

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Ipek Investment Limited

v.

Republic of Turkey

(ICSID Case No. ARB/18/18)

PROCEDURAL ORDER No. 6

Members of the Tribunal

Professor Campbell McLachlan QC, President of the Tribunal
The Hon. L. Yves Fortier QC, Arbitrator
Dr Laurent Lévy, Arbitrator

Secretary of the Tribunal

Ms Jara Mínguez Almeida

Date of dispatch to the Parties: 13 October 2019

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Whereas:

- (1) By paragraph 121(2) of Procedural Order No 5 dated 19 September 2019 (“PO 5”), for the reasons stated therein, the Tribunal ordered that: “the Respondent shall suspend the further pursuit of criminal proceedings against the Targeted Individuals for Criminal Proceedings pending the outcome of its Preliminary Objections in this arbitration”;
- (2) On 8 October 2019, the Tribunal directed that (a) either Party may provide a copy of PO No 5 to the Turkish criminal authorities for the sole purpose of ensuring compliance therewith and (b) the Respondent to inform the Tribunal by close of business on 10 October 2019 what steps it has taken to ensure compliance with PO No 5;
- (3) On 10 October 2019, the Respondent filed a letter with the Tribunal. Relying on provisions of its internal law, it did not confirm that it had supplied PO No 5 to its criminal authorities or otherwise taken any steps to ensure compliance with that provision of the Order;
- (4) On 11 October 2019, in view of the imminent resumption of the criminal trial in Turkey scheduled for 14 October 2019, the Claimant applied urgently to the Tribunal for an order that the Respondent provide copies of PO No 5 to its relevant authorities and inform them of the Republic’s international obligations thereunder;
- (5) On 12 October 2019, the Tribunal provided the Respondent with an opportunity to reply by 21.00 CET on that day and such a reply was duly submitted;
- (6) *Noting* that, pursuant to Article 47 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965, to which Turkey is a Party, an arbitral tribunal constituted thereunder has power

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to recommend any provisional measures which should be taken to preserve the respective rights of either Party, and that PO No 5 was issued pursuant to that power;

- (7) *Observing* that, pursuant to Article 3 of the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001, the characterization of an act of a State as wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law;
- (8) Further, pursuant to Article 4 of the said Articles, the conduct of any State organ shall be considered an act of that State, whether it exercises legislative, executive, judicial or any other functions;
- (9) *Recalling* that, at the First Procedural Session on 10 November 2018, the Respondent agreed to a procedural timetable which provided for a hearing of the Claimant's application for provisional measures nine months later on 24-26 July 2019. At no time, whether in written or oral pleadings, did the Respondent advance the submission made in its letter of 10 October 2019 as to alleged difficulties under internal law related to its compliance with any order that the Tribunal might make;
- (10) *Noting* that the Party Representative of the Respondent at the hearing on provisional measures was the Vice President of the Savings Deposit Insurance Fund ('SDIF'), which was appointed by the Ankara Criminal Court on 6 September 2016 pursuant to Decree Law No 674 to act as Trustee of the Koza Altin Group of Companies; and
- (11) In that capacity, the SDIF made an application on 1 August 2019 to the Ankara 24th Heavy Criminal Court by letter dated 30 July 2019 for a copy of the criminal case file for use in this arbitration.

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Now therefore the Tribunal decides and directs the Respondent, by the SDIF, to submit by 14 October 2019 copies of PO No 5 together with this Order (“PO No 6”) to the Public Prosecutor and to the Ankara Criminal Court that is hearing the proceedings brought against the Targeted Individuals for Criminal Proceedings, so that that Court may take this Tribunal’s Orders into account in determining its procedure.



Professor Campbell McLachlan QC
President of the Tribunal
13 October 2019