

Attorney-General advises Dutch Supreme Court to annul decision granting Stati and others leave to enforce arbitral awards

by *Practical Law Arbitration*, with *Van Oosten Schulz De Korte Advocaten*

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In *Kazakhstan v Stati and others* (ECLI:NL:PHR:2021:553), the Attorney-General advised the Dutch Supreme Court to annul a decision granting Stati and others leave to enforce USD500 million arbitral awards because the Appeal Court lacked jurisdiction.

Geert Wilts, Van Oosten Schulz De Korte Advocaten

The Attorney-General (AG) at the Dutch Supreme Court has issued an opinion advising that court to annul an Amsterdam Appeal Court's decision granting Stati and others leave to enforce arbitral awards against Kazakhstan due to the Appeal Court's lack of jurisdiction, and to refer the matter to the District Court.

In September 2017, Stati and others filed an application to enforce awards rendered before 2015 with the Amsterdam Appeal Court. In November 2018, the court held that it had jurisdiction to hear the request (see [Legal update, Amsterdam Appeal Court: appeal courts competent to rule on requests for enforcement of foreign arbitral awards](#)). In July 2020, the court granted the request (see [Legal Update, Moldovan investors granted leave to enforce multimillion investment treaty awards against Kazakhstan \(Amsterdam Court of Appeal\)](#)). Kazakhstan filed for cassation against these decisions with the Supreme Court.

First, according to the AG, Kazakhstan's request for cassation was admissible even though decisions granting leave for enforcement of foreign awards cannot be appealed in principle, because the Appeal Court's jurisdiction to rule on a request for enforcement cannot be challenged in set-aside proceedings. The reason for the limitation on appealability is that the grounds for refusing enforcement are the same as those to set aside an award, which (other than the Appeal Court's jurisdiction) should be submitted in set-aside proceedings.

The AG then opined that the Appeal Court lacked jurisdiction to rule on the request for enforcement. As of 1 January 2015, requests for enforcement of foreign awards should be filed with Appeal Courts, as opposed to District Courts. The Appeal Court had ruled that the provisions on transition to the new Dutch Arbitration Act (DAA), which provided that the old arbitration act 'remained' applicable to arbitrations initiated before 1 January 2015, did not apply to foreign arbitrations, as the DAA never applied to them. The AG disagreed, as the DAA includes provisions applying to foreign arbitrations, including on the issue in this case as to which court has jurisdiction.

If the Supreme Court agrees with the AG, it will cause a complete re-hearing of the request by Stati and others at the District Court and will also affect other proceedings on requests for enforcement in the Netherlands of foreign awards arising out of arbitrations commenced before 1 January 2015.

Case: *Kazakhstan and others v Stati and others* (ECLI:NL:PHR:2021:553) (4 June 2021).

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