

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' RENEWED REQUEST FOR
PROVISIONAL MEASURES**

Members of the Tribunal

Professor Eduardo Zuleta, President of the Tribunal
Mr. D. Brian King, Arbitrator
Dr. Claus von Wobeser, Arbitrator

Secretary of the Tribunal

Leah W. Njoroge

Assistant to the Tribunal

María Marulanda Mürrle

March 7, 2025

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I. PROCEDURAL BACKGROUND

1. On February 14, 2024, the Claimants submitted a Request for Provisional Measures accompanied by Exhibits C-67 through C-102 and the Witness Statement of Mr. Eran Muduroglu (“**Mr. Muduroglu**”) dated February 14, 2024 (the “**Claimants’ Initial Request**”).
2. On February 28, 2024, the Respondent filed its observations on the Claimants’ Initial Request, accompanied by Exhibits R-1 to R-5 and Legal Authorities RLA-1 to RLA-13 (the “**Respondent’s Observations**”).
3. On March 6, 2024, the Claimants filed their reply to the Respondent’s Observations, accompanied by Exhibits C-103 through C-119 and the Second Witness Statement of Mr. Muduroglu (the “**Claimants’ Response**”).
4. On March 15, 2024, the Respondent filed its reply to the Claimants’ Response, accompanied by Exhibits R-6 to R-13 and Legal Authorities RLA-14 to RLA-28 (the “**Respondent’s Reply**”).
5. By letter dated April 3, 2024, the Claimants filed a Supplemental Submission in support of the Claimants’ Initial Request, accompanied by Exhibits C-120 through C-155 and the Third Witness Statement of Mr. Muduroglu (the “**Supplemental Submission**”), and requested the ICSID Secretary-General to fix a two-week deadline for the Respondent’s response.
6. On April 24, 2024, the Respondent filed a Reply to the Claimants’ Supplemental Submission, accompanied by Exhibit R-14 and Legal Authorities RLA-29 to RLA-40 (the “**Reply to Supplemental Submission**”).
7. On July 8, 2024, the Tribunal issued its Decision on Provisional Measures denying the Claimants’ Request (the “**First Decision on Provisional Measures**”).

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8. On December 19, 2024, the Claimants filed a renewed request for provisional measures, together with the Fourth Witness Statement of Mr. Muduroglu, Exhibits C-187 through C-210, and Legal Authorities CL-48 through CL-70 (“**Claimants’ Renewed Request**”). The Claimants requested, *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...[Request]” (the “**TRO Request**”). The Landmark III auction was scheduled to commence on December 22, 2024, and to finish on December 29, 2024.
9. The Tribunal invited the Respondent to submit a short response to the TRO Request, which the Respondent did on December 20, 2024.
10. On December 26, 2024, the Tribunal denied the TRO Request (the “**TRO Decision**”).
11. On January 9, 2025, the Respondent filed its observations to the Claimants’ Renewed Request, together with Exhibits R-22 through R-33 and Legal Authorities RLA-65 through RLA-74 (“**Respondent’s Observations on Renewed Request**”).
12. On January 17, 2025, the Claimant filed its Memorial on the Merits, together with three witness statements, including the Fifth Witness Statement of Mr. Muduroglu, a quantum expert report, Exhibits C-211 through C-618, and Legal Authorities CLA-71 through CLA-241.
13. On January 23, 2025, the Claimants filed a reply to the Respondent’s Observations on the Renewed Request, together with the Sixth Witness Statement of Mr. Muduroglu, and Exhibits C-619 through C-624 (“**Claimants’ Reply on Renewed Request**”).
14. On February 6, 2025, the Respondent filed a rejoinder, together with Exhibits R-34 through R-39 and Legal Authorities RLA-74 through RLA-79 (“**Respondent’s Rejoinder on Renewed Request**”).

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II. THE PARTIES' POSITIONS

A. THE CLAIMANTS' POSITION

15. The Claimants request that the Tribunal recommend 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 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;
 - c. **Ordering** Azerbaijan to refrain from taking any other action to aggravate this dispute or disturb the *status quo ante* as of Claimants' Request for Arbitration;
 - d. **Ordering** Azerbaijan to reimburse Claimants forthwith for any and all costs they have incurred pursuing provisional measures; and
 - e. **Ordering** any other relief that the Tribunal deems appropriate.¹
16. The Claimants assert that since the First Decision on Provisional Measures, Azerbaijan has escalated its misconduct against the Claimants and Mr. Muduroglu.² Specifically, the Respondent (i) continues to prevent Mr. Muduroglu from leaving Azerbaijan on entirely spurious grounds,³ and (ii) has unlawfully used Aqrarkredit to auction Landmark III at a suppressed price to ensure that Libra maintains its debt after the auction, as a tool of leverage to pressure the Claimants into giving up this arbitration and to hold Mr. Muduroglu personally accountable for the remaining debt.⁴

¹ Claimants' Reply on Renewed Request, ¶ 22. The Tribunal notes that the Claimants adjusted their request for relief in their Reply on the Renewed Request. Specifically, they removed the request for the Tribunal to issue provisional measures 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" and 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" [*see* Claimants' Renewed Request, ¶ 92(a) and (b)], and added a request for costs.

² Claimant's Renewed Request, ¶ 2.

³ Claimant's Renewed Request, ¶ 42.

⁴ Claimant's Renewed Request, ¶ 6.

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17. The Claimants cite the following facts in support of their request for provisional measures:
- (i) Mr. Muduroglu has remained unlawfully detained in Azerbaijan since his initial travel ban in January 2024. Although this ban was lifted in an administrative hearing on March 11, 2024, Azerbaijan has placed additional travel bans on Mr. Muduroglu.⁵
 - (ii) In February and March 2024, Azerbaijan initiated three tax investigations against Neptun, Libra and Malham. Based on these investigations, Azerbaijan placed additional travel bans on Mr. Muduroglu.⁶
 - (iii) In February 2024, the State Tax Service began a desk audit of Neptun. This audit is, in Claimants' view, illegal as the time bar for said audit had expired. On March 15, 2024, the State Tax Service purportedly discovered an outstanding VAT deficiency for Neptun, imposing a US\$ 530,000 debt on the company. Consequently, Neptun's accounts were frozen, and a travel ban was imposed on Mr. Muduroglu's.⁷
 - (iv) On October 30, 2024, the Baku Court of Appeal ruled on the allegedly outstanding tax and on the travel ban. In its decision, the Court held that "no deviations were revealed by the [State Tax Service]" and concluded that Neptun's claim was highly likely to be successful. As a result, the Court ordered the "prohibit[ion of] all actions related to the execution" of the contested decision, which would have resulted in the lifting of the Neptun travel ban and the freeze of Neptun's assets. However, only the freeze was lifted, as the travel ban remains in place. In its ruling, the Court ordered, within a month, the provision of an independent expert opinion to confirm that

⁵ Claimant's Renewed Request, ¶¶ 2, 10.

⁶ Claimant's Renewed Request, ¶ 9.

⁷ Claimant's Renewed Request, ¶ 11.

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Neptun did not owe any of the alleged taxes. However, almost three months after the ruling, the work on the expert opinion has not yet started.⁸

- (v) On December 28, 2024, the Court of Cassation issued a decision in the Neptun tax and travel ban proceeding, which upheld the travel ban on Mr. Muduroglu without examining the merits of the tax assessment.⁹
- (vi) The State Tax Service had notified Libra in March 2024 that the duration of the tax audit would be 30 working days. However, the State Tax Service has forced Mr. Muduroglu to sign extensions to and suspensions of the tax audit, informing him and his employees that refusal to sign would lead to serious consequences. Thus, the tax audit remains ongoing, and the State Tax Service recently demanded another extension of the audit on January 17, 2025, which continues extending the deadline.¹⁰
- (vii) As of December 28, 2024, the Malham travel ban is still in place although the tax debt was paid under protest in March 2024. In a decision dated November 27, 2024, which only became available to the Claimants on December 28, 2024, the Court of Cassation upheld the Malham travel ban arguing that a presumption of debt existence remained, ignoring the fact that Mr. Muduroglu had already paid this debt.¹¹ Additionally, Mr. Muduroglu had previously received a notice that the Malham tax was still outstanding as of September 2024. Also, in the Neptun hearing, the judge confirmed that the Malham travel ban remained in place. Lastly, an administrative hearing concerning the tax was scheduled for February 17, 2025.¹²

⁸ Claimant's Renewed Request, ¶¶ 12-13; Claimant's Reply in Support of their Renewed Application for Provisional Measures, ¶ 7.

⁹ Claimant's Reply in Support of their Renewed Application for Provisional Measures, ¶ 8.

¹⁰ Claimant's Reply in Support of their Renewed Application for Provisional Measures, ¶¶ 14-15.

¹¹ Claimant's Reply in Support of their Renewed Application for Provisional Measures, ¶ 12.

¹² Claimant's Renewed Request, ¶¶ 15-16.

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- (viii) By January 23, 2025, the State Tax Service website no longer listed an active travel ban against Mr. Muduroglu. However, when Mr. Muduroglu attempted to leave Azerbaijan, he was stopped by State Border Control, informing him of a “secret internal travel ban” against him, imposed by the State Tax Service.¹³
- (ix) Under the direction of the Azerbaijani government, pursuant to Presidential Decree No. 570, the International Bank of Azerbaijan (“**IBA**”), which financed the construction of Landmark III, transferred Libra’s outstanding debt to Aqrarkredit in 2017. Over the years, Libra attempted to negotiate with Aqrarkredit to restructure its debt, but the latter refused.¹⁴ After some years, Azerbaijan’s First Lady “gifted” Aqrarkredit her 50% stake in Landmark III, which had been acquired in 2006, after the First Lady had demanded a substantial portion of the Claimants’ properties in Baku in order to permit the construction of Landmark III to proceed.¹⁵
- (x) In March 2023, Aqrarkredit, the state-owned credit institution and an *alter ego* of the Azerbaijani government, initiated two actions before Azerbaijani courts seeking (1) a declaration that it is entitled to equal control over Libra and (2) foreclosure on Landmark III.¹⁶ In February 2024, Aqrarkredit obtained a freezing order on Libra’s accounts which has not allowed the company to make payments without Aqrarkredit’s consent. Subsequently, on March 12, 2024, the Baku Commercial Court ordered the foreclosure of Landmark III and ordered the property to be auctioned at a price of AZN 120 million, a value far below the actual value, which had to be adequately determined for the auction to take place.¹⁷

¹³ Claimant’s Reply on the Renewed Request, ¶ 10.

¹⁴ Claimant’s Renewed Request, ¶¶ 24, 26-27, 29.

¹⁵ Claimant’s Renewed Request, ¶ 24.

¹⁶ Claimant’s Renewed Request, ¶¶ 4-5, 22, 28.

¹⁷ Claimant’s Renewed Request, ¶¶ 31-32, 38-39.

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- (xi) The decision concerning the auction of Landmark III was upheld by the Court of Appeal and the Court of Cassation, and the Azerbaijani courts initially set a date for the auction to begin on December 22, 2024.¹⁸ By early January 2025, an attempted auction of Landmark III came and went with no bidders. After two auctions have concluded without a buyer, Landmark III will be offered at a 40% discount on the initial price of AZN 120 million, which will not satisfy Libra's outstanding debt.¹⁹
- (xii) Libra has sought relief through an application through the Constitutional Court. However, the Claimants claim that there is no remaining domestic recourse available that could feasibly stay the auction.²⁰
18. According to the Claimants, the travel bans imposed, and the auction of Landmark III demonstrate that Azerbaijan has implemented measures to aggravate the dispute. Indeed, the travel bans have caused serious harm to the Claimants' rights and ability to pursue this arbitration. Additionally, the ongoing auction proceedings of Landmark III undermine the *status quo* at the time the Request for Arbitration was filed and aggravate the dispute to a substantial degree.
19. The Claimants contend that their request to lift the travel bans is necessary and urgent.
20. *First*, the Claimants argue that their request for provisional measures is necessary as the travel ban seriously affects the preparation presentation of the Claimants' claim in this arbitration. The Claimants contend that the fact that Mr. Muduroglu remains consistently detained in Azerbaijan has caused great difficulty to retrieve various documents located outside of Azerbaijan, including in Italy. Further, Azerbaijan's actions have occupied significant legal resources and time.²¹

¹⁸ Claimant's Renewed Request, ¶¶ 31-34, 37.

¹⁹ Claimants' Reply on Renewed Request, ¶¶ 16-17.

²⁰ Claimant's Renewed Request, ¶ 37.

²¹ Claimant's Renewed Request, ¶¶ 44-45.

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21. *Second*, the Claimants assert that their request is urgent as there is a material risk of serious and imminent prejudice.²² The Claimants argue that Mr. Muduroglu's continuous detention has a serious chilling effect on his testimony, and he has become genuinely afraid to testify against senior government members and Azerbaijan's First Family.²³ The Claimants rely on *Libananco v. Republic of Turkey* to assert that it is urgent for the Tribunal to act, since the Respondent has created an untenable situation by abusing its sovereign powers to gain an unfair procedural advantage.²⁴
22. The Claimants further contend that the court proceedings concerning the auction of Landmark III violate Article 26 of the ICSID Convention, which operates to exclude other remedies which may be parallel to the remedies sought in the arbitration.²⁵ The Claimants assert that in this case both the identity of the subject matter and the identity of the parties overlap, supporting their position.²⁶
23. The Claimants aver that the order of the Court of Cassation to auction Landmark III so as to satisfy Libra's purported debt to Aqrarkredit weighs directly on determinations the Tribunal has been asked to make of whether that debt is legitimate, whether the sale from IBA to Aqrarkredit breached the BIT, and whether the First Lady's actions breached the BIT. Thus, there is overlapping identity of the subject matter.²⁷
24. Aqrarkredit is a state-owned, government backed, non-banking credit institution that is directed and controlled by Azerbaijan and is thus an *alter ego* of the State. In this regard, Azerbaijan uses Aqrarkredit for its own purposes, it is owned 100% by the Ministry of Economy and has received direct instructions from Azerbaijan. Further, the Claimants

²² Claimant's Renewed Request, ¶¶ 47, 49.

²³ Claimant's Renewed Request, ¶ 47.

²⁴ Claimant's Renewed Request, ¶ 49.

²⁵ Claimant's Renewed Request, ¶¶ 51-53.

²⁶ Claimant's Renewed Request, ¶ 58.

²⁷ Claimant's Renewed Request, ¶ 61.

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- contend that there is an obvious level of coordination between the Azeri government and Aqrarkredit. The Claimants rely on Articles 5, 8 and 11 of the ILC Articles on State Responsibility to support their position.²⁸
25. The Claimants argue that the outcome of the parallel proceedings would deprive them of the ownership of one of the investments at issue, resulting in irremediable harm,²⁹ which supports a request for provisional measures to the Tribunal.
26. The Claimants contend that the auction proceedings of Landmark III threaten to alter the *status quo*, as the sale of Landmark III would destroy Libra's viability as an enterprise.³⁰ The Claimants relied on different cases, including *Perenco v. Ecuador*, to assert that measures that would jeopardize an enterprise's viability are serious enough to recommend provisional measures to preserve the *status quo*.³¹
27. The Claimants allege that the auction has been irregular for several reasons including that the auction company is under investigation for tax fraud. Further, auctions cannot be carried out by companies that have not worked continuously for 5 years, and in the present case this auction company was dormant for a few years.³²
28. The Claimants assert that their request for provisional measures is urgent, as an action prejudicial to their rights is likely to be taken before the Tribunal's decision, namely Landmark III's auction.³³

²⁸ Claimant's Renewed Request, ¶¶ 64-65, 68-69.

²⁹ Claimant's Renewed Request, ¶ 54.

³⁰ Claimant's Renewed Request, ¶¶ 76, 81.

³¹ Claimant's Renewed Request, ¶ 80.

³² Sixth Witness Statement of Eran Muduroglu, ¶ 13.

³³ Claimant's Renewed Request, ¶¶ 83-84.

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29. Finally, the Claimants argue that all provisional measures requested are proportional as they present no prejudice to Azerbaijan or Aqrarkredit. On the other hand, the Claimants contend that the travel bans, and the auction of Landmark III, seriously harm their rights.³⁴

B. THE RESPONDENT'S POSITION

30. The Respondent requests that the Tribunal dismisses the Claimants' Renewed Request.³⁵ The Respondent asserts that the travel restrictions, tax audits, and the proceedings related to the auction of Landmark III have been made by the competent authorities in accordance with domestic law and procedures.

31. In response to the factual allegations made by the Claimants, the Respondent asserts the following:

- (i) The Neptun travel ban is valid and in force under Azeri law.³⁶ Under the Azerbaijani Civil Procedure Code, proceedings on the imposition of travel bans are separate and different from the tax-related proceeding.³⁷ The decision of the Court of Appeal dated October 30, 2024 did not result in the lifting of Mr. Muduroglu's travel ban.³⁸ The Claimants acknowledged this fact as they appealed the Neptun travel ban in a different court proceeding.³⁹
- (ii) The travel ban was challenged on April 15, 2024, before the Baku Appellate Court⁴⁰ which rejected the appeal. This decision was upheld by the Supreme Court which left

³⁴ Claimant's Renewed Request, ¶ 86; Claimant's Reply on Renewed Request, ¶ 21.

³⁵ Respondent's Observations to Renewed Request, ¶ 92.

³⁶ Respondent's Observations to Renewed Request, ¶ 10; Respondent's Rejoinder on Renewed Request, ¶ 15.

³⁷ Respondent's Rejoinder on Renewed Request, ¶ 17.

³⁸ Respondent's Observations to Renewed Request, ¶¶ 18, 21.

³⁹ Respondent's Observations to Renewed Request, ¶¶ 11, 16-17, 20, 23.

⁴⁰ Respondent's Observations to Renewed Request, ¶ 23.

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the travel restriction in force.⁴¹ The Neptun travel ban can be seen on both the New Website and Old Website of the government and will only be lifted once the outstanding tax debt is paid or until domestic courts rule in Neptun's favor.⁴²

- (iii) As for the expert appointed by the Baku Court of Appeal to render a forensic report, the Court is required to provide the expert with the materials to conduct the examination. The expert review process has not commenced because the case materials were sent to the Supreme Court, which will consider the State Tax Service's recourse filed against the October 30, 2024 ruling.⁴³ The case file will be sent to the Baku Court of Appeal after the Supreme Court completes its review of the recourse and only then the expert review process will commence.⁴⁴
- (iv) In relation to Libra's audit, there has been no travel ban imposed in relation to Libra.⁴⁵ As for the extended time alleged by the Claimants, in accordance with the Tax Code, the duration of on-site tax audits may be extended up to 90 business days. Further, the audit has lawfully been further extended by virtue of decisions issued by the State Tax Service, which were also signed by Mr. Muduroglu,⁴⁶ and the latter has voluntarily submitted and signed applications that resulted in suspensions of Libra's tax audit.⁴⁷

⁴¹ Respondent's Observations to Renewed Request, ¶¶ 23-24; Respondent's Rejoinder on Renewed Request, ¶ 2.

⁴² Respondent's Observations to Renewed Request, ¶ 12; Respondent's Rejoinder on Renewed Request, ¶¶ 11, 22.

⁴³ Respondent's Rejoinder on Renewed Request, ¶ 19.

⁴⁴ Respondent's Observations to Renewed Request, ¶ 22; Respondent's Rejoinder on Renewed Request, ¶ 20.

⁴⁵ Respondent's Observations to Renewed Request, ¶ 40.

⁴⁶ Respondent's Observations to Renewed Request, ¶ 45.

⁴⁷ Respondent's Observations to Renewed Request, ¶¶ 42-43, 45; Respondent's Rejoinder on Renewed Request, ¶ 23.

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- (v) The Malham travel ban has been lifted because Mr. Muduroglu paid the Malham tax debt.⁴⁸ Both the Baku Appellate Court and the Supreme Court did not find that the travel ban was still in force.⁴⁹ Furthermore, in the Neptun hearing the judge never commented on the alleged Malham travel restriction, and the administrative hearing scheduled for February 17, 2025 concerns the tax debt in question for the Court to consider matters related to the tax calculation.⁵⁰
- (vi) The Landmark III auction process has been conducted in accordance with Azeri laws and is the result of a series of court proceedings initiated in 2023 by Aqrarkredit, a financial institution and separate legal entity from Azerbaijan.⁵¹ The dispute has been heard before first instance courts, the Court of Appeal and the Supreme Court, allowing the Claimants to fully present their arguments, including through an application before the Constitutional Court.⁵² All of them have ordered that Landmark III be auctioned at an initial price of AZN 120 million.⁵³
- (vii) On March 12, 2024, the Baku Commercial Court ordered the foreclosure of Landmark III, and further ordered that the property be auctioned. On June 10, 2024, the Court of Appeal upheld the Commercial Court's decision. Further, on October 16, 2024, the Supreme Court ordered Landmark III to be auctioned.⁵⁴
- (viii) The auction price of Landmark III was properly determined based on available evidence. Mr. Muduroglu failed to facilitate the process necessary for experts to

⁴⁸ Respondent's Rejoinder on Renewed Request, ¶ 8.

⁴⁹ Respondent's Rejoinder on Renewed Request, ¶ 13.

⁵⁰ Respondent's Observations to Renewed Request, ¶¶ 27, 32, 37.

⁵¹ Respondent's Observations to Renewed Request, ¶ 5; Respondent's Rejoinder on Renewed Request, ¶ 28.

⁵² Respondent's Observations to Renewed Request, ¶ 55.

⁵³ Respondent's Observations to Renewed Request, ¶¶ 53, 55.

⁵⁴ Respondent's Letter, ¶ 6.

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determine the liquid value of the property.⁵⁵ In 2023-2024, experts attempted to access the property, but Libra failed to cooperate.⁵⁶

(ix) After two unsuccessful auctions with no participants, Landmark III was offered at a 40% discount price on the initial price, in accordance with Azeri laws.⁵⁷ The auction has been available to all participants at an open auction, and the Claimants themselves could have bid on the building if the auction price was indeed too low.⁵⁸

32. The Respondent argues that that the requested provisional measures fail to satisfy the legal standard as they are not urgent or necessary.⁵⁹ The Respondent argues that the Claimants have failed to present new convincing grounds and evidence justifying why it is necessary and urgent to lift the Neptun travel restriction.⁶⁰ In this regard, the situation remains that Mr. Muduroglu has had no difficulties in assisting in the preparation of the Claimants' case, as shown by the fact that the Claimants have submitted multiple witness statements by Mr. Muduroglu, together with multiple exhibits.⁶¹ Furthermore, the documents which are allegedly outside Azerbaijan were not previously mentioned, and as such, the Respondent contends that this argument is newly created.

33. The Respondent contends that the Claimants have voluntarily chosen to keep the travel restriction in force by not paying the outstanding debt and have also refrained from participating in the auction process.⁶² Thus, the restriction does not reflect any attempt to

⁵⁵ Respondent's Observations to Renewed Request, ¶ 57.

⁵⁶ Respondent's Rejoinder on Renewed Request, ¶ 33.

⁵⁷ Respondent's Rejoinder on Renewed Request, ¶ 32.

⁵⁸ Respondent's Rejoinder on Renewed Request, ¶ 29.

⁵⁹ Respondent's Rejoinder on Renewed Request, ¶ 6.

⁶⁰ Respondent's Observations to Renewed Request, ¶ 64.

⁶¹ Respondent's Observations to Renewed Request, ¶ 65.

⁶² Respondent's Rejoinder on Renewed Request, ¶¶ 5, 32.

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- undermine the Claimants' preparation of the case, but Mr. Muduroglu's economic decision not to satisfy tax obligations.⁶³
34. In relation to the court-ordered auction of Landmark III, the Respondent argues that the alleged urgency is undermined by the fact that the Claimants knew about the upcoming auction since March 2024, nine months before submitting the Renewed Request, and in any event since October 2024.⁶⁴
35. The Respondent contends that, in relation to the parallel proceedings, Article 26 of the ICSID Convention does not aim to prevent the State from exercising its sovereign rights to exercise its judicial powers but rather aims to prevent an investor from bringing a cause of action in multiple fora.⁶⁵ For provisional measures to be warranted, the cause of action, dispute and parties must be the same, which is not the case here.⁶⁶
36. First, the dispute and cause of action of the domestic proceedings and the arbitration are not the same. The domestic proceedings are a dispute brought by Aqrarkredit against Libra, concerning the enforcement of a debt while the arbitration proceedings concern Azerbaijan's compliance with the BIT.⁶⁷
37. Second, Aqrarkredit's acts are by no means attributable to the State as there is no delegation of governmental authority to Aqrarkredit; there is no evidence of instructions, direction or control on behalf of the State.⁶⁸
38. The Respondent argues that there is no significant threat to the *status quo ante* as the domestic court proceedings with Aqrarkredit that led to the auction process were ongoing

⁶³ Respondent's Observations to Renewed Request, ¶ 71.

⁶⁴ Respondent's Observations to Renewed Request, ¶ 78.

⁶⁵ Respondent's Letter, ¶ 13.

⁶⁶ Respondent's Observations to Renewed Request, ¶ 81.

⁶⁷ Respondent's Letter, ¶ 17.

⁶⁸ Respondent's Observations to Renewed Request, ¶ 82.

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and known to the Claimants when they submitted their Request for Arbitration before this Tribunal.⁶⁹

39. The Respondent also contends that there is no record of any tax fraud investigation against the auction company.⁷⁰ Furthermore, there is no evidence supporting the allegation that the auction company was dormant for a few years. In any event, Libra had the opportunity to appeal the decision of the enforcement officer on the conduct of the auction by the particular auction company but never filed a complaint.⁷¹
40. Furthermore, the Respondent asserts that where an award of damages is an adequate remedy, provisional measures should not be ordered. In this case, any damage caused to the Claimants is monetary in nature and could be compensated through a damages award, rendering the recommendation of provisional measures unnecessary.⁷²
41. Lastly, the Respondent claims that these issues are not fit for determination in the context of a request for preliminary measures as they relate to the merits of the dispute.⁷³

III. THE TRIBUNAL'S ANALYSIS

42. The Tribunal has been asked three times by the Claimants to consider interim relief: in the Initial Request, in the TRO Request and in the Renewed Request.
43. In their Renewed Request, the Claimants seek an order from the Tribunal to: (i) lift the travel bans imposed on Mr. Muduroglu, and (ii) suspend the auction of Landmark III, as

⁶⁹ Respondent's Observations to Renewed Request, ¶ 80.

⁷⁰ Respondent's Rejoinder on Renewed Request, ¶ 30.

⁷¹ Respondent's Rejoinder on Renewed Request, ¶ 31.

⁷² Respondent's Letter, ¶ 30-31; Respondent's Rejoinder on Renewed Request, ¶ 6.

⁷³ Respondent's Rejoinder on Renewed Request, ¶ 34.

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well as all domestic proceedings involving the foreclosure or sale of the investments at issue in this dispute.⁷⁴

44. While the first item, the request to lift the travel bans was included in the Claimants' Initial Request, the second item was not. However, the Tribunal considered the relevant facts related to the auction in its TRO Decision. The Tribunal will first address the request concerning the travel bans and will then turn to the Landmark III auction.

A. TRAVEL BANS ON MR. MUDUROGLU

45. The Claimants' Renewed Request is based on the allegation that Mr. Muduroglu has been effectively detained in Azerbaijan by successive travel bans since January 27, 2024, shortly after this arbitration began, imposed on spurious grounds and with no effective legal recourse available.⁷⁵
46. By the time of the Tribunal's First Decision on Provisional Measures, the first and second travel bans had seemingly already been lifted.⁷⁶ However, Mr. Muduroglu remained subject to a third travel ban imposed due to an alleged unpaid tax debt of Neptun.⁷⁷
47. In their Renewed Application, the Claimants presented the following new developments regarding the travel bans.
48. First, according to Claimants and contrary to the Respondent's assertions, the second travel ban related to the Malham tax debt, which Mr. Muduroglu paid under protest, remains in

⁷⁴ See Claimants' Renewed Application, ¶ 92; Claimants' Reply on Renewed Request, ¶ 22.

⁷⁵ Claimants' Renewed Request, ¶ 42.

⁷⁶ Tribunal's First Decision Provisional Measures, ¶¶ 46 and 48.

⁷⁷ Tribunal's First Decision Provisional Measures, ¶ 51.

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- effect.⁷⁸ This contradicts the Respondent's claim that paying the debt leads to the lifting of the travel ban.⁷⁹
49. Second, the tax audit of Libra, which the tax authorities stated would be completed within 30 working days, has been ongoing for nearly a year. This prolonged audit has provided Azerbaijan with a basis for potentially imposing a new travel restriction on Mr. Muduroglu.⁸⁰
50. Third, on October 30, 2024, the Baku Court of Appeal ruled on the allegedly outstanding Neptun tax debt, finding that Neptun's position was "highly likely" to succeed.⁸¹ As a result, the Court ordered the suspension of all measures related to the contested tax assessment—an order that should have led to the lifting of the travel ban but did not.⁸²
51. The Tribunal will address each of these points.
52. Regarding the Malham travel ban, the Tribunal finds that the evidence presented by the Claimants does not contradict the Respondent's repeated assertion that the restriction was lifted after the Malham tax debt was paid under protest in March 2024.
53. In their Renewed Request, the Claimants raised four factual matters: (i) Mr. Muduroglu was notified that the debt was still outstanding as of September 2024;⁸³ (ii) in a hearing before the Baku Court of Appeal regarding the Neptun tax assessment, a judge confirmed that the Malham travel ban remained in effect;⁸⁴ (iii) Malham's administrative appeal of

⁷⁸ Claimants' Renewed Request, ¶ 16.

⁷⁹ Claimants' Reply on Renewed Request, ¶¶ 12-13.

⁸⁰ Claimants' Renewed Request, ¶¶ 18-19.

⁸¹ Claimants' Renewed Request, ¶ 12, referencing Exhibit C-187.

⁸² Claimants' Renewed Request, ¶¶ 12-13.

⁸³ Claimants' Renewed Request, ¶ 16, referencing Exhibit C-190.

⁸⁴ Claimants' Renewed Request, ¶ 16, referencing the Fourth Witness Statement of Eran Muduroglu at ¶ 11.

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the tax was rejected;⁸⁵ and (iv) an administrative hearing concerning the tax was scheduled for February 17, 2025.⁸⁶

54. In response, the Respondent clarified why the debt appeared outstanding in the system, denied that the judge confirmed the continuation of the Malham travel ban, explained the administrative appeal's rejection, and stated that the February hearing concerned the tax assessment and could potentially result in a credit for Malham.⁸⁷
55. The Tribunal finds these explanations plausible and notes that the Claimants did not address them in their Reply on the Renewed Request.
56. Instead, the Claimants introduced a new factual matter: a decision from the Azerbaijani Court of Cassation dated November 27, 2024, allegedly upholding the Malham travel ban.⁸⁸ In its Rejoinder on the Renewed Request, the Respondent clarified that the ruling merely affirmed the restriction was lawful at the time it was imposed, not that it remains in effect.⁸⁹ The Respondent thus maintains that the Malham travel restriction has been lifted, and the Tribunal will hold the Respondent to that assertion.
57. Turning to the Libra tax audit, the Claimants assert that it has exceeded the 30-day limit and may result in a new travel ban. However, the Tribunal lacks sufficient evidence to conclude that the suspensions and extensions, which Mr. Muduroglu consented to, albeit under alleged undue pressure for which there is no conclusive evidence, were contrary to domestic law. Accordingly, based on the current record, it has not been established that the duration of the audit violates domestic law, and, as of today, no travel ban has resulted from this audit. The Tribunal, however, will continue monitoring the developments of this

⁸⁵ Claimants' Renewed Request, ¶ 16, referencing Exhibit C-191.

⁸⁶ Claimants' Renewed Request, ¶ 16, referencing the Fourth Witness Statement of Eran Muduroglu at ¶ 11.

⁸⁷ Respondent's Observations to Renewed Request, ¶¶ 32-39.

⁸⁸ Respondent's Rejoinder on Renewed Request, ¶ 12.

⁸⁹ Respondent's Rejoinder on Renewed Request, ¶ 13.

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audit and requests the Parties to keep the Tribunal updated, particularly if a clear risk arises of a new travel ban being imposed on Mr. Muduroglu.

58. As to the travel restriction arising from the Neptun tax matter, the Claimants argued in their Renewed Request that the Baku Court of Appeal's determination favoring Neptun should have resulted in the travel ban against Mr. Muduroglu being lifted.⁹⁰ In response, the Respondent explained that "the Baku Court of Appeal issued temporary protective measures pending the resolution of the dispute and did not finally resolve the Neptun tax dispute," and that the travel restriction is subject to separate court proceedings; consequently, "[t]he travel restriction has been lawfully not suspended based on the Court of Appeal's ruling."⁹¹
59. In their Rejoinder, the Claimants criticized the Azeri system for requiring travel bans related to alleged tax debts to be handled in separate, parallel proceedings that seem unrelated to the validity of the debt. However, they did not dispute the Respondent's assertion that the travel restriction remains lawful under domestic law despite the Court of Appeal's decision, nor did they argue that the separation of these proceedings is illegal or abusive rather than a standard Azeri legal practice.⁹²
60. Therefore, it appears undisputed that the travel restriction will be lifted either upon the substantive, favorable resolution of the tax issue for Neptun (which, based on the Baku Court of Appeal October 2024 ruling, is likely to be the case) or when Neptun pays the debt under protest. Furthermore, it seems that Neptun has judicial remedies available to challenge the tax assessment on the merits.
61. Based on the available evidence, the Tribunal cannot determine that the travel ban resulting from the Neptun tax proceedings is unlawful. However, it remains concerned that the tax

⁹⁰ Claimants' Renewed Request, ¶¶ 12-13.

⁹¹ Respondent's Observations to Renewed Request, ¶¶ 18-20.

⁹² See Claimants' Reply on Renewed Request, ¶ 8.

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proceedings have still not been resolved, and as a result, Mr. Muduroglu has been unable to leave Azerbaijan for over a year.

62. Although the Tribunal's First Decision on Provisional Measures found that the circumstances at the time did not allow it to conclude that the travel bans directly impacted the arbitration,⁹³ it is now concerned that the lack of prompt resolution of these tax proceedings, and the prolonged detention of Mr. Muduroglu as a result, will begin to impinge materially on the Claimants' ability to prosecute this case, particularly in terms of Mr. Muduroglu's access to counsel and the potential chilling effect of his inability to leave Azerbaijan.
63. Based on the facts presented by the Respondent, the Tribunal understands that, in its decision dated October 30, 2024, the Baku Court of Appeal ordered an expert review process on the Neptun tax assessment, which has not yet started because the case file was sent to the Supreme Court for resolution of an appeal filed by the State Tax Service on November 16, 2024.⁹⁴ The Respondent further explains that on January 21, 2025, the Supreme Court invited the parties to provide objections to the appeal by February 21, 2025, and that once the Supreme Court completes its review, the case file will be returned to the Baku Court of Appeal, allowing the expert review process to commence.⁹⁵ Given the Court's earlier ruling, the Tribunal would expect that the travel ban would be lifted once the expert review process concludes. The Respondent has provided no reason to think or evidence suggesting otherwise.
64. Although the Respondent notes that it cannot provide a timeline due to the absence of a statutory deadline for such processes,⁹⁶ the Tribunal expects the matter to be resolved efficiently, so that Mr. Muduroglu's ability to leave the country is clarified without

⁹³ First Decision on Provisional Measures, ¶¶ 69-71.

⁹⁴ Respondent's Rejoinder on Renewed Request, ¶ 19.

⁹⁵ Respondent's Rejoinder on Renewed Request, ¶ 20.

⁹⁶ Respondent's Rejoinder on Renewed Request, fn. 34.

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unnecessary delay. Even though it is true that Mr. Muduroglu may avoid the travel ban by paying under protest, it is also true that he has the right to challenge the ban and obtain a prompt resolution of his case by the courts. If the travel ban were not lifted despite a final decision by the Baku Court of Appeals following the expert review, or despite Neptune paying under protest, the Tribunal would view that as a very serious matter indeed.

65. For the reasons set out above, the Tribunal (i) will not grant the requested measure at this time, but (ii) will direct the Parties to provide an update on the developments in these tax matters by April 15, 2025, after which it may, if deemed appropriate, recommend provisional measures.

B. THE LANDMARK III COURT PROCEEDINGS

66. The Claimants assert that “[t]he ongoing court proceedings concerning the auction of Landmark III represent an urgent threat to the principle of exclusivity of ICSID proceedings under Article 26 of the ICSID Convention.”⁹⁷ They argue that the two noncumulative factors tribunals typically consider when deciding whether to stay domestic proceedings under the principle of exclusivity—overlap in (i) subject matter and (ii) parties between the domestic and international proceedings—are satisfied in this case.⁹⁸ The Respondent maintains that the dispute and cause of action in the domestic proceedings and this arbitration are different and the parties in the domestic proceedings are not the same.⁹⁹
67. As previously noted, the Tribunal reviewed the relevant facts regarding the auction of Landmark III in its TRO Decision and concluded that the Claimants’ delay in submitting the TRO Request provided sufficient grounds to deny it.¹⁰⁰ Specifically, the Tribunal

⁹⁷ Claimants’ Renewed Request, § IV.B.

⁹⁸ Claimants’ Renewed Request, ¶ 58.

⁹⁹ Respondent’s Observations to Renewed Request, ¶ 81.

¹⁰⁰ TRO Decision, ¶ 18.

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observed that “[a] party cannot assert urgency for a provisional measure when it has postponed the submission of its application without good cause shown.”¹⁰¹

68. The Tribunal finds that the same reasoning applies to the Renewed Request. As the Respondent asserts, “the auction process forms part of domestic court procedures that had already started when the dispute was presented before the Tribunal.”¹⁰² Therefore, there is no reason why the Claimants could not have requested provisional measures earlier if they believed the matter required urgent intervention from the Tribunal.
69. Additionally, two further reasons support the conclusion that the requested measures should not be granted. First, determining whether the requirements for parallel proceedings are met could involve prejudging issues currently before the Tribunal, including whether Aqrarkredit actions are attributable to Azerbaijan. Second, an award of damages would likely be an adequate remedy if the Tribunal finds a treaty violation concerning the foreclosure proceedings of Landmark III.
70. In conclusion, the Tribunal is not persuaded that the requested measures concerning the Landmark III court proceedings satisfy the criteria of urgency and necessity and, therefore, will not grant the requested relief.

¹⁰¹ TRO Decision, ¶ 18.

¹⁰² Respondent's Observations to Renewed Request, ¶ 80.

IV. DECISION OF THE TRIBUNAL

71. For the reasons set out above, the Tribunal:
- a. Dismisses the Claimants' Renewed Request;
 - b. Directs the Parties to provide an update on the developments regarding the Libra tax audit, the Neptun tax proceeding, or any other relevant matters related to the travel bans imposed on Mr. Muduroglu by April 15, 2025; and
 - c. Defers any decision on the costs associated with the Claimants' requests for provisional measures to a later stage of the proceedings.

For and on behalf of the Tribunal,

[signed]

Professor Eduardo Zuleta
President of the Tribunal
March 7, 2025