

“TNK-Ukraine” LLC v. TAT-GAZGRUP, The Supreme Court of Ukraine, 427307, 21 February 2007

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Based on the cassation appeal of “TNK-Ukraine” LLC, the Supreme Court of Ukraine renewed the term for setting aside the arbitral award rendered by the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC) dated 13 January 2003 in the case between TNK-Ukraine LLC (Ukraine) and SRL “TAT-GAZGRUP” (Moldova), dated 13 January 2003.

The Supreme Court found that the ICAC by rendering its award without proper notification of the party to the dispute violated its Rules and made the enforcement of such award impossible. Since TNK-Ukraine LLC was not able to find out this failure prior to the decision of Commercial Chamber of Appeal, the Supreme Court renewed the term for filing of the application for cancelling the ICAC Award.

The Supreme Court of Ukraine Renewed the Term for Filing the Application (21 February 2007) – Enterprise with foreign investments “TNK-Ukraine” LLC (“*TNK-Ukraine LLC*”) filed a cassation appeal before the Supreme Court of Ukraine (the “*Supreme Court*”) seeking to renew the term for filing of the application and to cancel the award of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (the “*ICAC*”) dated 13 January 2003. On 13 January 2003 the ICAC rendered its award in favor of TNK-Ukraine LLC compelling Company SRL “TAT-GAZGRUP” (Moldova) to pay the penalty amounting to 27 775 US Dollars and arbitration costs. At this, the ICAC failed to meet the order of notification of SRL “TAT-GAZGRUP” (Moldova). Only on 6 January 2004 TNK-Ukraine LLC became aware of the latter as the Commercial Chamber of Appeal (Chisinau, Moldova) dismissed its application on recognition and enforcement of the said ICAC award. On 12 May 2004 the Kyiv Court of Appeal refused to renew the term for filing the application on cancelling the ICAC Award on the basis that TNK-Ukraine LLC failed to meet the 3-months term for appeal provided in p. 3 Article 34 of the *Law of Ukraine On International Commercial Arbitration* dated 1994.

Proceeding from the above, the Supreme Court noted that the Kyiv Court of Appeal, when rendering its decision, correctly determined the norm of law regulating the dispute, but failed to apply duly the said norm of law. Moreover, the Kyiv Court of Appeal did not properly examine the actual circumstances of the case in full and hence had incorrectly applied the procedural norms. Further, the Supreme Court found that the ICAC by rendering its award without proper notification of the party in the dispute violated its Rules and made the enforcement of such award impossible. Since TNK-Ukraine LLC was not able to find out this failure prior to the decision of Commercial Chamber of Appeal, the Supreme Court satisfied the cassation appeal by cancelling the decision of

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Jurisdiction

- Ukraine

Court

- The Supreme Court of Ukraine

Arbitrators/Judges

- L.I. Grigorieva, chairman
- V.I. Kosenko, judge
- V.I. Gumenuk, judge
- V.M. Barsukova, judge
- O.F. Volkov, chairman

Case date

- 21 February 2007

Case number

- 427307

Parties

- appellant, “TNK-Ukraine” LLC (Ukraine)
- appellee, TAT-GAZGRUP (Ukraine)

Key words

- setting aside
- enforcement
- arbitration award
- proper notification
- term for setting aside

Applicable legislation

- UNCITRAL Model Law
- Ukrainian

Kyiv Court of Appeal and renewing the term for filing of the application for cancelling the ICAC Award.

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The summary of the case file and full text of summarized court decision are available on:

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