

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

EMS SHIPPING & TRADING GMBH

Claimant

and

REPUBLIC OF ALBANIA

Respondent

ICSID CASE NO. ARB/23/9

**ORDER OF THE TRIBUNAL TAKING NOTE OF THE
DISCONTINUANCE OF THE PROCEEDING**

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal

Prof. Stanimir Alexandrov, Arbitrator

Prof. Albert Jan van den Berg, Arbitrator

Secretary of the Tribunal

Ms. Izabela Chabinska

Assistant to the Tribunal

Ms. Laura Zinnerman

Date of dispatch to the Parties: 13 August 2024

REPRESENTATION OF THE PARTIES

Representing EMS Shipping & Trading GmbH:

Dr. Florian Dupuy
Dr. Philipp K. Wagner
Mr. Petrit Elshani
Ms. Laura Halonen
Dr. Julian Bickmann
Wagner Arbitration Partnerschaft von
Rechtsanwälten mbB
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Federal Republic of Germany

Representing the Republic of Albania:

Mr. Odise Mocka
Ms. Florinda Ibrahimi
Ms. Manuela Imeraj
State Advocate's Office/
Avokatura e Shtetit
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Nd.5, kati 4
Tirana
Republic of Albania

and

Dr. Markus Burianski
Dr. Alexandra Diehl
Mr. Ignacio Madalena
Dr. Federico Parise Kuhnle
White & Case LLP
Bockenheimer Landstraße 20
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I. PROCEDURAL HISTORY

1. On 28 March 2023, the International Centre for Settlement of Investment Disputes (“**ICSID**”) received a request for arbitration from EMS Shipping & Trading GmbH (“**EMS**” or “**the Claimant**”), a company incorporated in the Federal Republic of Germany, for the institution of arbitration proceedings under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (“**the ICSID Convention**”) and the Treaty between the Federal Republic of Germany and the Republic of Albania concerning the Encouragement and Reciprocal Protection of Investments (the “**BIT**” or “**Treaty**”), in respect of a dispute with the Republic of Albania (“**Albania**” or “**the Respondent**”) (“**the Request**”). The dispute relates to the Concession Agreement for the Management, Operation and Maintenance of the Durrës Port East Terminal in Albania. The Claimant and the Respondent are collectively referred to as the “Parties.” The Parties’ representatives and their addresses are listed above on page (i).
2. On 7 April 2023, the Secretary-General registered the Request pursuant to Article 36(3) of the ICSID Convention and Rules 6 and 7 of the ICSID Institution Rules and notified the Parties of the registration. In the Notice of Registration, the Secretary-General invited the Parties to proceed to constitute an Arbitral Tribunal as soon as possible in accordance with Rule 7(c) of the Centre’s Institution Rules.
3. On 12 April 2023, in accordance with ICSID Administrative and Financial Regulation 15(1)(a) (the “**AFR**”), the ICSID Secretariat requested that the Claimant make an initial advance payment of USD 150,000.00 within 30 days, which shall be considered partial payment by the Claimant of the further advance payment to be requested upon constitution of the Tribunal pursuant to AFR 15(1)(b).
4. On 24 April 2023, the Secretariat received the Claimant’s payment.
5. The Tribunal was constituted in accordance with Article 37(2)(a) of the ICSID Convention, pursuant to the method of constitution described in Articles 10 and 11 of the BIT (which required the Tribunal to be composed of three arbitrators, one arbitrator appointed by each

Party and the presiding arbitrator to be appointed by agreement of the two Party-appointed arbitrators).

6. The Tribunal is composed of Prof. Gabrielle Kaufmann-Kohler, a national of Switzerland, President, appointed by agreement of the two Party-appointed arbitrators; Prof. Stanimir Alexandrov, a national of the Republic of Bulgaria, appointed by the Claimant; and Prof. Albert Jan van den Berg, a national of the Kingdom of the Netherlands, appointed by the Respondent.
7. On 22 June 2023, the Secretary-General, in accordance with Rule 21(1) of the ICSID Arbitration Rules (“**Arbitration Rules**”) notified the Parties that all three arbitrators had accepted their appointments and that the Tribunal was therefore deemed to have been constituted on that date. Ms. Izabela Chabinska, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.
8. On 26 June 2023, in accordance with AFR 15(1)(b), the Secretariat requested that the Respondent make an advance payment to ICSID of USD 150,000.00 within 30 days.
9. On 25 July 2023, the Secretariat, on behalf of the Tribunal, circulated a draft Procedural Order No. 1 (“**PO1**”) and proposed the appointment of Ms. Laura Zinnerman as the Assistant to the Tribunal. The Tribunal also invited the Parties to provide their input about the transparency/confidentiality of the proceedings.
10. On 28 July 2023, the Secretariat informed the Parties that it had not received payment from the Respondent and in accordance with AFR 16 invited either Party to pay the outstanding amount within 15 days. On 1 August 2023, the Respondent requested a one-month extension for making the payment. On the same date, the Secretariat acknowledged and noted the Respondent’s request.
11. By communications of 14 August 2023, the Parties informed the Tribunal of their agreement to the appointment of Ms. Laura Zinnerman as the Assistant to the Tribunal and provided their input about the transparency/confidentiality of the proceedings.
12. On 23 August 2023, the Secretariat, on behalf of the Tribunal, circulated a draft Procedural Order No. 2 (“**PO2**”) on transparency and confidentiality.

13. On 4 September 2023, the Parties provided their joint comments to draft PO1 together with a draft procedural timetable setting out the Parties' respective positions thereon. Additionally, the Claimant noted that draft PO2 accurately reflected its position on transparency.
14. On 5 September 2023, the Secretariat received the payment of USD 150,000.00 from the Respondent.
15. In accordance with Rule 29 of the Arbitration Rules, the Tribunal held a first session with the Parties of 18 September 2023 by videoconference.
16. On 20 September 2023, the Tribunal issued PO1 setting out the procedural rules governing this arbitration and attaching a draft procedural calendar drawn up on the basis of the Parties' prior proposals and as discussed at the first session. The Tribunal also noted its understanding that the Parties had agreed to extend the 60-day timeline for publication of orders and decisions provided for in Arbitration Rule 63 in respect to PO1.
17. By communications of 27 September 2023, each Party provided comments on the draft procedural calendar. Additionally, the Respondent requested an extension of time for submitting comments on draft PO2 and the Claimant noted that it had no objection.
18. On 3 October 2023, the Tribunal issued the final version of the procedural calendar, to constitute Annex B to PO1, forming an integral part of PO1. Furthermore, the Tribunal approved the Parties' agreement of 27 September 2023 to extend the time for comments on draft PO2.
19. By communications of 7 November 2023, the Respondent requested an additional extension of time for submitting its comments on draft PO2 and the Claimant repeated that it had no comments on draft PO2 as it had already noted on 4 September 2023. On the same date, the Tribunal invited the Parties to confer and revert with a joint proposal on the date for comments on draft PO2.
20. On 24 November 2023, the Claimant filed its Memorial accompanied by Factual Exhibits C-0001 to C-0239; Legal Authorities CL-0001 to CL-0135; Witness Statement of Mr. Florian Çimo; Witness Statement of Mr. Heiko Luikenga; Expert Report of Mr. Michael Seelhof (together with Exhibits MS-0001 to MS-0066); and an Index of Supporting Documents.

21. On 7 December 2023, the Tribunal invited the Parties to submit either the comments to draft PO2 or their joint date proposal to file these comments by 12 December 2023.
22. On 12 December 2023, the Claimant informed the Tribunal that it still had no comments on draft PO2 as expressed in its communication of 4 September 2023. On the same date, the Respondent informed the Tribunal and the Secretariat that it appointed Dr. Markus Burianski, Dr. Alexandra Diehl, Mr. Ignacio Madalena and Dr. Frederico Parise Kuhnle of White & Case LLP, Frankfurt, as additional counsel for the Respondent. Additionally, the Respondent provided its comments on draft PO2.
23. On 5 January 2024, the Tribunal issued PO2 on transparency and confidentiality.
24. On 19 January 2024, the Respondent filed a request to address the objections to jurisdiction as a preliminary question, together with Factual Exhibits R-0001 to R-0034 and Legal Authorities RL-0001 to RL-0028 (the “**Request for Bifurcation**”).
25. On 9 February 2024, the Claimant filed its response to the Request for Bifurcation, together with Factual Exhibit C-0240 and Legal Authorities CL-0136 to CL-0138.
26. On 23 February 2024, the Tribunal issued Procedural Order No. 3 rejecting the Respondent’s Request for Bifurcation. As a result, the objections to jurisdiction were joined to the merits of the dispute and the proceedings followed the timetable in Scenario 2 of Annex B to PO1.
27. By communications of 24 and 25 April 2024, the Parties informed the Tribunal of their agreement to modify the applicable procedural timetable. On 29 April 2024, the Tribunal confirmed its consent to the Parties’ agreement to modify the procedural timetable and issued an amended timetable reflecting the Parties’ agreement.
28. On 18 May 2024, the Respondent filed its Memorial on Jurisdiction and Counter-Memorial on the Merits accompanied by Factual Exhibits R-0001 to R-259; Legal Authorities RL-0001 to RL-0119; RL-0121 to RL-0185 (intentionally omitting Exhibit RL-120); Witness Statement of Pirro Vengu; Expert Report of Colin Johnson and Mohammad Yadollahi (together with Appendices 3, 5 and 6; and Exhibits CJMY-0001 to CJMY-0026); and a List of Factual Exhibits and Legal Authorities.

29. On 12 July 2024, the Parties simultaneously exchanged replies to the other Party's objections to the document production requests and submitted their respective requests to the Tribunal, seeking an order for the production of the documents sought and not produced.
30. On 18 July 2024, the Claimant requested that the Tribunal strike from the record the Respondent's legal arguments set out in the Parties' document production requests. On the same date, the Tribunal invited the Respondent's comments on the Claimant's request, which were received on the next day. On 24 July 2024, the Tribunal denied the Claimant's request.
31. By letter of 31 July 2024 on behalf of both Parties, the Claimant informed the Tribunal and the Secretariat as follows:

In accordance with Rule 55(2)(a) of the ICSID Arbitration Rules, the Claimant EMS Shipping & Trading GmbH ("EMS") wishes to notify you that the Parties have agreed on a settlement of their dispute.

The Parties have agreed:

- *to discontinue the proceeding;*
- *that EMS shall irrevocably withdraw with prejudice all its claims against the Republic of Albania as set out in the Request for Arbitration and Memorial on the Merits;*
- *to request the Tribunal to issue an order taking note of the discontinuance of the proceeding in accordance with Rule 55(2)(a) of the ICSID Arbitration Rules;*
- *that they shall each bear their own legal fees, costs, and expenses incurred in relation to the arbitration, including their respective shares of any ICSID and arbitrator fees and costs;*
- *that any funds remaining on deposit with ICSID shall be returned to the Parties in equal shares.*

EMS hereby irrevocably withdraws with prejudice all of its claims against the Republic of Albania as set out in its Request for Arbitration and Memorial on the Merits and respectfully requests the Tribunal to issue the order as specified above.

32. On the same date, the Respondent confirmed its agreement with the Claimant's correspondence of 31 July 2024.

33. Rule 55(2)(a) of the Arbitration Rules provides as follows:

Rule 55: Settlement and Discontinuance by Agreement of the Parties

[...]

(2) If the parties agree on a settlement of the dispute before the Award is rendered, the Tribunal:

(a) shall issue an order taking note of the discontinuance of the proceeding, if the parties so request; [...]

II. ORDER

34. On the basis of the foregoing, the Tribunal

(i) takes note of the Parties' agreement to discontinue this proceeding upon the terms quoted in paragraph 31 above;

(ii) hereby takes note of the discontinuance of the proceeding.

Dated as of 13 August 2024:

[signed]

[signed]

Prof. Stanimir Alexandrov
Arbitrator

Prof. Albert Jan van den Berg
Arbitrator

[signed]

Prof. Gabrielle Kaufmann-Kohler
President of the Tribunal