

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

MIRIAN G. DEKANOIDZE AND T.G. TRADE LLC

Claimants

v.

GEORGIA

Respondent

(ICSID Case No. ARB/23/45)

PROCEDURAL ORDER NO. 2

On Transparency and Confidentiality

Members of the Tribunal

Ms. Judith Levine, President of the Tribunal

Dr. Hamid Gharavi, Arbitrator

Prof. Attila Massimiliano Tanzi, Arbitrator

Secretary of the Tribunal

Ms. Ella Rosenberg

5 September 2024

I. PROCEDURAL BACKGROUND

1. On 14 March 2024, the Tribunal circulated a draft of this order (“**Draft PO2**”) for discussion by the Parties.
2. On 1 August 2024, the Parties commented on Draft PO2.
3. On 6 August 2024, the first session was held. During the first session, the Parties and the Tribunal discussed the Parties’ comments on Draft PO2 and the draft Procedural Order No. 1.
4. On 9 August 2024, the Tribunal circulated updated versions of Draft PO2 and the draft Procedural Order No. 1 to the Parties.
5. On 21 August 2024, the Parties provided their joint proposal on the procedural calendar.
6. This Procedural Order No. 2 contains the Parties’ agreements and the Tribunal’s decisions concerning the transparency regime governing this case.

II. LEGAL FRAMEWORK

7. The legal framework applicable to these proceedings is determined by the Treaty between the Government of the United States of America and the Government of Georgia Concerning the Encouragement and Reciprocal Protection of Investment, which was signed on 7 March 1994, and entered into force on 10 August 1999 (“**BIT**”), the ICSID Convention, and the 2022 ICSID Arbitration Rules. ICSID Arbitration Rules 62-66 contain provisions concerning the publication of the award, orders and decisions, other documents filed in the proceedings, transcripts and recordings of hearings, open hearings and the definition of confidential or protected information.
8. In accordance with ICSID Arbitration Rule 1(2), the Parties may agree on other rules governing transparency and confidentiality of this proceeding.
9. In this case, the BIT is silent with respect to transparency/confidentiality. Therefore, the applicable provisions are those set out in Article 48(5) of the ICSID Convention and ICSID Arbitration Rules 62-66 as amended/supplemented by Section III of this Order.
10. In accordance with ICSID Arbitration Rule 66, confidential or protected information is information which is protected from public disclosure:
 - (a) by the instrument of consent to arbitration;
 - (b) by the applicable law or applicable rules;
 - (c) in the case of information of a State party to the dispute, by the law of that State;
 - (d) in accordance with the orders and decisions of the Tribunal;
 - (e) by agreement of the parties;
 - (f) because it constitutes confidential business information or protected personal information;

- (g) because public disclosure would impede law enforcement;
- (h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;
- (i) because public disclosure would aggravate the dispute between the parties; or
- (j) because public disclosure would undermine the integrity of the arbitral process.

III. TRANSPARENCY RULES

11. The Tribunal adopts the following transparency and confidentiality rules governing the proceedings.

A. AWARD (ICSID ARBITRATION RULE 62)

12. For the purposes of Article 48(5) of the ICSID Convention and ICSID Arbitration Rule 62, Georgia does not consent to publication of the Award by ICSID on its website. Accordingly, ICSID Arbitration Rule 62(4) shall apply.

B. ORDERS AND DECISIONS (ICSID ARBITRATION RULE 63)

13. ICSID shall publish the orders and decisions of the Tribunal, with any redactions agreed by the Parties or decided by the Tribunal, in accordance with ICSID Arbitration Rule 63. To facilitate compliance with ICSID Arbitration Rule 63, the following provisions shall apply, unless otherwise agreed.
14. Within 30 days from the date of a decision or order, a Party shall give written notice to the other Party, the Tribunal and the ICSID Secretariat, that it requests the non-disclosure of certain information. Absent such a notice within the 30-day timeline, and unless the Tribunal determines on its own initiative that certain information is not to be made public in accordance with ICSID Arbitration Rule Section 66, the Tribunal will authorize ICSID to publish the order or decision without redactions.
15. Within 14 days of receipt of the notice referred to in paragraph 12, the other Party may raise objections to the proposed redactions.
16. If no objections are raised within the time limit established in paragraph 13, the Tribunal will authorize ICSID to publish the decision or order at issue with the requested redactions.
17. If objections are raised within the time limit established in paragraph 13, the Parties shall confer and seek to agree on redactions within 14 days of receipt of the objections to the proposed redactions. If the Parties reach an agreement, the Tribunal will authorize ICSID to publish the document at issue with the agreed redactions.
18. If objections remain unresolved, the disputed redaction requests and the objections thereto shall be submitted to the Tribunal in the form of the Transparency Schedule set out in Annex A to this Order, and the Tribunal will endeavour to decide the disputed redaction requests and objections, within 21 days.
19. If information is to be redacted from a decision or order in accordance with the above paragraphs, the Parties shall provide a redacted version of the document within 10 days.

Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the decision or order.

C. WRITTEN SUBMISSIONS (ICSID ARBITRATION RULE 64)

20. ICSID shall not publish the Parties' written submissions.

D. SUPPORTING DOCUMENTS (ICSID ARBITRATION RULE 64)

21. Supporting documents, including exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto) shall not be published by ICSID.

E. OPEN HEARINGS (ICSID ARBITRATION RULE 65(1)-(2))

22. Hearings shall not be open to the public.

F. TRANSCRIPTS AND RECORDINGS OF HEARINGS (ICSID ARBITRATION RULE 65(3))

23. Transcripts and recordings of hearings shall not be published by ICSID.

On behalf of the Tribunal,

_____[Signature]_____

Ms. Judith Levine
President of the Tribunal
Date: 5 September 2024

ANNEX TO PROCEDURAL ORDER NO. 2
TRANSPARENCY SCHEDULE

[insert Party]	Request [1]
Information sought to be protected from disclosure	
Legal basis for protection	
Comments	
Reply by opposing Party	
Decision	