School of International Arbitration, Queen Mary, University of London
International Arbitration Case Law
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Award Name and Date: Vladislav Kim et al. v. Republic of Uzbekistan (ICSID Case No. ARB/13/6) - Decision on Jurisdiction – 8 March 2017

Case report by: Puneeth Ganapathy**, Editor Ignacio Torterola***

Summary:

The dispute concerns a claim filed in relation to certain regulatory and other measures taken by the Respondent with respect to investments made by the Claimants in two cement companies.

The ICSID Tribunal was required to decide multiple objections raised by the Respondent to the Jurisdiction of the tribunal. These objections were as follows: (i) that the nationality of the claimants allegedly did not satisfy the requirements under the Kazakhstan – Uzbekistan BIT, (ii) that the claimants were not 'investors' under the BIT, (iii) that the claimants had not made an 'investment' under the BIT (due to an alleged lack of normative requirements of contribution and capital and the undertaking of risk), (iv) that the investments allegedly did not comply with several domestic laws of the Republic of Uzbekistan and were therefore to be denied protection under the BIT & (v) that the investments were allegedly vitiated by corruption.

The tribunal considered each of Respondent's objections in detail and held as follows. First, that all Claimants satisfied the nationality requirements on the dates relevant to the establishment of jurisdiction of the tribunal. Second, that there was sufficient evidence to conclude that the claimants were owners of the shares as on the relevant dates and were therefore 'investors' under the BIT. Third, that the normative as well as treaty requirements as to the definition of 'investment' were satisfied. Fourth, by a majority, the tribunal held that the Respondent had either not established non-compliance with the several domestic provisions which it had alleged to have been violated or that such non-compliance did not sufficiently impair a serious interest of the State in order to warrant a denial of the protection under the BIT. Fifth, the tribunal held that the ingredients for invoking the prohibition against corruption of governmental officials, whether implicit under the BIT or under international public policy, had not been established by the Respondent.

Therefore, the tribunal, by a majority denied all jurisdictional objections raised by the Respondents. Further, in its partial decision on costs, the tribunal reprimanded and imposed costs on the counsel for Respondents for breaches of confidentiality requirements that were peculiar to the sensitive nature of the arbitral proceedings.

Main issues: Jurisdiction, Nationality, Investment, Investor, Illegality, Corruption, Confidentiality.

Members of the Tribunal: Mr. Toby Landau, QC (Appointed by Respondent); The Honorable L. Yves Fortier, PC, CC, OQ, QC (Appointed by Claimants); Prof David D. Caron (President)

Applicant's Counsel: Mr. Baiju S. Vasani (Jones Day, London); Ms. Melissa S. Gorsline (Jones Day, Washington D.C.); Mr. Michael McNicholas (Visor Holding, Almaty, Kazakhstan)

Respondent's Counsel: Ms. Carolyn B. Lamm, Ms. Andrea J. Menaker, Mr. Brody K. Greenwald, Ms. Larissa Eltsefon, Ms. Jennifer A. Ivers (White & Case LLP, Washington D.C.); Minister Muzraf Ikramov, Mr. Davonbek Akhmedov, Ms. Khurliman Aytniyazov (Ministry of Justice, Republic of Uzbekistan)

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Digest:

1. Facts of the Case:

The claim was submitted to the ICSID pursuant to the Kazakhstan-Uzbekistan Bilateral Investment Treaty ('BIT'). The twelve claimants are partners in an investment group headquartered in Kazakhstan. (¶ 1) The dispute concerns indirect interests of the claimants in two cement plants in Uzbekistan, Bekabadcement ('BC') and JSC Kuvasaycement ('KC') (¶ 3).

The Claimants allege having suffered losses in their interests in BC and KC based on actions of the Respondent & its courts, including criminal and regulatory investigations & expropriation without due process (¶ 139-141). The Respondent raised several objections to the jurisdiction of the tribunal based on the circumstances involving, and the alleged illegal conduct of the Claimants in, the acquisition of the investments (¶ 150).

The Claimants used two sets of agreements, the Tashkent Share Purchase Agreements (TSPAs) and the English Share Purchase Agreements (ESPAs), to acquire the investments (¶ 153). The modalities of effecting this acquisition formed the crux of difference in the characterization of the facts by the Claimant and the Respondent, and formed the basis of the preliminary objections raised by the Respondent (¶ 157).

Respondent raised five preliminary objections to jurisdiction. First, that the Claimants did not meet the nationality requirement for the application of the BIT (¶ 168). Second, that the

Claimants allegedly failed to prove ownership of the shares in BC and KC (¶ 169). Third, that even assuming that the Claimants indirectly owned shares, they did not make an investment, as defined under the BIT (¶ 170). Fourth, that the investments were made in violation of Uzbek Laws and consequently the claims were inadmissible under the BIT (¶ 171). Fifth, that the investments involved allegedly corrupt payments and the claims were therefore inadmissible under the BIT as principles of international public policy (¶ 172).

2. Procedural Background

The Claimants submitted the request for arbitration on 22 March 2013 (¶ 28), which was registered by the Secretary-General of the ICSID on 24 April 2013 (¶ 29). The Respondent filed its memorial on preliminary objections to jurisdiction of the tribunal on 1 August 2014 (¶ 35).

The Claimant responded to these objections by way of a counter-memorial dated 11 December 2014, which included certain anonymous expert reports (¶ 38). The Respondent filed a motion to exclude the reports of the anonymous experts from the record on 15 December 2014, which was denied by the tribunal on 30 April 14, finding merit in the Claimant's assertion that there was a substantial risk to the experts, if their identity was disclosed (¶ 39).

On the basis of a renewed request to exclude the expert reports by Respondent, the Tribunal issued a procedural order on 1 July 2015, deciding to allow the anonymous experts to testify in an "attorney's eyes only" manner (limiting the hearing to the counsel of the Respondents and not the Respondents themselves), via video-link (¶ 50, 89). The identities of the experts would be disclosed only to certain counsel upon the signing of a Non-Disclosure Agreement (¶ 50, 89).

The tribunal offered this solution on considering an expert report by Mr. Gary Born, taking into account the fundamental principles of procedural fairness and of equal treatment of parties, being balanced with the perceived threat to the anonymous experts (¶ 83, 88).

Special arrangements were made to enable the anonymous experts to testify via video-link from an undisclosed location (¶ 55, 89), which was however deferred due to multiple disclosures by the Respondent's counsel (¶ 56). Two of these disclosures were accepted as being inadvertent (¶ 94). Respondent's counsel made another disclosure by copying an email containing confidential information regarding the anonymous experts, to the Uzbek Government (Respondent), in addition to the tribunal (¶ 101). Consequently, the Anonymous Experts declined to further participate in the proceedings (¶ 102, 107, 109). The Experts also appreciated that the tribunal might exclude their reports or not give them any weight, (¶ 110) ultimately seeking to withdraw their reports even if the tribunal provided them anonymity due to fears arising from the disclosures already made by Respondent's counsel (¶ 113).

The tribunal withdrew the reports from the record, while allowing Claimant to make a motion to add certain exhibits relied upon in the anonymous expert reports (¶ 114).

3. Analysis of Legal Issues

The tribunal dealt with the five objections of the claimant (¶ 168-172), in sequence.

3.1. The alleged lack of Nationality for the purposes of the BIT

3.1.1. The applicable law

The tribunal held that the applicable international law on nationality was found in Article 1(5) of the BIT and Article 25(2) of the ICSID Convention (¶ 184). Article 1(5) referred to the applicable national law (¶ 185), being the Law of the Republic of Kazakhstan on Citizenship, (¶ 184, 192), the Constitution of Kazakhstan and Resolution 12 (¶ 192).

3.1.2. The relevant dates for determination of nationality

The tribunal found that as required by the ICSID Convention, the relevant dates on which nationality needed to be established were as follows (¶ 191): (i) the date of the alleged breach, (ii) the date of submission of the claim to ICSID and (iii) the date of registration of the Claim by ICSID.

3.1.3. Evidence of nationality and application of the Nationality law

The tribunal held that under Uzbek Law, while an individual may be susceptible to the termination of citizenship on certain grounds, such termination was not automatic and citizenship was retained until the Office of Internal Affairs took a decision (¶ 207). The tribunal found this interpretation to be in consonance with the general presumption against statelessness in International Law (¶ 208).

The tribunal further held that passports and certificates constituted *prima facie* evidence of nationality, resulting in a presumption of the existence of citizenship (¶ 209). The tribunal relied on decisions to further hold that the threshold for the rebuttal of such presumption was high and onerous, and required establishment of material error or fraud (¶ 210-11).

It was noted that all claimants had provided Kazakh passports of such *prima facie* evidence (¶ 212). In relation to different facts pertaining to the 12 claimants, in particular, the tribunal found that: (i) previous citizenship of the Kyrgyz Republic of one of the claimants did not rebut the *prima facie* evidence of Uzbek Nationality on the relevant dates (¶ 217); (ii) that the subsequent termination of the Kazakh nationality of one of the claimants, in fact supported the evidence of nationality on the required dates (¶ 224-225); (iii) that there was lack of specific evidence calling into question the *prima facie* evidence in relation to all other claimants (¶ 233).

Therefore, in the tribunal's view none of Respondent's arguments displaced the *prima facie* evidence of nationality (¶ 235), thereby denying Respondent's objection on this ground.

3.2. The allegation that Claimants were not 'investors' under the BIT

The Respondent contended that Claimants were not investors under the BIT since they had not established their ownership of the shares in BC and KC prior to the alleged breach (¶ 245,

249). The Respondent further alleged that the Claimants did not meet the definition of investors under the BIT due to the passive and remote nature of their holding (¶ 306, 315).

3.2.1. The ownership of Shares of BC and KC

This objection was made in light of the complicated holding structure employed by the Claimants (¶ 255). The tribunal found that the Claimants had adequately demonstrated their ownership of various entities involved at the different levels of the holding structure at the time of acquisition of the shares (¶ 258, 259, 260, 266, 267, 273, 280, 288).

In relation to one argument raised by Respondent, the tribunal clarified that the burden on claimants was to establish ownership at the time of the alleged breach, and a break in the chain of continuity of ownership over a period of time was irrelevant (¶ 268, 272).

However, the tribunal made several of its findings subject to the validity of an Oral trust under Cypriot Law, (¶ 288) which formed an essential element of the holding structure. The tribunal concluded, on the basis of expert evidence, that oral trusts were valid in Cyprus (¶ 300).

Accordingly, there was sufficient evidence of ownership and this objection of the Respondent was denied (¶ 304).

3.2.2. The allegation that the investors were passive rather than active

The Respondent alleged that due to the complicated structure of the investments, the Claimants were passive investors not warranting protection under the BIT. The tribunal found that the definition of investors in the BIT did not contain a distinction between active and passive investors (¶ 312) and further, that the provision could not be read in a restrictive manner requiring a certain degree of involvement in the management of the investment (¶ 311). Consequently, this objection of the Respondent was denied (¶ 314).

3.2.3. The allegation of remoteness

The Respondent alleged that the multiple levels involved in the Claimants' investment structure rendered them too remote to qualify as investors under the BIT. The tribunal held that there was no basis in the BIT, to read a 'remoteness' test into the definition of investor. Further, it was noted that in any case, there was no specificity offered as to the content of such a test (¶ 320). The tribunal therefore denied this objection (¶ 321).

3.3. The allegation that the claimants had not made an investment as defined under the BIT

The Respondent alleged that the investment failed to meet the alleged requirements of (i) capital contribution, (ii) duration and (iii) specific awareness of the Uzbek Government (¶ 330).

3.3.1. Capital Contribution

It was argued by the respondent that the Claimants did not make a contribution of capital or equity in the acquisition of BC and KC, since they used bank loans for the same (¶ 331). However, the tribunal found no basis in the BIT for such an argument, holding that

dependency on credit facilities was immaterial to the definition of an investment (¶ 334). The tribunal also stated that the loans were not related party transactions and carried with them the obligation of the Claimants to repay (¶ 338).

3.3.2. Duration

Respondent relied on the fact that Claimants had intended to invest in BC and KC only for a short term and wanted to subsequently consolidate and sell their shares (¶ 340). However, the tribunal found nothing in the BIT or the ICSID convention indicating that intent to dispose an investment in the short term would as such affect the definition of investment under the treaty (¶ 342). The tribunal distinguished this with circumstances under which the duration of ownership may be relevant, such as the trading of shares on the stock exchange, ownership being held very briefly (¶ 343). Consequently, this objection was denied (¶ 345).

3.3.3. Awareness of the Respondent

Respondent further alleged that the investment was not protected as it had been made without the awareness of the Respondent government (¶ 346). The tribunal rejected this objection (¶ 355), finding no basis either in the BIT for an awareness requirement (¶ 348) or as a general rule in international law (¶ 353), contrasting this with other instances, where the BIT could require a specific procedure for the establishment of a protected investment (¶ 351).

3.4. The allegations of illegality in the acquisition by the Claimants

The Respondent alleged several violations of Uzbek domestic Law, thereby invoking a loss of protection of the BIT under Articles 12, 1(3) and 2 (¶ 360, 363). The tribunal held that only Article 12 of the BIT concerned the legality of the investment in terms of affecting the scope of jurisdiction of the tribunal (¶ 367-368).

3.4.1. Scope of the legality requirement in Article 12 of the BIT

The tribunal held that the use of the word ‘made’ in Article 12 implied that the compliance with domestic laws was required only at the point of making or establishing the investment and not subsequent to it (¶ 374, 410). Further, this requirement was to be satisfied only in relation to Claimants’ decision to make the investment (¶ 376).

With respect to the term ‘law’ as mentioned in Article 12, the tribunal found that this was not restricted to statutory law (¶ 378) and covered all normative legal acts as prescribed by the law of the Republic of Uzbekistan on Normative-Legal Acts, 2002 (¶ 379, 411).

As a further limitation on the scope, the tribunal found that, on interpretation in accordance with the Vienna Convention on the Law of Treaties and the object and purpose of the treaty, it was not plausible that Article 12 was intended to address minor acts of non-compliance (¶ 394-95).

3.4.2. Test for application of Article 12

As a result, the tribunal applied the principle of proportionality, looking at the object and purpose of the BIT (¶ 396). It accordingly held that the denial of the protection of the BIT

was a harsh result that could be warranted only by non-compliance of a law that resulted in compromising a significant interest of the State (¶ 413).

In determining whether this test was met, the tribunal sought to consider (i) the gravity of the law that was allegedly not complied with (i.e. the significance of the obligation) and (ii) the flagrancy/conduct of the party in the non-compliance (i.e. whether violation was intentional or accidental as well as the subsequent conduct of the party) (¶ 398, 406-407).

3.4.3. The application of Article 12

The tribunal classified the various allegations of violation of domestic law invoked by Respondent into four categories. First, that TSPAs had been registered with a false purchase price (¶ 414). Second, that the ESPAs were not registered with the Tashkent Stock Exchange ('TSE') (¶ 414, 420). Third, that the acquisition was in violation of Uzbek Law in purchasing shares from employees at below market price (¶ 415, 419), and fourth, the acquisition was fraudulent, causing harm to the State, minority shareholders and to the TSE.

A fifth basis raised by the Respondent was that of an alleged transnational public policy of securities laws of countries requiring truthful disclosures. However, the tribunal denied this basis (¶ 433).

3.4.3.1. Fraud in making false disclosures as to price

The tribunal found that true disclosure as per Uzbek Securities Law was a significant obligation in terms of the test laid down by the Tribunal (¶ 425). However, the violation of this law required intent of the Claimant, which was not demonstrated by the Respondent (¶ 427).

The tribunal further found certain mitigating factors in the conduct of the Claimant, which it frequently referred to in its subsequent analysis of each of the allegations of illegality. The tribunal specifically found the conduct of the Claimants not to be egregious on account of the following (¶ 428):

First, Uzbekistan had an uncertain legal environment at the time of making the investment, making compliance difficult (¶ 429). Second, that the Claimant had acted on the advice of its brokers for the purposes of complying with Uzbek Law (¶ 430). Third, the Claimants were purchasers in good faith and had made substantial subsequent investments (¶ 432). Fourth, the involvement of Miss. Karimova (the daughter of the then President of Uzbekistan) indicated knowledge of the Respondent (¶ 433). Fifth, that the rules of TSE were difficult to ascertain and there was lack of evidence of governmental prosecution of Uzbek security laws (¶ 434).

Consequently, the tribunal, by a majority found that the deliberate entry of incorrect price did not itself demonstrate intent to defraud other market participants or manipulate the market (¶ 439).

3.4.3.2. Non-registration of the ESPAs on the TSE

The Respondent alleged that three domestic provisions were violated by the non-registration of the ESPAs on the TSE.

First, with respect to Article 22 of Law No. 218-I, the tribunal, by a majority, found that the law did not clearly require for registration of private contracts for the purchase of shares, as opposed to shares traded at the exchange (¶ 445). The tribunal further held that assuming this requirement applied, its non-compliance did not compromise a significant interest of Uzbekistan (¶ 446), indicated by the fact that the sanction for non-compliance of this provision was only in the form of penalties and not nullity of the transaction (¶ 447). Therefore, this did not constitute a significant obligation in terms of the test being applied (¶ 448). In any case, the seriousness of the conduct of the Claimant was mitigated by the factors noted in ¶ 429-432, thereby not warranting the denial of the protection of the BIT.

Second, with respect to Cabinet Minister's resolution No. 285, the tribunal similarly found that its scope was unclear (¶ 455) and that it did not carry a high degree of significance, since its violation did not result in nullity (¶ 456).

Third, with respect to Order No. 2003 of 2008, the tribunal again noted that its violation did not lead to nullity but was a ground for invalidity by the court and was not a trivial obligation (¶ 460, 464). The tribunal held however, by majority, that the Respondent had not established the seriousness of the alleged acts of non-compliance, given the mitigating factors noted in ¶ 429-432 (¶ 464).

3.4.3.3. Fraudulent purchase of shares below market value

The Respondent invoked as many as 7 different provisions of Uzbek domestic law, each of which were denied by a majority of the tribunal as warranting the application of Article 12 of the BIT.

First, with respect to Article 116 of the Civil Code, the tribunal found it to be a significant obligation since its sanction was nullity (¶ 469). The provision contained two elements, one, that the transaction must not correspond to statutory requirements and two, that it was made knowingly contrary to the foundations of legal order and morality (¶ 470).

The tribunal held, by majority, recalling the mitigating factors noted in ¶ 429-432 and the fact that the Claimants had not induced third parties or other market participants, (¶ 473) that a violation of this provision required the contract to be immoral and anti-social and did not cover all statutory violations (¶ 474). Accordingly, the tribunal by majority denied this ground of illegality alleged by the Respondent (¶ 475).

Second, with respect to Civil Code Article 124, the tribunal noted that it consisted of two separate parts: one that prohibited transactions unintended to have any legal consequences and second, that in case of sham transactions concealing another transaction, the sham transaction was to be ignored and only the real transaction to be considered. (¶ 478) The tribunal found this provision to be inapplicable since, the transactions of the claimants were intended to have a legal effect (¶ 479) and the second part of the provision did not nullify the transaction but merely decided which one was to be given effect to in law (¶ 484). Further, in context of the mitigating factors noted in ¶ 429-432, the tribunal, by majority, held that the Respondent had not established the seriousness of the alleged non-compliance.

Third, with respect to Law No. 260-11, which was passed in order to regulate the activities of exchanges (¶ 487), the tribunal found the law to be directed to members of the exchange, and

not clients such as the claimants (¶ 492). The tribunal also held that Article 27 of the law, which covered the Claimants, did not provide for consequences of violation, which was to be ascertained under specific provisions (¶ 492).

Fourth, with respect to Law No. 218-I, the tribunal reiterated that the Respondent had not established that Claimant intended to mislead investors and authorities (¶ 498). Therefore, by majority, the tribunal, relying on the mitigating factors noted above and a less degree of significance of the law (¶ 499), given that the sanction imposed only consisted of a fine (¶ 495), held that Claimants had not acted in a manner warranting the application of Article 12 of the BIT (¶ 499).

Fifth, with respect to Order No. 04-103, which prohibited misleading information being given to market participants (¶ 501), the tribunal similarly held that the law was not of a high significance in terms of the test being applied, since it did not specify sanctions for its violation (¶ 504). Further, coupled with the mitigating factors noted above, the tribunal, by majority, concluded that the application of Article 12 of the BIT was not warranted (¶ 505).

Sixth, with respect to Order No. 2002-06, which was the Securities Disclosures Order, the tribunal found that it did not contain any obligation to disclose price, and therefore, did not assist the Respondents (¶ 511-12).

Seventh, with respect to the TSE Rules, the tribunal held that these did not constitute normative legal acts under the Laws of Uzbekistan (¶ 514).

3.4.3.4. Allegations of fraud causing significant harm to the State

The Respondent invoked three provisions under this heading, each of which was rejected by the tribunal.

First, with respect to Article 168 of the Criminal Code, which applied to acquisition of property by deception (¶ 518), the tribunal held that this required proof of intent (¶ 520) and that the violation of criminal law was matter to be determined by the legal system of the host State (¶ 522). In any case, the tribunal held that the Respondent had not established the elements of the alleged crime (¶ 523).

Second, with respect to Article 184 of the Criminal code, dealing with an intent to conceal profit for tax evasion (¶ 523), the tribunal similarly held that the ingredients of this provision had not been established by Respondent (¶ 530).

Third, with respect to Article 123 of the Civil Code, the tribunal noted that as per the provision, transactions concluded by fraud or coercion were voidable on institution of a suit by the victim (¶ 531). By majority, the tribunal reiterated that no evidence to suggest that the Claimants acted in order to mislead or fraud or coerce had been established (¶ 536).

3.4.4. Conclusion on allegations of illegality

The tribunal, by majority, consequently denied all allegations of domestic illegality as either not being substantiated, or not demonstrated to the extent of warranting a denial of the protection the BIT under of Article 12 (¶ 541). In light of this holding, the tribunal, by majority, did not consider Claimant's argument that Respondent was estopped from raising

these allegations on account of Respondent's constructive knowledge of the facts pertaining to the transaction (¶ 539).

3.5. Allegation of Corruption

The Respondent alleged that certain payments made in the establishment of the investments were vitiated by corruption, both under domestic law and under International public policy.

3.5.1. Standard of Proof

The tribunal noted that there was no fixed standard of proof (whether 'convincing' or 'reasonably certain') that was required in order to establish an allegation of corruption (¶ 544). However, the tribunal did not elaborate on the standard, holding that the Respondent did not establish allegations of corruption (¶ 545).

The tribunal noted that certain peculiarities in the transactions did raise red flags, which could be treated only as circumstantial evidence (¶ 548). However, such red flags were to be seen in the context of the Claimant's assertion that the business and personal safety considerations in the CIS countries justified taking of extra measures, thereby lessening the weight of the red flags (¶ 549).

Further, the tribunal clarified that for the purposes of challenge to jurisdiction, only those allegations of bribery and corruption that pertain to the original investment, and not subsequent, were to be considered (¶ 553).

3.5.2. Establishment of Corruption

The tribunal categorized the allegations of corruption in three heads: first, the excess payments to Miss Karimova being in alleged violation of Uzbek Criminal Code; second, the same being in violation of international public policy, and third, payments to Mr. Bizkov, who introduced the Claimants to the original sellers of the shares, being in violation of international public policy.

First, with respect to the alleged violation of Article 211 of the Uzbek Criminal Code, the tribunal noted that there were four ingredients to be satisfied (¶ 554, 558): (i) whether there was an excess payment, (ii) whether the payment was made to Miss Karimova, (iii) whether Miss Karimova was a government official, and (iv) whether it was intended for the performance of an official act within Miss Karimova's capacity.

The tribunal found that, while it was difficult to conclude whether there had been an overpayment (¶ 563), the payment in all likelihood was made to Miss Karimova. However, the tribunal held that it had not been established that Miss Karimova was a government official at the time of making of the investment in 2006 (¶ 575). Consequently, Respondent also failed to identify what, if any actions Miss Karimova could have taken with respect to the investment as a result of any governmental position she may have held (¶ 588).

The tribunal also drew adverse inferences from the facts that the Respondent had not produced Miss Karimova, without explanation, for cross-examination, while being in Respondent's custody, nor had it produced any evidence of a governmental investigation into

her role (¶ 590). Therefore, the tribunal held that the Respondent had not met its burden of proof in respect of this allegation (¶ 591).

Second, with respect to international public policy, the tribunal stated that the international public policy prohibiting corruption existed (¶ 593), but was however, limited to acts of 'government officials' (¶ 594). For this purpose, the tribunal relied on the relevant OECD Convention against Corruption of Public Officials and the UN Convention, which indicated a narrow consensus with respect to corruption in the private sector (¶ 595). Consequently, since Respondent had not established Miss Karimova to be a government official at the relevant time, this objection was denied (¶ 599-600).

Third, with respect to the allegation of payments to Mr. Bizkov being allegedly in violation of international public policy, the Tribunal held that the Respondent had not established any relationship between Mr. Bizkov and the Government of Uzbekistan (¶ 605). Consequently, the tribunal found no evidence of corruption in this regard. (¶ 608)

Therefore, the tribunal concluded that none of the allegations of corruption by Respondent had been substantiated (¶ 615-616).

3.6 Conclusion on all Objections

The tribunal therefore denied all objections to jurisdiction raised by the Respondent (¶ 640).

4. Costs

The tribunal deferred the question of general costs to the final award (¶ 619). However, in light of the procedural history pertaining to the anonymous experts, and the disclosures of confidential information by Respondent's counsel (¶ 623, 625), the tribunal reprimanded the counsel for lack of professionalism (¶ 627). The tribunal further imposed all costs pertaining to the anonymous experts, including the costs of the claimant, the ICSID, and of the tribunal, on the Respondent (¶ 631, 633-36). Consequently, the tribunal ordered the payment of 259,519 GBP and 60,000 USD to the Claimants with Libor plus 1% interest after 30 days of the order.

The tribunal also reprimanded the specific conduct of one of Claimants, which involved making derogatory remarks against Respondent's counsel (¶ 637). Although an apology was received for the same, the tribunal noted that this fact would be noted in its decision on overall costs in the final award (¶ 638).