

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
WASHINGTON, D.C.

In the proceedings between

IOANNIS KARDASSOPOULOS AND RON FUCHS
(Respondents)

v.

GEORGIA
(Applicant)

ICSID Case N^os. ARB/05/18 and ARB/07/15
(Annulment Proceeding)

**DECISION OF THE *AD HOC* COMMITTEE
TO TERMINATE THE STAY OF ENFORCEMENT OF THE AWARD**

Members of the ad hoc Committee

Judge Dominique Hascher (President)
Tan Sri Cecil W. M. Abraham
Professor Karl-Heinz Böckstiegel

Secretary of the ad hoc Committee

Ms. Aïssatou Diop

Representing the Applicant

Ms. Louise Roman Bernstein
Mr. Derek C. Smith
Mr. Luis Parada
Mr. Tomás Solís
Ms. Erin Argueta
Dewey LeBoeuf LLP

Representing the Respondents

Ms. Karyl Nairn
Mr. Timothy G. Nelson
Mr. John Gardiner
Mr. David Herlihy
Skadden, Arps, Slate, Meagher & Flom (UK) LLP

1. On 12 August 2010, Georgia filed a Request for the Continuation of the Stay of Enforcement of the Award of 3 March 2010 in ICSID case n°s ARB/05/18 and ARB/07/15 which had been provisionally stayed by the Deputy-Secretary-General of ICSID on 16 July 2010. After hearing the parties on 18 October 2010 following an exchange of written submissions, this *ad hoc* Committee (the “Committee”) decided that:

“Enforcement of the Award of 3 March 2010 shall continue to be stayed until the date on which the ad hoc Committee issues its decision on the pending applications for annulment submitted by Georgia under the following conditions:

- *Provided that within ninety (90) days following the notification by the ICSID Secretariat of this Decision, Georgia furnishes an unconditional and irrevocable bank guarantee issued by a reputable international bank (with no principal establishment in Georgia, Greece or Israel) for the full amount of the Award, with the exception of post-award interest.*
- *Such bank guarantee must be approved by the Committee and therefore, within no more than sixty (60 days) following the notification by the ICSID Secretariat of this Decision, it must be submitted to the Committee for its consideration and to Messrs. Kardassopoulos and Fuchs for any comments they may wish to make on it.*
- *The costs of the present application are reserved until the conclusion of the annulment proceeding”.*

2. The Committee’s Decision was issued on 12 November 2010 and notified to the parties on the same day.

3. On 12 January 2011, sixty days following notification by the Secretariat, a letter was received from Messrs. Kardassopoulos and Fuchs (the “Respondents”) declaring that no notification of the proposed security had been received and informing that, because there has been non-compliance with the Decision, it was the Respondents' intention to take action to enforce the Award forthwith.

4. The Committee invited Georgia on 14 January to provide an update on the matter by 17 January 2011.

5. Georgia indicated on that date to the Committee that it had filed on 11 January an

Application for Revision and that pursuant to Article 51(4) of the ICSID Convention, it had also included a request to stay enforcement of the Award pending the Tribunal's decision on the Application for Revision. Georgia further informed the Committee of its decision not to pursue its request for a stay of enforcement in the annulment proceedings.

6. Georgia rightly stressed in its letter of 17 January 2011 that enforcement of the Award would be provisionally stayed, according to Article 51(4) of the ICSID Convention, until the Tribunal for revision ruled on the request for a stay. Article 54(2) of the Rules of Procedure for Arbitration Proceedings specifies in this regard that such request of a stay is only granted by the Secretary-General upon registration of the application, but Georgia does not allege that it has been notified of such registration of its Application for Revision of 11 January 2011 or informed of the stay.

7. Taking note:

- a) that Georgia did not submit an unconditional and irrevocable bank guarantee issued by a reputable international bank (with no principal establishment in Georgia, Greece or Israel) to the Committee and to Messrs. Kardassopoulos and Fuchs within sixty days of the notification of the Decision on Stay of 12 November 2010, which was a condition for the continuance of the stay, and
- b) that Georgia indicated on 17 January 2011 “*that it does not intend to pursue its request to the ad hoc Committee for the continuance of the stay of the enforcement of the Award*”,

8. THE COMMITTEE HEREBY DECIDES

that according to Rule 53(4) of the Rules of Procedure for Arbitration Proceedings, the stay of enforcement of ICSID Award in case n°s ARB/05/18 and ARB/07/15 is terminated.

On behalf of the *ad hoc* Committee
Judge Dominique Hascher
President of the *ad hoc* Committee

January 19, 2011

Date