

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Libra LLC and Others
Claimants

v.

Republic of Azerbaijan
Respondent

(ICSID Case No. ARB/23/46)

**DECISION ON THE CLAIMANTS' REQUEST
FOR A TEMPORARY RESTRAINING ORDER**

Members of the Tribunal

Professor Eduardo Zuleta, President of the Tribunal

Mr. D. Brian King, Arbitrator

Professor Claus von Wobeser, Arbitrator

Secretary of the Tribunal

Leah W. Njoroge

Assistant to the Tribunal

María Marulanda-Mürle

December 26, 2024

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I. INTRODUCTION

1. The Claimants are three companies incorporated under the laws of the Republic of Azerbaijan – Libra LLC (“**Libra**”), Neptun Azerbaijan-British LLC (“**Neptun**”), Virgo Developments Ltd. (“**Virgo**”) – and the Estate of Mr. Efruz Muduroglu (the “**Estate**”), who is a deceased national of the United Kingdom (the “**Claimants**”).
2. The Respondent is the Republic of Azerbaijan (the “**Respondent**” or “**Azerbaijan**”).
3. The Claimants and the Respondent are collectively referred to as the “**Parties**”.

II. PROCEDURAL BACKGROUND¹

4. On July 8, 2024, the Tribunal issued a Decision on the Claimants' Request for Provisional Measures dated February 14, 2024, as supplemented by the Claimants on April 3, 2024.
5. On July 12, 2024, the proceeding was suspended following the Claimants' Proposal for the Disqualification of Ms. Carolyn Lamm, who had been appointed as arbitrator by the Respondent.
6. Following the resignation of Ms. Lamm, the Tribunal was reconstituted on November 12, 2024, with Prof. Claus von Wobeser appointed to fill the vacancy, and the proceeding resumed on that same date.
7. On December 5, 2024, the Tribunal and the Parties held the First Session.
8. On December 19, 2024, the Claimants submitted a Renewed Application for Provisional Measures (the “**Renewed Application**”), requesting, *inter alia*, that the Tribunal “recommend an immediate temporary restraining order (“**TRO**”) suspending the auction of Landmark III [a building in Baku] pending its determination of [the] Claimants' Renewed

¹ This section summarizes the main procedural events relevant to the present decision regarding the Claimants' request for a Temporary Restraining Order, submitted along with the Claimants' Renewed Application for Provisional Measures dated December 19, 2024.

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[Application]....”² (the “**TRO Request**”). The Landmark III auction is scheduled to commence on December 22, 2024, and to finish on December 29, 2024.³

9. On December 20, 2024, the Tribunal invited the Respondent to submit (i) a brief response on the TRO Request by close of business on December 20, 2024; and (ii) a response to the Renewed Application by December 26, 2024.

On December 20, 2024, the Respondent submitted a letter to the Tribunal in response to the TRO Request (the “**Response to the TRO Request**”). Additionally, the Respondent requested that the Tribunal extend the deadline to respond to the Renewed Application to January 9, 2024.⁴

III. THE PARTIES' REQUESTS FOR RELIEF

A. THE CLAIMANTS' REQUEST FOR RELIEF

10. In its Renewed Application, the Claimants requested that the Tribunal recommend the following provisional measures:

- a. **Ordering** Azerbaijan to take all actions necessary to immediately lift the restrictions on Mr. Muduroglu's right to leave the country;
- b. **Ordering** Azerbaijan to take all actions necessary to temporarily suspend the auction of Landmark III while the Tribunal decides Claimants' Renewed Request for Provisional Measures;
- c. **Ordering** Azerbaijan to take all actions necessary to temporarily suspend the auction of Landmark III, the asset freezes on Libra and Neptun, and all related domestic proceedings until the Tribunal issues its Final Award in this arbitration;

² The Claimants' Renewed Application for Provisional Measures dated December 19, 2024 (the “**Renewed Application**”), ¶¶ 7 and 92(b).

³ Renewed Application, ¶ 5; The Respondent's Letter to the Tribunal dated December 20, 2024 (the “**Response to the TRO Request**”), ¶ 7.

⁴ Response to the TRO Request, ¶ 35(b).

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d. **Ordering** Azerbaijan to suspend any other domestic proceedings involving the foreclosure or sale of the investments at issue in this dispute until the Tribunal issues its Final Award in this arbitration;

e. **Ordering** Azerbaijan to refrain from taking any other action to aggravate this dispute or disturb the status quo antes as of [the] Claimants' Request for Arbitration; and

f. **Ordering** any other relief that the Tribunal deems appropriate.⁵

B. THE RESPONDENT'S REQUEST FOR RELIEF

11. In its Response to the TRO Request, the Respondent requested that the Tribunal

(a) Deny the Claimants' TRO Request; and

(b) Extend the deadline to respond to the Claimants' [Renewed] Application to 9 January 2024.⁶

* * *

12. This decision addresses solely the Claimants' request in paragraph 92(2) of their Renewed Application, seeking that the Tribunal recommend a provisional measure "[o]rdering Azerbaijan to take all actions necessary to temporarily suspend the auction of Landmark III while the Tribunal decides [the] Claimants' Renewed [Application],"⁷ i.e., the TRO Request.

13. On December 23, 2024, the Tribunal granted the Respondent's request for an extension up until January 9, 2025 to respond to the Renewed Application. The Tribunal will decide on the Renewed Application after considering the positions of both Parties in full.

IV. ANALYSIS OF THE TRIBUNAL

14. The Claimants request the temporary suspension of the auction of Landmark III, which was ordered by the Azerbaijani courts in a proceeding initiated by Aqrarkredit, a creditor of a

⁵ Renewed Application, ¶ 92.

⁶ Response to the TRO Request, ¶ 35.

⁷ Renewed Application, ¶ 92(b) [emphasis eliminated].

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loan granted to Libra.⁸ The auction is set to begin on December 22, 2024, and conclude on December 29, 2024.⁹

15. The Claimants argue that due to the immediate threat to their investment and the likelihood of harm occurring before the Tribunal can fully address their Renewed Application, a TRO should be issued to suspend the auction of Landmark III pending the Tribunal's decision on their Renewed Application.¹⁰
16. The relevant facts before this Tribunal as of the date of this decision on the TRO are the following:
 - a. In March 2023, Aqrarkredit brought an action in the Azerbaijan courts seeking foreclosure on Landmark III.¹¹
 - b. On March 12, 2024, the first-instance Baku Commercial Court ordered the foreclosure of Landmark III and set the property's price at AZN 120 million.¹²
 - c. On June 10, 2024, the Court of Appeal upheld the Baku Commercial Court's decision.¹³
 - d. On October 16, 2024, the Court of Cassation ordered that Landmark III be auctioned at a price of AZN 120 million.¹⁴

⁸ See, Renewed Application, ¶¶ 22-37.

⁹ Renewed Application, ¶ 5.

¹⁰ Renewed Application, ¶ 89.

¹¹ Renewed Application, ¶ 22; Response to the TRO Request, ¶ 6.

¹² Renewed Application, ¶ 32; Response to the TRO Request, ¶ 6.

¹³ Renewed Application, ¶ 33; Response to the TRO Request, ¶ 6.

¹⁴ Renewed Application, ¶ 34; Response to the TRO Request, ¶ 6.

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- e. The Claimants do not specify the exact date when the Azerbaijani courts set the auction of Landmark III to begin on December 22, 2024. The Respondent affirms that the auction announcement was published online on December 2, 2024.¹⁵
17. After considering the positions of the Parties and the evidence presented, the Tribunal finds no compelling justification for the Claimants' delay in submitting the TRO Request. The foreclosure was ordered on March 12, 2024. The Claimants were aware of the decision of the Court of Cassation decision since October 2024¹⁶ and knew or should have known the auction date at least since December 2, 2024. However, the Claimants waited until December 19, 2024 – only one business day before the auction was scheduled to begin – to file the TRO Request.
18. In the Tribunal's view, this delay provides sufficient grounds to deny the TRO Request. A party cannot assert urgency for a provisional measure when it has postponed the submission of its application without good cause shown.
19. The Tribunal notes that this decision solely concerns the Claimants' request to suspend the auction of Landmark III scheduled for December 22 to 29, 2024, and does not anticipate or prejudge the Tribunal's ruling on the Renewed Application.
20. The Tribunal must reiterate its concern about the course of events involving Mr. Muduroglu and Landmark III as recited in the Claimants' papers. It will closely monitor the upcoming developments as part of its assessment of the Renewed Application.

¹⁵ Response to the TRO Request, ¶ 7.

¹⁶ According to the English translation of the Court of Cassation's decision dated October 16, 2024, "[t]he decision is final and enters into force from the moment of its adoption." (Exhibit C-202, p. 31)

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V. DECISION OF THE TRIBUNAL

21. For the reasons provided above, the Tribunal rejects the Claimants' TRO Request.

For and on behalf of the Tribunal,

[signed]

Professor Eduardo Zuleta
President of the Tribunal
December 26, 2024