INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
1818 H STREET, NW | WASHINGTON, DC 20433 | USA
TELEPHONE +1 (202) 458 1534 | FACSIMILE +1 (202) 522 2615
WWW.WORLDBANK.ORG/ICSID

CERTIFICATE

MARKO MIHALJEVIĆ

v.

REPUBLIC OF CROATIA

(ICSID CASE NO. ARB/19/35)

I hereby certify that the attached document is a true copy of the Tribunal's Award dated May 19, 2023, and the Concurring Opinion of Ms. Maria Vicien-Milburn.

Martina Polasek
Acting Secretary-General

Washington, D.C., May 19, 2023

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

MARKO MIHALJEVIĆ

Claimant

and

REPUBLIC OF CROATIA

Respondent

ICSID Case No. ARB/19/35

AWARD

Members of the Tribunal
Mr. Cavinder Bull S.C., President of the Tribunal
Mr. Mark Kantor, Arbitrator
Ms. Maria Vicien-Milburn, Arbitrator

Secretary of the Tribunal
Ms. Celeste E. Salinas Quero

Date of dispatch to the Parties: 19 May 2023

REPRESENTATION OF THE PARTIES

Representing Marko Mihaljević:

Mr. Alexander A. Yanos
Ms. Kristen Bromberek
Mr. Rajat Rana
Mr. Subarkah Syafruddin
Alston & Bird LLP
90 Park Avenue
15th Floor
New York, NY 10016-1387
United States of America

and

Ms. Dora Horvat
ILEJ & Partners
RX54+6R
Franje Petracica 4
10000 Zagreb
Republic of Croatia

and

Mr. Srećko Mihaljević

Representing the Republic of Croatia:

Ms. Slava Stojić
Mr. Željko Odorčić
Dr. Jadranka Osrečak
State Attorney's Office
Gajeva ulica 30a
HR-10000 Zagreb
Republic of Croatia

and

Ms. Miriam K. Harwood
Mr. Luka S. Misetic
Mr. Carlos Guzman Plascencia
Squire Patton Boggs (US) LLP
1211 Avenue of the Americas
26th Floor
New York, NY 10036
United States of America

TABLE OF CONTENTS

TABLE OF COMMONLY USED ABBREVIATIONS / DEFINED TERMS

BIT or Treaty	Treaty Between the Republic of Croatia and the Federal Republic of Germany Concerning the Reciprocal Encouragement and Protection of Investments, signed on 21 March 1997 and entered into force on 28 September 2000, and associated Protocol
C-[#]	Claimant's Exhibit
CL-[#]	Claimant's Legal Authority
Claimant or Mr. Mihaljević	Mr. Marko Mihaljević
Claimant's Cost Submission	Claimant's Submission on Costs dated 10 January 2023
Claimant's Counter-Memorial	Claimant's Counter-Memorial to Croatia's Objection to Jurisdiction Under Article 25 of the ICSID Convention dated 25 February 2022
Claimant's Interest Submission	Letter from the Claimant to the Tribunal dated 14 March 2023 regarding his submissions on the applicable interest rate
Claimant's Rejoinder	Claimant's Rejoinder to Croatia's Objection to Jurisdiction under Article 25 of the ICSID Convention dated 15 August 2022
Claimant's Post-Hearing Memorial	Claimant's Post-Hearing Brief dated 21 December 2022
Donation Agreement	Document titled "Donation Agreement" dated 8 February 1996 (Exhibit 5 to the Request for Arbitration)

First Mihaljević Statement	First Witness Statement of Mr. Marko Mihaljević dated 20 July 2020
First Otočan Report	First Legal Expert Report of Dr. Sc. Sanja Otočan dated 2 July 2020
First Request	Claimant's Request for Arbitration filed on 18 October 2019 and withdrawn on 14 November 2019
Fourth Mihaljević Statement	Fourth Witness Statement of Mr. Marko Mihaljević dated 15 August 2022
Hearing	Hearing on the Respondent's Jurisdictional Objection under Article 25 of the ICSID Convention held on 14–15 November 2022
ICSID Arbitration Rules	ICSID Rules of Procedure for Arbitration Proceedings (2006)
ICSID Convention	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States dated 18 March 1965
ICSID or the Centre	International Centre for Settlement of Investment Disputes
R-[#]	Respondent's Exhibit
RL-[#]	Respondent's Legal Authority
Request for Arbitration	Claimant's Request for Arbitration dated 6 December 2019
Respondent or Croatia	The Republic of Croatia

Respondent's Cost Submission	Letter from the Respondent to the Tribunal dated 10 January 2023 regarding its submission on costs
Respondent's Interest Submission	Letter from the Respondent to the Tribunal dated 7 March 2023 regarding its submissions on the applicable interest rate
Respondent's Memorial	Respondent's Memorial on its Objection to Jurisdiction under Article 25 of the ICSID Convention due to the Claimant's Croatian Citizenship dated 19 November 2021
Respondent's Post-Hearing Memorial	Respondent's Post-Hearing Brief dated 21 December 2022
Respondent's Reply Memorial	Respondent's Reply Memorial on its Objection to Jurisdiction under Article 25 of the ICSID Convention due to the Claimant's Croatian Citizenship dated 5 July 2022
Rule 41(5) Application	Respondent's Application under ICSID Arbitration Rule 41(5) dated 2 July 2020
Rule 41(5) Decision	Tribunal's Decision on the Respondent's Rule 41(5) Application dated 23 June 2021
Rule 41(5) Hearing	Hearing on the Application under ICSID Arbitration Rule 41(5) held on 11–13 November 2020
Rule 41(5) Hearing, Tr. Day [#], [page:line]	Transcript of the Rule 41(5) Hearing
Schreuer Legal Opinion	Legal Opinion of Prof. Dr. Christoph Schreuer dated 17 November 2021
Second Mihaljević Statement	Second Witness Statement of Mr. Marko Mihaljević dated 26 August 2020

Second Otočan Report	Second Legal Expert Report of Dr. Sc. Sanja Otočan dated 11 August 2020
Third Mihaljević Statement	Third Witness Statement of Mr. Marko Mihaljević dated 25 February 2022
Third Otočan Report	Third Legal Expert Report of Dr. Sc. Sanja Otočan dated 19 November 2021
Tr. Day [#], [page:line]	Transcript of the Hearing
Tribunal	Arbitral tribunal as reconstituted on 22 June 2020

I. INTRODUCTION AND PARTIES

1. This case concerns a dispute submitted to the International Centre for Settlement of Investment Disputes ("**ICSID**" or the "**Centre**") on the basis of the Treaty between the Republic of Croatia and the Federal Republic of Germany Concerning the Reciprocal Encouragement and Protection of Investments, which entered into force on 28 September 2000 (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 (the "**ICSID Convention**").

2. This award addresses and rules upon the application filed on 19 November 2021 (the "**Application**") by the Republic of Croatia ("**Croatia**" or the "**Respondent**") objecting to the jurisdiction of ICSID under Article 25 of the ICSID Convention.[1]

3. The Claimant is Mr. Marko Mihaljević (or "**Mr. Mihaljević**"). The Claimant and the Respondent are occasionally referred to herein as a "Party," or together as the "Parties."

II. PROCEDURAL BACKGROUND

4. On 18 October 2019, the Claimant filed a request for arbitration (the "**First Request**") against the Respondent pursuant to the Treaty, and the ICSID Convention.

5. On 14 November 2019, the Claimant withdrew the First Request.

6. On 6 December 2019, the Claimant filed before ICSID a second request for arbitration (the "**Request for Arbitration**") against the Respondent together with Exhibits 1 through 11.

7. On 31 December 2019, the ICSID Secretary-General registered the Request for Arbitration.

8. On 15 May 2020, the Tribunal was constituted, with Mr. Stephen Drymer, a national of Canada, as its President, and Mr. Mark Kantor, a national of the United States of America, and Ms. Maria Vicien-Milburn, a national of the Argentine Republic and the Kingdom of

[1] Respondent's Memorial at [1].

Spain, as Arbitrators. Mr. Drymer subsequently resigned, and the Tribunal was reconstituted on 22 June 2020 with Mr. Cavinder Bull S.C., a national of the Republic of Singapore, as its President.

9. On 2 July 2020, the Respondent filed an Application under Rule 41(5) of the ICSID Arbitration Rules (the "**Rule 41(5) Application**"), together with a Legal Expert Report of Dr. Sc. Sanja Otočan dated 2 July 2020 ("**First Otočan Report**"), with Exhibits SO-001 through SO-013; a Legal Expert Report of Prof. Dr. Sc. Tatjana Josipović dated 2 July 2020, with Exhibits TJ-001 through TJ-038; Exhibits R-001 through R-012; and Legal Authorities RL-001 through RL-031. The Rule 41(5) Application was advanced on two independent grounds: first, that the Claimant's Croatian nationality was an automatic bar to ICSID jurisdiction in light of Article 25(2) of the ICSID Convention (the "Citizenship Issue"); and second, that the Claimant did not own the property in dispute and has no right to assert claims with respect to it (the "**Property Ownership Issue**").

10. On 23 July 2020, the Tribunal held a first session with the Parties by video conference.

11. On 24 July 2020, the Claimant filed its Observations on the Rule 41(5) Application, together with a Witness Statement of Mr. Marko Mihaljević dated 20 July 2020 ("**First Mihaljević Statement**"); Exhibits C-001 through C-003; and Legal Authorities CL-001 through CL-011.

12. On 28 July 2020, the Tribunal issued Procedural Order No. 1 concerning the applicable procedure governing this arbitration.

13. On 11 August 2020, the Respondent filed its Reply on the Rule 41(5) Application, together with a Second Legal Expert Report of Dr. Sc. Sanja Otočan dated 11 August 2020 ("**Second Otočan Report**"), with Exhibits SO-14 through SO-16; a Second Legal Expert Report of Prof. Dr. Sc. Tatjana Josipović dated 11 August 2020 with Exhibits TJ-039 through TJ-045; Exhibits R-013 through R-016; and Legal Authorities RL-032 through RL-037.

14. On 29 August 2020, the Claimant filed its Rejoinder on the Rule 41(5) Application, together with a Second Witness Statement of Mr. Marko Mihaljević dated 26 August 2020

("**Second Mihaljević Statement**"); Exhibits C-004 through C-009; and Legal Authorities CL-011 through CL-018.

15. On October 1, 2020, the Tribunal issued Procedural Order No. 2 concerning the organization of the hearing on Respondent's Rule 41(5) Objection.

16. On October 28, 2020, the Tribunal issued Procedural Order No. 3 on the logistics of the hearing on Respondent's 41(5) Rule Objection.

17. On 11–13 November 2020, the Tribunal held a hearing on the Rule 41(5) Application by videoconference (the "**Rule 41(5) Hearing**").

18. On 23 June 2021, the Tribunal issued its Decision on the Rule 41(5) Application (the "**Rule 41(5) Decision**"). For the reasons set forth in the Decision, the Tribunal dismissed the Rule 41(5) Application and reserved the issue of costs of the Rule 41(5) Application for decision at a later stage in the proceedings. The Tribunal also directed that the Parties consider whether it would be expedient to bifurcate the proceedings so that certain jurisdictional objections could be dealt with before the merits, and that the Parties consider whether the Citizenship Issue or the Property Ownership Issue, or both, should be dealt with in a bifurcated jurisdictional proceeding.

19. On 7 July 2021, the Respondent informed the Tribunal that both Parties agreed to have a bifurcated jurisdictional phase, but they disagreed on the scope of that phase. Specifically, the Parties disagreed whether the jurisdictional phase should cover both or only one of either the Citizenship Issue and the Property Ownership Issue. The Claimant took the position that any other jurisdictional objections must also be raised and determined in the bifurcated jurisdictional phase or be deemed waived. The Respondent did not agree. On 21 July 2021, each Party submitted a letter to the Tribunal with its respective position on bifurcation (the "**Bifurcation Application**").

20. On 28 July 2021, the Tribunal issued Procedural Order No. 4 containing its Decision on Bifurcation. The Tribunal decided that the present proceedings were to be bifurcated, and that the bifurcated phase would deal solely with the Citizenship Issue. The Tribunal also

reserved the issue of costs of the Bifurcation Application for decision at a later stage in the proceedings.

21. On 19 November 2021, the Respondent filed its Memorial on its Objection to Jurisdiction under Article 25 of the ICSID Convention due to the Claimant's Croatian Citizenship (the "**Respondent's Memorial**"), together with a Third Legal Expert Report of Dr. Sc. Sanja Otočan dated 19 November 2021 ("**Third Otočan Report**"), with Exhibits SO-017 and SO-018; a Legal Opinion of Prof. Dr. Christoph Schreuer dated 17 November 2021; Exhibits R-017 through R-044; and Legal Authorities RL-051 through RL-117.

22. On 25 February 2022, the Claimant filed its Counter-Memorial to Croatia's Objection to Jurisdiction under Article 25 of the ICSID Convention (the "**Claimant's Counter-Memorial**"), together with a Third Witness Statement of Mr. Marko Mihaljević dated 25 February 2022 ("**Third Mihaljević Statement**"); Exhibits C-010 through C-012; and Legal Authorities CL-023 through CL-039.

23. Following exchanges between the Parties, on 6 April 2022, the Tribunal issued its Decision on the Respondent's Document Production Requests (the "**Tribunal's Document Production Decision**"). Following the Tribunal's Document Production Decision, the Claimant submitted a privilege log dated 15 April 2022 (the "**Claimant's Privilege Log**"). The Respondent sent a letter to the Claimant dated 21 April 2022 on the Claimant's Privilege Log, and the Claimant responded by way of a letter dated 26 April 2022.

24. On 6 May 2022, the Respondent filed an application seeking "an Order from the Tribunal compelling the Claimant, Marko Mihaljević, to produce documents responsive to the Respondent's document requests" (the "**Respondent's Document Production Application**").

25. On 27 June 2022, the Tribunal issued Procedural Order No. 5 containing its Decision on the Respondent's Document Production Application. The Tribunal rejected the Document Production Application and reserved the issue of costs pertaining to the Document Production Application for decision at a later stage in the proceedings.

26. On 5 July 2022, the Respondent filed its Reply Memorial on its Objection to Jurisdiction under Article 25 of the ICSID Convention due to the Claimant's Croatian Citizenship (the "**Respondent's Reply Memorial**"), together with Exhibits R-045 through R-048 and Legal Authorities RL-052 (resubmitted) and RL-118 through RL-119.

27. On 15 August 2022, the Claimant filed its Rejoinder to Croatia's Objection to Jurisdiction Under Article 25 of the ICSID Convention (the "**Claimant's Rejoinder**"), together with a Fourth Witness Statement of Marko Mihaljević dated 15 August 2022 ("**Fourth Mihaljević Statement**"); Exhibits C-013 through C-0015; and Legal Authorities CL-040 and CL-041.

28. On 7 September 2022, a pre-hearing organisational meeting for the organisation of the upcoming hearing on jurisdiction (the "**Hearing**") was held by video-conference between the President of the Tribunal and the Parties. Participating in the Pre-Hearing Organisational Meeting were:

Tribunal
Mr. Cavinder Bull S.C. President of the Tribunal

ICSID Secretariat
Ms. Celeste E. Salinas Quero Secretary of the Tribunal

For the Claimant
Alston & Bird LLP
Mr. Alexander A. Yanos
Ms. Kristen Bromberek
Mr. Subarkah Syafruddin
Mr. Srecko Mihaljević

For the Respondent
Squire Patton Boggs (US) LLP
Ms. Miriam K. Harwood
Mr. Luka Misetic
Mr. Carlos Guzman Plascencia

29. On 15 September 2022, the Tribunal issued Procedural Order No. 6 concerning the organization of the Hearing.

30. The Hearing was held from 14 to 15 November 2022, in a hybrid format, with the Tribunal, the ICSID Secretariat, and most of each Party's legal teams attending in-person in Washington, D.C. A part of the Respondent's representatives joined by video conference from Zagreb and one of the Respondent's expert witnesses joined by video conference from Vienna. Participating in the Hearing were:

Tribunal	
Mr. Cavinder Bull S.C.	President of the Tribunal
Mr. Mark Kantor	Arbitrator
Ms. Maria Vicien-Milburn	Arbitrator
ICSID Secretariat	
Ms. Celeste Salinas Quero	Secretary of the Tribunal
For the Claimant	
Counsel	
Mr. Alexander A. Yanos	Alston & Bird LLP
Ms. Kristen Bromberek	Alston & Bird LLP
Mr. Rajat Rana	Alston & Bird LLP
Mr. Subarkah Syafruddin	Alston & Bird LLP
Ms. Dora Horvat	ILEJ & Partners
Parties and Witness	
Mr. Marko Mihaljević	Claimant and Witness
Mr. Srećko Mihaljević	Claimant's Representative
For the Respondent	
Counsel	
Ms. Miriam K. Harwood	Squire Patton Boggs (US) LLP
Mr. Luka Misetic	Squire Patton Boggs (US) LLP
Mr. Carlos Guzman Plascencia	Squire Patton Boggs (US) LLP
Parties	
Ms. Jadranka Osrečak	State Attorney`s Office of the Republic of Croatia
Mr. Slava Stojić*	Deputy Attorney General of the Republic of Croatia
Mr. Željko Odorčić*	Deputy Attorney General of the Republic of Croatia
Mr. Jozo Jurčević*	Deputy Attorney General of the Republic of Croatia
Ms. Željka Šaškor*	Deputy Attorney General of the Republic of Croatia
Ms. Sanja Dumbović-Gajić*	Deputy Attorney General of the Republic of Croatia
Ms. Tanja Šušak*	Deputy Attorney General of the Republic of Croatia
Ms. Zvjezdana Verk*	Deputy Attorney General of the Republic of Croatia

Ms. Marijana Bertović Đurović*	Deputy Municipal State Attorney in Zagreb seconded to the State Attorney`s Office of the Republic of Croatia
Ms. Jelena Dragičević*	Deputy Municipal State Attorney in Zagreb seconded to the State Attorney`s Office of the Republic of Croatia
Ms. Kosjenka Krapac*	Deputy Municipal State Attorney in Zagreb seconded to the State Attorney`s Office of the Republic of Croatia
Experts	
Dr. Sc. Sanja Otočan	Expert Witness
Prof. Dr. Christoph Schreuer*	Expert Witness

(*) denotes remote participant

31. Following the Hearing, each Party filed its respective post-hearing brief on 21 December 2022 (the "**Respondent's Post-Hearing Memorial**" and the "**Claimant's Post-Hearing Memorial**").

32. On 10 January 2023, each Party also filed its respective submission on costs (the "**Respondent's Cost Submission**" and the "**Claimant's Cost Submission**").

33. On 28 February 2023, the Tribunal requested further submissions from the Parties on what the appropriate interest rate should be in respect of any cost award. On 8 March 2023, the Respondent filed further submissions on the applicable interest rate (the "**Respondent's Interest Submission**") and on 14 March 2023, the Claimant filed his responsive further submissions on the applicable interest rate (the "**Claimant's Interest Submission**").

34. On 19 May 2023, the Tribunal declared the proceeding closed.

III. FACTUAL BACKGROUND AS PRESENTED BY THE CLAIMANT

35. For the purposes of this decision, the Tribunal sets out below a brief summary of the factual background asserted by the Claimant in his Request for Arbitration. The Tribunal makes no determinations in relation to the Claimant's assertions.

36. According to the Request for Arbitration, in July 1993, the Claimant's father, Mr. Srećko Mihaljević ("**Mr. Mihaljević senior**") purchased from a Croatian entity, Gortan Gradvinarstvo ("**Gortan**"), a parcel of land located next to Mirogoj cemetery, a historical landmark in Zagreb, Croatia (the "**Property**").[2] At the time, there were persons who the Claimant refers to as "squatters" who refused to vacate the Property, and Mr. Mihaljević senior successfully obtained a declaratory judgment from the district court in Zagreb on 21 September 1994 confirming that he was the rightful owner of the Property.[3] Following the declaratory judgment, Mr. Mihaljević senior recorded his title to the Property in the Zagreb land registry.[4]

37. On or around 8 February 1996, Mr. Mihaljević senior executed a Donation Agreement that transferred his rights in the Property to the Claimant.[5]

38. After years of litigation between Mr. Mihaljević senior and the "squatters", the "squatters" were ordered to be evicted in 2005. However, on 6 March 2005, the Croatian State Privatization Fund issued a decree declaring, inter alia, that Gortan never had a title which could have been transferred to Mr. Mihaljević senior (the "**Decree**").[6] No compensation was paid to the Claimant or Mr. Mihaljević senior.[7] A Croatian Administrative Court rejected a challenge to the Decree on 12 February 2009, and that decision was affirmed by the Croatian Constitutional Court on 17 January 2013.[8]

39. In addition, Mr. Mihaljević senior was accused by the "squatters" of wrongfully inducing land registry officials to register the Property inaccurately, which triggered a criminal inquiry and an initial conviction against Mr. Mihaljević senior. The initial criminal conviction was vacated by the Croatian Constitutional Court in December 2017, on the basis that Mr. Mihaljević senior was denied a fair hearing in violation of Article 29(1) of

---

2 Request for Arbitration at [4].

3 Request for Arbitration at [6] – [7].

4 Request for Arbitration at [7].

5 Request for Arbitration at [8]; Ex. 005 to Request for Arbitration, Donation Agreement between Mr. Srećko Mihaljević and Mr. Marko Mihaljević dated 8 February 1996 ("**Donation Agreement**").

6 Request for Arbitration at [10].

7 Request for Arbitration at [11].

8 Request for Arbitration at [11].

the Croatian Constitution.[9] However, the Croatian authorities re-launched the prosecution, and Mr. Mihaljević senior was found guilty of soliciting an "abuse of authority" on 4 October 2018 by a criminal court in Zagreb. An appeal launched by Mr. Mihaljević senior to the Croatian Supreme Court was pending at the time of the filing of the Request for Arbitration.[10]

IV. POSITIONS OF THE PARTIES

40. Each Party was allowed two rounds of written submissions in respect of the present Application. These submissions were developed orally at the Hearing held from 14 to 15 November 2022, following which each Party had a further round of post-hearing written submissions. The summary which follows is not intended to repeat or deal with every point raised, but to capture the essence of the arguments presented. The Tribunal has, however, carefully considered all of the Parties' submissions and taken them into account in reaching its decision.

A. THE RESPONDENT'S POSITION

41. The Respondent contends that the Tribunal lacks jurisdiction rationae personae and must dismiss the case in its entirety.[11]

42. The Respondent contends that the Claimant bears the burden of establishing the Tribunal's jurisdiction,[12] and that the Claimant must prove "conclusively" the jurisdictional requirements of Article 25 of the ICSID Convention.[13] The Respondent submits that the Claimant is unable to meet the "negative" nationality requirement under Article 25 of the ICSID Convention as he failed to prove that he was not a Croatian national at the material time.

---

9 Request for Arbitration at [12] – [15].

10 Request for Arbitration at [15].

11 Respondent's Memorial at [252].

12 Respondent's Memorial at [122].

13 Respondent's Memorial at [124] – [125].

43. According to the Respondent, the Claimant was a national of Croatia (a) at the time when he consented to ICSID arbitration and (b) at the time of the registration of the Request for Arbitration, and the Claimant's Croatian nationality on either of these dates precludes him from pursuing ICSID arbitration of this dispute[14] under Article 25(2)(a) of the ICSID Convention which imposes an "absolute bar to arbitration by a national against its own State"; such nationality to be determined on these two dates.[15]

44. The Respondent argues that the first of the two relevant dates, i.e., the date of consent to ICSID arbitration, was 11 March 2019, when the Claimant sent to the Respondent a Notice of Dispute dated 6 February 2019 accepting Croatia's standing offer to arbitrate.[16] According to the Respondent, the time of consent is determined by the investor's acceptance of the host State's general offer to accept ICSID's jurisdiction in its legislation or treaties,[17] and in this case, the date the Claimant's Notice of Dispute was conveyed was the date of consent for the purposes of the nationality test in Article 25 of the ICSID Convention.[18]

45. In support of this argument, the Respondent filed a legal opinion by Prof. Dr. Christoph Schreuer, which opined that the consent in writing that the Claimant gave in his Notice of Dispute, accepting the Respondent's offer of ICSID arbitration in the BIT, constituted consent for the purposes of Article 25 of the ICSID Convention, and his nationality is determined as of that date.[19] Accordingly, the Claimant does not qualify as a national of another Contracting State under Article 25(2)(a) of the ICSID Convention because he had the nationality of the Contracting State party on the date of consent to ICSID arbitration.[20]

46. The Respondent further argues that the date of consent should not be 6 December 2019, as the Claimant alleges, based on the Claimant's letter which purports to "reaffirm" the Claimant's consent to arbitration on 6 December 2019 (after the Claimant re-filed his

14 Respondent's Memorial at [4].
15 Respondent's Memorial at [2] – [3].
16 Respondent's Memorial at [45] – [48].
17 Respondent's Memorial at [151].
18 Respondent's Memorial at [153].
19 Schreuer Legal Opinion at [37].
20 Schreuer Legal Opinion at [26].

Request for Arbitration). The Respondent contends that the date of consent does not depend upon the fulfilment of the nationality requirements;[21] in other words, the Claimant cannot "cure" his "defective" consent that was previously given on 11 March 2019.[22] First, the double test of time for determining the nationality of natural persons under Article 25(2)(a) would be deprived of its effet utile if the date of consent were dependent on a claimant's fulfilment of the nationality requirements.[23] Second, this would ignore the principle of irrevocability of consent in Article 25(1) of the ICSID Convention.[24] On the facts, although the Claimant re-filed his Request for Arbitration and sent a letter to Croatia "re-affirming" his consent to arbitration on 6 December 2019, the Claimant did not attempt to revoke his prior notice and consent and, on the contrary, the letter expressly "reaffirms" his prior consent to arbitration of the dispute.[25] The "validity" or "effectiveness" of consent is not the criterion for determining the "date of consent",[26] and his act of giving consent in writing, in March 2019, cannot be "simply disregarded as if it never happened", nor can it "be later cured by a revocation of Croatian nationality in an attempt to gain access to ICSID arbitration in a circumvention of its rules".[27]

47. As for the second of the two relevant dates, the Respondent submits that it is clear that the Claimant was a Croatian national on the date that the Request for Arbitration was registered, 31 December 2019.[28]

48. According to the Respondent, the Claimant was a Croatian national until 18 May 2020.[29] The Respondent claims that the Claimant remained a Croatian national until this date, which was the date that the Claimant's Croatian passport was cancelled upon notification

21 Respondent's Memorial at [174].
22 Respondent's Memorial at [176] – [177].
23 Respondent's Memorial at [174].
24 Respondent's Memorial at [175].
25 Respondent's Memorial at [176].
26 Respondent's Memorial at [165].
27 Respondent's Memorial at [180].
28 Respondent's Memorial at [185].
29 Respondent's Memorial at [219].

of the decision of the Croatian Ministry of the Interior which approved the Claimant's request for discharge of his citizenship (the "**Interior Ministry's Decision**").[30]

49. The Respondent relies on the definition of a "national" in Article 1(b) of the BIT Protocol, which the Respondent submits provides that the Claimant would be "deemed to be a national" of Croatia as long as he remained in possession of his Croatian passport. Accordingly, he was a Croatian citizen until the date that he no longer held a valid Croatian passport, which was 18 May 2020.[31] The Respondent submits that this definition is consistent with the Croatian Citizenship Act ("**CCA**"), which provides that Croatian citizenship is proven by a Croatian passport.[32]

50. According to the Respondent, the Claimant's visit to the Croatian Interior Ministry in Zagreb on 5 November 2019 did not have the effect of an immediate revocation of his Croatian citizenship.[33] The Claimant made a request to "discharge" his citizenship and not to "renounce" it, and as a result the revocation of his Croatian citizenship was only effective on 18 May 2020, when he was served with the approval of his request for discharge.[34]

51. In support of this argument, the Respondent relies on three legal expert reports by Dr. Sc. Sanja Otočan.[35] Amongst other things, Dr. Sc. Otočan has stated:[36]

    a. the Claimant submitted a request for discharge of his Croatian citizenship to the Ministry of the Interior on 5 November 2019, pursuant to Article 18 of the CCA;

    b. any subjective intention or wish that the Claimant may have had to "renounce" his citizenship had no legal effect, as the Claimant never submitted a request for "renunciation", nor did he ever submit, let alone personally sign, a "statement of renunciation" as required under Croatian law in support of an application for

30 Respondent's Memorial at [8].

31 Respondent's Memorial at [215] – [219].

32 Respondent's Memorial at [220].

33 Respondent's Memorial at [182].

34 Respondent's Memorial at [183].

35 First Otočan Report; Second Otočan Report; Third Otočan Report.

36 First Otočan Report at [23] – [28], [38], [49], [58]; Second Otočan Report at [7] – [8], [29]; Third Otočan Report at [3], [7], [11], [38].

renunciation. Under Croatian law, only a written, express declaration of renunciation proves the applicant's intention to renounce his Croatian citizenship and there can be no oral declaration of renunciation;

c. the Claimant's request for discharge was subject to the requirements and procedures of the CCA, including the administrative review and approval by the Ministry of the Interior of Croatia;

d. the officials in charge of the Claimant's application for revocation at the Ministry of the Interior had no duty to seek clarification of the application prior to their decision on the application. No ambiguity arose because all documents submitted by the Claimant consistently referred to "discharge" and not to "renunciation" of Croatian citizenship;

e. the Interior Ministry's Decision approving the Claimant's request for discharge of his Croatian citizenship was issued on 30 April 2020, and delivered to his designated legal representative on 18 May 2020;

f. the effective date of the revocation of the Claimant's citizenship was on 18 May 2020;

g. the Claimant never appealed or challenged the Interior Ministry's Decision, which was legally valid and effective; and

h. therefore, the Claimant remained a Croatian citizen until 18 May 2020.

52. The Respondent further submits that the Claimant continued to pursue a decision on his request for "discharge" of Croatian citizenship even after the Request for Arbitration was registered. The Claimant submitted two requests to the Croatian authorities, in January and March 2020, seeking to "rush" the decision on his pending request for discharge of citizenship.[37] The Respondent therefore submits that the objective evidence shows that the

[37] Respondent's Memorial at [189], Ex. SO-011, Rush Order for Decision on Discharge of Citizenship for Marko Mihaljević dated 2 January 2020; Ex. SO-012, Rush Order for Decision on Discharge of Citizenship for Marko Mihaljević dated 10 March 2020.

Claimant uniformly and expressly declared an intention to obtain a "discharge" of Croatian citizenship, not a "renunciation".[38] Even if it were true that the Claimant communicated his intention to renounce his Croatian nationality to the clerks in the office at the Interior Ministry, as a matter of Croatian law, such an undocumented and unverified conversation does not constitute the requisite written and signed, express declaration necessary for the renunciation of Croatian citizenship.[39] The Respondent also submits that the letter dated 6 December 2019 sent by the Claimant's counsel to the President of Croatia would not serve as his "renunciation" particularly in light of the January and March 2020 requests seeking "rush" treatment of his pending request for "discharge".[40] In any event, the Claimant had abundant time and opportunity to recognise, understand and rectify any "error" or "confusion" regarding the request for revocation of citizenship that he submitted to the Ministry of the Interior of Croatia on 5 November 2019 before it was decided and delivered on 18 May 2020, yet he took no action to rectify his pending application for "discharge".[41]

53. The Respondent further submits that the Claimant's attempt to change his nationality status for the sole purpose of gaining access to ICSID arbitration, after the dispute arose and had been notified to the Respondent, and even after he had filed the First Request, constitutes a "manifest abuse of process" requiring the denial of jurisdiction and dismissal of all claims.[42]

54. The Respondent contends that there exists a consistent practice that a change of the claimant's nationality to manufacture jurisdiction rationae personae in a particular dispute is an abuse of process.[43] The Respondent further relies on Prof. Dr. Schreuer's Expert Legal Opinion, which set out a series of international arbitral tribunal decisions and written commentary to conclude that such a "consistent practice" exists, where claims grounded on ex post facto arrangements to obtain a nationality status that would open the door to

38 Respondent's Memorial at [191].
39 Respondent's Memorial at [195].
40 Respondent's Memorial at [203] – [206].
41 Respondent's Memorial at [213].
42 Respondent's Memorial at [222] – [251].
43 Respondent's Memorial at [225] – [228].

investment arbitration have invariably been held to be inadmissible.[44] As Prof. Dr. Schreuer acknowledges, tribunals have developed and applied this principle in cases involving corporate restructurings or transfers of assets, but he submits that the same policy considerations apply with equal force to the manipulation of the nationality of individuals.[45]

B. THE CLAIMANT'S POSITION

55. The Claimant submits that the Respondent's jurisdictional objection must fail, and that the Tribunal has the requisite jurisdiction rationae personae because the Claimant was only a German national (and not a Croatian national) on the requisite dates under Article 25(2)(a) of the ICSID Convention. The Claimant contends that he had lost his Croatian nationality on 5 November 2019. According to the Claimant, the relevant dates to assess his nationality are (a) 6 December 2019, the date that he filed his Request for Arbitration, and (b) 30 December 2019, the date that the Request for Arbitration was registered.[46]

56. On the requisite burden of proof, the Claimant accepts that he bears the burden to prove all facts necessary to establish the Tribunal's jurisdiction under Article 25 of the ICSID Convention, but contends that the Respondent bears the burden of proof "with regard to any assertions that alters the record from the claimant's jurisdictional case".[47] In this regard, the Claimant submits that the Respondent bears the burden of demonstrating that the Claimant's renunciation of his nationality was not valid, and of establishing its objection on abuse of process.[48]

57. As for the applicable law, the Claimant acknowledges that Croatian law "supplies the contents of the framework nationality regime" which provides for renunciation of citizenship based on the "key element of intent (or 'will')".[49] The Claimant argues, though,

---

44 Schreuer Legal Opinion at [63] – [127].

45 Schreuer Legal Opinion at [128].

46 Claimant's Counter-Memorial at Heading II.A, [12].

47 Claimant's Counter-Memorial at [17] (grammar in original).

48 Claimant's Counter-Memorial at [20] – [21].

49 Claimant's Counter-Memorial at [28].

that the Tribunal should make its own independent determination as to the Claimant's nationality, based on its determination of the Claimant's will at various points in time.[50]

58. The Claimant's argument rests on several planks. First, the Claimant submits that his possession of a Croatian passport until 18 May 2020 is not dispositive of the question of his nationality, because he renounced his Croatian citizenship on 5 November 2019.[51] On 5 November 2019, he appeared before the Croatian Interior Ministry and expressly told the personnel at the Interior Ministry that his will was to renounce his Croatian citizenship with immediate effect.[52] Although the Claimant marked the box labelled "*otpust*" (discharge) rather than the one labelled "*odricanjem*" (renounce), this was a mistake (or a "patent error"),[53] and done in reliance on the guidance from the Croatian officials at the Interior Ministry. According to the Claimant, this "should not obscure his otherwise clear intent to renounce his Croatian citizenship, especially taking into account the facts that he has limited Croatian proficiency and was not accompanied by any lawyer licensed in Croatia".[54] The Claimant also contends that the officials at the Croatian Ministry of the Interior "cut" and "hole-punched" his passport on 5 November 2019, and argues that this act "would have made no sense had the officials deemed that his relinquishment of nationality had not been made effective on November 5, 2019".[55] The Claimant submits that the Respondent's expert Dr. Sc. Otočan had also admitted during the Rule 41(5) Hearing that one's intent to renounce his or her citizenship was "self-executing".[56]

59. According to the Claimant, the Respondent "fully understood" the Claimant's intention to immediately renounce his citizenship, including because the officials at the Interior Ministry requested the Claimant to present them with his Croatian passport and then proceed to cut it on the spot.[57] The Claimant also contends that any confusion about the

---

50 Claimant's Counter-Memorial at [29].

51 Claimant's Counter-Memorial at Heading IV.B.

52 Claimant's Counter-Memorial at [37].

53 Claimant's Counter-Memorial at [54].

54 Claimant's Counter-Memorial at [40].

55 Claimant's Post-Hearing Memorial at [17].

56 Claimant's Rejoinder at [53].

57 Claimant's Rejoinder at [3].

Claimant's intent would have been clarified by way of his counsel's letter to the President of Croatia dated 6 December 2019. In addition, by way of a letter to ICSID dated 30 December 2019, Croatia's Deputy Attorney General acknowledged that the Claimant had sent a "submission stating that [the Claimant] has renounced his Croatian citizenship" under "Article 24a" of the CCA.[58]

60. Notwithstanding his renunciation of Croatian nationality on 5 November 2019, the Claimant submits that the Respondent then attempted to avoid the Claimant's claims by "imposing its nationality on him",[59] and that the Respondent's delay in approving his application was "not in good faith".[60] The Claimant contends that the Respondent withheld its formal acknowledgement of the Claimant's renunciation of Croatian citizenship until 18 May 2020, and after the two critical dates contemplated in Article 25(2)(a) of the ICSID Convention had passed. According to the Claimant, this "was not in good faith" as there were no reasons to deny or ignore the Claimant's request in November 2019; he fulfilled all of the administrative requirements set out in the CCA before filing his Request for Arbitration on 6 December 2019. The Claimant further submits that 18 May 2020 "may have been selected by Croatia because it waited to sign the agreement for the termination of intra-EU bilateral investment treaties on 5 May 2020 in order to create a (baseless) further argument for avoiding [the Claimant's] claims".[61]

61. The Claimant therefore submits that he was no longer a Croatian national with effect from 5 November 2019, and therefore he was not a Croatian national on the two relevant dates for assessing nationality under Article 25(2)(a) of the ICSID Convention:

    a. As for the first of the two relevant dates, the Claimant argues that although he "attempted to consent" to ICSID arbitration on 11 March 2019, he subsequently "perfected" his consent on 6 December 2019.[62] The Claimant submits that ICSID case law recognises that consent in the past can be perfected on a later date when

58 Claimant's Counter-Memorial at [41].

59 Claimant's Counter-Memorial at [52].

60 Claimant's Post-Hearing Memorial at Heading III.B.

61 Claimant's Counter-Memorial at [52].

62 Claimant's Counter-Memorial at [32].

the conditions for rationae personae are met,[63] and therefore the time of consent will be the date by which these conditions are fulfilled.[64] In the present case, the Claimant's allegedly "defective" attempt to consent to ICSID arbitration in March 2019 did not preclude him from consenting to ICSID arbitration in December 2019, and the latter should be taken to be the date of consent for the purposes of Article 25(2)(a) of the ICSID Convention.[65]

b. As for the second of the two relevant dates, the Claimant submits that this should be 30 December 2019, the date the Request for Arbitration was registered.[66]

62. As for the Respondent's submissions on abuse of process, the Claimant submits that the threshold for finding an abuse of process is high and should only be found in very exceptional circumstances.[67] The Claimant also submits that none of the cases cited by the Respondent involve relinquishment of nationality, and there is a significant difference between revocation of nationality and acquisition of nationality.[68] The present case "does not concern acquisition of a new nationality for 'purposes of creating jurisdiction over the dispute'", as the Claimant had acquired German nationality long before the dispute arose.[69] According to the Claimant, what he did was to "remove a procedural obstacle through renunciation", and there is nothing abusive about such an action.[70]

V. THE TRIBUNAL'S ANALYSIS

63. In summary, the Tribunal is of the view that the requirements for jurisdiction rationae personae under Article 25(1) of the ICSID Convention are not met. The Tribunal finds that the Claimant was a dual citizen of Croatia and Germany on the relevant dates for assessing nationality under Article 25(2)(a) of the ICSID Convention, and the Claimant has not

63 Claimant's Rejoinder at [93].
64 Claimant's Post-Hearing Memorial at [30].
65 Claimant's Rejoinder at Heading V.B, [87].
66 Claimant's Counter-Memorial at [12].
67 Claimant's Counter-Memorial at [74].
68 Claimant's Rejoinder at [41] – [42].
69 Claimant's Counter-Memorial at [78] – [82].
70 Claimant's Rejoinder at [49].

discharged his burden to prove that he had relinquished his Croatian citizenship at any time prior to 18 May 2020. ICSID jurisdiction is therefore precluded and the present case should be dismissed.

A. BURDEN OF PROOF

64. The Parties agree that the Claimant bears the burden of proving all facts necessary to establish the Tribunal's jurisdiction under Article 25 of the ICSID Convention.[71]

65. The Claimant must prove conclusively, and not to the prima facie evidential standard, that he meets the jurisdictional requirements of Article 25. As the tribunal in National Gas v. Egypt stated:

> *For present purposes, this approach means that the burden of establishing jurisdiction, including consent, lies primarily upon the Claimant. Although it is the Respondent which has here raised specific jurisdictional objections, it is not for the Respondent to disprove this Tribunal's jurisdiction. Under international law, as a matter of legal logic and the application of the principle traditionally expressed by the Latin maxim "actori incumbit probatio", it is for the Claimant to discharge the burden of proving all essential facts required to establish jurisdiction for its claims. Such jurisdictional facts are not here subject to any "prima facie" evidential test; and, in any event, that test would be inapplicable at this stage of the arbitration proceedings where the Claimant (as with the Respondent) had sufficient opportunity to adduce evidence in support of its case on the bifurcated jurisdictional issues and for the Tribunal to make final decisions on all relevant disputed facts*.[72] [Emphasis added.]

66. Although the Claimant acknowledges that he bears the burden to prove all facts necessary to establish the Tribunal's jurisdiction, he submits that the Respondent bears the burden of proof "with regard to any assertions that alters the record from the claimant's jurisdictional case".[73] The Claimant submits, referring to Pey Casado v. Chile, that for cases where a

---

71 Respondent's Memorial at [6] and [122]; Claimant's Counter-Memorial at [17].

72 Ex. RL-040, *National Gas S.A.E. v. Arab Republic of Egypt*, ICSID Case No. ARB/11/7, Award, 3 April 2014 at [118].

73 Claimant's Counter-Memorial at [17] (grammar in original).

respondent disputes a claimant's nationality, it is the respondent who bears the burden of proof for that contention.[74]

67. The Tribunal disagrees with the Claimant's submission insofar as it puts forth a general rule that where a claimant's nationality is in dispute, respondents always bear the burden of proving that the claimant does not have the requisite nationality. In the Tribunal's view, once the Claimant is able to discharge his persuasive burden (i.e., once he proves the facts necessary to establish the Tribunal's jurisdiction), the persuasive burden then shifts to the Respondent to show why the Tribunal should not have jurisdiction. Accepting a general rule that respondents always bear the burden of dis-proving a claimant's nationality would be flipping the ordinary burden on its head, and the Tribunal finds that Pey Casado v. Chile does not establish such a proposition. In that case, the annulment committee expressly noted that it was only after the claimant had discharged its burden of proving that Mr. Pey Casado had renounced his Chilean nationality that the tribunal then looked to Chile to prove that his renunciation was invalid.[75] The burden therefore rested on the Claimant in the first instance and Pey Casado v. Chile was simply an application of the usual standard.

B. ANALYSIS

(1) Applicable Law on Jurisdiction

68. Articles 25(1) and 25(2)(a) of the ICSID Convention provide:

> *(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:*

---

74 Claimant's Counter-Memorial at [20], referring to Ex. CL-026, *Victor Pey Casado And Foundation "Presidente Allende" v. Republic of Chile*, ICSID Case No. ARB/98/2, Decision on the Application for Annulment of the Republic of Chile, 18 December 2012 ("***Pey Casado v. Chile***") at [121].

75 Ex. CL-026, *Pey Casado v. Chile* at [121].

> *(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 …*

69. As this Tribunal has explained in its Rule 41(5) Decision,[76] Article 25 of the ICSID Convention contains both "positive" and "negative" nationality tests. The "positive" test is that the natural person must have the nationality of a State which is a party to the Convention. The Claimant's assertion that he held German nationality at all material times has not been contested by the Respondent.[77] The Respondent has contended that the Claimant perpetuated a "falsehood" by initially claiming that he was a German citizen "all [his] life", yet later admitting that he only acquired German citizenship in 1995.[78] In the Tribunal's view, this may affect the Claimant's credibility but the Tribunal notes that the Respondent does not dispute that the Claimant was a German citizen since 1995, and at the relevant dates under Article 25(2)(a) of the ICSID Convention. There is therefore no dispute that the "positive" test has been fulfilled in this case.

70. The "negative" test in Article 25 of the ICSID Convention is that the natural person must not have the nationality of the Contracting State party with which it has a dispute on two dates: the date on which the parties consented to submit such dispute to arbitration and the date on which the request was registered. Whether the "negative" test is fulfilled is disputed in the present case. In this regard, the Claimant must establish, to the requisite standard, that he was not a Croatian national on both of the two relevant dates.

71. There is no dispute that the Claimant is no longer a Croatian national. The critical inquiry is the question of when the Claimant ceased to be a Croatian national.

---

76 Rule 41(5) Decision at [58] – [59].

77 Request for Arbitration at [17(a)]; Respondent's Memorial at [19]; Claimant's Counter-Memorial at [32].

78 Respondent's Memorial at [17] – [19].

(2) Applicable Law on Nationality

72. In the Tribunal's view and for the reasons below, the Claimant remained a dual national of Germany and Croatia until 18 May 2020.

a. Nationality under Article 1(b) of the Protocol to the BIT

73. The starting point is Article 1(b) of the Protocol to the BIT, which provides:

> *Without prejudice to any other method of determining nationality, in particular any person in possession of a national passport issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Party.*[79]

74. As Prof. Dr. Schreuer observes, this provision is inclusive ("any person") as well as imperative ("shall be deemed"), and under the ordinary meaning of this provision, possession of a passport is conclusive proof of nationality, although other methods to prove nationality remain admissible ("[w]ithout prejudice to any other method of determining nationality").[80]

75. Applying the test in Article 1(b) of the Protocol to the BIT, the Claimant would be deemed to be a Croatian national until 18 May 2020, the date that his passport was cancelled.

76. In this regard, it is undisputed by the Parties that on 18 May 2020, the Interior Ministry's Decision dated 30 April 2020[81] was served on the Claimant's designated representative, his father. The Interior Ministry's Decision approved the Claimant's request for discharge of citizenship and expressly stated that the Claimant's passport and national identity card were "Cancelled on the date: 18/05/2020". The Interior Ministry's Decision stated:

---

79 Ex. 001 to Request for Arbitration, BIT Protocol, Article 1(b).

80 Schreuer Legal Opinion at [58] – [59].

81 Ex. R-006, Decision of the Ministry of the Interior regarding the Request for Discharge of Croatian Citizenship of Marko Mihaljević dated 30 April 2020 ("**Interior Ministry's Decision**"), with Delivery Notice dated 18 May 2020; Ex. R-042, Memorandum from the Zagrebačka County Police Administration dated 5 February 2020, attaching Power of Attorney for Marko Mihaljević.

> *The following person is discharged from Croatian citizenship MARKO MIHALJEVIĆ (father SREĆKO), born on 10/01/1981, place of birth LANGEN, GERMANY.*[82]

77. The Claimant has not challenged the legality of the Interior Ministry's Decision, nor has he claimed that the Interior Ministry's Decision was not validly served on him.[83] An application of the test in Article 1(b) of the BIT Protocol, on its own, would therefore lead to the conclusion that the Claimant only ceased to be a Croatian citizen after 18 May 2020 and accordingly, he would have been a dual national of Croatia and Germany until 18 May 2020.

78. However, the Claimant argues that the Tribunal should make its own "independent determination" as to the Claimant's nationality,[84] because a "contractual clause inserted in the investment agreement concerning the investor's nationality creates a strong presumption in favour of the existence of the stipulated nationality, but it cannot create a nationality that does not exist".[85]

79. Moreover, the Tribunal observes that Article 1(b) of the Protocol to the BIT is expressly stated to be "[w]ithout prejudice to any other method of determining nationality". This phrase indicates that Article 1(b)'s test is only presumptive, and it may be rebutted by a different conclusion pursuant to other methods of determining nationality. In addition, the Tribunal notes that Article 25(2)(a) of the ICSID Convention sets forth a "negative" nationality requirement which must be met independently from the requirements of the instrument of consent, in this case, the BIT. As the ICSID Convention foresees no specific method for determining the nationality of an investor, such a determination must be made in accordance with general principles of international law, and these general principles of international law themselves require examination of the applicable municipal law of the state of nationality. In this regard, the Parties have submitted that Croatian law on

---

82 Ex. R-006, Interior Ministry's Decision.

83 Claimant's Counter-Memorial at [16].

84 Claimant's Counter-Memorial at [29].

85 Claimant's Counter-Memorial at [46], quoting Ex. CL-030, M. Purice, "Chapter 4: Natural Persons as Claimants under the ICSID Convention" in C. Baltag., ed., *ICSID Convention after 50 Years: Unsettled Issues* (Kluwer Law International: 2016), at p150.

determining an individual's nationality should be examined, and it is to these submissions that the Tribunal now turns.

b. Nationality under Croatian law

80. It was not disputed by the Parties that Croatian law governs the questions of when the Claimant ceased to be a Croatian citizen and how Croatian citizenship may be relinquished.

81. In this regard, this Tribunal notes the statement by the annulment committee in Soufraki v. UAE that nationality is within the reserved domain of States, and due respect must be given to nationality laws of States,[86] but that an international tribunal is empowered to determine whether a party has the alleged nationality in order to ascertain its own jurisdiction, and is unhindered by national documentation on the very issue:

> [T]*he principle is in fact well established that international tribunals are empowered to determine whether a party has the alleged nationality in order to ascertain their own jurisdiction, and are not bound by national certificates of nationality or passports or other documentation in making that determination and ascertainment*.[87]

82. At the same time, the Tribunal also notes that sovereign authorities' decisions relating to nationality are not to be easily departed from, and some international tribunals have described this high threshold as a "strong presumption of validity".[88] Others have required fraud or material error before the sovereign authorities' decisions can be departed from.[89]

83. In the present case, the contents of Croatian law on the relinquishment of Croatian citizenship are largely undisputed by the Parties. The Respondent's expert Dr. Sc. Sanja Otočan was unchallenged in her evidence that Croatian law (i.e., the Croatian Citizenship

---

86 Ex. CL-009, *Hussein Nuaman Soufraki v. United Arab Emirates*, ICSID Case No. ARB/02/7, Decision on Annulment, 5 June 2007 ("***Soufraki v. UAE***") at [60].

87 Ex. CL-009, *Soufraki v. UAE* at [64].

88 Ex. RL-089, *Sergei Viktorovich Pugachev v. Russian Federation*, UNCITRAL, Award on Jurisdiction, 18 June 2020 ("***Pugachev v. Russia***") at [308] – [309].

89 Ex. RL-089, *Pugachev v. Russia* at [323]; Ex. RL-095, *Mr. Franck Charles Arif v. Republic of Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013 at [357]; Ex. RL-090, *Tza Yap Shum v. Republic of Peru*, ICSID Case No. ARB/07/6, Decision on Jurisdiction and Competence, 19 June 2009 (excerpt) at [57].

Act) draws a distinction between "*otpust*" (discharge) and "*odricanjem*" (renunciation) of Croatian citizenship.[90]

84. According to Dr. Sc. Otočan, discharge is the more complex method of relinquishing Croatian citizenship, and an administrative procedure is conducted to determine if the legal requirements for discharge have been met, after which a decision on the request is issued.[91] In other words, a request for discharge of citizenship is not an "automatic right"; the Ministry of the Interior may nonetheless reject a request for discharge if any of the prescribed requirements for discharge are not met, or if there are other reasons (including based on administrative discretion) for the request to be rejected.[92] Discharge is regulated by Article 18 of the Croatian Citizenship Act, which provides:

Article 18

> *Discharge from Croatian citizenship may be granted to a person who submitted a request for discharge and meets the following requirements:*
>
> *1. they are older than 18 years of age;*
>
> *2. there are no obstacles regarding mandatory military service;*
>
> *3. they have settled all their due taxes, dues, and other public fees, as well as outstanding debts towards legal and natural persons in the Republic of Croatia for which there is an enforceable title;*
>
> *4. they have legally regulated their property obligations resulting from a marriage and from their relationship between parents and children, toward Croatian citizens and toward persons who will remain living in the Republic of Croatia;*
>
> *5. they have citizenship of a foreign country or they have proof that they will be admitted to the citizenship of a foreign country.*
>
> *A discharge from Croatian citizenship cannot be obtained by a person against whom there is an ongoing criminal procedure for*

---

90 Respondent's Memorial at [77]; First Otočan Report at [6] – [7]; Ex. RL-001 / SO-001, Croatian Citizenship Act, ("**CCA**"), Article 17.

91 First Otočan Report at [9].

92 First Otočan Report at [17] – [22].

> *offences prosecuted ex officio or, if the person is convicted to serve a prison sentence in the Republic of Croatia, they cannot obtain a discharge until that sentence has been served*.[93]

85. In contrast, the procedure for a renunciation of Croatian citizenship is relatively less complex.[94] Renunciation is initiated by the applicant's submission of a request for revocation of Croatian citizenship by renunciation to the competent public authority body, i.e., the Ministry of the Interior. That request must include certain attachments, including a declaration on renunciation that meets the applicable requirements under the CCA.[95] Renunciation is governed by Article 21 of the CCA, which provides:

> *Article 21*
>
> *A person of legal age who is a Croatian citizen with residency abroad, who also has foreign citizenship, may renounce their Croatian citizenship.*
>
> *A person who renounced their Croatian citizenship after they became of legal age cannot re-acquire Croatian citizenship*.[96]

86. According to Dr. Sc. Otočan, two cumulative requirements must be met: the intention of the person to renounce Croatian citizenship (as a subjective element) and the manifestation of that will (as an objective element):

> *i. the will of the applicant to renounce Croatian citizenship: this is a subjective element that must be proven; and*
>
> *ii. the objective manifestation of the applicant's will: it is not enough that the person has an intention or wish, i.e., have the will to renounce Croatian citizenship, but also that intent and will for renunciation must be clearly – objectively manifested, meaning that the person who wishes to renounce Croatian citizenship must express that will by a clear and unequivocal declaration on renunciation. It is therefore not enough that the applicant mark the option "RENUNCIATION" in the request. The applicant must also submit a declaration on renunciation that meets the applicable*

---

93 First Otočan Report at [14] – [18]; Ex. RL-001 / SO-001, CCA, Article 18.

94 First Otočan Report at [10].

95 Third Otočan Report at [10].

96 First Otočan Report at [23]; Ex. RL-001 / SO-001, Article 21.

> *requirements under the* [Croatian Citizenship Act].[97] [Emphasis in original.]

87. It is therefore not sufficient that the person has a subjective intention or will to renounce Croatian citizenship; that intention or will must be objectively manifested by way of the declaration on the relevant form. The prescribed form is provided by the Ministry of the Interior's Regulation on the Request Forms for the Acquisition of Croatian Citizenship by Naturalisation and for the Revocation of Croatian Citizenship,[98] which explicitly requires that there be a "signed and dated declaration on the renunciation of Croatian Citizenship". If the requirements for renunciation are met, a decision on the revocation of Croatian citizenship by renunciation is issued, and such a decision is a "declaratory administrative act".[99] If a "positive" renunciation decision is issued, the Croatian citizenship of the applicant will end on the date the declaration on the renunciation of Croatian citizenship was submitted.[100]

88. According to Dr. Sc. Otočan, the expression of the applicant's intention or will to renounce his citizenship must be clear and unequivocal.[101] This requirement is clear from the formal requirements of the "signed and dated declaration on the renunciation of Croatian Citizenship", which requires amongst other things for the declaration to "state unequivocally that the applicant renounces his Croatian citizenship".[102]

89. The distinction between a "discharge" and a "renunciation" of Croatian citizenship is important in the present case because there is a difference in the effective date of the relinquishing of citizenship. According to Dr. Sc. Otočan, the effective date for an applicant who seeks a discharge is the date the discharge decision is delivered (assuming a "positive" discharge decision by the Ministry of the Interior).[103] In contrast, the effective date for an

---

97 Third Otočan Report at [10].

98 Third Otočan Report at [11]; Ex. SO-009, Croatian Regulation on the Request Forms for the Acquisition of Croatian Citizenship by Naturalisation and for the Revocation of Croatian Citizenship.

99 First Otočan Report at [26].

100 First Otočan Report at [27].

101 Third Otočan Report at [10].

102 Third Otočan Report at [11] – [13].

103 First Otočan Report at [15].

applicant who seeks a renunciation is the date the declaration on the renunciation of Croatian citizenship was submitted (assuming a "positive" renunciation decision by the Ministry of the Interior).[104] In the words of Dr. Sc. Otočan, "while the legal effects of the decision on the revocation of citizenship by discharge are effective ex nunc, the legal effects of the decision on the revocation of citizenship by renunciation are effective ex tunc".[105]

90. The Claimant does not challenge Dr. Sc. Otočan's description of Croatian law, and neither does he challenge the applicability of these rules in the present case. The Claimant submits that the test for renunciation is satisfied in that he had indeed objectively manifested his will to renounce his Croatian citizenship on 5 November 2019, notwithstanding that he had submitted a form selecting "discharge" to the Croatian Ministry of the Interior on that date.[106] The Respondent disputes this and argues that the Claimant received "precisely what he asked for: a discharge of citizenship, which became effective and binding under Croatian law on May 18, 2020".[107]

(3) Whether the Claimant objectively manifested a will to renounce his Croatian citizenship

91. The Tribunal is not persuaded that there is sufficient evidence that the Claimant had objectively manifested a will to renounce his Croatian citizenship on 5 November 2019. Even if the Tribunal accepts the Claimant's version of events on 5 November 2019 as true, the Claimant's actions were equivocal at best, and this would not suffice to discharge his burden to show that he had unequivocally and objectively manifested an intent or will to immediately renounce his Croatian citizenship on 5 November 2019.

---

104 First Otočan Report at [27].

105 First Otočan Report at [27].

106 Claimant's Counter-Memorial at [37].

107 Respondent's Post-Hearing Memorial at [30].

a. The documentary record consistently indicates that the Claimant sought a discharge

92. First, the documentary record in this case shows that the Claimant had clearly and consistently requested a discharge of citizenship from the Croatian authorities.

93. In this regard, all of the documents submitted by the Claimant to the Croatian Ministry of the Interior on 5 November 2019 consistently selected a "discharge" rather than a "renunciation":

a. The Claimant circled "*otpust*" ("discharge") as his choice for termination of citizenship on the application form;[108]

b. The Claimant submitted a "resume" and an "explanation" in his own handwriting stating that he wanted a "*otpust*" ("discharge") from Croatian citizenship:[109]

i. in his "explanation", the Claimant wrote, "I am requesting discharge from Croatian citizenship for the reasons of employment …" (Croatian original: "*Otpust iz hrvatskog drzvljanstva molim iz razloga za poslenja …*")[110] (emphasis added);

ii. in his "resume", the Claimant wrote, "I have been living and working in Germany … and now, as a condition to start employment in a new job, I am required to be discharged from Croatian citizenship" (Croatian original: "*zivim i radim u Njemacoj ... a sada za dobivanje radnog mjesta uvjed mi je otpust iz hrvatskog drzavljanstvo*")[111] (emphasis added); and

c. The Claimant submitted a request to the Croatian Ministry of the Interior in his own handwriting seeking "confirmation" that he had submitted a request for "*otpust*"

---

108 Ex. R-045, Marko Mihaljević Citizenship Revocation Application (R-01-0002).

109 Ex. R-045, Marko Mihaljević Citizenship Revocation Application (R-01-0003 and R-01-006); Ex. R-005, Request for Discharge of Croatian Citizenship of Marko Mihaljević dated 5 November 2019 (pp3, 6).

110 Ex. R-005, Request for Discharge of Croatian Citizenship of Marko Mihaljević dated 5 November 2019 (p 3).

111 Ex. R-005, Request for Discharge of Croatian Citizenship of Marko Mihaljević dated 5 November 2019 (p 6).

("discharge"), claiming that he needed it for "foreign bodies of the state of Germany".[112]

94. The Tribunal also notes that the documents that had been prepared in advance of the Claimant's visit to the Ministry of the Interior on 5 November 2019 (and thereafter submitted by the Claimant) were also consistent with a "discharge" application and not a "renunciation" application:

a. At the Hearing, the Claimant acknowledged that in the week prior to his visit to the Croatian Ministry of the Interior on 5 November 2019, the Claimant and his father had gathered documents for the application to relinquish his citizenship, and the gathered documents were subsequently submitted to the Ministry of the Interior.[113]

b. However, the Claimant did not submit on 5 November 2019 a signed and dated declaration of renunciation of Croatian citizenship, which is specially listed in the regulations as a requirement for applications to revoke citizenship by renunciation.[114]

c. When questioned about his failure to prepare and submit such a declaration of renunciation, the Claimant's response was simply that "[i]f there is no declaration, well, then I must not have wrote one and nobody asked me to provide one".[115]

d. Even if the Tribunal accepts the Claimant's evidence that the officials at the Ministry of the Interior advised him to submit a "discharge" rather than a "renunciation" application, the Claimant has failed to explain why he had prepared all the supporting documents for a "discharge" application in advance of his visit to the Ministry to the Interior. The Claimant's conduct in preparing the supporting documents for a "discharge" rather than a "renunciation" application therefore casts

112 Ex. R-045, Marko Mihaljević Citizenship Revocation Application (pR-01-0055).

113 Tr. Day 1, 177:5 – 178:1.

114 Ex. SO-009, Croatian Regulation on the Request Forms for the Acquisition of Croatian Citizenship by Naturalisation and for the Revocation of Croatian Citizenship.

115 Tr. Day 1, 195:2 – 195:10.

doubt on whether he had truly intended a renunciation procedure; it suggests to the contrary that the Claimant indeed intended to submit a "discharge" application.

95. The documentary record in the present case therefore indicates that the Claimant intended to submit a discharge application.

b. The Claimant continued seeking a discharge even after being put on notice

96. Second, the Claimant continued to insist on a discharge of his citizenship even after 6 December 2019, and even after being put on notice that his application was being treated as a discharge and not a renunciation.

97. By 30 December 2019, the Claimant would have known that the Croatian Ministry of the Interior was treating the Claimant's application as a discharge rather than a renunciation application. Two letters were sent by the Respondent to ICSID in December 2019 (both of which the Claimant received), stating that the Claimant's application was a "discharge" and that a decision from the Ministry of the Interior had not yet been rendered.

98. The letter from the Respondent to ICSID dated 11 December 2019, which the Claimant received,[116] states that the Claimant still held Croatian citizenship and that his application to revoke his citizenship filed on 5 November 2019 remained pending.[117] Notably, the letter states:

> *Furthermore, Mr. Mihaljević's request to be discharged from the Croatian citizenship does not mean that he has been automatically discharged from it for the following reasons …*
>
> …
>
> *It is clear from the cited provisions [of Articles 17, 18 and 26 of the Croatian Citizenship Act] that Mr. Mihaljević's request to renounce his Croatian citizenship does not mean that his citizenship has ceased to exist as it can be either accepted or refused, depending on the decision of the Ministry of the Interior of the Republic of Croatia which has not yet been rendered. Furthermore, decisions of the*

---

116 The Claimant sent to ICSID on 23 December 2019 a letter in response to the Respondent's 11 December 2019 letter: Ex. R-003.

117 Ex. R-001, Letter from the Respondent to ICSID dated 11 December 2019 at [4] – [7].

> *Ministry of the Interior of the Republic of Croatia which accept the application for acquisition or termination of citizenship have a constitutive effect, so consequently the decision on the discharge from the Croatian citizenship also has a constitutive effect on the cease of the citizenship and a citizen is discharged from Croatian citizenship only when such a decision is final*.[118] [Emphasis added.]

99. The Tribunal notes that the Respondent's letter dated 11 December 2019 contains a sentence describing the Claimant's 5 November 2019 application as a "request to renounce his Croatian citizenship". However, all other references to the Claimant's application in that letter are stated to be "discharge" requests. In the Tribunal's view, it is clear from the letter, read as a whole, that the Respondent was treating the Claimant's application as a "discharge", and the Tribunal would not place much weight on the single reference to a "request to renounce" in the circumstances.

100. In any event, any ambiguity would have been put to rest when the Claimant received the letter from the Respondent to ICSID dated 30 December 2019,[119] which states:

> *… Following ICSID's instruction of 17 December 2019 to address the issue of the discharge from Croatian citizenship, Mr. Mihaljević has sent a submission stating that Mr. Mihaljević has renounced his Croatian citizenship and that article [sic] Article 24a of the Croatian Citizenship Act (Official Gazette no. 53/91, 70/91, 28/92, 113/93-Constitutional Court decision, 4/94 and 130/11) applies to this situation. Furthermore, Mr. Mihaljević argues that he is not Croatian citizen any more.*
>
> *The State Attorney's Office of the Republic of Croatia respectfully submits that the above statement is wrong for several reasons*
>
> *First of all the translation of the Certificate of the Immigration, Citizenship and Administration Division of the Zagreb Police Administration of the Ministry of the Interior of the Republic of Croatia of 5 November 2019 is incorrect because the Croatian version states that Mr. Mihaljević has filed a request for discharge (not to renounce) from the Croatian citizenship according to the Article 18 of the Croatian Citizenship Act. This means that the procedure laid down by the Article 18 of the Croatian Citizenship Act applies. The evidence to the fact that the translation of the Certificate of Immigration, Citizenship and Administration Division*

118 Ex. R-001, Letter from the Respondent to ICSID dated 11 December 2019 at [4] – [6].

119 Respondent's Reply Memorial at [116].

> *of the Zagreb Police Administration of the Ministry of the Interior of the Republic of Croatia of 5 November 2019 is wrong arises from the simple fact that even this incorrect translation rightly states that the request has been made In accordance with the Article 18 of the Croatian Citizenship Act.*
>
> …
>
> *Finally, as mentioned in earlier submission of the State Attorney's Office of the Republic of Croatia of 11 December 2019, Mr. Mihaljević's request to be discharged from Croatian citizenship does not mean that his Croatian citizenship has already ceased to exist as it can be either accepted or refused, depending on the decision of the Ministry of the Interior of the Republic of Croatia which has not yet been rendered.*[120] [Emphasis in original.]

101. Having received the Respondent's letters to ICSID dated 11 and 30 December 2019 expressly drawing attention to the difference between discharge and renunciation (and that what the Claimant had sought was a discharge and not a renunciation), what the Claimant nonetheless continued to insist on was a discharge of his citizenship.

102. At this stage, the Claimant could have submitted a fresh request for renunciation to the Croatian Ministry of the Interior. In this regard, Dr. Sc. Otočan stated (and was not challenged) that an applicant may change his or her request for discharge into a request for renunciation at any time until the decision has been made by the Ministry of the Interior on the original request.[121] However, the Claimant did not attempt to change his discharge request into a renunciation request.

103. Instead, two "rush orders" were submitted on behalf of the Claimant requesting that the Croatian Ministry of the Interior grant an "*otpust*" ("discharge"), on 2 January 2020 and 10 March 2020.[122] The first of these "rush orders" was sent just three days after the Respondent's letter to ICSID dated 30 December 2019. Each of these "rush orders"

---

120 Ex. R-004, Letter from the Respondent to ICSID dated 30 December 2019 at [1] – [3], [7].

121 Third Otočan Report at [25] – [26].

122 Ex. SO-011, Rush Order for Decision on Discharge of Citizenship for Marko Mihaljević dated 2 January 2020; Ex. SO-012, Rush Order for Decision on Discharge of Citizenship for Marko Mihaljević dated 10 March 2020.

requested the addressee to "act expeditiously" and "issue a decision on the discharge from Croatian citizenship". The term "*otpust*" ("discharge") is used in each rush order.

104. In the Tribunal's view, these "rush orders" show that the Claimant chose to maintain his "discharge" application rather than submit a renunciation application and/or invite the Croatian authorities to clarify the situation. Even if the Claimant had misunderstood the distinction between "discharge" and "renunciation" when he visited the Croatian Ministry of the Interior on 5 November 2019, the fact that he submitted these "rush orders" after having been apprised of this distinction is telling.

105. At the Hearing, counsel for the Respondent questioned the Claimant on why "rush orders" were being issued if the Claimant believed that his Croatian citizenship had already been renounced with immediate effect. The Claimant had no explanation other than to state that he wanted to have his Croatian citizenship discharged:

> *Q. And then let me ask you--let me take you to SO-12. This is the rush order of March 9, 2020 Same issue: Your father is continuing to request discharge and not renunciation.*
>
> *My question to you is: If you thought that you had already renounced with immediate effect, why are you issuing rush orders?*
>
> A. *Because I wanted to have that I had been discharged, that I was no longer a Croatian citizen.*[123]

106. Even after the Interior Ministry's Decision was issued on the Claimant's discharge application (and served on the Claimant's designated representative on 18 May 2020), the Claimant chose not to challenge the Decision before the administrative courts in Croatia. At the Hearing, the Claimant admitted that his father explained to him that he was no longer a citizen as of 18 May 2020, and the Claimant simply decided to "leave it at that":

> *Q. Okay. But my point is that, according to now what you've said, your point there was that your father told you that you were now not legally a Croatian citizen anymore as of May 18, 2020, according to the Croatian authorities, and that's what you left it at; correct?*

[123] Tr. Day 1, 229:13-21.

A. Yes, I did leave it at that.[124]

107. The Tribunal therefore finds that the Claimant's actions after being put on notice that the Respondent was treating his application as a discharge and not a renunciation, are telling of the Claimant's objective intent or will at the material time (i.e., to consistently seek a discharge and not a renunciation).

108. In the face of the evidence set out above (which consistently indicates that the Claimant sought a discharge), the Claimant points to two acts that he says constituted his objectively-manifested intent or will to renounce his Croatian citizenship with immediate effect. According to the Claimant, his intent or will to renounce was communicated to the officials at the Croatian Ministry of the Interior on 5 November 2019,[125] and thereafter "reiterated" on 6 December 2019 by way of a letter from the Claimant's counsel to ICSID.[126] The Claimant also contends that he had "substantially complied" with all "legally regulated requirements"[127] to have renounced his Croatian citizenship, and this Tribunal should therefore consider that he had renounced his Croatian citizenship immediately as at 5 November 2019. Each of these arguments will be dealt with below.

c. The Claimant's account of his visit to the Ministry of the Interior

109. Much of the Claimant's case rests upon his account of his visit to the Croatian Ministry of the Interior on 5 November 2019 and in particular, his claim that he had expressed a will to renounce his citizenship immediately but made a "mistake" upon being given "misleading advice" by the officials.[128] However, the Tribunal has difficulties accepting the Claimant's account of his visit to the Croatian Ministry of the Interior.

110. The Tribunal first notes that the Claimant's father, Mr. Mihaljević senior, was never called as a witness despite being present at the Claimant's visit to the Ministry of the Interior on 5 November 2019.[129] It certainly cannot be said that there were any difficulties in procuring

---

124 Tr. Day 1, 232:20 – 233:4.

125 First Mihaljević Statement at [5] – [6]; Second Mihaljević Statement at [4].

126 Claimant's Counter-Memorial at [37].

127 Claimant's Post-Hearing Memorial at [19]; Claimant's Counter-Memorial at [34].

128 Claimant's Counter-Memorial at [54].

129 Second Mihaljević Statement at [5].

Mr. Mihaljević senior's attendance, because Mr. Mihaljević senior in fact attended the Rule 41(5) Hearing as well as the jurisdictional Hearing.[130] The Claimant's account of the events that transpired on 5 November 2019 was simply uncorroborated by any other witness.

111. Moreover, the Claimant's account of his visit to the Croatian Ministry of the Interior has changed several times over the course of these proceedings.

112. For example, the Tribunal notes that it was only at the Rule 41(5) Hearing that the Claimant stated for the first time that the officials at the Croatian Ministry of the Interior advised him to request a "discharge" in his application.[131] This was not mentioned in two previous witness statements submitted by the Claimant in the Rule 41(5) proceedings. The Claimant then alleged in his Fourth Witness Statement dated 15 August 2022 that the officials took his passport and "cut" it on 5 November 2019,[132] and on the first day of the jurisdictional Hearing asserted that not only was his passport "cut"; but it was also hole-punched as well.[133] As the Respondent has highlighted,[134] the Claimant had never asserted that his passport was "cut" despite three prior witness statements and testimony at the Rule 41(5) Hearing. Nor had that assertion been made in previous legal submissions by the Claimant's counsel. On the contrary, the Claimant had testified at the Rule 41(5) Hearing that he had tried to turn over his passport to the officials on 5 November 2019, but they would not accept it.[135] The Claimant has no explanation for why he failed to mention this detail on which he now relies, save to say that he had "misremembered".[136]

113. Whilst the Tribunal is not persuaded that the act of cutting or hole-punching the Claimant's passport has any material bearing on the issue, the shifts in the Claimant's case cast some doubt on the credibility of the Claimant's account. Coupled with the Claimant's failure to produce any corroborating witness (despite one being seemingly available), the Tribunal

130 Respondent's Post-Hearing Memorial at [51].
131 Respondent's Post-Hearing Memorial at [37].
132 Fourth Mihaljević Statement at [5].
133 Tr. Day 1, 212:5 – 212:15.
134 Respondent's Post-Hearing Memorial at [46].
135 Rule 41(5) Hearing Tr. Day 2, 128:4-11.
136 Hearing Tr. Day 1, 212:10.

has difficulty accepting the Claimant's evidence on his account of his visit to the Ministry of the Interior on 5 November 2019.

114. In any event, even if the Claimant's account of events at the Croatian Ministry of the Interior during his visit on 5 November 2019 were true (including that he had verbally expressed an intention to "renounce" his Croatian citizenship but that he had "erroneously or mistakenly filled out paperwork"[137]), the Claimant's actions, taken as a whole, are at best equivocal in showing his will or intent. The Claimant may have been advised on 5 November 2019 to tick the box indicating "discharge", but the Claimant upon being put on notice that his application was being treated as a "discharge" application then submitted two "rush orders" to affirm his "discharge" application. In these circumstances, the Tribunal finds it hard to consider that the Claimant has discharged his burden to show that he had objectively manifested a clear and unequivocal will or intent to obtain an immediate "renunciation".

d. The Claimant's counsel's letter to the Croatian President dated 6 December 2019

115. In the Tribunal's view, neither does the Claimant's counsel's letter to the Croatian President dated 6 December 2019[138] avail the Claimant. The Tribunal is unpersuaded by the Claimant's submission that this letter was a "clarification" of his desire to renounce his citizenship, which had previously been addressed on 5 November 2019.[139]

116. In the first place, the letter dated 6 December 2019 could not have been a clarification of a previous intent (or a demonstration of a present intent) to renounce, because that is not how the letter is worded. It is clear from the text of the letter dated 6 December 2019 (titled ("Re: Reaffirmation Of Acceptance Of Offer to Arbitrate Disputes Under the Germany-Croatia Bilateral Investment Treaty") that its purpose was to "reaffirm [the Claimant's] acceptance of the standing offer found at Article 11(2) of the Treaty to arbitrate disputes with German investors" and to notify the Respondent that the Claimant "will be submitting

137 Hearing Tr. Day 1, 234:2.

138 Ex. C-010, Letter from the Claimant's counsel to the President of Croatia dated 6 December 2019.

139 Claimant's Post-Hearing Memorial at [16].

a renewed request for arbitration pursuant to the ICSID Convention". The relevant sections of the letter state:

> *Mr. Mihaljević submitted a Request for Arbitration to ICSID on October 18, 2019, after more than six months had elapsed from the service of his Notice of Dispute. Although Mr. Mihaljević had standing to commence arbitration pursuant to Article 11(2) of the Treaty, his Request for Arbitration was ultimately withdrawn on account of Article 25(2)(a) of the ICSID Convention upon Mr. Mihaljević's coming to understand that he potentially could be deemed a dual national of Germany and Croatia.*
>
> *On November 5, 2019, Mr. Mihaljević appeared before the Croatian Interior Ministry in Zagreb and formally renounced his Croatian citizenship. A signed certificate to that effect from the Immigration, Citizenship and Administration Division of the Zagreb Police Administration of the Interior Ministry is attached (Annex 2) to this letter. As a result, as of that date, there is no possible argument that Mr. Mihaljević is still a citizen of Croatia.*
>
> *Mr. Mihaljević accordingly takes this opportunity to reaffirm his acceptance of the standing offer found at Article 11(2) of the Treaty to arbitrate disputes with German investors arising under the Treaty. Please be advised that, with the requirements of Article 25(2)(a) of the ICSID Convention now satisfied, Mr. Mihaljević will be submitting a renewed request for arbitration pursuant to the ICSID Convention.* [Emphasis added.]

117. The letter refers to the application made by the Claimant on 5 November 2019 and represents that that application was a renunciation. The very next sentence refers to the Certificate issued by the Immigration, Citizenship and Administration Division of the Zagreb Police Administration of the Interior Ministry (the "**Certificate**"),[140] and the statement that the Certificate is "to that effect". However, as the Respondent subsequently highlighted by way of a letter sent just five days later,[141] that Certificate used the word "*otpust*" ("discharge") in describing the type of revocation of citizenship that Claimant requested.[142]

---

140 Ex. 010 to the Request for Arbitration, Certificate No. 511-19-23/2-10281/19 issued by the Zagreb Police Administration of the Croatian Ministry of the Interior date 5 November 2019.

141 Ex. R-001, Letter from Respondent to ICSID dated 11 December 2019.

142 Respondent's Memorial at [80].

118. In other words, the Claimant's letter dated 6 December 2019 was not an expression or clarification of his will; it was a mistranslation of the Certificate. Had the Claimant genuinely intended to submit a renunciation application, the Claimant should have immediately (upon being put on notice that the Certificate specified "*otpust*") taken steps to rectify the situation. He could have submitted a fresh renunciation application or taken other steps to bring his intent to renounce to the attention of the relevant Croatian authorities. He did not do so.

e. The "legally regulated requirements" for a renunciation of citizenship

119. The Tribunal is also not persuaded by the Claimant's submission that his "substantial compliance" with all "legally regulated requirements"[143] sufficiently discharges his burden in the present case.

120. A crucial plank to the Claimant's case is his submission that he had "substantially" met all legally regulated requirements for renunciation to have taken place and therefore the Tribunal should not "prioritize form over substance".[144] This follows from the Claimant's submission that renunciation is a "self-executing", "declaratory administrative act" that "declares rights and obligations established at the moment that legal regulated requirements are met" and in respect of which "the key element is the intention of the person who renounced their Croatian citizenship".[145] According to the Claimant, he had met the explicit requirements of Article 21 of the Croatian Citizenship Act (i.e., providing for "renunciation") on 5 November 2019,[146] and had "substantially complied with the requirements under the applicable regulation" when he submitted his discharge application along with the supporting documents thereto.[147] The Claimant submits therefore that a "stringent application of Croatian law is unwarranted".[148]

---

143 Claimant's Post-Hearing Memorial at [19]; Claimant's Counter-Memorial at [34].

144 Claimant's Post-Hearing Memorial at [19].

145 Claimant's Counter-Memorial at [34], citing First Otočan Report at [26].

146 Claimant's Post-Hearing Memorial at [8] – [9].

147 Claimant's Post-Hearing Memorial at [19].

148 Claimant's Post-Hearing Memorial at [21].

121. However, it is common ground between the Parties that the requirements of either procedure ("discharge" versus "renunciation") are neither interchangeable nor identical; there is a difference between the formal requirements for a discharge application and a renunciation application under Croatian law and regulations. Whilst the Claimant says that the formal requirements for both applications are "virtually identical under the applicable regulation",[149] the point remains that they are not identical. In this regard, the Claimant himself acknowledges that there are two additional "requirements" for the renunciation application that do not exist for the discharge application – the requirements that the applicant submit a "signed and dated declaration" on the renunciation of Croatian citizenship and a "certificate of permanent residency abroad".[150]

122. In the Tribunal's view, the Claimant has been unable to prove to the Tribunal's satisfaction that any of the documents he submitted (i.e., the "resume" he had submitted on 5 November 2019[151] or his counsel's letter to the Croatian President dated 6 December 2019[152]) could meet the requirements of applicable regulations[153] and in particular that they constitute such "signed and dated declaration on the renunciation of Croatian citizenship". Dr. Sc. Otočan has opined that neither document would constitute a "signed and dated declaration on the renunciation of Croatian citizenship",[154] and the Claimant has provided no evidence to the contrary, or any expert evidence establishing that either document fulfilled the formal requirements under applicable regulations. Instead, the Claimant has simply asserted that Dr. Sc. Otočan "provides neither legal text nor case law to support any of these requirements or her analysis as to why the letter failed to meet these requirements in her report".[155] But the burden rests with the Claimant, not the Respondent.

---

149 Claimant's Post-Hearing Memorial at [15].

150 Claimant's Post-Hearing Memorial at [19]; Ex. SO-009, Croatian Regulation on the Request Forms for the Acquisition of Croatian Citizenship by Naturalisation and for the Revocation of Croatian Citizenship.

151 Ex. R-045, Marko Mihaljević Citizenship Revocation Application (R-01-0006).

152 Ex. C-010, Letter from the Claimant's counsel to the President of Croatia dated 6 December 2019.

153 Ex. SO-009, Croatian Regulation on the Request Forms for the Acquisition of Croatian Citizenship by Naturalisation and for the Revocation of Croatian Citizenship.

154 Tr. Day 2: 415:3 – 416:15; Third Otočan Report at [34] – [37].

155 Claimant's Post-Hearing Memorial at [18].

123. In the absence of any evidence that "substantial" compliance would suffice to somehow consider him as having "renounced" his citizenship, the Tribunal is unable to find that the Claimant has discharged his burden.

f. Conclusion

124. Considering the above, even if the Claimant's account of events at the Croatian Ministry of the Interior during his visit on 5 November 2019 were true (including that he had verbally expressed an intention to "renounce" his Croatian citizenship), these actions taken cumulatively are at best equivocal in showing his will or intent. Having chosen to accept and abide by the outcome of the discharge application that he had submitted on 5 November 2019; the Claimant has not discharged his burden to show that he had objectively manifested a clear and unequivocal will or intent to obtain an immediate "renunciation".

(4) Whether the Respondent delayed the processing of the Claimant's discharge application in bad faith

125. The Claimant has argued in the alternative that even if the Respondent was justified in processing the Claimant's application as a "discharge" rather than "renunciation", any delay in the processing of this application should be disregarded "as it was the result of Croatia's desire to avoid this arbitration",[156] and that this was done "not in good faith".[157] The Tribunal is unpersuaded by this submission.

126. In the first place, the Claimant has failed to establish that there was any undue delay in the processing of his discharge application. The Claimant has submitted no evidence showing that the time taken for the Respondent to issue a decision on the Claimant's application was unusual or out of the ordinary. On the contrary, Dr. Sc. Otočan's unchallenged evidence is that the Claimant's discharge application had been "reviewed by the Ministry of the Interior pursuant to the normal administrative procedures under the CCA",[158] and

156 Claimant's Post-Hearing Memorial at [22].

157 Claimant's Post-Hearing Memorial at Heading III.B.

158 Third Otočan Report at [43].

that the "duration of the procedure in the case of Marko Mihaljević for discharge from Croatian citizenship did not exceed a reasonable timeframe".[159]

127. Nor has the Claimant argued that there was fraud or any "material error" which rendered the Respondent's determination of the Claimant's nationality as invalid under international law.[160] The Claimant speculates that "May 18, 2020 may have been selected by Croatia because it waited to sign the agreement for the termination of intra-EU bilateral investment treaties on May 5, 2020 in order to create further argument for avoiding Mr. Mihaljević's claims".[161] However, as highlighted by the Respondent, this case (commenced in December 2019) falls within the definition of "new" arbitrations under the 5 May 2020 agreement of the EU Member States to terminate intra-EU bilateral investment treaties (the "**Termination Agreement**"). Therefore, whether the Ministry of the Interior's decision on the Claimant's application was issued in 2019 or 2020 is entirely irrelevant and in any event, the Termination Agreement only entered into force on 25 October 2020 for Croatia and 9 June 2021 for Germany, both dates well after the Decision of 18 May 2020.[162]

128. The Tribunal therefore rejects the Claimant's argument that there was a delay in the processing of the Claimant's discharge application that was done "not in good faith".

(5) The relevant dates for determining nationality

129. For the reasons outlined above, the Claimant has been unable to persuade the Tribunal that he had relinquished his Croatian nationality as of 5 November 2019 (or any time prior to 18 May 2020).

130. It follows from this that the Claimant would have held dual nationality status at the later of the two relevant dates for determining nationality under Article 25(2)(a) of the ICSID Convention.

---

159 First Otočan Report at [54].

160 Respondent's Post-Hearing Memorial at [5].

161 Claimant's Post-Hearing Memorial at [25].

162 Respondent's Reply Memorial at [164] – [167].

131. The later of the two dates is the "date on which the request was registered", which according to the Respondent was 31 December 2019[163] and according to the Claimant was 30 December 2019.[164] Nothing turns on this distinction as both dates are nevertheless earlier than 18 May 2020, but the Tribunal would have been inclined to find that the date of registration was 31 December 2019 because the letter from ICSID to the Parties dated 31 December 2019 stated "[t]he Request, as supplemented, was registered today and has been assigned ICSID Case Number ARB/19/35".[165]

132. There is, therefore, no need for the Tribunal to rule on what was the earlier of the two dates under Article 25(2)(a) of the ICSID Convention. However, as the Parties devoted extensive submissions to the issue, the Tribunal offers some brief observations below.

133. The Tribunal has not been referred to any authority dealing specifically with the issue of determining the date of consent to arbitration for the purposes of Article 25(2)(a) of the ICSID Convention in a situation like the present where the Claimant attempted to give his consent twice. In the Tribunal's view, the starting point must be an examination of the object and purpose of the "negative" nationality requirement in Article 25(2)(a).

134. In this regard, the Tribunal expresses its gratefulness to Prof. Dr. Christoph Schreuer, whose Legal Opinion dated 17 November 2021 greatly assisted the Tribunal. Prof. Dr. Schreuer's unchallenged evidence was that Article 25(2)(a)'s object and purpose was a "strict exclusion" of host State nationals from bringing proceedings against their State of nationality.[166] The importance of the ICSID Convention's "negative" nationality requirement is also underlined by the Report of the Executive Directors[167] and Rule 2(1)(d) of ICSID's Institution Rules, both of which strictly provide that a natural person is ineligible to bring proceedings against his host State. It is therefore incompatible with the ordinary meaning of Article 25(2)(a) of the ICSID Convention, read in good faith in its

163 Respondent's Memorial at [130].

164 Claimant's Counter-Memorial at [32].

165 Ex. R-033, Letter from ICSID to the Parties dated 31 December 2019.

166 Schreuer Legal Opinion at [25].

167 Ex. RL-051, International Bank for Reconstruction and Development, "Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States" dated 18 March 1965 ("**Report of the Executive Directors**"), reprinted in 1 ICSID Reports 23 (1993) (p43).

context and in the light of its object and purpose, for the Claimant to argue that his original declaration of consent on 11 March 2019 does not count for Article 25(2)(a) purposes because his Croatian nationality would have made that consent invalid. According to Prof. Dr. Schreuer, Article 25(2)(a) states that the nationality of the investor is to be determined by reference to the date on which the parties gave their consent; it does not state that the date of consent will depend on the investor's nationality status and eligibility.[168] Prof. Dr. Schreuer therefore concludes:

> *In the present case, the Claimant gave his consent to ICSID's jurisdiction by letter dated 6 February 2019, provided to Respondent with an English translation on 11 March 2019. The letter was titled "Notice of Dispute and Acceptance of Offer to Arbitrate Disputes Under the Germany-Croatia Bilateral Investment Treaty", containing his acceptance of Croatia's offer of ICSID arbitration under the BIT. It is undisputed that on that date the Claimant still had Croatian nationality. Therefore, in terms of Article 25(1)(a) of the ICSID Convention, he does not qualify as a national of another Contracting State because he had the nationality of the Contracting State party on the date of consent to ICSID arbitration.*
>
> …
>
> *The consent in writing that Claimant gave in his Notice of Dispute by letter dated 6 February 2019 (sent on 11 March 2019) accepting Croatia's offer of ICSID arbitration in the BIT, constituted consent for purposes of Article 25 of the ICSID Convention, and his nationality is determined as of that date. This Tribunal lacks jurisdiction because the Claimant did not meet the nationality requirement of Article 25(2)(a) on the date he gave his consent in writing. This lack of jurisdiction cannot be cured by a subsequent change of the Claimant's nationality status since Article 25(2)(a) fixes the nationality requirements to the date of consent. The Claimant cannot pull himself up by his own bootstraps by attaching the validity of his consent to arbitration to his nationality.*[169]

135. The Tribunal finds much force in Prof. Dr. Schreuer's reasoning. However, the Tribunal considers it unnecessary to express a definitive view on the date of consent for the purposes of Article 25(2)(a), in light of its finding that the Claimant remained a Croatian national on

---

168 Schreuer Opinion at [28] – [30].

169 Schreuer Legal Opinion at [26] and [37]

the date the Request for Arbitration was registered. The Tribunal therefore declines jurisdiction over the present dispute.

(6) Whether the Claimant's claim was an abuse of process

136. In a similar vein, the Tribunal does not consider it necessary to rule on whether the Claimant's claim was an abuse of process in light of the Tribunal's decision to decline jurisdiction.

137. However, having considered the Parties' respective submissions, the Tribunal is troubled by the Claimant's conduct. In particular, the facts strongly suggest that the sole reason for the Claimant's application to relinquish his citizenship was so that he could pursue arbitration against the Respondent.

138. Ultimately though, the Tribunal does not need to rule on the issue of whether there has been an abuse of process given that the Tribunal has already decided to decline jurisdiction on the issue of the Claimant's nationality.

VI. CONCLUSION

139. The Tribunal is of the view that the requirements for jurisdiction rationae personae are not met. The Claimant has not discharged his burden to prove that he had relinquished his Croatian citizenship at any time prior to 18 May 2020, and therefore the Tribunal finds that he remained a dual national of Croatia and Germany on the date the Request for Arbitration was registered (31 December 2019), and this precludes ICSID jurisdiction pursuant to Article 25(2)(a) of the ICSID Convention.

VII. COSTS

A. THE PARTIES' SUBMISSIONS

140. The Parties provided their Submissions on Costs simultaneously on 10 January 2023. Each Party submits that its fees and expenses be borne in full by the other Party. The Respondent submits that its legal fees and expenses incurred (including advances on costs made to

ICSID) amount to US$1,974,551.27.[170] The Claimant submits that his legal fees and expenses incurred (excluding advances on costs made to ICSID) amount to US$666,959.63.[171]

141. Upon the Tribunal's request, each Party also filed submissions on what the applicable interest rate for any award on costs should be.

142. By way of the Respondent's Cost Submission, the Respondent seeks an award of interest "at a reasonable commercial rate accruing from the date of the Award until the date of payment".[172] The Respondent submits that the reasonable commercial interest rate for an award on costs is the Secured Overnight Financing Rate ("**SOFR**") + 2% rate, accruing from the date of the Award until the date of payment.[173] According to the Respondent, tribunals have broad discretion in determining the interest rate for cost awards,[174] and it highlights that Article 4(2) of the BIT (which relates to compensation for expropriation) provides that "compensation shall be paid without delay and shall carry the normal commercial interest until the time of the payment" (emphasis added by the Respondent).[175] According to the Respondent, the London Interbank Offered Rate ("**LIBOR**") has been "widely accepted as the commercially reasonable rate for awards in investment disputes",[176] but due to LIBOR's upcoming discontinuance in 2023, tribunals have also

---

170 This comprises "ICSID Advances on Costs" of US$370,000.00, "Legal Fees" of US$1,409,494.00, "Expert Fees" of US$153,081.32 and "Other Expenses" of US$41,975.95: *see* Respondent's Cost Submission (p3).

171 This comprises "Alston & Bird Fees" of US$644,377.45 and "Alston & Bird Costs" of US$22,582.18: *see* Claimant's Cost Submission (p3).

172 Respondent's Cost Submission (p3).

173 Respondent's Interest Submission (p3).

174 Respondent's Interest Submission (p1), citing *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, 22 August 2017 at [992] (Annex 1 to the Respondent's Interest Submission).

175 Respondent's Interest Submission (p1), citing Ex. 001 to Request for Arbitration, BIT, Article 4(2).

176 Respondent's Interest Submission (pp1 – 2), citing various authorities including *Mohamed Abdel Raouf Bahgat v. Arab Republic of Egypt*, PCA Case No. 2012-07, Final Award, 23 December 2019 at [532] – [533] (Annex 6 to the Respondent's Interest Submission); *Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award, 27 August 2019 at [1607] (Annex 5 to the Respondent's Interest Submission).

adopted LIBOR's successor (the SOFR) as the normal commercial rate applicable to post-award interest.[177]

143. By way of the Claimant's Interest Submission, the Claimant stated that he "does not object to [the Respondent's] proposal", but his non-objection "should not be read to suggest that such an approach would be appropriate with respect to the calculation of interest in relation to the damages Claimant suffered as a result of [the Respondent's] unlawful conduct, including, but not limited to the interpretation of Article 4(2) of the [BIT]".[178]

B. THE TRIBUNAL'S ANALYSIS ON COSTS

144. Article 61(2) of the ICSID Convention provides:

> *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.*

145. In exercising its discretion to award costs under Article 61(2) of the ICSID Convention and Rule 47(1)(j) of the ICSID Arbitration Rules, the Tribunal awards to the Respondent all fees and expenses incurred in the present proceedings.

146. In so deciding, the Tribunal has considered all of the circumstances of the present case, including the general principle that costs should follow the event[179] and that the Respondent has been forced to go through the arbitration process and should not be

---

177 Respondent's Interest Submission (p2), citing various authorities including *Niko Resources (Bangladesh) Ltd. v. Bangladesh Petroleum Exploration & Production Company Limited and Bangladesh Oil Gas and Mineral Corporation*, ICSID Case No, ARB/10/18, Award, 24 September 2021 at [174], [256] – [257], [374] (Annex 8 to the Respondent's Interest Submission); *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited and Telcom Devas Mauritius Limited v. Republic of India*, PCA Case No. 2013-09, Award on Quantum, 13 October 2020 at [626], [663(g) – (i)] (Annex 11 to the Respondent's Interest Submission); *Garcia Armas et al. v. Bolivarian Republic of Venezuela*, PCA Case No. 2013-03, Award, 26 April 2019 (excerpt) at [541], [572] (Annex 12 to the Respondent's Interest Submission).

178 Claimant's Interest Submission (p1).

179 Ex. RL-069, *Cementownia "Nowa Huta" S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/06/2, Award, 17 September 2009 at [176].

penalised by having to pay for its defence. The Tribunal has also considered the Claimant's conduct in the present proceedings in arriving at its decision.

147. As for the quantum of such fees and expenses, the Respondent's calculations for the fees and expenses incurred in the present proceedings have been set out at Part II of the Respondent's Cost Submission dated 10 January 2023. This includes the advances paid to the Centre to cover the costs of the arbitration (the Tribunal's fees and expenses and ICSID's administrative fees, and direct expenses) which were estimated at US$370,000.00,[180] as well as the Respondent's legal fees and expenses amounting to US$1,604,551.27. The Tribunal finds that these legal fees and expenses are not unreasonable having regard to the course of these proceedings and therefore, the Claimant should bear these legal fees and expenses amounting to US$1,604,551.27 in addition to the costs of the arbitration specified below.

148. Having considered the Parties' submissions on the applicable interest rate for any cost award, the Tribunal determines that the reasonable commercial interest rate for an award on costs is the 6-month SOFR + 2 percentage points. However, such interest should only be payable if sums payable by the Claimant to the Respondent are left unpaid 30 days after the date of this Award. In that event, interest would accrue from the date of this Award to the date that the cost award is paid in full.

149. The costs of the arbitration, including the fees and expenses of the Tribunal, ICSID's administrative fees, and direct expenses, amount to (in US$):

Arbitrators' Fees and Expenses	
Mr. Cavinder Bull S.C.	241,690.34
Mr. Mark Kantor	82,156.25
Ms. Maria Vicien-Milburn	120,832.57
ICSID's Administrative Fees	168,000.00

[180] The ICSID Secretariat will in due course provide the Parties with a final financial statement of the case account.

Direct Expenses	103,774.07
Total	**716,453.23**

150. The above costs have been paid out of the advances made by the Parties in equal parts.[181] The Claimant advanced US$370,000.00 and the Respondent advanced US$369,965.00.

151. Accordingly, as stated at paragraph 147 above, the Tribunal orders the Claimant to pay the Respondent US$1,604,551.27 to cover the Respondent's legal fees and expenses and US$369,965.00 for the expended portion of the Respondent's advances to ICSID.

VIII. AWARD

152. In the light of the above considerations and for the reasons set forth above, the Tribunal decides as follows:

a. The Tribunal is precluded from exercising jurisdiction over this dispute.

b. The Claimant is to pay the Respondent all fees and expenses incurred in the present proceedings amounting to a total of US$1,974,516.27 (including the costs of the arbitration for US$369,965.00 and the Respondent's legal fees and expenses for US$1,604,551.27).

c. If the amounts stated at paragraph (b) above remain unpaid 30 days after this date of this Award, the Claimant is to pay the Respondent interest on the amounts stated at paragraph (b) above at a rate of the 6-month SOFR + 2 percentage points, accruing from the date of this Award until the date of full payment.

[181] The remaining balance will be reimbursed to the Parties in proportion to the payments that they advanced to ICSID.

Mr. Mark Kantor
Arbitrator

Date: 19 May 2023

Ms. Maria Vicien-Milburn
Arbitrator

(Concurring opinion attached)

Date: 19 May 2023

Mr. Cavinder Bull S.C.
President of the Tribunal

Date: 19 May 2023