In THE NAME OF THE KING

judgment

COURT OF JUSTICE THE HAGUE

Civil law department

Zaaknummer: 200.291.814

Numbers Hoge Raad: 19/03142 and 19/03144

judgment of 14 June 2022

regarding

1. **SAMRUK-KAZYNA JSC,** a company incorporated under foreign law**, having** its registered office in Astana, Kazakhstan,
appellant,
hereafter referred to as: Samruk,
lawyer: J. van den Brande, Rotterdam,

and

2. the **republic of kazakhstan,**
Astana (Kazakhstan),
Joined party on the part of Samruk, hereinafter referred to as: Kazakhstan,
lawyer: J.J. Valkte Amsterdam,

against

1. **Anatolic Stati,**
residing in Chisinau (Moldova),

2. **Gabriel Stati,**
residing in Chisinau (Moldova),

3. foreign-law company **ASCOM GROUP S.A., having** its registered office in Chisinau (Moldova),

4. **TERRA RAE TRANS TRAEDING LTD.,** a company incorporated under foreign law**, with** its registered office in Gibraltar,

respondents,
Hereinafter referred to as: Stati c.s.,
lawyer: K.J. Krzeminski, Rotterdam.

The casting

By judgment of 18 December 2020, the Supreme Court, on the appeal in cassation of Samruk and Kazakhstan, set aside the judgment of the Amsterdam Court of Appeal of 19 May 2019 and referred the case to the Court of Justice.

to this Court for further consideration and decision. Samruk and Kazakhstan then each submitted a statement after referral. Samruk, in its statement after reference, submitted productions 46 to 50; Kazakhstan, in its statement after reference, submitted productions 10 to 17. Stati et al. submitted a response after referral (with productions 62 to 74). On 4 April 2022, the parties argued their case before this court, Samruk being argued by Mr van den Brande and Mr P.L. Klaassen, lawyers in Rotterdam, Kazakhstan by Mr J.J. Valk and Mr A.W.P. Marsman, lawyers in Amsterdam, and Stati et al. by Mrs Krzeminski, Mr P.E. Ernste and Mr A. Koolebrander, lawyers in Rotterdam, on the basis of pleadings submitted to the court. On that occasion, Samruk also submitted productions 51 to 54, Kazakhstan submitted productions 18 to 21 and Stati et al. submitted productions 75 to 79. Finally, judgment was given today.

Assessment of the appeal after cassation and reference

1. Brief summary of this statement

1.1 Stati et al. have been awarded a substantial claim against Kazakhstan in arbitration proceedings. Stati et al. are trying to recover this claim from Kazakhstan. To this end, they have seized shares held by Samruk in KMG Kashagan B.V. (hereinafter referred to as: KMGK) in the Netherlands. Samruk is a *sovereign wealth fund* that manages several participations in Kazakh companies. The sole shareholder of Samruk is the Republic of Kazakhstan.

1.2 In these preliminary relief proceedings, Samruk claimed that the attachment should be lifted. Among other things, Samruk is of the opinion that the shares in KMGK cannot be attached because they enjoy immunity from execution. The court agreed with Samruk. The seized shares fall under the ultimate control of Kazakhstan and have a public destination. This means that they may not be attached. The court therefore lifted the attachment.

2. The facts and background of this case

2.1 Samruk is a company (Joint Stock Company) incorporated under the laws of Kazakhstan and a fund as defined in the "Kazakhstan Law on the National Welfare Fund". Kazakhstan is the founder and sole shareholder of Samruk. The Kazakhstan Law on the National Welfare Fund stipulates that the shares in Samruk are the exclusive property of Kazakhstan and cannot be alienated.

2.2 Samruk holds shares in the Dutch company KMGK.

2.3 A dispute has arisen between Stati et al. and Kazakhstan as to whether or not Kazakhstan has unlawfully appropriated certain investments of Stati et al. in Kazakhstan. Stati et al. initiated arbitration proceedings against Kazakhstan on the basis of the Energy Charter. By arbitral award of 19 December 2013, supplemented on 17 January 2014, the arbitrators ordered Kazakhstan to pay Stati et al. USD 497,685,101 and € 802,103, 24.

2.4 Kazakhstan has not complied with the arbitration award. Attempts by Kazakhstan to have the arbitration award set aside by the Swedish court have so far been unsuccessful.

2.5 On 14 September 2017, Stati et al., having obtained leave from the preliminary relief judge in Amsterdam, laid a prejudgment attachment on all of Samruk's shares in KMGK. In the attachment petition, it was argued that Samruk should be considered part of Kazakhstan, even though it has been constituted as a separate legal entity, and that the attached goods have a purpose other than a public purpose. The latter, according to Stati et al., would involve the question of whether the *immediate* destination of the seized goods is public.

2.6 In summary proceedings, Samruk claimed that the attachment should be lifted. The In a judgment dated 5 January 2018, the court in preliminary relief proceedings of the District Court of Amsterdam denied this claim. In brief, the Court in preliminary relief proceedings was of the opinion that it must be assumed that in its relation to Kazakhstan Samruk lacks factual-economic independence and that Samruk was incorporated by Kazakhstan with (at least partly) the aim of keeping its assets out of the reach of creditors of Kazakhstan. According to the Court in preliminary relief proceedings, this means that for the time being it is plausible that Samruk is abusing its in principle existing power to invoke its legal independence against Stati et al. A weighing up of the interests does not lead to a different conclusion, because Samruk has insufficiently made it plausible that it is suffering so much damage from the attachment that its interest in lifting the attachment should weigh heavier than that of Stati et al. in maintaining it. The judge in preliminary relief proceedings concludes that there is no summary evidence of the unfounded nature of the claim of Stati et al .

2.7 Samruk has appealed. On appeal, Kazakhstan has joined Samruk.

2.8 In its judgment of 7 May 2019, the Amsterdam Court of Appeal upheld the judgment of the interim relief judge. In summary, and in so far as still relevant after referral by the Supreme Court, the court of appeal considered:

(i) The key question raised by the grievances in this appeal is not whether the attachment should be lifted because there is summary evidence of the defectiveness of Stati et al.'s claim, but *primarily* whether the attachment should be lifted because it is unlawful, since it was not levied on the debtor's goods (Kazakhstan) but on the goods of a third party (Samruk), and, *in the alternative,* whether the attachment should be lifted because it constitutes a misuse of powers (ground 3.4);

(ii) The question under which conditions a lifting of the attachment may be claimed is governed by art. 254 Rv and in particular, now that it concerns a prejudgment attachment, art. 705 section 2 Rv, which means that lifting the attachment must take place, among other things, if it appears summarily that the right invoked by the distraining party or the unnecessary nature of the attachment is defective (section 3.5);

(iii) Samruk cannot invoke immunity from *jurisdiction',* the After all, the Court in preliminary relief proceedings ruled that Samruk is abusing its in principle existing power to invoke its legal autonomy vis-à-vis Stati et al. and because from the nature of this action by Samruk (apparently: the invocation of legal autonomy, Court of Appeal) it cannot be deduced that she was thereby performing a typical government task (ground 3.6); .

(iv) Samruk's reliance on immunity from *execution* was made exclusively in the event that Samruk should be identified with Kazakhstan; the Court in preliminary relief proceedings, however, did not identify Samruk and Kazakhstan; but even if the Court in preliminary relief proceedings had assumed identification, the reliance on immunity from execution failed; after all, it is up to Stati et al.s. to make it plausible that not the ultimate, but the immediate destination of the goods (the shares of Samruk in KMGK) is other than a public destination and Stati. et al. have done this sufficiently, also in view of what Samruk and Kazakhstan themselves had already stated about Samruk's commercial purpose (section 3.7);

(v) for the time being, it is plausible that Samruk is abusing (within the meaning of Art. 8 of the Civil Code of Kazakhstan) of its right in principle to rely on its legal autonomy (paragraphs 3.8 to 3.12);

(vi) Also a weighing of interests does not lead to the conclusion that the attachment must be lifted; Samruk has insufficiently substantiated the disadvantages she claims to suffer from the attachment and her interest thus derived does not outweigh the interest of Stati et al. in maintaining the attachment, also because Samruk has not argued that she is unable to provide security within the meaning of art. 705 (2) Rv; the attachment therefore does not constitute a misuse of power (ground 3.13).

2.9 In its judgment of 18 December 2020, the Supreme Court set aside the judgment of the Amsterdam Court of Appeal and considered the following in connection with it:

(1) The judgment of the Court of Appeal that Samruk only invoked immunity from execution in the event that Samruk should be identified with Kazakhstan is incomprehensible; what Samruk has put forward in ground 14 and the explanation thereof in its memorandum of appeal leaves no other explanation than that Samruk invoked immunity from execution in the event that the Court of Appeal agrees with the judgment of the judge in preliminary relief proceedings that Stati c.s. may seek recourse for their claims against Kazakhstan from the assets of Samruk, regardless of whether they are able to do so on the basis of identification between Kazakhstan and Samruk or on the basis of misuse of powers by Samruk to invoke its legal independence (section 3.1.2);

(2) The requirement applied by the Court that it is decisive whether the immediate destination of the seized goods is other than a public destination is incorrect in law; under international law there is a presumption of immunity from execution for assets of a foreign State, which only applies if it is established that the assets in question are used or intended by the foreign State for purposes other than public purposes, and that it is for the party relying on an exception to immunity from execution to provide information by which this can be established; it follows from these rules that immunity from execution is not limited to assets whose immediate destination is a public one (para. 3.2.4);

(3) without further explanation, it is not clear why it can be assumed as a matter of certainty that the shares in KMGK held by Samruk have a purpose other than a public purpose; that the revenue from the shares in KMGK

are intended to increase the national prosperity of Kazakhstan indicates in principle that they have a public purpose (para. 3.2.5);

(4) In order to further assess the reliance on immunity from execution, it will also have to be examined after the reference if the seized goods (Samruk's shares in KMGK) are to be regarded as 'property' of the State of Kazakhstan within the meaning of Article 19, part c, UN Convention, which on this point is to be regarded as a rule of customary international law (section 3.2.7).

3. Assessment of grievances after referral

3.1 The Court of Appeal will first consider Samruk's (and Kazakhstan's) plea for immunity from execution. Contrary to Stati et al.'s argument, the Court of Appeal is not obliged to first examine Stati et al.'s right of recourse because Samruk has only invoked immunity from execution in the alternative. The court of appeal is free in the order in which it deals with the complaints. The Court of Appeal will discuss Samruk's complaint regarding immunity from execution (complaint 14), also in the light of the judgment of the Supreme Court, on the basis of the following subjects:

(a) Samruk's seized shares in KMGK must be regarded as 'property' within the meaning of Article 19(c) UN Convention of the State of Kazakhstan;

(b) any public purpose and the resulting immunity from execution precludes the attachment of Samruk's shares in KMGK.

(a) 'property' within the meaning of Article 19(c) of the UN Convention

3.2 Article 19 UN Convention ('State immunity from post-judgment measures of constraint') reads, as far as relevant here (in the authentic English language):

> No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:
>
> (a) the State has expressly consented to the taking of such measures as indicated:
>
> (i) by international agreement; .
>
> (ii) by an arbitration agreement (...);
>
> (...)
>
> (c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum (...).

3.3 Samruk argues that the seized shares, although privately owned by Samruk, qualify as 'property of the State' within the meaning of Article 19 c of the UN Convention. According to Samruk, this is the case in the first plants if one should

it should be assumed that Samruk and Kazakhstan should be identified. Secondly, Samruk states that the concept of 'property of the State' is broader than strictly private property and that assets over which a state has control are also considered as such. Kazakhstan, in its reference, endorsed Samruk's contentions. Third, Samruk argues that it must be regarded as 'State[1] ' within the meaning of Article 2 (1) opening words and (b) (iii) of the UN Convention, because it exercises 'sovereign power' over the shares in KMGK that it holds[1] .

3.4 Stati et al. did not address the argument of Samruk and Kazakhstan that the seized shares in KMGK must be considered 'property of the state' because Kazakhstan exercises control over them. Stati et al. argue that Samruk cannot be considered a 'State' within the meaning of Article 2(1)(b)(iii) of the UN Convention because it is not empowered to exercise the sovereign powers of the State of Kazakhstan and it does not exercise such sovereign powers with regard to the seized shares. According to Stati and others, this means that these shares do not qualify as 'property' within the meaning of Article 19(c) of the UN Convention.

3.5 The Court of Appeal considers the following in this respect. Stati et al. wrongly assume that the instruction of the Supreme Court would imply that it should be examined whether *Samruk* should be considered a 'State' within the meaning of article 2, paragraph 1, section b (iii) of the UN Convention. The Supreme Court unmistakably meant that after referral it will be examined whether the seized shares must be regarded as 'property' of *Kazakhstan*; that Kazakhstan is a 'State' within the meaning of article 2 (1) (b) (i) of the UN Convention is an established fact.

3.6 The Court will first examine whether, as Samruk and Kazakhstan argue, the seized shares in KMGK should be regarded as 'property' of Kazakhstan because Kazakhstan exercises control over them. The term 'property' within the meaning of Article 19(c) of the UN Convention must be interpreted broadly. It does not only include civil property. The term 'property of a State' in Article 19 of the UN Convention must be read as an abbreviated version of *'its property or property in its possession or control'*. The decisive factor is therefore whether Kazakhstan exercises control (in the sense of 'control') over the seized shares.

3.7 With regard to the relationship between Kazakhstan and Samruk, the following is clear:

(i) Samruk was established on 3 November 2008 as a 'Joint Stock Company'; this establishment took place through a merger between Samruk Holding and Sustainable Development Fund Kazyna, companies that were both established by Kazakhstan;

(ii) Samruk holds the shares in several companies of national significance, such as National Atomic Company Kazatomprom and national oil company KazMunaiGas;

(iii) Samruk has been designated as a 'Sovereign Wealth Fund' by the Ministry of Finance of Kazakhstan; as such it aims *'to increase the national*

[1] R. O'Keefe and Christian Tams (eds.),The United Nations Convention on Jurisdictional Immunities of States and Their Property, A Commentaiy, Oxford 2013, p. 316.

welfare of the Republic of Kazakhstan f

(iv) Kazakhstan is (the) sole shareholder of Samruk; under the law Kazakhstan cannot alienate its shares in Samruk;[2] [3]

(v) Kazakhstan (as the sole shareholder) has the exclusive power to amend the Articles of Association, approve the annual accounts, dissolve the company, pay dividends and approve Samruk's *development strategy*; more specifically, Kazakhstan (as the sole shareholder) has exclusive power to decide on the disposal of state-owned shares;[4] [5]

(vi) the members of Samruk's *Board of Directors* are appointed and dismissed by Kazakhstan as the sole shareholder; according to Samruk's Articles of Association, at least 40% of the *Board of Directors* must be independent directors;[3] decisions by the Board of Directors are taken by simple majority;[6]

(vii) the *Management Board* of Samruk, which is responsible for the *day-to-day activities* of Samruk, is obliged to implement the decisions of the sole shareholder and the *Board of Directors*;[7] appointment and dismissal of the *Chairman of the Management Board* is reserved to Kazakhstan as the sole shareholder.[8] '

3.8 In view of these circumstances, Samruk's seized shares in KMGK must be regarded as 'property' of Kazakhstan within the meaning of Article 19, part c, of the UN Convention. After all, Kazakhstan exercises 'control' over the seized KMGK shares. This is also what Stati et al. have been arguing throughout these proceedings.[9] More specifically, it is established (i) that Kazakhstan is the sole shareholder of Samruk by law and - until the law is changed, which of course is also Kazakhstan's power - remains so, and (ii) that the disposal of the KMGK shares held by Samruk is reserved to Kazakhstan as the sole shareholder. In a more general sense, on the basis of the aforementioned powers of the sole shareholder, it is clear that Kazakhstan, through the statutory powers of the (sole) shareholder and in particular through its power to appoint and dismiss the members of the *Board of Directors*, exercises ultimate control over Samruk. In this respect it can remain unclear to what extent Kazakhstan actually exerts an even greater influence on the course of events within Samruk than is apparent from the formal powers of the sole shareholder, as argued by Stati et al. Nor is it of any importance that Kazakhstan and Samruk have concluded an agreement (the *"Agreement on Cooperation between the Government of the Republic of Kazakhstan and the Fund")* in which, according to Kazakhstan, it is laid down that Samruk has operational independence and that the management of

[2] Art. 4 para. 1 Law of the Republic of Kazakhstan on the National Welfare Fund (prod. *6* Stati c.s.).
[3] Art. 3 Law of the Republic of Kazakhstan on the National Welfare Fund (prod. 6 Stati c.s.).
[4] Art. 49 Samruk Statutes (prod. 8 Stati c.s.) and Art. 7 SWF Act (prod. 6 Stati c.s.).
[3] Art. 60 Statutes Samruk (prod. 8 Stati c.s.).
[6] Art. 69 Samruk Statutes.
[7] Art. 77 Samruk Statutes.
[s] Art. 49 under (9) Samruk Articles of Association.
[9] Memorandum after reference Stati c.s. no. 46 (Kazakhstan has an 'all-important influence on Samruk'), No 48 (it is 'in fact Kazakhstan [that governs Samruk]').

of Samruk by Kazakhstan takes place exclusively through the exercise of powers as a shareholder and the representation of government members in the Board of Directors.[10] That agreement does not affect the ultimate control that Kazakhstan has over Samruk by virtue of its statutory powers. Kazakhstan can exercise as sole shareholder over Samruk.

3.9 The conclusion is that the seized KMGK shares are 'property' of Kazakhstan. This means that the Court of Appeal does not have to enter into the parties' debate about whether Kazakhstan and Samruk should be identified or about whether Samruk is allowed to invoke its independent legal personality. That debate is not relevant to the question of whether Article 19 of the UN Convention precludes the attachment of 'property' of Kazakhstan, namely the shares in KMKG held by Samruk. All that matters is whether these shares are subject to immunity from execution, a question that the court of its own motion must examine, aside from the fact that both Samruk and Kazakhstan are invoking immunity from execution in these proceedings.

3.10 The foregoing means that it must now be examined whether the seized shares in KMGK are *'(...) specifically in use or intended for use by the State for other than government non-commercialpurposes' within the meaning* of Article 19(c) of the UN Convention.

(b) public allocation of seized shares in KMGK

3.11 By way of introduction to the following considerations, the Court notes the following. In the judgment of the Supreme Court in the present case[11] , the Supreme Court confirmed the line of its earlier so-called 'autumn judgments'. In those 'herfstar judgments'[12] the following was decided, among other things (references are to the considerations of the Morning Star judgment, unless indicated otherwise):

(a) According to the rules that currently apply in the Netherlands as unwritten public international law, foreign states enjoy immunity from execution, but this is not absolute; however, state property with a public purpose is in any case not subject to forced execution (3.4.3);

(b) The basic principle is that the property of a foreign state is not subject to attachment or execution unless and to the extent that it has been determined that it is destined for a purpose which is not incompatible with that purpose; this is in line with Article 19(c) of the UN Convention, which on this point is to be regarded as a rule of customary international law (3.5.2);

(c) the foreign state is not obliged to provide data from which it can be concluded that its properties have a purpose that resists attachment and execution (3.5.2); .

(d) the burden of proof and the burden of proof in respect of the attachability and enforceability of the foreign State are on the creditor seeking to attach the foreign State's assets, so that, even if the foreign State fails to appear in court, it will always be established

[50] Memorandum of reply after referring Kazakhstan nos. 71, 74.
[11] HR 18 December20, ECLI:NL:HR:2020:2103.
[12] HR 30 September 2016, ECLI:NL:HR:2016:2236 (Morning Star), HR 14 October 2016, ECLI:NL:HR:2016:2371 (N.N.) and HR 14 October 2016, ECLI:NL:HR:2016:2354 (Servaas).

it must be established that the goods in question are liable to attachment; the creditor will therefore always have to provide information enabling it to be established that the goods are being used or intended by the foreign state for purposes other than public use (3.5.3);

To this has been added the fact that immunity from execution is not limited to goods whose immediate destination is a public one (para. 3.2.4 Samruk judgment);

(e) If the funds and assets in question are used by the foreign state for various purposes, the creditor seeking to attach them must state and make it plausible that and to what extent those funds and assets are liable to attachment and execution (3.5.4);

(f) These rules do not violate Art. 6 ECHR, based on the established case law of the ECHR (3.6.2).

3.12 Stati et al. have argued in their Memorandum of Reply that Samruk and Kazakhstan cannot invoke the immunity from execution of the seized shares in KMGK, because the burden of proof and the burden of proof would rest on Samruk in this case. This argument first of all ignores the fact that the present proceedings are summary proceedings, in which the ordinary rules of evidence do not apply. As the Supreme Court considered in its judgment in this case, a presumption of immunity from execution applies to goods that are 'property' of a state (Kazakhstan), which only deviates if it is established that the seized shares are used or intended by Kazakhstan for other than public purposes, and it is up to the party that relies on an exception to the immunity from execution to provide data on the basis of which this can be established. Therefore, although Stati et al. do not have to *prove* in these preliminary relief proceedings that the seized shares have a purpose other than a public purpose, they do have to make this plausible and provide sufficient data in that regard.

3.13 Stati et al. did not provide sufficient data in the present proceedings to establish that the shares in KMGK held by Samruk were intended for purposes other than public purposes. It is an established fact that the participations held by Samruk, including the shares in KMGK, are managed by Samruk with the aim! Vo *increase the national welfare of the Republic of Kazakhstan'* and that Samruk may not alienate these shares without Kazakhstan's consent. It is important to note that not only does Kazakhstan, as the sole shareholder, exercise ultimate control over Samruk, but that legal safeguards have also been put in place to ensure that (subject to a change in the law by Kazakhstan) Kazakhstan remains the sole shareholder of Samruk. Moreover, the purpose of Samruk (7o *increase the national welfare of the Republic of Kazakhstan'*, emphasis added) does not only relate to the proceeds from the shares in KMGK that can ultimately benefit Kazakhstan as a shareholder of Samruk. The purpose of Samruk is unmistakably broader. As Kazakhstan has argued, in so far as it has contested (insufficiently) motivated, the objective of Samruk is, in particular, to contribute to the economic development of Kazakhstan and to increase national prosperity through optimal management of the state holdings it holds.[10]

[10] Memorandum following the accession of Kazakhstan No 44; see also the background to this memorandum

This further confirms that the destination of the state holdings held by Samruk, including the seized shares of KMKG, is a public destination.

3.14 The argument of Stati et al. that the proceeds of the shares in KMGK accrue to Samruk and are used by it to realise a commercial activity is at odds with this. Even if it is assumed that Samruk manages its participations in a commercial manner and its participation in KMGK is aimed at maximising value in the long term, this does not alter the fact that Samruk's objective is also to contribute to the economic development of Kazakhstan and to increase the national prosperity of that country. To that extent this situation differs from the companies referred to by Stati et al. who hold strategic and highly valuable participations in commercial companies'.[4] It cannot be assumed that such companies have the objective of promoting the relevant national economies and prosperity.

3.15 Stati et al. have also argued that accepting immunity from execution is a disproportionate restriction of the right to access to the courts and the right to the 'peaceful enjoyment of possession' that Stati et al. are entitled to by virtue of art. 6 ECHR and which is guaranteed by art. 1 First Protocol. This argument first of all runs counter to the opinion of the Supreme Court that the starting points accepted by the Supreme Court are not in conflict with art. 6 ECHR (see above 3.10 under f). In this connection the Court also points out that both the European Court of Human Rights[15] and the International Court of Justice[16] have upheld the immunity from jurisdiction in cases involving torture and war crimes respectively, despite an appeal to art. 6 ECHR and international humanitarian law. In both cases these courts did not consider it decisive that the plaintiffs did not have an alternative course of justice available: it is therefore hard to see why acceptance of immunity from execution in this case would lead to a violation of art. 6 ECHR. Since the immunity from execution thus constitutes a permissible violation of art. 6 ECHR, there is no reason to assume that there is an impermissible restriction on the right to property of art. 1 First Protocol.

3.16 The foregoing leads to the conclusion that it has been sufficiently established in these summary proceedings that Samruk's seized shares in KMGK enjoy immunity from execution. They are therefore not subject to attachment. As a result, any claim Stati et al. have against Kazakhstan or Samruk cannot be recovered on these shares. This means that the attachment must be lifted.

3.17 Ground 14 of Samruk was rightly put forward. The other grievances need no discussion.

of the establishment of Samruk's legal predecessors (nos. 29 to 40).

[14] Memorandum of reply after referring Stati c.s. nr. 195.

[1:1] ECHR 14 January 2014, *Jones and Others v. UK*, nos. 34356/06 and 40528/06; this was a case against government tincturers of a foreign state. In its judgment of 12 October 2021 (ECHR 12 October 2021, *J.C. and Others v. Belgium* (no. 11625/17)), in a case in which victims of sexual abuse sought to challenge the Vatican, the ECtHR considered that no arguments had been advanced to suggest that the state of international law had changed since 2012, when Jones v. the UK was decided.

[16] IGH 3 February 2012, *Jurisdictional Immunities from the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J, Reports 2012*, p. 99.

4. Conclusion

4.1 Since in any case ground 14 is successful, the judgment of the court in preliminary relief proceedings must be set aside. The court of appeal will lift the attachment again.

4.2 Stati and Others, as the unsuccessful party, shall pay the costs.
of the proceedings at first instance and on appeal,
including the dispute referred to it.

Decision

The court:

- Sets aside the judgment of the judge in preliminary relief proceedings of 5 January 2018 and gives a new ruling:

- has lifted the attachment of all shares held by Samruk in K..MG Kashagan B.V. at the request of Stati et al;

- order Stati et al. jointly and severally to pay the costs of the proceedings in both instances, assessed on the side of Samruk *in the first instance* at (€ 618.00 in court fees and € 80.42 in writ of summons costs =) € 698.42 and € 9,516 for the lawyer's salary, and *in the appeal proceedings* to date at (nil in court fees and € 80.42 in writ of summons costs =) € 80.42 and € 34,230 for the lawyer's salary, as well as
the amount of € 163,- for the attorney's fee, to be increased by € 85,- if this judgment is not complied with within fourteen days after a notification to that effect and, subsequently, service of this judgment has taken place, and stipulates that these amounts must be paid within 14 days after the date of the judgment or, with regard to the amount of € 85,- after the date of service, in default thereof these amounts shall be increased by the statutory interest as referred to in Section 6:119 of the Dutch Civil Code from the end of the aforementioned period of 14 days until the date of payment;

- declares this judgment provisionally enforceable.

This judgment was delivered by S.A. Boele, D. Aarts and B.M.P. Smulders, and signed and pronounced in public by C.A. Joustra, court reporter, in the presence of the Registrar on 14 June 2022 .

Case number: 200.291.814

For grosse to: Issued to Mr. K.[1] ^
Advocate
of: app./geint. - The Clerk of the
Court of Appeal