

IN ACCORDANCE WITH THE PROVISIONS OF  
THE TREATY ON THE EURASIAN ECONOMIC UNION OF 29 MAY 2014  
UNDER THE 2013 UNCITRAL ARBITRATION RULES

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**Manolium-Processing LLC**

Claimant

v.

**Republic of Belarus**

Respondent

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**STATEMENT OF CLAIM**  
**CS-II**

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**10 May 2018**

**Baker  
McKenzie.**

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## **I. NATURE OF THE STATEMENT OF CLAIM**

1. The Claimant has set factual circumstances of the dispute as well as its position regarding substantive violations of Protocol No. 16 and the Belarusian laws in the Notice of Arbitration submitted on 7 April 2017 ("**CS-I**").
2. The purpose of the Statement of Claim of 10 May 2018 (the "**Statement of Claim**" or "**CS-II**") is to reply to the jurisdictional objections made by the Respondent in the Response to the Notice of Arbitration of 15 December 2017 ("**RS-I**").
3. The Claimant reserves the right to:
  - a. Amend the claims made to any extent; and
  - b. Make any additional submissions in the course of arbitration proceedings, in order to:
    - (i) complete the claims against the Republic of Belarus; and (ii) respond to any allegations and arguments brought in by the Republic of Belarus.
2. The abbreviations appearing in the Statement of Claim have the same meaning which is attributed to them in the Claimant's Notice of Arbitration.

## **II. THE ARBITRAL TRIBUNAL HAS JURISDICTION TO CONSIDER THE DISPUTE**

4. The Respondent in its Response to the Notice of Arbitration raised three jurisdictional objections with respect to the Claimant's claims.<sup>1</sup>
5. The Claimant addresses the issues raised by the Respondent in the same order and submits that:
  - 1) An arbitration agreement contained in Section VII of Protocol No. 16 to the EEU Treaty is a valid arbitration agreement, and the Arbitral Tribunal has jurisdiction *ratione temporis* to decide the case;
  - 2) The claims presented by the Claimant are treaty claims and are therefore admissible; and

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<sup>1</sup> **RS-I**, paras. 22-50.

3) Actions of Minsktrans are attributable to Belarus.

**A. THERE IS A VALID ARBITRATION AGREEMENT**

6. The Respondent's primary objection to the jurisdiction is that the EEU Treaty applies only to the events that occurred *after* the EEU Treaty entered into force, *i.e.*, after 1 January 2015, while the Dispute between the Parties arose *before* 1 January 2015.<sup>2</sup>

7. The Respondent's objection should be dismissed by the Arbitral Tribunal for the following reasons:

a. The EEU Treaty applies to the disputes connected with investments made prior to the EEU Treaty's entry into force;

b. In any event, the Dispute arose after 1 January 2015.

8. The Claimant's argumentation is stated below.

a. ***The EEU Treaty Applies to the Disputes Connected with Investments Made Prior to the EEU Treaty's Entry Into Force***

9. The issue of application of Protocol No. 16 to the EEU Treaty to the facts of the present case is an issue of interpretation of the specific Protocol's provision.

10. In the interpretation of relevant provisions the Claimant relies on Article 31 of the Vienna Convention on the Law of the Treaties.<sup>3</sup>

11. Since the terms of the treaty are to be interpreted in their ordinary meaning,<sup>4</sup> the starting point of the analysis of the Treaty is the wording of such provisions.

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<sup>2</sup> **RS-I**, paras. 26-35.

<sup>3</sup> **Exhibit CL-13**. Vienna Convention on the Law of Treaties, Art. 31.

<sup>4</sup> **Exhibit CL-13**. Vienna Convention on the Law of Treaties, Art. 31(1).

12. Clause 65 of Section VII on Investments of Protocol No. 16 to the EEU Treaty provides as follows:<sup>5</sup>

*"65. The provisions of this section shall apply to all investments made by investors of the member States in the territory of another member State since December 16, 1991." [Claimant's emphasis]*

13. This is the only temporal limitation that is stipulated by Protocol No. 16 to the EEU Treaty that applies specifically to Section VII on Investments.
14. Section VII contains a provision on the dispute resolution between the investors from one of the Contracting Parties and the other Contracting Party (Clauses 84-87 of Protocol No. 16 to the EEU Treaty) which applies to all disputes connected with investments which were made after 16 December 1991.
15. Notably, the cited clause refers to the "*investments*" as the only criterion that should be taken into account when deciding on the issues of application of this Section. The provision does not refer to "*disputes*" or "*actions*", and thus there is no ground to apply artificial temporal limitation regarding actions that occurred or disputes that arose prior to the entry of the EEU Treaty into force.
16. There is no need to further assess when the dispute arose or when the actions that gave rise to the dispute took place, given that the only temporal criterion is fulfilled and in the absence of any additional criteria.
17. The similar interpretation of the analogous clause was supported by the tribunal in *Chevron v Ecuador*, which stated as follows:<sup>6</sup>

*"265. The BIT's temporal restrictions refer to "investments" and not disputes. Thus, the BIT covers any dispute as long as it is a dispute arising out of or relating to "investments existing at the time of entry into force."" [Claimant's emphasis]*

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<sup>5</sup> **Exhibit CL-3.** Protocol No. 16 to EEU Treaty.

<sup>6</sup> **Exhibit CL-34.** *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (I)*, PCA Case No. 34877, Interim Award of 1 December 2008, para. 265.

18. Thus, Section VII of Protocol No. 16 covers any dispute as long as the dispute is connected with investments made after 16 December 1996 – the date specifically agreed on by the Parties to the EEU Treaty.
19. The Respondent relies on investment jurisprudence in support of its position, but all the awards cited may not be considered relevant:
- a. In the *Railroad Company v Guatemala* case, the wording of the applicable CAFTA agreement provides for explicit exclusion of the disputes that took place before the BIT's entry into force. Namely, Article 10.3.1 of CAFTA provides:  
  
*"For greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement."*<sup>7</sup>
  - b. In Estonia-Germany BIT, which was examined by the tribunal in the *Oko Pankki v Estonia*<sup>8</sup> case, there was no provision on any kind of temporal limitation;
  - c. In the *ST-AD v Bulgaria* case, the tribunal discussed a different issue on application of the BIT to the claims arising prior to the date of investments and reached the conclusion that *"a tribunal has no jurisdiction ratione temporis to consider claims arising prior to the date of the alleged investment, since a BIT cannot be applied to acts committed by a State before the claimant invested in the host country."*<sup>9</sup>  
[Claimant's emphasis]
  - d. Finally, in a paragraph in the ICJ *Case Concerning Elettronica Sicula SPA* Judgment,<sup>10</sup> the Respondent made a reference to, does not contain any conclusions of the temporal application of the treaty at issue and described the issue of local remedies.

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<sup>7</sup> **Exhibit RL-2.** CAFTA Agreement, Art. 10.1.3, cited in *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Second Decision on Objections to Jurisdiction, 18 May 2010, para. 115.

<sup>8</sup> **Exhibit RL-3.** *Oko Pankki Oyj, VTB Bank (Deutschland) AG and Sampo Bank Plc v. The Republic of Estonia*, ICSID Case No. ARB/04/6, Award, 19 November 2007.

<sup>9</sup> **Exhibit RL-4.** *ST-AD GmbH v. Republic of Bulgaria*, UNCITRAL, PCA Case No. 2011-06, Award on Jurisdiction, 18 July 2013, para. 300.

<sup>10</sup> **Exhibit RL-7.** *Case Concerning Elettronica Sicula SpA (ELSI) (United States of America v. Italy)*, ICJ Rep 15, Judgment, 20 July 1989, para. 50.

20. As could be seen, the cases the Respondent refers to as a support of its position does not prove the Respondent's case.
21. The intention of the parties to the EEU Treaty not to limit its application to the facts that occurred prior to the entry of the EEU Treaty into force is also evident from the other relevant rules on international law applicable between the parties of the EEU Treaty, as provided by Art. 31(3)(c) of the VCLT.<sup>11</sup>
22. The EEU Treaty is not the only treaty containing investment-protection-related provisions between Russia and Belarus.
23. To briefly describe the scene, after the break-up of the Soviet Union in 1991, Russia and Belarus have been members of various regional integration organizations such as the Community of Independent States (the CIS – since 1991 up to the present),<sup>12</sup> the Eurasian Economic Community (the EEC – since 2001 until 2014),<sup>13</sup> and, finally, the Eurasian Economic Union (the EEU - since 2015 up to the present).<sup>14</sup>
24. The composition of the member states in these organizations has varied, and the states concluded various international treaties to satisfy needs of all members. Due to the complicated system of these organizations, some of the treaties duplicate each other.
25. In a similar manner, Russia and Belarus are currently contracting parties to two treaties containing provisions on investment protection: (1) the EEU Treaty with Protocol No. 16 to EEU Treaty thereto of 29 May 2014; and (2) the Agreement on mutual agreement and protection of investments in the state-members of Eurasian Economic Community of 12 December 2008 (the "**EEC Investment Agreement**").
26. Notably, the EEC Investment Agreement also contains a specific clause on the temporal limitations of its application which reads as follows:<sup>15</sup>

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<sup>11</sup> **Exhibit CL-13.** Vienna Convention on the Law of Treaties, Art. 31(3)(c).

<sup>12</sup> **Exhibit C-196.** About Commonwealth of Independent States. // Available at: <http://www.cisstat.com/eng/cis.htm>.

<sup>13</sup> **Exhibit C-197.** Eurasian Economic Community, About EurAsEC. // Available at: <http://www.evrazes.com/en/about/>.

<sup>14</sup> **Exhibit C-198.** Eurasian Economic Union, About the Union. // Available at: <http://www.eaeunion.org/?lang=en#about>.

<sup>15</sup> **Exhibit CL-35.** EEC Investment Agreement, Art. 13 (Unofficial translation). // Available in Russian at: <http://investmentpolicyhub.unctad.org/Download/TreatyFile/2997>.

*"The Agreement applies to all investments made by investors of one Contracting Party on the territory of the other Contracting Party since 1 January 1992.*

*The Agreement does not apply to disputes that arose before the entry of the Treaty into force.* [Claimant's emphasis]

27. As could be seen, the cited provision provides for two explicit limitations of the EEC Investment Agreement's application: (1) the application in relation to the investments made before 1 January 1992; and (2) the application to the disputes that took place before the agreement entered into force.
28. Thus, the parties to the EEC Investment Agreement, including Belarus and Russia, specifically limited the application of the EEC Investment Agreement to the disputes that occurred after the entry of the treaty into force.
29. The comparison of these two investment-related agreements where both Belarus and Russia are contracting parties, clearly demonstrates that in the absence of direct provisions to the contrary, the Treaty is applied to all disputes connected with investments, whether they arose prior or after the Treaty entered into force or after that.
30. Due to the described reasons, the parties to the EEU Treaty agreed to apply Section VII of Protocol No. 16 to the EEU Treaty including the investor-state dispute resolution clause to any disputes related to the investments made after 16 December 1991.
31. Since the fact that the Claimant's investments were made after this breaking point is not disputed between the Parties, the present Arbitral Tribunal has temporal jurisdiction to decide the dispute connected with the Claimant's investments.

***b. In Any Event, the Dispute Arose After the EEU Treaty Entered Into Force***

32. It is established in international law that that the principle of non-retroactivity is not violated if any dispute is referred to the arbitration proceedings after the treaty entered into force, irrespective of the time when the violation of international law occurred.



33. The Permanent Court of Justice stated in the *Mavrommatis Palestine Concessions* case:<sup>16</sup>

*"The Court is of opinion that, in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment ... The reservation made in many arbitration treaties regarding disputes arising out of events previous to the conclusion of the treaty seems to prove the necessity for an explicit limitation of jurisdiction and, consequently, the correctness of the rule of interpretation enunciated above."* [Claimant's emphasis]

34. At the same time, the ordinary meaning of the term dispute is well-accepted.

35. As the Permanent Court of Justice stated in the *Mavrommatis Palestine Concessions* case, a dispute is "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons".<sup>17</sup> This ordinary meaning was continuously confirmed by arbitral tribunals in such cases as *Luccetti v Peru*,<sup>18</sup> *Teinver v Argentina*,<sup>19</sup> *Crystallex v Venezuela*.<sup>20</sup>

36. The EEU Treaty does not provide for any specific meaning of "dispute" and, thus, the ordinary meaning should be applied.

37. The Respondent refers to two dates as possible alleged dates of the Dispute's beginning: "1 July 2011 after the Claimant failed to construct the municipal facilities by the deadline set out in the Amended Investment Contract"<sup>21</sup> and "19 September 2013, when MCEC notified the Claimant for the last time of its intention to submit a claim to the Economic Court of Minsk for the Investment Contract to be terminated".<sup>22</sup>

38. None of these dates could be considered as dates when the Dispute arose between the Parties.

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<sup>16</sup> **Exhibit CL-33.** *Mavrommatis Palestine Concessions (PCIJ)*, 30 August 1924, Series A, no. 2, p. 35.

<sup>17</sup> **Exhibit CL-33.** *Mavrommatis Palestine Concessions (PCIJ)*, 30 August 1924, Series A, no. 2, p. 11.

<sup>18</sup> **Exhibit CL-36.** *Empresas Lucchetti, S.A. and Lucchetti Peru, S.A. v. The Republic of Peru*, ICSID Case No. ARB/03/4, Award, 7 February 2005, para. 48.

<sup>19</sup> **Exhibit CL-37.** *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Jurisdiction, 21 December 2012, para. 110.

<sup>20</sup> **Exhibit CL-38.** *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, paras. 447-450.

<sup>21</sup> **Response to the Notice of Arbitration**, para. 34.

<sup>22</sup> **Response to the Notice of Arbitration**, para. 34.

39. The arbitral tribunal in the *Teinver v Argentina* case, referring to the ordinary meaning of the term "*dispute*" stated as follows:<sup>23</sup>

*"To instigate a dispute, therefore, refers to the time at which the disagreement was formed, which can only occur once there has been at least some exchange of views by the parties. It does not refer to the commission of the act that caused the parties to disagree, for the very simple reason a breach or violation does not become a "dispute" until the injured party identifies the breach or violation and objects to it."*  
[Claimant's emphasis]

40. The dispute between the Parties arising out of the Belarus' violations of the EEU Treaty arose only after the Claimant submitted the Pre-Arbitration Notice to Belarus on 25 April 2017, claiming the violations of the international law by the Respondent.<sup>24</sup>

41. It is the earliest possible date of the Dispute's starting point, because the disagreement between the Parties on the legal basis of the EEU Treaty was formed only on this date.

42. Given that the first notice on the dispute was filed on 25 April 2017, and the Dispute was referred to the arbitration on 15 November 2017, clearly after the EEU Treaty entered into force, the Arbitral Tribunal has jurisdiction to consider the present Dispute.

**c. *Alternatively, the Non-Retroactivity Does Not Apply Because the Belarus' Breach of the EEU Treaty Continues***

43. Even if the principle of non-retroactivity of treaties under Article 28 of the VCLT applies in the present circumstances, Section VII of Protocol No. 16 to the EEU Treaty extends to the Dispute at hand due to the exception to the principle of non-retroactivity.

44. Article 28 of the VCLT provides as follows:<sup>25</sup>

*"Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any*

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<sup>23</sup> **Exhibit CL-37.** *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Jurisdiction, 21 December 2012, para. 110.

<sup>24</sup> **Exhibit C-190.** Pre-Arbitration Notice of 25 April 2017.

<sup>25</sup> **Exhibit CL-13.** Vienna Convention on the Law of Treaties, Art. 28.

*situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."* [Claimant's emphasis]

45. Thus, the provisions of the treaty may not apply only to the situations which ceased to exist. The situation related to the Dispute between the Claimant and the Republic of Belarus is far from being ceased to exist even at the moment of submitting the Statement of Claim.
46. While, indeed, the first acts which form the background of the present Dispute, occurred before the EEU Treaty entered into force, the majority of acts which gave rise to the Dispute, occurred after the EEU Treaty entered into force.
47. The conduct of Belarus was a whole campaign with the purpose to get as much profit from the Claimant as possible avoiding to perform its own obligations.
48. The conduct of Belarus which finally resulted in an expropriation of the Claimant's Investments and violation of the FET obligations may be generally divided on the following parts:
  - a. Conduct of MCEC and Minsktrans during the implementation of the Investment Agreement and the Amended Investment Agreement;<sup>26</sup>
  - b. Submission of the arbitral and ungrounded claims to the Belarusian state courts for termination of the Amended Investment Contract;<sup>27</sup>
  - c. Unfair legal proceedings in the Belarusian state courts;<sup>28</sup>
  - d. Groundless tax claims of the Tax Inspectorate to Manolium-Engineering resulted in bankruptcy of Manolium-Engineering;<sup>29</sup>
  - e. Issuance of a secret order of the President of Belarus which approved the transfer of Communal Facilities to the communal ownership.<sup>30</sup>

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<sup>26</sup> CS-I, paras. 109-212; 241-255.

<sup>27</sup> CS-I, para. 256.

<sup>28</sup> CS-I, paras. 256-282; 282-292.

<sup>29</sup> CS-I, paras. 296-320.

<sup>30</sup> CS-I, para. 407.

49. It is evident from the facts of the case that all these actions were only elements of the overall conduct of Belarus which has lead to violation of the Claimant's rights.
50. Taking into account the reasons stated above, the facts which formed the background of the Dispute has continued both *before and after* the EEU Treaty entry into force. Since there is not possibility simply to distinguish the facts as the facts took place before 1 January 2015 and the facts have taken place after 1 January 2015, all actions of Belarus should be considered as a whole.
51. Therefore, taking into account the continuing character of the Belarus' wrongful conduct, the EEU Treaty applies to all acts of the Respondent prior and after the EEU Treaty's entry into force.

**B. THE CLAIMS BEFORE THE ARBITRAL TRIBUNAL ARE TREATY CLAIMS AND ARE THEREFORE ADMISSIBLE**

52. The Respondent briefly described its "*contractual claims' objection*" in the Response to the Notice of Arbitration.<sup>31</sup> It should be noted that the Respondent addressed his arguments in a superficial manner and did not rely on the provisions of the EEU Treaty in support of its jurisdictional objections.
53. For the analysis of the Respondent's objection Clauses 84 and 86 of Protocol No. 16 to the EEU Treaty are relevant which provide as follows:<sup>32</sup>

*"84. Disputes between a recipient state and an investor of another Member State arising in connection with an investment of that investor on the territory of the recipient state, including disputes regarding the size, terms or order of payment of the amounts received as compensation of damages pursuant to paragraph 77 of this Protocol and the compensation provided for in paragraphs 79-81 of this Protocol, or the order of payment and transfer of funds provided for in paragraph 8 of this Protocol, shall be, where possible, resolved through negotiations.*

[...]

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<sup>31</sup> **Response to the Notice of Arbitration**, paras. 36-41.

<sup>32</sup> **Exhibit CL-3**. Protocol No. 16 to EEU Treaty.

*86. An investor having referred a dispute for settlement to a national court or one of the arbitration courts specified in sub-paragraphs 1 and 2 of paragraph 85 of this Protocol shall not have the right to redirect the dispute to any other court or arbitration."*

54. The Respondent submits that the Claimant's claims may not be referred to the arbitration for two reasons:
- a. The Claimant's claims are purely contractual;
  - b. The dispute between the parties has already been considered by Belarusian courts and thus may not be considered by the investment arbitration tribunal (apparently on the basis of "*fork-in-the-road*" clause in Clause 86 of Protocol No. 16 to EEU Treaty).
55. Both allegations are non-substantiated and should be dismissed by the present Tribunal.
56. The Claimant will address the following issues in objecting to the Respondent's allegations:
- a. The Claimant does not raise any contractual claims;
  - b. The "*fork-in-the-road*" clause should not be applied in the present case.
- a. ***The Claimant's Claims Are Treaty Claims***
57. The Respondent, relying on the mere fact that there was an Investment Contract concluded between the Claimant and Belarus, states that the dispute at hand has only a contractual nature.<sup>33</sup>
58. The Respondent states that the Claimant's claims "*concern the rights and obligations of Minsktrans and MCEC under the Amended Investment Contract and the parties' compliance with those obligations.*"<sup>34</sup>
59. This statement is incorrect.

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<sup>33</sup> **Response to the Notice of Arbitration**, para. 36.

<sup>34</sup> **Response to the Notice of Arbitration**, para. 39.

60. The Claimant admitted in CS-I that contractual claims and treaty claims are different and have different legal basis.<sup>35</sup> This is perfectly supported by international arbitration practice and is not a dispute between the Parties, and the Respondent does not object this.<sup>36</sup>
61. However, the Respondent incorrectly states that the Claimant's submissions "*go to the issue of whether there has been a breach of contract, not whether there has been a breach of the Treaty.*"<sup>37</sup>
62. At the same time, it is evident from the Claimant's Notice of Arbitration, that the breaches claimed are treaty claims, namely, unlawful expropriation and violation of the fair and equitable treaty standard.<sup>38</sup> This fact is sufficient to find that the claims are admissible before the investment arbitral tribunal.<sup>39</sup>
63. The Claimant has not made a single allegation that the Arbitral Tribunal has to decide on the purely contractual issues between Belarus and the Claimant or Manolium-Engineering, and there is no ground to suggest the dispute at hand is a contractual one.
64. In support of its position on inadmissibility of the Claimant's claims, the Respondent relies on the Decision on Annulment of the Vivendi Committee that "*an investment tribunal does not have jurisdiction over purely contractual claims.*"<sup>40</sup>
65. But the Respondent ignores the fact that about 10 paragraphs below, the Vivendi Committee states the following: "*[i]t is one thing to exercise contractual jurisdiction ... and another to take into account the terms of a contract in determining whether there has been a breach of a distinct standard of international law.*"<sup>41</sup>

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<sup>35</sup> CS-I, para. 504.

<sup>36</sup> RS-I, para. 37.

<sup>37</sup> RS-I, para. 39.

<sup>38</sup> CS-I, para. 576(a)(b).

<sup>39</sup> See, e.g., **Exhibit CL-39**. *Garanti Koza LLP v. Turkmenistan*, ICSID Case No. ARB/11/20, Award, 19 December 2016, para. 247 ("*All that is required to confer on this Tribunal jurisdiction to consider the Claimant's treaty claims is for one of the Claimant's claims to arise under the BIT. The Tribunal finds that the Claimant's claims for direct and indirect expropriation, for denial of fair and equitable treatment, for unreasonable and discriminatory measures, and for denial of full protection and security all concern 'obligation[s] of [the Respondent] under [the BIT] in relation to an investment of the [Claimant]'*").

<sup>40</sup> RS-I, para. 39. Ref. made to: **Exhibit RL-11**. *Compania de Aguas del Aconquija S.A. and Vivendi Universal v Argentine Republic*, ICSID Case No. ARB/97/3, Decision on Annulment, 3 July 2002, para. 96.

<sup>41</sup> **Exhibit CL-40**. *Compania de Aguas del Aconquija SA. and Vivendi Universal SA. v. Argentine Republic*, ICSID Case No. ARB/97/3, Decision on Annulment, 3 July 2002, para. 105.

66. A similar conclusion was expressed by the tribunal in the *Bayindir v Pakistan* case:<sup>42</sup>

*"However, the very fact that these questions are governed by specific contractual provisions does not necessarily mean that they have no relevance in the framework of a treaty claim. One cannot seriously dispute that a State can discriminate against an investor by the manner in which it concludes an investment contract and/or exercises the rights thereunder. Any other interpretation would consider treaty and contract claims as mutually exclusive, which would be at odds with the well-established principles deriving from the distinction between treaty and contract claims as discussed above".*

67. A view that tribunals' jurisdiction is not influenced by the existence of contractual relations between the parties if the claims brought before the tribunal arose out of violation of international treaties is supported by recent practice as well.

68. As an example, the tribunal in the *Ampal-American v. Egypt* case<sup>43</sup> confirmed its jurisdiction to hear the claims under the treaty while there was a contractual gas supply dispute. The tribunal stated as follows:

*"255. The Tribunal notes that the Claimants claim breaches of various standards under the Treaty in relation to the Gas Supply Dispute, including fair and equitable treatment, unlawful expropriation and breach of the umbrella clause. As to the first two standards, the Tribunal accepts that, in order for it to find that there has been a breach of those standards in relation to the Gas Supply Dispute, it will need to determine as an incidental question whether the Source GSPA was validly terminated. However, this does not change the fact that the key issue under the Treaty in respect of a claim for unlawful expropriation or breach of the fair and equitable treatment is whether there has been a loss of property right constituted by the contract or whether legitimate expectations arose under the contract."*

[Claimant's emphasis]

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<sup>42</sup> **Exhibit CL-41.** *Bayindir Insaat Turizm Ticaret ve Sanayi A.S v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 15 November 2005, para. 215. See also **Exhibit CL-42.** *Impregilo S.p.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/3, Decision on Jurisdiction, paras. 219, 258.

<sup>43</sup> **Exhibit CL-43.** *Ampal-American Israel Corporation and others v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Jurisdiction, 1 February 2016, para. 257.

69. On the basis of the jurisprudence cited, the conclusion is that the jurisdiction of the tribunal in relation to the treaty claims is not affected by the fact that relations between the parties include contractual elements. This fact does not prevent the tribunal from determining the facts, *inter alia*, related to the contractual relations between the parties to decide the international claims.
70. The overall factual background of the case shows that the relations between the Parties to the Dispute had their beginning and developed in the framework of the Investment Contract. This is an indispensable factual element of the Dispute before the Arbitral Tribunal.
71. However, the reasonable person would unlikely to suggest that the Tribunal could dismiss its jurisdiction to decide the case for the sole reason that factual background of the dispute includes contractual relations between the parties.<sup>44</sup>
72. Thus, there is no legal ground to dismiss the Claimant's treaty claims for the simple reason that there was an Investment Contract concluded between the Parties. The Arbitral Tribunal is respectfully invited to treat the Investment Contract as a factual element essential to decide the dispute brought before it.
73. In addition, the Respondent relies on the fact that "*The Claimant agreed for all issues arising out of the Investment Contract to be submitted to the Belarusian courts. The Respondent submits that the Claimant is referring the same contractual issues to the Tribunal dressed up as treaty claims.*"<sup>45</sup>

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<sup>44</sup> **Exhibit CL-44.** *Giovanni Alemanni and others v. Argentine Republic*, ICSID Case No. ARB/07/8, Decision on Jurisdiction and Admissibility, 17 November 2014, para. 300 ("While the distinction between contract claims and treaty claims is undeniable and well established, the mere fact that there is a contractual remedy available to a claimant does not of itself rule out the existence of a treaty claim for actions by the State, in its capacity as such, that affect private rights in a way that implicates a treaty guarantee"); **Exhibit CL-45.** *Bayindir Insaat Turizm Ticaret ve Sanayi A.S v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award, 27 August 2009, para. 135 ("As a threshold matter, the Tribunal recalls that its jurisdiction covers treaty and not contract claims. This does not mean that it cannot consider contract matters. It can and must do so to the extent necessary to rule on the treaty claims. It takes contract matters, including the contract's governing municipal law, into account as facts as far as they are relevant to the outcome of the treaty claims. Doing so, it exercises treaty not contract jurisdiction"); **Exhibit CL-46.** *Toto Costruzioni Generali S.p.A. v. Republic of Lebanon*, ICSID Case No. ARB/07/12, Decision on Jurisdiction, 11 September 2009, para. 214 ("The contractual jurisdiction clause and the Treaty jurisdiction clause are not mutually exclusive clauses. The contractual jurisdiction clause provided for in the Contract applies to actions and matters that are violations of the Contract; the Treaty jurisdiction clause applies to actions and matters that constitute violations of the substantive Treaty provisions even if the same actions and matters may give rise to breach of contract. It must also be noted that contractual claims founded on the investment contract do not have the same cause of action as the Treaty claims").

<sup>45</sup> **RS-I**, para. 40.



74. However, this statement as a ground for lack of jurisdiction of the tribunal or inadmissibility of the claim is not correct.
75. The investment tribunal in *Telefonica v. Argentina* clarified that the existence of contractual remedy available to the investor does not preclude it from submitting the dispute to arbitration:<sup>46</sup>

*"The claim that the host State has breached the BIT in respect of a given investment can be entertained by this Tribunal irrespective of the existence of contractual remedies available to TASA or to Telefónica as provided in the Transfer Agreement. The exclusive choice of forum clause contained in such contract operates therefore in respect of such contractual claim and cannot prevent the discharge by this Tribunal of its obligations in accordance with the BIT."*

76. Thus, the existence of the provision in the Investment Contract that the disputes should be referred to Belarusian courts does not in any way influence the right of the Claimant to refer the dispute under the EEU Treaty to international arbitration.

**b. No Trigger Of The "Fork-In-The-Road" Clause**

77. While the Respondent does not directly raise an objection based on the "fork-in-the-road" clause, the Respondent states that *"the allegations which the Claimant directs against Minsktrans and MCEC [...] have already been addressed in the proceedings before the Belarusian courts"*.<sup>47</sup>
78. Thus, the Claimant finds it reasonable to address the issue of application of "fork-in-the-road" clause in the Statement of Claim.
79. The primary submission is that the legal proceedings on the Investment Contract's termination may not trigger the application of the "fork-in-the-road" clause contained in the Clause 86 of Protocol No. 16 to the EEU Treaty.

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<sup>46</sup> **Exhibit CL-47.** *Telefónica S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/20, Decision of the Tribunal on Objections to Jurisdiction, 25 May 2006, para. 85.

<sup>47</sup> **RS-I**, para. 40.

80. However, the legal proceedings in Belarusian courts on the Investment Contract's termination may not trigger the application of the "*fork-in-the-road*" clause contained in Clause 86 of Protocol No. 16 to the EEU Treaty for the following reasons:
- a. The Claimant has not referred the dispute for settlement to any *fora* except the international arbitration at hand;
  - b. The dispute that was considered in Belarusian courts is different from the dispute referred to the arbitration.
81. **First**, the Claimant has not referred the dispute for settlement to any *fora* except the international arbitration at hand.
82. Clause 86 of the Protocol No. 16 of the EEU Treaty provides as follows:<sup>48</sup>
- "An investor having referred a dispute for settlement to a national court or one of the arbitration courts specified in sub-paragraphs 1 and 2 of paragraph 85 of this Protocol shall not have the right to redirect the dispute to any other court or arbitration."*
83. As a general note, in accordance with Article 31(1) of the VCLT "*[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*"<sup>49</sup> Thus, the starting point of the analysis of this provision is the very wording of the clause.
84. The crucial point of the interpretation of this provision is that the investor shall not have the right to redirect the dispute to any other court or arbitration if and only if this investor had already referred the dispute for settlement to another forum – national court or arbitration.
85. Thus, it should be interpreted in such a manner that an investor may be precluded from submitting the dispute to international arbitration if an investor has made a choice to seek remedy in another forum.
86. The aim of the clause is to grant an investor a choice with respect to the suitable forum. An investor may be precluded from bringing the claim to investment arbitration only if the

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<sup>48</sup> **Exhibit CL-3.** Protocol No. 16 to EEU Treaty.

<sup>49</sup> **Exhibit CL-13.** Vienna Convention on the Law of Treaties, Art. 31.

investor itself made a choice and referred the dispute to the local court. The situation is completely different if an investor is forced to come to the local court by the state itself. In such a situation investor did not have any choice – it just had to defend itself under the given circumstances.

87. There is no room for an interpretation that the mere consideration of a dispute in national court, let alone legal proceedings upon an initiative of the other party (the state in particular), could prevent the submission of the dispute to international arbitration.
88. The goal of the "*fork-in-the-road*" clause is, however, not to *de facto* exclude domestic remedies or any domestic legal proceedings just because a BIT contains a "*fork-in-the-road*" clause.
89. As Professor Christoph Schreuer notes:<sup>50</sup>

*"To see any utilization of domestic courts or administrative tribunals as a choice under the fork in the road provision would put the investor in an intolerable position. The investor would have to sit still and endure any form of injustice passively on pain of losing its access to international arbitration. In particular, the investor would have to forego appeals against administrative action that are subject to preclusive time limits under domestic law."*

90. If one would apply the logic to the contrary, we could face a situation wherein the host state would just bring any action against the investor, thus precluding this investor from defending its rights before the investment tribunal.
91. The factual background of the present case is that the issues under the Investment Contract had been referred to Belarusian courts by Belarus, not the Claimant.<sup>51</sup>
92. The Claimant had no other choice than to defend his rights in the legal proceeding initiated by the Respondent.<sup>52</sup>

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<sup>50</sup> **Exhibit CL-48.** Christoph Schreuer, Travelling the BIT Route of Waiting Periods, Umbrella Clauses and Forks in the Road, 9(2) Offprints of The Journal of World Investment & Trade, 241 (2004). p. 248-249.

<sup>51</sup> **CS-I**, para. 256.

<sup>52</sup> Tribunals have noted that the "*fork-in-the-road*" clause would only apply if it was exercised without any duress. See, e.g., **Exhibit CL-49.** *Occidental Exploration and Production Company v. Republic of Ecuador*, LCIA Case No. UN3467, Final Award, 1 July 2004, paras. 60-61 ("*The "fork in the road" mechanism by its very definition assumes that*

93. For the reasons stated above, application of "*fork-in-the-road*" clause in this situation would be contrary to the object and purpose of this clause.
94. *Second and in any event*, the dispute considered by the Belarusian courts is crucially different from the dispute referred to the UNCITRAL arbitration.
95. The "*fork-in-the-road*" clause is not triggered unless national proceedings and arbitration proceedings concern the same (investment) dispute.<sup>53</sup>
96. The main grounds on which basis the distinction may be made are established in the international investment arbitration practice, as follows:<sup>54</sup>
- a. Cause of action and the relief sought in the proceedings;
  - b. Legal basis of the claim;
  - c. Parties in the proceedings.
97. This test has been applied by several investor-state tribunals and is called the "*triple identity test*."<sup>55</sup> None of these criteria is present if one compares legal proceedings in the Belarusian courts and the arbitration proceedings at hand.

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*the investor has made a choice between alternative avenues. This in turn requires that the choice be made entirely free and not under any form of duress. ... It has been explained above that in the instant case the Ecuadorian Tax Law requires the taxpayer to apply to the courts within the brief period of twenty days following the issuance of any resolution that might affect it. If this is not done, as noted above, the resolution becomes final and binding. The Tribunal is of the view that in this case the investor did not have a choice"); Exhibit CL-50. Dolzer and Schreuer, Principles of International Investment Law (Oxford University Press 2012), p. 267 ("Investors are often drawn into local legal disputes of one sort or another in the course of investment activities. However, not every appearance before a court of tribunal of the host state will constitute a choice under a fork-in-the-road provision. While such disputes may relate in some way to the investment, they are not necessarily identical to the dispute before the international tribunal. Therefore, the appearance before a domestic court does not necessarily reflect a choice that would preclude international arbitration").*

<sup>53</sup> **Exhibit CL-51.** *Chapter V: Investment Arbitration - Food for Thought on Fork-in-the-Road – A Clause Awakens from its Hibernation*, Austrian Yearbook on International Arbitration 2010 (Zeiler, Welsch, Pitkowitz, et al. (eds); Jan 2010), p. 272 (p. 2).

<sup>54</sup> **Exhibit CL-49.** *Occidental Exploration and Production Company v. Republic of Ecuador*, LCIA Case No. UN3467, Final Award, 1 July 2004, paras. 60-61, para. 52; **Exhibit CL-52.** *Azurix Corp. v. The Argentine Republic*, ICSID Case No. ARB/01/12, Decision on Jurisdiction, 8 December 2003, paras. 90, 92.

<sup>55</sup> *See, e.g., Exhibit CL-53. Chevron Corporation (U.S.A.) and Texaco Petroleum Corporation (U.S.A.) v. Republic of Ecuador*, PCA Case No. 2009-23, Third Interim Award on Jurisdiction and Admissibility, 27 February 2012, para. 4.75 ("*Tribunals in earlier investment cases have applied a 'triple identity' test, requiring that in the dispute before the domestic courts and the dispute before the arbitration tribunal there should be identity of the parties, of the object, and of the cause of action. In the present case, there is no identity of parties, of object or of cause of action between the Lago Agrio litigation or, indeed, in the Aguinda litigation in the New York Courts*").

98. **The first** criterion suggested by the international arbitration practice is the similarity of the relief sought in the legal proceedings. It was analyzed by the tribunal in the *Genin v. Estonia* case. In this case, the subsidiary company of the investor filed an objection against the revocation of a banking license by the host state, and then on the basis of the same facts, referred the dispute to arbitration requesting to order damages for loss suffered as a result of the revocation. The tribunal came to the conclusion that the "*fork-in-the-road*" clause was not applicable, since the relief sought was different in each case.<sup>56</sup>
99. The same distinction based on the relief sought was applied by the tribunals in the *Middle East Cement v. Egypt*<sup>57</sup> and *Enron v. Argentina*<sup>58</sup> cases.
100. In the present case, the reliefs sought are different.
101. The subject matter of the proceedings in the Belarusian courts was a termination of the Investment Contract initiated by the MCEC, and that was the relief sought by Belarus in these proceedings. On the Claimant's side, the submissions were limited to the defence to Belarus' claims.<sup>59</sup>
102. As to the arbitration proceedings initiated by the Claimant, the relief sought is the compensation of damages resulting from the unlawful expropriation of the Claimant's investments by Belarus.<sup>60</sup>

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<sup>56</sup> **Exhibit CL-54.** *Alex Genin, Eastern Credit Limited, Inc. and A.S. Baltoil v. The Republic of Estonia*, ICSID Case No. ARB/99/2, Award, 25 June 2001, para. 332.

<sup>57</sup> **Exhibit CL-55.** *Middle East Cement Shipping and Handling Co. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002, para. 71.

<sup>58</sup> **Exhibit CL-56.** *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on Jurisdiction, 14 January 2004, para. 98.

<sup>59</sup> **CS-I**, para. 256.

<sup>60</sup> **CS-I**, para. 576. See also **Exhibit CL-57.** *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006, paras. 117, 120 ("*In the present case, while the dispute which gave rise to the proceedings before the Egyptian courts and authorities related to questions of contract interpretation and of Egyptian law, the dispute before this ICSID Tribunal deals with alleged violations of the two BITs, specifically of the provisions on fair and equitable treatment, on continuous protection and security, and on the obligation to promote investments. ... Under these circumstances, the Tribunal is unconvinced by the Respondent's (implied) argument that, in fact, the Claimants are merely trying to disguise their contract case as a treaty case*"); **Exhibit CL-58.** *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, para. 136 ("*Although the economic essence of the claims in both the local and these international arbitral proceedings is to seek compensation for construction works performed under the Contracts, and compensation for damages incurred during and after the execution of the Contracts, the Yemeni Arbitration and the present arbitral proceedings were brought pursuant to fundamentally different causes of action*"); **Exhibit CL-46.** *Toto Costruzioni Generali S.p.A. v. Republic of Lebanon*, ICSID Case No. ARB/07/12, Decision on Jurisdiction, 11 September 2009, para. 211 ("*The fork-in-the road clause in Article 7 of the Treaty does not take away jurisdiction from the Tribunal over Treaty claims. In order for a fork-in-the-road clause to preclude claims from being considered by the Tribunal, the Tribunal has to*

103. **The second** criterion that could be potentially invoked is the legal basis of the claims in different *fora*.
104. As the Claimant has elaborated above, the contractual disputes and treaty claims are different in their legal nature.<sup>61</sup>
105. Thus, the fact that the dispute under the contract was considered in the national courts may not in any way influence the opportunity of the investor to refer the claims based on the international treaty to investment arbitration.
106. Such a view on the difference of legal bases of the claims was supported by the tribunals in *CMS v Argentina*, where it was stated:<sup>62</sup>
- "Decisions of several ICSID tribunals have held that as contractual claims are different from treaty claims even if there had been or there currently was a recourse to the local courts for breach of contract, this would not have prevented submission of the treaty claims to arbitration."*
107. For the reasons stated above, the dispute that was considered by Belarusian courts had a legal basis different from the legal ground in the arbitration proceedings at hand.
108. **Finally**, the criterion of the same parties of the legal proceedings has no chance to be applied in the circumstances of the present case.
109. The parties of the proceedings in Belarusian courts were: MCEC and Minsktrans as the claimants and Manolium-Engineering and the Claimant as defendants; in the arbitration proceedings at hand, the Claimant and Belarus are the Parties.<sup>63</sup>

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*consider whether the same claim is "on a different road," i.e., that a claim with the same object, parties and cause of action, is already brought before a different judicial forum. Contractual claims arising out of the Contract do not have the same cause of action as Treaty claims").*

<sup>61</sup> **CS-II**, paras. 8-23.

<sup>62</sup> **Exhibit CL-59**. *CMS Gas Transmission Company v. The Republic of Argentina*, ICSID Case No. ARB/01/8, Decision on Jurisdiction, 17 July 2003, para. 80.

<sup>63</sup> **Exhibit CL-60**. *Ronald S. Lauder v. Czech Republic*, UNCITRAL, Final Award, 3 September 2001, paras. 161-162 ("The purpose of Article VI(3)(a) of the Treaty is to avoid a situation where the same investment dispute ("the dispute") is brought by the same the claimant ("the national or the company") against the same respondent (a Party to the Treaty) for resolution before different arbitral tribunals and/or different state courts of the Party to the Treaty that is also a party to the dispute. The resolution of the investment dispute under the Treaty between Mr. Lauder and the Czech Republic was not brought before any other arbitral tribunal or Czech court before - or after - the present proceedings

110. For the reasons stated above, the "*fork-in-the-road*" clause should not be applied in the present case.

### C. ACTIONS OF MINSKTRANS ARE ATTRIBUTABLE TO BELARUS

111. Contrary to the Respondent's objection, the actions of Minsktrans should be attributed to Belarus in accordance with Article 5 of the ILC Articles on State Responsibility (regarding conduct of persons or entities exercising elements of governmental authority), which provides as follows:<sup>64</sup>

*"The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance." [Claimant's emphasis]*

112. Both conditions required under this article are satisfied in the present case:

- a. Minsktrans is empowered to perform a governmental function. Minsktrans is a wholly state-owned company, which was created specifically to perform one of the governmental functions, *i.e.*, ensuring public transportation services to the Minsk population.<sup>65</sup>
- b. Minsktrans acted in its public capacity in its relations with the Respondent, specifically in the framework of the Investment Contract and the Amended Investment Contract.

**a. Minsktrans is Empowered to Perform a Governmental Function**

113. Turning to the *first* criteria, Minsktrans is an exclusively state-owned entity and a public communal enterprise that is empowered by the Republic of Belarus to exercise a governmental function – to ensure the functioning of the public transport system in Minsk.<sup>66</sup>

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*was initiated. All other arbitration or court proceedings referred to by the Respondent involve different parties, and deal with different disputes").*

<sup>64</sup> **Exhibit CL-4.** United Nations, ILC Articles on State Responsibility, 2001. Art. 5.

<sup>65</sup> **Exhibit C-175.** Printout from the Minsktrans official website.

<sup>66</sup> **Exhibit C-175.** Printout from the Minsktrans official website.

***b. Minsktrans Acted in Its Public Capacity***

114. The second criteria stipulated by Article 5 of the ILC Articles on State Responsibility is also clearly satisfied in the present case in relation to Minsktrans.
115. The Investment Contract was concluded between Minsktrans and MCEC on one side and the Claimant on the other. The Amended Investment Contract was concluded between Minsktrans and MCEC on one side and the Claimant together with Manolium-Engineering as the second counterparty.
116. Minsktrans and MCEC always acted as one side to the Investment Contract and the Amended Investment Contract. There is no possibility to distinguish the actions of MCEC and those of Minsktrans in the performance of the Amended Investment Contract because both MCEC and Minsk acted in their public capacity.
117. Moreover, the test which the Respondent relies on is the test of "*ordinary private contracting party*" and suggests to assess "*whether any private contractor could have acted in a similar manner under the circumstances*".<sup>67</sup>
118. While the Claimant does not object to the test suggested by the Respondent as applicable, the Claimant's submission is that Minsktrans acted as a state enterprise exercising public functions, and not as a mere commercial entity, in the performance of the Amended Investment Contract.
119. ***First***, the subject matter of the Investment Contract should be taken into account in assessment of the capacity of both Minsktrans and MCEC in their relations with the Claimant.
120. The Claimant was to be granted a right to construct an Investment Object after the following Communal Facilities are built: the Trolley Depot, the Road and the Motor Transport Base.<sup>68</sup> These facilities are to be constructed for public purposes, and public entities and even state organs could be customers of such facilities.

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<sup>67</sup> **RS-I**, paras. 46-47.

<sup>68</sup> **CS-I**, para. 76.



121. **Second**, all the functions connected with the mentioned facilities are public - building the roads and providing the population with trolleys and other kinds of public transportation.
122. These functions without any doubt are public functions that were performed by Minsktrans in its relation with the Claimant.
123. **Third**, the Minsktrans consistently used the administrative support from the state organs in performance of the Investment Contract and the Amended Investment Contract.
124. The President of Belarus Alexander Lukashenko was significantly involved in the process of implementation of the Investment Contract and the Amended Investment Contract:
- a. It was the President who had to approve the performance of the Investment Contract in 2003<sup>69</sup> and amendments to the Investment Contract in 2006;<sup>70</sup>
  - b. The Claimant had to pay USD 1,000,000 for the National Library which was a project of Mr. Lukashenko.<sup>71</sup>
125. **Finally**, the facilities built by the Claimant were to be transferred to the state communal, not private, ownership<sup>72</sup> which also supports the conclusion that Minsktrans acted in a public capacity.
126. For these reasons, Minsktrans as a counterparty of the Investment Contract and the Amended Investment Contract acted in its public capacity, and Belarus should bear international responsibility for the actions of Minsktrans.

### **III. PRAYER FOR RELIEF**

127. For the reasons, stated in the Notice of Arbitration and the Statement of Claim, the Claimant respectfully requests the Arbitral Tribunal:
- I. To dismiss the Respondent's jurisdictional objections and find the jurisdiction to consider the Dispute;

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<sup>69</sup> CS-I, para. 106.

<sup>70</sup> CS-I, para. 125.

<sup>71</sup> CS-I, paras. 89-96.

<sup>72</sup> **Exhibit C-34**. Investment Contract of 6 June 2003. **Exhibit C-66**. Amended Investment Contract.

- II. To issue an arbitral award on the Dispute declaring that the Republic of Belarus violated its obligations in relation to the Claimant under the Belarusian laws and EEU Treaty, and ordering that the Republic of Belarus:
- a) Has unlawfully expropriated the Claimant's Investments;
  - b) Has violated the FET Standard toward the Claimant and its Investments;
  - c) Is obligated to compensate the Claimant for:
    - i. Direct damages in the amount of **USD 36,900,000**;
    - ii. Loss of the Claimant's profit in the amount of **USD 171,300,000** or, alternatively, in the amount of **USD 8,650,000**;
    - iii. Pre-award and post-award interest accrued on the above amounts; and
    - iv. Arbitration costs, including legal costs, in full.

Respectfully submitted,



Vladimir Khvalei

## **LIST OF FACTUAL EXHIBITS TO THE STATEMENT OF CLAIM**

**Exhibit C-196.** About Commonwealth of Independent States

**Exhibit C-197.** Eurasian Economic Community, About EurAsEC

**Exhibit C-198.** Eurasian Economic Union, About the Union

## LIST OF LEGAL EXHIBITS TO THE STATEMENT OF CLAIM

- Exhibit CL-34.** *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (I)*, PCA Case No. 34877, Interim Award of 1 December 2008
- Exhibit CL-35.** EEC Investment Agreement, Art. 13
- Exhibit CL-36.** *Empresas Lucchetti, S.A. and Lucchetti Peru, S.A. v. The Republic of Peru*, ICSID Case No. ARB/03/4, Award, 7 February 2005
- Exhibit CL-37.** *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Jurisdiction, 21 December 2012
- Exhibit CL-38.** *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016
- Exhibit CL-39.** *Garanti Koza LLP v. Turkmenistan*, ICSID Case No. ARB/11/20, Award, 19 December 2016
- Exhibit CL-40.** *Compania de Aguas del Aconquija SA. and Vivendi Universal SA. v. Argentine Republic*, ICSID Case No. ARB/97/3, Decision on Annulment, 3 July 2002
- Exhibit CL-41.** *Bayindir Insaat Turizm Ticaret ve Sanayi A.S v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 15 November 2005
- Exhibit CL-42.** *Impregilo S.p.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/3, Decision on Jurisdiction
- Exhibit CL-43.** *Ampal-American Israel Corporation and others v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Jurisdiction, 1 February 2016
- Exhibit CL-44.** *Giovanni Alemanni and others v. Argentine Republic*, ICSID Case No. ARB/07/8, Decision on Jurisdiction and Admissibility, 17 November 2014
- Exhibit CL-45.** *Bayindir Insaat Turizm Ticaret ve Sanayi A.S v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award, 27 August 2009

- Exhibit CL-46.** *Toto Costruzioni Generali S.p.A. v. Republic of Lebanon*, ICSID Case No. ARB/07/12, Decision on Jurisdiction, 11 September 2009
- Exhibit CL-47.** *Telefónica S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/20, Decision of the Tribunal on Objections to Jurisdiction, 25 May 2006
- Exhibit CL-48.** Christoph Schreuer, Travelling the BIT Route of Waiting Periods, Umbrella Clauses and Forks in the Road, 9(2) Offprints of The Journal of World Investment & Trade, 241 (2004).
- Exhibit CL-49.** *Occidental Exploration and Production Company v. Republic of Ecuador*, LCIA Case No. UN3467, Final Award, 1 July 2004, paras. 60-61
- Exhibit CL-50.** Dolzer and Schreuer, Principles of International Investment Law (Oxford University Press 2012)
- Exhibit CL-51.** *Chapter V: Investment Arbitration - Food for Thought on Fork-in-the-Road – A Clause Awakens from its Hibernation*, Austrian Yearbook on International Arbitration 2010 (Zeiler, Welser, Pitkowitz, et al. (eds); Jan 2010)
- Exhibit CL-52.** *Azurix Corp. v. The Argentine Republic*, ICSID Case No. ARB/01/12, Decision on Jurisdiction, 8 December 2003
- Exhibit CL-53.** *Chevron Corporation (U.S.A.) and Texaco Petroleum Corporation (U.S.A.) v. Republic of Ecuador*], PCA Case No. 2009-23, Third Interim Award on Jurisdiction and Admissibility, 27 February 2012
- Exhibit CL-54.** *Alex Genin, Eastern Credit Limited, Inc. and A.S. Baltoil v. The Republic of Estonia*, ICSID Case No. ARB/99/2, Award, 25 June 2001
- Exhibit CL-55.** *Middle East Cement Shipping and Handling Co. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002
- Exhibit CL-56.** *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on Jurisdiction, 14 January 2004

- Exhibit CL-57.** *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006
- Exhibit CL-58.** *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008
- Exhibit CL-59.** *CMS Gas Transmission Company v. The Republic of Argentina*, ICSID Case No. ARB/01/8, Decision on Jurisdiction, 17 July 2003
- Exhibit CL-60.** *Ronald S. Lauder v. Czech Republic*, UNCITRAL, Final Award, 3 September 2001