

“If at First You Don’t Succeed ...”: A Rare Repeat Challenge of an Arbitral Award

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PRACTICES International Arbitration

Kazakhstan is the world’s largest exporter of uranium. Kazakhstan is party to 53 bilateral investment treaties, including with the UK, US, Canada, France, Germany and Japan and the multilateral Energy Charter Treaty. These give investors from counterpart countries the right to have their investments treated to a certain standard by Kazakhstan and to refer claims against Kazakhstan for breaches of those rights to binding arbitration.

The recent decision of Bryan J. in *Republic of Kazakhstan v World Wide Minerals Ltd & Ors* [\[2025\] EWHC 452 \(Comm\)](#) (28 February 2025) concerns a long running arbitration arising out of a failed investment in Kazakhstan’s uranium industry by a Canadian company called World Wide Minerals (WWM) nearly 30 years ago. WWM claimed that in 1997 it had, due to breaches of the treaty, been deprived of its investment in a uranium processing plant and certain uranium mines after WWM had invested sunk costs of around \$16.5 million. WWM claimed the value of its investment at that time was \$371 million and would be around \$1.9 billion today. The arbitration resulted in a more modest, but still substantial, \$54.5 million arbitration award, intended to reflect the present value of WWM’s sunk costs from three decades ago.

In 2020 Kazakhstan succeeded in having that award set aside by HHJ Pelling KC in *Republic of Kazakhstan v World Wide Minerals Ltd & Anor* [\[2020\] EWHC 3068 \(Comm\)](#) under section 68(2)(a) of the Arbitration Act 1996 on grounds of “*serious irregularity*” because the tribunal, in breach of its duty to give each party “*a reasonable opportunity of putting his case and dealing with that of his opponent*,” had calculated WWM’s loss and awarded WWM damages on a basis which neither Kazakhstan nor WWM had been given an opportunity to make any submissions on. That award having been set aside, the issue was remitted to the tribunal.

Over three years later, having heard Kazakhstan’s argument on the point, the tribunal proceeded to award WWM the same amount as before. Kazakhstan has now succeeded in challenging that second award too, this time under section 68(2)(d) because the tribunal has failed “*to deal with all the issues that were put to it*”. The second award made no reference to Kazakhstan’s central argument, referred to in the judgment as Kazakhstan’s “*Counterfactual Case*”. Essentially, even if there had been no breach of the treaty by Kazakhstan, WWM would inevitably always have failed to meet its obligations under a certain Management Agreement. That agreement would always have been terminated, and WWM would always have lost its investment and would never have recovered its sunk costs.

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