

Tatneft v Ukraine: Ukraine's cassation appeal dismissed and enforcement of award upheld (Commercial Court of the North-Caucasus Circuit, Russian Federation)

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In *Case No. A63-15521/2018* (Stavropol), the Commercial Court of the North-Caucasus Circuit in the Russian Federation upheld the Stavropol Commercial Court's judgment granting enforcement of an investment treaty award.

The Commercial Court of the North-Caucasus Circuit (Cassation Court) in the Russian Federation has upheld the Stavropol Commercial Court's earlier judgment granting enforcement of an investment treaty award in the well-known *Tatneft v Ukraine* dispute.

In July 2014, the UNCITRAL tribunal issued a final award in favour of Tatneft against Ukraine. In 2017, Tatneft initiated enforcement proceedings in Russia and the case was first considered by the Moscow courts, which ruled that Ukraine's property was immune from enforcement (see *Legal update, Tatneft saga continues: Ukraine's diplomatic premises immune from enforcement (Moscow Cassation Court)*). The Moscow courts subsequently transferred the case to Stavropol due to the lack of Ukrainian assets available for enforcement in Moscow. In contrast to the Moscow courts, the Stavropol Commercial Court granted enforcement on 11 March 2019 (see *Legal update, Tatneft v Ukraine: court enforces \$144 million award despite Moscow court's findings on immunity of Ukraine's property (Stavropol Court)*). Ukraine filed a cassation appeal to the Cassation Court.

Among other arguments, Ukraine referred to the improper application of Article 256.1 of the Commercial Procedural Code of the Russian Federation (CPC), in respect of which the Stavropol Commercial Court found it had jurisdiction to consider Tatneft's enforcement application.

Ukraine contended that the commercial courts only have jurisdiction to consider such applications if the court determines two facts: that state-owned property is located in the Russian Federation and that the property is not immune from enforcement. Ukraine argued that the Stavropol Commercial Court had failed to comply with Article 256.1 of CPC because it did not consider whether the property was immune from enforcement or not.

The Cassation Court rejected Ukraine's argument. It found that the Stavropol Commercial Court had correctly determined its competence to consider Tatneft's application on the sole basis that Ukrainian property is located in the North-Caucasus region. The Cassation Court noted that it is a bailiff's duty to determine the availability of enforcement of Ukrainian assets and not the courts.

Therefore, the legal positions of Moscow and North-Caucasus courts on this matter are conflicted. While the Moscow Commercial Court (upheld by the Cassation Court of Moscow Circuit) ruled that courts are obligated to determine the availability of state-owned assets for enforcement, the Stavropol Commercial Court (upheld by the Cassation Court) decided otherwise.

Ukraine has two months to appeal the judgment of the Cassation Court to the Supreme Court.

Case: *A63-15521/2018 (Stavropol) (21 June 2019)*.

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