

Moldovan investors granted leave to enforce multimillion investment treaty awards against Kazakhstan (Amsterdam Court of Appeal)

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In *Stati and others v Kazakhstan and others (unpublished)*, the Court of Appeal in Amsterdam recognised and granted Stati and others leave to enforce investment treaty arbitration awards in the Netherlands, awarding some USD500 million following the expropriation of the investments in Kazakhstan. Leave was granted despite Kazakhstan's objections based on asserted fraud.

The Court of Appeal in Amsterdam has recognised and granted leave to enforce investment treaty awards in the Netherlands. The court assessed the request on the basis of article 1075 of the [Dutch Civil Procedural Code \(Wetboek van Burgerlijke Rechtsvordering\)](#), in conjunction with articles III, IV and V of the New York Convention.

In December 2013 and January 2014, an SCC tribunal issued awards in favour of Stati and others (Stati) worth USD500 million relating to the expropriation of investments in oil fields in Kazakhstan by the state.

Stati applied for leave to enforce the awards in the Netherlands and Kazakhstan objected, arguing that the awards were influenced by fraud. The Court of Appeal in Amsterdam considered that, for the objection to succeed, Kazakhstan would need to demonstrate that Stati had deliberately defrauded the tribunal and that Stati's acts had a material influence on the arbitral awards. Moreover, the court considered it was for the tribunal (not the court) to rule on whether the tribunal had been defrauded and noted that the Svea Court of Appeal had already refused to set aside the awards based on fraud. Further, the English Commercial Court decision ruling that there was a prima facie case of fraud only concerned a preliminary ruling (see [Legal update, Enforcement: English court not bound by Swedish or US decisions on fraud \(English Commercial Court\)](#)).

The court dismissed Kazakhstan's arguments that Stati defrauded the tribunal by referring to USD245 million in investments for the expropriated plant and USD193 million in building costs. Further, even if the court's finding on this point had been different, it could not be established that the asserted fraud would have had a material influence on the awards.

The court also dismissed Kazakhstan's objections to the appointment of an arbitrator by the SCC after it failed to nominate an arbitrator itself in time.

Lastly, the court rejected Kazakhstan's request for disclosure of additional documents and dismissed the request for enforcement insofar as it was directed against parties related to Kazakhstan (Samruk and the National Fund of Kazakhstan) and issued a limited cost order.

Usually, in the Netherlands, a decision granting leave to enforce an award on the basis of the New York Convention cannot be appealed, except if the decision violates the principles of equality of arms or other procedural issues.

Case: *Stati and others v Kazakhstan and others (14 July 2020)* (unpublished).

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