

# Dutch Supreme Court orders re-hearing of enforcement proceedings in favour of Kazakhstan

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Legal update: case report | Published on 07-Jan-2022 | The Netherlands

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In *Kazakhstan v Stati and others* (ECLI:NL:HR:2021:1990), the Dutch Supreme Court ordered the re-hearing of a request for enforcement by Stati and others to enforce USD500 million awards against Kazakhstan, ruling that the district courts and not the appeal courts have jurisdiction to rule on a request for enforcement of an award resulting from a foreign arbitration commenced before 1 January 2015.

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The Supreme Court has annulled appeal court decisions assuming jurisdiction and granting leave to enforce and referred the matter to the district court.

The Supreme Court first considered whether Kazakhstan could file a cassation appeal. Although in principle an appeal cannot be filed against a decision granting leave to enforce, this principle, considered in connection with the non-discrimination rule in article III of the New York Convention, does not concern the court's jurisdiction to rule on a request for enforcement. Further, although the Supreme Court considered that Kazakhstan could have filed for cassation against the appeal court's interim decision assuming jurisdiction (see [Legal update, Amsterdam Appeal Court: appeal courts competent to rule on requests for enforcement of foreign arbitral awards](#)), the fact that it only filed for cassation against the final decision (see [Legal update, Moldovan investors granted leave to enforce multimillion investment treaty awards against Kazakhstan \(Amsterdam Court of Appeal\)](#)) could not prevent it from filing for cassation, as the rules on jurisdiction are public policy rules.

The Supreme Court then considered whether the appeal courts or district courts have jurisdiction to rule on a request for enforcement, filed on or after 1 January 2015, of an award resulting from foreign arbitration commenced before 1 January 2015. On 1 January 2015, the new Dutch Arbitration Act entered into force, providing that appeal courts have jurisdiction to rule on a request for enforcement of a foreign arbitral award. The transitional law provided that the old Arbitration Act applied to arbitrations commenced before 1 January 2015, providing that the district courts have jurisdiction. The Supreme Court therefore ruled that this also applied to foreign arbitrations. According to parliamentary history, the purpose of the transitional law was to prevent two different sets of arbitration rules applying simultaneously. The Supreme Court ruled that this consideration did not imply that foreign arbitrations were excluded from the transitional law, contrary to the appeal court, which found that the Dutch Arbitration Act never applied to foreign arbitrations.

This decision resolves a heavily debated subject of Dutch arbitration law. It will affect all pending and future state court proceedings commenced on or after 1 January 2015, concerning foreign arbitrations commenced before that date and may even affect decisions by appeal courts assuming jurisdiction or district court decisions, dismissing jurisdiction that are still subject to appeal.

Case: *Kazakhstan v Stati and others* (ECLI:NL:HR:2021:1990) (24 December 2021). (Not currently available in English).

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