

Judgment No. 108/21 - III - Exequatur

CIVIL JUDGMENT - EXEQUATUR

82

Hearing of two December two thousand and twenty-one

Roll number CAL-2018-00013. Composition:

Alain THORN, President of the Chamber;

Henri BECKER, First Adviser;

Paul VOUEL, Adviser;

Isabelle HIPPERT, Registrar.

Between:

THE REPUBLIC OF KAZAKHSTAN, represented by its President of the Republic, currently in office, and insofar as necessary by its Prime Minister, currently in office, or by any other body empowered for that purpose, prosecuted and assisted by the Department for provision of court's activity under the Supreme Court of the Republic of Kazakhstan (administrative office of the Supreme Court of the Republic of Kazakhstan) at its address at Dinmukhamed Qonayev Street 39, Astana 010000, Kazakhstan, or by the Ministry of Justice, represented by the current Minister of Justice, located at 8, Orynbor Street, House of Ministries, entrance 13, 010000 Astana, the Left bank, Kazakhstan,

appellant under the terms of a deed from the bailiff Véronique REYTER of Esch-sur Alzette dated 2 November 2017,

appearing before the Court, on behalf of the limited liability company Arendt & Medemach, registered at the Luxembourg Bar, established and having its registered office at L-2082 Luxembourg, 41A, J.F. Kennedy, represented for the purposes of the present proceedings by Maître François KREMER, attorney at law, residing in Luxembourg,

and:

- 1) **ASCOM GROUP S.A.**, a company incorporated under Moldovan law, established and having its registered office in MD-2009 Chisinau, Moldova, 75, Mateevici Street, represented by its president currently in office, or by any other body authorised for this purpose,
- 2) **Anatolia STATI**, living in MD-2008 Chisinau, Moldova, 20 Dragomima Street,
- 3) **Gabriel STATI**, living in MD-2008 Chisinau, Moldova, 1A Ghiocailor Street,

4) TERRA RAF TRANS TRADING LTD. a company incorporated under the laws of Gibraltar, having its registered office at 13/1 Line Wall Road, Gibraltar, British Overseas Territory, represented by its present director, or any other body empowered for that purpose,

Respondents for the purposes of the said REYTER deed,

appearing by the limited liability company NautaDutilh Avocats Luxembourg, registered at the Luxembourg Bar, established and having its registered office at L-1233 Luxembourg, 2, rue Jean Bertholet, represented for the purposes of the present proceedings by Maître Antoine LANIEZ, attorney at law, residing in Luxembourg.

THE COURT OF APPEAL:

The background to the dispute can be summarized as follows :

Anatolie STATI holds all the shares of ASCOM GROUP SA (hereinafter referred to as "**ASCOM**"), a joint stock company under Moldovan law.

Anatolia STATI and his son Gabriel STATI each hold half of the shares in TERRA RAF TRANS TRADING Ltd (hereinafter "**TERRA RAF**"), a limited liability company incorporated under the laws of Gibraltar.

Between 1999 and 2005, Anatolia and Gabriel STATI (hereinafter "**STATI**"), through ASCOM and TERRA RAF, acquired 100% of the shares of two Kazakh companies, namely KAZPOLMUNAY LLP (hereinafter "**KPM**") and TOLKYNNEFTEGAZ LLP (hereinafter "**TNG**") which had permission from the Republic of KAZAKHSTAN (hereinafter '**KAZAKHSTAN**') to explore and develop various oil and gas fields in KAZAKHSTAN pursuant to subsoil use contracts.

KPM is wholly owned by ASCOM, which in turn is wholly owned by Anatolia STATI, while TNG is wholly owned by TERRA RAF, which in turn is owned equally by Anatolia and Gabriel STATI.

Anatolie STATI also owns 100% of TRISTAN OIL Ltd (hereinafter "**TRISTAN**"), a British Virgin Islands company which, according to Anatolie and Gabriel STATI, was created for the sole purpose of financing the activities of KPM and TNG.

In 2006, ASCOM and TERRA RAF started the construction project of a liquefied petroleum gas plant in KAZAKHSTAN through TNG (hereinafter "**LPG Plant**") in cooperation with the oil company VITOL FSU B. V. (hereinafter "**VITOL**").

At the end of 2008, the Kazakh authorities reported several serious shortcomings in the operations of KPM and TNG.

On 21 July 2010, the Ministry of Oil and Gas of KAZAKHSTAN terminated the land use contracts of KPM and TNG. The oil fields were taken over by the state-owned oil company KazMunaiGas (hereinafter "**KMG**") and its subsidiary KazMunaiTeniz (hereinafter "**KMT**") through a trust.

On July 26, 2010, Anatolia STATI, GABRIEL STATI, ASCOM and TERRA RAF (hereinafter referred to together as "**STATI**") initiated arbitration proceedings before the Arbitration Institute of the Stockholm Chamber of Commerce (hereinafter referred to as "**SCC Institute**") based on the Energy *Charter Treaty* ("**ECT**"), which was signed on 17 December 1994 and whose purpose is to promote and protect foreign investment in the energy sector.

By an award of 19 December 2013, the Arbitral Tribunal resolved the dispute between the Moldovan law company ASCOM GROUP S.A., Anatolia STATI, Gabriel STATI and the Gibraltar law company TERRA RAF Trans. Trading Ltd, on the one hand, and KAZAKHSTAN, on the other.

The Tribunal held that KAZAKHSTAN had breached its obligations under the ECT in respect of STATI's investments and decided that KAZAKHSTAN should pay STATI an amount of USD 497,685,101.00 plus default interest (of which USD 199,000,000.00 as damages for the LPG Plant).

By a corrective award of January 17, 2014, the court of arbitration made a correction relating to the costs of the arbitration and determined the allocation of the arbitrators' fees.

An appeal by KAZAKHSTAN to set aside the arbitral award was dismissed by a decision of the Stockholm Court of Appeal (hereinafter "**SVEA Court**") on 9 December 2016.

An appeal against this decision was rejected by the Swedish Supreme Court.

Various exequatur and enforcement procedures have been initiated by STATI in the United States, England, the Netherlands, Belgium, Sweden, Italy and Luxembourg.

By order of 30 August 2017, under number 40/2017, a First Vice President at the District Court of Luxembourg, sitting in replacement of the legitimately prevented President, declared enforceable in the Grand Duchy of Luxembourg, as if it emanated from a native court, the arbitral award of 19 December 2013, as corrected by the award of 17 January 2014.

By writ of 2 November 2017, KAZAKHSTAN lodged an appeal, on the basis of Articles 1250 and 682 of the New Code of Civil Procedure, against that order, which had been served on it on 2 October 2017.

This appeal was brought before the Eighth Chamber of the Court of Appeal.

KAZAKHSTAN asked the Court

* principally, to declare that the arbitration award is contrary to Luxembourg public policy, since it is the product of an infringement or fraud,

therefore, on the basis of Article V(2) b) of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter "the New York Convention"), and in the alternative on the basis of Articles 1251(2), 1244(10) and 1244(12) of the New Code of Civil Procedure, to refuse to grant or to revoke the enforcement of the award, or order the reversal of the enforcement order and state that it could not have any effect whatsoever in the territory of the Grand Duchy of Luxembourg

* **as a first subsidiarity**, declare that the essential formal requirements laid down in relation to the documents to be attached to the application for enforcement have not been complied with by the STATI,

consequently, on the basis of Article IV(1) a) and b) of the New York Convention, if not Article 1250 of the New Code of Civil Procedure, to refuse, respectively to revoke, the enforcement of the award, if not to order consequently the reversal of the enforcement order and to declare that it cannot produce any effect whatsoever on the territory of the Grand Duchy of Luxembourg,

* as a second subsidiarity, to find and declare that there was no valid arbitration agreement between STATI and KAZAKHSTAN,

consequently, on the basis of Article V(1) a) of the New York Convention, or alternatively on Article 1244(3) of the New Code of Civil Procedure, to which Article 1251(3) of the New Code of Civil Procedure refers, to refuse, respectively to revoke, the enforcement of the award, if not to order in a consequential manner the reversal of the enforcement order and to declare that it cannot produce any effect whatsoever on the territory of the Grand Duchy of Luxembourg,

* as a third subsidiarity, to find and declare that the Award was made by an arbitral tribunal improperly constituted,

consequently, on the basis of Article V(1) b) and d) of the New York Convention, if not in the alternative of Article 1244(6) of the New Code of Civil Procedure to which Article 1251(3) of the New Code of Civil Procedure refers, to refuse, respectively to revoke, the enforcement of the award, if not to order in a consequential manner the reversal of the enforcement order and to declare that it cannot produce any effect whatsoever on the territory of the Grand Duchy of Luxembourg,

* as a fourth and final subsidiarity, to find and rule that KAZAKHSTAN must enjoy immunity from execution, the purpose of which is to protect the property of a sovereign State from any measure of execution, and that consequently the award could not be the subject of the exequatur granted by order of 30 August 2017,

consequently, to refuse, respectively revoke on this ground the exequatur of the Award, if not to order consequently the reformation of the order

of exequatur and to declare that it cannot produce any effect whatsoever on the territory of the Grand Duchy of Luxembourg.

In any event, KAZAKHSTAN requested notice that, insofar as necessary, it offered to prove by testimony the following facts :

" 1. The main equipment of the LPG plant was delivered and its installation supervised by the German company TGE Gas Engineering GMBH (hereinafter "**TGE**"), for a total amount of approximately EUR 32 million.

STATI - via AZALIA 000 (hereinafter "**AZALIA**") and PERKWODD INVESTMENT LIMITED (hereinafter "**PERKWOOD**") - sold TGE's equipment to TNG for USD 93 million, which is the same equipment sold by TGE for USD 35 million.

2. PERKWOOD is a company that was established by SARAH PETRE-MEARS on September 14, 2005. Throughout the period from September 2005 to July 2010, PERKWOOD was in fact controlled by STATI, by virtue of powers of attorney given by the sole director of PERKWOOD, SARAH PETRE-MEARS to STATI on November 2, 2005, and renewed on an annual basis on September 14, 2006, August 22, 2007 and August 26, 2008. The persons who intervened on behalf of PERKWOOD in the documents produced by STATI, however, include other persons, including Mr. Anatolia STATI's personal driver, Eldar KAZUMOV, who did not have the required knowledge to validate such transactions, and whose alleged authority to represent PERKWOOD was never established by STATI.

3. From 2006 to 2009, PERKWOOD was a company with no office or employees, and which filed dormant accounts with the BRITISH COMPANIES HOUSE.

4. AZALIA is a Russian company, of which STATI is neither a shareholder nor a director. However, STATI controlled AZALIA during the period from September 2005 to July 2010. AZALIA's sole director, Mr. Alexey SHORIN, has never heard of TGE, ASCOM, PERKWOOD, and TNG. AZALIA stopped its activities in 2005, i.e. before the construction of the LPG Plant started, and had no activities after that date until its liquidation in June 2016.

5. The contract concluded between PERKWOOD and TNG dated March 27, 2006 (Exhibit 8.3 Arendt) and the various Annexes and Addenda to this contract were signed on behalf of PERKWOOD by Elena OZEROVA (ASCOM's accountant at the time of the events) or Eldar KAZUMOV (Anatolia STATI's personal driver at the time of the events).

6. In addition to Anatolia STATI, Grigore PISICA and Gheorghe CIOBANU knew that PERKWOOD was a company linked to STATI. However, Grigore PISICA was a witness of STATI in the Arbitration!

7. Neither PERKWOOD nor AZALIA were mentioned as related parties in the 2007, 2008 and 2009 annual accounts of TRISTAN OIL LTD, KPM and TNG.

8. The representation letters sent by STATI to KPMG dated August 5, 2008, March 31, 2009, August 25, 2009, June 10, 2009, December 14, 2009 concerning the audit

of TRISTAN, KPM and TNG for the 2008 and 2009 financial reports are false and established in violation of IAS 24 in that they do not mention that PERKWOOD and AZALIA are related companies of STATI.

9. The “*Information Memorandum*” of 8 August 2008 on the controlled auction for the sale of KPM and TNG is false, as it is based on the 2007, 2008 and 2009 financial reports of Tristan, KPM and TNG which do not mention PERKWOOD or AZALIA as related parties.

10. After receiving, on 31 August 2008, a draft of the KPMG Report which mentioned several times that PERKWOOD was a company related to STATI, Mr Artur LUNGU sent the draft back to KPMG on 8 September 2008, manually crossing out the words “*related party*”. In the final version of the KPMG Report of 15 September 2008, the erroneous and misleading mention of “*third party*” appears. This final version of the KPMG Report of September 15, 2008, produced by STATI during the arbitration, was therefore materially false.

11. STATI also created a *management fee* of USD 44 million, which was included in the amount paid by TNG to PERKWOOD.

By telefax of 9 October 2019, KAZAKHSTAN’s lawyer, with reference to Article 418 of the New Code of Civil Procedure, completed the list of witnesses to be called.

In the alternative and insofar as necessary, the appellant requested that, in accordance with Article 1358 of the Civil Code, it intended to submit to the parties Anatolie STATI and Gabriel STATI, the *litisdecisory oath* on the following facts:

“PERKWOOD INVESTMENT LIMITED and AZALIA 000 were two companies controlled by Anatolia STATI and Gabriel STATI. This “related company” status was hidden in multiple documents, including the 2007, 2008 and 2009 annual accounts of TRISTAN OIL LTD, KAZPOLMUNAY LLP and TOLKYNNEFTEGAZ LLP, the “*Information Memorandum*” of August 8, 2008 regarding the controlled auction for the sale of KAZPOLMUNAY LLP and TOLKYNNEFTEGAZ LLP, the draft of the KPMG Report and the letters of representation sent by STATI to KPMG.”

In the further alternative, it asked the Court to give it the opportunity to amend the oath to make it admissible.

The appellant further sought to have the filing of its complaint with civil action against the respondents, dated 27 May 2019, in the hands of the Investigative Judge, as well as the payment of the required deposit.

The appellant therefore asked the Court to stay the *exequatur* proceedings, in application of the principle “*le criminel tient le civil en état*”.

In addition, the appellant requested the deletion of paragraphs numbers 2, 7 and 125 of the additional submissions of Nauta Dutilh Avocats Luxembourg SARL, dated 6 June 2019.

Finally, the appellant claimed that the respondents be ordered to pay it jointly, if not *in solidum*, then each for its share, the amount of EUR 250,000.00 on the basis of Article 240 of the New Code of Civil Procedure.

The respondents requested, before any further progress was made, on the basis of Article 282 of the New Code of Civil Procedure, if not on any other legal basis that the Court might deem appropriate, that the exhibits listed by KAZAKHSTAN in the document initiating the proceedings be excluded from the proceedings, for lack of timely communication, and referred to judicial caution as to the question of the validity of the appeal document and the admissibility of exhibits No. 108 and 109 submitted by KAZAKHSTAN.

They sought the rejection of KAZAKHSTAN's application for a stay of proceedings and the confirmation of the enforcement order made.

The respondents asked the Court to hold that the enforcement of the award is not contrary to Luxembourg public policy and that the conditions set out in Article 1250 of the New Code of Civil Procedure in relation to the documents to be attached to the application for exequatur have been met, to confirm the validity of the arbitration agreement between the parties to the dispute and to hold that the award was made by a properly constituted court.

In addition, the respondents challenged the applicability of immunity from execution in the exequatur proceedings.

They concluded that KAZAKHSTAN's offer of proof should be rejected, as per submissions of 10 May 2019, and that the request for a *litisdecisory* oath should be inadmissible, if not rejected.

Finally, they requested the allocation of a procedural indemnity of 30.000,- EUR on the basis of article 240 of the New Code of Civil Procedure and they requested to be informed that they reserved the right to request the reimbursement of the lawyer's costs incurred in the framework of the present case.

The representative of the public prosecutor reported to prudence of justice.

By judgment of 19 December 2019, under number 133/19, the Eighth Chamber of the Court of Appeal declared the appeal admissible but unfounded and dismissed the parties to the dispute from their respective claims for procedural damages.

KAZAKHSTAN filed an appeal against this judgment, which resulted in cassation judgment number 25/2021, issued on 11 January 2021, the operative part of which reads as follows:

"Sets aside and annuls the judgment delivered on 19 December 2019 by the Court of Appeal, Eighth Chamber, sitting in civil and exequatur matters under number CAL-2018-00013 of the roll;

declares the said judicial decision and the acts that followed null and void, puts the parties back in the state they were in before the judgment set aside and, for the sake of the law, refers them to the Court of Appeal, otherwise composed;

rejects the defendants' application for an award of procedural damages;

orders them to pay the costs of the proceedings in cassation, with a deduction for the benefit of ARENDT & MEDERNACH, a limited company, on the basis of its assertions of right;"

The court of this seat is called upon to rule as a court of reference.

KAZAKHSTAN firstly requests the Court to stay the proceedings on the basis of Article 3 of the Code of Criminal Procedure.

The appellant recalls that on 27 May 2019, it filed a complaint with the constitution of a civil party against the respondents in the hands of the Investigating Judge and that it paid the required deposit.

The appellant submits that the investigating judge at the Luxembourg court did indeed declare himself territorially incompetent, by order of 9 October 2019, but that on 28 January 2020 the Council Chamber of the Court of Appeal handed down a reversal judgment, under which the investigating judge at the Luxembourg district court has territorial jurisdiction to investigate the said complaint.

The Appellant contends that the ongoing criminal proceedings will establish that STATI obtained the arbitration award at issue by fraud and that it is currently attempting to have the award enforced by fraud.

The two conditions for the application of the rule that "*le criminel tient le civil en l'état*" would be met, since the public action would be in motion, having regard to the above-mentioned judgment of 28 January 2020, and the decision of the criminal court concerning the offences of which STATI is accused would have a direct influence on the exequatur procedure.

It argues that the documents alleged to be false include the KPMG report of "*due diligence*" on the sale of TNG and LPG, as well as the financial statements of TNG for the years 2007, 2008 and 2009 and that the falsifications contained therein are apparent from a sworn deposition, before a US court, of the former Chief Financial Officer of STATI.

By making use of documents claimed to be false in the context of the exequatur procedure, STATI would be committing the offence of fraud and attempted fraud against a judgment.

Finally, the production in the exequatur proceedings of an arbitral award obtained by fraud would constitute the offence of money laundering.

The recognition and enforcement of this arbitral award would be contrary to public policy, so that the opposing application for exequatur should be rejected.

The Respondents oppose the granting of the stay of proceedings.

The award in question has meanwhile been recognized and is being enforced in several countries.

The accusations made by the opposing party were allegedly unfounded and related to facts which had no connection with Luxembourg.

Even if they were established, the facts alleged against the respondents would not be such as to justify a rejection of the exequatur.

The restrictive provisions applicable in this matter would prohibit a review of the merits of the arbitration award, which the appellant would nevertheless attempt to obtain by means of this dilatory exception.

By order of 13 October 2021, the Pre-Trial Judge declared the proceedings closed "*limited to the examination of the merits of the objection to the granting of a stay of proceedings, raised by the appellant*".

The Court's assessment

The principle that "*le criminel tient le civil en l'état*" is enshrined in article 3 of the Code of Criminal Procedure.

It means that when the decision to be taken in criminal proceedings is likely to influence the decision to be taken in civil proceedings, the civil court must refrain from making a decision pending the outcome of the criminal proceedings.

The rule laid down in article 3 of the Code of Criminal Procedure is intended to avoid a contradiction in decisions between criminal and civil proceedings and to ensure the pre-eminence of the criminal decision over the civil decision, given, on the one hand, that the criminal court has more extensive means of investigation than the civil court and is therefore less exposed to the risk of making a mistake and, on the other hand, that the criminal decision is part of the public policy character that accompanies repression and the pronouncement of sentences (cf. Georges Levasseur and Albert Chavanne, *Droit pénal et procédure pénale*, Sirey, 9th ed, n° 619).

On May 24, 2019, KAZAKHSTAN, an appellant in this litigation, filed a complaint with civil action for forgery, use of forgery, fraud and money laundering against Anatolie STATI, Gabriel STATI and the companies ASCOM GROUP and TERRA RAF, respondents in this litigation.

In essence, the persons complained of are alleged to have falsified documents before using them in the arbitration proceedings before the Arbitration Institute of the Stockholm Chamber of Commerce to defraud the aforementioned arbitral award of 19 December 2013, as rectified by the aforementioned award of 17 January 2014, and to procure undue compensation to the detriment of the complaining State, and then to have made use of them in the exequatur proceedings.

By order of 9 October 2019, the examining magistrate at the district court of and in Luxembourg declared himself territorially incompetent to investigate the facts underlying this complaint with civil party.

By judgment No 95/20, delivered by the Council Chamber of the Court of Appeal on 28 January 2020, i.e. after the aforementioned decisions handed down in the context of the exequatur procedure, the said court decided, by way of reversal of the aforementioned order, that "*the investigating judge at the District Court of Luxembourg has territorial jurisdiction to investigate the facts underlying the complaint with civil party of 24 May 2019*", lodged by KAZAKHSTAN.

In the grounds of the same decision, the Court of Appeal's Council Chamber recalled that, under article 7-2 of the Code of Criminal Procedure, an *offence* is deemed to have been committed in the territory of the Grand Duchy of Luxembourg "*if an act characterizing one of its constituent elements was committed*" in that territory.

After examining the evidence in the case file, it found that, for each of the offences in question, namely forgery, fraud and money laundering, at least one of the potential constituent elements of the offence could be located on national territory.

The appellate court in matters of investigation noted, inter alia, that certain documents claimed to be false had been relied on before the national court in the exequatur proceedings, in particular the documents entitled respectively "*KPMG Due Diligence Report*" and "*Information Memorandum*" respectively, that the STATI consorts had referred, in their submissions notified in the exequatur proceedings, to financial statements also alleged to be false, and that, by letter dated 21 August 2019, KPMG had invalidated and withdrawn audit reports relating to the financial statements submitted in the arbitration proceedings.

It can be deduced from the judgment of 28 January 2020 of the Court of Appeal's Council Chamber that the public prosecution is underway concerning the facts referred to in the complaint with civil action lodged by KAZAKHSTAN, appellant, against Anatolia and Gabriel STATI as well as the companies ASCOM GROUP and TERRA RAF, respondents.

The court of this seat further notes that, according to several university professors who have issued written opinions on this subject, submitted to the debates (cf. exhibits 151, 161, 168 and 169 of the appellant), the respondents acted in a fraudulent manner, by knowingly altering the reality in the declarations and documents produced before the arbitration court, and then the national exequatur judge, in order to influence the decisions to be taken.

Christoph SCHREUER, Professor Emeritus at the Faculty of Law of the University of Vienna, concludes (see Exhibit 161 of the appellant, paragraph 72) that several recent pieces of evidence clearly establish STATI's illicit conduct and bad faith, which conduct would have had a considerable influence on the decision of the arbitrators ("*the evidence that has now become available, including the KPMG Correspondence and tire false Financial Statements, clearly demonstrates de STATI Parties illicit conduct and bad faith. The availability of this evidence to the Arbitral Tribunal would have been critical for the determination of its jurisdiction, the admissibility of the STATI parties claims and the liability of KAZAKHSTAN*").

George A. BERMANN, Professor of Public International Law at *Columbia University* in the United States of America, states that he is convinced in his conclusion (cf. Appellant's Exhibit 151, paragraph 198) that the STATIS consortium intentionally submitted false evidence to the Tribunal *on essential matters*, and that this had a decisive influence on the content of the arbitral award ("*the causal link between the STATIS' fraud and the Tribunal findings is crystal clear*").

Bernard HANOTIAU, Professor Emeritus at the Faculty of Law of the University of Louvain, even goes so far as to conclude (cf. Exhibit 169 of the Appellant, paragraphs 157 and 158) that, without the fraudulent procedures implemented, "*the content of the award and the conclusions of the Arbitral Tribunal on its jurisdiction, on liability, on causality and on quantum would have been totally different*" and that "*given the seriousness and importance of the fraudulent procedures used by the STATI consortium*", the recognition of the said arbitration award would constitute "*a manifest and fundamental violation of international public policy*".

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958 in New York, and approved by the law of 20 May 1983 (Mémorial A, no 43) is applicable in this case, as the parties to the dispute agree to recognize it.

Under Article V (2) b of the said Convention, "*the recognition and enforcement of an arbitral award may be refused if the authority where recognition and enforcement are sought finds (...) that such recognition or enforcement would be contrary to the public policy of that country*".

In the event that it should become apparent, in the light of the final decision to be rendered by the national criminal court, that the arbitral award, the recognition and enforcement of which is sought in the Grand Duchy of Luxembourg, was influenced by the use of fraudulent means or that such fraudulent means were employed by the respondents in the exequatur proceedings, the recognition and enforcement of the arbitral award in question would be contrary to public policy, within the meaning of Article V (2) b above.

The decision to be taken in the criminal proceedings is therefore likely to influence the decision to be taken by the exequatur judge.

Consequently, before any further progress is made, the appellant's request for a stay of proceedings should be granted, on the basis of Article 3, paragraph 2 of the Code of Criminal Procedure.

**BY THESE
REASONS:**

the Court of Appeal, Third Chamber, sitting in civil and exequatur matters, ruling in adversarial proceedings,

sitting as the referring court, following the judgment of the Court of Cassation of 11 February 2021, under number 25/2021,

Stays the proceedings until a final decision has been taken on the prosecution of the facts referred to in the complaint with civil action lodged on 24 May 2019 by the Republic of KAZAKHSTAN with the investigating judge,

States that the more diligent party may call for the case to be set down for trial as soon as the criminal proceedings have been finally disposed of,

reserves the costs.

This judgment was read out at the public hearing indicated above by Alain THORN, President of the Chamber, in the presence of the Registrar, Isabelle HIPPERT.