



## The Court

**Fax**

**Court of Amsterdam**

To [handwritten: translation in  
italics]  
Fax number 020 305 2514  
Lawyer mr L.C.M.  
Berger

Phone 020 5412514 Fax 020 541 2924

Date april 3 2014

Pages: 7

(Including this cover sheet)

Dear Sir/Madam,

Please find attached by fax the decision of seizure [handwritten: translation in  
italics] without attached application

Any documents sent along by you are not returned and you will yourself  
to attach them to the decision.

If you require the original document, you may submit a written  
and substantiated request to this effect. Should the court decide on  
it positively, submission is by mail.

[Handwritten: translation in italics] I send you today by post the original decision.

Yours

De griffier

# In the name of the King



## Decision

**COURT OF AMSTERDAM**

Department of Private Law, repliminary relief

judge numbers 562 330 / **KG RK 14-619 HJ** /

**CB Decision April 3 2014 in the case of**

1. the legal entity under the laws of the Republic of Moldova  
**ASCOM GROUP SA.**,  
established in Chisinau, Moldova,
2. the legal entity under the laws of Gibraltar  
**TERRA RAF TRADING TRANS LTD.**,  
established in Gibraltar,
3. **ANATOLIE STATIE**,  
residing in Moldova,
4. **GABRIEL STATIE**,  
residing in Romania,  
applicants,  
Lawyer LCM Berger Amsterdam,

against

**THE REPUBLIC OF KAZAKHSTAN**,  
seat in Astana, Kazakhstan,  
respondent.

### 1. Conduct of the procedure

Applicants have on April 1, 2014 made a petition for attachment at third party (actio pauliana) against respondent, which application is attached to this decision.

### 2. The request

2.1. The applicants were - in short - (indirectly) owners of two oil and gas producers, Kazpolmunay LLP (hereinafter KPM) and Tolkyneftegaz (hereinafter TNG). In 1998 and 1999, KPM and TNG have signed three agreements with respondent. These agreements gave KPM and TNG the right to seek oil and gas and then to exploit it. Each of these agreements regarded in a separate area. KPM was active in the Borankal-

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oil field and TNG in the Tolkyng gas field. TNG also had the rights of the so-called "Tabyl Block". research investigation regarding two areas began in 2000. In 2008, KPM and TNG exploited oil and gas in these areas, from approximately 100 different oil and gas wells. In the third area, significant oil and gas discoveries were made in 2008 and 2009. In total the applicants via KPM and TNG, invested approximately USD 1 billion in the search for oil and gas in these three areas as well as in the development of production and resources.

2.2. The applicants maintain - in short - the respondent seized all assets of KPM and TNG, at least that these assets are now owned by companies fully owned by respondents.

2.3. An arbitration between the parties, in accordance with the rules of the Arbitration Institute of the Stockholm Chamber of Commerce (Chamber of Commerce or Stockholm), has given a judgment on December 19, 2013. Respondent is ordered to pay to the applicants:

- (i) *The amount of USD 497,685,101.00 in respect of damages;*
- (ii) *interest over the amount of USD 7,685,101.00 at the rate for interest that applies to six month government bonds of the United States from April 30, 2009 until the date of full payment;*
- (iii) *the legal costs of applicants for an amount of USD 8,975,496.40;*
- (iv) *the cost of the arbitration.*

Part N of that arbitration award containing the literal text of the award is attached to this decision.

2.4. As of January 8, 2014 the claims have increased to USD 510,414,150.00. Despite repeated requests, respondent has failed to comply with the arbitration award.

2.5. As security for their claim, applicants request precautionary attachment against respondent at seventeen banks and among forty other third parties with whom (according to applicants) agreements have been concluded in respect of mining for which various allowances are paid to the respondent.

2.6. According to the applicants, the question how the precautionary attachments relate to the public law privilege of immunity against enforcement is not subject to the judgment of the judge. Article 3a of the Bailiffs Act (Gw) contains here indeed an exclusive arrangement. First, the bailiff will have to assess by making the seizures that he takes reasonably into account the possibility that these seizures might contradict called privilege. If so, he will then inform

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the Minister of Security and Justice (Ministerie Veiligheid en Justitie). If the minister then prohibits the seizures, the applicant may appeal to the court as is defined in Article 3a paragraph 7 Gw.

2.7. According to applicants respondent waived his right to immunity from execution in respect of the decision under 2.3 above, because it is a party to the Convention on the Energy Charter. In article 10 paragraph 12 of this Convention, Kazakhstan has undertaken to correct its national law in such a way that progress towards investment under the Energy Charter is effectively enforceable; therefore it is incompatible Kazakhstan invokes immunity from execution. In addition, the applicants with the attachments do not try to frustrate the implementation of public service provided by respondent. The goods which they want to attach have a commercial and a public destination. If after the attachment this is found not to be the case, the applicants will lift the respective seizures.

2.8. The arbitration award contains 414 pages and its translation involves time. The applicants will within one month after the attachment, start an exequatur proceedings (for which translation is required), so that the arbitration award may be enforced in the Netherlands.

### 3. The assessment

3.1. The preliminary relief judge considers that the right of claim of the applicant is prima facie proven summarily and decides the attachment without previous hearing of the respondent to giving the attachment, is necessary. However, the preliminary relief judge considers that account must be taken of the possibility that the requested attachment violates the public international obligations of the State. Given the great financial importance of the case and the far-reaching consequences for the debtor of the requested seizure, a temporary leave is considered appropriate. This is certainly not regulated in the law but arose in legal practice (see e.g. Court 's-Hertogenbosch, October 7, 2010, ECLI: NL: GHSGR: 2010: BN9816 and HR September 13, 2013, ECLI: HR: 2013: BZ9958. The basis for provisional attachment may be found in the corresponding application of art. 223 RV or in the fact that the preliminary relief judge is empowered to more (unconditional final leave provision), which suggests that the preliminary relief judge also has competence to the lesser (granting leave with a limited validity period, after which an assessment is made on whether the leave may be granted final).

3.2. The bailiff must assess whether execution of the received command may possibly be in conflict with the international obligations of the State. Now the petition for attachment recognises this may exist, the

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preliminary relief judge assumes that the bailiff in this case will make a statement as referred to in article 3a of the Bailiffs Act. In view of the importance of the case the preliminary relief judge will determine that attachment can not immediately take place after that communication, but that the minister should be given a reasonable time for a response. We also weigh the matter is by nature urgent. It must be expected the minister can know within seven days whether there are objections of public international law or not.

3.3. If the Minister within seven days informs there are no objections, the attachment may be done temporarily, and after the assessment of the final grant, the preliminary relief judge will hear the republic Kazakhstan itself and the Republic of Kazakhstan can, if desired, allege the attachment impinges on public international law or others.

3.4. If the Minister within seven days notice does inform the attachment is contrary to the public international law obligations of the State, this has the in art. 3a paragraph 5 of the Bailiffs Act mentioned effects, namely that the bailiff is not entitled to the mandatory attachment and that in spite of that jurisdiction the attachment is null and void. Applicants can then by virtue of Article 3a paragraph 7 of the said law, request the preliminary relief judge to cancel the effect of the notice by the minister.

3.5. If the Minister within seven days of making a notification referred to in Article 3a paragraph 2 of the Bailiffs Act does not inform that there is no objection to the proposed seizure, the bailiff will under have leave under this attachment order, although any later made notice will have the effects as regulated in Article 3a paragraph 6 of the Bailiffs Act.

3.6. If the bailiff proceeds to attachment applicants should within two days after the first attachment inform the data of parties over a period of two weeks to the office of the preliminary relief judge, so that a date and time can be determined at which parties will be heard before a final decision will be made.

3.7. This leads to the following decision.

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4. The decision

The preliminary relief judge

4.1. gives applicants a provisional authorisation to serve the requested attachment at third parties, including determination of the amount for which the permission is granted, including interest and costs at USD 520 million, - (in words five hundred twenty million US dollars) with the proviso that the preliminary relief judge will hear parties regarding the requested attachments, before deciding definitively;

4.2. provides that the attachment should not be made until seven days have elapsed after the Minister has been informed by the bailiff pursuant to Article 3a of the Bailiffs Act on the intention to seizure unless already within that period, the Minister informs that attachment to his judgment (wholly or partially) is not inconsistent with the public international obligations of the State;

4.3. provides that the hearing will be determined in accordance with what specified in paragraph 3.6 .;

4.4. provides that if leave is definitively granted the term within which the enforcement (exequatur) procedure must be started will be determined in the final grant.

This decision was rendered by mr. R.H.C. Jongeneel, preliminary relief judge, assisted by C.J.J. Buys, Registrar, on April 3, 2014.



UITGESEVEN VOOR GROSSE  
Burgemeester van de  
Rechtbank Amsterdam

