[informal translation from Dutch]

In the name of the King

decision

DISTRICT COURT OF AMSTERDAM

Private law division, court in summary proceedings, civil

case/application number: 634969 / KG RK 17-1581 MW/JT

Decision of 8 September 2017

in the matter of

1. **ANATOLIE STATI,**
residing in Chisinau, Moldavia,
2. **GABRIEL STATI,**
residing in Chisinau, Moldavia,
3. the company under foreign law
ASCOM GROUP S.A.,
with its registered office in Chisinau, Moldavia,
4.the company under foreign law
TERRA RAF TRANS TRAIDING LTD.,
with its registered office in Gibraltar,
applicants,
counsel Mr G.J. Meijer and Mr J.M. Hummelen of Amsterdam,

versus

1. the legal entity under foreign public law
REPUBLIC OF KAZAKHSTAN
with its registered office in Astana, Kazakhstan,
2. the legal entity under foreign public law
REPUBLIC OF KAZAKHSTAN (NATIONAL FUND OF THE REPUBLIC OF KAZAKHSTAN),
with its registered office in Astana, Kazakhstan,
3. the company under foreign law
SAMRUK-KAZYNA JSC,
with its registered office in Astana, Kazakhstan,
respondents,

1. The course of the proceedings

The applicants submitted an application on 23 August 2017 for leave to levy pre-judgment attachment on third parties and on shares against the respondents. The Registrar asked (counsel for) the applicants on 25 August 2017 to explain certain aspects in an amended

application. On 31 August 2017, the applicants submitted an amended application, which application is appended to this decision.

2. The application

2.1. Applicants were – essentially – (indirect) owner of two oil and gas producers, Kazpolmunay LLP (hereinafter KPM) and Tolkynneftegaz LLP (hereinafter TNG). KPM and TNG owned exploitation rights in respect of oilfields in Kazachstan. KPM operated in the Borankoil oilfield and TNG operated in the Tolkyn oilfield and the Tabyl Block. Applicants have invested substantial amounts in the making the aforesaid oil regions profitable.

2.2. Applicants assert – essentially – that the State of Kazakhstan has appropriated all of the applicants' investments.

2.3. The actions of the State of Kazachstan prompted the applicants to institute arbitration proceedings against the State of Kazakhstan at the arbitration institute of the Chamber of Commerce of Stockholm. The claim was based on violation of the obligations on the State of Kazakhstan under the Energy Charter Treaty. On 19 December 2013 an award was given in those proceedings (hereinafter the Arbitral Award). The State of Kazakhstan was ordered to pay the applicants a sum of USD 497,685,101.00 in compensation, with interest and legal costs.

2.4. In a supplementary arbitral award (hereinafter the Supplementary Arbitral Award), the tribunal specified the costs of arbitration, establishing them at EUR 1,069,470.98. On the basis of the operative part of the Arbitral Award, the State of Kazakhstan is ordered to pay a three-quarter share of that amounts to the applicants, i.e. EUR 802,103.24.

2.5. The aforesaid arbitral awards are not open to appeal. The State of Kazakhstan has instituted proceedings before the Swedish court to have both arbitral awards set aside. In a judgment of 9 December 2016, the Swedish court dismissed the claim to set aside the arbitral awards in full. This judgment is also not open to appeal. The State of Kazakhstan pursued an extraordinary legal remedy before the Swedish Supreme Court. The applicants do not expect a ruling in those proceedings within the foreseeable future. In spite of repeated demands, the State of Kazakhstan has failed to satisfy the arbitral awards.

2.6. Applicants will submit a request for the recognition and enforcement of the arbitral awards with the competent Dutch court, to enable them to proceed with the enforcement of the arbitral awards in the Netherlands.

2.7. As security for the recovery of their claim on the basis of the Arbitral Award and the Supplementary Arbitral Award, in the amount of USD 506,660,597.40 and EUR 802,103.24, plus the usual margin for interest and costs, Applicants wish to levy pre-judgment attachment against the respondents on a bank and ten other third parties, and on shares.

2.8. Applicants submit – essentially – that the requested objects of attachment are for commercial purposes and therefore do not serve a public purpose and meet the conditions for attachment.

3. The assessment

3.1. Applicants' right of action is prima facie well-founded. The question, however, is whether the requested leave for attachment can be reconciled with the obligations of the Dutch state under international law.

3.2. It follows from the judgment of the Supreme Court dated 30 September 2016 (ECLI:NL:HR:2016:2236) that state property which serves a public purpose does not meet the

conditions for enforcement. It follows from that same judgment that a debtor who levies or wishes to levy attachment must assert and demonstrate that the funds and credit balances on which attachment will be levied also meet the conditions for attachment and enforcement, and to what extent. That is only the case where:

a. the State has consented to the attachment,
b. the State has designated or reserved property to satisfy the claim, or
c. it has been established that the property is used or intended for use in particular by the State for purposes other than non-commercial government purposes,

3.3. The cases described in paragraphs a. and b. are categorically not relevant here. Therefore, before leave is now granted, the case must at least be made (prima facie) that this situation is that described in paragraph c. The applicants were therefore afforded the opportunity to explain/substantiate in an amended application that the attachment objects are not in use or designated for public purposes.

3.4. In regard to the attachment objects as described in paragraphs 45 and 46 (garnishment on Procon Europe B.V.), paragraphs 55 and 56 (garnishment on The bank of New York Mellon SA/NV), and paragraph 76 (attachment of shares in KMG Kashagan B.V.) of the (amended) application, it has been demonstrated (prima facie) that these attachment objects are not used all designated for public purposes and the situation is therefore as described in paragraph 3.2 (c). Consequently, leave can be granted in relation to these attachments, without prejudice to the legal obligations of the bailiff and the ability of the Minister to give an order to lift the attachment.

3.5. However, the following applies in regard to the attachment objects as described 55 and 56 (garnishment on The bank of New York Mellon SA/NV). It is in principle possible to levy an attachment on a foreign bank in the Netherlands and therefore the requested attachment on the branch of The bank of New York Mellon SA/NV in Amsterdam will be granted. However, the application in paragraphs 55 a, b, and c is for leave to levy attachment on the branches of the aforesaid bank in Brussels (Belgium), Astana (Kazakhstan) and London (United Kingdom), with reference to page 50 of the attachment syllabus for supporting reasons. In principle, however, leave to levy attachment, given the territorial effect of the pre-judgment attachment, relates only to property that is located in the Netherlands or to pecuniary claims that are payable in the Netherlands. Therefore attachment and garnishment can only be levied in the Netherlands. If an applicant also wants the garnishment on a bank – if that garnishment is recognised abroad – to cover credit balances that are administrated by an office of that bank that is located abroad, the applicant must indicate in the application for leave to levy attachment the country and the office in which the credit balances of the judgment debtor are held (cf. Amsterdam Court of Appeal, 10 April 2012, ECLI:NL:GHAMS:2012:BW3378). This does not apply, however, for this application in which the bank is located in Belgian and the Dutch office is the foreign branch of the garnishee. Nor does the application seek leave for an attachment as described on page 50 of the attachment syllabus on the basis of the recast Brussels I Regulation or a European bank attachment. All of this takes into consideration that leave will not be granted to levy an attachment on the branches of banks listed in paragraph 55 a, b, and c that are not located in the Netherlands.

3.6. In regard to the attachment objects as described in paragraphs 63 and 64 (garnishments on nine Dutch companies), the following also applies. In the view of the court in summmary proceedings, the case has not been demonstrated prima facie that the goods held by these third parties for the State of Kazakhstan are designated as a whole and directly for commercial, non-public purposes. The claims which the State of Kazakhstan has on these third parties, as the applicants have explained, comprise both tax liabilities and non-tax liabilities. It cannot be deemed to have been demonstrated prima facie that 75.2% of these claims is implicitly destined for the Savings Fund as described in paragraph 52 of the (amended)

application, as the court understands applicants are arguing. Consequently leave will not be granted to levy attachment on these nine Dutch companies.

3.7. This leads to the following decision.

4. The decision

The court in summary proceedings

4.1. Grants the applicants leave to levy the pre-judgment attachments described in paragraphs 45,46, 55, 56 and 76 of the application against the respondents, on the understanding that leave is not granted for the bank attachment described in paragraph 55 for the branches of banks not located in the Netherlands listed in subparagraphs a, b, and c.

4.2. Fixes the amount of the claim for which leave is granted, including interest and costs, at five hundred and fifty-seven million six hundred and fifty-six thousand six hundred and fifty American dollars (USD 557,656,650) and nine hundred ninety-two thousand five hundred and twenty euro (EUR 992,520).

4.3. Attaches to the leave the condition that the claim in the principal action be instituted within twelve weeks after the first attachment is levied.

4.4. Declares this ruling to be provisionally enforceable,

4.5. Refuses the request for a declaration of enforceability on any day and at any time.

4.6. Rejects any and all other claims.

This ruling was passed by M. van Walraven, court in summary proceedings, assisted by J.E. Tiddens, clerk of the court, on 8 September 2017.