

*BSF Swissphoto AG v. State Service of Ukraine for Geodesy, Cartography and Cadastre, Supreme Specialized Court of Ukraine for Civil and Criminal Cases, 760/15056/14-у, 22 June 2016*  
A contribution by the ITA Board of Reporters

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## **Headnote**

The Court of Cassation confirmed the ruling of the Court of Appeal on the granted permission for recognition and enforcement of the interim award and final award issued by a sole arbitrator.

## **Summary**

### **Facts of the case**

On 25 September 2007 BSF Swissphoto AG and the State Service of Ukraine for Geodesy, Cartography and Cadastre (formerly, the State Committee of Ukraine on Land Resources) signed Agreement No. DKZ-4-ICB.127 on replacement of certificates of title to land and the establishment of cadastral maps in Kharkiv, Luhansk, Donetsk and Dnipropetrovsk (hereinafter - the Agreement). The Agreement is subject to Ukrainian law.

The Agreement provides for dispute adjudication before submitting the disputes to arbitration. Each party can file the arbitral claim within 28 days from the time the adjudicator's decision has been served.

Pursuant to Article 24.1 of the Agreement, the Contractor can challenge the decision of the project manager if it was made beyond the powers given by the Agreement, or is erroneous, within 14 days.

On 16 June 2009 the project manager of the State Service of Ukraine for Geodesy, Cartography and Cadastre terminated the Agreement. His decision was challenged by BSF Swissphoto AG before the adjudicator.

On 20 June 2010 BSF Swissphoto AG initiated international commercial arbitration under Article 24.1 of the Agreement on the decision of the project manager.

On 15 June 2011 the interim award was issued by the sole arbitrator that stated that:

- 1.The sole arbitrator has jurisdiction over the dispute between the parties concerning the decision of the project manager to terminate the Agreement.
- 2.The sole arbitrator has jurisdiction over the dispute between the parties concerning the decision of the project manager on recovery of charges under warranties.
- 3.All other issues will be addressed and resolved in next decisions.

On 12 February 2014, the sole arbitrator issued the final award ruling that:

- 1.The State Service of Ukraine for Geodesy, Cartography and Cadastre shall pay BSF Swissphoto AG USD 590,334.50 with interest at the discount rate of the National Bank of Ukraine (hereinafter - the NBU) for the period from 26 July 2010 until the date of payment;
- 2.The State Service of Ukraine for Geodesy, Cartography and Cadastre must pay BSF Swissphoto AG EUR 34,133.80 with interest at the discount rate of the NBU for the period from 26 July 2010 until the date of payment;
- 3.The counterclaim of the State Service of Ukraine for Geodesy, Cartography and Cadastre is rejected;

4. The expenses of sole arbitrator are paid by the parties in equal shares, and the State Service of Ukraine for Geodesy, Cartography and Cadastre shall pay BSF Swissphoto AG USD 256,009.03 for legal costs incurred in connection with the arbitration proceedings;
5. All other claims and counterclaims are dismissed.

## **Question in Dispute**

### First instance court judgment

On 4 July 2014, BSF Swissphoto AG filed to the Solomiansky District Court of Kyiv City a request for recognition and enforcement of the interim award and for recognition and enforcement of the final award.

The State Service of Ukraine for Geodesy, Cartography and Cadastre objected invoking the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). The key point was that the Ukrainian courts had the exclusive jurisdiction over the cases where the respondent was a state institution.

The reasons presented by the State Service of Ukraine for Geodesy, Cartography and Cadastre were not substantial for the Solomiansky District Court of Kyiv City. By the resolution of the Solomiansky District Court of Kyiv City dated 15 July 2015, the motion of BSF Swissphoto AG for recognition and enforcement was partially satisfied. Both awards were recognized and the State Service of Ukraine for Geodesy, Cartography and Cadastre was ordered to comply with the final award.

### Appeal instance court judgment

By the resolution of the Kyiv City Court of Appeal dated 10 December 2015 the ruling of the Solomiansky District Court of Kyiv City was upheld.

## **Judgment of the Court**

### Cassation instance court judgment

On 22 June 2016 the High Specialized Court of Ukraine for Civil and Criminal Cases rejected the complaint and upheld the decision of the Solomiansky District Court of Kyiv City dated 15 June 2015.

The Court stated the following:

1. The award of any arbitral tribunal is recognized as binding and should be executed after the submission of the written request to the court.
2. There are no reasons to reject the enforcement of this award on the territory of Ukraine.
3. When granting permission for the recognition and enforcement of an award, the Court of Cassation should not review the correctness of the award but the procedural issues only.

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The summary of the case file and full text of summarized court decision are available on: <https://www.kluwerarbitration.com/document/kli-ka-ons-16-41-007?jurisdiction=Ukraine&type=Court%20Decisions>