

Tokios Tokelés v. Ukraine

(ICSID Case No. ARB/02/18)

ORDER No 2

Respondent's Request for Bifurcation

The Arbitral Tribunal,

Composed of: Prosper Weil, President
Piero Bernardini and Daniel Price, Members

After deliberation,

Having regard to Article 41, paragraph 2 of the ICSID Convention and Rule 41 of the Arbitration Rules,

Having regard to the Request for arbitration filed by Tokios Tokelés on August 14, 2002,

Having regard to the Observations as to the consideration of jurisdiction of the ICSID and admissibility of the case as preliminary matters filed by Ukraine on June 12, 2003,

Having regard to the Observations on bifurcation filed by Tokios Tokelés on June 17, 2003 requesting the Tribunal to join the issue of jurisdiction to the merits,

Makes the following order:

1. On June 12, 2003 Ukraine raised a jurisdictional objection challenging the jurisdiction *ratione personae* and *ratione materiae* of ICSID and the admissibility of Tokios Tokelés' request for arbitration, and requested a bifurcation, that is to say, a preliminary and separate consideration by the Tribunal of this objection.
2. On June 17, 2003 the Claimant requested the Tribunal to join the issue of jurisdiction to the merits because, so it argued, "the issue of jurisdiction and the case on the merits rest on the exact same set of factual events and circumstances", so much so that "the facts which demonstrate jurisdiction and the facts which prove the Claimant's assertions are identical or, at the very least, inextricably intertwined."
3. Having examined the arguments put forward by the parties, the Tribunal concludes that it is appropriate to examine the jurisdictional issue raised by Ukraine as a preliminary and separate matter.
4. The Tribunal therefore decides that it will first, and separately, examine the jurisdictional issue, and it requests the parties to limit their pleadings and accompanying documents to this preliminary issue. This decision, needless to say, is without prejudice to a possible future decision by the Tribunal to join its decision on this preliminary issue to the merits.
5. Consequently, *the Tribunal unanimously decides* that:
 - (a) Ukraine's request for bifurcation is granted, and therefore its jurisdictional objection will be examined as a separate and preliminary issue;

- (b) Ukraine shall file its observations on this issue within thirty days from the notification of the present Order; Tokios Tokelés will file its response to these observations within thirty days of the notification of Ukraine's observations; and the parties will then file their reply and rejoinder within fifteen days of the notification of the brief of the other party.

Done in Paris, on July 1, 2003

.....Signed.....

Prosper Weil, President of the Tribunal