

Court of Appeal win for Collas Crill on State Immunity case

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Following a landmark case in Jersey's Royal Court earlier this year, Collas Crill has once again acted for the winning party in a case on State Immunity when the respondent appealed the decision to the Court of Appeal.

Dispute resolution partner at Collas Crill, Elena Moran, twice represented Tepe, a construction company based in Turkey, when its contracts were unlawfully terminated by crude oil and natural gas pipelines and trading company, Botaş, owned by the Republic of Turkey.

The case originated when Tepe entered into two contracts with Botaş, to assist with the construction of the Baku-Tbilisi-Ceyhan (BTC) Pipeline. The BTC pipeline transports crude oil from oilfields in Azerbaijan through Georgia and Turkey to the Ceyhan terminal on the Turkish coast.

Botaş terminated both contracts with Tepe which were governed by English Law and provided for disputes to be arbitrated in Paris under the rules of the International Chamber of Commerce (ICC). The Arbitral Tribunals awarded Tepe damages, costs and interest in the sum of circa US\$100m.

Botaş failed to pay the Awards and Tepe sought to enforce the Awards by arresting the shares in two Jersey companies wholly owned by Botaş. The Republic of Turkey argued that Tepe could not arrest the shares because they are under the control of state (the Republic could control their transfer) and therefore constitute state property covered by state immunity.

In a decision published today (Monday 8 August), the Court of Appeal upheld the decision of the Royal Court from January 2016, rejecting the argument that an ability to direct Botaş to transfer the shares amounts to sufficient control: until the Republic of Turkey actually exercises that right the shares remain the property of Botaş and not the property of the Republic. As a result, the shares are not protected by state immunity.

Dr Moran, who specialises in complex commercial litigation and contentious trust disputes, said:

"This case is an important protection for creditors of state owned enterprises. Had the Republic been successful in its claims many state owned enterprises would be able to claim state immunity over their shares in foreign owned subsidiaries.

"The Court of Appeal has recognised that, while the doctrine of state immunity is an important one, the protection it affords should not be extended to the assets of state owned entities. These entities, which are often trading entities, are separate from the states that own them. In the same way that the entities are not liable for the debts of the parent states, the parent states should not be able to use state immunity to protect the entities from paying their debts.

"Both the Royal Court and the Court of Appeal gave lengthy judgments in what is a difficult area of law. The fact that these important principles of international law are being determined by the Jersey Courts is a reflection of the wide range of businesses that choose to base their offshore operations in Jersey."

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Read more on the case [here](#).