

Svea Court of Appeal upholds UNCITRAL investment treaty award: Lithuanian investor had protected investment under BIT

by *Practical Law Arbitration* with *Westerberg & Partners*

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In *The Kyrgyz Republic v Satoris UAB (Case No T 10588-24)*, the Svea Court of Appeal rejected Kyrgyzstan's attempt to set aside an UNCITRAL award, holding that the Lithuanian investor had obtained a protected investment under the 2008 Lithuania-Kyrgyzstan bilateral investment treaty by winning a 2018 public tender for production of e-passports, even if a contract was never signed.

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The Svea Court of Appeal has upheld an UNCITRAL investment treaty award regarding a dispute stemming from a 2018 public tender for production of e-passports in Kyrgyzstan, which was won by Lithuanian company Satoris UAB (Satoris). However, Satoris and the contracting authority never signed the contract due to subsequent events, including the launch of an investigation into alleged corruption arising from the tender, the validity of all submitted bids expiring before any contract was executed, and the tender subsequently being declared invalid by the Kyrgyz administrative courts following complaints by other bidders.

Satoris initiated arbitration against Kyrgyzstan pursuant to the Lithuania-Kyrgyz Republic bilateral investment treaty (BIT), claiming expropriation of its investment and discriminatory treatment. In the award, the tribunal held that Kyrgyzstan had violated the BIT and ordered it to pay damages to Satoris.

Kyrgyzstan applied to set aside the award, claiming that Satoris had made no qualifying investment and consequently the tribunal lacked jurisdiction over the dispute.

The court rejected Kyrgyzstan's application. Noting that it is uncertain how the Swedish "doctrine of assertion" should be applied in investment treaty arbitration, as the doctrine cannot apply to create an arbitration agreement, the court considered whether Satoris had proven the existence of a qualifying investment under the BIT. It interpreted the meaning of "investment" and found that the term has a wide definition under the BIT. Therefore, it held that the criteria underlying the ordinary meaning of the term (contribution, duration, risk) were not determinative for whether the claimant had made an investment.

The court established that by winning the tender, Satoris had obtained rights under Kyrgyz law which qualified as a protected investment under the BIT, even if a contract was never signed. According to the court, Satoris held these rights at the relevant time for determining whether the claimant had a qualifying investment, that is, when the Kyrgyz authorities launched the investigation into suspected corruption. Later events, such as the bid expiring and the tender being declared invalid, were held to be issues of the merits of the dispute and therefore outside the scope of the court's review.

The ambiguous approach to the doctrine of assertion and the failure to apply the criteria of contribution, duration and risk depart from the court's approach in *Littop et al v Ukraine (31 January 2025)*. As the court did not grant leave to appeal to the Supreme Court, this uncertainty remains unresolved.

Case: [Kyrgyz Republic v Satoris UAB \(Case No T 10588-24\) \(Svea Court of Appeal\) \(19 December 2025\)](#).

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