INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

MIRIAN G. DEKANOIDZE AND T.G. TRADE LLC

Claimants

v.

GEORGIA

Respondent

(ICSID Case No. ARB/23/45)

DECISION ON THE RESPONDENT'S RULE 41 OBJECTION

Members of the Tribunal
Ms Judith Levine, President of the Tribunal
Dr Hamid Gharavi, Arbitrator
Professor Attila Massimiliano Tanzi, Arbitrator

Secretary of the Tribunal
Ms Ella Rosenberg

Date of Dispatch: 20 January 2025

REPRESENTATION OF THE PARTIES

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FREQUENTLY USED ABBREVIATIONS AND ACRONYMS

Arbitration Rules	ICSID Rules of Procedure for Arbitration Proceedings (effective 1 July 2022)
BIT or the Treaty	Treaty between the Government of the United States of America and the Government of Georgia Concerning the Encouragement and Reciprocal Protection of Investment signed on 7 March 1994
CCS	Claimants' Costs Submission, 9 December 2024
CHP	Claimants' Hearing Presentation, 19 November 2024
Citizenship Law	The Organic Law of Georgia on Georgian Citizenship
Civil Code	Civil Code of Georgia of 26 June 1997
Claimants	Mr Dekanoidze and T.G. Trade
Decree	Decree dated 30 January 2020, issued by the President of Georgia regarding the termination of Mr Dekanoidze's citizenship
Decision	The present decision on the Respondent's Rule 41 Objection
Dekanoidze WS1	Witness Statement of Mr Dekanoidze, 4 October 2024
ECRF	Electric Carriage Repair Factory
Georgia or the Respondent	Georgia, the Respondent State in this arbitration
Hearing	Hearing on the Rule 41 Objection, held via videoconference on 19 November 2024
Hearing Tr.	Transcript of the Hearing
ICSID or the Centre	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14 October 1966
Mr Dekanoidze	Mr Mirian G. Dekanoidze, the first Claimant

Objection	The Respondent's Objection under Rule 41 of the ICSID Rules, 19 July 2024 (initially filed on 22 April 2024)
Parties	The Claimants and the Respondent
RCS	The Respondent's Costs Submission, 9 December 2024
Rejoinder	The Claimants' Rejoinder, 7 November 2024
Reply	The Respondent's Reply to the Claimants' Response, 21 October 2024
Respondent	Georgia
Response	The Claimants' Response to Respondent's Objection under Rule 41(1) of the 2022 ICSID Arbitration Rules, 4 October 2024
RFA or the Request	The Claimants' Request for Arbitration, 15 September 2023
RHP	Respondent's Hearing Presentation, 19 November 2024
Secretary-General	Secretary-General of ICSID
Supreme Court Judgment	Judgment of the Georgian Supreme Court, issued on 23 March 2019
Mr Tsilosani	Mr Badri Tsilosani
Ms Tsintsabadze	Ms Ketevan Tsintsabadze, the wife of Mr Dekanoidze and shareholder of T.G. Trade
T.G. Trade	Turkmenistan Georgia Trade LLC, the second Claimant
US	United States of America

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I. INTRODUCTION AND PARTIES

1. This case concerns a dispute submitted to the International Centre for Settlement of Investment Disputes ("**ICSID**" or "**Centre**") on the basis of the Treaty between the Government of the United States of America and the Government of Georgia Concerning the Encouragement and Reciprocal Protection of Investment signed on 7 March 1994 (the "**BIT**" or "**Treaty**") and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14 October 1966 ("**ICSID Convention**").

2. The Claimants are Mr Mirian G. Dekanoidze ("**Mr Dekanoidze**"), a natural person who was born in Georgia and has been a national of the United States of America ("**US**") since 23 May 2018, and Turkmenistan Georgia Trade LLC ("**T.G. Trade**"), a company registered under the laws of Georgia (together, "**Claimants**").

3. The respondent is Georgia ("**Respondent**", together with the Claimants, "**Parties**").

4. The Parties' representatives and their addresses are listed above on page (i).

5. The dispute has its origins in a series of interactions between the Respondent and the Claimants concerning investments in a railway construction and repair venture dating back to the early 2000s.[1] Court proceedings initiated by T.G. Trade eventually reached the Supreme Court, the highest court in Georgia. On 29 March 2019, the Supreme Court issued a judgment ("**Supreme Court Judgment**"),[2] by which the Claimants say they were "denied justice and denied the right to see their investment restored."[3] The Supreme Court Judgment forms the basis of the Claimants' claims for breach of the Treaty in this arbitration.[4]

6. The present decision ("**Decision**") concerns the Respondent's objection that the Claimants' case is manifestly without legal merit ("**Objection**"), submitted on 19 July 2024

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1 *See* Claimants' Request for Arbitration, 15 September 2023 ("**RFA**") ¶¶ 10-100.

2 *T.G. Trade LLC v. Badri Tsilosani*, Case No. AS-1215-2018, Ruling of the Georgia Supreme Court, 29 March 2019, Exh. R-012 ("**Supreme Court Judgment**").

3 RFA ¶ 100.

4 RFA ¶¶ 100, 119-133; Claimants' Response to Respondent's Objection under Rule 41(1) of the 2022 ICSID Arbitration Rules, 4 October 2024 ("**Response**") ¶¶ 11-15; Hearing Tr., p. 121.

under Rule 41(1) of the 2022 ICSID Arbitration Rules ("**Arbitration Rules**").

7. Essentially, the Respondent submits that the case should be dismissed early because it is clear and obvious that (i) Mr Dekanoidze was a dual national at the date of the alleged breach of the Treaty and the Tribunal therefore lacks jurisdiction *ratione personae* over Mr Dekanoidze; (ii) Mr Dekanoidze does not own T.G. Trade in any event and the Tribunal therefore lacks jurisdiction *ratione materiae*; and (iii) T.G. Trade's status as a US investor is contingent on Mr Dekanoidze being a qualified investor with a covered investment, which he is not for either or both of reasons (i) and (ii), and the Tribunal therefore lacks jurisdiction *ratione personae* over T.G. Trade.[5] The Claimants disagree on all these points and request the Tribunal to dismiss the Respondent's Objection and proceed with the arbitration.

8. For the reasons that follow, the Tribunal decides that the test for manifest lack of legal merit in Rule 41 of the ICSID Rules has not been met in this case. The Tribunal appreciates that the Respondent's Objection raises some serious questions as to jurisdiction, but these questions are not suitable for being summarily resolved within the framework of Rule 41.

9. Part II of this Decision sets out the procedural history. Part III contains relevant factual background. Part IV presents the relief sought by the Parties. Part V provides an overview of the legal framework for the present Decision. Part VI summarises the Parties' respective positions on the Rule 41 Objection. Part VII contains the Tribunal's analysis of the Rule 41 Objection. Part VIII addresses costs. Part IX contains the Tribunal's formal decision and directions for next steps.

II. PROCEDURAL HISTORY

10. On 15 September 2023, ICSID received a request for arbitration dated 15 September 2023, from Mr Dekanoidze and T.G. Trade against Georgia, together with factual exhibits C-001 through C-015 and legal authorities CL-001 through CL-006 ("**Request**" or "**RFA**").

[5] Respondent's Objection under Rule 41(1) of the 2022 ICSID Arbitration Rules, 19 July 2024 ("**Objection**") ¶¶ 9, 31-79; Respondent's Reply to the Objection under Rule 41(1) of the 2022 ICSID Arbitration Rules, 21 October 2024 ("**Reply**") ¶¶ 13-53; Respondent's Hearing Presentation, 19 November 2024 ("**RHP**"), Slide 2.

11. By letter of 26 September 2023, ICSID requested additional information from the Claimants.

12. By email of 28 September 2023, the Claimants provided their response to ICSID's question.

13. On 3 October 2023, the Secretary-General of ICSID ("**Secretary-General**") registered the Request, as supplemented by the Claimants' correspondence of 28 September 2023, in accordance with Article 36(3) of the ICSID Convention and notified the Parties of the registration. In the Notice of Registration, the Secretary-General invited the Parties to proceed to constitute an arbitral tribunal as soon as possible in accordance with Rule 7(c) of ICSID's Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings.

14. By letter of the same date, ICSID requested the Claimants to make an advance payment of USD 200,000.

15. By email of 26 October 2023, the Claimants requested a two-month extension to make the requested advance payment.

16. By letter of 3 November 2023, ICSID reminded the Parties that they had 45 days after the date of the registration (i.e., until 17 November 2023) to agree on the method of constitution of the Tribunal failing which the Tribunal would be constituted in accordance with Article 37(2)(b) of the ICSID Convention.

17. By letter of 17 November 2023, the Centre took note that the Parties had agreed on the number of arbitrators and the method of their appointment, in accordance with Article 37(2)(a) of the Convention. Pursuant to the Parties' agreement, the Tribunal would be comprised of three members, one appointed by each Party, and the third, the presiding arbitrator, to be appointed by agreement of the two-party appointed arbitrators. In the absence of any of such appointments within the prescribed periods, the Chairman of the Administrative Council would make the missing appointment.

18. On 18 December 2023, in accordance with the timing agreed by the Parties, the Claimants appointed Dr Hamid Gharavi as arbitrator.

19. By letter of 21 December 2023, ICSID informed the Parties that Dr Gharavi had accepted his appointment.

20. By email of 4 January 2024, the Claimants informed ICSID that they were unable to pay the advance requested in ICSID's letter of 3 October 2023, until 29 February 2024.

21. On 17 January 2024, in accordance with the timing agreed by the Parties, the Respondent appointed Professor Attila Massimiliano Tanzi as arbitrator.

22. By letter of the same date, ICSID acknowledged receipt of the appointment and informed the Parties that it would seek acceptance of Professor Tanzi.

23. By letter of 26 January 2024, ICSID informed the Parties that Professor Tanzi had accepted his appointment.

24. On 27 February 2024, the Centre informed the Parties that in accordance with their agreed method of constituting the Tribunal, the co-arbitrators had appointed Ms Judith Levine as presiding arbitrator.

25. On 8 March 2024, the Secretary-General of ICSID, in accordance with Rule 21(1) of the Arbitration Rules, notified the Parties that all three arbitrators had accepted their appointments, and that the Tribunal was therefore deemed to have been constituted on that date. Ms Ella Rosenberg, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.

26. The Tribunal is thus composed of Ms Judith Levine, a national of Australia and Ireland, President, appointed by the co-arbitrators with the agreement of the Parties; Dr Hamid Gharavi, a national of France and Iran, appointed by the Claimants; and Professor Attila Massimiliano Tanzi, a national of Italy, appointed by the Respondent.

27. By letter of 11 March 2024, ICSID notified the Parties of the Claimants' default and invited either Party to make the required payment of USD 200,000 by 26 March 2024. On the same date, ICSID also requested the Respondent to make an advance payment of USD 200,000 by 10 April 2024.

28. By email of 26 March 2024, the Claimants informed ICSID of their partial payment of USD 70,000 and of their intention to pay the remaining amount by 31 March 2024. On 2 April 2024, ICSID confirmed the Claimants' partial payment.

29. By letter of 5 April 2024, the Tribunal informed the Parties that the first session would be held on 24 April 2024.

30. By letter of 10 April 2024, the Respondent informed ICSID that it was ready to make its advance payment following the confirmation that the Claimants had paid their share in full.

31. By letter of that same date, ICSID informed the Parties of the Secretary-General's intention to suspend the proceedings for non-payment on 17 April 2024, if neither Party paid the remaining portion of USD 130,000 of the requested advance payment.

32. By email of 12 April 2024, the Respondent requested that the Tribunal suspend a procedural deadline until the Secretary-General rendered her decision on the suspension of proceedings. On the same date, the Claimants requested that the proceedings not be suspended.

33. By email of 13 April 2024, the Tribunal informed the Parties that it granted the Respondent's request to extend the procedural deadline until the Secretary-General rendered her decision on the suspension of the proceedings.

34. On 17 April 2024, pursuant to Regulation 16(2)(b) of the ICSID Administrative and Financial Regulation, the Secretary-General suspended the proceedings for non-payment of the required advances.

35. On 22 April 2024, the Respondent filed its objection under Rule 41(1) of the Arbitration Rules, together with factual exhibits R-001 through R-014 and legal authorities RL-001 through RL-031.

36. By email of 23 April 2024, ICSID reminded the Parties that the proceedings were suspended, and invited the Respondent to submit its Rule 41 objection, if it so wished, once the proceedings were resumed.

37. By email of the same date, ICSID informed the Parties that the first session scheduled to take place on 24 April 2024, was vacated.

38. By letter of 20 June 2024, ICSID reminded the Parties that the 90-day period referred in Regulation 16(2)(c) would expire on 16 July 2024, and that the Secretary-General would

discontinue the proceedings if no payment was made by that deadline.

39. By email of 15 July 2024, the Claimants informed ICSID that they had paid the remaining portion of the advance requested in the amount of USD 130,000. By letter of 17 July 2024, ICSID acknowledged receipt of the Claimants' payment and announced that in accordance with Regulation 16(2)(b), "the proceeding, suspended since 17 April 2024, shall resume today."

40. On 19 July 2024, the Respondent (re)filed its Objection Under Rule 41(1) of the 2022 ICSID Arbitration Rules, together with factual exhibits R-001 through R-015, and legal authorities RL-001 through RL-031.

41. On 5 August 2024, the Centre informed the Parties of the Respondent's default and invited either Party to make the required payment of USD 200,000 by 20 August 2024.

42. In accordance with ICSID Arbitration Rule 13(1), the Tribunal held a first session with the Parties on 6 August 2024, by videoconference.

43. By letter of 8 August 2024, Professor Tanzi asked whether the Parties would be agreeable to the appointment of Professor Gian Maria Farnelli as assistant to Professor Tanzi in this proceeding. On 14 August 2024, the Parties confirmed their agreement with the appointment.

44. By letter of 27 August 2024, the Centre confirmed the Respondent's payment of its share of the advance requested in ICSID's letter of 11 March 2024.

45. On 5 September 2024, the Tribunal issued Procedural Order No. 1 recording the agreement of the Parties on procedural matters and Procedural Order No. 2 on Transparency and Confidentiality. Procedural Order No. 1 provides, *inter alia*, that the applicable Arbitration Rules would be those in effect from 1 July 2022, that the procedural language would be English, and that the place of proceeding would be Paris, France. Annex B to Procedural Order No. 1 also sets out the agreed schedule for the jurisdictional and merits phase of the proceedings, including for different scenarios depending on whether any future proceedings are bifurcated.

46. On 4 October 2024, the Claimants filed their Response to Respondent's Objection Under

Rule 41(1) of the 2022 ICSID Arbitration Rules, together with the Witness Statement of Mr Dekanoidze, factual exhibit C-014, and legal authorities CL-007 through CL-026 ("**Response**").

47. On 21 October 2024, the Respondent filed its Reply to the Objection Under Rule 41(1) of the 2022 ICSID Arbitration Rules, together with factual exhibit R-016,[6] and legal authorities RL-032 through RL-048 ("**Reply**").[7]

48. By letter of 29 October 2024, and in preparation for the upcoming hearing on the Respondent's Rule 41 Objection scheduled to take place on 19 November 2024 ("**Hearing**"), the Tribunal requested the Parties to indicate by 8 November 2024, if they wished for Mr Dekanoidze to be examined at the Hearing. The Tribunal further requested that the Parties submit a proposed hearing timetable by 12 November 2024.

49. By email of 1 November 2024, the Respondent confirmed that it did not wish to call Mr Dekanoidze to be examined at the Hearing.

50. On 7 November 2024, the Claimants filed their Rejoinder to Respondent's Reply Under Rule 41(1) of the 2022 ICSID Arbitration Rules, together with legal authorities CL-027 through CL-029 ("**Rejoinder**").

51. On 8 November 2024, the Claimants confirmed that they did not intend to call Mr Dekanoidze to testify at the Hearing.

52. By letter of 12 November 2024, the Tribunal informed the Parties that it did not intend to ask questions to Mr Dekanoidze at the Hearing. The Tribunal further requested the Parties to respond to two questions concerning evidence and legal authorities, by 15 November 2024.

53. On 13 November 2024, the Tribunal issued Procedural Order No. 3 on the organization of the Hearing.

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[6] The Box folder entitled "Respondent's factual exhibits" also contained R-006, R-008 and R-011.

[7] The Box folder entitled "Respondent's legal authorities" also contained RL-009, RL-011, RL-017, RL-018, RL-021 and RL-023 through RL-025.

54. By email of 15 November 2024, the Respondent provided its responses to the two questions raised by the Tribunal on 12 November 2024, and submitted new versions of the English translations of Exhibits R-006 and R-007.

55. On 18 November 2024, the Claimants agreed with the answers provided by the Respondent. They also provided, as Exhibit CL-30, a copy of the version of the Organic Law of Georgia on Georgian Citizenship ("**Citizenship Law**") that was in force when Mr Dekanoidze acquired US nationality on 23 May 2018, and a subsequent version that was in force as at 19 November 2019 which they expected the Respondent may wish to submit into the record. These supplemented the two versions of the Citizenship Law already in the record, namely the current version (CL-021) and the version as amended on 21 July 2018 (R-016).

56. On 18 November 2024, the Respondent advised that it was content not to incorporate the 2019 version of the Citizenship Law into the record, seeing as the Claimants had not submitted it, and "taking the Claimants' case at its highest [for purposes of the Rule 41 process]."

57. On 18 November 2024, the Claimants advised of the designation of an additional counsel to participate in the Hearing on Rule 41, namely Mr Irakli Mgaloblishvlii of MKD Law. No issues arose pursuant to paragraph 8.2 of PO1 with respect to his designation.

58. On 19 November 2024, in accordance with Procedural Order No. 3, the Claimants circulated a demonstrative exhibit showing a chronology of key events (CD-1).

59. The Hearing was held online on 19 November 2024. The following persons participated:

Tribunal:	
Ms Judith Levine	President
Dr Hamid Gharavi	Arbitrator
Professor Attila Massimiliano Tanzi	Arbitrator
For the Claimants:	
Mr Michael Ostrove	DLA Piper LLP (US)
Mr Théobald Naud	DLA Piper France LLP
Ms Cătălina Bîzîc	DLA Piper France LLP
Ms Zsófia Deli	DLA Piper, Posztl, Nemescsói, Györfi-Tóth & Partners

Mr Irakli Mgaloblishvili	MKD Law
Mr Mirian G. Dekanoidze	Claimant

For the Respondent:

Mr Hussein Haeri KC	Withers LLP
Dr Robert Kovacs	Withers LLP
Ms Clàudia Baró Huelmo	Withers LLP
Ms Maanya Tandon	Withers LLP
Ms Tessa Hall	Withers LLP
Ms Mariam Antia	Ministry of Justice of Georgia
Ms Nino Chikhradze	Ministry of Justice of Georgia

ICSID Secretariat:

Mr Yuichiro Omori	Legal Counsel
Ms Lucie Laclie	Paralegal
Mr Maxime Somda	Intern

Court Reporter:

[redacted]	Court Reporter

60. On 22 November 2024, the Tribunal circulated for the Parties' comments a draft procedural order recording the post-hearing steps discussed during the Hearing, as well as a portion of the procedural calendar that had been jointly proposed by the Parties on 5 September 2024. Having consulted the Parties, the Tribunal issued Procedural Order No. 4 in final form on 25 November 2024.

61. In accordance with Procedural Order No. 4, the Parties submit their agreed corrections to the transcript of the Hearing on 30 November 2024.

62. On 9 December 2024, in accordance with Procedural Order No. 4, the Parties filed their submissions on costs.

III. FACTUAL BACKGROUND

63. In this section, the Tribunal sets out in brief the facts described in the Parties' written submissions to date that are relevant for the present Objection. The Parties have acknowledged that for purposes of decisions on objections under Rule 41, tribunals will not

engage in an in-depth examination of disputed facts.[8] The summary below should not be taken as including any finding of fact by the Tribunal.

A. MR DEKANOIDZE'S BIRTH AND MARRIAGE IN GEORGIA

64. Mr Dekanoidze was born in Georgia on 29 July 1958, and it is not in dispute that he was a Georgian citizen by birth, pursuant to Article 9(1) of the Citizenship Law.[9]

65. On 5 May 2000, Mr Dekanoidze married Ms Ketevan Tsintsabadze ("**Ms Tsintsabadze**"), who was also a Georgian national by birth.[10]

B. 2001 – T.G. TRADE IS ESTABLISHED

66. In 2001, Mr Dekanoidze and Ms Tsinitsabadze decided to engage in a new business venture to finance and manage the work of local Georgian factories involved in rail repair and renovation services.[11]

67. On 2 May 2001, Ms Tsintsabadze, together with a Georgian business partner, Ms Nana Rusishvili incorporated and registered T.G. Trade under the laws of Georgia, each of them owning 50% of the share capital.[12] Mr Dekanoidze himself has not at any point been registered as a shareholder in T.G. Trade.[13]

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[8] *See* Objection ¶ 11 (noting that the Respondent's acceptance of the facts in the RFA was purely for purposes of the Rule 41 Objection and "without prejudice to any subsequent disagreement as to the facts presented by the Claimants" and that it "reserves its rights to dispute any statements of fact" should the Tribunal reject the Objection) ¶ 44 (it is "not necessary for the Tribunal to perform an in-depth examination of the facts in order to dismiss the claim."); Hearing Tr., pp. 9-10 (Respondent: "for the Rule 41 process, we are taking the Claimants' case at its highest. We are not impugning the facts … if necessary, the Respondent will address those … in due course…."); Hearing Tr., p. 116 (Claimants agreeing "that you take the facts as they're stated on the record. It's not proper, as the jurisprudence clearly says, to start delving into a factual analysis.").

[9] RFA ¶ 4; American Passport of Mirian G. Dekanoidze, 26 June 2018, Exh. C-001; Objection ¶ 12, Organic Law of Georgian Citizenship (with English translation), 30 April 2014, Exh. R-001 ("Article 9 – Forms of acquiring Georgian citizenship 1. Georgian citizenship is acquired: a) by birth….").

[10] Marriage Certificate of Mirian Dekanoidze and Ketevan Tsintsabaze, 5 May 2000, Exh. C-006; RFA ¶ 13; Objection ¶ 12.

[11] RFA ¶ 15; Objection ¶ 13.

[12] LEPL National Agency of Public Registry, Extract from Registry of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities, T.G. Trade LLC Registration, 2 May 2001, Exh. C-003; RFA ¶ 18; Objection ¶ 14; see also Ruling of Vake-Subartalo District Court of Tbilisi, 2 May 2001, Exh. R-002.

[13] LEPL National Agency of Public Registry, Extract from Registry of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities, T.G. Trade LLC Registration, 2 May 2001, Exh. C-003; Objection ¶ 14.

C. 2005 – T.G. TRADE ACQUIRES 51.63% SHAREHOLDING OF ECRF

68. T.G. Trade worked with the Electric Carriage Repair Factory ("**ECRF**") and subcontracted to it repair works of train carriages.[14] Up until 2004, ECRF was 98.63% owned by a Mr Badri Tsilosani ("**Mr Tsilosani**"), who then entered into a settlement agreement with Georgian authorities through which he renounced 51.63% of his shareholding. In 2005, there was a call for tender issued by Georgia's Ministry of Economic Development to sell this shareholding to a new investor.[15]

69. On 28 June 2005, T.G. Trade entered a share purchase agreement with the Ministry of Economic Development for the 51.63% of shares in ECRF, Mr Tsilosani retaining a 47% shareholding, and the remaining shares held by ECRF employees. At this time, Mr Dekanoidze was Deputy Minister of Agriculture of Georgia.[16]

70. From 2007 onwards, the relationship between ECRF and Georgian Railways LLC deteriorated, including with a lawsuit commenced by ECRF which was ultimately dropped, allegedly due to pressure and threats from Georgian authorities.[17]

D. 2008 – T.G. TRADE SHARE TRANSFER; MR DEKANOIDZE AND FAMILY FLEE TO US

71. T.G. Trade was allegedly pressured to transfer 25.82% of its shares in ECRF back to Mr Tsilosani, via an agreement on 17 September 2008, in exchange for approximately USD 1.1 million. T.G. Trade's remaining 25.82% share of ECRF was also transferred ultimately to Mr Tsilosani, via a series of transactions involving a third party. According to the Claimants, these share transfers occurred in the context of months of alleged harassment (including raids, document seizures, fabricated corruption allegations, proposals for money laundering schemes, surveillance, and threatening messages).[18]

72. Later in 2008, Mr Dekanoidze and his family fled Georgia, following months of what he

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[14] RFA ¶ 21, Objection ¶ 15.

[15] RFA ¶¶ 22-26, Objection ¶ 15.

[16] RFA ¶ 19; Objection ¶ 16.

[17] RFA ¶¶ 44, 46; Objection ¶ 17.

[18] Response ¶ 67.1; Witness Statement of Mirian G Dekanoidze, 4 October 2024 ("**Dekanoidze WS**") ¶¶ 13, 24-55.

says was severe harassment and ill-treatment.[19] In May 2011, Mr Dekanoidze and his family were granted asylum and he received his Green Card. He and his family have lived in Los Angeles, California, ever since.[20]

E. 2014 TO 2017 – T.G. TRADE COMMENCES LAWSUIT ABOUT THE 2008 SHARE TRANSFERS; MR DEKANOIDZE APPLIES FOR US NATIONALITY

73. In 2014, T.G. Trade filed proceedings in the Georgian courts against Mr Tsilosani, seeking to annul the share transfers from six years earlier.[21]

74. In connection with the court proceedings, Mr Dekanoidze returned to Georgia for the first time in 2016.[22]

75. In March 2017, Mr Dekanoidze applied for US nationality.[23]

76. T.G. Trade received a favourable decision from the Tbilisli City Court on 17 May 2017.[24]

F. 2018 – TBILISI COURT OF APPEAL REVERSES DECISION OF TBILISI CITY COURT AND T.G. TRADE APPEALS TO SUPREME COURT

77. On 23 February 2018, the Tbilisi Court of Appeal reversed the decision of the Tbilisi City Court, finding that there was no credible evidence of coercion by the State.[25]

78. On 13 April 2018, T.G. Trade appealed to the Georgian Supreme Court.[26]

79. Up until this point in time, it is common ground that Mr Dekanoidze was still a Georgian national, and not yet a US national. It is also common ground that Ms Tsintsabadze was a

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[19] Response ¶ 67.1; Dekanoidze WS ¶¶ 13, 24-55.

[20] Response ¶ 67.2; Dekanoidze WS ¶¶ 13, 59. Order of the Immigration Judge, Los Angeles Immigration Court, Case No. A089-980-836, 16 May 2011, Exh. C-014.

[21] RFA ¶¶ 72-81; Objection ¶ 18.

[22] Response ¶ 67.4; Dekanoidze WS ¶ 67.

[23] Dekanoidze WS ¶ 61.

[24] *T.G. Trade LLC v. Badri Tsilosani,* Decision of Tbilisi City Court, Case No. 2/15455-14, 17 May 2017, Exh. R-003.

[25] Objection ¶ 20, RFA ¶¶ 82-90; *Badri Tsilosani v. T.G. Trade LLC*, Decision of Tbilisi Court of Appeal, Case No. 2b/3958-17, 23 February 2018, Exh. R-004, p. 87.

[26] Excerpt of the Cassation Appeal submitted by T.G. Trade LLC to the Supreme Court of Georgia, 13 April 2018, Exh. R-005.

Georgian national, and not yet a US national.

G. 23 MAY 2018 – MR DEKANOIDZE BECOMES A US CITIZEN

80. On 23 May 2018, Mr Dekanoidze became a US citizen. The US naturalisation certificate identified Georgia as his "country of former nationality."[27]

81. Mr Dekanoidze received his US passport on 26 June 2018, and since then he has only used that passport when traveling abroad.[28]

82. The Parties have different views as to whether at this point in time, upon acquisition of US nationality, Mr Dekanoidze lost his Georgian nationality.

H. 29 MARCH 2019 – GEORGIAN SUPREME COURT RENDERS JUDGMENT

83. On 29 March 2019, the Georgian Supreme Court issued its Judgment.[29]

84. According to the Claimants, their claim in this arbitration is based on the conduct of the Georgian Supreme Court when it issued its Judgment, which the Claimants say constituted a denial of justice in breach of Article II(3)(a) of the BIT.[30] The Claimants alleged, for example, that the Court (i) decided in "patently absurd terms" that T.G. Trade should have sought testimony from those who were accused of making threats, (ii) failed to address and correct the Tbilisi Court of Appeal's decision on neutrality of a particular witness; and (iii) incorrectly and unjustly dismissed the probative value and credibility of evidence of other witnesses.[31] The Claimants thus identify the date of the breach of the Treaty underlying their claims in the arbitration as the date of the Supreme Court Judgment, i.e. 29 March 2019.

85. It is common ground that as at the date of the Supreme Court Judgment, Mr Dekanoidze was a US citizen, and Ms Tsintsabadze was not yet a US citizen. It is also common ground that Ms Tsintsabadze remained a Georgian national on 29 March 2019. However, the Parties

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[27] Certificate of Naturalization of Mirian Dekanoidze, 23 May 2018, Exh. C-002.

[28] Dekanoidze WS ¶ 66; American Passport of Mirian G. Dekanoidze, 26 June 2018, Exh. C-001.

[29] RFA ¶¶ 98, 126; Supreme Court Judgment, Exh. R-012.

[30] Response ¶ 9; RFA ¶¶ 98, 126.

[31] Response ¶¶ 9-10.

dispute whether or not Mr Dekanoidze was still a dual national of Georgia as at that date.

I. 2019 – MR DEKANOIDZE AND MS TSINTSABADZE FILE APPLICATIONS WITH GEORGIAN CONSULATE

86. In November 2019, according to Mr Dekanoidze, he called the Georgian Consulate in New York to inform them that he was no longer Georgian. In his words "I wanted to make sure that nobody would use my national IDF card and numbers, for example to vote or to try to take my pension."[32] He said that the person at the Consulate told him that if he wanted dual citizenship, he would have to make an application to keep the Georgian nationality. He said he did not want dual citizenship and was told to send in a statement to the Consulate formally informing them that he was now American. He testified that he used the wording that he was told to use, which he copied down onto a declaration form the Consulate provided by email and he signed.[33] That form contained the following text:[34]

> *Application*
>
> *I, Mirian Dekanoidze, son of Givi, am a citizen of Georgia who has also acquired citizenship of the United States of America in 2018.*
>
> *I hereby request the suspension of my Georgian citizenship.*
>
> *[signed] Applicant: M. Dekanoidze*

87. On 30 January 2020, the President of Georgia issued a decree "Regarding the termination of Georgian Citizenship" ("**Decree**"), which contained the following text:[35]

> *Decree*
> *By the President of Georgia*
> *No. 34 dated January 30, 2020 Tbilisi*
>
> *Regarding the Termination of Georgian Citizenship.*

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[32] Dekanoidze WS ¶¶ 63-64.

[33] Dekanoidze WS ¶ 65.

[34] Application to the Consulate General of Georgia in New York City requesting the suspension of Georgian citizenship of Mirian Dekanoidze (with English translation), 19 November 2019, Exh. R-006; Ms Tsintsabadze's Application is almost identical but refers to having acquired citizenship of the US in "the current 2019 year" (Application to the Consulate General of Georgia in New York City requesting the suspension of Georgian citizenship of Ketevan Tsintsabadze (with English translation), 19 November 2019, Exh. R-007). References are to the updated translations of Exh. R-006 and Exh. R-007 submitted by the Respondent on 15 November 2024.

[35] President of Georgia, Decree No. 34 regarding the termination of Georgian citizenship of Mr Mirian Dekanoidze (with English translation), 30 January 2020, Exh. R-008.

1. *In accordance with Article 19, Subparagraph "b", Article 21, Paragraph One, Subparagraph "c", and Article 25 of the Organic Law of Georgia on "Georgian Citizenship", due to acquiring foreign citizenship, Georgian citizenship shall be terminated for:*

   Mirian Dekanoidze, born in Georgia on July 29, 1958;

2. *This Decree may be appealed at the administrative chamber of the Tbilisi City Court … within one month from the date of its accessibility for review.*

[signed and sealed] Salome Zourabichvili

J. 2023 – COMMENCEMENT OF ICSID ARBITRATION

88. The Claimants filed the RFA in this case on 15 September 2023, and ICSID registered the case on 3 October 2023. The Parties agree that by both of these dates, Mr Dekanoidze was a US citizen and also no longer a Georgian citizen.[36]

89. According to Mr Dekanoidze, he had not heard of ICSID or bilateral investment treaties when he fled Georgia to seek asylum in the US to start a new life. He said he knew nothing about the ability to bring a claim against Georgia until well after he was granted US nationality.[37]

90. In the RFA, the Claimants submitted that "[t]hrough the conduct of its Supreme Court", Georgia has breached (i) the obligation of fair and equitable treatment (under Article II(3)(a) of the Treaty);[38] (ii) the obligation to provide effective means of asserting and enforcing rights (under Article II(4) of the Treaty);[39] and (iii) the prohibition against unlawful direct and indirect expropriation (under Article III) of the Treaty.[40] According to the Claimants, these violations of the BIT directly caused the loss of Claimants' entire covered investments in Georgia, amounting to "at least 150 million USD."[41]

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[36] Response ¶ 64.

[37] Dekanoidze WS ¶ 68.

[38] RFA ¶¶ 119-127.

[39] RFA ¶¶ 128-130.

[40] RFA ¶¶ 131-133.

[41] RFA ¶ 134.

IV. THE PARTIES' REQUESTS FOR RELIEF

A. RELIEF REQUESTED BY THE RESPONDENT

91. In the Objection, the Respondent requested the Tribunal to render an award:[42]

> *a) declaring that the Claimants' claim is all manifestly without legal merit;*
>
> *b) declaring that the Centre lacks jurisdiction ratione temporis;*
>
> *c) declaring that the Centre lacks jurisdiction ratione materiae; and*
>
> *d) ordering the Claimants to pay the Respondent's costs arising from this arbitration, including but not limited to legal, professional and arbitration costs (which are to be quantified in due course).*

92. In the Reply, the Respondent framed its request slightly differently, seeking an award:[43]

> *a) declaring that the Claimants' claim is manifestly without legal merit for:*
>
> *i) a lack of jurisdiction ratione personae; and / or*
>
> *ii) a lack of jurisdiction ratione materiae; and*
>
> *b) ordering the Claimants to pay the Respondent's costs arising from this arbitration including but not limited to legal, professional and arbitration costs (which are to be quantified in due course).*

93. During the Hearing, counsel for the Respondent clarified that the Tribunal could look to paragraph 54 of the Reply for operative purposes of the Rule 41 objection proceeding.[44] Counsel confirmed, however, that were this matter to proceed any further, the *ratione temporis* arguments articulated in paragraph 80 of the Objection would come back into focus, as the Respondent maintains that the dispute did not crystallise with the Supreme Court decision.[45]

94. For the avoidance of doubt, the Respondent has reserved all its rights in relation to further

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[42] Objection ¶ 80.

[43] Reply ¶ 54.

[44] Hearing Tr., pp. 119-120.

[45] Hearing Tr., pp, 14, 120. In the Objection ¶ 44 (the Respondent described its contention as to which the arguments are unavoidable and indisputable as "mainly that the Claimants were not US investors at the time the dispute crystallised and that they had no covered investments.") (emphasis added); see also ¶ 48(a) ("Mr Dekanoidze was not a US national at the time the events which form the basis of the Claimants' claim occurred.").

objections under the ICSID Rules, and its position on all factual and substantive assertions made by the Claimants.[46]

95. As for costs, if the Respondent is successful on its Objection, the Respondent seeks an award of "all costs it has incurred in connection with this arbitration", which include the fees and expenses of the Tribunal and ICSID plus the following:[47]

	Description	***Respondent's costs (USD)***
1.	*Withers' legal fees*	*349,144.40*
2.	*Withers' costs and expenses*	*569.42*
3.	*Translation fees*	*2,460.81*
	Total	***352,174.63***

96. If the Respondent is not successful in its Objection, the Respondent requests that any determination on costs be deferred to a later date.[48]

B. RELIEF REQUESTED BY THE CLAIMANTS

97. The relief requested by the Claimants in their Request for Arbitration is noted above at paragraph 90. For purposes of the present decision, in response to the Respondent's Objection, the Claimants request the Tribunal to:[49]

- *Deny Respondent's Rule 41(1) Objection; and*
- *Order Respondent immediately to bear all costs borne by Claimants in defending Respondent's Rule 41(1) Objection.*

98. As for costs, the Claimants ask the Tribunal to issue "an interim decision on costs pursuant to ICSID Rule 52(3) and order Georgia immediately to bear all the costs incurred by the

[46] Objection ¶ 81; Reply ¶ 55.

[47] Respondent's Costs Submissions, 9 December 2024 ("**RCS**") ¶¶ 5-7, 12-14.

[48] RCS ¶¶ 8-10.

[49] Response ¶ 103; Claimants' Rejoinder to Respondent's Reply under Rule 41(1) of the 2022 ICSID Arbitration Rules ("**Rejoinder**") ¶ 58.

Claimants in defending against the Rule 41 Objection,"[50] in the following amounts, with interest:[51]

Category	*Amount (USD)*
Legal fees	*USD 145,000*
Disbursements	*USD 3,870.96*
Total	***USD 148,870.96***

99. The Claimants suggest that the Tribunal's fees and expenses and the ICSID administrative charges and direct costs be reserved for the final stage of the proceedings.[52]

V. THE LEGAL FRAMEWORK

100. Article 42(1) of the ICSID Convention provides that "[t]he Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable." In this section, the Tribunal sets out the key legal instruments governing the dispute in general, and the Respondent's Objection in particular, starting with the BIT.

A. THE BIT

101. The BIT was signed on 7 March 1994, and entered into force on 10 August 1999.[53] It provides for the "encouragement and protection of investment" of nationals or companies of either State Party to the BIT in the territory of the other State Party.[54]

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[50] Claimants' Costs Submission, 9 December 2024 ("**CCS**") ¶ 2.

[51] CCS ¶¶ 12, 15.

[52] CCS ¶ 16.

[53] Treaty between the Government of the United States of America and the Government of the Republic Georgia Concerning the Encouragement and Reciprocal Protection of Investment signed on 7 March 1994, CL-001 ("**Treaty**" or "**BIT**").

[54] Treaty, CL-001, Preamble.

102. Article I contains definitions, including:[55]

> *…*
>
> *(b) "company of a Party" means a company constituted or organized under the laws of that Party;*
>
> *(c) "national" of a Party means a natural person who is a national of that Party under its applicable law;*
>
> *(d) "investment" of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company, and includes investment consisting or taking the form of:*
>
> > *(i) a company;*
> >
> > *(ii) shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;*
> >
> > *…*
> >
> > *(iv) tangible property… and intangible property, including rights…*
> >
> > *…*
> >
> > *(vi) rights conferred pursuant to law… ;*
>
> *(e) "covered investment" means an investment of a national or company of a Party in the territory of the other Party….*

103. As noted above, the Treaty provisions which the Claimants allege the Respondent violated through the conduct of the Supreme Court are as follows:[56]

> *ARTICLE II*
>
> *…*
>
> *3. (a) Each party shall at all times accord to covered investments fair and equitable treatment and full protection and security, and shall in no case accord treatment less favorable than that required by international law.*
>
> *(b) Neither Party shall in any way impair by unreasonable and discriminatory measures the management, conduct, operation, and sale or other disposition of covered investments.*
>
> *4. Each Party shall provide effective means of asserting claims and enforcing rights with respect to covered investments.*
>
> *…*
>
> *ARTICLE III*
>
> *1. Neither Party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a*

[55] Treaty, CL-001, Article I.

[56] Treaty, CL-001, Articles II-III.

nondiscriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II(3)….

104. The provisions for resolution of investment disputes, pursuant to which the present claim has been brought, appear in Article IX of the Treaty as follows:[57]

> *ARTICLE IX*
>
> *1. For purposes of this Treaty, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to an investment authorization, an investment agreement or an alleged breach of any right conferred, created or recognized by this Treaty with respect to a covered investment.*
>
> *2. A national or company that is a party to an investment dispute may submit the dispute for resolution under one of the following alternatives:*
>
> *(a) to the courts or administrative tribunals of the Party that is a party to the dispute; or*
>
> *(b) in accordance with any applicable, previously agreed dispute-settlement procedures; or*
>
> *(c) in accordance with the terms of paragraph 3.*
>
> *3. (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2(a) or (b), and that three months have elapsed from the date on which the dispute arose, the national or company concerned may submit the dispute for settlement by binding arbitration:*
>
> *(i) to the Centre, if the Centre is available; or…*
>
> *(ii) to the Additional Facility of the Centre, if the Centre is not available; or*
>
> *(iii) in accordance with the UNCITRAL Arbitration Rules; or*
>
> *(iv) if agreed by both parties to the dispute, to any other arbitration institution or in accordance with any other arbitration rules.*
>
> *…*
>
> *8. For purposes of Article 25(2)(b) of the ICSID Convention and this Article, a company of a Party that, immediately before the occurrence of the event or events giving rise to an investment dispute, was a covered investment, shall be treated as a company of such other Party.*

105. To bring their claims under the Treaty, the Claimants rely on the above definitions and provisions for the propositions that:

[57] Treaty, CL-001, Article IX.

- Mr Dekanoidze is a national of the US for purposes of the BIT (Article I(c));[58]

- T.G. Trade is a "company" which is a type of asset qualifying as an "investment" within the meaning of Article I(d)(i);[59]

- T.G. Trade is a "covered investment" within the meaning of Article 1(e) of the Treaty because it was 50% owned by Mr Dekanoidze (pursuant to the community property marital regime in place in Georgia that provides all assets acquired by one spouse are jointly owned by both spouses);[60]

- T.G. Trade, by virtue of Article 25(2)(b) of the ICSID Convention and Article IX(8) of the Treaty, is itself to be treated as a company of the US;[61]

- T.G. Trade's shares in ECRF also qualifies as an "investment" for purposes of the BIT under Article I(d)(i)-(ii) that is a "covered investment" by virtue of its direct ownership by T.G. Trade, and indirect ownership by Mr Dekanoidze;[62]

- T.G. Trade's claim in the Georgian courts also constitutes an investment of Mr Dekanoidze and of T.G. Trade within the meaning of Article 1(d)(iv).[63]

106. As will be apparent from the summary of the Parties' arguments in connection with the Rule 41 Objection, the Respondent does not accept that all of the above propositions represent an appropriate application of the Treaty provisions in this case, with consequences for the Tribunal's jurisdiction.

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[58] RFA ¶¶ 108-109.

[59] RFA ¶ 115.1.

[60] RFA ¶ 115.2, citing Article 1158 of the Civil Code of Georgia, and *Badri Tsilosani v. T.G. Trade LLC*, Decision of Tbilisi Court of Appeal, Case No. 2b/3958-17, 23 February 2018, Exh. R-004 ¶ 4.2. The shares were formally registered by Mr Dekanoidze's wife, Ms Tsintsabadze, but according to the Claimants' submission, Mr Dekanoidze also owns this 50% shareholding.

[61] RFA ¶ 118.

[62] RFA ¶ 116.

[63] RFA ¶ 117.

B. THE ICSID CONVENTION

107. The Claimants commenced the arbitration under the ICSID Convention, pursuing the option under Article IX(3)(a)(i) of the Treaty. Provisions of the ICSID Convention are therefore relevant for purposes of jurisdiction and the Respondent's Objection. Notably, Article 25 of the ICSID Convention provides:[64]

> *(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.*
>
> *(2) "National of another Contracting State" means:*
>
> > *(a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and*
> >
> > *(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention…*

108. As will be seen in the summary of the Parties' arguments in connection with the Rule 41 Objection, the Respondent does not accept that ICSID has jurisdiction in the present case.

109. Article 61(2) of the ICSID Convention, provides as follows with respect to costs:[65]

> *(2) In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.*

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[64] ICSID Convention, Article 25 (emphasis added).

[65] ICSID Convention, Article 61(2).

C. THE ICSID RULES

110. The Respondent's Objection is brought under Rule 41 of the ICSID Rules, which provides as follows in Chapter VI on Special Procedures:[66]

> *Rule 41 – Manifest Lack of Legal Merit*
>
> *(1) A party may object that a claim is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction of the Centre, or the competence of the Tribunal.*
>
> *(2) The following procedure shall apply:*
>
> > *(a) a party shall file a written submission no later than 45 days after the constitution of the Tribunal;*
> >
> > *(b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;*
> >
> > *(c) the Tribunal shall fix time limits for submissions on the objection;*
> >
> > *(d) if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and*
> >
> > *(e) the Tribunal shall render its decision or Award on the objection within 60 days after the later of the constitution of the Tribunal or the last submission on the objection.*
>
> *(3) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.*
>
> *(4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 43 or to argue subsequently in the proceeding that a claim is without legal merit.*

111. While the Parties share a common understanding about what the term "manifestly without legal merit" means, and the high threshold it sets for a Rule 41 Objection to prevail, they have different views on whether that threshold has been reached in this case.[67] The meaning of the key provisions in Rule 41, including the phrase "manifestly without legal merit", and the application of those provisions to the circumstances of this case, are addressed further in Parts VI and VII of this Decision.

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[66] ICSID Arbitration Rules, Rule 41 (emphasis added).

[67] See, e.g., Hearing Tr., pp. 112-113; and further references in Section VII.A below.

112. Rule 52 of the ICSID Rules contain the following provisions on costs:[68]

> *Rule 52 Decisions on Costs*
>
> *(1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:*
>
> *(a) the outcome of the proceeding or any part of it;*
>
> *(b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost effective manner and complied with these Rules and the orders and decisions of the Tribunal;*
>
> *(c) the complexity of the issues; and*
>
> *(d) the reasonableness of the costs claimed.*
>
> *(2) If the Tribunal renders an Award pursuant to Rule 41(3), it shall award the prevailing party its reasonable costs, unless the Tribunal determines that there are special circumstances justifying a different allocation of costs.*
>
> *(3) The Tribunal may make an interim decision on costs at any time, on its own initiative or upon a party's request.*
>
> *(4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.*

113. These provisions on costs are discussed further in Part VIII of this Decision.

D. RELEVANT PROVISIONS OF GEORGIAN LAW

114. As will be seen from the summary of the Parties' arguments on the Objection, certain aspects of Georgian law are also relevant to the issues before the Tribunal, in particular (i) laws concerning Georgian nationality, and (ii) laws concerning ownership of property including corporate assets.

115. Notable amongst these legal sources is the Citizenship Law. It has been updated in various iterations, but the version of the Citizenship Law as at the date of 23 May 2018 (when Mr Dekanoidze became a US citizen) contained the following relevant provisions:[69]

> ***Chapter I – General Provisions***
>
> ...

[68] ICSID Arbitration Rules, Rule 52.

[69] Organic Law of Georgia on Georgian Citizenship, (version for 27 May 2016 to 6 June 2018) ("**Citizenship Law**"), CL-030, submitted by the Claimants on 18 November 2024, with the agreement of the Respondent (emphasis added).

Article 3 – Georgian citizenship

…

3. A Georgian citizen may not concurrently be a citizen of an other country, except as provided for in Article 17 of this Law.

…

Chapter II – Acquiring Georgian Citizenship

Article 9 – Forms of acquiring Georgian citizenship

1. Georgian citizenship is acquired:

a) by birth;…

…

Article 17 – Granting Georgian citizenship by way of exception

Under Article 12(2) of the Constitution of Georgia, the President of Georgia may grant Georgian citizenship by way of exception to an alien who has made a contribution of exceptional merit to Georgia…

….

Chapter III – Termination of Georgian Citizenship

Article 19 – Types of termination of Georgian citizenship

Georgian citizenship of a Georgian citizen may be terminated by:

- *a) renunciation of Georgian citizenship;*
- *b) the loss of Georgian citizenship;…*

Article 20 – Renouncing Georgian citizenship

1. A Georgian citizen may renounce Georgian citizenship.

2. A Georgian citizen may not renounce Georgian citizenship if:

a) he/she has not fulfilled military or any other duties owed to Georgia;

b) he/she is accused of a crime provided for by the Criminal Code of Georgia or there is a final court decision with respect to him/her which is yet to be executed.

3. A decree of the President of Georgia on a person's renunciation of Georgian citizenship shall take effect:

a) upon receipt by competent Georgian authorities of the documents confirming that the person has been granted foreign citizenship;

b) on the 15th day of signing the decree, if the person has received a document issued by a competent authority of a foreign country confirming that the person will definitely be granted the citizenship of that country if he/she renounces Georgian citizenship.

Article 21 – Loss of Georgian citizenship

1. A Georgian citizen shall lose Georgian citizenship if he/she:

a) joins military, police or security services of a foreign country without

permission of competent Georgian authorities;

b) acquires Georgian citizenship by presenting false documents;

c) acquires foreign citizenship.

...

4. A Georgian citizen may retain Georgian citizenship despite the grounds specified in paragraph 1(a) or (c) of this article, if those grounds are eliminated before they are identified.

...

Chapter IV – Procedure for Considering and Deciding on Issues Regarding Georgian Citizenship

Article 22 – Submitting applications on issues regarding Georgian citizenship

1. Interested persons shall submit… applications on issues regarding Georgian citizenship to the Legal Entity under Public Law (LEPL) – Public Service Development Agency under the Ministry for Justice of Georgia ("the Agency") or to Georgian diplomatic missions or consular offices abroad.

...

Article 23 – Notification for the loss of Georgian citizenship

Upon identifying the grounds for the loss of Georgian citizenship, state authorities shall submit a request to the Agency on the loss of citizenship.

Article 24 – Consideration of issues regarding Georgian citizenship

1. The Agency shall consider applications and notification on the issues regarding Georgian citizenship and prepare appropriate conclusions.

2. If the Agency becomes aware of the existence of grounds for the loss of Georgian citizenship without receiving a notification for the loss of Georgian citizenship, it shall consider the issue of the loss of citizenship in compliance with the rule established under the first paragraph of this article and submit appropriate materials to the President of Georgia.

Article 25 – Making decisions on issues regarding Georgian citizenship

1. In the case of a positive decision on an application for granting or terminating Georgian citizenship or on the notification on the loss of citizenship, the President of Georgia shall issue a decree, and in the case of a negative decision on such application and request, the President of Georgia shall issue an ordinance.

...

Article 28 – Procedure for considering applications and notification on the issues regarding Georgian citizenship

1. The procedure for considering applications for granting or terminating Georgian citizenship and procedure for considering notification on the loss of Georgian citizenship, as well as the procedure for granting Honorary Georgian citizenship, shall be determined by a regulation approved by a decree of the President of Georgia.…

116. Subsequent versions of the Citizenship Law, including that which was in force at the date of the Supreme Court Judgment, contain some different formulations. This includes a differently worded Article 3(3), which provides that "A Georgian citizen may at the same time be a foreign citizen only in cases provided for in Articles 17 and 21^1 of this Law", and a new Section 21^1 on "Retention of Georgian citizenship in case of acquiring foreign citizenship" (which would appear not to apply in Mr Dekanoidze's case, as he had acquired foreign citizenship before this version of the Citizenship Law came into effect):[70]

> ***Article 21^1 – Retention of Georgian citizenship in case of acquiring foreign citizenship***
>
> *1. In case of acquiring foreign citizenship, a citizen of Georgia shall retain Georgian citizenship if he/she obtains consent from the Georgian state to retention of Georgian citizenship before acquiring citizenship of the aforementioned country.*
>
> *2. In case of acquiring foreign citizenship, the consent to retention of Georgian citizenship shall be granted if the connection of a citizen of Georgia with Georgia is deemed realistic.*
>
> *3. A minor, who, along with Georgian citizenship, has acquired foreign citizenship by birth, shall retain Georgian citizenship from his/her birth until reaching 18 years of age...*
>
> *4. In case of acquiring foreign citizenship, a citizen of Georgia shall not retain Georgian citizenship if his/her retention of Georgian citizenship is against the interests of state security of Georgia and/or protection of public security.*

117. In addition to the Citizenship Law, the Parties cited provisions of Georgian civil laws relating to marital property rights and company law. These are potentially relevant to questions of ownership by Mr Dekanoidze of the investments that are the subject of the claims. The Claimants cited Article 1158 of the Civil Code of Georgia of 26 June 1997 ("**Civil Code**") in support of their contentions that Mr Dekanoidze owned the investments, which says:[71]

> *1. The property purchased during the marriage period between spouse represents their common property (co-ownership), unless otherwise is determined in the marriage contract.*

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[70] Organic Law of Georgia on Georgian Citizenship, 30 April 2014 as amended on 21 July 2018, Exh. R-016.

[71] RFA ¶ 115.2; Response ¶¶ 69-70; Dekanoidze WS ¶ 37; Claimants' Hearing Presentation, 19 November 2024 ("**CHP**") Slide 16. The Claimants also referred to comments by the Tbilisi Court of Appeal, *Badri Tsilosani v. T.G. Trade LLC*, Decision of Tbilisi Court of Appeal, Case No. 2b/3958-17, 23 February 2018, Exh. R-004, p. 62,; CHP, Slide 17. See also Reply ¶ 47, and Excerpts from the Civil Code of Georgia (with English translation) 26 June 1997, Exh. R-009 (Article 1158 Property acquired by spouses).

> *2. On such property the right of co-ownership of spouses shall emerge even if one of them was carrying out family activities, was taking care of children or due to any other excuse had no independent income.*

118. The Respondent, in turn, cited other provisions of the Civil Code in support of its contentions that Mr Dekanoidze should not be treated as the owner of T.G. Trade and its investments,[72] including Article 311:

> *Article 311 – Procedure for submitting transactions to the Public Registry*
>
> *1. A transaction made in writing shall be submitted to the Public Registry to register the relevant right to the thing and intangible property. The transaction or the signatures of the parties to the transaction shall be authenticated according to the procedures laid down by law.*
>
> *2. If the parties to a transaction sign the transaction in the registration authority in the presence of an authorised person, then the transaction or the signatures of the parties to the transaction need not be authenticated in order for the transaction to be valid.*
>
> *3. Where so provided by law, transactions involving things and intangible property shall take effect upon registration of the rights determined by such transactions with the Public Registry.*

119. The Respondent also cited the Law of Georgia on Entrepreneurs, 28 October 1994, which provides, *inter alia*:[73]

> *5[1]. The title to the share of a partner of a limited liability company or limited partnership and the related obligations shall be deemed to be established, changed or terminated after being registered with the Entrepreneurial Registry.*

120. The above provisions of Georgian Law are discussed further in Parts VI and VII below.

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[72] Reply ¶ 47; RHP, Slide 28; Excerpts from the Civil Code of Georgia (with English translation) 26 June 1997, Exh. R-009, Article 311, (which also includes Articles 147, 152, 173, 183, 185, 312, 959, 1159-1171).

[73] Excerpts from the former Law of Georgia on Entrepreneurs (with English translation) Exh. R-011; see also RHP, Slide 28.

VI. THE RESPONDENT'S RULE 41 OBJECTION

121. The Respondent's Rule 41 Objection has three components:[74]

(1) The Tribunal does not have jurisdiction *ratione personae* over Mr Dekanoidze ("**Objection 1**");

(2) The Tribunal does not have jurisdiction *ratione materiae* since Mr Dekanoidze does not own a qualifying investment ("**Objection 2**"); and

(3) T.G. Trade is not a qualifying investor under the BIT ("**Objection 3**").

122. The Respondent submits these three objections all clearly reveal manifest flaws in the legal merit of the Claimants' claims. According to the Claimants, the Respondent's Objection is a "desperate attempt to … derail this case early" to avoid what down the road, the Claimants say, will be an "open-and-shut case" that will embarrass the government.[75] In the Claimants' view, that attempt should fail because Rule 41 sets a "very high bar" and none of Georgia's objections are "self-evident" but on the contrary, they are "clearly wrong."[76]

123. The Tribunal sets out the Parties' positions on each of these objections below.

A. OBJECTION 1: LACK OF JURISDICTION *RATIONE PERSONAE* OVER MR DEKANOIDZE

(1) The Respondent's Position

124. Objection 1 is that the Tribunal lacks *ratione personae* jurisdiction over Mr Dekanoidze. The Respondent presented four key arguments for Objection 1:[77]

a. Mr Dekanoidze was a national of Georgia when he claims the dispute crystallised with the Supreme Court Judgment in March 2019, and, according to the Respondent, there is "absolutely crystal clear" evidence to that effect, including

[74] Objection ¶¶ 45-79; RHP, Slide 2; Hearing Tr., p. 5.

[75] Hearing Tr., pp. 49-50.

[76] Hearing Tr., pp. 51.

[77] Hearing Tr., pp. 6-10; RHP, Slides 2, 33.

him representing at the time that he was a national of Georgia;

b. ICSID categorically does not allow for jurisdiction over dual nationals, which has been affirmed in the "clearest and most absolute terms in consistent jurisprudence";

c. Jurisdiction over a dispute must exist at the time of that dispute and it is fundamentally wrong to shift the date for the Tribunal's determination of jurisdiction to after the point when the dispute exists;

d. It would be an abuse of process to allow a change of nationality status after an alleged breach. This does not require bad faith motives, but if a step is taken to change or improve a jurisdictional position, when a dispute is reasonably foreseeable (*a fortiori* after the dispute has actually arisen), that is an abuse of process.

125. During the Hearing, the Respondent acknowledged that Objection 1 could only succeed if the Tribunal accepted as a premise the first of the above four arguments. In response to the question "[D]oes the Tribunal have to accept that Mr Dekanoidze was a dual national, as in still Georgian and American at the date of the Supreme Court Judgment, in order for the next three bullet [point]s … to succeed?" the Respondent's counsel answered "Yes" and confirmed that it is "correct that [O]bjection [1] is based on him being a dual national at the point when the alleged breach took place at the date of the Supreme Court decision."[78] The Claimants likewise agreed that if the Tribunal does not find for the Respondent "on the first point that it's manifest, none of their other points could be manifest."[79]

a. Mr Dekanoidze was still a national of Georgia in March 2019

126. The Respondent submitted that at the date of the Supreme Court Judgment, Mr Dekanoidze was still a Georgian national. This, it said, is inescapably clear from the fact that Mr Dekanoidze wrote to the Georgian authorities on 19 November 2019 referring to himself in the present tense as a "citizen of Georgia" and seeking a presidential decree to suspend

[78] Hearing Tr., pp. 44-45.

[79] Hearing Tr., p. 101.

his Georgian citizenship. The Decree was granted on 30 January 2020, stating that "Georgian citizenship shall be terminated for Mirian Dekanoidze" without reflecting any retroactivity.[80] The Respondent contended that this documentary evidence of his contemporaneous representation, some eight months after the Supreme Court Judgment, refutes the Claimants' argument that he had previously and automatically lost his Georgian citizenship upon acquiring US nationality.[81] Referring to Article 25 of the Citizenship Law, the Respondent submitted that Georgian citizenship can only be terminated by presidential decree.[82]

127. In reply to the Claimants' arguments on the automatic annulment of Georgian nationality upon acquisition of foreign citizenship, the Respondent maintained that Article 21 of the Citizenship Law must be read in tandem with the procedural provisions of Article 25.[83] The Respondent asserts that the Claimants' position (that a presidential decree was "not required by law to effect the loss of Georgian citizenship")[84] is "wholly without support and indisputably incorrect."[85] Reflecting on the steps taken by Mr Dekanoidze with the Consulate, to request a termination of Georgian citizenship as a predicate to a decree which would then terminate Georgian citizenship, "is consistent with the requirement in Article 25 of the applicable Organic Law of Georgia on Citizenship."[86]

128. In rebuttal submissions at the Hearing, the Respondent submitted that it is "far-fetched" and "extraordinary" for the Claimants to suggest that the Decree has no legal effect, especially when such decisions can be appealed.[87] The Respondent also rejected the Claimants' suggestion that the purpose of the Decree was to notify the public (and in fact the Decree was not published). The Respondent analysed the interplay of the substantive and procedural

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80 See also Hearing Tr., p. 17.

81 Objection ¶¶ 6-9, 50-51, citing Application to the Consulate General of Georgia in New York City requesting the suspension of Georgian citizenship of Mirian Dekanoidze (with English translation) 19 November 2019, Exh. R-006, and President of Georgia, Decree No. 34 regarding the termination of Georgian citizenship of Mr Mirian Dekanoidze (with English translation) 30 January 2020, Exh. R-008; Reply ¶¶ 6-8, 27-29; Hearing Tr., pp. 13-19; RHP, Slides 4-9.

82 RHP, Slide 8; Hearing Tr., p. 17.

83 Reply ¶¶ 30-34.

84 Response ¶ 60.

85 Reply ¶ 32.

86 Reply ¶ 33.

87 Hearing Tr., pp. 84-85 (referencing appeal procedure in Article 29 of Citizenship Law).

provisions within Articles 19 to 25 of the Citizenship Law,[88] and pointed to the text of the Decree itself, which did not reference any alternative date for loss of citizenship.[89] The Respondent maintained that the Decree "clearly" does have the legal effect to bring about loss of Georgian citizenship.[90]

129. As for Mr Dekanoidze's own conduct in referring to himself as a present citizen of Georgia in November 2019, this is, according to the Respondent, "fatal to his jurisdictional standing" and "the evidence is absolutely clear; there couldn't be anything clearer,"[91] "it's not a complex question of Georgian law and it's an absolutely clear position."[92]

b. ICSID does not allow for jurisdiction over dual nationals

130. If the Tribunal accepts that Mr Dekanoidze clearly was a Georgian national in March 2019, the Respondent moves on to its second argument as to why the Tribunal lacks jurisdiction *ratione personae*. This, it said, is the "fundamental" and "very well known" point that ICSID does not allow for jurisdiction over dual nationals.[93] The Respondent pointed to a line of cases that shows it is a "guiding principle" and "the essence of the ICSID system" that the ICSID system does not protect nationals of a State against their own State.[94] The Respondent referred to a "consistent jurisprudence that shows that ICSID precludes claims by natural persons who are nationals of the host State"[95] and highlighted that "no ICSID tribunal has

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88 Hearing Tr., pp. 85-91.

89 Hearing Tr., pp. 90-91.

90 Hearing Tr., p. 91.

91 Hearing Tr., pp. 16-17.

92 Hearing Tr., p. 19.

93 Objection ¶¶ 34, 38, 64; Reply ¶¶ 35-38; Hearing Tr., pp. 19-22; RHP, Slides 10-14.

94 Reply ¶¶ 35-38; RHP, Slides 10-11, citing *Venoklim Holding B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/12/22, Award, 3 April 2015, RL-038 ¶ 154; *ST-AD GmbH v. Republic of Bulgaria*, PCA Case No. 2011-06, Award on Jurisdiction, 18 July 2013, RL-013 ¶ 408; *National Gas S.A.E. v. Arab Republic of Egypt,* ICSID Case No. ARB/11/7, Award, 3 April 2014, RL-039 ¶ 123; *Vladislav Kim and others v. Republic of Uzbekistan,* ICSID Case No. ARB/13/6, Decision on Jurisdiction, 8 March 2017, RL-017 ("***Kim v. Uzbekistan***") ¶ 189.

95 Hearing Tr., p. 22; RHP, Slide 13, citing *Waguih Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Decision on Jurisdiction and Partial Dissenting Opinion of Professor Francisco Orrego Vicuña, 11 April 2007, RL-036; *Micula et al. v. Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, 24 September 2008, RL-037, *Venoklim Holding B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/12/22, Award, 3 April 2015, RL-038; *National Gas S.A.E. v. Arab Republic of Egypt,* ICSID Case No. ARB/11/7, Award, 3 April 2014, RL-039; *Abaclat and others v. Argentine Republic*, ICSID

ever upheld a claim by a dual national."[96]

131. The Respondent explained that in the context of an ICSID arbitration, as articulated in Article 25 of the ICSID Convention, there is a positive nationality requirement that the investor has the nationality of the home state, and there is a negative nationality requirement, that the investor does not have the nationality of the host state.[97] According to the Respondent, both tests need to be met, at the dates mentioned in Article 25, as well as the date when the dispute crystallises, which relates to the third argument.[98]

c. Jurisdiction over a dispute must exist at the time of that dispute

132. The Respondent's third argument related to jurisdiction *ratione personae* is that jurisdiction over a dispute must exist at the time of that dispute.[99] In other words, jurisdiction under the BIT and the ICSID Convention need to be assessed together rather than separately.[100] The Respondent submitted that the express reference to two dates set in Article 25(2) (filing of RFA and registration of the dispute at the Centre) does not obviate the need for jurisdiction to exist at the time the dispute arises.[101] The Respondent reiterated that "you can't claim for events at a time when you don't have the protection… Mr Dekanoidze didn't have jurisdiction at the point when the dispute crystalised. He continued at that point to have

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Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, RL-018; *Mr Saba Fakes v. Republic of Turkey*, ICSID Case No. ARB/07/20, Award, 14 July 2010, RL-040; *Champion Trading Company et al. v. Arab Republic of Egypt*, ICSID Case No. ARB/02/9, Decision on Jurisdiction, 21 October 2003, RL-042; *Marko Mihaljević v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award, 19 May 2023, RL-043; *Mr Edmond Khudyan and Arin Capital & Investment Corp. v. Republic of Armenia*, ICSID Case No. ARB/17/36, Award, 15 December 2021, RL-044; *Dawood Rawat v. Republic of Mauritius*, PCA Case No. 2016-20, Award on Jurisdiction, 6 April 2018, RL-045.

96 Reply ¶ 36; see also Hearing Tr., p. 84. The Respondent described the choice to pursue ICSID arbitration instead of UNCITRAL arbitration here as a "fatal procedural preclusion… [a] decision [with] significant consequence in the context of dual nationality for ICSID… it is fatal to a claim with regards to a dual national."

97 Hearing Tr., p. 21, RHP, Slide 12.

98 Hearing Tr., pp. 21-23.

99 Reply ¶¶ 20-25; Hearing Tr., pp. 23-27, 82-83; RHP, Slides 14-19, citing, *Société Générale v. Dominican Republic,* LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction, 19 September 2008, RL-009 ¶ 111, and the Claimants' own admission that the date of breach is one of three "relevant" dates for the present jurisdictional analysis (citing Response ¶ 34; Rejoinder ¶ 7).

100 RHP, Slide 16, citing *Kim v. Uzbekistan*, RL-017 ¶¶ 190-91; *Champion Trading Company et al. v. Arab Republic of Egypt*, ICSID Case No. ARB/02/9, Decision on Jurisdiction, 21 October 2003, RL-042, p. 17.

101 Objection ¶¶ 32-38-63; RHP, Slides 17-19, citing Article 25(2)(a) of ICSID Convention; *Mr Saba Fakes v. Republic of Turkey,* ICSID Case No. ARB/07/20, Award, 14 July 2010, RL-040 ¶¶ 59-60; *ABCI Investments N.V. v. Tunisian Republic*, ICSID Case No. ARB/04/12, Decision on Jurisdiction, 18 February 2011, RL-033.

Georgian nationality."[102]

d. Change of nationality status after breach is an abuse of process

133. The Respondent's fourth argument on jurisdiction *ratione personae* is that it would be an abuse of process to allow a change of nationality status after an alleged breach.[103]

134. The Respondent submitted that the Claimants are "trying to shoehorn a Georgian citizen and company into the definition of 'US' investors under the BIT for the purpose of gaining access to ICSID arbitration."[104] The Respondent said that the Claimants belatedly attempted to obtain jurisdiction after the dispute here was not only reasonably foreseeable but had indeed already arisen.[105] In raising this argument, the Respondent clarified that it was not making submissions relating to the personal motivations or reasons for Mr Dekanoidze's acquisition of US nationality, but rather the timing of the *loss* of Mr Dekanoidze's Georgian nationality, which was applied for and implemented many months after the date of the alleged breach.[106] The Respondent said that as at the date of that alleged breach, Mr Dekanoidze was a Georgian national and represented to be a Georgian national and "cannot now artificially manufacture jurisdiction in a retroactive manner."[107]

(2) The Claimants' Position

135. By way of introduction, the Claimants reminded the Tribunal of the circumstances that led Mr Dekanoidze and his family to flee Georgia and start a new life in the US, and that when he became a US national, he and the company T.G. Trade still had an asset in Georgia, which

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[102] Hearing Tr., p. 83.

[103] Reply ¶¶ 39-46; RHP, Slides 20-23; Hearing Tr., pp. 27-33, 92-93; citing *Phoenix Action Ltd. v. Czech Republic,* ICSID Case No. ARB/06/5, Award, 15 April 2009, RL-016 ¶ 95; *Pac Rim Cayman LLC v. Republic of El Salvador,* ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections, 1 June 2012, RL-048 ¶ 2.100; *Cascade Investments NV v. Republic of Turkey,* ICSID Case No. ARB/18/4, Award (Redacted), 20 September 2021, RL-014 ¶ 377.

[104] Objection ¶¶ 32-37; Reply ¶ 39.

[105] Hearing Tr., pp. 29-32; RHP, Slides 22-23, citing *Philip Morris Asia Limited v. Australia,* PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, 17 December 2015, RL-047 ¶ 539; *Lao Holdings N.V. v. Lao People's Democratic Republic,* ICSID Case No. ARB(AF)/12/6, Decision on Jurisdiction, 21 February 2014, RL-011 ¶ 76; *ST-AD GmbH v. Republic of Bulgaria*, PCA Case No. 2011-06, Award on Jurisdiction, 18 July 2013, RL-013 ¶ 423.

[106] Reply ¶ 45.

[107] Reply ¶ 46.

was their claim relating to the forced sale of ECRF.[108] They further recalled that Mr Dekanoidze was a US national at the date of the Supreme Court Judgment which is the basis for the denial of justice claim in violation of the BIT. As noted above, the Claimants consider the Respondent's Rule 41 Objection a "desperate attempt" to derail the case early.[109] However, in the Claimants' view, that attempt will fail because Rule 41 of the ICSID Convention sets a "very high bar" and none of Georgia's objections are "self-evident" – on the contrary, they are all "clearly wrong."[110]

a. Mr Dekanoidze was no longer a national of Georgia in March 2019

136. The Claimants submitted that "Georgia entirely fails to establish that Mr Dekanoidze remained a Georgian national, a dual citizen, when the Supreme Court of Georgia issued its judgment in 2019, which is the only time that matters under the argument."[111]

137. The Claimants recalled that originally in the Objection, the Respondent sought to argue that the claims were manifestly without legal merit because the Claimants were not US nationals when the dispute arose. The Respondent's position evolved to focus on the retention of dual nationality instead.[112]

138. The Claimants submitted that Mr Dekanoidze lost Georgian nationality upon acquiring US nationality on 23 May 2018 as a result of the application of the Georgian law on citizenship as set out in the applicable version of the Citizenship Law.[113] They highlighted Article 3 of the Citizenship Law which states that "a Georgian citizen may not concurrently be a citizen of another country, except as provided for in Article 17" (and Article 17 does not apply). The next relevant provision, Article 21, provides clearly that a Georgian citizen "shall lose Georgian citizenship if he/she … (c) acquires foreign citizenship."[114] According

[108] Hearing Tr., pp. 48-49. See also RFA ¶ 117.

[109] Hearing Tr., pp. 49-50.

[110] Hearing Tr., p. 51.

[111] Hearing Tr., pp. 51-52.

[112] Hearing Tr., pp. 53-54; CHP, Slide 7, citing Objection ¶ 39 ("[a]t the time when the dispute arose, neither of the Claimants were US investors…."), cf. Slide 9, citing new position in Reply ¶¶ 4, 34, 38; see also Response ¶¶ 8-9; ¶¶ 37-52.

[113] Response ¶¶ 53-61; Rejoinder ¶¶ 10-17; Hearing Tr., pp. 58-62.

[114] Hearing Tr., pp. 58-59; CHP, Slide 13, citing Citizenship Law, CL-030, Article 3; Rejoinder ¶¶ 11-16.

to the Claimants, "that's just as clear as it gets: by acquiring US citizenship, Mr Dekanoidze lost Georgian citizenship, and there's simply no exception."[115] The Claimants noted that the change in the law in June 2018 introduced an exception to that rule allowing applications to retain Georgian citizenship, but there is no dispute that Mr Dekanoidze acquired US nationality before that law change, nor that he applied before that date change (or ever) to keep Georgian nationality.[116]

139. As for the effect of the Presidential Decree, the Claimants maintained that Article 3 of the Citizenship Law is clear that there can be no concurrent nationality, and so the administrative processes set out in Articles 23 to 25 are only about "notification" of the loss, not the loss itself (which already occurred by application of Articles 3 and 21).[117] Even if not published, the Decree can be used by the former citizen vis-à-vis the authorities, for example to remove the name from voting records, or remove ID from the state pension system to avoid fraudulent abuse of a person's identity.[118] That, according to the Claimants, is essentially the purpose of the Decree, and it does not change the point in time that a citizen loses Georgian nationality because of the "absolute ban on concurrent nationality."[119] These are also the very reasons that Mr Dekanoidze said he contacted the consulate in the first place.[120]

140. The Claimants also considered it inappropriate to rely on the wording of the form signed by Mr Dekanoidze to the Georgian Consulate, which in itself cannot and does not change the law. A mere self-declaration of Georgian nationality cannot bring into effect Georgian nationality as a matter of law.[121] The Claimants speculate that the consular official may have mistakenly suggested text based on the new version of the law, by which it became possible to apply to keep Georgian nationality.[122] In any event, the form requested "suspension" which is a non-existent concept under Georgian nationality law.

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[115] Hearing Tr., p. 59.

[116] Hearing Tr., p. 59. See also Response ¶¶ 59-60.

[117] Hearing Tr., p. 60; CHP, Slide 14, Citizenship Law, CL-030, Articles 21, 25.

[118] Hearing Tr., p. 110; see also Rejoinder ¶¶ 18-21.

[119] Hearing Tr., p. 110.

[120] Hearing Tr., p. 110; Dekanoidze WS ¶ 64.

[121] Rejoinder ¶ 20; Hearing Tr., p. 61.

[122] Hearing Tr., p. 61.

141. The Claimants concluded that Georgia's objection to the jurisdiction based on Mr Dekanoidze's nationality is "incorrect, and it certainly does not rise to the high threshold of a self-evident and clear objection that is required under Rule 41."[123] Rather, it is a "complex issue that requires the interpretation of domestic law."[124]

b. ICSID only bars dual nationality at the date of the RFA and its registration

142. The Claimants submitted that even if Georgia is right about the operation of the Citizenship Law, "all that matters is that Mr Dekanoidze was a US national and not a dual national when he filed his claim, and that is uncontested."[125] There are, in the Claimants' view, only two relevant dates for the "negative nationality test" under Article 25 of the ICSID Convention, which are the filing of the RFA (here, 15 September 2023), and the date of registration of the case by ICSID (here, 3 October 2024) – at both dates, it is undisputed that the positive and negative nationality tests were fulfilled by the Claimants.[126]

c. The BIT contains no requirement of negative nationality at time of breach

143. The Claimants accused the Respondent of imposing a "third jurisdictional requirement that doesn't exist, and that's the jurisdictional requirement that the Claimant cannot be a dual national on the date of the breach."[127] According to the Claimants, that argument is not supported by the text of the ICSID Convention, nor by the BIT. The Claimants submitted that Georgia is conflating substantive coverage under the BIT (which only has a positive nationality requirement on the date of the breach) with the Tribunal's jurisdiction under the ICSID Convention under Article 25(2)(a).[128] The Claimants pointed out that the BIT does

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[123] Hearing Tr., p. 62.

[124] Rejoinder ¶ 21, noting that no ICSID tribunal had ever conducted a loss of citizenship analysis within the context of a Rule 41 objection.

[125] Hearing Tr., p. 52.

[126] Response ¶¶ 63-64; Rejoinder ¶¶ 29-31, citing *Waguih Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Decision on Jurisdiction, 11 April 2007, CL-028; Hearing Tr. pp. 55-56, CHP, Slides 10-11.

[127] Response ¶¶ 65-68; Rejoinder ¶¶ 22-33; Hearing Tr., pp. 56-57, pp. 107-108 (citing *ABCI Investments N.V. v. Tunisian Republic*, ICSID Case No. ARB/04/12, Decision on Jurisdiction, 18 February 2011, RL-033, which the Claimants say clearly distinguish nationality that must exist when the dispute arises for the purposes of the BIT, from nationality that must exist when lodging an ICSID claim for purposes of Article 25 of the ICSID Convention).

[128] Hearing Tr., p. 56, see also p. 103 ("Under the BIT, the question would be: are you a US national. That's all that's required. There's nothing about dual nationals.").

not exclude dual nationals from protection, and if a question were to arise as to dominant nationality, Mr Dekanoidze has made his life in the US for many years and that is where he conducts his affairs. The Claimants noted that none of the nine cases cited by Georgia in the Reply (and on slide 13 of their Hearing presentation) raise the existence of this third jurisdictional requirement under the ICSID Convention.[129]

144. The Claimants emphasised that in any event, Mr Dekanoidze was no longer a Georgian national at the date of the Supreme Court Judgment (for reasons noted in Section A(2)(a) above) and thus the arguments in Section A(2)(b) and (c) need not arise.

d. There has been no abuse of process

145. The Claimants rejected the Respondent's abuse of process arguments and submit there is "simply no way that Georgia can establish that Mr Dekanoidze is acting in an abusive way, taking advantage of his rights."[130] They said Mr Dekanoidze did not change his nationality to manufacture jurisdiction in this case, but because of threats of violence from the Respondent.[131]

146. The Claimants pointed out that initially, the Respondent asserted that Mr Dekanoidze had abusively acquired US citizenship.[132] The Claimants observed that, as apparent from the abuse of cases cited by the Respondent, there is a requirement to demonstrate intent and to consider whether the purpose of the nationality change is to try to create a substantive investment protection.[133] The Claimants submitted there is not only no evidence of such intent. To the contrary, the evidence shows Mr Dekanoidze did not manipulate the international system of citizenship in order to create a claim artificially or to obtain a right abusively. Rather, he was harassed, persecuted, threatened and had no option to flee. For that he received asylum in 2011, upon which he had to wait five years before applying for citizenship. He applied for nationality when he became eligible to apply and was in due

[129] Hearing Tr., p. 57.

[130] Response ¶¶ 76-89; Hearing Tr., p. 52.

[131] Rejoinder ¶¶ 41-57; Hearing Tr., pp. 48-52.

[132] Hearing Tr., p. 69; CHP, Slide 20, citing Objection ¶ 32.

[133] Hearing Tr., pp. 71-72, 104, citing *ST-AD GmbH v. Republic of Bulgaria*, PCA Case No. 2011-06, Award on Jurisdiction, 18 July 2013, RL-013 ¶ 423; *Cascade Investments NV v. Republic of Turkey,* ICSID Case No. ARB/18/4, Award (Redacted), 20 September 2021, RL-014 ¶ 331.

course granted US nationality.[134]

147. The Claimants suggested that the Respondent must have realised the absurdity of this position and "repackaged" its argument to say that Mr Dekanoidze abusively lost his Georgian nationality, and he was a dual national until he applied for the decree saying he was no longer. This would require finding that if he never went to the consulate, he would still be a dual national, despite the fact that Georgian law says that you lose nationality at the moment you obtain a foreign nationality.[135] The other problem with this new argument, is that it is still lacking the intent element, which is not present due to the good faith reasons (on the record) for him seeking to lose his Georgian nationality (including to avoid stolen ID, manipulation of his voting rights or pension, etc).[136]

148. For the above reasons, the Claimants submitted that it is clear that Georgia's abuse of process argument fails, but recalled it is not necessary for purposes of Rule 41 to find their argument fails, it is sufficient to find that Georgia's jurisdictional objections are "not clear and obvious" and are "not genuinely indisputable."[137]

B. OBJECTION 2: LACK OF JURISDICTION *RATIONE MATERIAE* OVER A QUALIFYING INVESTMENT OWNED BY MR DEKANOIDZE

(1) The Respondent's Position

149. The Respondent's Second Objection is that the Tribunal does not have jurisdiction *ratione materiae* since Mr Dekanoidze does not own a qualifying investment.[138]

150. The Respondent submitted that Mr Dekanoidze does not own T.G. Trade (or its shares in ECRF), both as a factual and a legal matter, under Georgian law, and as a result, he does not

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[134] Hearing Tr., pp. 44-49.

[135] Rejoinder ¶¶ 44-49; Hearing Tr., pp. 72-74.

[136] Rejoinder ¶¶ 46-57, citing *Philip Morris Asia Limited v. Australia,* PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, 17 December 2015, RL-047 ¶ 539; *Lao Holdings N.V. v. Lao People's Democratic Republic,* ICSID Case No. ARB(AF)/12/6, Decision on Jurisdiction, 21 February 2014, RL-011 ¶ 76; Hearing Tr., pp. 75-76, p. 104 ("There is no evidence whatsoever on the record that he did that for the purposes of trying to establish jurisdiction.") Cf. *Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Decision on Respondent's Preliminary Objections on Jurisdiction and Admissibility, 18 April 2008, CL-026 (questions of motive are beyond the scope of what can be decided on a preliminary basis in any event); CHP, Slide 23.

[137] Hearing Tr., p. 76.

[138] Objection ¶¶ 71-79; RHP, Slides 25-29.

qualify and own a covered investment under the BIT. This second objection, according to the Respondent, constitutes an independent and dispositive ground for the Tribunal to find the claim is manifestly without legal merit.[139]

151. In relation to the ownership of T.G. Trade, it is common ground and a matter of public record, that it is Mr Dekanoidze's wife, Ms Tsintsabadze, who is the registered owner, together with her Georgian business partner.[140] The Respondent rejected the Claimants' argument that Mr Dekanoidze gains ownership of T.G. Trade by virtue of the Georgian spousal property law, which provides for assets acquired by a spouse during a marriage to be jointly owned by both spouses. The Respondent submitted that the Claimants' argument is based on an "obviously flawed logic and misconceived understanding of Georgian law" and an "incorrect interpretation of the Georgian Civil Code which regulates matrimonial property."[141] This is because regardless of his position under spousal property law (which only "regulates the rights to matrimonial property vis-à-vis spouses within the marriage"), Mr Dekanoidze is not an owner of shares unless and until they are registered in his name on the Public Registry.[142] The Respondent noted that Article 1158 of the Civil Code does not even use the terminology of "ownership."[143]

152. The Respondent pointed to Article 311 of the Civil Code, which provides that transactions involving things and intangible property "shall take effect upon registration of the rights determined by such transactions with the Public Registry."[144] The Respondent also noted that in Georgia, company information is recorded on the public register, which is the authoritative record for corporate matters regarding legal ownership, as provided in Article 5

[139] Hearing Tr., pp. 41, 45-45 ("objection number 1 or objection number 2 … are independent objections and each would be dispositive of the matter….").

[140] Hearing Tr., p. 35, referring to LEPL National Agency of Public Registry, Extract from Registry of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities, T.G. Trade LLC Registration, 2 May 2001, Exh. C-003.

[141] Objection ¶ 74; Reply ¶¶ 48-49; Hearing Tr., pp. 36-39.

[142] Hearing Tr., pp. 37-39, 97-98.

[143] Hearing Tr., p. 95.

[144] Objection ¶¶ 74-77; Reply ¶¶ 48-49; RHP, Slide 28, Excerpts from the Civil Code of Georgia (with English translation) 26 June 1997, Exh. R-009.

of the Law on Entrepreneurs.[145]

153. The Respondent did not consider the Claimants' reliance on comments within the Court of Appeals judgment about Mr Dekanoidze's matrimonial interest in T.G. Trade to undermine its point, submitting that the Court's comments went to his credibility as an interested witness and do not prove his ownership interests as against third parties.[146]

154. The Respondent submitted that the Claimants are effectively asking the Tribunal to "displace the legal ownership test under investment treaty law, without giving or citing any authority or precedent. They haven't referred to any cases which have accepted ownership through matrimonial rights, and they're asking the Tribunal to recognise those types of interest which may exist under local law for the purposes of bringing an investment treaty claim." This would lead to the absurd result that Mr Dekanoidze's wife is precluded from bringing a claim, but her husband, whose interest is derived through her, can. The Respondent disagreed that this is similar to an indirect ownership through an SPV, as that kind of indirect ownership at least begins with a legal ownership interest.[147]

(2) The Claimants' Position

155. The Claimants maintained that as a matter of Georgian law, Mr Dekanoidze owns investments in Georgia (including an interest in T.G. Trade, and through it, shares in ECRF, and the legal claims concerning those shares).[148] The Claimants submitted that Georgia's second objection ignores Georgia's own laws on marital property.[149] By operation of Article 1158 of the Civil Code, Mr Dekanoidze owned the shares (directly or indirectly) in T.G. Trade (and thus in ECRF) and thus had a covered investment under the Treaty.[150] The Claimants said that the Respondent incorrectly confuses the Civil Code rules on property

[145] RHP, Slide 28; Excerpts from the former Law of Georgia on Entrepreneurs (with English translation), 28 October 1994, R-011, Article 5.

[146] Hearing Tr., pp. 40, 95-98.

[147] Hearing, Tr., pp. 39-41, 98-99, citing *Ioannis Kardassopoulos v. Republic of Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction, 6 July 2007, CL-029.

[148] See Response ¶¶ 69-70, 75.

[149] Hearing Tr., p. 62; CHP, Slide 16, citing Article 1158 of the Civil Code, Excerpts from the Civil Code of Georgia (with English translation) 26 June 1997, Exh. R-009.

[150] Response ¶¶ 70-75.

rights with corporate law, and rules on how companies operate.[151] All that matters, according to the Claimants, is the interest in an asset. Even agreeing that the registry is the authoritative matter for corporate matters, it is not the authoritative record for property matters.[152]

156. The Claimants disagreed with the Respondent's argument that Article 1158 of the Civil Code applies only "as between spouses." It is a property law rule that indicates the property is joint property.[153]

157. The Claimants cited the Tbilisi Court of Appeal decision in the record, where the Court stated that Mr Dekanoidze "as co-owner of the share of the LLC and a person interested in maintaining the property of the [company], receiving profit as a result of the [company's] activities" had an interest in the outcome of the court's decision (and thus his testimony "should be viewed skeptically"), reiterating that he "is the owner of T.G. Trade LLC, holding a 50% stake in the company alongside his spouse."[154] The Claimants compared the ownership through a spouse to ownership of a company through an SPV, though submitted that in Mr Dekanoidze's case, the position is stronger because he actually has a "direct" interest in the property, as owner.[155] The Claimants noted there are "legions of cases where the ownership is indirect, where an ultimate – somebody further up the chain of shareholding has the interest and brings the case."[156]

158. As such, the Claimants submitted that it is actually clear that there <u>is</u> jurisdiction *ratione materiae,* but recalled for purposes of the Rule 41 Objection, they need only demonstrate that "it is not manifest" that the Tribunal lacks jurisdiction *ratione materiae*.[157] They said that "[g]iven the unambiguous terms of the law and given how obvious Mr Dekanoidze's ownership was even to Mr Tsilosani and to the Georgian courts, Georgia's argument that he

[151] Rejoinder ¶¶ 34-40; Hearing Tr., p. 63.

[152] Hearing Tr., p. 65.

[153] Hearing Tr., p. 104.

[154] Hearing Tr., p. 65; CHP, Slides 17-18, citing *Badri Tsilosani v. T.G. Trade LLC*, Decision of Tbilisi Court of Appeal, Case No. 2b/3958-17, 23 February 2018, Exh. R-004.

[155] Rejoinder ¶¶ 38-39, citing *Ioannis Kardassopoulos v. Republic of Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction, 6 July 2007, CL-029; Hearing Tr., pp. 68, 105.

[156] Response ¶¶ 72-73; Hearing Tr., p. 106.

[157] Hearing Tr., p. 69.

does not own 50% of T.G. Trade by virtue of his marriage is … disingenuous."[158]

C. OBJECTION 3: LACK OF JURISDICTION *RATIONE PERSONAE* OVER T.G. TRADE

(1) The Respondent's Position

159. The Respondent submitted that as a consequence of Mr Dekanoidze not being a qualifying investor at the time of the alleged Treaty breach, T.G. Trade also is not a qualifying investor under the BIT.[159] It pointed out that on the Claimants' own evidence, T.G. Trade is and has been a company registered under the laws of Georgia since its inception.[160] T.G. Trade was incorporated by two Georgian nationals (Ms Tsintsabadze and Ms Rusishviili) who have owned the shares equally at all relevant times, including at the date of the Supreme Court Judgment. This renders the Claimants' reliance on Article IX(8) of the BIT to be ineffective.

160. The Respondent observed that T.G. Trade's status as a US investor is contingent upon being an "investment" of a qualifying investor. As the Respondent stated at the Hearing: "If the Tribunal is with us on either objection number 1 or objection number 2, [… independent objections … each … dispositive of the matter] then it also follows that jurisdiction over T.G. Trade on either of those objections falls away."[161] That is:

> *It's an uncontroversial point that the status of TG Trade as a US investor is contingent upon there being an investment of a qualifying investor. And that is, if the Tribunal finds that Mr Dekanoidze does not have the necessary nationality requirements for the purpose of ICSID jurisdiction, which we say he does not, under objection number 1, then there is also no jurisdiction over TG Trade… Likewise, if the Tribunal finds that Mr Dekanoidze does not own TG Trade, and we say he does not own it under objection number 2, then TG Trade is also not a covered investment.*

(2) The Claimants' Position

161. The Claimants noted that the Respondent's objection to jurisdiction over T.G. Trade as a qualifying investor under the Treaty is "entirely derivative" of its other arguments relating

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[158] Response ¶ 74.

[159] Objection ¶ 65; Reply ¶ 50.

[160] Objection ¶ 65, noting LEPL National Agency of Public Registry, Extract from Registry of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities, T.G. Trade LLC Registration, 2 May 2001, Exh. C-003, RFA ¶¶ 112-113.

[161] Hearing Tr., pp. 6, 41.

to Mr Dekanoidze and his ownership of T.G. Trade.[162] Thus, for the reasons outlined in Sections A(2) and B(2) above, the Claimants maintained both that Mr Dekanoidze satisfied the nationality requirements at the date of the alleged breach of Treaty; and that he was effectively the owner of the shares in T.G. Trade via his marriage to Ms Tsintsabadze. As such, according to the Claimants, T.G. Trade is both a covered investment of Mr Dekanoidze and it is appropriate for it to be treated as a US company within the meaning of Article IX(8) of the Treaty and Article 25(2)(b) of the ICSID Convention.

VII. THE TRIBUNAL'S ANALYSIS

A. THE APPLICABLE STANDARD UNDER RULE 41

162. The Rule 41 process allows for the early dismissal of claims that manifestly lack legal merit, to avoid parties unnecessarily expending time and resources arbitrating unmeritorious claims. It is available for objections to jurisdiction, merits, or admissibility, and pertains to legal, not factual objections.[163]

163. Both Parties agree that the threshold for a Rule 41(1) application to succeed is a high one.[164]

164. The Parties also agree that the Tribunal may be usefully guided by decisions of previous ICSID tribunals that have considered the meaning of "manifestly without legal merit" in

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[162] Response ¶¶ 90-95.

[163] See generally, ICSID, *Procedures*, "Manifest Lack of Legal Merit - ICSID Convention Arbitration" (2022 Rules), RL-020. See also *Optima Ventures LLC et al. v. United States of America*, ICSID Case No. ARB/21/11, Decision on the Respondent's Objection under Arbitration Rule 41(5), 19 January 2024, CL-010 ("***Optima***") ¶ 91, citing *Trans-Global Petroleum Inc. v. The Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07//25, Tribunal's Decision on the Respondent's Objection under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, RL-028, ("***Trans-Global***").

[164] Objection ¶¶ 40-41; Response ¶¶ 19-23, 28; Reply ¶ 13; Rejoinder ¶ 5; Hearing Tr., p. 42 (Respondent: "The parties don't particularly disagree in terms of the cases on Rule 41. It does set a high threshold."), p. 51 (Claimants: "Rule 41… sets a very high bar."), p. 61 ("Georgia's objection … does not rise to the high threshold of a self-evident and clear objection that is required under Rule 41."); p. 76 (Claimants: "Georgia's jurisdictional objections, all of them, are not clear and obvious. They're not genuinely indisputable. None of them come anywhere close to meeting the high threshold under Rule 41."). See also ICSID, *Procedures*, "Manifest Lack of Legal Merit - ICSID Convention Arbitration" (2022 Rules), RL-020, p. 1 ("Tribunals have uniformly employed a high standard for determining whether a claim manifestly lacks legal merit."); SY Koh and A Yeo, "Part 3: ICSID Arbitration Rules, Chapter VI: Special Procedures" in R Happ and S Wilske (eds), *ICSID Rules and Regulations 2022: Article-by-Article Commentary*, RL-021 ¶ 27 ("The threshold to be met to establish that a claim is 'manifestly without legal merit' is a high one. Indeed, there have only been a handful of cases where Tribunal upheld such an objection.").

Rule 41(1) of the 2022 Rules and its earlier formulation in Rule 41(5) of the 2006 ICSID Rules.[165]

165. The first ICSID tribunal to consider the Rule, in *Trans-Global v Jordan*, reviewed the drafting history, commentary by ICSID Secretariat at the time, dictionary definitions of "manifestly", and the interpretation of the term in the context of its usage elsewhere in the ICSID Convention and Rules.[166] These legal materials confirmed for the *Trans-Global* tribunal "that the ordinary meaning of the word ["manifestly"] requires the respondent to establish its objection clearly and obviously, with relative ease and dispatch. The standard is thus set high.… [T]his exercise may not always be simple… [it] may be … complicated, but it should never be difficult."[167]

166. The *Trans-Global* tribunal also noted that the truncated time-limits for the Rule 41 procedure indicated "that the rule is directed only at clear and obvious cases."[168] They took into account the grave consequences of a ruling upholding a Rule 41 objection (essentially driving a claimant from judgment without the usual opportunity to develop its case), and noted that "as a basic principle of procedural fairness, an award under Rule 41(5) can only apply to a clear and obvious case, i.e. [one that is] 'patently unmeritorious'."[169] The *Trans-Global* tribunal concluded, as regards the word "manifestly"[170] that a respondent's objection under Rule 41 must "meet the test of clarity, certainty and obviousness."

167. The tribunal in *PNG Sustainable Development Program Ltd v Papua New Guinea* approved the above tests and noted that the rule "is intended to capture cases which are clearly and

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[165] See Objection ¶ 41 ("Given the almost identical wording of the standard in Rule 41(1) of the ICSID Rules and Rule 41(5) of its previous iteration, the Respondent submits that the Tribunal should be guided by the legal standard applied by tribunals when considering the test under the previous ICSID Rules."). Both the Claimants and the Respondent have relied on previous decisions of ICSID Tribunals, including *Trans-Global*, RL-028; *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea*, ICSID Case No. ARB/13/33, Decision on the Respondent's Objections under Rule 41(5), 28 October 2014, CL-009 ("***PNG***"); *Lotus Holding Anonim Sirketi v. Republic of Turkmenistan*, ICSID Case No. ARB/17/30, Award, 6 April 2020, RL-022 ("***Lotus***").

[166] *Trans-Global*, RL-028 ¶¶ 79-84.

[167] *Trans-Global*, RL-028 ¶ 88 (emphasis added).

[168] *Trans-Global*, RL-028 ¶ 90.

[169] *Trans-Global*, RL-028 ¶ 92, citing then Deputy Secretary-General of ICSID, Antonio Parra, in "The Development of the Regulations and Rules of the International Centre for Settlement of Investment Disputes", 41 *Int. Law* 47 (2007). As to the serious consequences of upholding a Rule 41 Objection, see also *Lotus*, RL-022 ¶¶ 156-158.

[170] *Trans-Global*, RL-028 ¶¶ 104-105.

unequivocally unmeritorious, and as such, the standard that Respondent must meet under Rule 41(5) is very demanding and rigorous. In the opinion of the Tribunal, a case is not clearly and unequivocally unmeritorious if the Claimant has a tenable arguable case."[171] The *PNG* tribunal added:[172]

> *89. Rule 41(5) is not intended to resolve novel, difficult or disputed legal issues, but instead only to apply undisputed or genuinely indisputable rules of law to uncontested facts.*
>
> *90. In considering the scope of a Rule 41(5) objection (i.e., the scope of the phrase "without legal merit"), ICSID tribunals have found that objections should be based on legal impediments to claims, rather than factual ones.….*

168. As with the present case, the *PNG* tribunal was faced with competing interpretations of two domestic laws that were central to the Respondent's objections. In those circumstances, the tribunal made the following observations:[173]

> *95.… The Tribunal considers that these interpretations cannot be satisfactorily made in the context of a Rule 41(5) application, which necessarily involves an expedited and summary procedure. The Tribunal notes that there are disputed questions regarding which system (or systems) of law should apply to the interpretation of the IPA and IDCA (in particular, international or domestic rules of interpretation) and in addition, which specific interpretative principles should apply… Further, the Tribunal notes that the [domestic laws had] not yet been the subject of interpretation by an ICSID tribunal, and it will therefore be required to decide issues of first impression. Doing so in a summary Rule 41(5) procedure would be inappropriate.*

169. The *PNG* tribunal found one other jurisdictional objection could not be satisfactorily dealt with in a summary and preliminary manner because it did "not appear to be based upon an explicit jurisdictional criterion set out in either the ICSID Convention or the relevant PNG legislation. Rather, the Respondent's objection appears to be based on the Respondent's interpretation of the ICSID Convention's jurisdictional requirements in light of materials extraneous to the terms of Article 25(1)…." As such, the *PNG* tribunal found the objection "unsuited for a Rule 41(5) Application", noting it "does not involve application of undisputed or indisputable legal rules, but rather involves novel issues of interpretation and

[171] *PNG*, CL-009 ¶ 88 (emphasis added).

[172] *PNG*, CL-009 ¶¶ 89-90 (emphasis added).

[173] *PNG*, CL-009 ¶ 95.

analysis in the context of a Rule 41(5) procedure."[174] The *PNG* tribunal thus concluded:[175]

> *99. … all of the arguments raised by the Respondent's objections involve disputed, and often complex, legal and factual issues which cannot properly be resolved within the expedited Rule 41(5) procedure. The Respondent's Application must therefore be dismissed.*

170. Similar to the *PNG* tribunal's opinion that a claim is not manifestly without legal merit "if the Claimant has a tenable arguable case", the tribunal in *Lotus Holding Anonim Sirketi v Turkmenistan* framed the test a follows:[176]

> *… The inevitability of dismissal must be manifest. It must be obvious from the submissions of the parties that there is some unavoidable and indisputable fact, or some legal objection in relation to which no possible counter-argument is identified. If the claimant, in its submissions under Rule 41(5), can point to an arguable case, the claim should proceed: but if the tribunal is satisfied than no such arguable case has been identified, it is in accordance with the sound administration of justice that the claim should be halted and dismissed at that point.*
>
> *159. The procedure under Rule 41(5) serves the interests of the efficient administration of justice and the interests of both parties in a case. Dismissal of a claim saves the claimant expending time and resources on the pursuit of a claim that cannot succeed, and it saves the respondent expending time and resources in defending a claim that is so manifestly and fundamentally defective that it calls for no further defence before it is dismissed.*
>
> *160… A tribunal must be able to regard some legal rules and principles as so firmly established that they can serve as premises on the basis of which it can properly conclude that a particular claim will inevitably fail. If that were not the case, Rule 41(5) would be emptied of practical effect.*

171. In *Eskosol v Italy*, the tribunal, applying Rule 41(5) of the 2006 ICSID Arbitration Rules,

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[174] *PNG*, CL-009 ¶ 97. See also *MOL Hungarian Oil and Gas Company Plc v. Republic of Croatia (I)*, ICSID Case No. ARB/13/32, Decision on Respondent's Application under ICSID Arbitration Rule 41(5), 2 December 2014, CL-008 ("***MOL v. Croatia***") ¶ 44 ("There is no dispute between the Parties that the standard is a high one and that must be right. The Rule… plainly envisages a claim that is so obviously defective from a legal point of view that it can properly be dismissed outright. By contrast, an objection to the jurisdiction or substantive defence (in terms that a claim lacks legal merit) which requires for its disposition more elaborate argument or factual enquiry must be made the subject of a regular preliminary objection under Rule 41(1) or a regular defence on the merits.") (emphasis added).

[175] *PNG*, CL-009 ¶ 99.

[176] *Lotus*, RL-022 ¶¶ 158-160 (emphasis added). This *Lotus* formulation of the test was also accepted by the Parties, though the Respondent suggested that a "seriously, genuinely, arguable" case that the claim should proceed would be a better formulation than simply "arguable." (Hearing Tr., pp. 112-113.)

noted that "the 'manifest' standard requires a very high degree of clarity"[177] and that an issue which is "both novel and complex … is unsuitable for resolution on a Rule 41(5) application."[178]

172. In *Optima Ventures v USA,* the tribunal noted that the word "manifestly" "points to something obvious, clear or self-evident, that is discernible without the need for an elaborate analysis,"[179] in other words, the respondent must establish its objections "clearly and obviously, with relative ease and dispatch."[180] The *Optima* tribunal concluded that "as a general matter, a claim that is tenable, arguable, colorable, or debatable, on the facts asserted, should survive" a Rule 41 objection. This will occur, if "the issues concerned are reasonably susceptible to legal argument."[181]

173. This Tribunal, when analysing the arguments of the Parties and the record of the case, will be guided by the above decisions on the meaning of "manifestly without legal merit" in considering whether each of the Respondent's objections clear the high threshold required for a tribunal to dismiss a case under Rule 41.

174. As set out below, after careful analysis and deliberation, although the Respondent has presented several significant issues bearing on the Tribunal's jurisdiction which the Claimants will have to address in due course, the Tribunal finds the Respondent's three objections do not meet the required threshold for summary dismissal pursuant to Rule 41.

B. OBJECTION 1: JURISDICTION *RATIONE PERSONAE* OVER MR DEKANOIDZE

175. Objection 1 is that the Tribunal lacks *ratione personae* jurisdiction over Mr Dekanoidze. While the Respondent presented four key arguments in connection with Objection 1, they all rested on the premise of the first argument, namely that Mr Dekanoidze was a national of

[177] *Eskosol S.P.A. in Liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50, Decision on Respondent's Application under Rule 41(5), 20 March 2017, CL-011 ("***Eskosol***") ¶ 37.

[178] *Eskosol*, CL-011 ¶ 98.

[179] *Optima*, CL-010 ¶ 92.

[180] *Optima*, CL-010 ¶ 93.

[181] *Optima*, CL-010 ¶ 95.

Georgia at the date of the Supreme Court Judgment in March 2019.[182]

176. The Tribunal does not accept the Respondent's view that it is "absolutely crystal clear" that Mr Dekanoidze was a Georgian national on 29 March 2019.[183] The Tribunal rather considers that the Claimants have raised a genuinely arguable counter-argument to the Respondent's contention that Mr Dekanoidze maintained Georgian citizenship at that date, and that such counter-argument requires further briefing.

177. First, it is undisputed that Mr Dekanoidze became a US national on 23 May 2018.[184] Under the Georgian Citizenship Law at the time, Article 3 stated, in terms which could be viewed as a prohibition on dual citizenship:[185]

> *3. A Georgian citizen may not concurrently be a citizen of another country, except as provided for in Article 17 of this Law.*

178. Article 19 provided that citizenship would be terminated through renunciation or loss of citizenship, and Article 21(1) stated that "1. A Georgian citizen shall lose Georgian citizenship if he/she: … c) acquires foreign citizenship." Article 21(4) provided only limited grounds via which a "Georgian citizen may retain Georgian citizenship" despite acquiring foreign citizenship (neither of which are applicable here).

179. On the face of the plain meaning of the legislative provisions quoted above, this Tribunal considers that there is at least a genuinely arguable case that Mr Dekanoidze lost his Georgian citizenship when he acquired US citizenship in May 2018, and thus was not a dual national the date of the alleged Treaty breach in March 2019.

180. The Tribunal acknowledges that there is some tension between the import of the above substantive provisions and how they might interact with the procedural provisions of Articles 22 to 28 in Mr Dekanoidze's situation.[186] These questions of interpretation of

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[182] See paragraph 125 above; Hearing Tr., pp. 44-45, 101.

[183] See Hearing Tr., p. 7.

[184] Certificate of Naturalization of Mirian Dekanoidze, 23 May 2018, Exh. C-002.

[185] Citizenship Law, CL-030, Article 3. The Article 17 exception is inapplicable to Mr Dekanoidze.

[186] See, e.g. Hearing Tr., p. 109 (referring to "new submissions on the administrative process, how in practice the law is applied" as to which the Claimants submitted a response would "require further submissions and evidence of

Georgian statute law are further complicated by the fact that the legislation changed (including with respect to permitting dual citizenship) in the times between when Mr Dekanoidze acquired US citizenship, when the Supreme Court Judgment was issued, and when filed Mr Dekanoidze submitted his application with the Consulate in New York for a "suspension" of his citizenship (a term which is not contained in any version of the Citizenship Law). In these circumstances it is conceivable that he or the consular official were operating under some misapprehension as to the appropriate version of the Citizenship Law.[187] In any event, it is not clear what impact the subjective beliefs (whether correctly or incorrectly held) of an individual or consular officer could have on nationality status determined by Georgian law.[188] The Parties' submissions also reveal there is uncertainty about the purpose and legal effect of the Presidential Decree.[189]

181. The above tensions and uncertainties give rise to questions of interpretation that are "novel, difficult or disputed"[190] that require for their disposition more "elaborate argument" than that envisaged by the Rule 41 process,[191] which is "directed only at clear and obvious cases."[192]

182. Accordingly, the Tribunal concludes that there is at least a genuinely arguable case that Mr Dekanoidze lost his Georgian citizenship when he acquired his US citizenship. As such, the Tribunal finds the first argument of Respondent's Objection 1 is not so "obvious, clear or self-evident, that is discernible without the need for an elaborate analysis." The other three arguments were anchored to the first argument and were premised on it being upheld. While interesting and serious questions were raised by those arguments, having rejected the first

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how the law is applied in practice, and perhaps we can agree that the law is not self-evident on the process, exactly what application has to be filed, and who decides….").

[187] Dekanoidze WS ¶ 63 ("I always understood I lost Georgian nationality as soon as I became a US citizen, because Georgia does not allow dual nationality."); Hearing Tr., p. 61 (Claimants: "It's a mistake by the consulate, because that law didn't apply when Mr Dekanoidze lost his Georgian nationality, and also because, in any event, if you want to keep Georgian nationality you have to make that application before you acquire the foreign nationality. But it seems to explain why the US Consulate asked Mr Dekanoidze to send in that form.").

[188] See Hearing Tr., pp. 61, 116-117.

[189] See Hearing Tr., pp. 78-79; Hearing Tr., p. 60; CHP, Slide 14, Citizenship Law, CL-030, Articles 21, 25. RHP, Slide 8. Hearing Tr., p. 17.

[190] See, e.g., *PNG*, CL-009 ¶¶ 89, 98.

[191] *MOL v. Croatia*, CL-008 ¶ 44.

[192] *Optima*, CL-010 ¶ 92 (citing *Mainstream Renewable Power, Ltd. et al. v. Federal Republic of Germany*, ICSID Case No. ARB/21/26, Decision on Respondent's Application under ICSID Arbitration Rule 41(5), 18 January 2022, RL-050 ¶ 86).

argument of Objection 1, for reasons of judicial economy the Tribunal does not consider it necessary or desirable to address them in this Decision.[193]

183. The Tribunal finds that Objection 1 should be dismissed, and moves on to Objection 2.

C. OBJECTION 2: JURISDICTION *RATIONE MATERIAE* OVER A QUALIFYING INVESTMENT OWNED BY MR DEKANOIDZE

184. The Parties' arguments on Objection 2 require the Tribunal to interpret and apply at least two sources of Georgian statute law, as well as international jurisprudence on directly and indirectly held ownership of assets.

185. The Tribunal has been presented with provisions from Article 1158 of the Georgian Civil Code, which the Claimants rely upon to establish Mr Dekanoidze's ownership of shares in T.G. Trade by virtue of his marriage to Ms Tsintsabadze. The Parties dispute the effect of that provision and whether it (i) concerns purely the property allocation "as between spouses" (which the Respondent argued),[194] (ii) gives rise to an ownership interest (as apparently acknowledged by the Court of Appeal),[195] or (iii) is a form of ownership akin to (or even more direct than) a beneficial ownership via a corporate structure (as the Claimants suggested).[196] The Tribunal considers any of these positions could be genuinely arguable positions on the appropriate treatment of shares owned via marriage as a matter of domestic and international law.

186. The issue gives rise to questions that are "novel, difficult [and] disputed", and apparently not previously considered by ICSID tribunals.[197] The Tribunal does not consider the issue appropriate for disposition at the Article 41 stage, particularly as the question is further complicated by the changing nationality status of both spouses at different time periods

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[193] See *Optima*, CL-010 ¶ 99 ("the less it says here, the better" to avoid perception of pre-judgement of the merits, citing *Trans-Global*, RL-028 ¶ 107).

[194] Hearing Tr., p. 39 (Respondent), p. 104 (Claimants).

[195] *Badri Tsilosani v. TG Trade LLC*, Decision of Tbilisi Court of Appeal, Case No. 2b/3958-17, 23 February 2018, Exh. R-004.

[196] Hearing Tr., pp. 105-106.

[197] *PNG*, CL-009 ¶¶ 95, 89, 98 (referring to the task of disputed interpretation of two pieces of domestic legislation), as to novelty, see also the Respondent's comment at Hearing Tr., p. 99 (noting no ICSID tribunals have considered situations "where rights have been acquired through matrimonial common interest property.").

across the course of the share ownership and the dispute.

187. To dispose of Objection 2 requires the Tribunal also to consider the interaction of the marital property law provisions of the Civil Code with provisions on corporate ownership in the Civil Code, as well as legislation on the registration of shares under the Law on Entrepreneurs.[198]

188. In these circumstances, the Respondent has failed to show that the Claimants' case on Mr Dekanoidze's ownership of the shares to be so "obvious, clear or self-evident, that is discernible without the need for an elaborate analysis."[199] As with Objection 1, the "elaborate argument or factual enquiry" required for Objection 2 is more appropriately "made the subject of a regular preliminary objection … or regular defence on the merits."[200]

189. Accordingly, the Tribunal dismisses Objection 2, and now considers Objection 3.

D. OBJECTION 3: JURISDICTION *RATIONE PERSONAE* OVER T.G. TRADE

190. In Objection 3, the Respondent submits that if the Tribunal upholds either Objection 1 or Objection 2, then, the claim would be meritless for T.G. Trade as well, since T.G. Trade's status as a U.S. investor is contingent upon being an "investment" of a qualifying investor.[201]

191. The Tribunal agrees that the Tribunal's jurisdiction *ratione personae* over T.G. Trade is contingent upon there being an investment of a qualifying investor.

192. T.G. Trade is a company registered in Georgia. Under the terms of Article 25(2)(b) of the ICSID Convention, a "national of another Contracting State" means any juridical person which "had the nationality of the Contracting State party to the dispute [i.e. Georgia] on th[e] date [the parties consented to submit such dispute to arbitration], and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention." The Parties expressed such agreement in the form

[198] See, e.g., Excerpts from the former Law of Georgia on Entrepreneurs, Exh. R-011; RHP, Slide 28.

[199] *Optima*, CL-010 ¶ 92 (see also *Trans-Global*, RL-028 ¶ 88 (the respondent is "to establish its objection clearly and obviously, with relative ease and dispatch.").

[200] *MOL v. Croatia,* CL-008 ¶ 44.

[201] Hearing Tr., pp. 6, 41; Objection ¶ 65; Reply ¶ 5.

of Article IX(8) of the Treaty, which states:[202]

> *For purposes of Article 25(2)(b) of the ICSID Convention and this Article, a company of a Party that, immediately before the occurrence of the event or events giving rise to an investment dispute, was a covered investment, shall be treated as a company of such other Party.*

193. Article 1(e) of the Treaty in turn defines "covered investment" to mean an "investment of a national or company of a Party in the territory of the other Party."

194. In order for T.G. Trade to qualify as a claimant subject to this Tribunal's personal jurisdiction in its own right for purposes of Article IX(8) of the Treaty, T.G. Trade must demonstrate that it was the "investment of" a US "national." The Respondent's first objection goes to the "national" component of this test, and the issue of whether the company was owned by Mr Dekanoidze goes to the "investment of" element of the test.

195. Had the Tribunal found that Mr Dekanoize manifestly lacks the necessary nationality requirements (Objection 1), or manifestly does not own a covered investment (Objection 2), then it would follow that the Tribunal also manifestly lacked jurisdiction *ratione personae* over T.G. Trade. However, for the reasons set out above, both Objection 1 and Objection 2 give rise to issues that are novel, difficult and complex, and thus cannot be readily resolved through the Rule 41 procedure. As such, it must logically follow that Objection 3 is likewise not suited to summary disposition under the Rule 41 procedure.

196. The Tribunal therefore dismisses Objection 3.

E. CONCLUSION ON THE RESPONDENT'S RULE 41 OBJECTIONS

197. The Respondent's Rule 41 Objection has identified and illuminated significant jurisdictional issues which will need to be further addressed in due course. However, for all the reasons set out in this Part VII, the Tribunal has found the Objection does not meet the required threshold for summary disposition pursuant to Rule 41. Accordingly, the Tribunal dismisses the Respondent's Rule 41 Objection.

[202] Treaty, CL-001, Article IX(8).

VIII. COSTS

A. THE RESPONDENT'S POSITION

198. The Respondent submitted that if it is successful on its Objection, the power to award costs under Article 61(2) of the ICSID Convention and Rule 52(2) of the ICSID Rules should be exercised, in the Tribunal's discretion, to award costs in favour of the Respondent.[203] This principle of awarding costs in favour of the successful party is, according to the Respondent, generally consistent with recent practice of ICSID arbitration tribunals,[204] including in cases where a tribunal finds manifest lack of legal merit and has fully indemnified the successful respondent.[205]

199. The Respondent maintained that the very purpose of its Objection was to enable the Tribunal to dispose of the proceedings to avoid further time and costs being incurred, and notes that it made its application expeditiously, despite delays to the proceedings brought about by the Claimants' failure to pay the deposits timely.[206] It considered its fees and costs incurred to date, summarised in the chart below, to be reasonable and that they should be awarded in full in addition to the fees and expenses of the Tribunal and ICSID:[207]

	Description	***Respondent's costs (USD)***
1.	*Withers' legal fees*	*349,144.40*
2.	*Withers' costs and expenses*	*569.42*
3.	*Translation fees*	*2,460.81*
	Total	***352,174.63***

[203] RCS ¶¶ 2-3.

[204] RCS ¶¶ 3-4, citing *ADC Affiliate Limited and others v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, RL-002; *AFC Investment Solutions S.L. v. Republic of Colombia*, ICSID Case No. ARB/20/16, Award on Respondent's Preliminary Objection Under Rule 41(5) of the ICSID Arbitration Rules, 24 February 2022, RL-025; *Marko Mihaljević v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award, 19 May 2023, RL-043.

[205] RCS ¶ 3, citing *Rachel S. Grynberg and others v. Grenada*, ICSID Case No. ARB/10/6, Award, 10 December 2010, RL-049. See also *Almasryia v. Kuwait* RL-024. See also *Lotus*, RL-022 ¶ 207 ("The Tribunal considers that the dismissal of this case is the result of defects in the Claimant's Request for Arbitration, and that the Respondent has not contributed to those deficiencies.").

[206] RCS ¶ 6.

[207] RCS ¶¶ 7, 12-14.

200. In the event the Respondent's Objection is not upheld, the Respondent submitted that the "Tribunal should reserve its decisions on costs until a later stage of the proceedings", noting there is no basis for the Tribunal to award costs in such circumstances, and, as acknowledged by the Claimants at the Hearing, there has not been a single precedent of a tribunal awarding costs to a claimant in the event of an unsuccessful Rule 41 objection.[208]

B. THE CLAIMANTS' POSITION

201. The Claimants requested that the Tribunal issue an interim decision on costs pursuant to ICSID Rule 52(3) and order Georgia immediately to bear all the costs incurred by the Claimants in defending against the Rule 41 Objection.[209]

202. Although all tribunals have reserved costs decisions when denying Rule 41 objections, the Claimants noted that "good case management militates in favor of awarding costs immediately – to discourage respondents from making inefficient and dilatory applications."[210] The Claimants also referred to one case in which a Rule 41 Objection was upheld in part, and rejected in part, where the Tribunal did issue an interim decision on costs, ordering the parties to bear their own legal and other costs attributable to that phase.[211]

203. The Claimants referred to the following *obiter* by the tribunal in *MOL v Croatia* in support of the "loser pays" principle in the context of Rule 41 applications:[212]

> *Given that one of the main reasons behind the introduction of Rule 41(5) was to spare respondent States the wasted trouble and expense of having to defend wholly unmeritorious claims, it must follow per contra that a Respondent invoking the procedure under the Rule takes on itself the risk of adverse cost consequences should its application fail.*

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[208] RCS ¶¶ 8-10, citing consistent practice in support of this approach, such as *Optima*, CL-010 ¶ 112; *Eskosol* CL-011 ¶ 173(3); *Mainstream Renewable Power Ltd. and others v. Germany*, ICSID Case No. ARB/21/26, Decision on Respondent's *Application under ICSID Arbitration Rule 41(5)*, 18 January 2022, RL-050; *Vasilisa Ershova and Jegor Jeršov v. Bulgaria*, ICSID Case No. ARB/22/29, Decision on the Respondent's Preliminary Objection pursuant to ICSID Arbitration Rule 41(5), 25 July 2023, RL-051; and the Claimants' acknowledgement that "in decisions denying Rule 41 applications, there has never been a cost award granted." (Hearing Tr., p. 122).

[209] CCS ¶ 2.

[210] CCS ¶ 7; Hearing Tr., pp. 122-123.

[211] CCS ¶ 6; *Bank of Nova Scotia v. Republic of Peru,* ICSID Case No. ARB/22/30, Decision on Respondent's Rule 41 Application, 31 May 2024 ¶¶ 269-273, CL-033 (The Tribunal reserved to a later date the costs of the tribunal's own fees and administrative costs for the Rule 41 proceeding).

[212] CCS ¶ 9; *MOL v. Croatia*, CL-008 ¶ 54 (emphasis added and citations omitted by the Claimants).

204. The Claimants also cited the following passage from one commentator:[213]

> *While tribunals in the early cases may have exercised caution in the allocation of costs given the novelty of the Rule, a more robust approach to costs may be expected by tribunals in the future as parties may now be presumed to be more familiar with the scope and aims of the procedure. Thus, in principle, a successful 41(5) objection should trigger a cost-follow-the-event approach, as a finding by a tribunal in favour of the objecting party implies that the claim should never have been brought in the first place. Conversely, where a tribunal finds that an objection is clearly unmeritorious, brought in bad faith or raised merely to delay the process, it should consider allocating the costs related to the procedure against the objecting party.*

205. The Claimants submitted that the above represents a sound approach as the Objection is nothing but a delay strategy that does "not come close to meeting the very high bar of showing the claim here is 'manifestly without merit'" and the Respondent should be discouraged from repeating such tactics by, for example, seeking bifurcation.[214]

206. In these circumstances, the Claimants have sought an order reimbursing them, with interest at a rate of Daily SOF + 4% compounded monthly, for the following reasonable legal fees and disbursements of DLA Piper and MKD and Partners:[215]

Category	***Amount (USD)***
Legal fees	*USD 145,000*
Disbursements	*USD 3,870.96*
Total	***USD 148,870.96***

207. The Claimants suggested that the Tribunal's fees and expenses and the ICSID administrative charges and direct costs should be reserved for the final stage of the proceedings.[216]

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[213] CCS ¶ 10; Michele Potestà, Chapter 9: Preliminary Objections to Dismiss Claims that are Manifestly Without Legal Merit under Rule 41(5) of the ICSID Arbitration Rules, in Crina Baltag, *ICSID Convention after 50 Years: Unsettled Issues*, Kluwer Law International, 2016, CL-034, pp. 249-272, 266 (emphasis by the Claimants).

[214] CCS ¶ 11.

[215] CCS ¶¶ 15, 17.

[216] CCS ¶¶ 16.

C. THE TRIBUNAL'S ANALYSIS

208. The ICSID Rules provide a default presumption on costs if a Rule 41 Objection is upheld. Rule 52(2) states that: "If the Tribunal renders an Award pursuant to Rule 41(3), it shall award the prevailing party its reasonable costs, unless the Tribunal determines that there are special circumstances justifying a different allocation of costs."

209. By contrast, there is no default presumption on costs in the event a Tribunal dismisses a Rule 41 Objection. The general rules on costs therefore apply, including that the Tribunal has the power, under Rule 52(3), to make an interim decision on costs at any time, on its own initiative, or upon a party's request. In practice, for cases denying Rule 41 objections, costs have been reserved.[217] As the Claimants acknowledged at the Hearing, "in decisions denying Rule 41 applications, there has never been a cost award granted."[218]

210. In making any decisions on costs, pursuant to Rule 52 of the ICSID Rules, the Tribunal shall consider all relevant circumstances, including (a) the "outcome of the proceeding or any part of it", (b) the conduct of the parties, including the extent to which they acted in an expeditious and cost-effective manner and complied with the Rules and orders of the Tribunal, (c) the complexity of the issues; and (d) the reasonableness of the costs claimed.[219]

211. While the amounts of the Parties' costs claims at this stage appear to the Tribunal to be reasonable, and the Tribunal commends both sides on having conducted themselves professionally, expeditiously, and in a cost-effective manner, the Tribunal is of the view that it would be premature to make a ruling on costs at this stage of proceedings. As noted above, the Respondent's jurisdictional objections raise complex legal issues relevant to nationality, ownership, and temporal jurisdiction, as well as the object and purpose of the Treaty and the

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[217] See, e.g. *Optima*, CL-010 ¶¶ 112-113; *Eskosol* CL-011 ¶ 173(3); *Mainstream Renewable Power Ltd. and others v. Germany*, ICSID Case No. ARB/21/26, Decision on Respondent's Application Under ICSID Arbitration Rule 41(5), 18 January 2022, RL-050 ¶ 126c; *Vasilisa Ershova and Jegor Jeršov v. Bulgaria*, ICSID Case No. ARB/22/29, Decision on the Respondent's Preliminary Objection pursuant to ICSID Arbitration Rule 41(5), 25 July 2023, RL-051 ¶ 80.

[218] Hearing Tr., p. 122 (in answer to a Tribunal question, Hearing Tr., p. 79). This was confirmed in CCS ¶ 6, while noting that the Claimants located one case in which a Rule 41 objection was partly upheld and partly denied and costs were decided (to be shared between the parties), *Bank of Nova Scotia v. Republic of Peru,* ICSID Case No. ARB/22/30, Decision on Respondent's Rule 41 Application, 31 May 2024, CL-033 ¶¶ 269-273.

[219] ICSID Arbitration Rules, Rule 52(1).

ICSID system. Such issues will require further analysis in due course. The Tribunal is not persuaded that the Respondent's Rule 41 Objection was so "clearly unmeritorious, brought in bad faith, or merely to delay the process" as to warrant a costs order at this point.[220]

212. At this juncture, before having the benefit of the Parties' full submissions, the Tribunal considers it too early to come to a conclusion on the "outcome of proceedings" for purposes of costs allocation. In these circumstances, and in line with the approach taken by other tribunals that have dismissed Rule 41 objections, the Tribunal has taken note of the Parties' positions on costs but has decided to reserve its determination as to costs for a later date.

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[220] *See,* Potestà, CL-034, cited in CCS ¶ 10.

IX. DECISION

213. For the reasons set forth above, the Tribunal unanimously:

(1) DISMISSES the Respondent's objections under Rule 41(1) of the ICSID Rules;

(2) RESERVES until a later date any determinations as to costs connected with the Respondent's objections under Rule 41(1) of the ICSID Rules;

(3) DIRECTS that, pursuant to Rule 41(3) of the ICSID Rules, the arbitration shall continue pursuant to the procedural timetable fixed by Procedural Order No. 1 on 5 September 2024, as updated in Procedural Order No. 4 on 25 November 2024, and accordingly the next step shall be the filing of the Claimants' Memorial on 25 April 2025; and

(4) CONFIRMS that, pursuant to Rule 41(4) of the ICSID Rules, the Tribunal's decision that the Claimants' claims are not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 43 or to argue subsequently in the proceeding that the claims are without legal merit.

[Signature]

Dr Hamid Gharavi
Arbitrator

Date: 20 January 2025

[Signature]

Professor Attila Massimiliano Tanzi
Arbitrator

Date: 20 January 2025

[Signature]

Ms Judith Levine
President of the Tribunal

Date: 20 January 2025