The AIFC Court, Gazprom v Naftogaz and the Emergence of a New Conduit Jurisdiction Debate

This post is written by Dr. Nicolás Zambrana-Tévar LLM(LSE) PhD(Navarra), Associate Professor School of Law KIMEP

Introduction

In May 2026, the Court of First Instance of the Astana International Financial Centre (AIFC) recognised and enforced a Swiss ICC arbitral award rendered in favour of Naftogaz against Gazprom. The award arose out of the disputes between the parties concerning the transit of Russian gas through Ukraine after the start of the war.

The decision was followed by public comments from Kazakhstan's Minister of Justice. According to press reports, the Minister stated that the award would not be enforced in Kazakhstan because neither Gazprom nor Naftogaz were participants in the AIFC and because the dispute had no connection to the Centre. He further suggested that the AIFC should not become a "transit platform" for the enforcement of foreign decisions unrelated to its activities.

The controversy raises an interesting private international law question that extends well beyond the particular dispute between Gazprom and Naftogaz. Can the AIFC Court function as a conduit jurisdiction for the recognition of foreign arbitral awards and their subsequent enforcement in Kazakhstan, i.e. outside the AIFC?

The Jurisdictional Problem

The AIFC occupies a unique constitutional position. Established in 2018, it operates under a separate common-law framework within Kazakhstan and possesses its own court system staffed by international judges. Article 13(2) of the AIFC Constitutional Statute on the AIFC expressly provides that the AIFC Court is not part of the judicial system of the Republic of Kazakhstan.

The difficulty is that the Constitutional Statute does not expressly address whether the AIFC Court may recognise foreign arbitral awards that have no connection to the Centre.

The Court relied principally on Article 45(1) of the AIFC Arbitration Regulations, which provides that: “An arbitral award, irrespective of the State or jurisdiction in which it was made, shall be recognised as binding within the AIFC.” The Court also relied on Article 40(3) of the AIFC Court Regulations, which refers to the enforcement of “other judgments and arbitration awards”.

Whether these provisions actually confer jurisdiction to recognise foreign arbitral awards remains debatable. The AIFC Constitutional Statute itself is largely silent on the matter. The dispute therefore raises a classic question of institutional competence: can jurisdiction be inferred from subordinate regulations where the constitutional instrument neither expressly grants nor expressly excludes it?

The New York Convention Argument

One possible justification for the Court’s approach lies in Kazakhstan’s obligations under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

The AIFC is located within the territory of Kazakhstan. Under Article 29 of the Vienna Convention on the Law of Treaties, treaties bind the entire territory of a state unless a contrary intention appears. Nothing in Kazakhstan’s ratification of the New York Convention suggests that the Convention does not apply within the territory of the AIFC.

Article III of the Convention requires contracting states to recognise foreign arbitral awards. However, the Convention itself does not allocate jurisdiction among domestic courts. It does not specify whether recognition must be sought before an ordinary state court, a specialised commercial court or a court located within a financial centre. It may therefore be argued that once Kazakhstan created the AIFC Court and granted it powers relating to arbitration, the Court became one of the institutions through which Kazakhstan fulfils its Convention obligations.

The contrary argument is equally plausible. Kazakhstan may comply fully with the Convention while reserving recognition proceedings to its ordinary courts. The

Convention requires recognition; it does not dictate which court must provide it.

An Exequatur of an Exequatur?

The dispute also raises a more traditional private international law concern.

If a Swiss arbitral award is recognised by the AIFC Court and the resulting AIFC judgment is then enforced elsewhere in Kazakhstan, one might ask whether this effectively amounts to an "exequatur of an exequatur". Scholars have long expressed reservations about attempts to circulate recognition judgments relating to arbitral awards. Such practices may circumvent the grounds for refusal contained in Article V of the New York Convention by converting an arbitral award into a court judgment before seeking enforcement elsewhere.

Whether that objection applies here depends in part on how one characterises the relationship between the AIFC and Kazakhstan. Although the AIFC forms part of Kazakhstan's territory, it possesses a distinct legal system and separate courts. Therefore it is, properly speaking "another jurisdiction", if not another state.

Lessons from Dubai and Abu Dhabi

The most illuminating comparison comes from the Gulf financial centres, which the AIFC openly tries to emulate.

The Dubai International Financial Centre (DIFC) Courts have long been associated with the concept of a conduit jurisdiction. Under the DIFC framework, parties have sought recognition of foreign judgments and arbitral awards before the DIFC Courts even where neither the parties nor the dispute had any connection to the DIFC. Once recognised, the resulting DIFC judgment could potentially be enforced through the ordinary Dubai courts.

The leading authorities include *X1 and X2 v Y1 and Y2* and *Banyan Tree Corporate Pte Ltd v Meydan Group LLC*. In both cases, the DIFC Courts adopted a broad understanding of their recognition jurisdiction.

The Abu Dhabi Global Market (ADGM) followed a different path. Following legislative reforms in 2020, it became clear that the ADGM Courts could not be used as a conduit jurisdiction for the recognition of foreign judgments and arbitral awards. Abu Dhabi thus deliberately rejected a model that Dubai had largely embraced.

The AIFC now appears to stand somewhere between these two approaches. Unlike the DIFC legislation, the AIFC framework contains no clear statement granting recognition jurisdiction over foreign arbitral awards irrespective of any connection to the Centre. Unlike the ADGM legislation, however, it contains no express prohibition.

Conclusions

The Minister's remarks announcing that the AIFC Court judgement would not be enforced in Kazakhstan may be understood as reflecting a legitimate policy concern: whether an international financial-centre court should be used to bypass ordinary domestic recognition procedures. Yet, they also concern a matter that is arguably for the courts themselves to determine. The Constitutional Statute repeatedly emphasises the independence of the AIFC Court and grants it exclusive authority to interpret AIFC law.

The broader issue therefore concerns institutional design rather than merely arbitration enforcement. If Kazakhstan does not wish the AIFC Court to function as a conduit jurisdiction, the appropriate solution may be legislative clarification. Conversely, if the AIFC is intended to replicate aspects of the DIFC model, greater certainty regarding its recognition jurisdiction would be desirable.