



## Amsterdam

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### **Dutch courts consider enforcement of awards allegedly obtained through procedural deceit**

An increasingly common ground that parties to peri-arbitral Dutch proceedings have been referring to is procedural deceit.

In the latest saga of the *Stati et al. (“Stati”) v The Republic of Kazakhstan (“Kazakhstan”)* battle, Stati sought to have two arbitral awards, which were rendered under the rules of the Stockholm Chamber of Commerce in Sweden, and pursuant to which Kazakhstan was ordered to pay USD 487,685,101 to Stati, recognised and enforced in the Netherlands. Both arbitral awards were rendered under the Energy Charter Treaty.

As a defence, Kazakhstan alleged that the arbitral awards were the result of procedural deceit committed in the arbitration. According to Kazakhstan, Stati committed extensive fraud during the arbitration by making false representations to the arbitral tribunal to obtain compensation higher than that it was entitled to.

Dutch courts are generally required to deny recognition or enforcement of an award if such recognition or enforcement would be contrary to the Dutch public order. While it is uncontested that procedural deceit contravenes Dutch public order, an award may only be denied recognition or enforcement if said deceit contaminated the arbitral tribunal’s reasoning and ultimate decision.

In its judgment of 9 January 2023, the Amsterdam District Court acknowledged that Stati, by misrepresenting factual information about its alleged damages to the arbitral tribunal, notably through altered annual accounts, had committed procedural deceit that undeniably served as a basis of the arbitral tribunal’s decisions with respect to damage allocation. Consequently, the court rejected Stati’s application to recognise and enforce the awards.

In addition, while it is established case law that recognition and enforcement of an arbitral award on grounds of deceit can only be denied when the alleged deceit was discovered after the conclusion of the arbitral proceedings, the Amsterdam District Court noted that, Stati’s manoeuvres only came to Kazakhstan’s knowledge after the award was issued.

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