

Crimea real estate claim goes forward



Russia's president Vladimir Putin signs Crimea's accession to the Russian Federation on 18 March 2014, Wikimedia Commons

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Claims by Ukrainian real estate investors against Russia over losses arising from the annexation of Crimea can go ahead even though the peninsula was part of Ukrainian territory at the time the investments were made, a tribunal at the Permanent Court of Arbitration has ruled.

The Hague-based PCA announced today that the UNCITRAL tribunal hearing Everest Estate's claim, chaired by Spain's **Andrés Rigo Sureda** sitting with **Michael Reisman** of the US and **Rolf Knieper** of Germany, unanimously issued a decision on jurisdiction on 20 March.

This followed a hearing in December, post-hearing briefs and two additional questions posed to the parties by the tribunal.

Although it is not stated in the press release, GAR understands that the tribunal upheld jurisdiction over the claim brought in reliance of the Ukraine-Russia bilateral investment treaty for the seizure of real estate properties during the 2014 annexation.

This was despite the objections of Russia, which is not participating in the arbitration but asserted in letters sent to the PCA last year that the BIT does not cover its actions in Crimea and "cannot serve as a basis for composing an arbitral tribunal".

The Everest tribunal ruled that the Ukraine-Russia BIT applies to investments in the Crimea post-annexation as it has always done. It said the key question was whether there is any requirement in the BIT that an investment by an investor from one contracting party must be in the territory of the other contracting party at the time it was made.

The tribunal ruled there was no such requirement. The investment only needs to be on the other contracting state's territory at the time of the alleged breach, it said.

It also said it would be unreasonable for it to conclude that Russia could have nationalised property situated outside of its territory.

The claim is one of a set of eight known claims brought by Ukrainian investors against Russia in the aftermath of the annexation in reliance on the Ukraine-Russia BIT.

Most of these have been brought by entities associated with Ukrainian-Israeli-Cypriot businessman-cum-politician Igor Kolomoisky, an opponent of the annexation who raised his own private militia to combat it. Russia is declining to participate in any of them.

Two other claims have already reached a jurisdictional decision, based on somewhat different reasoning. In February, a tribunal chaired by France's **Pierre-Marie Dupuy** upheld claims filed by Aeroport Belbek and by Ukraine's largest commercial bank Privatbank and affiliate Finilon Finance Company.

That tribunal ruled that the Ukraine-Russia BIT applied to Ukrainian investments in Crimea as soon as Russia's president Vladimir Putin formally asserted Russian control over Crimea in March 2014.

Unlike in that case, the Everest tribunal did not set a specific date on which the BIT started applying to Russia in Crimea but merely found that it was applicable to the alleged expropriations which Everest alleges began to take place in April 2014.

As far as GAR is aware, the other claims are still to reach jurisdictional decisions. All are proceeding under the UNCITRAL 1976 rules that applied at the time the BIT entered the force – which means that publication of awards is not possible without Russia's consent.

Everest Estate LLC et al v Russian Federation (PCA case no 2015-36)

Tribunal

- **Andrés Rigo Sureda** (Spain) (President)
- **Michael Reisman** (US) (appointed by claimants)
- **Rolf Knieper** (Germany) (appointed by appointing authority, **Michael Hwang SC**)

Counsel to claimants

- **Hughes Hubbard & Reed**
Partners **John Townsend** and **James Boykin** and associate **Vitaly Morozov** in Washington, DC; partner **Marc-Olivier Langlois** and associate **Leon Ioannou** in Paris

Counsel to Russia

- Russia is not participating in the proceedings

Aeroport Belbek and Igor Valerievich Kolomoisky v Russian Federation (PCA case no. 2015-07)

PJSC CB PrivatBank and Finance Company Finilon v Russian Federation (PCA Case no. AA568)

Tribunal

- **Pierre-Marie Dupuy** (France) (President)
- **Daniel Bethlehem QC** (UK) (appointed by claimants)
- **Vaclav Mikulka** (Czech Republic) (appointed by appointing authority **Bruno Simma**, in the first case, and **Michael Hwang SC** in the second)

Counsel to claimants

- **Hughes Hubbard & Reed**
Partners **John Townsend**, **James Boykin** and associate **Vitaly Morozov** in Washington DC; partner **Marc-Olivier Langlois** and associate **Leon Ioannou** in Paris
- **Kaj Hobér** of 3 Verulam Buildings in London

Counsel to Russia

- Russia is not participating in proceedings

PJSC Ukrnafta (Ukraine) v Russian Federation (PCA case no 2015-34)

Stabil LLC et al (Ukraine) v Russian Federation (PCA case no 2015-35)

Tribunal

- **Gabrielle Kaufmann-Kohler** (Switzerland) (President)
- **Daniel Price** (US) (appointed by claimants)
- **Brigitte Stern** (France) (appointed by appointing authority, Michael Hwang SC)

Counsel to claimants

- **Hughes Hubbard & Reed**
Partners **John Townsend** and **James Boykin** and associate **Vitaly Morozov** in Washington, DC; partner **Marc-Olivier Langlois** and associate **Leon Ioannou** in Paris

Counsel to Russia

- Russia is not participating in the proceedings

Lugzor, Libset, Ukrintervest, DniproAzot and Aberon v Russian Federation (PCA case no 2015-29)

Tribunal

- **Donald McRae** (Canada) (President)
- **Bruno Simma** (Germany) (appointed by claimants)
- **Eduardo Zuleta** (Colombia) (appointed by appointing authority)

Counsel to claimants

- Fieldfisher
Partners **Simon Moore, Alexandra Underwood** and **Tracey Wright**
- **Zachary Douglas QC** and **Luis Gonzalez Garcia** of Matrix Chambers in London

Oschadbank v Russian Federation

Tribunal unknown

Counsel to claimants

- Quinn Emanuel Urquhart & Sullivan
Partners **Alex Gerbi, Stephen Jagusch QC** and **Epaminontas Triantafilou** in London

Naftogaz v Ukraine

Counsel to Naftogaz

- Covington & Burling
Partners **Marney Cheek, David Pinsky, Jeremy Wilson** and **Erin Thomas**