

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Libra LLC and Others
Claimants

v.

Republic of Azerbaijan
Respondent

(ICSID Case No. ARB/23/46)

DECISION ON THE CLAIMANTS' REQUEST FOR PROVISIONAL MEASURES

Members of the Tribunal

Professor Eduardo Zuleta, President of the Tribunal
Mr. D. Brian King, Arbitrator
Ms. Carolyn B. Lamm, Arbitrator

Secretary of the Tribunal

Leah W. Njoroge

July 8, 2024

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I. INTRODUCTION

1. The Claimants are three companies incorporated under the laws of the Republic of Azerbaijan – Libra LLC (“**Libra**”), Neptun Azerbaijan-British LLC (“**Neptun**”), Virgo Developments Ltd. (“**Virgo**”) – and the Estate of Mr. Efruz Muduroglu (the “**Estate**”), who is a deceased national of the United Kingdom (the “**Claimants**”).
2. The Respondent is the Republic of Azerbaijan (the “**Respondent**” or “**Azerbaijan**”).
3. The Claimants and the Respondent are collectively referred to as the “**Parties**.”

II. PROCEDURAL BACKGROUND

4. On September 6, 2023, the Claimants submitted the Request for Arbitration, together with Exhibits 1 to 63 (the “**RfA**”), to the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”). The RfA was based on the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Azerbaijan Republic for the Promotion and Protection of Investments, signed on January 4, 1996, and entered into force on December 2, 1996 (the “**BIT**” or “**Treaty**”).
5. On October 16, 2023, the ICSID Secretary-General registered the RfA.
6. On November 29, 2023, the Parties informed ICSID that they had agreed on the method of appointment of the arbitrators and constitution of the arbitral tribunal.
7. On December 15, 2023, the Claimants appointed Mr. D. Brian King, a national of the United States, as arbitrator. Mr. King accepted the appointment on December 22, 2023. Together with his acceptance, Mr. King provided the Parties with a declaration of his independence and impartiality.
8. On January 25, 2024, the Respondent appointed Ms. Carolyn B. Lamm, a national of the United States, as arbitrator. Ms. Lamm accepted the appointment on February 16, 2024.

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Together with her acceptance, Ms. Lamm provided the Parties with a declaration of her independence and impartiality that she has updated twice at the Claimants' request.

9. On February 14, 2024, the Claimants submitted a Request for Provisional Measures accompanied by Exhibits 67-102 and the Witness Statement of Mr. Eran Muduroglu (“**Mr. Muduroglu**”) dated February 14, 2024 (the “**Claimants' Request**”).
10. In accordance with ICSID Arbitration Rule 47(2)(c), the Claimants requested that the ICSID Secretary-General fix time limits for the Respondent to present its observations on the Claimants' Request so that the Claimants' Request and observations could be considered by the Tribunal promptly upon its constitution. Accordingly, on February 15, 2024, the ICSID Secretary-General ordered the following time limits for the Parties' written observations: (i) the Respondent would file its observations on the Claimants' Request by February 28, 2024; (ii) the Claimants' response within seven days of receipt of the Respondent's observations; and (iii) the Respondent's reply within seven days of receipt of the Claimants' response.
11. On February 28, 2024, the Respondent filed its observations on the Claimants' Request, accompanied by Exhibits R-1 to R-5 and Legal Authorities RLA-1 to RLA-13 (the “**Respondent's Observations**”).
12. On March 6, 2024, the Claimants filed its reply to the Respondent's Observations, accompanied by Exhibits 103-119 and the Second Witness Statement of Mr. Muduroglu (the “**Claimants' Response**”).
13. On March 15, 2024, the Respondent filed its reply to the Claimants' Response, accompanied by Exhibits R-6 to R-13 and Legal Authorities RLA-14 to RLA-28 (the “**Respondent's Reply**”).
14. By letter dated April 3, 2024, the Claimants filed a Supplemental Submission in support of the Claimants' Request, accompanied by Exhibits 120-155 and the Third Witness Statement

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of Mr. Muduroglu (the “**Supplemental Submission**”), and requested the ICSID Secretary-General to fix a two-week deadline for the Respondent’s response. This Supplemental Submission was not contemplated in the calendar referred to under paragraph 10 of this Decision, but the Respondent did not object to the filing of the Supplemental Submission.

15. On April 24, 2024, the Respondent filed a Reply to the Claimants’ Supplemental Submission, accompanied by Exhibit R-14 and Legal Authorities RLA-29 to RLA-40 (the “**Reply to Supplemental Submission**”).
16. On May 15, 2024, in accordance with the method of appointment of the President agreed upon by the Parties, Professor Eduardo Zuleta, a national of the Republic of Colombia, was appointed as President of the Tribunal by his co-arbitrators. Professor Zuleta accepted the appointment on June 5, 2024. Together with his acceptance, Professor Zuleta provided the Parties with a declaration of his independence and impartiality.
17. On June 6, 2024, a Tribunal composed of Professor Eduardo Zuleta (President, appointed by his co-arbitrators by agreement of the Parties), Mr. D. Brian King (Arbitrator, appointed by the Claimants), and Ms. Carolyn B. Lamm (Arbitrator, appointed by the Respondent), was constituted. Ms. Leah W. Njoroge, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.
18. By letter dated June 19, 2024, the Tribunal invited the Parties to indicate by June 24, 2024, their respective availabilities to attend the first session on either July 15 or 16, 2024, beginning at 9am Washington, D.C. time.
19. On June 24, 2024, the Claimants confirmed their availability for the first session on either date and also inquired whether the Tribunal intended to address the Claimants’ Request before or during the first session. On the same date, the Respondent also confirmed availability for the first session on either date offered by the Tribunal.

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20. On June 25, 2024, the Tribunal confirmed that the first session would take place by video conference on July 16, 2024 starting at 9am Washington, D.C. time. The Tribunal directed the Parties to confirm by June 26, 2024, whether they wished to address the Claimants' Request at the first session. If the Parties agreed to do so, the Tribunal would then issue its decision after the first session. If there was no agreement to address the issue at the first session, the Tribunal would issue its decision within the time limit provided in ICSID Arbitration Rule 47(2)(d), based on the Parties' written submissions.
21. On June 26, 2024, the Claimants informed the Tribunal that they were prepared to forego addressing the Claimants' Request at the first session unless the Tribunal had questions or would find oral argument on the Claimants' Request helpful.
22. By letter also dated June 26, 2024, the Respondent informed the Tribunal that it was content for the Tribunal to issue its decision based on the Parties' written submissions, and did not consider it necessary to address the Claimants' Request during the first session. The Claimants responded to this message requesting that the Tribunal either (1) strike and refuse to consider the substantive sections of the Respondent's letter; or (2) allow the Claimants a two-page response to be filed by June 27, 2024. In response to the Claimants' request, the Tribunal invited the Claimants to submit a two-page response to the Respondent's letter by the end of the day on June 27, 2024.
23. On June 27, 2024, the Claimants filed a response to the Respondent's letter dated June 26, 2024, as invited by the Tribunal.

III. THE PARTIES' POSITIONS

A. THE CLAIMANTS' ARGUMENTS

24. The Claimants request that the Tribunal recommend provisional measures:
 - a. **Ordering** Azerbaijan to take all actions necessary to immediately lift the restrictions on Mr. Muduroglu's right to leave the country;

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b. **Ordering** Azerbaijan forthwith to furnish a formal written undertaking signed by the appropriate authority in Azerbaijan that Mr. Muduroglu is granted permission to leave Azerbaijan by any means and at any time of his choosing;

c. **Ordering** Azerbaijan to desist from any measures that aggravate this dispute, alter the *status quo*, or otherwise threaten or harass Claimants, Mr. Muduroglu, his family, or any other individuals involved in or connected with Claimants or the arbitration, including ordering Azerbaijan to desist from the bogus tax audits of Neptun and Libra and to lift the associated freezing orders on their accounts; and

d. **Ordering** any other relief that the Tribunal deems appropriate.¹

25. The Claimants assert that the Respondent has (i) repeatedly prevented Mr. Muduroglu from leaving Azerbaijan under manufactured and groundless pretenses, and (ii) frozen the bank accounts of two of the Claimants (Libra and Neptun) in connection with sham tax audits.² According to the Claimants, this is part of the "Respondent's deliberate and coordinated 'dirty war' strategy aimed at interfering with Claimants' pursuit of this arbitration."³

26. The Claimants allege the following facts to support their request for provisional measures:

- (i) Mr. Muduroglu is the authorized representative of the Estate, and the manager of day-to-day operations of Libra, Neptun, and the Landmark Properties; as such, he is indispensable to the Claimants' presentation of their case.⁴
- (ii) On January 27, 2024, Mr. Muduroglu attempted to fly from Baku to Istanbul, with Istanbul being a stopover on his way to London, where he intended to meet with the Claimants' experts and hand-deliver documents relevant to the Claimants' claims in this arbitration.⁵ However, Mr. Muduroglu was informed by a State Border Official at the airport that he was prohibited from leaving the country by order of Azerbaijan's

¹ Supplemental Submission, ¶ 54.

² Supplemental Submission, ¶ 1.

³ Supplemental Submission, ¶ 1.

⁴ Claimants' Response, ¶ 11.

⁵ Claimants' Request, ¶ 13.

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Ministry of Internal Affairs (the “**First Travel Ban**”).⁶ This restriction is said to have been unlawful. Mr. Muduroglu did not receive prior notification or an opportunity to be heard before it was imposed.⁷ Additionally, despite requesting an explanation through multiple channels, Mr. Muduroglu received no response or justification for this travel ban.⁸

- (iii) On March 11, 2024, upon request by the State Tax Service, the Baku Commercial Court (the “**Baku Court**”) imposed another travel ban on Mr. Muduroglu (the “**Second Travel Ban**”). The State Tax Service based its request on the claim that Malham LLC (“**Malham**”), a company managed by Mr. Muduroglu, owed US\$ 4,500 in unpaid profit taxes from 2022, even though Malham had not earned any profits that year. Despite granting Malham five days to pay the alleged debt, the State Tax Service immediately filed a request for a travel ban on Mr. Muduroglu. The Baku Court scheduled the hearing for the next business day, mere hours before the hearing to lift the First Travel Ban would take place.⁹ According to the Claimants, “[t]hese court proceedings were plainly a sham, as demonstrated by the lack of evidence presented to the Court, the Baku Court’s issuance of a decision within eleven minutes of the commencement of the hearing (although neither party appeared for the hearing), the Court’s failure to provide any reasoning for its decision, and the Court upholding the Second Travel Ban despite the deadline for payment of the disputed tax assessment not having expired.”¹⁰

- (iv) On March 11, 2024, Mr. Muduroglu paid the assessment under protest, relying on the statement in the Baku Court’s judgement of the same date that the ban would be lifted

⁶ Claimants’ Request, ¶ 14.

⁷ Claimants’ Response, ¶ 11.

⁸ Claimants’ Request, ¶¶ 16-28.

⁹ Supplemental Submission, ¶ 5.

¹⁰ Supplemental Submission, ¶ 24.

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upon settlement of Malham's alleged tax debt.¹¹ On March 13, 2024, Mr. Muduroglu attempted to leave the country again, but the State Border Control prevented him from departing Azerbaijan without justification (the "**Third Travel Ban**").¹²

- (v) Also on or about March 13, 2024, the State Tax Service began a comprehensive audit of Libra.¹³ Libra's accounts had been initially frozen in February 2024 at the request of Aqrarkredit CJSC ("**Aqrarkredit**"),¹⁴ and will remain frozen during the pendency of the State Tax Service's audit.¹⁵
- (vi) On March 15, 2024, as a result of a "desk audit", the State Tax Service issued another notice declaring that Neptun owed approximately US\$ 736,000 in unpaid VAT. This resulted in another travel ban being imposed on Mr. Muduroglu (the "**Fourth Travel Ban**"), as well as the freezing of Neptun's VAT deposit account in the amount of 105% of the debt calculated by the tax authority.¹⁶ The Claimants claim that the "desk audit" of Neptun is "facially impermissible and improper under Azeri law,"¹⁷ and that the court proceedings resulting in the Fourth Travel Ban were also rigged.¹⁸
- (vii) Due to the freezing of their accounts, Neptun and Libra "must obtain pre-authorization from the Azeri courts before paying any business expenses other than ordinary payroll or tax expenses," which means that Azerbaijan can "know exactly what expenses Neptun and Libra are paying in furtherance of the arbitration (such as

¹¹ Supplemental Submission, ¶ 25.

¹² Supplemental Submission, ¶¶ 5 and 12.

¹³ Supplemental Submission, ¶ 5.

¹⁴ Supplemental Submission, ¶ 31.

¹⁵ Supplemental Submission, ¶ 5.

¹⁶ Supplemental Submission, ¶¶ 5 and 35.

¹⁷ Supplemental Submission ¶ 32.

¹⁸ Supplemental Submission ¶ 42.

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the fees of expert witnesses), and also [] block the payment of such expenses altogether.”¹⁹

27. According to the Claimants, the manner, timing, and speed with which Azerbaijan has implemented the measures described above demonstrate that they are intended to intimidate and harass the Claimants, and impair their ability to prepare and present their case.²⁰
28. The Claimants contend that the Tribunal has broad discretion under Article 47 of the ICSID Convention and Rule 47 of the ICSID Arbitration Rules to “‘recommend’ provisional measures it considers appropriate to ensure the preservation of either party’s rights in the circumstances of the case,”²¹ and that their request satisfies the legal standard for the recommendation of provisional measures.²²
29. First, the Claimants assert that the Tribunal has *prima facie* jurisdiction.²³ Citing to *Occidental v. Ecuador* and *Millicom v. Senegal*, the Claimants contend that the Tribunal should limit its examination to a preliminary analysis of its jurisdiction at this stage.²⁴ The Claimants proceed to argue that they are protected “investors” with qualifying “investments” within the meaning of Articles 1 and 8(2) of the BIT and Article 25 of the ICSID Convention.²⁵ Specifically, the Claimants assert that (i) they are “nationals” and “companies” of the United Kingdom, which (ii) directly or indirectly hold “movable and immovable property”, as well as “participation in companies” that own or owned the properties at issue; (iii) the dispute arose in the early 2000s, after the BIT’s entry into force in December 1996; and (iv) the Respondent gave its consent to ICSID arbitration in Article

¹⁹ Supplemental Submission, ¶ 45.

²⁰ See, Supplemental Submission, ¶¶ 2, 7, 14, 31, 43, 44.

²¹ Claimants’ Request, ¶ 37.

²² Claimants’ Request, §V.

²³ Claimants’ Request, §V.A.

²⁴ Claimants’ Request, ¶¶ 59-50.

²⁵ Claimants’ Request, ¶ 52.

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8 of the BIT, whereas the Claimants gave their consent in their Notice of Dispute and the RfA.²⁶

30. Second, the Claimants claim that the requested provisional measures are necessary.²⁷ According to the Claimants, the relevant test is not whether the harm threatened is irreparable by an award of damages, but rather whether it is serious or significant.²⁸ The Claimants contend that

[t]he harm that is likely to occur here if Azerbaijan's unlawful mistreatment of Mr. Muduroglu persists is grave and implicates Claimants' most fundamental rights. Azerbaijan's unlawful restriction of Mr. Muduroglu's freedom of movement already has impeded Claimants' ability to present their case by rendering it impossible for Mr. Muduroglu to travel to London for important meetings with Claimants' experts and to provide physical documents necessary for the development of Claimants' claims. The provisional measures Claimants seek are necessary to ensure the integrity of the proceeding, to protect Claimants' ability to develop and present their case in an unintimidated manner, and to ensure Claimants' ability to communicate securely and confidentially with their counsel.²⁹

31. Third, the Claimants argue that their request for provisional measures is urgent in the sense that it cannot await the outcome of the award on the merits.³⁰ The Claimants assert that "Azerbaijan is presently impeding [their] ability to prepare and present their case," and that they will continue to suffer harm as long as the Respondent's unlawful conduct remains unremedied.³¹

32. Regarding the necessity and urgency requirements, the Claimants further contend that "[r]eviewing voluminous, complex documents in a remote setting is neither feasible nor an adequate substitute for in person meetings (...) [n]or is digital communication a secure

²⁶ Claimants' Request, ¶¶ 52-55.

²⁷ Claimants' Request, § V.B.

²⁸ Claimants' Request, ¶¶ 57-58.

²⁹ Claimants' Request, ¶ 59.

³⁰ Claimants' Request, ¶ 61.

³¹ Claimants' Request, ¶ 62.

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substitute for in-person meetings.”³² The Claimants argue that Azerbaijan has a history of intercepting private telephone and online communications without judicial oversight, and that the Respondent's own statements imply that Mr. Muduroglu has already been subjected to surveillance.³³

33. Finally, the Claimants argue that the requested measures meet the proportionality standard, as they would not impose any obligations on Azerbaijan beyond those already required under international and domestic law, the ICSID Convention, and the BIT, while without these measures, there is a significant risk that the Claimants will be unable to fully prepare or present their case.³⁴

B. THE RESPONDENT'S ARGUMENTS

34. The Respondent opposes the Claimants' request for provisional measures. The Respondent denies any threats of a “dirty war” against the Claimants and asserts that the measures concerning travel restrictions and tax audits have been made by the competent authorities in accordance with domestic laws and procedures.³⁵ Accordingly, the Respondent requests that the Tribunal:

- (a) deny the Claimants' requests for provisional measures; and
- (b) order the Claimants to pay to the Respondent the full costs arising out of the Request and all subsequent submissions on provisional measures.³⁶

35. In response to the factual allegations made by the Claimants, the Respondent asserts the following:

³² Claimants' Response, ¶¶ 34-35.

³³ Claimants' Response, ¶¶ 36-37.

³⁴ Claimants' Request, ¶¶ 67-68.

³⁵ Respondent's Observations, § IV.

³⁶ Reply to Supplemental Submission, ¶ 75.

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- (i) The First Travel Ban was made on the basis of a Protocol on Administrative Offences (No. 1904159) (the “**Protocol**”) issued by the State Migration Service on January 26, 2024, where it was determined that Mr. Muduroglu breached article 575.1.3 of the Code of Administrative Offences of Azerbaijan (the “**CAO**”).³⁷ On March 11, 2024, the Baku Court decided that Mr. Muduroglu had not committed an administrative offense under article 575.1.3 of the CAO, and lifted the travel restriction imposed on him.³⁸ The First Travel Ban has thus been lifted, such that it cannot be used as grounds for the request.³⁹
- (ii) The Second Travel Ban has also been lifted; therefore, the Claimants' request for provisional measures related to it is now moot.⁴⁰ In any event, the imposition of this travel restriction was in accordance with domestic laws and procedures.⁴¹
- (iii) The Third Travel Ban did not exist. Contrary to the Claimants' suggestion, a travel restriction does not lift automatically upon payment, as the State Tax Service must confirm the payment and take necessary actions to lift it. According to the Claimants' own account, payment was received on the same day Mr. Muduroglu was scheduled to travel, and there is no evidence that he followed up on lifting this travel restriction.⁴²
- (iv) The Fourth Travel Ban was lawfully imposed on Mr. Muduroglu as Managing Director of Neptun.⁴³ The Court, after a hearing at which both sides were represented, considered it was justified as Mr. Muduroglu, a foreign citizen, might leave the

³⁷ Respondent's Observations, ¶ 58.

³⁸ Respondent's Observations, ¶ 6.

³⁹ Respondent's Reply, ¶ 11.

⁴⁰ Reply to Supplemental Submission, ¶ 14.

⁴¹ See, Reply to Supplemental Submission, ¶¶ 15-25.

⁴² Reply to Supplemental Submission, ¶¶ 27-28.

⁴³ Reply to Supplemental Submission, ¶ 29.

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country before attending to the tax debt.⁴⁴ In any event, it is a “temporary measure that will be lifted when Neptun fulfills its tax debt obligations, or if Neptun succeeds in challenging the tax assessment following established procedures under the laws of Azerbaijan.”⁴⁵

- (v) The freezing of Libra’s bank accounts is linked to domestic court proceedings between Aqrarkredit and Libra, and has nothing to do with the Government of Azerbaijan or the ongoing tax audit of Libra by the State Tax Service.⁴⁶ Moreover, the freezing order of Neptun’s accounts was in accordance with Azeri laws and procedures.⁴⁷

36. The Respondent submits that the Claimants have failed to establish a basis for the provisional measures sought.⁴⁸

37. First, the Respondent argues that the Claimants have failed to discharge their burden to prove that the Tribunal has *prima facie* jurisdiction. Specifically, according to the Respondent,

the Claimants have failed to establish that, before the dispute arose, and at all relevant times as prescribed under the ICSID Convention and the BIT, Libra LLC, Neptun Azerbaijan-British LLC and Virgo Developments Ltd. were majority owned by UK nationals or companies, and that the UK Estate or other person in this regard qualifies as an “investor” under the Treaty. They have also failed to show how and when exactly ownership interests in the alleged “investments” were acquired by the Claimants, namely in Landmark I, Landmark II, Landmark III, Baku II and the Venetian Palace, and that they actually “made” these alleged investments. Finally, the Claimants have not

⁴⁴ Reply to Supplemental Submission, ¶¶ 32-41.

⁴⁵ Reply to Supplemental Submission, ¶ 29.

⁴⁶ Reply to Supplemental Submission, ¶ 44.

⁴⁷ Reply to Supplemental Submission, ¶¶ 45-46.

⁴⁸ Respondent’s Observations, §III.

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proved that the alleged investments meet the characteristics of an investment under the ICSID Convention and the BIT.⁴⁹

38. Second, the Respondent contends that the Claimants have failed to demonstrate that the provisional measures requested are urgent and necessary, i.e., that “they are required to preserve [the Claimants’] rights from irreparable harm [i.e., harm that cannot be compensated by monetary damages] and there is a need to obtain the measures requested before the issuance of an award.”⁵⁰
39. According to the Respondent, the rights at issue are those of Mr. Muduroglu and not of the Claimants; and the Claimants “have failed to explain how the travel restriction against Mr. Muduroglu indirectly affects their rights in the arbitration proceedings, and particularly their ability to present their case.”⁵¹ Specifically, the Respondent argues that the Claimants “have failed to explain why in-person meetings in London are necessary to prepare for the arbitration proceedings, why electronic communications and virtual meetings are inadequate, and why it is important to transfer ‘voluminous documents’ out of the country in person and delivered only by Mr. Muduroglu himself.”⁵² Moreover, the Claimants have not provided “any evidence of intimidation, duress, harassment, or any sort of ill-treatment by Azerbaijan, nor any threat to Mr. Muduroglu’s personal safety and health, nor any risk to the Claimants’ ability to communicate securely and confidentially with their counsel because no such risks or threats exist.”⁵³
40. The Respondent therefore concludes that “the only conceivable effect of the travel restriction on the Claimants’ ability to present their case may be a potential slight increase of costs, assuming that it is more expensive for the Claimants’ counsel (and expert, if

⁴⁹ Respondent’s Observations, ¶ 48.

⁵⁰ Respondent’s Observations, ¶¶ 14 and 20. See generally, Respondent’s Observations, § III.B.

⁵¹ Respondent’s Observations, ¶¶ 27-28.

⁵² Reply on Supplemental Submission, ¶ 64; Respondent’s Observations, ¶ 29.

⁵³ Respondent’s Observations, ¶¶ 31-32

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necessary) team to travel to Azerbaijan for preparatory meetings than for Mr. Muduroglu to travel to London, if indeed in person meetings are required at all.”⁵⁴

41. Regarding the freezing of Libra's and Neptun's bank accounts, the Respondent contends that “[the] Claimants have provided no evidence regarding the extent of their overall resources and ability to fund this arbitration through assets held both inside and outside Azerbaijan. Nor have they attempted to show how precisely the freezing orders affect their ability to fund the present proceedings (which are clearly ongoing and not inhibited) (...). Therefore, their requests in relation to those measures must be declined as unsubstantiated.”⁵⁵
42. Third, the Respondent submits that the Claimants' specific request for relief is disproportionate and vague.⁵⁶ The Respondent argues that granting provisional measures for a potential and hypothetical harm arising from uncertain actions would improperly interfere with the exercise of the State's sovereign powers in pursuit of the public interest.⁵⁷

IV. FACTUAL BACKGROUND

43. The Tribunal summarizes the facts relevant to its decision below. These facts have been only preliminarily determined on the basis of the Parties' pleadings related to the request for provisional measures and are determined solely for purposes of the decision on provisional measures. Both Parties may, therefore, provide evidence on any alleged facts at the appropriate stage of the proceedings for purposes of jurisdiction and merits. The Tribunal further notes that the omission of express reference to an alleged fact below does not mean that the Tribunal has not considered it.

⁵⁴ Respondent's Observation, ¶ 35.

⁵⁵ Reply on Supplemental Submission, ¶ 47.

⁵⁶ Reply on Supplemental Submission, ¶ 66.

⁵⁷ See, Reply on Supplemental Submission, ¶¶ 67-73.

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44. On January 27, 2024, Mr. Muduroglu, the authorized representative of the Estate, the Director of Virgo and the General Director of Neptun and Libra, attempted to fly from Baku, Azerbaijan, to Istanbul, Turkey.⁵⁸ The State Border Control official stopped Mr. Muduroglu, informing him without explanation that Azerbaijan had prohibited him from leaving the country.⁵⁹ The Claimants complain that Mr. Muduroglu and his counsel addressed several authorities of Azerbaijan requesting an explanation for the travel ban but received no response.⁶⁰
45. On January 26, 2024, the State Migration Service had issued the Protocol, determining that Mr. Muduroglu had breached article 575.1.3 of the CAO.⁶¹ According to the Respondent, it was on the basis of the Protocol that the State Migration Service temporarily restricted Mr. Muduroglu's right to leave the territory of Azerbaijan on the ground of commission of an administrative offence by a foreign citizen.⁶²
46. Following a hearing that took place on March 11, 2024, at the State Migration Service, in which Mr. Muduroglu did not appear but was represented by counsel, the State Migration Service finally decided that Mr. Muduroglu had not committed an administrative offence under article 575.1.3 of the CAO, resulting in the lifting of the travel restriction it had imposed on him.⁶³

⁵⁸ Claimants' Request, ¶¶ 4 and 6.

⁵⁹ Claimants' Request, ¶ 7

⁶⁰ Claimants' Request, ¶ 8.

⁶¹ Exhibit R-2, Protocol on Administrative Offences No. 1904159, dated 26 January 2024 (unofficial translation); Exhibit RLA-13, Migration Code of the Republic of Azerbaijan (unofficial translation), Article 17.1, 17.1.7; Exhibit R-3, Resolution of the State Migration Service No. 09/QD, "Decision on the preparation of the case on administrative offence for consideration", dated 26 February 2024 (unofficial translation).

⁶² Respondent's Observations, ¶ 58.

⁶³ Respondent's Reply, ¶ 19; Exhibit R-6, Decision on the termination of proceedings on the administrative offence case MN No 0000251 dated 11 March 2024, (unofficial translation to English); Exhibit R-7, State Migration Service Website, "Check the Existence of a Travel Ban for Eran Muduroglu", at: <https://eservice.migration.gov.az/public/checkrestriction> (last checked 15 March 2024); Exhibit R-10, State Migration Service Acknowledgement dated 11 March 2024, and handwritten note in Resolution of the State Migration Service

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47. Meanwhile, on March 7, 2024, the State Tax Service issued a notice declaring that Malham (not a Claimant in this proceeding), a company managed by Mr. Muduroglu, owed approximately US\$ 4,500 in unpaid profit taxes from 2022.⁶⁴ On the same date, the Main Department of Liability Management of the State Tax Service issued a notice temporarily restricting Mr. Muduroglu's right to leave the country.⁶⁵ The State Tax Service then filed an application with the Baku Commercial Court requesting that it restrict Mr. Muduroglu from leaving Azerbaijan.⁶⁶ The Baku Court scheduled a hearing for March 11, 2024, and on the same date, it upheld the travel ban on Mr. Muduroglu imposed by State Tax Service.⁶⁷
48. Also on March 13, 2024, Mr. Muduroglu paid the taxes on Malham's behalf under protest,⁶⁸ and on the same day he went to the airport to again try to leave the country. The State Border Control prevented Mr. Muduroglu from departing Azerbaijan, claiming that he was banned from departing.⁶⁹ According to the Respondent, given the short timing between the payment of the taxes and Mr. Muduroglu's attempt to travel out of Azerbaijan, it was not possible to update the information so that the lifting of the ban appeared in the system of the State Border Control.⁷⁰

No. 09/QD, "Decision on the preparation of the case on administrative offence for consideration", dated 26 February 2024 (unofficial translation).

⁶⁴ Exhibit 120, Resolution No. 2419120115179800 on the Calculation of Taxes, Social Insurance and Unemployment Insurance Fees of Malham LLC dated March 6, 2024, received March 7, 2024; Muduroglu WS3, ¶ 6.

⁶⁵ Exhibit 122, Notice for Temporary Restriction of the Right to Leave the Country from the Main Department of Liability Management of the State Tax Service of the Republic of Azerbaijan under the Ministry of Taxes dated March 7, 2024

⁶⁶ Exhibit 123, Statement by the Baku City Main Directorate of Local Revenues of the State Tax Service under the Ministry of Economy to the Baku Commercial Court dated March 7, 2024.

⁶⁷ Exhibit 124, Determination (Court Ruling) of the Baku Commercial Court dated March 7, 2024; Muduroglu WS3, ¶¶ 11 and 14.

⁶⁸ Exhibit 127, Payment Confirmation dated March 11, 2024.

⁶⁹ Muduroglu WS3, ¶ 20.

⁷⁰ Reply to Supplemental Submission, ¶¶ 26-28.

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49. On March 15, 2024, the State Tax Service sent a formal notification to Neptun asserting that the company owed a debt to the state budget of approximately US\$ 530,000,⁷¹ which was subsequently adjusted to approximately US\$ 736,000.⁷² On the same date, the State Tax Service issued a decision freezing Neptun's VAT deposit account in the amount of 105% of the debt calculated by the tax authority.⁷³
50. Also on March 15, 2024, the State Tax Service submitted a statement to the Baku Court requesting that the Court restrict Mr. Muduroglu's right to leave the country based upon this tax debt.⁷⁴
51. On March 18, 2024, the Baku Court scheduled a hearing on the travel ban for March 27, 2024.⁷⁵ The hearing took place on March 27, 2024, and, on the same date, the Baku Court issued its ruling upholding the travel ban.⁷⁶ Mr. Muduroglu is prevented from leaving Azerbaijan until Neptun pays the tax allegedly owed or successfully challenges the tax assessment.
52. On or about March 13, 2024, the State Tax Service began a comprehensive audit of Libra, another Claimant in this arbitration. During the pendency of this latest audit, the State Tax Service has frozen Libra's accounts.⁷⁷

⁷¹ Exhibit 140, Notification on Non-Payment of Tax Debt for Neptun dated March 15, 2024.

⁷² Exhibit 143, Decision on Calculated Taxes, Social Insurance, and Unemployment Insurance Fees of Neptun dated March 15, 2024.

⁷³ Exhibit 134, Letter regarding the necessary documents (information) required for a desk tax audit from the Main Directorate of National Revenues of the State Tax Service to Neptun dated March 6, 2024; Exhibit C-135, Letter regarding the necessary documents (information) required for a desk tax audit from the Main Directorate of National Revenues of the State Tax Service to Neptun dated March 6, 2024; Exhibit C-140, Notification on Non-Payment of Tax Debt for Neptun dated March 15, 2024.

⁷⁴ Exhibit 144, Statement for Temporary Restriction of the Right to Leave the Country from the State Tax Service to Baku Commercial Court dated March 15, 2024.

⁷⁵ Exhibit 146, Determination (Court Ruling) of the Baku Commercial Court dated March 18, 2024.

⁷⁶ Exhibit 150, Resolution of the Baku Commercial Court dated March 27, 2024, p. 5.

⁷⁷ Supplemental Submission, ¶ 5.

V. THE TRIBUNAL'S ANALYSIS

53. The Tribunal begins by observing that its power to recommend provisional measures is well-established under the rules applicable to this arbitration.

54. Article 47 of the ICSID Convention provides:

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.

55. Further elaborating on the Tribunal's authority, Rule 47 of the ICSID Arbitration Rules provides, in relevant part, that:

(1) A party may at any time request that the Tribunal recommend provisional measures to preserve that party's rights, including measures to:

(a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;

(b) maintain or restore the status quo pending determination of the dispute; or

(c) preserve evidence that may be relevant to the resolution of the dispute.

(...)

(3) In deciding whether to recommend provisional measures, the Tribunal shall consider all relevant circumstances, including:

(a) whether the measures are urgent and necessary; and

(b) the effect that the measures may have on each party.

(4) The Tribunal may recommend provisional measures on its own initiative. The Tribunal may also recommend provisional measures different from those requested by a party.

56. The Parties seem to agree that in deciding whether to adopt interim measures requested by a party, the Tribunal must consider whether (a) it has *prima facie* jurisdiction to hear the

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case;⁷⁸ (b) the requested measures are necessary;⁷⁹ (c) the situation is urgent,⁸⁰ and (d) the requested measures are proportional, i.e., the “balance of convenience” falls on the side of the requesting party.⁸¹

57. The Tribunal is of the view that these requirements must be met concurrently. Therefore, generally, failing one of them, an application for provisional measures must also fail. The Claimants have the burden to prove that their Request meets all these requirements.

A. PRIMA FACIE JURISDICTION

58. Neither the ICSID Convention nor the ICSID Rules provide for this requirement and investment tribunals have not been uniform in including the same as a condition for the granting of provisional measures. In any event, the tribunals that have considered this matter have indicated that, for purposes of provisional measures, the Tribunal does not need to definitely establish that it has jurisdiction in respect of the merits of the case.⁸² The Tribunal therefore “cannot and must not examine in depth the claims and arguments submitted on the merits of the case; it must confine itself to an initial analysis, i.e. ‘at first sight.’”⁸³ As correctly put by the tribunal in *Paushok v. Mongolia*:

“Essentially, the Tribunal needs to decide only that the claims made are not, on their face, frivolous or obviously outside the competence of the Tribunal. To do otherwise would require the Tribunal to proceed to a determination of the facts and, in practice, to a hearing on the merits of the case, a lengthy and complicated process which would defeat the very purpose of interim measures.”⁸⁴

⁷⁸ Claimants' Request, ¶ 47; Respondent's Observations, ¶ 39.

⁷⁹ Claimants' Request, ¶ 47; Respondent's Observations, ¶ 14.

⁸⁰ Claimants' Request, ¶ 47; Respondent's Observations, ¶ 14.

⁸¹ Claimants' Request, ¶ 47; Respondent's Observations, ¶ 14.

⁸² Exhibit 84, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, August 17, 2007, ¶ 55.

⁸³ Exhibit 88, *Millicom v. Senegal*, ICSID Case No. ARB/08/20, Decision on the Application for Provisional Measures, December 9, 2009, ¶ 42.

⁸⁴ Exhibit 95, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, Order on Interim Measures, September 2, 2008, ¶ 55.

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59. The Respondent's objections to the *prima facie* jurisdiction of the Tribunal would require the Tribunal to go into the facts of the case and to a detailed analysis of the evidence supporting such facts. This exceeds a *prima facie* analysis and corresponds to a full and detailed decision on jurisdiction that is reserved for a different stage of the proceedings.
60. For purposes of its decision on provisional measures, and without prejudice to the analysis on jurisdiction at the proper stage of the proceedings, the Tribunal is satisfied that the Claimants' claims, as presented in the RfA, are not, on their face, frivolous or obviously outside the competence of the Tribunal. The Claimants have provided evidence that the executor of the Estate has authority to pursue the claim on its behalf, and they have provided *prima facie* evidence of an investment, and a UK national's ownership of the majority of the Claimant entities and thus their nationality. Given the Respondent's allegations to the contrary, the Tribunal's determination is preliminary, and the issues of investment, investor and nationality all remain to be examined on the basis of a full evidentiary record in the jurisdictional and merits proceedings.
61. The Tribunal, therefore, considers that, *prima facie*, it has jurisdiction to decide on the provisional measures.
62. The Tribunal has carefully considered all the arguments and allegations presented by both Parties in connection with the other requirements listed in paragraph 56 above. The Tribunal observes, on the one hand, that the facts related to necessity and urgency overlap, and on the other, that neither the necessity nor the urgency requirement has been sufficiently established by the Claimants as of the present time and, consequently, that the request for provisional measures is premature. Therefore, the Tribunal will limit its analysis to the necessity and urgency of the requested provisional measures and will not undertake an analysis of the proportionality requirement.

B. NECESSITY AND URGENCY OF THE MEASURES

63. Provisional measures are generally ordered to prevent the aggravation of a dispute, maintain the status quo or prevent or stop acts that affect the integrity of the arbitration. According to the Claimants, the rationale and urgent need for provisional measures is clear because absent the requested measures, there is a serious threat that the dispute will be materially aggravated and the integrity of the proceedings undermined: “[the] Claimants’ ability to present their case will be severely impaired if Mr. Muduroglu, the Executor of the Estate and General Director of Neptun and Libra, is forced to live in fear for his physical and legal safety, and is being detained in Azerbaijan, unable to leave the country to attend meetings in relation to the Arbitration or to communicate with counsel securely and confidentially.”⁸⁵
64. The Claimants further submit that the requested provisional measures are necessary and urgent. According to the Claimants, they are already suffering harm and will continue to suffer harm as long as Azerbaijan’s conduct remains unremedied.⁸⁶ In particular, the Claimants are being affected in their ability to prepare and present their case, and this is not a harm that can be remedied at a later stage or that can wait until the issuance of a final award to address.⁸⁷ Azerbaijan is thus jeopardizing the integrity of the arbitral process and inhibiting the Tribunal’s ability to conduct a fair and impartial proceeding by preventing the Claimants from presenting their case unimpeded.⁸⁸
65. The travel restrictions adopted by the Respondent have, according to the Claimants, prevented Mr. Muduroglu from traveling outside of Azerbaijan to meet with counsel and experts, and to personally deliver physical documents necessary for the development of the Claimants’ claims.⁸⁹ Mr. Muduroglu, a British citizen, remains detained in Azerbaijan with

⁸⁵ Claimants’ Request, ¶ 42.

⁸⁶ Claimants’ Request, ¶ 62.

⁸⁷ Claimants’ Request, ¶ 62.

⁸⁸ Claimants’ Request, ¶ 62.

⁸⁹ Claimants’ Request, ¶ 59.

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no access to legitimate legal recourse, and with no ability to communicate safely and confidentially with international counsel for the Claimants.⁹⁰ This is disputed by the Respondent, which adds that the decision of the Baku Court already provides a remedy as it notes that the travel restriction is “temporary” until the tax obligations are fully met.

66. As to the freezing of Libra’s and Neptun’s accounts, the Claimants submit that it inhibits not just their ability to do business generally, but also directly interferes with their ability to conduct this arbitration.⁹¹ As explained in Mr. Muduroglu’s third witness statement, Neptun and Libra must obtain pre-authorization from the Azeri courts before paying any business expenses other than ordinary payroll or tax expenses.⁹² Again, the Respondent disputes the alleged effects on the Claimants.
67. The Tribunal considers that a provisional measure is necessary if there are no other reasonably available means to preserve the procedural rights of the given party, and urgent when there is a risk of serious or irreparable harm to the rights of a party in the arbitration or to the arbitration itself that may occur before the Tribunal renders a final decision.
68. As applicable here, the standard of necessity requires the Claimants to prove that, due to the Respondent’s conduct, unless the Tribunal grants the provisional measures, they would be seriously impeded in preparing and presenting their case before this Tribunal. The standard of urgency, meanwhile, requires a showing that this risk is sufficiently imminent so as to justify an early intervention of the arbitral tribunal in the proceedings, prior to issuing a final decision on the case. By contrast, if the alleged risk is merely potential or insufficiently concrete when the provisional measures are requested, such an early intervention would not be justified. Further, and in all events, the Tribunal must balance the interference alleged by

⁹⁰ Supplemental Submission, ¶ 44.

⁹¹ Supplemental Submission, ¶ 45.

⁹² Supplemental Submission, ¶ 45.

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the Claimants against the Respondent's sovereign right to regulate conduct within its territory.

69. The Tribunal is indeed concerned by the sequence of actions by the Respondent's officials that have resulted in repeated and sequential travel bans, and with the way the proceedings resulting in the travel bans have been conducted. However, absent a stronger evidentiary showing by the Claimants, the Tribunal is not persuaded that the requested measures are presently necessary in order to ensure the procedural integrity of the arbitration, avoid aggravation of the dispute or preserve the status quo. The Claimants have failed to prove that the alleged measures have a direct effect on the arbitration.
70. First, Mr. Muduroglu submitted before this Tribunal three witness statements in support of the request for provisional measures and there is no allegation, much less evidence, that he has had any difficulties in communicating with counsel for the preparation of the witness statements or that such preparation was interfered with by acts of the Respondent.
71. Second, the Claimants do not explain why Mr. Muduroglu must deliver the documents related to the arbitration personally and in physical form, and there is no evidence that he is prevented from delivering those documents safely via an electronic platform or in any other technically secured manner. There is likewise no convincing evidence that Mr. Muduroglu is under surveillance and thus prevented from delivering or discussing the documents with encryption or in another confidential manner.
72. Third, in connection with the freezing of Libra's and Neptun's accounts, on the one hand, there is no evidence that the freezing affects all funds held by such companies, and on the other, the Claimants have not proven that the funds held by Libra and Neptun are the only sources of funding available to the Claimants to continue prosecuting this arbitration. Further, there appears to be at least some potential legal recourse available to the companies in Azerbaijan. Therefore, the Tribunal considers that the Claimants have not on the present record proven that the freezing of the accounts prevents them from presenting their case before this Tribunal.

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73. In conclusion, the Tribunal finds no sufficient grounds on the evidentiary record, as it now stands, to grant the provisional measures requested by the Claimants. However, in light of the concerns expressed in paragraph 69 above, the Tribunal invites the Parties to keep it updated on the issue of the travel bans and asset freezes and may revisit the issue at a later stage of the proceedings.

VI. DECISION OF THE TRIBUNAL

74. For the reasons provided above, the Tribunal:

- (i) rejects the Claimants' request for provisional measures; and
- (ii) defers any decision on the costs associated with this request to a later stage of the proceedings.

For and on behalf of the Tribunal,

[signed]

Professor Eduardo Zuleta
President of the Tribunal
July 8, 2024