

# Leave to enforce multimillion awards obtained by Statis against Kazakhstan refused due to procedural fraud in the arbitration (Amsterdam District Court)

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In *Stati and others v Kazakhstan (ECLI:NL:RBAMS:2023:178)*, the Amsterdam District Court refused the request by Stati and others for the recognition and enforcement of USD489 million awards due to procedural fraud.

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The Amsterdam District Court has refused Stati and others' (Statis) request for recognition and enforcement of USD489 million awards against Kazakhstan due to procedural fraud. The court made the ruling following the Dutch Supreme Court decision ordering a re-hearing of this matter (see [Legal update, Dutch Supreme Court orders re-hearing of enforcement proceedings in favour of Kazakhstan](#)).

First, the court ruled that the Statis committed material fraud. This was apparent from numerous circumstances, including that the Statis withdrew large sums of money from the sale of crude oil paid into entities controlled by them for unusual and personal expenses, entered into agreements that were not at arms-length with a company they secretly controlled and concealed these transactions in their annual accounts.

The court then considered whether there was also procedural fraud, considering Dutch public policy within the meaning of article V(2)(b) of the New York Convention, which includes the Dutch law standards for revocation of awards and state-court judgments. The court ruled that it was required to find that the material fraud was committed intentionally, but not that the intention was aimed at later committing procedural fraud (contrary to the standard earlier applied by the Appeal Court). According to the court, there was procedural fraud because (among other things) of the incorrect annual accounts.

Lastly, the court ruled that there was a causal link between the procedural fraud and the awards. The court found that there is a sufficient causal link if it is likely that the tribunal could have reached a different decision had it known about the procedural fraud. However, it stated that it is not required to find that the procedural fraud had a significant influence on the awards (contrary to the standard earlier applied by the Appeal Court). As the awards were based on bids by third parties for the plant operated by the Statis, which was then expropriated by Kazakhstan, and these bids were in turn based on the incorrect annual accounts, the court ruled that there was a causal link.

Given the amounts at stake, it is likely that the Statis will appeal against this decision. As the District Court applied a different (lower) standard for procedural fraud than the earlier Appeal Court's decision (see [Legal update, Moldovan investors granted leave to enforce multimillion investment treaty awards against Kazakhstan \(Amsterdam Court of Appeal\)](#)), the outcome of such an appeal will be eagerly anticipated.

Case: *Stati and others v Kazakhstan (ECLI:NL:RBAMS:2023:178)* (9 January 2023). (Not currently available in English).

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