

INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL COURT OF ARBITRATION

In the Matter of an Arbitration
Between:

GAMA GÜÇ SISTEMLERİ MÜHENDİSLİK VE TAAHHÜT (“GAMA” or “Claimant”)
AND
THE REPUBLIC OF NORTH MACEDONIA (“MACEDONIA” or “Respondent”)
(The Claimant and the Respondent hereinafter collectively referred to as “Parties”)

ICC Arbitration No. 26696/HBH

Procedural Order No. 4

I. The Parties’ Positions

A. The Claimant’s Requests

1. On 20 December 2023, the Claimant submitted a Request for Leave to Introduce New Evidence to the Tribunal (the “Request”). The first part of the Request constituted a renewed request for leave to introduce eight new documents, which it had obtained from the State Commission for the Prevention of Corruption of the Republic of North Macedonia on 25 September 2023 through a freedom of information request. These documents (hereinafter referred to as the “FOI Documents”) are as follows:

- (a) The criminal complaint of the Financial Police dated 19 June 2019 submitted to the Public Prosecution Office for Organized Crime and Corruption against (i) TE-TO, for the criminal offence “false Insolvency”; (ii) Vadim Mihailov, the President of the Management Board of TE-TO, for the criminal offences “abuse of official position” and “false Insolvency”; (iii) Sashka Trajkovska, the bankruptcy judge who approved the Reorganisation Plan dated 6 June 2018 for the criminal offence “abuse of official Position”; (iv) Snezana Sardzovska, the notary who certified the annexes to the loan agreements and the Loan acceleration agreements for the criminal offence “abuse of official position; (v) Ivica Sekovanovikj, former President of the Management Board of TE-TO, for the criminal offence “money laundering”; (vi) Dmitry Dmytrenko, former President of the Management Board of TE-TO, for the criminal offence “money laundering”; and (vii) Mihail Scobioala, former President of the Management Board of TE-TO, for the criminal offence “money laundering”.
- (b) The letter by the Public Prosecution Office dated 2 January 2020 in response to the request for information from the Anticorruption Commission.

- (c) The letter of request for information by the Anticorruption Commission no. 12-5267/7 dated 30 December 2019 to the bankruptcy judge who approved TE-TO's reorganization and the letter of response by the bankruptcy judge dated 2 January 2020 in response to the request from the Anticorruption Commission.
- (d) The letter of request for information by the Anticorruption Commission no. 12-120/29 dated 13 October 2020 to the bankruptcy judge who approved TE-TO's reorganization and the letter of response by the bankruptcy judge dated 16 October 2020 in response to the request from the Anticorruption Commission.
- (e) The letter of request by the Directorate for Large Taxpayers – Unit for Debt Collection at the Public Revenue Office (“PRO Debt Collection Unit”) no. 28-559 dated 4 February 2020 to the Director of the Public Revenue Office; and
- (f) The letter by the PRO Debt Collection Unit no. 28-3820/1 dated 16 October 2020 to the Anticorruption Commission.

2. As noted in the Request, the FOI Documents were the subject of a previous request made by the Claimant on 14 November 2023, a request that was denied without prejudice by the Tribunal in Procedural Order No. 3 issued on 4 December 2023.

3. Subsequent to this Order, the Claimant shared the FOI Documents with the Respondent. However, the parties were unable to reach agreement on their introduction.

4. The Claimant renews its request for leave to introduce the FOI Documents into the record with a brief argument explaining their relevance. It submits that the Respondent's objection on timing grounds is unjustified, and reiterates that the Documents are to or from government authorities and therefore have been in the possession, custody or control of the Respondent. It argues that the only party to be prejudiced by their late receipt was the Claimant, who secured the Documents only after the filing of its Reply, despite having requested them during the document production phase. It also argues that given the fact that the FOI Documents are not voluminous (approximately 40 pages), and are relevant and material and could be addressed by the Respondent either prior to or at the hearing, there will be no prejudice to the Respondent even assuming it had no access to the Documents previous to their being shared by the Claimant.

5. In addition to renewing the request for leave to introduce the FOI Documents, the Claimant requested leave to introduce four new documents issued in December 2023 which came to its attention only after the Tribunal's issuance of Procedural Order No. 3, along with a short argument explaining their relevance. These documents, which it collectively refers to as the Angjushev Documents, consist of the following:

- (i) Designation by the US Department of State of North Macedonian Public Official Kocho Angjushev for Significant Corruption dated 5 December 2023;
- (ii) Statement by the US Ambassador to the Republic of North Macedonia, Angela P Aggeler, dated 5 December 2023, referring to the designation above;
- (iii) Global Regulatory Information Database (GRID) Details on Kocho Angjushev from December 2023; and
- (iv) Statement by the US Ambassador to the Republic of North Macedonia, Angela P Aggeler, “Angjushev’s designation not based on suspicion but evidence”, dated 13 December 2023.

6. The Claimant submits that the Angjushev Documents are relevant and material to the present dispute, specifically noting that they “support Claimant’s case that there is a high degree of likelihood Mr. Angjushev leveraged his position to facilitate the unlawful tax debt deferral to his longstanding business partner TE-TO”. (Request, para. 8, citing to the Statement of Claim and various documents in the record).

7. The Claimant indicates that prior to making the Request, it sought the Respondent’s consent to their introduction into the record, which was not granted due to the late stage of the procedure. It submitted that their admission is justified under Procedural Order No. 1, Part II, Section (B)(i)(o), as a fact that occurred after the filing of the last written submission, as well as the fact that they are not voluminous and that the Respondent would have enough time to address them either before or at the hearing.

B. The Respondent’s Observations

8. On 28 December 2023, the Respondent, at the invitation of the Tribunal, provided its observations on the Claimant’s Request, objecting to the admission of both the FOI Documents and the Angjushev Documents on timeliness grounds (“coming a few weeks before the hearing”).

9. The Respondent notes that the Claimant did not dispute in its current Request the Respondent’s previous submission that exceptional circumstances needed to be shown by the Claimant in order for the documents to be introduced. It maintains that the Claimant had failed to establish such circumstances, let alone any circumstances that would justify their admission at this time. It considers “mundane” the fact that the Angjushev documents are of recent provenance.

10. The Respondent disputes the relevance and materiality of the documents covered by the Request, arguing in particular that the Angjushev Documents are “untethered” to the facts of this case and cannot be material.

11. The Respondent also objects to the Claimant's request for an opportunity to make submissions regarding the relevance of the documents covered by the Request, and indicates it would be prejudiced by their admission.

II. The Tribunal's Analysis

12. The Tribunal will address the FOI Documents and the Angjushev Documents separately.

13. As to the Angjushev Documents, the Tribunal considers that the previous submissions of the Claimant sufficiently confirm their potential relevance and materiality. It also notes that they are far from voluminous (4 pages in total), and constitute publicly available documents since the time of their issuance in early December 2023. Their admission is therefore confirmed. The Tribunal does not, however, grant the Claimant's request to submit argument prior to the hearing regarding their relevance.

14. The Tribunal has also determined to admit the FOI Documents. In so deciding, the Tribunal is mindful of the timing concerns raised by the Respondent, and appreciates that the hearing in this case is only a few weeks away. The Tribunal is influenced by the fact that the Claimant has indicated that the FOI Documents are not extensive in nature, comprising approximately 40 pages in total, and that the Claimant has shared the FOI Documents with the Respondent following the Tribunal's issuance of Procedural Order No. 3.

15. Moreover, as the Tribunal expressed in Procedural Order No. 3, these are documents from or to governmental authorities of North Macedonia, not third-party documents. And as also previously expressed, their relevance is to issues that have already been raised by the Claimant's submissions—indeed, it appears to the Tribunal from the face of the Claimant's submissions (the Tribunal continues not to have reviewed the documents themselves pending a decision on their admission), that they are related to central issues in Claimant's case. This strongly suggests their relevance and potential materiality. and reduces the risk of potential prejudice from their introduction at this stage.

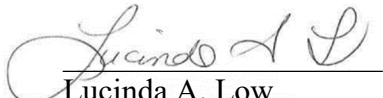
16. This combination of circumstances provides sufficient justification for their introduction into the record notwithstanding the proximity of the hearing, in the view of the Tribunal.

17. As with the Angjushev Documents, however, the Tribunal does not grant the request of the Claimant to make a written submission in advance of the hearing on these Documents. Given the proximity of the hearing, there is not sufficient time to provide both parties with an equal opportunity to make submissions regarding either the FOI Documents or the Angjushev Documents. Both parties shall be free to address both the FOI Documents and the Angjushev Documents in their oral submissions at the hearing.

III. Decision and Order

18. For the foregoing reasons, the Claimant's Request to introduce the FOI Documents and the Angjushev Documents is granted and these documents are now admitted to the record. The Claimant is directed to number them accordingly. The Claimant's further request to make written submissions regarding the relevance of these documents is denied.

Issued on behalf of the Tribunal, on 4 January 2024.



Lucinda A. Low
President of the Tribunal