

In the Matter of the Dispute Under the Convention on the Settlement of Investment Disputes  
between States and Nationals of Other States

**MR. EDMOND KHUDYAN**

*Applicant,*

v.

**THE REPUBLIC OF ARMENIA**

*Respondent.*

ICSID Case No. ARB/17/36

---

**APPLICANT’S REPLY ON THE CONTINUATION OF THE  
STAY OF ENFORCEMENT OF THE AWARD**

26 August 2022

---

## TABLE OF CONTENTS

I.	Introduction.....	1
II.	Respondent Fails to Rebut The Circumstances In This Case That Require A Continued Stay of Enforcement .....	12
A.	Mr. Khudyan’s Non-Recoupment Risk.....	12
B.	Respondent’s Lack of Risk of Non-Collection .....	14
C.	The Balance of Harms Weighs in Favor of Continuing the Stay of Enforcement.....	17
D.	Respondent’s Abuse of Right.....	19
III.	Request for Relief.....	21

Armenia's criminal court accepted this finding and issued a judgment awarding him substantial damages.<sup>29</sup> Respondent's ongoing attempts to frustrate the enforcement of this judgment in Mr. Khudyan's favor receive not a single mention in the Opposition.

16. **Application for Annulment.** Finally, Respondent alleges that Mr. Khudyan's bad faith is shown by the fact that his co-claimant in the Arbitration has not paid the Award, and that his Application for Annulment does not explicitly seek to annul the paragraphs of the Award representing the Tribunal's reasoning on costs.<sup>30</sup> This is a red herring. The enforcement of the Award – the entire Award – has been provisionally stayed since 12 April 2022.<sup>31</sup> Furthermore, the Tribunal expressly stated that its decision on costs resulted from the fact that “the Claimants have lost this arbitration.”<sup>32</sup> It is entirely speculative whether the Tribunal would have issued the same costs decision if it had not made its manifestly erroneous determination that it lacked jurisdiction *ratione personae* over Mr. Khudyan and instead had proceeded to assess the merits of his claims. Therefore, Mr. Khudyan's application to annul the Tribunal's jurisdictional finding, if accepted, would necessarily annul the reasoning underlying the cost award. Moreover, Mr. Khudyan has expressly sought annulment of the *dispositif* of the cost award.<sup>33</sup> By doing so, Mr. Khudyan necessarily seeks to annul the reasoning the Tribunal used to reach its

---

29. A-0001 Award, ICSID Case No. ARB/17/36 dated 15 December 2021, ¶ 150.

30. Opposition, ¶¶ 7, 12, 125.

31. See Letter from ICSID Secretary-General re: Notice of Registration of Application for Annulment in Edmond Khudyan v. Republic of Armenia dated 12 April 2022 (“Accordingly, I hereby notify you that the enforcement of the Award is provisionally stayed.”); see also Letter 09 from Ms. Laura Bergamini, Secretary of the ad hoc Committee dated 29 June 2022 (“the Committee has decided to extend the stay of enforcement of the Award until it has heard both parties and has reached a final decision on the continuation of the stay.”); Procedural Order No. 1 dated 27 July 2022, ¶ 24.1 (“The Committee confirms that a stay of enforcement shall remain in force unless and until the Committee decides otherwise.”).

32. A-0001 Award, ICSID Case No. ARB/17/36 dated 15 December 2021, ¶ 448.

33. See Application for Annulment, ¶ 66.2 (seeking annulment of paragraph 452(5) of the Award).

decision to award Respondent costs. Mr. Khudyan takes no issue with how the Tribunal calculated those costs in the section of the Award concerning costs. Rather, he takes issue with the Tribunal's decision to award costs to Respondent and therefore included a request to annul the provision of the *dispositif* that awarded Respondent costs.

## **II. RESPONDENT FAILS TO REBUT THE CIRCUMSTANCES IN THIS CASE THAT REQUIRE A CONTINUED STAY OF ENFORCEMENT**

17. After spending most of its Opposition on misleading and irrelevant attempts to impugn Mr. Khudyan's character, Respondent offers at best a cursory challenge to the circumstances identified in Mr. Khudyan's Stay Application, mostly in the final nine pages of its 53-page Opposition. None of Respondent's arguments justify lifting the stay in this case.

### **A. Mr. Khudyan's Non-Recoupment Risk**

18. Mr. Khudyan's Stay Application demonstrated the serious non-recoupment risk he faces if he pays amounts under the Award and the Committee were later to annul the Award. This risk arises from: (a) Respondent's failure to commit to returning any such amounts; (b) the fact that its law does not require it to pay such amounts; (c) the lack of a track record for Armenia paying out amounts due under international arbitration awards; and (d) the difficulties in enforcing awards against a sovereign, and particularly against Armenia whose law doesn't provide for execution against government assets.<sup>34</sup>

19. Respondent's Opposition only compounds Mr. Khudyan's concern. The unwarranted hostility toward Mr. Khudyan that permeates Respondent's Opposition is a harbinger of just how difficult Respondent will make it for Mr. Khudyan to get back any amounts collected by the Respondent if the stay is lifted and the Award is ultimately annulled.

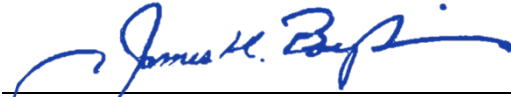
---

34. Stay Application, ¶¶ 14-22.

34.2. The Republic of Armenia be ordered to pay all costs and expenses borne by Mr. Khudyan in connection with Stay Application and subsequent briefing thereon.

Respectfully submitted,

26 August 2022



---

James H. Boykin  
Alexander S. Bedrosyan  
Alexander Afnan  
Hughes Hubbard & Reed LLP  
1775 I Street, N.W.  
Washington DC 20006, U.S.A.  
Phone +1 202 721 4751  
Fax: +1 202 721 4646  
[James.Boykin@hugheshubbard.com](mailto:James.Boykin@hugheshubbard.com)  
[Alexander.Bedrosyan@hugheshubbard.com](mailto:Alexander.Bedrosyan@hugheshubbard.com)

Dr. Gevorg Tumanov  
Redbridge LLC  
Abovyan str. 39, 21 area, Yerevan, 0009,  
Republic of Armenia  
Phone +374 (41) 33 13 45  
[gevorg@redbridge.am](mailto:gevorg@redbridge.am)

*Counsel for Applicant*