
**IN THE MATTER OF AN ARBITRATION UNDER
THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND
AND GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA ON THE ENCOUR-
AGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS**

AND

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNA-
TIONAL TRADE LAW**

between

WANG JIAZHU

Claimant

and

THE REPUBLIC OF FINLAND

Respondent

RULING ON RESPONDENT’S JURISDICTIONAL OBJECTION
10 June 2022

Arbitral Tribunal:

The Right Honourable Lord Mance (presiding arbitrator)
The Honourable Kemal Bokhary
Professor Dr. Kaj Hobér

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(I) Introduction

1. This is the Tribunal's Ruling on a Jurisdictional Objection dated 29 October 2021 raised by the Respondent, the Republic of Finland, in response to the Statement of Claim dated 30 August 2021 filed by the Claimant, Mr Wang Jiazhu. Mr Wang's claim is made under the Agreement between the Government of the Republic of Finland and the Government of the People's Republic of China on the Encouragement and Reciprocal Protection of Investments dated 15 November 2004 ("the Treaty"). The basic Objection is that Mr Wang has previously submitted the same dispute to the competent national courts of Finland, and thereby made a choice regarding the means of resolution of the dispute which, under Article 9 of the Treaty, precludes its submission to ICSID arbitration. If and so far as Mr Wang seeks to raise any new dispute, outside the scope of that before the Finnish courts, the Republic also submits that Mr Wang has not satisfied the prima facie test required to confer jurisdiction for its pursuit before the Tribunal under the Treaty.

2. Mr Wang commenced this arbitration by Notice of Arbitration dated 22 January 2021 to which the Republic responded on 19 February 2021. The Tribunal held a case management conference on 22 June 2021, and issued its Procedural Order No 1 with annexed Procedural Timetable on 6 August 2021. Pursuant to that Timetable: Mr Wang served his Statement of Claim on 30 August 2021; the Republic served its Jurisdictional Objection on 29 October 2021; Mr Wang served his Reply on 21 February 2022; and the Republic served its Rejoinder on 16 March 2022. By emails dated 21 March 2022 both parties confirmed that they agreed to dispense with an oral hearing, and by emails on 23 and 31 March 2022 the Tribunal confirmed that it did not at that stage propose to hold an oral hearing in circumstances where neither party wished one, while not excluding the possibility that it might (during its future deliberations) find points which it would be beneficial to raise with the parties, either in writing or in a short oral hearing. In the event the Tribunal has been able to issue this Ruling without finding it necessary to revert to the parties on any points.

3. The Treaty contains, inter alia, the following provisions:

"Article 1. Definitions
For the purpose of this Agreement,

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusively, includes:
 - (a) movable and immovable property and other property rights such, as mortgages and pledges;
 - (b) shares, debentures, stock and any other kind of participation in companies;
 - (c) claims to money or to any other performance having an economic value associated with an investment;
 - (d) intellectual property rights

.....

Article 2. Promotion And Protection of Investments

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such| investments in accordance with its laws and regulations.
2. Investments of the investors of either Contracting Party shall enjoy constant protection, and security in the territory of the other Contracting Party.
3. Neither Contracting Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment, expansion, sale" or disposal of investments that have been made by investors of the other Contracting Party.

Article 3. Treatment of Investments

1. Investments by the investors of each Contracting Party shall all the time be accorded fair and equitable treatment in the territory of the other Contracting Party.
2. Each Contracting Party shall accord to investments by investors of the other Contracting Party treatment no less favourable than the treatment it accords to investments by its own investors with respect to the operation, management, maintenance use enjoyment expansion sale or other disposal of investments that have been made.
3. Each Contracting Party shall accord to investments by investors of the other Contracting Party treatment no less favourable than treatment it accords to investments .by. investors of. any third State, with respect to the establishment, acquisition, operation, management, maintenance, use, enjoyment, expansion, sale or other disposal of investments. Further, neither Contracting Party shall impose unreasonable or discriminatory measures on investments by investors of the other Contracting Party concerning^ local content or export performance requirements.
4. Each Contracting Party-shall accord to investments by the investors of the other Contracting Party the treatment, which, according to the -investor is the more favourable of those stipulated in paragraph 2 and paragraph 3 of this Article.

.....

Article 4. Expropriation

1. Neither Contracting Party shall expropriate, nationalise or take other measures having similar effects, (hereinafter referred to as "expropriation") against the investments of the investors of the other Contracting Party in its territory, unless the following conditions are met. The expropriation is done:
 - (a) in the public interest;
 - (b) under domestic legal procedure;
 - (c) without discrimination, and
 - (d) against compensation.
2. The compensation referred to in paragraph 1 of this Article shall be equivalent to the fair market value of the expropriated investment at the time immediately before the ex-

propriation' was taken or the impending expropriation became public knowledge, whichever is earlier. The value shall be determined in accordance with generally recognised principles of valuation.

3. Compensation shall be fully realisable and shall, in order to be effective for the affected investor, be paid without delay. It shall include interest at a commercial rate established on a market basis for the currency- of payment from the date of dispossession of the expropriated property until the date of actual payment.

4. Where a Contracting Party expropriates the assets of a company which was incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 to 2 of this Article are applied to the extent necessary to guarantee compensation in respect of their investments to such investors of the other Contracting Party who are owners of those shares.

5. Without prejudice to the provisions of Article 9 of this Agreement, the investor whose investments are expropriated by a Contracting Party shall have the right to prompt review of its case and of valuation of its investments in accordance with the provisions of this Article, by a judicial or other competent authority of that Contracting Party.

Article 5. Compensation for Damages and Losses

1. Investments by "investors of one Contracting Party in the territory of the other Contracting Party that suffer losses owing to war, a state of national emergency, insurrection, riot or other similar events in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other

settlements on less favourable than that accorded-to investments by its own investors or investments by investors of any third State, whichever is the more favourable according to the investor concerned.

2. Investments by investors of one Contracting Party that, in any of the situations referred to in paragraph 1 of this Article, suffer losses in the territory of the other Contracting Party resulting from requisitioning or destruction of an investment or a part thereof by the latter's armed forces or authorities, which was not caused in combat action or was not required by the necessity of situation shall be accorded restitution or compensation that is equivalent to the value of such losses.

....

Article 9. Settlement of Disputes Between an Investor and a Contracting Party

1. Any dispute arising out of an investment between one Contracting Party and an investor of the other Contracting Party should,, whenever possible, be settled amicably between the two parties concerned.

2. If the dispute has not been settled within three (3) months, from the date at which it was raised in writing, the dispute may,- at the choice of the investor, be submitted:

(a) to the competent courts of the Contracting Party in whose territory the investment is made; or (b) to arbitration by the International Centre for the Settlement of investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965; or

(c) an ad hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations' Commission on International Trade Law (UNCITRAL).

3. An investor who has submitted the dispute to national court referred to in paragraph 2 (a) of this Article may nevertheless have recourse to one of the Arbitral Tribunals mentioned in paragraph 2 (b) and 2 (c) of this Article, if the investor has withdrawn his case from national court before judgement has been delivered on the subject matter. In that case the Contracting Party to the dispute shall agree to the submission of the dispute between it and an investor of the other Contracting Party to international arbitration in accordance with this Article.

4. The Arbitral Tribunal mentioned in paragraph 2 (c) shall consist of three arbitrators. The Tribunal shall reach its award by a majority of votes.

5. The Tribunal shall adjudicate in accordance with the provisions of this Agreement, the law of the Contracting Party involved in the dispute (including the rules on the conflict of laws) and the rules of international law applicable to both Contracting Parties.”

(II) Mr Wang's project - the Centre

4. Mr Wang is a national of the People's Republic of China bearing Chinese Passport No. [REDACTED] and is or was the shareholder and director of a Finnish incorporated company, Nordic Finland Investments Oy (“NFIO”), which owned and operated the Nordic-China Centre (“The Centre”) in Kouvola, Finland. His claim is that he was encouraged and authorised by the Mayor and other authorities to establish the Centre in Kouvola, Finland, as a place where there was the rule of law and stability; that the plan was for Kouvola (which is at or near a terminus of the Trans-Siberian Railway) to become a wholesale distribution and logistics centre, facilitating trade between Europe, China and Russia; and that he invested between Euro 5 million and 6 million to that end (partly as equity in and partly as a loan to NFIO). To house the Centre an old dairy factory of approximately 128,000 m² was on 1 June 2006 acquired at a cost of Euro 2.5 million. The plan was to construct and renovate the premises in three phases. Mr Wang says that he spent approximately EUR 1.18 million on initial construction and renovation works. The Centre was officially opened on 20 October 2007 under his day-to-day management. By September 2009 he had completed approximately 70% of the second phase, estimated to cost EUR 1.5 million and to be completed by the end of 2009. He says that China Development Bank had offered a EUR 40 million loan to complete the third phase, and that the Centre’s business was expected to grow and prosper upon such completion and as rail links improved.

(III) The dispute

5. The background to the present dispute lies in the years 2008 to 2010. In September 2008 a memorandum, prepared it appears by the Finnish Border Guard’s contact in the Finnish Embassy in China, concluded that there was reason to suspect the commission of immigration offences in relation to a significant number of residence permits relating to the Centre. The Border Guard on 13 May 2009 initiated a criminal investigation. On 9 June 2009 the Tax Authorities also initiated

an audit into the Centre, and, after receiving certain information from Mr Wang and discussing the matter with him on 17 September 2009, they on 22 October 2009 reported to the criminal investigation authorities their suspicion of aggravated accounting and tax fraud offences, and requested an investigation into whether these had been committed.¹ The report was made pursuant to section 18 of the Act on the Finnish Tax Administration, providing:

“The Finnish Tax Administration is entitled to report to the criminal investigation authority for investigation a matter that concerns a suspect tax offence or other offence related to taxation with respect to the taxes and payments that the Finnish Tax Administration is prescribed to collect on behalf of all tax recipients

The Tax Administration were also in touch with the Border Guard.

6. The events triggering the present dispute occurred on and after 11 November 2009, when the Border Guard instituted a large scale raid on the Centre. This took place without warning and at the same time as raids on certain other centres, and was widely publicised. Mr Wang and other Chinese persons at the Centre were detained. According to his evidence before the Helsinki District Court, Mr Wang was informed of three reasons for his detention: aggravated arrangement of illegal immigration, aggravated tax fraud and aggravated forgery. Mr Wang was thereafter refused bail, on four occasions (13 and 27 November and 11 December 2009 and 15 January 2010). In each case the prosecuting authority resisted bail, and the Vantaa District Court by reasoned decisions refused bail on grounds of ongoing investigation and risks of witness tampering and absconding, and made an order restricting Mr Wang from communicating (without the permission of the Head Investigator) with persons outside the prison other than counsel and the Chinese Embassy. His detention on that basis lasted in the event until 1 February 2010. While detained, he spent some time in solitary confinement. Computers, mobile telephones and documents seized from the Centre during the raid were not returned for some ten to twelve months. The criminal investigation relating to illegal immigration ceased effectively on 1 February 2010 (though the formal proposal for its discontinuance was not until 2 June 2010 and actual discontinuance not until 31 March 2011). It ceased after a decision of the Finnish Supreme Court in an unconnected case declared that the offence of arranging illegal immigration was not committed when entry was pursuant to a visa obtained by the provision of false information. The Tax Authorities' investigation closed at the end of 2010, But Mr Wang's case is that tenants left after the raid, the

¹ R22.

Centre's business was destroyed by what happened, and the Centre subsequently ceased all operations, with its premises being sold by public auction and/or effectively expropriated.

7. Mr Wang maintains that there was no justification for the raid, for the length, nature or terms of the detention which he underwent, for the consequent destruction of the Centre, or for the loss and/or what he submits amounted to expropriation of its premises. He has taken steps first in the Finnish domestic courts and now at an international level before the present Tribunal to recover compensation for the losses he has allegedly sustained.

(IV) The Finnish proceedings

8. Starting in the Finnish courts, by summons issued on 13 June 2013 in case L13/45446 in the Helsinki District Court, Mr Wang claimed from the Republic compensation in the sum of EUR 4,428,762.22 plus interest and costs for financial losses allegedly suffered "in the form of loss on investments" arising from the criminal investigation or for the coercive measures against persons and property used in its course. His case was that there were no grounds for initiating such an investigation or for the coercive measures used in it or for the Tax Administration to make a report leading to any investigation into his or the Centre's affairs, that all such steps were unreasonable (and inconsistent with the trust which he had placed in Kouvola and Finland as places free of administrative abuse of power or mafia activities and subject to the rule of law) and that their effect was to destroy his business. He accordingly claimed compensation by way of damages under the Tort Liability Act, Chapter 3, section 2.

9. Section 2 of Chapter 3 of the Tort Liability Act states that:

"(1) A public corporation shall be vicariously liable in damages for injury or damage caused through an error or negligence in the exercise of public authority. The same liability shall apply also to other corporations that perform a public task on the basis of an Act, a Decree or an authorisation given in an Act.

(2) However, the liability of the corporation referred to in paragraph (1) arises only if the performance of the activity or task, in view of its nature and purpose, has not met the reasonable requirements set for it."

10. The Helsinki District Court received and heard substantial evidence from both sides and on 15 October 2015 issued a reasoned judgment in writing No 15/42334 in which it examined the evidence and concluded that Mr Wang's claim failed, as regards both the criminal investigation and

the Tax Administration's report. By case S 15/3076 Mr Wang appealed to the Helsinki Court of Appeal which by reasoned judgment in writing dated 15 September 2017 dismissed the appeal. By decision in case S 2017/764 dated 8 March 2018 the Finnish Supreme Court refused permission to appeal it from the Helsinki Court of Appeal's judgment, thereby meaning that that Court's judgment remained final.

(V) The present arbitration

11. Having been unsuccessful in the Finnish courts, Mr Wang by Request for Arbitration dated 22 January 2021 initiated the present arbitration. Mr Wang summarises the core of the dispute in paragraph 16 of his Statement of Claim dated 30 August 2021 in the present arbitration as follows:

“16. The dispute between the Claimant and Respondent centres on (a) the unnecessary and in any event disproportionate raid conducted by the Finnish Border Guard on the Nordic-China Centre in the city of Kouvola, Finland on 11 November 2009, without any proper or credible preliminary investigation(s) into and/or assessment of evidence for the suspicion of crime(s) allegedly committed by the Claimant; (b) the discriminatory treatment against the Chinese in Kouvola, Finland; (c) the subsequent unlawful and unjustifiable detention of the Claimant for an extensive period of 3 months without bail, and without any reasonable basis; (d) the arbitrary and unreasonable refusal by the Finnish Courts to allow the Claimant to communicate with third parties during his detention including his close relatives and business partners; and (e) the effective expropriation of the Claimant's property without compensation.”

After that initial summary, the Statement of Claim goes on to develop the case which Mr Wang now advances in more detail.

12. Mr Wang relies on three articles of the Treaty in support of his claims: Article 2 dealing with constant protection and security, as well as protection against unreasonable and discriminatory measures; Article 4 providing for protection against expropriation; and Article 3 providing for fair and equitable treatment of investments protected under the Treaty. Mr Wang's claim relating to fair and equitable treatment consists of several elements, including a claim of denial of justice.
13. The Republic denies all claims raised by Mr Wang and asks the Tribunal to dismiss them in their entirety.

(VI) The jurisdictional issues

14. As stated in paragraph 1 above, the Republic relies upon Article 9 of the Treaty as precluding Mr Wang's pursuit of the present arbitration.
15. Article 9(3) is a Fork in the Road ("FITR") provision according to which an investor has, and may make, a choice as to the means of dispute resolution to pursue in respect of a dispute – a choice which may preclude the investor from later pursuing another means of dispute resolution.
16. The Republic contends that the Tribunal lacks jurisdiction because Mr Wang has previously submitted the dispute now before the Tribunal for resolution by the competent courts of Finland and did not withdraw his case from the Finnish courts before judgment was rendered on the subject-matter. The Republic argues on this basis that the FITR provision has been triggered, leading to a lack of jurisdiction on the Tribunal's part.
17. The Republic further submits that, if and so far as Mr Wang seeks to raise a new dispute outside the scope of the dispute before the Finnish courts, Mr Wang has not satisfied the prima facie test required to confer jurisdiction for such dispute on the Tribunal under the Treaty.
18. Mr Wang's position is that the FITR provision is not applicable because the dispute which he initiated before the Finnish courts by his Finnish Tort Claim differs in nature from the dispute now brought before the Tribunal.
19. Mr Wang adds that the FITR provision is not in any event applicable to his denial of justice claim relating to the dismissal by the Helsinki District Court and the Finnish Court of Appeal of his Finnish Tort Claims. That claim, he contends, is brought on a different legal basis, as well as on a different factual basis, to his Finnish Tort Claims before those Finnish courts.
20. In his Reply on Jurisdiction, Mr Wang describes the factual basis of his denial of justice claim as follows:

“139 The factual basis which gave rise to the said ‘denial of justice’ claim included the ruling and adjudication of the Claimant's Tort Claims heard in the Helsinki District Court (case no. 15/42334) and the Finnish Court of Appeal (case no. 1093) during which the Claimant asserts that there was denial of justice because the domestic courts, inter alia, had failed to give sufficient reasoning or at all for their ruling and questions such as proportionality of the Finnish coercive measures were not addressed: see Statement of Claim at §104.

140. The above factual basis for “denial of justice” now put forward before this investor-state tribunal could not have been the Claimant’s “factual basis” asserted before the Finnish courts for his Tort Claims. This is because at the time when the Tort Claims were heard, the alleged wrongful treatment of the Claimant by the domestic courts had not yet occurred.”

21. At paragraphs 133-142 of his Statement of Claim Mr Wang provides further details of his denial of justice claim.

(VII) The Tribunal’s Analysis

22. In the view of the Tribunal, the very nature of a denial of justice claim means that it cannot be covered by a traditional FITR provision. A denial of justice only arises, where a claimant has first turned to local courts and /or authorities and been denied justice there. Assuming for the sake of argument that Mr Wang’s pursuit of his Tort Claims before the Helsinki District Court and the Finnish Court of Appeal brought the FITR provision into application, a complaint relating to the treatment by those courts of his Tort Claims after and in consequence of the choice made by the FITR provision is not a matter covered by that choice or provision or in respect of which Mr Wang could have sought or had recourse before those courts. Further, there can be no suggestion in the present case that Mr Wang could or should have taken matters further before the domestic courts. He was in fact refused permission to have them reviewed at the highest Finnish instance. Article 9(3) of the Treaty is a traditional FITR provision and does not in these circumstances cover Mr Wang’s denial of justice claim.

23. Any ruling on Mr Wang’s denial of justice claim will involve close consideration of the underlying subject-matter, including the nature and effect of Finnish law. The factual matrix underlying Mr Wang’s denial of justice claim is also intertwined with facts, references to which Mr Wang makes in support of his other claims in this arbitration. There would be a clear risk of inconsistency if the Tribunal were to decide the application of the FITR provision at this stage, in advance of the denial of justice claim.

24. Further, the nature and effect of Finnish law are critical to both the denial of justice claim and the question of whether the FITR provision bites or not. It would be most undesirable if the Tribunal were to form a view when considering the present FITR arguments that Finnish law gave equivalent protection to the Treaty protection, but were to conclude, when considering the denial of

justice claim, that the Finnish courts were unable to give or did not in practice give the same protection as the Treaty protection.

25. The Tribunal has therefore reached the conclusion that it should not, at this stage, enter further into the question whether the FITR provision applies, either potentially or actually. That question should be deferred, for consideration, if it arises, at the same time as the denial of justice claim.

26. The Tribunal should however add the following regarding the sufficiency of Mr Wang's denial of justice claim. As the Republic has pointed out, it is for Mr Wang to make a sufficient prima facie showing of his denial of justice claim for purposes of establishing jurisdiction. The Republic submits that there is nothing in Mr Wang's denial of justice claim, which amounts to more than a complaint that the Helsinki District Court and the Finnish Court of Appeal should have come to a different conclusion and, certainly, nothing that should be regarded as satisfying the high hurdle incumbent on a claimant like Mr Wang under public international law, to show some manifest injustice or error of a kind that no competent judge could reasonably have made. The Tribunal accepts that the denial of justice claim is pleaded very generally and briefly, and that its more specific reference to lack of reasoning and an absence of focus on proportionality was only introduced in Mr Wang's Reply on Jurisdiction. However, any complaint about denial of justice based on such matters is bound, once raised, to require the Tribunal to examine the underlying factual subject-matter and issues, to see whether the Helsinki District Court and Finnish Court of Appeal's evaluation of them can be regarded as tenable or in a broad sense reasonable or proportionate. As the Tribunal has already indicated, this is a case where the factual matrix of the denial of justice claim, which Mr Wang now pursues, and that of the Tort Claims, which the Finnish courts dismissed, are very closely intertwined. At least as the matter presently appears, the Tribunal does not consider that the denial of justice claims can or should be put aside as lacking even prima facie merit. Having reviewed the facts and arguments relied upon by Mr Wang in this respect, the Tribunal therefore finds that Mr Wang has made a prima showing for jurisdictional purposes in respect of his denial of justice case.

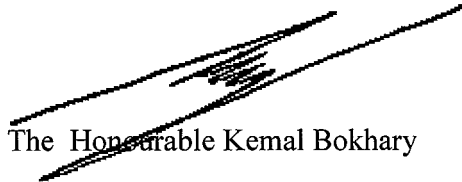
(VIII) The Tribunal's Conclusions

27. In the result, and for these reasons, the Tribunal concludes that the Republic's Jurisdictional Objection fails.

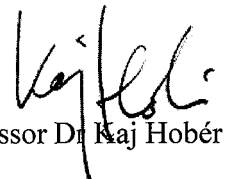
28. The Tribunal will therefore proceed to a consideration of the merits of the claims raised by Mr Wang, albeit on the understanding that the Tribunal may, if appropriate in light of the evidence and arguments on the merits presented by the Parties, have to revisit jurisdictional aspects of the dispute.

Place: London

Date: 10 June 2022



The Honourable Kemal Bokhary



Professor Dr. Kaj Hobér



The Right Honourable Lord Mance
(Presiding arbitrator)