

JKX Oil & Gas PLC and Poltava Gaz B.V. v. Ukraine, District Court of the Pechersk Raion of the City of Kiev, 757/5777/15-у, 8 June 2015

A contribution by the ITA Board of Reporters

Yaroslav Petrov; Anna Tkachova

Headnote

Pecherskyi District Court of Kyiv allowed the motion of the JKX OIL & GAS PLC and POLTAVA GAZ B.V. regarding recognition and enforcement of award on interim measures, issued by emergency arbitrator of the Arbitration Institute of the Stockholm Chamber of Commerce, dated January 14, 2015.

Summary

Facts of the case

On 28 December 2014, Ukraine issued a Law "Regarding tax reform amendments to the Tax Code of Ukraine and other legislative acts", which provides for increase of royalty payments on gas production from previous 28% up to 55%.

JKX OIL & GAS PLC and POLTAVA GAZ B.V, considering royalty payments increase as a violation of their rights as investors, referred to the Arbitration Institute of the Stockholm Chamber of Commerce seeking recovery of USD180 million.

On January 14, 2015, emergency arbitrator of the Arbitration Institute of the Stockholm Chamber of Commerce issued an emergency decision ordering Ukraine to refrain from imposing royalties on Poltava Petroleum's gas production in excess of the rate of 28% (the "Award").

JKX OIL & GAS PLC and POLTAVA GAZ B.V applied to Ukrainian court in order to recognise and enforce the Award.

In court proceedings, Ukraine raised such arguments as a defence:

Cooling off period established in BIT's had not pass;

State wasn't properly notified about arbitral proceedings;

Award contains decision on matters beyond the scope of the arbitration agreement (since at the moment of the Energy Charter Treaty ratification by Ukraine, the Arbitration Institute of the Stockholm Chamber of Commerce Rules (the "Arbitration Rules") did not provide for emergency arbitrator procedure);

Recognition and enforcement of the Award would violate Ukrainian public policy.

On June 08, 2015 Pecherskyi District Court of Kyiv granted the motion of the JKX OIL & GAS PLC and POLTAVA GAZ B.V. on recognition and enforcement of the Award.

As to the objections of Ukraine, the Court:

disregarded the argument regarding cooling off period;

found that notification via e-mails should be considered as a proper notification;

concluded that the Award contains decision on matters within the scope of the arbitration agreement, since current Arbitration Rules are applicable and provide for emergency arbitrator procedure;

opined that the Award doesn't violate Ukrainian public policy, since it affects only the applicant/investor in the case and does not change the existing royalty system.

Original source: © 2021 Kluwer Law International, a Wolters Kluwer Company. All rights reserved. <http://www.kluwerarbitration.com>

The summary of the case file and full text of summarized court decision are available on:
<https://www.kluwerarbitration.com/document/kli-ka-15-33-003?jurisdiction=Ukraine&type=Court%20Decisions>