IN THE MATTER OF INVESTMENT DISPUTE UNDER THE AGREEMENT BETWEEN SERBIA AND MONTENEGRO AND THE REPUBLIC OF CYPRUS ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS AND UNDER THE AGREEMENT BETWEEN CANADA AND THE REPUBLIC OF SERBIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

COROPI HOLDINGS LIMITED AND KALEMEGDAN INVESTMENTS LIMITED (CYPRUS)

AND

MR. ERINN BERNARD BROSHKO (CANADA)

CLAIMANTS

– v –

THE REPUBLIC OF SERBIA

RESPONDENT

MEMORIAL

31 March 2023

SQUIRE PATTON BOGGS

nstlaw/ Stankovic & Partners

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I. INTRODUCTION

A. Preliminary statement

1. Serbia has decided to use Claimants' land in central Belgrade, worth EUR 38.2 million, for the construction of a bus loop—and refuses to pay any compensation. Thus, Claimants have started this arbitration to obtain compensation for their EUR 30 million share in the value of the land.

2. Claimants are the owners of the Serbian company Preduzeće za prikupljanje, preradu i promet sekundarnih sirovina Obnova AD Beograd (Stari grad) ("**Obnova**"). Obnova has had for decades a permanent right to use land in two locations in Belgrade's city center, at Dunavska 17-19 and Dunavska 23:[1]

3. Obnova built a number of buildings at both locations and these buildings became Obnova's property upon its privatization in 2003. In 2009, Obnova also acquired the right to convert its right to use the land into ownership.

4. The high value of Obnova's land was due to its strategic location near the Danube river and Port of Belgrade in the Belgrade city center and it being zoned for commercial and residential use under the "*Master Plan for the City of Belgrade 2021*" that the City of

[1] Google Earth images (with annotation), **C-308**.

Belgrade adopted in 2003 ("**2003 RP**").[2] Obnova's land is also designated for commercial and residential use under the City of Belgrade's General Urban Plan from 2016 ("**2016 RP**").[3]

5. In December 2013, Serbia decided to use Obnova's premises for the construction of a bus loop and its access roads. This decision, enacted by the City of Belgrade in the "*Detailed Regulation Plan for Roadways: Dunavska, Tadeuša Košćuška, Dubrovačka, Trolleybus and Bus Terminus in Dorćol, Municiplaity of Stari Grad*" ("**2013 DRP**"), immediately deprived Obnova of any prospect of realizing the value of its premises in a commercial transaction as it could no longer be developed. It also eliminated Obnova's right to convert its right to use the land into ownership.

6. Stunningly, the City of Belgrade designated Obnova's premises for a bus loop even though the City owned a much larger land plot specifically zoned for traffic infrastructure *literally across the street* from Obnova's premises. To add insult to injury, the City then rezoned its own land to residential use in the "*Detailed Regulation Plan for the area between the streets: Francuska, Cara Dušana, Tadeuša Košćuška and the existing Dorćol railway, the Municipality of Stari Grad adopted in 2015*" ("**2015 DRP**"). Thus, the City of Belgrade arbitrarily picked Obnova's premises for the construction of traffic infrastructure even though they were zoned for commercial and residential use, and converted its own land designated for traffic infrastructure into very valuable land for residential construction.

7. Under Serbian law, such a change in the spatial regulation of Obnova's land requires the payment of compensation. Such compensation would be agreed to between the City of Belgrade and Obnova or, failing such an agreement, determined by the Serbian courts in an amount equal to the fair market value of the expropriated property and rights as of the date of the court's decision.

8. However, in 2021, the City of Belgrade expressly refused Obnova's request for compensation as a result of the expropriatory effects of the 2013 DRP. By so doing, the City of Belgrade clearly breached Serbian law.

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[2] 2003 RP, **C-025**.

[3] 2016 RP, **C-177**.

9. The refusal to provide compensation violated not only Serbian law, but also two international investment treaties that protect the three claimants in this arbitration.

10. Kalemegdan Investments Limited ("**Kalemegdan**") is a Cypriot company that has been, since April 2012, the owner of 14,142 shares in Obnova, which represent approximately 70% of Obnova's total share capital (the "**Cypriot Obnova Shares**"). Coropi Holdings Limited ("**Coropi**"; together with Kalemegdan, "**Cypriot Claimants**") is another Cypriot company that has been the beneficial owner of the Cypriot Obnova Shares since the same date. Cypriot Claimants are protected under the Agreement between Serbia and Montenegro and the Republic of Cyprus on Reciprocal Promotion and Protection of Investments, which entered into force on 23 December 2005 and was published in the Official Gazette of Serbia and Montenegro No.14/05 (the "**Serbia-Cyprus BIT**").[4]

11. Mr. Erinn B. Broshko ("**Mr. Broshko**"; together with Cypriot Claimants, "**Claimants**") is a Canadian national whose Serbian company, Maple Leaf Investment d.o.o. Beograd – Stari Grad ("**MLI**"), purchased approximately 10% of Obnova's shares in 2017. Mr. Broshko is protected under the Agreement between Canada and the Republic of Serbia for the Promotion and Protection of Investments, which entered into force on 27 April 2015 (the "**Canada-Serbia BIT**"; the Canada-Serbia BIT and the Serbia-Cyprus BIT being, together, the "**Treaties**").[5]

12. The loss incurred by Claimants as a result of Serbia's breaches of the Treaties can be easily calculated—it is the loss in the value of their respective shareholdings in Obnova, which reflects the decrease in the fair market value of Obnova's assets and rights stemming from the adoption of the 2013 DRP and Serbia's failure to provide any compensation in respect thereof.

13. The standard of compensation is the same under both Serbian and international law and requires Serbia to compensate Claimants for the decrease in the fair market value of Obnova's assets and rights calculated as of the date of this Tribunals' award.

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4 Extract from the website of the Law Commissioner of the Republic of Cyprus evidencing the entry into force of the Serbia-Cyprus BIT on 23 December 2005, 6 February 2018, **C-072**.

5 Extract from the website of the Government of Canada evidencing the entry into force of the Canada-Serbia BIT on 27 April 2015, 6 February 2018, **C-073**.

14. The damages due to Claimants would be the same regardless of whether the Tribunal finds a breach of one, two or any combination of the treaty standards invoked by Claimants. This is because all losses sustained by Claimants stem directly from only two specific measures—adoption of the 2013 DRP and Serbia's express refusal to provide Obnova any compensation in respect thereof. Each of these measures caused the same loss to Claimants.

15. Claimants' valuation expert, Dr. Richard Hern from NERA Economic Consulting, estimates the damages due to Claimants at: (*i*) EUR 26.2 million due to Kalemegdan or Coropi; and (*ii*) EUR 3.8 million due to Mr. Broshko.

16. Claimants served on Serbia written notifications of this investment dispute on 16 June 2021 (the "**Cypriot NoD**")[6] and 23 November 2021 (the "**Canadian NoD**")[7] and invited Serbia to settle it amicably. Serbia did not respond. The cooling-off periods under the Treaties, therefore, lapsed without Serbia engaging in any amicable settlement process. As a result, Claimants were left with no choice but to initiate these arbitration proceedings.

B. Organization of the Memorial

17. This Memorial is structured as follows:

a. Section I is this Introduction;

b. Section II sets out the Parties to the Dispute;

c. Section III describes the Factual Background;

d. Section IV explains that the claims fall within the jurisdictional ambit of the Treaties and the ICSID Convention;

e. Section V sets out Serbia's violation of the Treaties;

f. Section VI sets out the compensation owed by Serbia; and

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6 Cypriot NoD, 16 June 2021, **C-061**.

7 Canadian NoD, 23 November 2021, **C-062**.

g. Section VII sets out the Claimants' Request for Relief.

18. This submission is also accompanied by the following expert reports:

a. joint expert report of Prof. Miloš Živković and Mr. Miloš Milošević addressing various Serbian law issues; and

b. expert report of Dr. Richard Hern addressing quantum of the case.

19. This Memorial annexes a number of exhibits (*e.g.*, **C-[x]**) and legal authorities (*e.g.*, **CL-[x]**) numbered consecutively following those submitted with the Claimants' Request for Arbitration dated 27 April 2022 ("**Request for Arbitration**").

II. THE PARTIES

A. The Claimants

20. **Kalemegdan** is a company with its seat at 2, Corner Prodromou & Zinonos Kitieos, Palaceview House, 2064, Nicosia, Cyprus, registered in Cyprus under Registration No. 303472.[8] Kalemegdan is the owner of 14,142 shares in Obnova, which represent approximately 70% of Obnova's total share capital (the "**Cypriot Obnova Shares**"). Kalemegdan acquired the Cypriot Obnova Shares in April 2012.[9]

21. **Coropi** is a company with its seat at 2, Corner of Prodromos Street & Zinonos Kitieos, Palaceview House 2064, Nicosia, Cyprus, registered in Cyprus under Registration No. 263966.[10] Coropi is the direct beneficial owner of 4,500 shares in Kalemegdan, which represent 100% of Kalemegdan's total share capital. Through its beneficial interest in Kalemegdan, Coropi has been an indirect beneficial owner of the Cypriot Obnova Shares since their acquisition by Kalemegdan in April 2012.[11]

22. Coropi is solely owned by Mr. Robert Jennings as the Trustee on behalf of the Ahola Family Trust.[12] The Ahola Family Trust is a trust domiciled in Guernsey whose beneficiaries are, and always have been, the following Canadian nationals: Ms. Kathleen Elizabeth Rand, Ms. Allison Ruth Rand and Mr. Robert Harry Leander Rand.[13] Coropi is fully controlled by Mr. William Archibald Rand ("**Mr. Rand**"), who is also a Canadian national and the father of Ms. Kathleen Elizabeth Rand, Ms. Allison Ruth Rand and Mr. Robert Harry Leander Rand.

23. **Mr. Broshko** is a Canadian national residing at 3599 West 32nd Avenue, Vancouver, British Columbia, V6S 1Z1, Canada.[14] Mr. Broshko is the Managing Director of Rand Investments Ltd., a Vancouver-based private equity firm owned by Mr. Rand.

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8 Corporate Register of Kalemegdan, 31 March 2022, **C-063**.

9 Excerpt from the Central Securities Depository and Clearing House, 17 May 2012, **C-005**; Excerpt from the webpage of the Central Cecurities Depository and Clearing House, 29 March 2022, **C-004**.

10 Corporate Register of Coropi, 31 March 2021, **C-065**.

11 Trust Deed, 26 April 2012, **C-066**; Trust Deed, 16 August 2012, **C-067**.

12 Corporate Register of Coropi, 31 March 2021, pp. 6-9, 15-16 (pdf), **C-065**.

13 The Ahola Family Trust Indenture, Schedule B, **C-074**.

14 Passport of Mr. Erinn Broshko, 23 August 2016, **C-001**.

24. Mr. Broshko submits this Memorial and raises the investment dispute on his own behalf, pursuant to Article 21(1) of the Canada-Serbia BIT, and on behalf of the Serbian company Maple Leaf Investment d.o.o. Beograd – Stari Grad ("**MLI**"), pursuant to Article 21(2) of the Canada-Serbia BIT.

25. **MLI** is a Serbian company with its seat at Karađorđeva 11, 11000 Belgrade, Serbia. MLI is 100% owned and controlled by Mr. Broshko.[15] MLI is the owner of a 10% shareholding in Obnova (the "**Canadian Obnova Shares**", together with the "**Cypriot Obnova Shares**" being, the "**Obnova Shares**").[16]

26. Neither Mr. Broshko nor MLI have any agreement with Mr. Rand relating to ownership or control over Obnova. Therefore, MLI and Mr. Broshko, being direct and indirect minority shareholders in Obnova, respectively, do not exert any control over Obnova.

27. The Claimants are jointly represented by:[17]

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and

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15 Excerpt from the webpage of Serbian Business Register Agency for MLI, 29 March 2022, **C-002**.

16 Confirmation of MLI's purchase of Obnova's shares, 14 November 2017, **C-003**; Excerpt from the webpage of the Central Securities Depository and Clearing House, 29 March 2022, **C-004**; Confirmation from Ilirika Investments, 30 March 2022, **C-006**.

17 Powers of Attorney issued by the Claimants to Messrs. Rostislav Pekař and Matej Pustay from Squire Patton Boggs s.r.o. and to Mr. Nenad Stanković and Ms. Sara Pendjer from Stankovic & partners law office, **C-068**.

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28. All electronic and hardcopy correspondence should be sent solely to the Claimants' counsel at the addresses set out above.

B. Respondent

29. The Respondent is the Republic of Serbia represented by the Government of the Republic of Serbia.

30. The Republic of Serbia is represented by:

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III. FACTUAL BACKGROUND

A. Obnova's pre-privatization history

1. In 1948, Obnova was founded and allocated land at Dunavska 17-19

31. Obnova was founded in 1948 as a so-called state economic enterprise. Its task was to collect and process scrap metals in Belgrade, the capital city of Yugoslavia. Its original name was "Otpad" gradsko preduzeće za promet otpacima.[18]

32. Obnova was allocated a large land plot located at the Dunavska street, numbers 17 - 19, in the city center of Belgrade, near the Danube river, to operate a scrapyard.[19] The central location of the land plot is shown on a current photomap:[20]

33. The allocation of land consisted in the State granting Obnova the right to use the land. Obnova was not granted ownership because, at the time, all urban construction land had to be in a Soviet-style type of state ownership called "*people's common property*" (*in*

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18 Confirmation from the Serbian Business Registers Agency dated 8 February 2021, p. 1, **C-149**.

19 The current status of buildings and land plots constituting Obnova's premises at Dunavska 17-19 is set out in detail in **Annex A** below.

20 Google Earth images (with annotation), **C-308**.

Serbian: opštenarodna imovina).[21] Obnova itself was also considered to be "*people's common property*."[22]

34. All enterprises and assets in people's common property were controlled by the State.[23] Thus, the State had full control over all urban construction land and alocated its use to state economic enterprises and other entities as it saw fit.

35. Starting in late 1940's, Obnova gradually built a number of buildings at Dunavska 17-19, as shown on a current photomap:[24]

36. Upon construction, the buildings became part of people's common property and Obnova automatically acquired the right to use the buildings.[25]

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21 Živković Milošević ER, ¶ 24.

22 Živković Milošević ER, ¶ 24.

23 Živković Milošević ER, ¶ 25.

24 The current status of buildings and land plots constituting Obnova's premises at Dunavska 17-19 is set out in detail in **Annex A** below.

25 Živković Milošević ER, ¶¶ 24-25.

37. In 1953, OTPAD changed its name to Obnova and became a socially-owned enterprise.[26] This change reflected the replacement, in the same year, of people's common property with "*social ownership*" (*in Serbian: društvena svojina*). The new terminology had a purely ideological motivation stemming from a political split between Yugoslavia and the Soviet Union.[27] In practice, nothing changed: "*Yugoslav socially-owned entities were substantially the same as Soviet state-owned entities and continued to be under control of the state*."[28]

38. Same as before, when a socially owned enterprise constructed a building, the building was in social ownership and the enterprise automatically acquired the right to use the building.[29]

39. By constructing its buildings, Obnova also acquired the so-called "*permanent right of use*" over the land at Dunavska 17-19 where these buildings were built.[30] This type of right of use was acquired *ex lege* by all socially-owned enterprises that had the right of use (called the "*right of use as an emanation of social ownership*") over a building.[31]

40. Obnova has been using buildings and land at Dunavska 17-19 for more than 70 years.

2. In the 1960s, Serbia allocated to Obnova land at Dunavska 23

41. Obnova has also been using buildings and land located at Dunavska 23, approximately 50 meters down the street from Dunavska 17-19:[32]

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26 Živković Milošević ER, ¶ 26.

27 Živković Milošević ER, ¶ 26.

28 Živković Milošević ER, ¶ 30.

29 Živković Milošević ER, ¶ 29.

30 Živković Milošević ER, ¶ 177.

31 Živković Milošević ER, ¶ 178.

32 Google Earth images (with annotation), **C-308**. The current status of buildings and land plots constituting Obnova's premises at Dunavska 23 is set out in detail in **Annex A** below.

42. Obnova's premises at Dunavska 23 also include land and several buildings:[33]

33 Google Earth images (with annotation), **C-308**. The current status of buildings and land plots constituting Obnova's premises at Dunavska 23 is set out in detail in **Annex A** below.

43. Obnova started to use the land at Dunavska 23 in the 1960s, at the latest in 1968 when it constructed a metal gate at this location.[34]

44. Obnova constructed several buildings at Dunavska 23 between 1988 and 1992.[35] Since Obnova was still a socially-owned enterprise at that time, same as with respect to the buildings at Dunavska 17-19, the buildings at Dunavska 23 were in social ownership and Obnova automatically acquired the right of use over these buildings.[36]

45. Obnova has been using the land at Dunavska 23 for more than 50 years and the buildings for more than 30 years.

B. Obnova's privatization on 12 September 2003

46. The collapse of the Soviet block in 1989 did not lead to any major changes in the organization of Serbia's economy in the 1990s. Socially-owned enterprises were not privatized. The only relevant, albeit small, change was that in 1995, Serbia transferred all urban construction land from social ownership into state ownership.[37] However, while "*the ownership [of the land] officially changed from social to state ownership, the legal regime of the construction land remained materially the same […].*"[38]

47. Only in early 2000s did Serbia launch a large program of privatization of socially and state-owned enterprises. The purpose of the privatization program was to sell socially-owned and state-owned capital and to convert socially-owned and state-owned property used by the privatized enterprises into property in their private ownership.[39]

48. At the beginning of 2003, Serbia decided to privatize Obnova through a public auction. The basic document in any privatization through a public auction was the so-called

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34 Obnova Privatization Program dated July 2003, p. 7 (pdf), Item 18, **C-015**. *See also* Živković Milošević ER, ¶ 205.

35 Obnova Privatization Program dated July 2003, pp. 4-5 (pdf), Items 16-23, **C-015**. *See also* Živković Milošević ER, ¶ 205.

36 Živković Milošević ER, ¶ 207.

37 Živković Milošević ER, ¶ 33. Law on Construction Land, Official Gazette of the Republic of Serbia, Nos. 44/95, 16/97; Official Gazette of the Federal Republic of Yugoslavia, No. 16/01, Art. 33(1), **C-011**; Law on Assets in Ownership of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 53/95, 3/96, 54/96, 32/97, 101/05, Art. 2(2), **C-012**.

38 Živković Milošević ER, ¶ 34.

39 Živković Milošević ER, ¶ 46.

"privatization program". This document contained information about the subject of privatization and its assets and liabilities.[40]

49. The privatization agreement for Obnova was concluded on 12 September 2003. Obnova's privatization had two important consequences. *First*, Obnova became a joint stock company and 70% of its shares were transferred to the buyer selected through the public auction.

50. *Second*, the socially-owned property that Obnova had the right to use was transferred to Obnova's private ownership.[41] The change of ownership from socially-owned property to private property occurred automatically by force of law.[42] Thus, upon the conclusion of the privatization agreement, Obnova's right to use the buildings at Dunavska 17-19 and Dunavska 23, which were all listed in the privatization documents,[43] automatically converted into Obnova's full private ownership of the buildings.[44]

51. The only exception to the *ex lege* transfer into Obnova's private ownership was construction land, which was not to be included in any privatization and remained in state ownership.[45] Obnova continued to have the right to use this land.[46]

52. The decision to keep construction land used by privatized companies in state ownership created significant issues because privatized companies often found themselves in a situation where they owned certain buildings, but they did not own the land on which those buildings were built. This situation was economically unsustainable in the long-term. Thus, Serbia subsequently enacted a mechanism, called the conversion process, which allowed privatized companies to convert their right of use over construction land into ownership.

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40 Živković Milošević ER, ¶ 143. *See also* Obnova Privatization Program, July 2003, **C-015**.

41 Živković Milošević ER, ¶ 139.

42 Živković Milošević ER, ¶ 139.

43 Obnova Privatization Program, July 2003, **C-015**.

44 Živković Milošević ER, ¶¶ 143, 215.

45 Živković Milošević ER, ¶¶ 179, 223.

46 Živković Milošević ER, ¶¶ 179, 223.

C. The City of Belgrade's adoption of the 2003 RP on 22 September 2003

53. On 22 September 2003, the City of Belgrade adopted the 2003 RP. The 2003 RP created the potential for a very interesting development possibility for Obnova because it designated all of the land at Obnova's premises at Dunavska Street as "*commercial zones and city centers*".[47]

54. The 2003 RP defined "*city centers*" as follows:

> City centers are complex urban spaces of public character on lower floors, with a clear identity, which aside from *commercial facilities*, depending on their function, importance and location, typically contain *other public buildings as well (culture, higher education, various administrations, religious facilities, etc.) and public areas (squares, parks) with possible housing on higher floors*.[48]

55. The 2003 RP provided the following characterization of commercial zones:

> Commercial zones are concentrated business premises with predominantly commercial activities that occupy urban spaces with a high degree of publicity and communication, especially in the central areas of cities. The aforesaid activities refer to trade, catering and tourism, crafts (service part) and business and financial services, and other business premises. […] Businesses that jeopardize the environment by air pollution or noise, old factories in City center areas which generate a large volume of traffic and require direct access by car and which trade in bulky goods (such as warehouses, furniture sales), are increasingly moving out of City center commercial areas.[49]

56. The 2003 RP thus made it clear that "*commercial zones and city centers*" should contain commercial and residential buildings, accompanied by various public services and public areas (such as squares and parks). Importantly, the 2003 RP also made it clear that premises generating "*air pollution or noise*" and "*a large volume of traffic*" are moving away from city centers.

57. Within the category of "*commercial zones and city centers*", Obnova's premises were further defined as "*special commercial complexes*".[50] The 2003 RP defined special commercial complexes as "*multifunctional complexes […] with a predominantly*

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47 2003 RP, pp. 24, 214 (pdf), **C-025**. *Similarly also* 2003 RP, pp. 29, 229 (pdf), **C-025**.

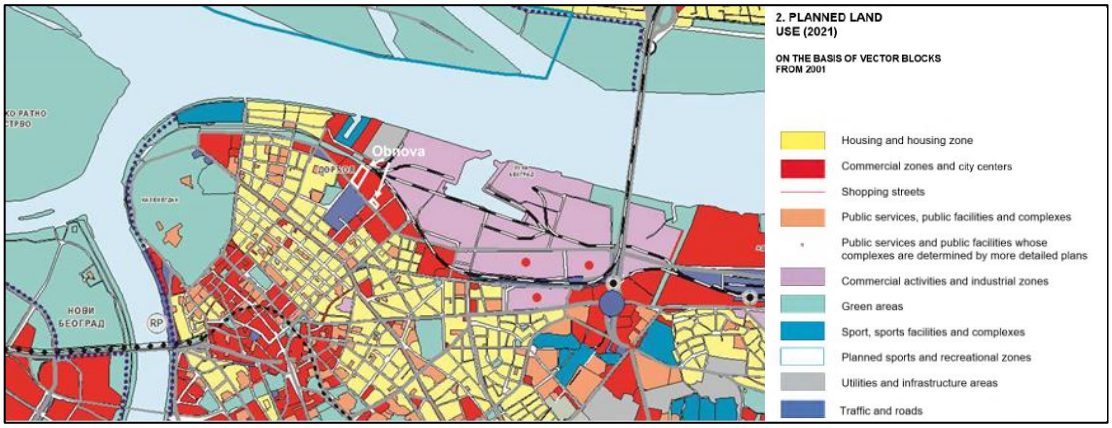
48 2003 RP, p. 5 (pdf), **C-025**.

49 2003 RP, p. 5 (pdf), **C-025**.

50 2003 RP, p. 27 (pdf), **C-025**.

commercial purpose."[51] The 2003 RP mentioned, among others, business parks and shopping centers as examples of special commercial complexes.[52]

58. The 2003 RP also designated a big land plot across Obnova's premises at Dunavska 17-19 for "*traffic and roads*". Both Obnova's premises and the land designated for the traffic purposes are depicted on the following excerpt from the 2003 RP:[53]



59. The land designated for the traffic purposes and the buildings located on this land plot were publicly owned.[54] They were used by JKP Gradsko saobraćajno preduzeće "Beograd" ("**JKP**"), the city transportation company providing public transportation services in Belgrade as a bus depot.[55] The total area of this land plot is 53,658m^2, *i.e.* approximately 43,000m^2 more than the area of the land at Dunavska 17-19 and Dunavska 23 and approximately 34,000m^2 more than the area of the planned bus loop.[56]

60. The 2003 RP made it clear that it was "*a combination of a vision of the future until 2021 and operationally significant actions that can commence or be realized by 2006*."[57] The 2003 RP therefore represented a long-term planning concept of urbanistic development

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51 2003 RP, ¶ 4.5.10, **C-025**.

52 2003 RP, **C-025**.

53 2003 RP, pp. 24, 214 (pdf), **C-025**.

54 Cadaster decision No. 952-02-040-376/13, 21 January 2014, p. 3 (pdf), **C-309**.

55 Letter from JKP, 31 August 2022, p. 1, **C-310**.

56 2013 DRP, Section B.2, **C-024**.

57 2003 RP, p. 1 (pdf), **C-025**.

in the City of Belgrade. As the plan itself confirmed, this concept was developed based on "*strategy and appropriate planning solutions and measures.*"[58]

61. The 2003 RP also confirmed that it was necessary to respect "*the need of small investors to build practically in every point of the City fabric.*"[59] Furthermore, the plan stressed the need for flexibility when allowing new investments:

> Having in mind the above, we can also deem important an idea that the [2003 RP] must be open to any investment, especially for the important ones which both drive the economic life and contribute to the well-being of citizens. Hence, this [2003 RP] has a high degree of flexibility to allow investment requirements to be performed so as to meet private needs, while not jeopardizing the common and public interests of the City as a whole.[60]

62. The focus on small investors went hand in hand with an important legislative change: earlier in 2003, Serbia allowed, for the first time since the end of World War II, private ownership of certain types of construction land under a new Law on Planning and Construction ("**2003 Law on Planning and Construction**").[61]

63. While it was not possible for Obnova to convert its right to use over the land at its premises into ownership immediately in 2003, that possibility was introduced later.

D. Obnova's first attempts to register the right to its premises

64. Consistent with the then prevailing practice in former communist Yugoslavia, Obnova's right of use over its premises was never registered in public registers.[62] While there always was a formal obligation to register rights to publicly-owned land, it was "*largely ignored*."[63] Socially-owned enterprises were ultimately controlled by the State and, thus, did not need to register their right to use over land controlled by the State.

65. This widespread ignorance of public registers was reflected in the Regulation on the Sale of Capital and Property by Public Auction adopted in 2001, which expressly

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58 2003 RP, p. 1 (pdf), **C-025**.

59 2003 RP, p. 1 (pdf), **C-025**.

60 2003 RP, p. 2 (pdf), **C-025**.

61 Živković Milošević ER, ¶ 46.

62 Živković Milošević ER, ¶¶ 97-105.

63 Živković Milošević ER, ¶ 100.

required that socially owned assets to which privatized entities had a right of use be included in the privatization even if the right of use was not registered in public registers.[64] Obnova's right to use its premises at Dunavska 17-19 and Dunavska 23 were all listed in its privatization documents.[65]

66. Similarly, some of Obnova's buildings were constructed without acquiring all necessary permits. Once again, this was not unusual in Serbia. It was very common during the socialist time to build and use buildings without all prescribed permits. Again, socially-owned enterprises were controlled by the State, and it was not necessary, in practice, for a State-controlled enterprise to have all permits to build and use its buildings. It is estimated that, in the mid-1990s, there were millions of buildings in Serbia that had been built and were being used without at least one of the prescribed permits.[66]

67. In 2003, Obnova started to take first steps to put its records in order. In March 2003, Obnova, still a socially-owned enterprise at that time, filed with the Land Cadaster to formally register its right to use the buildings at Dunavska 17-19 and Dunavska 23.[67] For reasons unknown, the Cadaster failed to act and simply ignored the request.

68. In November 2003, Obnova decided to address the decades-long lack of formal occupancy and/or construction permits for some of its buildings. Obnova, therefore, filed with the City of Belgrade a request to commence so-called legalization proceedings under Article 160 of the then applicable Law on Planning and Construction, which would have led to the issuance of all missing permits.[68]

69. The legalization proceedings were supposed to be a formality. The decision on Obnova's request was not discretionary—Obnova had a legal right to receive the

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64 Živković Milošević ER, ¶ 141.

65 Obnova Privatization Program, July 2003, **C-015**.

66 Ministry of Construction, Transport and Infrastructure, *Database of illegally constructed buildings*, https://www.mgsi.gov.rs/cir/dokumenti/baza-nezakonito-izgradjenih-objekata (last accessed 21 November 2021), **C-060**. *See also* Živković Milošević ER, ¶ 79.

67 Request for registration of immovables to the Cadaster, 18 March 2003, **C-013**.

68 Obnova's Legalization Request related to Dunavska 17-19, November 2003, **C-019**; Obnova's Legalization Request related to Dunavska 23, November 2003, **C-020**.

missing permits to all of its buildings.[69] Obnova, however, did not receive any response from the City of Belgrade.

70. Rectification of public records clearly was not a priority for Serbia at the time. The confusion only increased when, on 22 November 2003, the Cadaster registered in error the City of Belgrade as the user of most of Obnova's buildings at Dunavska 17-19 and certain of Obnova's buildings at Dunavska 23.[70] On 7 December 2003, the Cadaster, again in error, registered the City of Belgrade as the owner of most of Obnova's buildings at Dunavska 17-19 and certain of Obnova's buildings at Dunavska 23.[71]

71. These registrations were clearly erroneous because the City of Belgrade did not even claim to have any of these rights. The City of Belgrade had not been using Obnova's land since the 1940s and it had never had anything to do with Obnova's buildings. This did not change after the registrations were made in error. The in error registration of the City of Belgrade did not lead to its acquisition of any rights to Obnova's buildings[72]—and the City of Belgrade did not claim otherwise at the time.[73]

72. In fact, it appears that the in error registrations were due simply to the fact that the Land Cadaster was being created *de novo* and the clerks were entering data on the basis of very old documents, without checking the actual status of the property.

E. Acquisition of Obnova's shares by Mr. Obradović

73. On 22 December 2005, Mr. Djura Obradović, a Canadian-Serbian businessman, acquired the privatized shares in Obnova through assignment of the privatization agreement.[74] Mr. Obradović thus became a 70% nominal shareholder in Obnova.

74. Mr. Obradović acted according to directions from Mr. William Rand, a Canadian lawyer and businessman. Messrs. Rand and Obradović had had a business relationship in

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69 Živković Milošević ER, ¶ 142.

70 Cadaster decision No. 952-02-9-31/03 dated 22 November 2003, **C-165**.

71 Cadaster decision No. 952-02-9-31/03 dated 7 December 2003, **C-166**.

72 Živković Milošević ER, ¶ 173.

73 On the contrary, in 2016, *i.e.* more than a decade later, the City of Belgrade confirmed that Obnova's buildings were not included in the City's commercial space fund. *See* Letter from the Secretariat for property and legal affairs of the City of Belgrade, 22 February 2016, **C-311**.

74 Annex to Obnova's privatization agreement, 22 December 2005, **C-312**.

Serbia going back to the late 1990s. As a part of this relationship, Messrs. Rand and Obradović agreed that Mr. Obradović would acquire certain Serbian assets—including Obnova's shares—as a nominal owner. The beneficial owner of these assets was Mr. Rand—usually through various corporate entities he owned and/or controlled.

75. Mr. Rand directed Mr. Obradović to acquire Obnova's shares primarily because of Obnova's ownership of the buildings and the right of use over the land at Dunavska 17-19 and 23. Due to their central location and the recently adopted 2003 RP, Obnova's premises represented a very interesting real estate investment with a potential for a significant increase in value. Obnova could fully realize such value subject only to its ability to become the owner of the land. Mr. Rand anticipated that Serbia's economic transformation would unavoidably require a legislative change allowing the privatized companies to acquire ownership over the then state-owned land to which they had the right of use.

F. The City of Belgrade's 2006 decision to draft a detailed regulation plan of the area comprising Obnova's premises

76. On 6 March 2006, the City of Belgrade adopted the Decision on the drafting a Detailed Regulation Plan for the area between the Francuska, Cara Dušana, Tadeuša Košćuška streets and the existing railway in Dorćol, Municipality of Stari Grad ("**2006 Decision**").[75]

77. In the hierarchy of Serbian regulation plans, detailed regulation plans represent lower level plans when compared to general plans. They govern smaller areas than the general plans and they provide more detailed regulation. Importantly, detailed regulation plans have to be in line with higher level regulations—such as the 2003 RP.[76] Accordingly, Article 3 of the 2006 Decision expressly stated that the detailed regulation plan was to "*further elaborate a part of the territory of the Municipality of Stari grad in accordance with the conditions presented in the [2003 RP].*"[77]

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75 2006 Decision, p. 1, **C-313**.

76 2003 Law on Planning and Construction, Official Gazette of the Republic of Serbia, Nos. 47/03, 34/06, 39/09, Art. 39, **C-018**.

77 2006 Decision, Art. 3, **C-313**.

78. Despite this requirement for the detailed regulation plan to be in accordance with the 2003 RP, Obnova heard that the City of Belgrade was considering placing a bus loop on Obnova's premises. Thus, on 27 March 2008, Obnova wrote a letter to the City of Belgrade and asked the City "*relocate the tram turnaround and to adapt the land to the development land in order for the business facilities to be built.*"[78]

79. On 23 April 2008, the City of Belgrade forwarded the letter from Obnova to the Secretariat for Urban Planning and Construction. In its letter, the City confirmed that Obnova's premises were "*located in areas intended for commercial activities and urban centers.*"[79] The City asked the Secretariat for Urban Planning and Construction to consider this fact, as well as Obnova's letter, when preparing the detailed regulation plan.[80] The City subsequently forwarded this letter to Obnova.

80. As explained in more detail below, when the detailed regulation plan was eventually adopted in 2013, this instruction was completely ignored.

G. Possibility to convert right of use into ownership under the 2009 Law on Planning and Construction

81. On 11 September 2009, Serbia adopted a new Law on Planning and Construction ("**2009 Law on Planning and Construction**"). The 2009 Law on Planning and Construction introduced, among other things, the ability to convert the right to use over state-owned construction land—which Obnova had for the land at Dunavska 17-19 and Dunavska 23—into ownership.[81]

82. According to the 2009 Law on Planning and Construction, privatized companies could apply for conversion of all the land necessary for ordinary use of their buildings.[82] The land necessary for ordinary use of buildings was defined as the "*land under the building*

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78 Letter from Obnova to City of Belgrade, 27 March 2008, **C-314**.

79 Letter from City of Belgrade to Secretariat for Urban Planning and Construction, 23 April 2008, **C-315**.

80 Letter from City of Belgrade to Secretariat for Urban Planning and Construction, 23 April 2008, **C-315**.

81 2009 Law on Planning and Construction, Official Gazette of the Republic of Serbia, Nos. 72/09 and 81/09, Art. 103, **C-021**. Effectively, this conversion only became possible on 6 February 2010, when the Government passed a regulation specifying the criteria and procedure for determining the conversion fee. *See* Regulation on the Criteria and Procedure for Determining the Amount of a Fee on the Basis of the Conversion of Rights for the Persons Entitled to the Conversion with the Fee, Official Gazette of the Republic of Serbia, Nos. 4/10, 24/10, 46/10, **C-022**.

82 Živković Milošević ER, ¶¶ 50, 189.

and the land around the building in the area that is determined as the minimum for the allotment of new parcels for that zone, according to the valid planning document, for that building."[83]

83. As explained above, Obnova acquired ownership of its buildings *ex lege* upon its privatization. It also kept the right to use the land around these buildings, which, however, remained in State ownership because Serbian law did not allow for private ownership of construction land at the time.[84] The conversion process was introduced exactly to address this situation and allow privatized companies, such as Obnova, to acquire ownership over the land on which buildings owned by these companies were built.[85]

84. Obnova's premises at Dunavska 17-19 are essentially a narrow yard with Obnova's buildings at the entrance to the yard and along both wings. Obnova has been the only user of the entire area, as one business complex, for decades. Therefore, the land necessary for regular use of Obnova's buildings is the entire land to which Obnova has the right of use at Dunavska 17-19.

85. The premises at Dunavska 23 is a small yard between Obnova's buildings. Again, the land necessary for regular use of these buildings is the entire land to which Obnova has the right of use.[86] Obnova has been the only user of that land for decades. Obnova's land is even protected by a fence that Obnova built in the 1960s.[87]

86. Therefore, the 2009 Law on Planning and Construction gave Obnova a legal right to acquire ownership over all the land at Dunavska 17-19 and 23.

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83 2009 Law on Planning and Construction (Official Gazette RS, No. 72/2009, 81/2009), Art. 70(1), **C-021**.

84 *Supra* ¶¶ 46-47.

85 *Supra* ¶ 48.

86 Živković Milošević ER, ¶¶ 50, 189.

87 *Supra* ¶ 39.

H. Obnova's continued efforts to obtain the missing permits for its buildings

87. On 15 December 2008, Obnova submitted a request for reopening of the legalization proceedings, which it started in 2003 and which were ignored by the City of Belgrade.[88]

88. On 27 November 2009, the Construction Department of the City of Belgrade rejected Obnova's request, claiming that Obnova had allegedly been informed about a decision to discontinue the 2003 legalization proceedings. The Construction Department failed to provide any evidence for its claims because "*the case was archived on January 17, 2005, with the time limit for retention of one year, and it was discarded as unworthy registry material upon the expiry of the specified period*."[89] In fact, the Construction Department admitted that the alleged letter informing Obnova about the outcome of the proceedings "*has not been recorded through the case tracker.*"[90] Of course, according to the Construction Department, this was only because "*a failure of the official person responsible for entering data about the actions taken in respect of the case in the computer record.*"[91]

89. The Construction Department advised that Obnova should initiate new legalization proceedings.[92] Obnova followed the instructions of the Construction Department and submitted a new request for the legalization of its buildings in 2010. This request had a similar destiny as the first request from 2003. As explained below, Obnova only obtained a decision on its request to legalize its buildings eight years later—in 2018.[93]

I. Cypriot Claimants' acquisition of the Cypriot Obnova Shares in 2012

90. In April 2012, acting upon Mr. Rand's instruction, Mr. Obradović contributed the Cypriot Obnova Shares (*i.e.* 14,142 shares in Obnova, representing approximately 70% of Obnova's total share capital) to the capital of Kalemegdan.[94] This was a part of a

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88 Obnova's request for reopening of the legalization proceedings, 15 December 2008, **C-316**.

89 Letter from the Construction Department to Obnova, 27 November 2009, p. 2, **C-317**.

90 Letter from the Construction Department to Obnova, 27 November 2009, p. 1, **C-317**.

91 Letter from the Construction Department to Obnova, 27 November 2009, p. 1, **C-317**.

92 Letter from the Construction Department to Obnova, 27 November 2009, p. 2, **C-317**.

93 Decision of the Secretariat for Legalization No. 351.21-16194/2014, 25 April 2018, **C-042**.

94 Excerpt from the Central Securities Depository and Clearing House, 17 May 2012, **C-005**; Excerpt from the webpage of the Central Securities Depository and Clearing House, 29 March 2022, **C-004**; Minutes of a meeting of the board of directors of Kalemegdan, 26 April 2012, p. 2, **C-318**.

broader restructuring of Mr. Rand's Serbian companies. The shares of Crveni signal a.d., Pester a.d., Beotrans a.d. and Inex a.d. were also contributed to the capital of Kalemegdan.

91. Mr. Obradović was the nominal owner of Kalemegdan.[95] The beneficial owner of Kalemegdan was—and still is—Mr. Rand. As a result of the contribution, Kalemegdan became both the nominal and the direct beneficial owner of the Cypriot Obnova Shares.

92. Mr. Rand further decided to involve Coropi in the beneficial ownership of the Cypriot Obnova Shares. Mr. Rand is a director of Coropi and controls the company. The sole shareholder of Coropi is The Ahola Family Trust.[96] Beneficiaries of the trust are Mr. Rand's children.[97]

93. On 26 March 2012, Coropi issued a letter of instruction to the then directors of Kalemegdan. The letter states that the directors should always obtain "*instructions, directions and written consent*" from Coropi for the implementation of any administration and fiduciary services. The letter also states that no "*decisions and resolutions shall be taken regarding*" Kalemegdan without obtaining permission from Coropi. Coropi signed the letter as the beneficial owner. Kalemegdan's directors accepted the instructions in the letter.[98]

94. On 26 April 2012, Coropi concluded a trust deed with Mr. Obradović.[99] Later on, in August 2012, when Kalemegdan issued additional shares, Mr. Obradović and Coropi concluded a second trust deed.[100] Both trust deeds give Coropi a right to direct Mr. Obradović, at any time, to transfer all shares in Kalemegdan to Coropi (or any other entity nominated by Coropi).[101] Furthermore, Mr. Obradović is, under the trust deeds, obliged to transfer to Coropi any dividends or other payments related to his shareholding

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95 *E.g.* Corporate Register of Kalemegdan, 31 March 2022, **C-063**.

96 Corporate Register of Coropi, 31 March 2022, **C-065**.

97 The Ahola Family Trust Indenture, 6 March 1995, Schedule B, **C-074**.

98 Letter of Instructions, 26 March 2012, pp. 1-2, **C-319**.

99 Trust Deed, 26 April 2012, **C-066**.

100 Trust Deed, 16 August 2012, **C-067**.

101 Trust Deed, 26 April 2012, Art. 1(a), **C-066**; Trust Deed, 16 August 2012, Art. 1(a), **C-067**.

in Kalemegdan.[102] Mr. Obradović is also obliged to "*exercise all available rights and vote at any General Meeting*" of Kalemegdan in accordance with written instructions from Coropi.[103]

95. Based on the trust deeds, Coropi therefore became the 100% beneficial owner of Kalemegdan. As a result, Coropi also became the indirect beneficial owner of the Cypriot Obnova Shares.

96. To this day, Coropi remains the 100% beneficial owner of Kalemegdan and, thus, also the indirect beneficial owner of the Cypriot Obnova Shares.

J. Obnova's rights upon Cypriot Claimants' investment

97. At the time when Kalemegdan and Coropi became owners of Obnova, Obnova was the unregistered owner of its buildings at Dunavska 17-19 and Dunavska 23 and had a right of use over the land it was using at these locations.[104] Furthermore, the 2009 Law on Planning and Construction was in force and Obnova had the right to convert its right of use over the land at Dunavska 17-19 and Dunavska 23 into ownership under that law.[105] Finally, as explained above, Obnova had a right to obtain all permits for its buildings and it had also initiated the respective legalization proceedings.[106]

98. Obnova was a very valuable investment at the time. Its ownership of the buildings and the right to obtain ownership of the land through the conversion process allowed Obnova to realize the enormous development potential due to their strategic central location between the Danube river front and the historic city center of Belgrade, and also due to their zoning for commercial purposes under the 2003 RP.

99. The possibility to convert right of use into ownership has continued to exist in Serbia to this date, even though the 2009 Law on Planning and Construction was amended several times and the regulation of the conversion process was eventually replaced by regulation

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102 Trust Deed, 26 April 2012, Art. 1(c), **C-066**; Trust Deed, 16 August 2012, Art. 1(c), **C-067**.

103 Trust Deed, 26 April 2012, Art. 1(e), **C-066**; Trust Deed, 16 August 2012, Art. 1(e), **C-067**.

104 Živković Milošević ER, ¶ 144.

105 Živković Milošević ER, ¶ 184.

106 *Supra* §§ III.G and III.H.

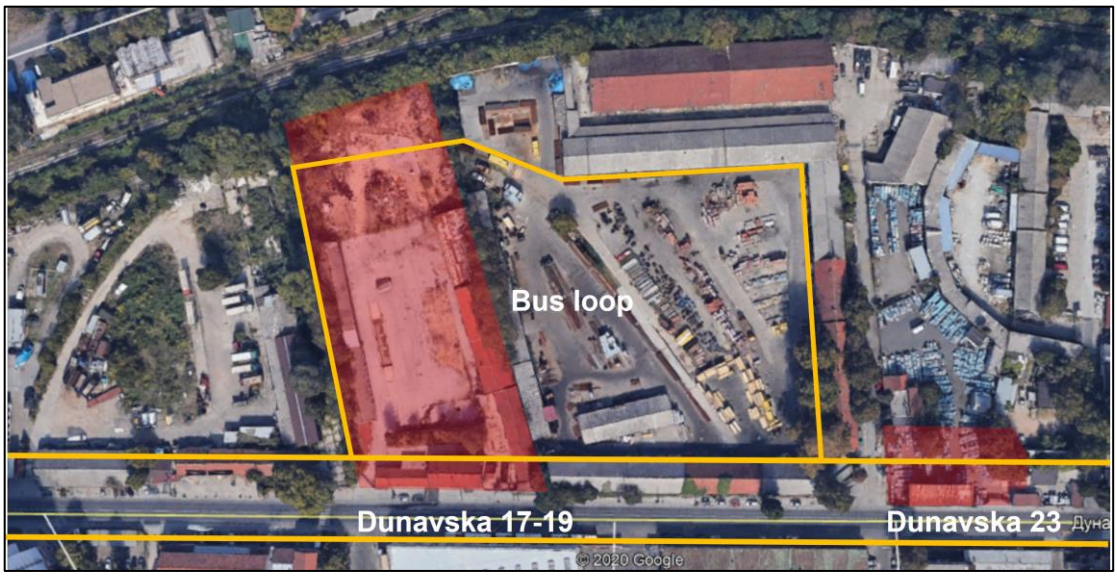
in a separate law—the Law on Conversion of the Right of Use into Ownership on the Construction Land with a Fee ("**2015 Law on Conversion**").[107]

100. The only reason why Obnova has been unable to exercise this right and become the owner of the land at Dunavska 17-19 and Dunavska 23 is the adoption by Serbia of the 2013 DRP on 20 December 2013. The 2013 DRP placed a bus loop on Obnova's premises and, thus, eliminated the right to conversion.

K. The adoption of the 2013 DRP on 20 December 2013

1. Content of the 2013 DRP

101. On 20 December 2013, the City of Belgrade adopted the 2013 DRP.[108] The 2013 DRP designated the majority of Obnova's premises at Dunavska 17-19 and Dunavska 23 for construction of a bus terminal (bus loop) and its access roads:[109]



102. The City of Belgrade presented a draft of the 2013 DRP for public review for the first time on 5 September 2012.[110] To the best of Claimants' knowledge, this was the first time that the City of Belgrade published a planning document that envisaged Obnova's premises being used for traffic infrastructure. As explained above, the 2003 RP

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107 Živković Milošević ER, ¶ 65.

108 2013 DRP, **C-024**.

109 Google Earth images (with annotation), **C-308**.

110 Letter from Belgrade Urban Planning Institute, 31 December 2020, p. 1, **C-320**.

designated all Obnova's premises for commercial and residential use, while the traffic infrastructure was supposed to be located on a land plot directly across the street from Obnova's premises at Dunavska 17-19.[111]

103. The 2013 DRP expressly—but wrongly—stated that the "*Planning basis*" for "*drafting of the [2013 DRP]*" was the 2003 RP.[112] However, the 2003 RP designated Obnova's premises for commercial and residential use—not for development of traffic infrastructure, such as a bus loop. Thus, while the City of Belgrade cited the 2003 RP as "*Planning basis*" for "*drafting of the [2013 DRP]*", the 2013 DRP was clearly contradictory to the 2003 RP. Serbia did not address this contradiction in the 2013 DRP.

104. The fact that the 2003 RP and 2013 DRP are contradictory is not without consequences. On the contrary, the fact that the 2013 DRP was contradictory to the 2003 RP means that it was not in compliance with Article 33 of the 2009 Law on Planning and Construction. According to this provision: "*Spatial and urban planning documents must be harmonized, so that the document of the narrower area must be in accordance with the document of the wider area.*"[113]

105. This non-compliance continues to this day because 2016 RP, which replaced the 2003 RP, again zoned Obnova's premises as commercial facilities. For the avoidance of doubt, this does not mean that Serbia no longer envisages construction of the bus loop on Obnova's premises. The 2013 DRP remains valid as well and development of Obnova's premises for residential and commercial purposes remains impossible.

106. Besides the fact that the City of Belgrade failed to address the contradictions between the 2013 DRP, 2003 RP and 2016 RP, it also did not explain why it decided to put the bus loop on Obnova's premises, rather than on the land plot across the street, which is

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111 2003 RP, pp. 24, 214 (pdf), **C-025**. *Similarly also* 2003 RP, pp. 29, 229 (pdf), **C-025**.

112 2013 DRP, p. 3 (pdf), **C-024**.

113 2009 Law on Planning and Construction, Art. 33, **C-021**.

owned by the City of Belgrade and designated for traffic development in the 2003 RP.[114] In fact, this land plot has been used for the parking[115] of buses for at least two decades:[116]

November 2000	April 2022
	

107. It would therefore seem logical to put the bus loop on the land already used for parking buses. Yet, Serbia decided not to do so—without offering any explanation.

108. Serbia also did not explain why it placed the bus loop on Obnova's premises, rather than on some other publicly owned land plots in the area. For example, the City of Belgrade owns land plots Nos. 39/8, 39/11 and has rights to buildings on a land plot No. 39/13, which are located just few hundred meters from Obnova's premises and which has a similar shape and size as Obnova's premises:[117]

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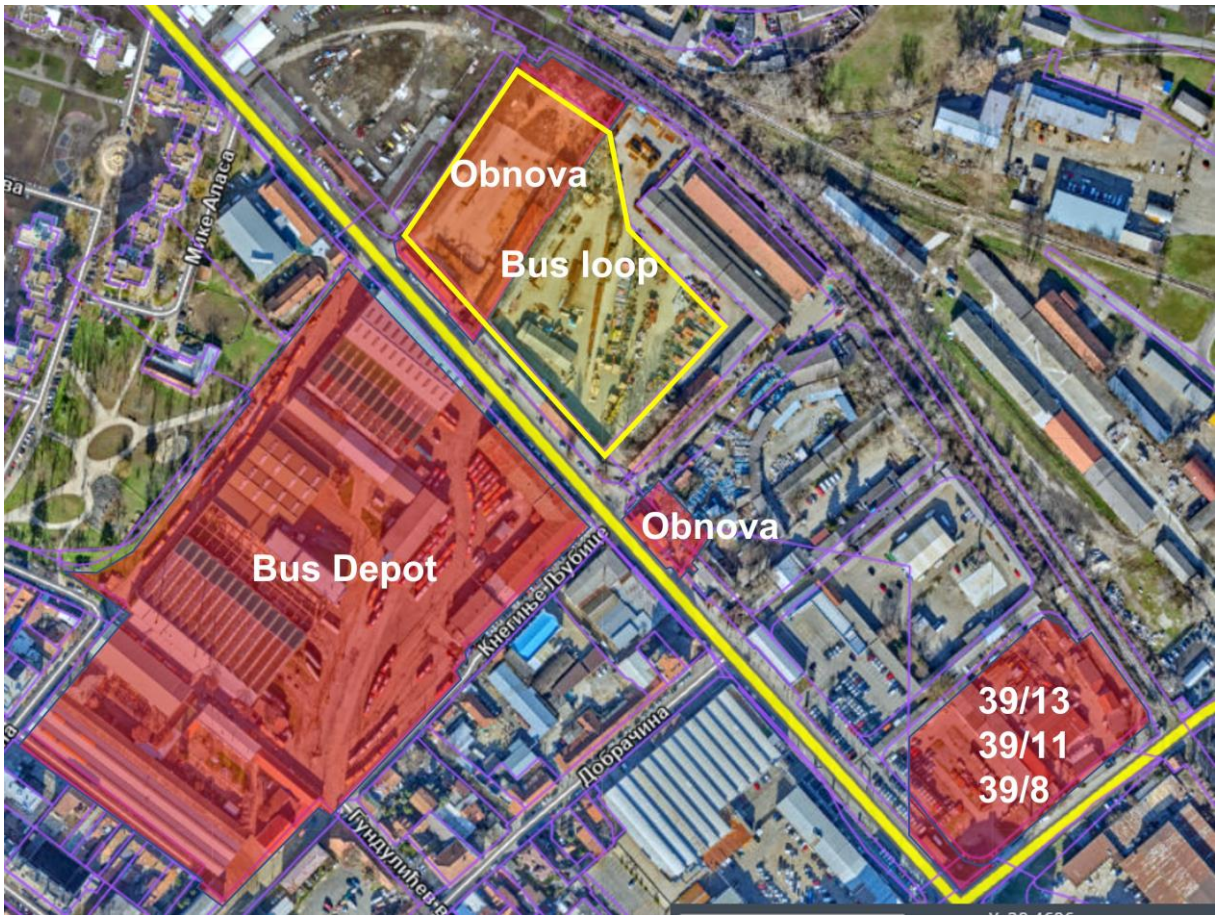
114 Excerpt from the cadaster for the land plot, 4 August 2022, p. 1, **C-321**; Excerpts from the cadaster for buildings, 4 August 2022, p. 1 (of all individual excerpts), **C-322**. Given that the excerpts are all identical, with the exception of description of individual buildings, Claimants only submit English translation of one of these excerpts. The remaining excerpts are only submitted in Serbian. *See also* Cadaster decision No. 952-02-040-376/13, 21 January 2014, p. 3 (pdf), **C-309**.

115 Letter from JKP, 31 August 2022, p. 1, **C-310**.

116 Google Earth images (with annotation), **C-308**.

117 Google Earth images (with annotation), **C-308**; Excerpt from Cadaster dated 4 January 2023, relating to land plot No. 39/8, **C-323**; Excerpt from Cadaster dated 4 January 2023, relating to land plot No. 39/11, **C-324**; Excerpt from Cadaster dated 4 January 2023, relating to land plot No. 39/13, **C-325**.



2. Expropriatory effect of the 2013 DRP on Obnova's rights

109. The 2013 DRP stripped Obnova of its right to convert the right to use over all the land at Dunavska 17-19 and Dunavska 23 into ownership. The 2013 DRP designated the land at Dunavska 17-19 and Dunavska 23 for public purposes—construction of a bus loop. Under Serbian law, land designated for public purposes is excluded from the conversion process.[118] Thus, upon the adoption of the 2013 DRP, Obnova lost its right to acquire ownership over the land at Dunavska 17-19 and Dunavska 23.

110. In addition, the 2013 DRP expressly prohibits any development on the land affected by the plan:

> Until all existing facilities planned for removal that are located within the borders of the plan on planned public development parcels have been conformed to designated use, they shall be kept in the existing

118 Živković Milošević ER, ¶ 56.

> condition. No new construction or extension is permitted on them. Current maintenance of facilities and adaptation is permitted.[119]

111. Finally, after the adoption of the 2013 DRP, Obnova was no longer able to legalize its buildings at Dunavska 17-19 and most of the buildings at Dunavska 23 because the 2009 Law on Planning and Construction made legalization contingent on the consent of the Land Directorate of the City of Belgrade (the "**Land Directorate**"). This contingency remained applicable also under the later adopted 2013 and 2015 Laws on Legalization of Buildings.[120] Upon Obnova's request for legalization, the Secretariat for Legalization then inquired whether the Land Directorate would consent to such legalization. In Response, the Directorate informed the Secretariat for Legalization that it would not provide such consent.[121]

3. Obnova's right to compensation under Serbian law

112. Despite the major negative impact that the adoption of the 2013 DRP had on Obnova's rights, Serbia provided no compensation whatsoever to Obnova—even though it was obliged to do so under Serbian law.

113. Serbian courts recognize the concept of effective expropriation—*i.e.* a situation where assets are expropriated even though the legal title is not officially taken from the owner.[122] Serbian courts have also repeatedly confirmed that the adoption of a planning document turning privately-owned assets into assets intended for public use represents an expropriation—even if no formal expropriation proceedings were commenced by the state.[123]

114. Based on the above, the adoption of the 2013 DRP clearly represented an expropriation of Obnova's rights. According to Serbian law, the expropriation could have been done only for a public purpose, on the basis of law and against the payment of compensation

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119 2013 DRP, p. 6 (pdf), **C-024**.

120 Živković Milošević ER, ¶ 94.

121 Decision of the Secretariat for Legalization No. 351.21-19758/2010, 25 April 2018, p. 3 (pdf), **C-041**; Decision of the Secretariat for Legalization No. 351.21 – 16194/2014, 25 April 2018, p. 2 (pdf), **C-042**.

122 Živković Milošević ER, ¶ 240.

123 Živković Milošević ER, ¶ 246.

no lower than the market value of expropriated rights. These rules were codified in the Constitution and the 1995 Law on Expropriation.[124]

115. Article 58 of the Serbian Constitution guaranteed peaceful enjoyment of property and other property rights acquired on the basis of law and provided that the right of ownership can be taken or limited only for a public purpose determined on the basis of law and against a payment of compensation, which cannot be lower than the market value.[125]

116. Article 1 of the 1995 Law on Expropriation equally stated that ownership of immovable property could be expropriated only for a public purpose determined on the basis of law and against a payment of compensation, which could not be lower than the market value.[126] Serbian courts have confirmed that the specific amount representing the market value of expropriated rights should be calculated as of the date of the court decision awarding the compensation.[127]

117. Despite these clear rules, Serbia did not provide any compensation to Obnova for expropriation of its rights to buildings and land at Dunavska 17-19 and Dunavska 23. Worse yet, when Obnova approached Serbia and requested the compensation due, it was flatly rejected based on clearly incorrect and arbitrary reasons. Claimants address this issue in detail in **Section III.O** below.

L. Adoption of the 2015 DRP

118. On 28 December 2015, the City of Belgrade adopted 2015 DRP.[128] To add an insult to injury, according to the 2015 DRP, the land plot directly across the street from Obnova's premises (owned by the City of Belgrade) is no longer supposed to be used for development of traffic infrastructure. Instead, it is now dedicated to residential

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124 Živković Milošević ER, ¶ 237.

125 Constitution of the Republic Serbia, Official Gazette of the Republic of Serbia No. 98/06, Arts. 58(1), 58(2), **C-031**. *See also* Živković Milošević ER, ¶ 238.

126 Law on Expropriation, Official Gazette of the Republic of Serbia, No. 53/95; Official Gazette of the Federal Republic of Yugoslavia, No. 16/01; Official Gazette of the Republic of Serbia, Nos. 20/09, 55/13, 106/16, Art. 1, **C-032**. *See also* Živković Milošević ER, ¶ 239.

127 Živković Milošević ER, ¶ 253.

128 2015 DRP, **C-326**.

development (blocks of apartment buildings)[129] with a note that the existing depot should "*be […] relocated to another adequate location.*"[130]

119. By adoption of the 2015 DRP, the City of Belgrade therefore significantly increased the value of its own land plot located across the street from Obnova's premises, as the land for residential development is obviously more valuable than the land for traffic infrastructure.

120. This fact explains why the City of Belgrade did not place the bus loop on this land, even though it was, as explained above, specifically dedicated for development of traffic infrastructure. The City of Belgrade did not do so simply because it had more lucrative plans for its own land.

M. Serbia's decision to demolish Obnova's buildings

121. On 24 February 2016, Obnova received a letter from the Land Directorate informing Obnova that the Land Directorate initiated proceedings related to planned construction of the bus loop. As a part of these proceedings, Obnova's buildings affected by the 2013 DRP were supposed to be demolished.[131]

122. Importantly, the Land Directorate did not assert in the letter that the City of Belgrade was the owner of Obnova's buildings. It merely asserted that the City of Belgrade was registered as the user of the buildings in the Cadaster. However, the Land Directorate was well aware that the records did not correspond to reality because the City of Belgrade was not using, and had never used, the buildings in any manner. The Land Directorate was careful not to dispute Obnova's rights to the buildings.

123. The Land Directorate took the same position in subsequent correspondence. In its letter from 19 February 2018, the Land Directorate expressly envisaged that Obnova would be provided with compensation "*for facilities that need to be demolished, that is, removed from the location.*"[132] It comes as a bitter irony that the same Land Directorate,

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129 2015 DRP, **C-326**.

130 2015 DRP, p. 157 (pdf), **C-326**.

131 Letter from the Land Directorate to Obnova, 24 February 2016, **C-327**.

132 Letter from the Land Directorate to Obnova, 19 February 2018, **C-328**.

in a remarkable about-face, rejected Obnova's request for compensation just three years later.

N. MLI's acquisition of 10% of Obnova's shares in 2017

124. In November 2017, MLI acquired the Canadian Obnova Shares (*i.e.* 2,028 shares in Obnova, representing approximately 10% of Obnova's total share capital).[133] As explained above, MLI is a Serbian limited liability company 100% owned and controlled by Mr. Broshko.[134] Mr. Broshko is the Managing Director of Rand Investments Ltd., a Vancouver-based private equity firm owned by Mr. Rand. Due to his work for Mr. Rand, Mr. Broshko learned about Obnova and its situation.

125. Mr. Broshko's investment in Obnova was made independently of Mr. Rand. Mr. Broshko decided to invest in Obnova's shares because he believed that the company would either be able to resolve the issue with the 2013 DRP or would be awarded compensation due under Serbian law. Either way, Mr. Broshko would have been able to participate in the value of Obnova driven by Obnova's rights to its premises at Dunavska 17-19 and 23.

O. Serbia's refusal to compensate Obnova

126. On 19 April 2021, Obnova filed with several Serbian authorities, including the City of Belgrade and the State Attorney's Office, a request for compensation for the losses caused to Obnova by the adoption of the 2013 DRP and Serbia's failure to register and protect Obnova's rights ("**Request for Compensation**").[135]

127. In the Request for Compensation, Obnova explained that it had constructed buildings at Dunavska 17-19 during the 1940s and 1950s and had been using them ever since.[136] Obnova also explained that, upon privatization, it acquired private ownership over these buildings and, as a result, had the right to use the land on which they were constructed,

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133 Confirmation of MLI's purchase of Obnova's shares, 14 November 2017, **C-003**; Excerpt from the webpage of the Central Securities Depository and Clearing House, 29 March 2022, **C-004**.

134 Excerpt from the webpage of Serbian Business Register Agency for MLI, 29 March 2022, **C-002**.

135 Obnova's request for compensation, 19 April 2021, **C-052**.

136 Obnova's request for compensation, 19 April 2021, p. 2 (pdf), **C-052**.

which can be converted into ownership. This right could be converted to ownership prior to the 2013 DRP.[137]

128. Obnova further explained that, as a result of the adoption of the 2013 DRP, its rights to Dunavska 17-19 and Dunavska 23 premises were *de facto* expropriated because it became impossible for Obnova to develop these premises.[138] Obnova also explained that, as a result, it is entitled to compensation under the Serbian law.[139] At the time of the Request for Compensation, Obnova estimated the amount of compensation to be at least EUR 45.2 million.[140]

129. On 13 August 2021, the Land Directorate of the City of Belgrade rejected the Request for Compensation. The Land Directorate did so based on entirely incorrect, unreasonable and arbitrary grounds and in complete disregard of the position it took just three years earlier, in February 2018.[141]

1. Land Directorate's response regarding premises at Dunavska 17-19

130. With respect to buildings at Dunavska 17-19, the Land Directorate argued that:

a. Obnova's buildings are temporary and that Obnova was allegedly obliged to demolish its buildings "*at the request of the People's Committee of the City of Belgrade, without the right to compensation*";[142]

b. it is "*not possible to positively identify Objects built under temporary approvals compared to the current situation on the ground*" and that Obnova's requests for legalization of the existing objects had been rejected;[143]

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137 Obnova's request for compensation, 19 April 2021, pp. 2-4 (pdf), **C-052**.

138 Obnova's request for compensation, 19 April 2021, pp. 4-6 (pdf), **C-052**.

139 Obnova's request for compensation, 19 April 2021, pp. 6-7 (pdf), **C-052**.

140 Obnova's request for compensation, 19 April 2021, p. 7 (pdf), **C-052**.

141 *Supra* ¶ 121.

142 Letter from the Land Directorate of the City of Belgrade, 13 August 2021, p. 2 (pdf), **C-053**.

143 Letter from the Land Directorate of the City of Belgrade, 13 August 2021, p. 2 (pdf), **C-053**.

c. Obnova's buildings allegedly "*could not be regarded as the subject of privatization*";[144] and

d. Obnova's rights allegedly could not be expropriated because the Cadaster had registered the City of Belgrade as the owner and Obnova's claim for correction of the registration was pending before Serbian courts.[145]

131. None of these arguments withstand scrutiny.

a. Obnova's buildings are not temporary and Obnova does not have an obligation to demolish them

132. Obnova's buildings are not "*temporary*"—they have existed since the 1940s, *i.e.* for approximately 70 years.[146] Serbia cannot seriously claim that "*temporary*" buildings would exist for 70 years.

133. Further, Obnova's buildings are not temporary in nature. The Constitutional Court of Serbia explained in its decisions that "*only smaller prefabricated buildings that are placed in public areas (kiosks, summer gardens, mobile stalls, etc.) ha[ve] [a] temporary character.*"[147] Obnova's buildings—consisting of brick-and-mortar warehouses, offices and other buildings for commercial use, which have been permanently attached to the ground (some since the 1940s)—clearly do not fall within any of these categories.[148]

134. The construction permits for Obnova's buildings also are not temporary. They were issued pursuant to the Basic Regulation on Construction from 1948[149] and the

144 Letter from the Land Directorate of the City of Belgrade, 13 August 2021, p. 2 (pdf), **C-053**.

145 Letter from the Land Directorate of the City of Belgrade, 13 August 2021, pp. 2-3 (pdf), **C-053**.

146 Živković Milošević ER, ¶¶ 150, 261.

147 Decision of the Constitutional Court, Case No. IUI 156/2009, Official Gazette of the Republic of Serbia, No. 55/10, 22 June 2010, p. 6 (pdf), **C-056**.

148 Živković Milošević ER, ¶ 261.

149 Basic Regulation on Construction, Official Gazette of the Federal People's Republic of Yugoslavia, No. 46/48, Arts. 1, 2, 16, **C-054**.

Regulation on Construction from 1952.[150] Neither of these regulations allowed for the issuance of "*temporary*" construction permits.[151]

135. The notion of temporary construction permits was defined by Serbian law only decades later, in the Law on Special Conditions for the Issuing of Construction and Usage Permits for Certain Objects from 1997[152] and the 2009 Law on Planning and Construction.[153] Neither of these two laws applies to permits issued prior to their entry into force.[154] Furthermore, even if these laws did apply to Obnova's permits (*quod non*), Obnova's permits would still not qualify as temporary permits under these laws. This is because these laws envisaged issuance of temporary permits only to objects that could not be adjusted to comply with urbanistic plans, objects built in the areas for which no urbanistic plan had been adopted and certain specific types of buildings (*e.g.* temporary toll stations or construction camps) expressly listed in relevant laws.[155] Obnova's buildings do not meet that definition because they are compliant with urbanistic plans and do not belong to any of the specifically listed categories of temporary buildings.[156]

136. Finally, the Land Directorate's argument that Obnova "*is obliged to demolish [its buildings] at the request of the People's Committee of the City of Belgrade, without the right to compensation*" is nothing short of absurd.[157] While the Land Directorate did not state so expressly, this appears to be a reference to a lease agreement that Obnova concluded with the Municipality Stari Grad in 1953 ("**1953 Lease Agreement**").

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150 Regulation on Construction, Official Gazette of the Federal People's Republic of Yugoslavia, No. 14/52, Art. 26, **C-055**.

151 Živković Milošević ER, ¶ 160.

152 1997 Law on Special Conditions for Granting of Construction and Usage Permits for Certain Objects (Official Gazette of RS, No. 16/1997), **C-117**.

153 2009 Law on Planning and Construction (Official gazette RS, Nos. 72/09, 81/09, 64/10, 24/11, 121/12, 42/13, 50/13, 98/13), Art. 147, **C-169**.

154 Živković Milošević ER, ¶ 161.

155 Živković Milošević ER, ¶ 162.

156 *See* Živković Milošević ER, ¶ 162.

157 Letter from the Land Directorate of the City of Belgrade, 13 August 2021, p. 2 (pdf), **C-053**.

137. While it is true that this agreement did indeed include such an obligation,[158] the 1953 Lease Agreement was terminated in November 1961.[159] Thus, this obligation no longer exists. Tellingly, the Land Directorate had not referred to this alleged obligation at any previous time—despite the fact that it specifically discussed with Obnova as early as 2016 the potential demolition of its buildings.

b. The Land Directorate did not even attempt to identify relevant buildings

138. The Land Directorate's argument that it is allegedly "*not possible to positively identify Objects built under temporary approvals compared to the current situation on the ground*" is arbitrary.[160] The Land Directorate did not explain what efforts it undertook to reconcile Obnova's permits with its existing buildings. Most importantly, it did not even approach Obnova to resolve this alleged issue.

c. It is irrelevant that the buildings located at Dunavska 17-19 were not "*subject of privatization*"

139. The Land Directorate's argument that the buildings located at Dunavska 17-19 could not be subject of privatization is entirely irrelevant.[161] It is technically correct that the "*subject of privatization*" within the meaning of Article 3 of the 2001 Law on Privatization was Obnova's shares and not its assets.[162] However, in accordance with consistent case law of Serbian courts, "*[u]pon privatization, Obnova ex lege acquired ownership of the buildings it had the right to use, even though the object of the privatization was Obnova's shares, not Obnova's assets.*"[163]

d. The City of Belgrade is not the owner of Obnova's buildings

140. The Land Directorate's argument that the City of Belgrade is the owner of the buildings at Dunavska 17-19 is equally erroneous. It is based on the extravagant proposition that at the moment of its privatization in 2003, Obnova did not have the right to use the

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158 1953 Lease Agreement, Section 4, **C-007**.

159 Živković Milošević ER, ¶ 136.

160 Letter from the Land Directorate of the City of Belgrade, 13 August 2021, p. 2 (pdf), **C-053**.

161 Letter from the Land Directorate of the City of Belgrade, 13 August 2021, p. 2 (pdf), **C-053**.

162 Živković Milošević ER, ¶ 263.

163 Živković Milošević ER, ¶ 263.

buildings it had built in 1940s and 1950s, had been using ever since and that were listed in its privatization documentation. To support this proposition, the Land Directorate alleged that the City of Belgrade acquired the right to use the premises at Dunavska 17-19 from Luka Beograd, a socially-owned enterprise tasked with the development of Belgrade's river port on the Danube, based on an agreement concluded in 1975 ("**1975 Agreement**"). This argument is obviously without any merit.

141. As explained above, Obnova constructed its buildings at Dunavska 17-19 in the 1940s and 1950s—years before the foundation of Luka Beograd on 27 November 1961 and the conclusion of the contract between Luka Beograd and the City of Belgrade in 1975. Luka Beograd was never granted any rights to Obnova's buildings. Luka Beograd, therefore, did not have—and could not have had—any rights to the buildings built and used by Obnova. As a result, it could not have transferred such rights to the City of Belgrade.[164]

142. In addition, while the text of the 1975 Agreement generally envisages a transfer of the right of use over both land and buildings,[165] it does not specify any buildings subject to the transfer and only includes a list of land plots with respect to which the right of use was transferred.[166] Thus, the 1975 Agreement did not transfer rights to any buildings at all.

143. Tellingly, while the Land Directorate took the position in 2021 that Obnova's buildings are publicly owned, it had taken a completely different position only three years earlier, in 2018, when it recognized that Obnova was entitled to compensation for potential demolition of its buildings.[167]

144. Another Serbian authority—the Geodetic Authority of Serbia (the "**Geodetic Authority**")—had also previously confirmed that the buildings were not publicly-owned.

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164 Živković Milošević ER, ¶¶ 150-151.

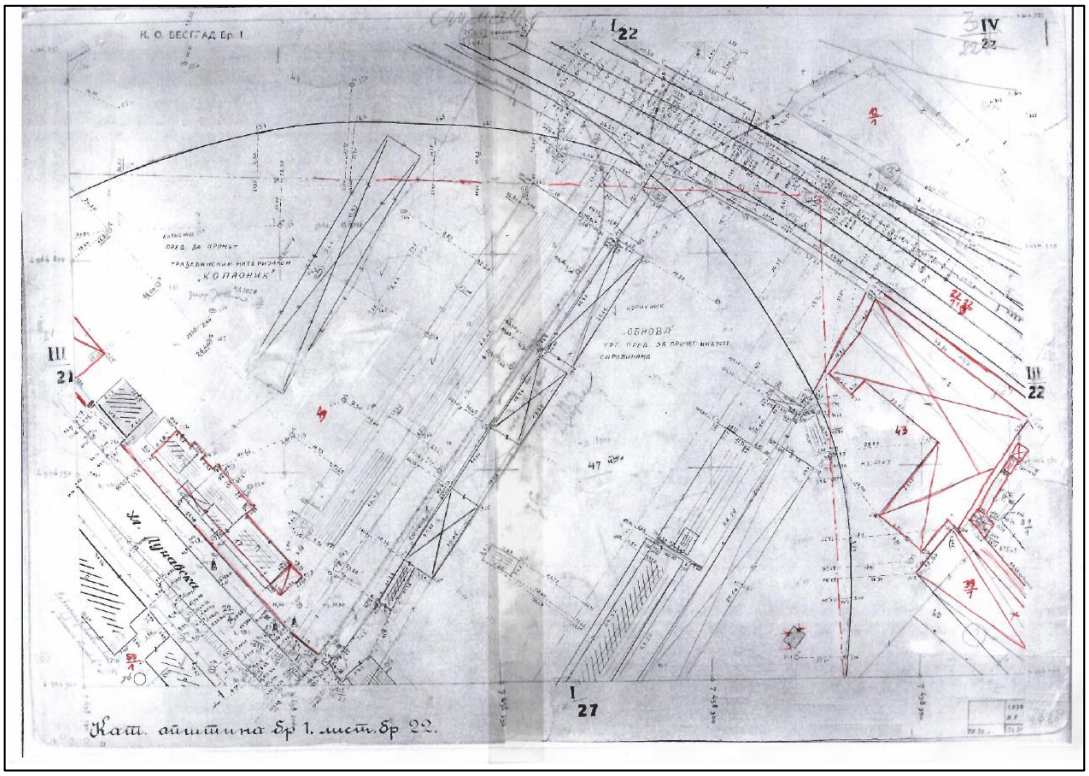
165 1975 Agreement, Art. 2, **C-167**.

166 1975 Agreement, pp. 7-11 (pdf), **C-167**. *See also* Živković Milošević ER, ¶ 153.

167 *Supra* ¶ 121.

145. On 4 February 2021, Obnova requested from the Geodetic Authority of Serbia information about historical changes of land plot No. 47.[168] The Geodetic Authority replied on 18 February 2021, *i.e.* approximately six months before the Land Directorate refused Obnova's Request for Compensation.[169] With its response, the Geodetic Authority attached the following two maps (one from 2004 and one undated[170]), which state that Obnova is the beneficiary and the owner of its premises at Dunavska 17-19:[171]

Translation: "*User: 'OBNOVA' Trading Company for Trade of Industrial Raw Materials*"



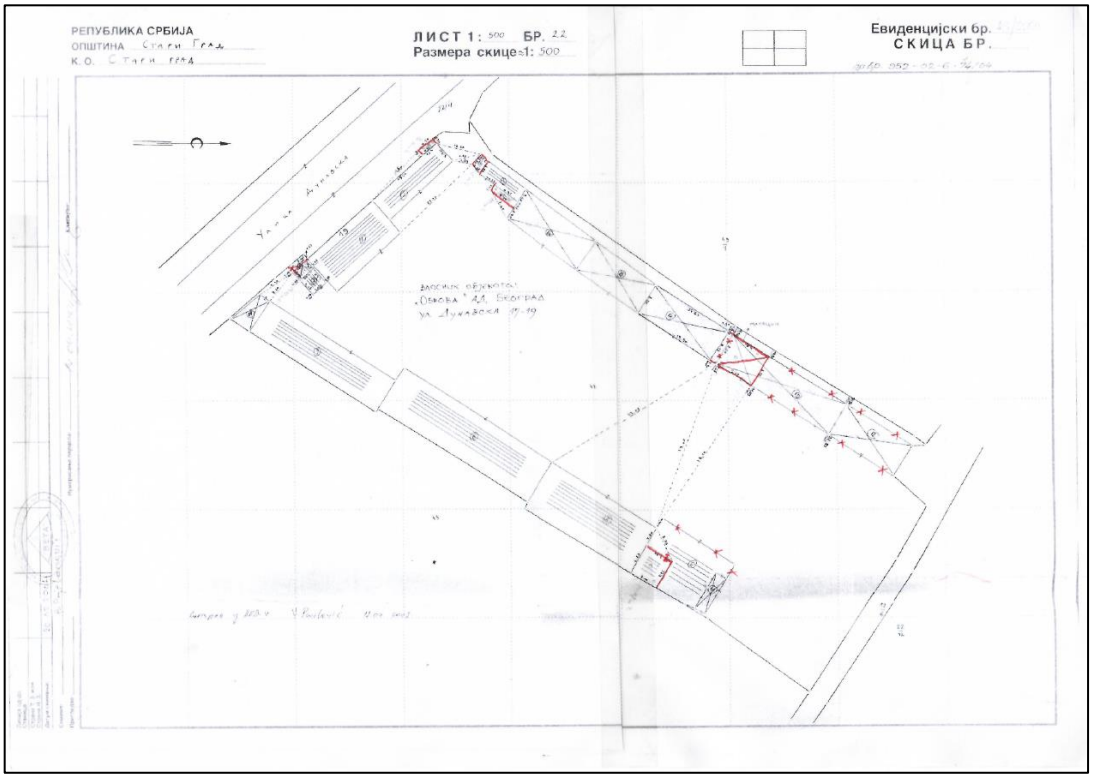
168 Letter from Obnova to Geodetic Authority of Serbia, 4 February 2021, **C-331**.

169 Letter from Geodetic Authority of Serbia to Obnova, 18 February 2021, **C-329**.

170 The map is probably from the period between 1953 and 1977 because it refers to Obnova as "*'OBNOVA' Trading Company for Trade of Industrial Raw Materials*" and Obnova was registered under that name in this period. *See* Confirmation from the Business Registers Agency, 8 February 2021, p. 1 (pdf), **C-149**.

171 Letter from Geodetic Authority of Serbia to Obnova, 18 February 2021, pp. 8-9 (pdf), **C-329**.

Translation: "*Owner of the Buildings: 'Obnova' JSC, Belgrade Dunavska St., 17-19*"



146. In addition, before Serbia adopted the 2013 DRP, it prepared the so-called concept of this plan.[172] The concept specifically envisaged that costs of construction of the bus loop would include, among others, payments for expropriated land and buildings.[173] If Serbia had believed that it owned the land and buildings at Dunavska 17-19 and Dunavska 23, there would have been no need to consider additional payments for their expropriation.

e. Erroneous registration of the City of Belgrade's purported ownership is irrelevant

147. The Land Directorate stated that Obnova's right to compensation allegedly depends on the outcome of the court proceedings that Obnova initiated in order to correct the in error registration of Serbia as the owner of its buildings in the Cadaster. As explained by Prof. Živković and Mr. Milošević, this simply is not the case. The Land Directorate could have addressed the ownership as a preliminary question and reached a decision

172 Concept of the 2013 DRP, 2010, **C-330**.

173 2013 DRP, Section B.8, **C-024**; Concept of the 2013 DRP, 2010, pp. 2-3 (pdf), **C-330**.

on this specific point. The registration in the Cadaster is not determinative to establish ownership (or any other rights and facts registered in the Cadaster).[174] The pending proceedings, therefore, did not represent an obstacle for providing compensation to Obnova.[175]

148. Furthermore, as explained above, Obnova was forced to initiate these proceedings because the Cadaster had: (*i*) incorrectly, and without any apparent reason, registered City of Belgrade as the owner of Obnova's buildings; and (*ii*) refused Obnova's request for correction of the Cadaster records. The Land Directorate cannot rely on Serbia's own mistakes and omissions to try and escape its obligation to compensate Obnova for the expropriation of its premises.

2. Land Directorate's response regarding Obnova's premises at Dunavska 23

149. With respect to Obnova's premises at Dunavska 23, the Land Directorate merely stated that the 2013 DRP does not cover Obnova's building located on land plot No. 40/5 CM Stari grad.[176] This is simply incorrect.

150. The fact that this land plot is affected by the 2013 DRP is confirmed by data from the Land Directorate's own web site:[177]

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174 Živković Milošević ER, ¶ 116.

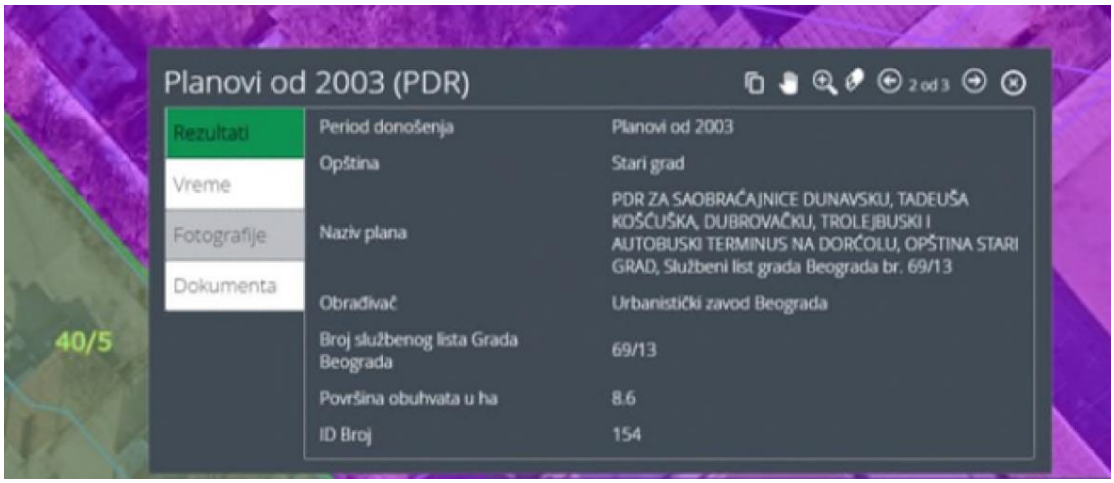
175 On 22 September 2022, the Higher Court in Belgrade rejected Obnova's request for recognition of Obnova's ownership of certain buildings at Dunavska 17-19 on the grounds that Obnova did not acquire ownership of these buildings by acquisitive prescription (*usucapio*). According to the Court, Obnova's possession of the buildings was not lawful and in good faith because Obnova allegedly constructed its buildings and based its possession thereof on "*building permits and decisions of the competent authorities that are of temporary character i.e., he was aware of the fact that he was allowed to construct temporary facilities that have to be demolished at any time upon request of the competent authority*." *See* Decision of the Higher Court in Belgrade No. 23. P. no. 1724/16 dated 22 September 2022, p. 16 (pdf), **C-168**.

The Court's decision and reasoning were clearly erroneous because: (*i*) Obnova did not claim that it acquired the ownership of buildings at Dunavska 17-19 by acquisitive prescription (as explained above, Obnova acquired ownership of these buildings *ex lege* at the moment of its privatization); and (*ii*) the question of whether Obnova's permits and buildings are temporary or not is irrelevant for their ownership. Prof. Živković and Mr. Milošević explain that even "*if the buildings and/or permits indeed were temporary, and they are not, this would change nothing on the fact that Obnova is the owner of the buildings*." *See* Živković Milošević ER, ¶ 159.

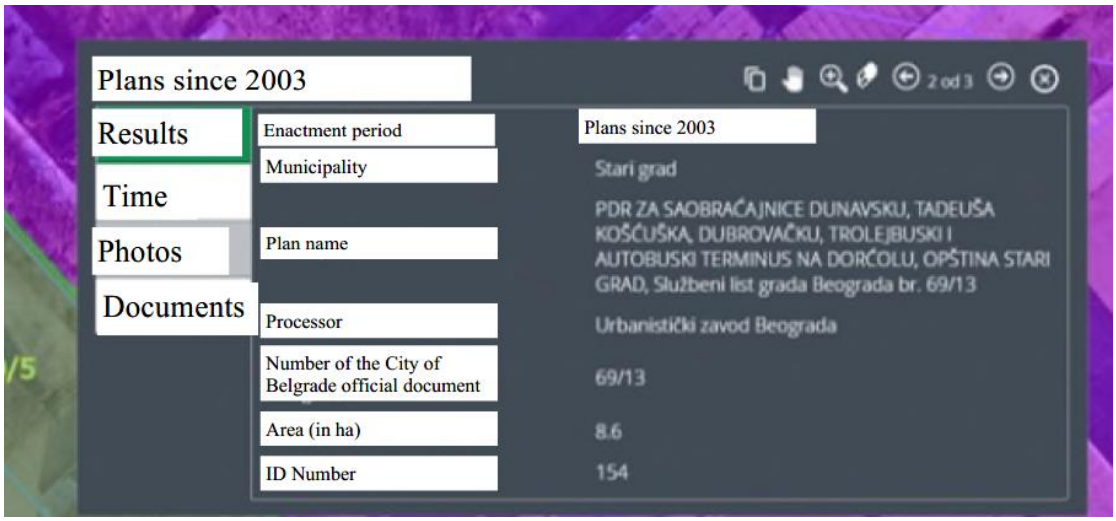
In any case, as already explained above, the fact is that neither Obnova's permits nor its buildings are temporary. On 15 November 2022, Obnova filed an appeal against the decision, which is pending.

176 Letter from the Land Directorate of the City of Belgrade, 13 August 2021, p. 1 (pdf), **C-053**.

177 Screenshots from Cadaster website evidencing effect of the 2013 DRP, **C-176**. *See also* Živković Milošević ER, ¶ 268.



[…]



151. Further, the Secretariat for Legalization previously refused to legalize Obnova's building on this land plot exactly because the 2013 DRP covers this building.[178]

152. Finally, the Land Directorate entirely ignored the fact that Obnova has four other buildings on land plots Nos. 39/12 and 39/1 CM Stari grad, which are also located at Dunavska 23 and were expressly mentioned in the Request for Compensation.[179]

178 Decision of the Secretariat for Legalization No. 351.21-16194/2014, 25 April 2018, p. 2, **C-042**. *See also* Decision of the City Council of the City of Belgrade No. 351-512/18-GV, 19 June 2018, 4-5 (pdf), **C-045**; Decision of Administrative Court No. 11 U 14419/8, 11 January 2021, p. 3 (pdf), **C-049**.

179 Obnova's request for compensation, 19 April 2021, p. 9 (pdf), **C-052**. *See also* Živković Milošević ER, ¶ 269.

The response from the Land Directorate is, thus, not only incorrect, but also arbitrary as it simply ignores an important part of the Request for Compensation.

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153. The response from the Land Directorate makes it absolutely clear that Serbia is not willing to provide to Obnova any compensation for expropriation of its premises at Dunavska 17-19 and Dunavska 23. Instead, Serbia invents incorrect, unreasonable and arbitrary arguments to avoid, or at the very least delay, the payment of compensation—which has now been due for almost a decade.

154. Faced with Serbia's denial of its obligation to compensate Obnova, Claimants had no choice than to notify Serbia of the existence of an investment dispute under the applicable Treaties. On 16 June 2021, Cypriot Claimants filed the Request for amicable settlement of investment dispute pursuant to the Cyprus-Serbia BIT and on 23 November 2021, Mr. Broshko filed a Notice of Dispute under the Canada-Serbia BIT. Serbia did not deem it necessary to provide *any* response.

IV. JURISDICTION

A. Claimants meet the jurisdictional requirements of the Treaties

155. Claimants bring their investment claims against Serbia under the Treaties and the ICSID Convention. As shown *seriatim* below, their claims meet all jurisdictional requirements under each of these instruments.

1. Jurisdiction *ratione personae*

a. Coropi and Kalemegdan are investors protected under the Serbia-Cyprus BIT

156. According to Article 1(3)(b) of the Serbia-Cyprus BIT, the term "*investor*" shall "*mean […] a legal entity incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having its seat in the territory of that Contracting Party and making investments in the territory of the other Contracting Party.*"[180]

157. Kalemegdan and Coropi are companies incorporated and having their seat in Cyprus. They have made investments in Serbia. Therefore, they qualify as "investors" under Art. 1(3)(b) of the Serbia-Cyprus BIT.[181]

b. Mr. Broshko is an investor protected under the Canada-Serbia BIT

158. Article 1 of the Canada-Serbia BIT defines "*investor*" as: "*a national or an enterprise of a Party, that seeks to make, is making or has made an investment*."[182]

159. The term "*national*" means "*for Canada, a natural person who is a citizen or permanent resident of Canada*".[183] Mr. Broshko is a natural person who is a citizen and permanent

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180 Serbia-Cyprus BIT, Art. 1(3)(b), **CL-007(a)**. With the Request for Arbitration, Claimants submitted another version of the Serbia-Cyprus BIT as legal authority CL-007. That version of the Serbia-Cyprus BIT is resubmitted with this Memorial as exhibit CL-007(a).

181 Corporate Register of Kalemegdan, 31 March 2022, p. 2 (pdf), **C-063**. Corporate Register of Coropi, 31 March 2021, p. 2 (pdf), **C-065**.

182 Canada-Serbia BIT, Art. 1, definition of "investor of a Party," **CL-001**.

183 Canada-Serbia BIT, Art. 1, definition of "national," **CL-001**.

resident of Canada. He has made an investment in Serbia. Thus, Mr. Broshko qualifies as a protected investor under Article 1 of the Canada-Serbia BIT.[184]

160. According to Article 21(2) of the Canada-Serbia BIT, an investor can submit a claim to arbitration also "*on behalf of an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly.*"[185] The term "*enterprise*" means "*an entity constituted or organized under applicable law, whether or not for profit, whether privately owned or governmentally owned, including a corporation, trust, partnership, sole proprietorship, joint venture or other association and a branch of any such entity*."[186]

161. MLI is an "*enterprise of the respondent Party*" because it is a corporation constituted in accordance with the laws of Serbia. MLI is controlled by Mr. Broshko, its sole shareholder.[187]

162. Given the above, Mr. Broshko can submit claims both on his own behalf, under Article 21(1) of the Canada-Serbia BIT, and on behalf of MLI, under Article 21(2) of the Canada-Serbia BIT in conjunction with Article 1 of the Canada-Serbia BIT.

2. Jurisdiction *ratione materiae*

a. The Cypriot Claimants' investments are protected under the Serbia-Cyprus BIT

163. According to Article 1(1)(b) of the Serbia-Cyprus BIT, the term "investment" shall "*mean every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and in particular, though not exclusively, shall include […] shares, bonds and other kinds of securities*."[188]

164. Since April 2012, Kalemegdan has been the direct nominal owner of the Cypriot Obnova Shares, which represent 14,142 shares in Obnova (approximately 70% of

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184 Passport of Mr. Erinn Broshko, 23 August 2016, **C-001**.

185 Canada-Serbia BIT, Art. 21(2), **CL-001**.

186 Canada-Serbia BIT, Art. 1, definition of "enterprise," **CL-001**.

187 Passport of Mr. Erinn Broshko, 23 August 2016, **C-001**

188 Serbia-Cyprus BIT, Art. 1(1)(b), **CL-007(a)**.

Obnova's total share capital).[189] Kalemegdan's shares in Obnova represent an "*investment*" under Art. 1(1)(b) of the Serbia-Cyprus BIT.

165. To avoid any doubt about the Tribunal's jurisdiction in this case, Kalemegdan brings its claims together with Coropi, which has been the beneficial owner of the Cypriot Obnova Shares since April 2012. Coropi's beneficial ownership is based on the two trust deeds concluded between Coropi and Mr. Obradović, the sole nominal shareholder of Kalemegdan.[190] According to the trust deeds, Mr. Obradović has, among other things, the following obligations:

a. an obligation to transfer all shares in Kalemegdan to Coropi (or any other entity nominated by Coropi) if Coropi so directs him;[191]

b. an obligation to transfer to Coropi any dividends or other payments related to his shareholding in Kalemegdan;[192] and

c. an obligation to "*exercise all available rights and vote at any General Meeting*" of Kalemegdan in accordance with written instructions from Coropi.[193]

166. Based on the trust deeds, Coropi has been the 100% beneficial owner of Kalemegdan and, thus, also an indirect beneficial owner of the Cypriot Obnova Shares. As such, Coropi is an indirect beneficial owner of "*shares*" and thus also has an "*investment*" within the meaning of Article 1(1) of the Cyprus-Serbia BIT. Accordingly, Coropi's beneficial ownership of the Cypriot Obnova Shares enjoys protection under the Serbia-Cyprus BIT.

b. Mr. Broshko's investment is protected under the Canada-Serbia BIT

167. Article 1 of the Canada-Serbia BIT defines "*covered investment*" as "*an investment in [the host state's] territory that is owned or controlled, directly or indirectly, by an*

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189 Excerpt from the Central securities depository and clearing house, 17 May 2012, **C-005**; Excerpt from the webpage of the Central Securities Depository and Clearing House, 29 March 2022, **C-004**.

190 Trust Deed, 26 April 2012, **C-066**; Trust Deed, 16 August 2012, **C-067**.

191 Trust Deed, 26 April 2012, Art. 1(a), **C-066**; Trust Deed, 16 August 2012, Art. 1(a), **C-067**.

192 Trust Deed, 26 April 2012, Art. 1(c), **C-066**; Trust Deed, 16 August 2012, Art. 1(c), **C-067**.

193 Trust Deed, 26 April 2012, Art. 1(e), **C-066**; Trust Deed, 16 August 2012, Art. 1(e), **C-067**.

investor of the other Party existing on the date of entry into force of this Agreement, as well as an investment made or acquired thereafter."[194] The term "*investment*," also laid down in Article 1 of the Canada-Serbia BIT, includes, among others, "*a share, stock or other form of equity participation in an enterprise.*"[195]

168. Mr. Broshko's investment is represented by the 10% shareholding in Obnova, held by Mr. Broshko indirectly through MLI. Mr. Broshko's shareholding in Obnova squarely meets the definition of "investment" as set forth by Article 1 of the Canada-Serbia BIT.

3. Jurisdiction *ratione temporis*

169. The Serbia-Cyprus BIT entered into force on 23 December 2005 and provides that "*[t]he provisions of this Agreement shall apply to investments made by investors of one Contracting Party prior to as well as after the date of entry into force of this Agreement, but it shall only apply to matters occurring after the entry into force of the present Agreement.*"[196]

170. The Canada-Serbia BIT entered into force on 27 April 2015 and provides that it shall apply to all investments "*existing on the date of entry into force of this Agreement, as well as an investment made or acquired thereafter*".[197]

171. The City of Belgrade adopted the 2013 DRP, and thus indirectly expropriated Obnova's rights to its premises, on 20 December 2013, *i.e.* after the entry into force of the Serbia-Cyprus BIT and after the making of the Cypriot Claimants' investment in Obnova.

172. Serbia's violations of Obnova's rights continued after that date and culminated in the express refusal to provide Obnova compensation for expropriation of its premises on 13 August 2021, *i.e.* after the entry into force of the Canada-Serbia BIT. Accordingly, the Claimants' claims satisfy the *ratione temporis* requirement set forth in the Treaties.

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194 Canada-Serbia BIT, Art. 1, definition of "covered investment," **CL-001**.

195 Canada-Serbia BIT, Art. 1, definition of "investment," **CL-001**.

196 Serbia-Cyprus BIT, Art. 12, **CL-007(a)**.

197 Canada-Serbia BIT, Art. 1, definition of "covered investment," **CL-001**.

B. The Claimants' claims meet the jurisdictional requirements of the ICSID Convention

173. In accordance with Article 9(2) of the Serbia-Cyprus BIT[198] and Article 24(1)(a) of the Canada-Serbia BIT,[199] Claimants have elected to resolve the present investment dispute in arbitration under the ICSID Convention.

174. Article 25(1) of the ICSID Convention sets forth the conditions for ICSID jurisdiction as follows:

> The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.[200]

175. Thus, an investment dispute may be submitted to an arbitral tribunal under the ICSID Convention if: (*i*) it is a *legal dispute*; (*ii*) arising directly out of an *investment*; (*iii*) between a *national* of a Contracting State and another Contracting State; and (*iv*) both Parties to the dispute have consented in writing to submit the dispute to ICSID**.**

176. The present investment dispute meets all of these jurisdictional requirements.

1. There is a legal dispute between Claimants and Serbia

177. There is a *legal dispute* between Claimants, on one hand, and Serbia, on the other hand, with respect to Serbia's breaches of its obligations under the Treaties owed to Claimants. This dispute arises out of the facts set forth in **Section III** above.

178. The Permanent Court of International Justice defined a dispute in the seminal *Mavrommatis* case as a "*disagreement on a point of law or fact, a conflict of legal views or interests between two persons*."[201] A number of investment tribunals have

198 Serbia-Cyprus BIT, Art. 9(2), **CL-007(a)**.

199 Canada-Serbia BIT, Art. 24(1)(a), **CL-001**.

200 ICSID Convention, Art. 25(1), **CL-013**.

201 *Mavrommatis Palestine Concessions (Greece v. United Kingdom)*, Judgment No. 2, 30 August 1924, P.I.J Rep. Series A - No. 2, p. 11, **CL-014**.

subsequently upheld this definition.[202] *Legal disputes* have in turn been defined as "*controversies in which the Parties are in disagreement over a right.*"[203]

179. Serbia's failure to respond to the Notice of Dispute and the Request for Arbitration submitted by Claimants shows that it disagrees with Claimants' claim that Serbia breached their legal rights under the Treaties and owes them compensation. Accordingly, there is a legal dispute between Claimants and Serbia within the meaning of Article 25(1) of the ICSID Convention.

2. The dispute between Serbia and Claimants arises directly out of an investment

180. The ICSID Convention does not include a definition of *investment*. It is therefore the definition under the relevant investment treaty—here the Treaties—which is determinative for the existence of an *investment* under the ICSID Convention. As explained above, Claimants have made *investments* within the meaning of the Treaties and the present dispute arises directly out of that investment.

3. The dispute between Claimants and Serbia is a dispute between a Contracting State and a national of another Contracting State

181. The parties to the present dispute are Cypriot Claimants, nationals of Cyprus, and Mr. Broshko, a national of Canada, on the one hand,[204] and Serbia, on the other hand. Serbia, Cyprus and Canada are all Contracting States to the ICSID Convention.[205] Therefore, the present dispute is "*between a Contracting State and a National of another Contracting State*" as required by Article 25 of the ICSID Convention.

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202 *E.g. El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Decision on Jurisdiction, 27 April 2006, ¶ 61, **CL-015**.

203 *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Decision on Jurisdiction, 27 April 2006, ¶ 61, **CL-015**.

204 For the sake of completeness, the Claimants declare that none of them holds, or ever held Serbian nationality.

205 List of Contracting States to the ICSID Convention, **C-075**.

4. Claimants and Serbia consented in writing to submit their dispute to the Centre

182. Serbia's consent to arbitration under the ICSID Convention is included in Article 9(2) of the Serbia-Cyprus BIT and Article 24(1)(a) of the Canada-Serbia BIT.

a. Cypriot Claimants complied with the requirements under Article 9(2) of the Serbia-Cyprus BIT

183. Article 9 of the Serbia-Cyprus BIT provides:

> 1. Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party with regard to an investment in the sense of the present Agreement, shall be notified in writing, including a detailed information. [sic] by the investor to the former Contracting Party. As far as possible, the parties concerned shall endeavour to settle these disputes amicably.
>
> 2. If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute may be submitted, at the choice of the investor, to: […] the International Centre for the Settlement of Investment Disputes (ICSID) established by the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.[206]

184. Cypriot Claimants served the Cypriot NoD on Serbia on 16 June 2021.[207] The Cypriot NoD included detailed information on the dispute and invited Serbia to negotiate an amicable settlement. Serbia did not respond.

185. Therefore, Cypriot Claimants have complied with the above requirements and are entitled to submit their claim to arbitration as envisaged by Article 9(2) of the Serbia-Cyprus BIT. By filing the Request for Arbitration, the Cypriot Claimants consented to arbitration in accordance with the Serbia-Cyprus BIT and the ICSID Convention.[208]

b. Mr. Broshko complied with the requirements under Article 24(1)(a) of the Canada-Serbia BIT

186. Article 24(1)(a) of the Canada-Serbia BIT provides:

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206 Serbia-Cyprus BIT, Art. 9, **CL-007(a)**.

207 Cypriot NoD, 16 June 2021, **C-061**.

208 Confirmation that Coropi had taken all necessary internal actions to authorize the Request for arbitration, **C-077**; Confirmation that Kalemegdan had taken all necessary internal actions to authorize the Request for arbitration, **C-078**.

> 1. An investor that meets the conditions precedent in Article 22 may submit a claim to arbitration under:
>
> (a) the ICSID Convention, provided that both Parties are parties to the ICSID Convention […].[209]

187. Article 22 of the Canada-Serbia BIT contains several conditions precedent to an arbitration. These conditions are addressed *seriatim* below.

188. *First,* Article 22(2)(a) of the Canada-Serbia BIT requires that the investor "*consent to arbitration in accordance with procedures set out in this Agreement.*"[210] By filing the Request for Arbitration, Mr. Broshko consented, on his own behalf and on behalf of MLI, to arbitration in accordance with the Canada-Serbia BIT and the ICSID Convention. Mr. Broshko and MLI also recorded their consent in separate documents that were submitted with the Request for Arbitration.[211]

189. *Second,* Article 22(2)(b) of the Canada-Serbia BIT requires that "*at least six months have elapsed since the events giving rise to the claim.*"[212] As described above, Serbia expressly refused Obnova's claim for compensation for expropriation of its premises on 13 August 2021 and Mr. Broshko submitted the Request for Arbitration on 27 April 2022. Accordingly, the requirements of Article 22(2)(b) are satisfied.

190. *Third,* Article 22(2)(c) of the Canada-Serbia BIT requires that "*the investor has delivered to the respondent Party a written notice of its intent to submit a claim to arbitration at least 90 days prior to submitting the claim.*" The notice shall specify the name and address of the investor, the allegedly breached provision of the Canada-Serbia BIT, the legal and the factual basis for the claim, and the relief sought and the approximate amount of damages claimed.[213] According to Article 22(2)(d) of the Canada-Serbia BIT, the notice shall also include evidence that the investor is "*investor of the other Party*".[214]

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209 Canada-Serbia BIT, Art. 24(1)(a), **CL-001**.

210 Canada-Serbia BIT, Art. 22(2)(a), **CL-001**.

211 *See* Mr. Broshko's consent, **C-069**; MLI's consent, **C-070**. *See* also Confirmation that MLI had taken all necessary internal actions to authorize the Request for arbitration, **C-076**.

212 Canada-Serbia BIT, Art. 22(2)(b), **CL-001**.

213 Canada-Serbia BIT, Art. 22(2)(c), **CL-001**.

214 Canada-Serbia BIT, Art. 22(2)(d), **CL-001**.

191. The Canadian NoD was served on Serbia on 23 November 2021 and contained all the above-listed specifications as well as evidence that Mr. Broshko is an investor of Canada.[215] Accordingly, the requirements of Article 22(2)(c) and Article 22(2)(d) of the Canada-Serbia BIT are satisfied.

192. *Fourth,* Article 22(2)(e)(i) of the Canada-Serbia BIT requires that "*not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby.*"[216] Article 22(f)(i) sets out the same requirement for claims brought on behalf of an enterprise of the Respondent owned by an investor.[217] As shown above, Serbia expressly rejected Obnova's request for compensation on 13 August 2021 and Mr. Broshko submitted the Request for Arbitration on 27 April 2022. Accordingly, the requirements of Articles 22(2)(e)(i) and 22(2)(f)(i) of the Canada-Serbia BIT are satisfied.

193. *Finally*, Article 22(2)(e)(ii) of the Canada-Serbia BIT requires the investor to waive "*its right to initiate or continue before an administrative tribunal or court under the domestic law of a Party, or other dispute settlement procedures, proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article 21.*"[218] Article 22(2)(f)(ii) further states that in case the claim is brought on behalf of an enterprise of the Respondent, which is owned or controlled by an investor, both the investor and the enterprise must provide the required waiver.[219]

194. Mr. Broshko and MLI submitted their waivers in accordance with Articles 22(2)(e)(ii) and 22(2)(f)(ii) of the Canada-Serbia BIT together with the Request for Arbitration.[220] As MLI and Mr. Broshko are only minority shareholders of Obnova and do not exert

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215 Canadian NoD, 23 November 2021, title page and pp. 1,3, **C-062**; Passport of Mr. Erinn Broshko, 23 August 2016, **C-001**; Excerpt from the webpage of Serbian Business Register Agency for MLI, 29 March 2022, **C-002**; Confirmation of MLI's purchase of Obnova's shares, 14 November 2017, **C-003**; Excerpt from the webpage of the Central Securities Depository and Clearing House, 29 March 2022, **C-004**; Confirmation from Ilirika Investments, 30 March 2022, **C-006**.

216 Canada-Serbia BIT, Art. 22(2)(e)(i), **CL-001**.

217 Canada-Serbia BIT, Art. 22(2)(f)(i), **CL-001**.

218 Canada-Serbia BIT, Art. 22(2)(e)(ii), **CL-001**.

219 Canada-Serbia BIT, Art. 22(2)(f)(ii), **CL-001**.

220 Mr. Broshko's waiver, **C-071**; MLI's waiver, **C-064**.

any control over Obnova, Mr. Broshko did not, and could not, submit a waiver for Obnova. Accordingly, the requirements of Articles 22(2)(e)(ii) and 22(2)(f)(ii) of the Canada-Serbia BIT are satisfied.

195. Therefore, as demonstrated above, all conditions precedent required under Article 22 of the Canada-Serbia BIT have been satisfied and Mr. Broshko may submit the claim, on his behalf and on behalf of the MLI, to arbitration as envisaged by Article 24(1)(a) of the Canada-Serbia BIT.

V. SERBIA VIOLATED ITS OBLIGATIONS UNDER THE TREATIES

196. Serbia violated the Treaties by: (*i*) unlawfully expropriating the Cypriot Claimants' investment; (*ii*) violating the fair and equitable treatment standard ("**FET standard**"); (*iii*) subjecting the Claimants' investment to unreasonable and arbitrary treatment; and (*iv*) violating the umbrella clause relied upon by Cypriot Claimants. Claimants address all these breaches *seriatim* below.

A. Serbia unlawfully expropriated the Cypriot Claimants' investment

1. Serbia expropriated the Cypriot Claimants' investment

197. Serbia indirectly expropriated Obnova's property and rights when it adopted the 2013 DRP and, thus, prevented Obnova from using and/or selling its premises for commercial and residential development, for which the premises were—and still are—zoned in the 2003 RP and 2016 RP.[221] Numerous investment tribunals have confirmed that a change in the spatial regulation that effectively freezes or blights an owner's ability to reasonably exploit the economic potential of the property represents an indirect expropriation.[222]

198. For example, in *Santa Elena v. Costa Rica,* Costa Rica decided to expropriate claimant's land to enlarge one of its national parks. Costa Rica issued an expropriation decree for claimant's land, but the parties disagreed on the amount of appropriate compensation. Because of the dispute about compensation, Costa Rica failed to effectuate the expropriation and register itself as the owner of the land for almost 20 years.[223]

199. The tribunal concluded that, even though the claimant formally remained in the possession of the land, the expropriation decree represented a taking. This was because after the adoption of the expropriation decree, the claimant could no longer use the

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221 2003 RP, pp. 24, 29, 214, 229 (pdf), **C-025**; 2016 RP, **C-177**.

222 *E.g. Compañía del Desarrollo de Santa Elena, S.A. v. Costa Rica,* ICSID Case No. ARB/96/1, Final Award, 17 February 2000, ¶¶ 76-81, **CL-008**; *Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, ¶¶ 209-223, **CL-009**; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012, ¶¶ 209-223, **CL-009**; *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶¶ 109-112, **CL-011**.

223 *Compañía del Desarrollo de Santa Elena, S.A. v. Costa Rica,* ICSID Case No. ARB/96/1, Final Award, 17 February 2000, ¶¶ 15-20, **CL-008**.

property for development purposes and the property did not possess any significant resale value:

> In the circumstances of this case, the taking of the Property occurred as of 5 May 1978, the date of the 1978 Decree.
>
> As of that date, the practical and economic use of the Property by the Claimant was irretrievably lost, notwithstanding that CDSE remained in possession of the Property. As of 5 May 1978, Claimant's ownership of Santa Elena was effectively blighted or sterilised because the Property could not, thereafter, be used for the development purposes for which it was originally acquired (and which, at that time, were not excluded) nor did it possess any significant resale value.[224]

200. The conclusions of the *Santa Elena* tribunal are directly applicable in the present case. While Obnova retained possession of its premises after the adoption of the 2013 DRP, Obnova cannot convert its right of use over the land into ownership and the premises can no longer "*be used for development purposes*." In fact, the 2013 DRP expressly states that it "*represents the planning basis for expropriation*" of the affected land, which also includes Obnova's premises.[225]

201. The tribunal in *Marion Unglaube and Reinhard Unglaube v. Costa Rica* reached a similar conclusion. In those cases, Costa Rica issued regulations creating a new national park to protect a nesting site of leatherback turtles.[226] Part of this park was located on claimants' property, which prevented its development. The affected property was supposed to be purchased or expropriated by Costa Rica. Costa Rica, however, failed to do so.[227]

202. The tribunal concluded that Costa Rica's approach represented a *de facto* expropriation.[228] Relying on the decision in *Santa Elena v. Costa Rica*, the tribunal

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224 *Compañía del Desarrollo de Santa Elena, S.A. v. Costa Rica,* ICSID Case No. ARB/96/1, Final Award, 17 February 2000, ¶¶ 80-81, **CL-008**.

225 2013 DRP, p. 6 (pdf), **C-024**.

226 *E.g. Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, ¶ 37, **CL-009**; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012, ¶ 37, **CL-009**.

227 *E.g. Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, ¶¶ 193-201, **CL-009**; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012, ¶¶ 193-201, 223, **CL-009**.

228 *E.g. Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, ¶ 209, **CL-009**; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012, ¶ 209, **CL-009**.

concluded that Costa Rica's conduct "*effectively deprived the [claimant] of her normal right of ownership*." As a result, Costa Rica had the obligation to "*make provision for timely and adequate compensation […].*" By failing to do so, Costa Rica breached its obligations under the applicable treaty.[229]

203. As with the *Santa Elena* decision, the conclusions of the tribunal in the *Unglaube* cases are directly applicable in the present dispute. Same as in that case, Serbia "*effectively deprived [Obnova] of [its] normal right of ownership*" over the buildings—and prevented Obnova from converting its right of use into ownership of the land—when it adopted the 2013 DRP. After the adoption of the 2013 DRP, Claimants were no longer able to do anything with Obnova's premises.

204. Furthermore, same as in the *Unglaube* cases, Serbia too failed to "*make provision for timely and adequate compensation*." On the contrary, Serbia expressly refused to provide any compensation. Claimants address this point in more detail in **Section V.B.3** below.

205. Another instructive case is *Metalclad v. Mexico*. That case revolved around, among other things, Mexico's decision to create a natural area protecting a rare species of cactus on the land on which the claimant had built a hazardous waste landfill. The claimant argued that by creating the natural area, Mexico effectively and permanently precluded the operation of the landfill.[230]

206. The tribunal sided with the claimant and concluded that Mexico expropriated its investment. The tribunal began its analysis by observing that expropriation includes situations where the state does not formally take ownership of assets, but deprives the owner of "*the use or reasonably-to-be-expected economic benefit of property*":

> Thus, expropriation under NAFTA includes not only open, deliberate and acknowledged takings of property, such as outright seizure or formal or obligatory transfer of title in favour of the host State, but also covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use

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229 *E.g. Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, ¶¶ 220-223, **CL-009**; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012, ¶¶ 220-223, **CL-009**.

230 *E.g. Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 59, **CL-011**.

> or reasonably-to-be-expected economic benefit of property even if not necessarily to the obvious benefit of the host State.[231]

207. The tribunal then went on to conclude that the establishment of the nature area represented an expropriation because it "*had the effect of barring forever the operation of the landfill.*"[232] As such, the adoption of the decree establishing the nature area represented "*an act tantamount to expropriation.*"[233]

208. Same as in *Metalclad*, adoption of the 2013 DRP had "*had the effect of barring forever*" the development of Obnova's premises. This is because the 2013 DRP expressly prohibits any new construction within the area regulated by the plan:

> Until all existing facilities planned for removal that are located within the borders of the plan on planned public development parcels have been conformed to designated use, they shall be kept in the existing condition. No new construction or extension is permitted on them. Current maintenance of facilities and adaptation is permitted.[234]

209. The fact that Obnova did not own the land at Dunavska 17-19 and 23 at the time of the adoption of the 2013 DRP, but only had the right of use convertible into ownership does not change anything. Investment arbitration tribunals have repeatedly held that expropriation includes not only forced transfers of title, but also other types of interference with property or rights of investors.[235]

210. Importantly, expropriation may also concern rights other than rights *in rem*.[236] Investment tribunals have confirmed that a right to tangible assets not owned by the investors can be equally expropriated. For example, the tribunal in *Inmaris Perestroika*

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231 *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 103, **CL-011**.

232 *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 109, **CL-011**.

233 *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 111, **CL-011**.

234 2013 DRP, p. 6 (pdf), **C-024**.

235 *E.g. Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, ¶ 116, **CL-017**; *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 103, **CL-011**; *Compañía del Desarrollo de Santa Elena, S.A. v. Costa Rica,* ICSID Case No. ARB/96/1, Final Award, 17 February 2000, ¶ 77, **CL-008**.

236 See e.g. Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt, ICSID Case No. ARB/84/3, Award, 20 May 1992, ¶ 164, **CL-022**.

v. Ukraine found expropriation where the investors were unable to use and operate a ship, even though the "*[t]itle to the ship was […] never vested in Claimants*".[237]

211. In *Eco Oro v. Colombia*, the investor's mining activities under a concession were prevented by the creation of an environmentally protected area. The tribunal in that case concluded that the investor's rights under the mining concession were susceptible of expropriation.

212. The tribunal did so even though the economic value of those rights was, in the words of the tribunal, "*uncertain*". According to the tribunal, this was because claimants had to obtain future approvals and an environmental license "*in circumstances where the chances of making a successful application appear[ed] to be minimal*".[238] Despite this "*uncertainty*", the tribunal considered the deprivation of a mere potential right to exploit minerals to be a substantial deprivation amounting to an indirect expropriation:

> *Eco Oro suffered the complete deprivation of a potential right to exploit. Without a right to exploit, albeit a right which was dependent upon an approved PTO and environmental licence, there was no possibility of exploiting the Angustura Deposit such that the Concession became valueless*. Whilst of course the actual economic value of the right to exploit in that area was uncertain, given the need to obtain a future approval of the PTO and to obtain an Environmental Licence in circumstances where the chances of making a successful application appear to be minimal, *that exploitation right was lost in totality as a result of the Challenged Measures. The Tribunal finds that this loss is capable of being considered to be a substantial deprivation, such as to amount to an indirect expropriation*.[239]

213. Similarly to *Eco Oro*, as a result of the adoption of the 2013 DRP, Obnova "*suffered the complete deprivation of its*" right to convert the land at Dunavska 17-19 and 23 and develop its premises for commercial and residential use.

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237 *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine* (ICSID Case No. ARB/08/8), Excerpts of Award, 1 March 2012, ¶¶ 300-301, **CL-061**.

238 *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 634, **CL-062**.

239 *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 634, **CL-062**.

2. The expropriation of Cypriot Claimants' investment was unlawful

214. Article 5(1) of the Serbia-Cyprus BIT expressly prohibits expropriation of investors' investment, as well as measures having the effect equivalent to expropriation. According to this provision, Serbia can expropriate foreign investments only if it does so: (*i*) in the public interest; (*ii*) under due process of law; (*iii*) on a non-discriminatory basis; and (*iv*) against adequate compensation paid without undue delay:

> Investments of investors of either Contracting Party shall not be nationalized. [sic] expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except in cases in which such measures are taken in the public interest. The expropriation shall be carried out under due process of law. [sic] on a non-discriminatory basis and against adequate compensation which shall be effected without undue delay.[240]

215. Serbia expropriated Cypriot Claimants' investment in breach of these provisions. This is because Serbia: (*i*) failed to demonstrate that the expropriation of Cypriot Claimants' investment was done in the public interest; (*ii*) failed to provide Cypriot Claimants with the necessary due process; (*iii*) acted in a discriminatory manner; and (*iv*) did not provide *any* compensation to Cypriot Claimants.

a. Serbia failed to show that the expropriation of Obnova's premises was in the public interest

216. As explained above, according to Article 5(1) of the Serbia-Cyprus BIT, lawful expropriation must be undertaken in the public interest. Claimants do not dispute that, in general, development of traffic infrastructure, such as a bus loop, can serve the public interest. However, Serbia never bothered to explain why it is in the public interest to build the bus loop specifically on Obnova's premises.

217. The 2003 RP clearly shows that Serbia originally designated the location of Obnova's premises for commercial and residential development. Traffic infrastructure was supposed to be located on city-owned land located literally across the street from Obnova's premises, which the 2003 RP zoned as "*traffic and roads*". The land was—and still is—used as a bus depot:[241]

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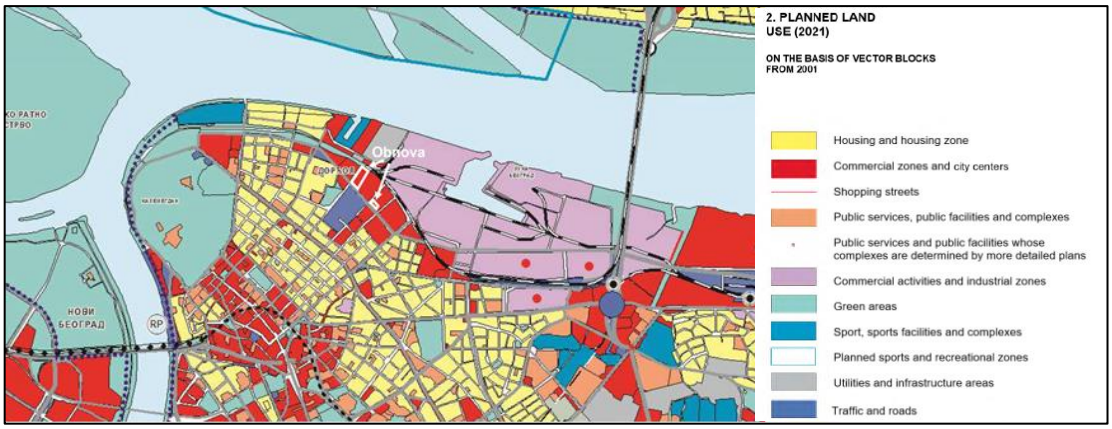
240 Serbia-Cyprus BIT, Art. 5, **CL-007(a)**.

241 2003 RP, pp. 24, 29, 214, 229 (pdf), **C-025**.



218. Stunningly, Serbia changed the zoning of its land plot with the bus depo to residential development in the 2015 DRP:[242]

[…]

242 2015 DRP, **C-326**.

SUBZONE C5	
Basic land use	- The main purpose of this zone is housing. - The speccific subzone is C5. - The subzone C5 includes blocks 28, 44.1 and 44.2.
Land use compatibility	- The predominant purpose is housing, and all compatible uses are allowed that do not threaten the basic purpose as well as the environment: trade, business, catering, service craftsmanship, tourism, sports contents, cultural institutions, medical offices, annexes to preschool institutions, health centers, social care institutions, pharmacies, accounting centers, educational facilities (private schools, playrooms, children's workshops, etc.), private facilities of social standard (a home for the elderly and the like), etc. - Only a multi-storey common garage can be built on the parcel, in accordance with the applicable norms and standards prescribed for that type of building. - Percentage ratio of housing and compatible purposes on the parcel: housing: compatible uses = 100-90% : 0-10% - Commercial, business and other compatible activities should be organized on the ground floor and lower floors within residential buildings (first and second floors).

219. The re-zoning shows two things: (*i*) Serbia does not need its land plot for the bus depo and thus can use it for the bus loop; and (*ii*) Serbia simply ignored Obnova's rights by using Obnova's premises for the bus loop and making Serbia's own land more valuable by re-zoning it for residential development.

220. Interestingly, the 2016 RP still envisages commercial development on Obnova's premises.[243] This, however, does not trump its designation for development of traffic infrastructure in the 2013 DRP. It only shows that the 2013 DRP was adopted in violation of due process because it conflicts with higher-level spatial plans.

221. Serbia never explained why it designated Obnova's premises for traffic purposes even though the 2003 RP and the 2016 RP, both having a higher position in the hierarchy of planning documentation than the 2013 DRP, zone Obnova's premises as residential and commercial. Similarly, Serbia has never explained why it re-zoned its own existing traffic infrastructure as residential, and re-zoned Obnova's premises—which is right across the street—from commercial and residential to traffic infrastructure.

243 2016 RP, **C-177**.

222. Serbia cannot seriously claim that it is in public interest to build a bus loop on Obnova's premises if two different plans, prepared in two different decades, both before and after the 2013 DRP, confirm that this area should be used for commercial and residential purposes. Similarly, Serbia cannot seriously claim that it is in the public interest to re-zone Serbia's own land as residential and simply move the traffic infrastructure function across the street to Obnova's premises.

223. In any case, even assuming, for the sake of Serbia's argument, that the placement of the bus loop on Obnova's premises was in the public interest, this would not be sufficient to make it lawful under the international law. As explained by the tribunal in *Tecmed v. Mexico*, it is also necessary to consider whether expropriatory measures are proportional to the public interest they are supposed to achieve:

> 122. After establishing that regulatory actions and measures will not be initially excluded from the definition of expropriatory acts, in addition to the negative financial impact of such actions or measures, *the Arbitral Tribunal will consider, in order to determine if they are to be characterized as expropriatory, whether such actions or measures are proportional to the public interest presumably protected thereby and to the protection legally granted to investments, taking into account that the significance of such impact has a key role upon deciding the proportionality*. Although the analysis starts at the due deference owing to the State when defining the issues that affect its public policy or the interests of society as a whole, as well as the actions that will be implemented to protect such values, such situation does not prevent the Arbitral Tribunal, without thereby questioning such due deference, from examining the actions of the State in light of Article 5(1) of the Agreement *to determine whether such measures are reasonable with respect to their goals, the deprivation of economic rights and the legitimate expectations of who suffered such deprivation. There must be a reasonable relationship of proportionality between the charge or weight imposed to the foreign investor and the aim sought to be realized by any expropriatory measure. To value such charge or weight, it is very important to measure the size of the ownership deprivation caused by the actions of the state and whether such deprivation was compensated or not*.[244]

224. The adoption of the 2013 DRP clearly does not pass the proportionality test. Serbia could have achieved the same aim, *i.e.* construction of a bus loop, without *any* interference with Claimants' rights by putting the bus loop on its own land across the street from Obnova's premises, which the 2003 RP specifically designated for

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244 *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, ¶ 122, **CL-017**.

development of traffic infrastructure.[245] Had Serbia placed the bus loop on this land, there would be no interference with Claimants' rights whatsoever.

225. In addition, the City of Belgrade also owns land plots Nos. 39/8, 39/11 and 39/13, which are located just few hundred meters from Obnova's premises and their shape and size is similar to Obnova's premises.[246] If Serbia had decided to place the bus loop on these land plots, there would also have been no interference with Claimants' rights.

226. Serbia, therefore, could have placed the bus loop on its own land in the same location, including land specifically designated for development of traffic infrastructure, and thus avoided any interference with Claimants' and Obnova's rights. However, Serbia decided to take a different approach. Completely disregarding Claimants' and Obnova's rights, it placed the bus loop on Obnova's premises—and re-zoned its own traffic infrastructure land for residential development. This is a textbook example of an approach that cannot qualify as proportionate.

b. Serbia did not grant Cypriot Claimants due process

227. The expropriation of Obnova's premises was unlawful because Serbia did not grant Obnova *any* due process rights in the procedure leading to the designation of Obnova's premises for the construction of a bus loop.

228. Under Article 5(1) of the Serbia-Cyprus BIT, another condition of a lawful expropriation is that the expropriation is "*carried out under due process of law.*"[247] The Tribunal in *SASL v. Bolivia* explained that the due process requirement is satisfied if a foreign investor can question the legality of the expropriation and the amount of compensation:

> In the context of an expropriation, and what due process under the Treaty requires is that the foreign investors have timely access to a legal proceeding in the territory of the host State of the investment which allows them to question the legality of the expropriation and the amount

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245 2003 RP, pp. 24, 29, 214, 229 (pdf), **C-025**.

246 Excerpt from Cadaster dated 4 January 2023, relating to land plot No. 39/8, **C-323**; Excerpt from Cadaster dated 4 January 2023, relating to land plot No. 39/11, **C-324**; Excerpt from Cadaster dated 4 January 2023, relating to land plot No. 39/13, **C-325**.

247 Serbia-Cyprus BIT, Art. 5(1), **CL-007(a)**.

> of the compensation, but not to participate in the making of the sovereign decision to expropriate.[248]

229. Furthermore, as pointed out by the tribunal in *Tenaris v. Venezuela*, it is not enough that the state adopts appropriate regulation of the expropriation process. What is required is that the state *comply* with its internal rules. Any other approach would strip investors of "*a reasonable chance within a reasonable time to claim [their] legitimate rights and have [their] claims heard*":

> In light of the evidence before it, the Tribunal is in no doubt that Venezuela failed to implement the procedures that it had put in place to effect the nationalisation of SIDOR and its subsidiaries and, specifically, Matesi. In so doing, Venezuela manifestly failed to conform with the requirements of the Venezuelan Constitution, the Expropriation Law and the Investment Law, to the extent that they address the issue of expropriation, and it failed, too, to ensure that the provisions of the Nationalisation Decree and those of Decrees No. 6,796 and No. 8,280 were consistent with one another and susceptible to be given full and consistent effect.
>
> […]
>
> In the opinion of the Tribunal, this is a case akin to the ADC/Hungary case, in that the affected investor has not had: "a reasonable chance within a reasonable time to claim its legitimate rights and have its claims heard."[249]

230. The conclusions of the tribunals in *SALS* and *Tenaris* apply with equal force in the present case. Serbia did not initiate *any* formal proceedings that could lead to a lawful expropriation and calculation of compensation due for such expropriation. Cypriot Claimants thus never had an opportunity to question "*the legality of the expropriation and the amount of the compensation*". This fact, on its own, is sufficient to hold that the Cypriot Claimants were not granted due process.

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248 *South American Silver Limited v. Bolivia*, PCA Case No. 2013-15, Award, 22 November 2018, ¶ 582, **CL-018**.

249 *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela I*, ICSID Case No. ARB/11/26, Award, 29 January 2016, ¶¶ 493, 496 (references omitted), **CL-019**. The tribunal in *Olin v. Libya* similarly confirmed that the breach of national laws regulating expropriation can represent a breach of due process. *See Olin Holdings Ltd v. Libya*, ICC Case No. 20355/MCP, Award, 25 May 2018, ¶ 172 ("*The Tribunal concludes that by failing to comply with the provisions of its Investment Law with regard to the procedural requirements in Article 23 of the Libyan Investment Law, Libya did not comply with its obligation to ensure that the 2006 Expropriation Order was issued in accordance with due process of law*."), **CL-020**.

231. Furthermore, as explained in detail in **Section III.K.3** above, Serbia's failure to initiate proper administrative proceedings and award necessary compensation to Obnova represents a breach of the Serbian Constitution and 1995 Law on Expropriation. As pointed by the *Tenaris* tribunal, the state's failure to adhere to its own national legislation represents a breach of the due process requirement because it strips the investor of "*a reasonable chance within a reasonable time to claim its legitimate rights and have its claims heard.*"

232. Finally, when Obnova tried to vindicate its right and requested compensation, the City of Belgrade simply refused its request. Worse yet, the City of Belgrade dismissed Obnova's request in a simple letter and for clearly arbitrary reasons.

233. To begin with, the City of Belgrade claimed that Obnova was not entitled to any compensation because the buildings it owns at Dunavska 17-19 and Dunavska 23 are allegedly "*temporary*".[250] As Claimants demonstrated in **Section III.O** above, this is not the case.

234. Obnova's buildings have existed since the 1940s, *i.e.* for approximately 70 years.[251] The City of Belgrade cannot seriously claim that buildings that have existed for 70 years are "*temporary*". Tellingly, records in the Real Estate Cadaster—which is a Serbian state organ operating the official database of real estate in Serbia—indicate that Obnova's buildings are not temporary.[252]

235. This comes as no surprise. Prof. Živković and Mr. Milošević explain that Serbian law started to define temporary objects and temporary permissions only in 1997, decades after Obnova's buildings were built. The definition includes objects that could not be adjusted to comply with urbanistic plans and objects built in the areas for which no urbanistic plan has been adopted and certain specific types of buildings (*e.g.* temporary toll stations or construction camps) expressly prescribed in relevant laws.[253] Obnova's

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250 Letter from the Land Directorate of the City of Belgrade, 13 August 2021, p. 2 (pdf), **C-053**.

251 Živković Milošević ER, ¶ 261.

252 Živković Milošević ER, ¶¶ 172-173.

253 Živković Milošević ER, ¶ 161.

buildings do not meet that definition because they are compliant with urbanistic plans and do not belong to any of the prescribed category of temporary buildings.[254]

236. The City of Belgrade's other argument that Obnova's buildings could not be the subject of privatization is equally misplaced.[255] Under Serbian law, the subject of the 2003 privatization of Obnova were Obnova's shares.[256] However, this fact is entirely irrelevant for the determination of whether Obnova owns the buildings or not. As explained by Prof. Živković and Mr. Milošević: "*Upon privatization, Obnova ex lege acquired ownership of the buildings it had the right to use, even though the object of the privatization was Obnova's shares, not Obnova's assets.*"[257]

237. Another argument raised by the City of Belgrade was that the City is the owner of Obnova's buildings at Dunavska 17-19. According to the City, this is because the City allegedly acquired the right to use the premises at Dunavska 17-19 and Dunavska 23 from Luka Beograd based on the 1975 Agreement. This argument is demonstrably false.

238. As explained above, Obnova constructed its buildings at Dunavska 17-19 in the 1940s and 1950s—years before the foundation of Luka Beograd on 27 November 1961 and the conclusion of the contract between Luka Beograd and the City of Belgrade in 1975. Luka Beograd, therefore, did not have—and could not have had—any rights to the buildings used by Obnova. As a result, it could not have transferred such rights to the City of Belgrade.[258]

239. This is even clearer with respect to buildings at Dunavska 23, which were built *more than a decade after* the conclusion of the 1975 Agreement. Needless to say, the 1975 Agreement could not transfer to the City rights to buildings that did not even exist at the time of its conclusion.[259]

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254 *See* Živković Milošević ER, ¶ 163.

255 Letter from the Land Directorate of the City of Belgrade, 13 August 2021, p. 2 (pdf), **C-053**.

256 Živković Milošević ER, ¶ 263.

257 Živković Milošević ER, ¶ 263.

258 Živković Milošević ER, ¶ 152.

259 Živković Miloševic ER, ¶ 152.

240. Furthermore, while the 1975 Agreement does envisage a transfer of the right of use over both land and buildings,[260] it includes only a list of land plots with respect to which the right of use was transferred.[261] It thus seems that the 1975 Agreement did not transfer any rights to any buildings at all.

241. This is in line with position that Serbia repeatedly took in contemporaneous documents. As explained above, there are at least four different documents issued by various Serbian authorities dating from at least 2004 to 2016, which confirm that the City of Belgrade is not the owner of Obnova's buildings.[262]

242. The City also argued that Obnova's right to compensation allegedly depends on the outcome of the court proceedings that Obnova initiated to correct the incorrect registration of the City of Belgrade as the owner of its buildings in the Cadaster. This argument is not serious. As explained above, Obnova was forced to initiate these proceedings because the Cadaster had: (*i*) in error, and without any apparent reason, registered the City of Belgrade as the owner of Obnova's buildings; and (*ii*) refused Obnova's request for correction of the Cadaster records. Serbia cannot rely on its own mistakes and omissions to try and escape its obligation to compensate Obnova for the expropriation of its premises.

243. Finally, with respect to the part of Obnova's claim related to Dunavska 23, the City merely stated that the 2013 DRP does not cover Obnova's buildings located on land plot No. 40/5 CM Stari grad.[263] This is both incorrect and insufficient.

244. As explained above, Serbia previously refused to legalize Obnova's building on this land plot exactly because the 2013 DRP covers this building.[264] In addition, the fact

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260 1975 Agreement, Art. 2, **C-167**.

261 1975 Agreement, pp. 8-11 (pdf), **C-167**. *See also* Živković Milošević ER, ¶ 153.

262 *Supra* ¶¶ 67 (fn. 70), 75, 143.

263 Letter from the Land Directorate of the City of Belgrade, 13 August 2021, p. 1 (pdf), **C-053**.

264 Decision of the Secretariat for Legalization No. 351.21-16194/2014, 25 April 2018, p. 2, **C-042**; Decision of the City Council of the City of Belgrade No. 351-512/18-GV, 19 June 2018, pp. 4-5 (pdf), **C-045**; Decision of Administrative Court No. 11 U 14419/8, 11 January 2021, p. 3 (pdf), **C-049**.

that this land plot is affected by the 2013 DRP is also confirmed by data from the web site of the Land Directorate of the City of Belgrade.[265]

245. Furthermore, Obnova confirmed in its Request for Compensation that it has four other buildings on land plots Nos. 39/12 and 39/1 CM Stari grad.[266] The Land Directorate simply ignored this fact and that part of the Request for Compensation.

c. Serbia acted discriminatorily

246. The expropriation of Obnova's premises was unlawful because it was done in a discriminatory manner.[267] Investment tribunals have confirmed that discrimination exists where a State treats similar parties differently without any reasonable justification. In the words of the tribunal in *Saluka v. the Czech Republic*: "*State conduct is discriminatory, if (i) similar cases are (ii) treated differently (iii) and without reasonable justification.*"[268]

247. This is exactly what happened in the present case. Serbia discriminated against Obnova because it treated it differently than other landowners in the area, whose land plots are not being converted into a bus loop. Serbia also did not provide any reasonable justification for why it put the bus loop on Obnova's premises rather than Serbia's own land, located literally across the street, or any other land located nearby.[269]

d. Serbia did not provide any compensation for the expropriation of Obnova's premises

248. Serbia also breached its obligation to provide adequate compensation. Article 5(1) of the Serbia-Cyprus BIT expressly states that Serbia can lawfully expropriate investors' investments only "*against adequate compensation which shall be effected without*

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265 Screenshots from Cadaster website evidencing effect of the 2013 DRP, **C-176**. *See also* Živković Milošević ER, ¶ 268.

266 Obnova's request for compensation, 19 April 2021, p. 9 (pdf), **C-052**. *See also* Živković Milošević ER, ¶ 269.

267 Serbia-Cyprus BIT, Art. 5(1), **CL-007(a)**.

268 *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶ 313, **CL-063**.

269 *Supra* ¶¶ 102-104.

undue delay."[270] Even though the expropriation occurred almost nine years ago, Serbia has not offered *any* compensation, whether to Obnova or to Claimants.

249. The fact that Serbia did not provide "*adequate compensation […] effected without undue delay*" on its own makes the expropriation unlawful. This was expressly confirmed, for example, by the tribunal in *Border Timbers v. Zimbabwe*:

> In relation to deciding whether the expropriation was lawful under the BITs, *the Tribunal notes that all of the conditions set out in the relevant BITs must be met*. As set out above, this would require payment of compensation, that the taking be for a public purpose, and that there be access to due process. In the case of the Swiss BIT, the taking must also be conducted on a non-discriminatory basis.
>
> It is clear that no compensation has been paid for the properties and therefore that the expropriation did not fulfil the "lawful" criteria.
>
> […]
>
> As no compensation was paid, there is no need to decide whether the acquisition was for a public purpose, whether there was access to due process or, in the case of the Swiss BIT, whether the acquisition was non-discriminatory.[271]

250. Similarly, the tribunal in *Rusoro v. Venezuela* concluded that "*[t]he legality of an expropriation where the State has taken the investment but has failed to make any compensation payment, depends on whether a good faith offer for a reasonable amount of compensation was actually made*."[272] Suffice to say, Serbia has not made any offer at all. On the contrary, when Obnova requested compensation, Serbia dismissed the request on arbitrary grounds.[273]

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270 Serbia-Cyprus BIT, Art. 5(1), **CL-007(a)**.

271 Border Timbers Limited, Border Timbers International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe, ICSID Case No. ARB/10/25, Award, 28 July 2015, ¶¶ 496-498 (emphasis added), **CL-021**. Similarly also Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia, UNCITRAL, PCA Case No. 2011-17, Award, 31 January 2014, ¶ 441, **CL-068**.

272 *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016, ¶ 407, **CL-023**.

273 *Supra* § III.O.

B. Serbia failed to provide fair and equitable treatment to Claimants' investment

1. The FET standard under the Treaties

251. According to Article 2(2) of the Serbia-Cyprus BIT, investors' investment "*shall at all times be accorded **fair and equitable treatment** and shall enjoy full protection and security in the territory of the other Contracting Party*."[274]

252. Under Article 6(1) of the Canada-Serbia BIT, "*each Party shall accord to a covered investment treatment in accordance with the customary international law minimum standard of treatment of aliens, **including fair and equitable treatment** and full protection and security*."[275]

253. While the Canada-Serbia BIT, unlike the Serbia-Cyprus BIT, ties the FET standard to the minimum standard of treatment under customary international law, both Treaties in reality provide for the same level of protection. This is because the contents of the FET standard connected to customary international law and the autonomous FET standard are, as confirmed in *Duke Energy*, "*essentially the same*".[276] Numerous other tribunals have reached the same conclusion.[277]

254. The FET standard has been interpreted by investment tribunals to encompass, in particular, the state's duty to act in a transparent manner and in good faith, to refrain from conduct that would be arbitrary, grossly unfair, unjust, idiosyncratic, discriminatory or lacking in due process, to respect procedural propriety and due process and not to frustrate the investor's reasonable and legitimate expectations.[278]

255. Serbia clearly breached the FET standard with respect to the investment of both Cypriot Claimants and Mr. Broshko.

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274 Serbia-Cyprus BIT, Art. 2(2) (emphasis added), **CL-007(a)**.

275 Canada-Serbia BIT, Art. 6(1) (emphasis added), **CL-001**.

276 *Duke Energy Electroquil Partners and Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008, ¶ 337, **CL-027**.

277 *CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005, ¶ 284, **CL-028**; *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006, ¶ 361, **CL-029**.

278 *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶ 609, **CL-002**.

2. Serbia breached the FET standard when it *de facto* expropriated Cypriot Claimants' investment

256. Serbia's uncompensated *de facto* expropriation of Obnova's property and rights upon its adoption of the 2013 DRP constitutes a breach of the FET standard. Indeed, as observed by Schreuer, "*it is difficult to envisage an uncompensated expropriation that would not also involve violation of the FET standard.*"[279] The tribunal in *Marione and Reinhard Unglabes v. Costa Rica* equally confirmed that the conduct leading to the *de facto* expropriation can also be classified as a breach of the FET standard:

> To the extent that the actions and decisions of Respondent related to that portion of Phase II "within the Park," the Tribunal has already ruled that those actions of Respondent amounted to de facto expropriation. *That violation of the Treaty might, alternatively, have been explained in terms of violations of the fair and equitable treatment standard, since, as is well known, expropriation may result from a variety of potential causes. Among these are included situations where violations of the fair and equitable treatment standard and their consequences are so severe that they result in a taking of an investor's property*.[280]

257. Serbia's adoption of the 2013 DRP represents a situation "*where violations of the fair and equitable treatment standard and their consequences are so severe that they result in a taking of an investor's property.*" As explained above, the adoption of the 2013 DRP made any development at Obnova's premises impossible. As a result, Obnova's premises at Dunavska 17-19 and 23 became essentially worthless. This is in stark contrast to the expectations that Cypriot Claimants had at the time of their investment.

258. When Cypriot Claimants made their investment in April 2012,[281] they expected that they would be able to develop Obnova's premises for residential and commercial purposes. Cypriot Claimants' expectation was based on the then-applicable 2003 RP, which designated Obnova's premises for commercial and residential use.[282] In addition, the 2003 RP expressly stated that it was necessary to respect "*the need of small investors to*

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279 Ch. Schreuer, *Standards of Investment Protection, Introduction: Interrelationship of Standards, Fair and Equitable Treatment*, p. 3, **CL-024**.

280 *Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, ¶ 257 (emphasis added), **CL-009**; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012, ¶ 257 (emphasis added), **CL-009**

281 *Supra* § III.I.

282 *Supra* § III.C.

build practically in every point of the City fabric"[283] and to be "*open to any investment, especially for the important ones which both drive the economic life and contribute to the well-being of citizens*."[284]

259. Investment tribunals have confirmed that investors' legitimate expectation can be based, among other things, on the legal framework applicable at the time of the making of an investment.[285] For example, the tribunal in *Tecmed v. Mexico* expressly concluded that a foreign investor can expect "*the host State to act consistently, i.e.* ***without arbitrarily revoking any preexisting decisions or permits issued by the State that were relied upon by the investor*** *to assume its commitments as well as* ***to plan and launch its commercial and business activities***."[286]

260. When Serbia adopted the 2013 DRP, it arbitrarily revoked Obnova's ability to develop its premises at Dunavska 17-19 and 23 in accordance with the 2003 RP. Investment tribunals concluded that State's conduct is arbitrary if it depends "*on individual discretion*" or is "*founded on prejudice or preference rather than on reason or fact.*"[287] Serbia's conduct leading to the adoption of the 2013 DRP clearly fulfills this definition.

261. As explained above, Serbia adopted the 2013 DRP without any explanation of why the bus loop would need to be located specifically on Obnova's premises. In doing so, Serbia ignored two important facts:

a. the 2003 RP designated Obnova's premises for residential and commercial use; and

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283 2003 RP, p. 1 (pdf), **C-025**.

284 2003 RP, p. 2 (pdf), **C-025**.

285 *Enron Corporation and Ponderosa Assets LP v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007, ¶ 265, **CL-033**.

286 *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, ¶ 154 (emphasis added), **CL-017**.

287 *Ronald S. Lauder v. The Czech Republic*, Final Award, 3 September 2001, ¶ 221 (citing Black's Law Dictionary 100 (7th ed. 1999), **CL-064**.

b. the land plot across the street from Obnova's premises at Dunavska 17-19, which was owned by the City of Belgrade[288] and used as a bus depo for many years,[289] was designated for traffic development in the 2003 RP.[290]

262. It is to be inferred that Serbia did not decide to place the bus terminal on Obnova's premises—rather than Serbia's own land located just across the street—based on "*reason or fact*".

263. Finally, the adoption of the 2013 DRP represents a breach of the FET standard also because it was discriminatory. As explained above,[291] the adoption of the 2013 DRP was discriminatory because Serbia offered no reasonable justification for its different treatment of Obnova's premises as opposed to its own land or the land owned in the vicinity of Obnova's premises by other owners.

3. Serbia breached the FET standard by refusing to compensate Obnova for the expropriation of its property

264. As explained above, Cypriot Claimants had a legitimate expectation that they would be able to develop Obnova's premises. In addition, they also legitimately expected that if such development became impossible—because of Serbia's conduct, including a potential change in planning regulation—Obnova would be compensated in line with Serbian law.

265. As explained in **Section III.K.3** above, Obnova has a right under Serbian law to compensation for expropriation of its premises caused by adoption of the 2013 DRP. Cypriot Claimants legitimately expected that Serbia would abide by its own law and provide compensation to Obnova.

266. When Mr. Broshko acquired the Canadian Obnova Shares and became an indirect owner of Obnova in November 2017, he equally expected—same as Cypriot Claimants—that

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288 Excerpt from the cadaster for the land plot, 4 August 2022, p. 1, **C-321**; Excerpts from the cadaster for buildings, 4 August 2022, p. 1 (of all individual excerpts), **C-322**. Given that the excerpts are all identical, with the exception of description of individual buildings, Claimants only submit English translation of one of these excerpts. The remaining excerpts are only submitted in Serbian. *See also* Cadaster decision No. 952-02-040-376/13, 21 January 2014, p. 3 (pdf), **C-309**.

289 Letter from JKP, 31 August 2022, p. 1, **C-310**.

290 *Supra* ¶ 54.

291 *Supra* § V.A.2.d.

Serbia would abide by its own law and provide the necessary compensation due to Obnova. However, this was not Serbia's intention.

267. As explained above, Serbia failed to initiate *any* proceedings that could potentially lead to compensation for either Obnova or Claimants. By doing so, Serbia breached its own laws, disregarded Claimants' legitimate expectations and breached the FET standard.

268. Investment tribunals have confirmed that a host state's deliberate non-observance of its own regulatory framework—whether through positive acts or a failure to comply with the state's obligations—can represent a breach of the FET standard.[292] For example, in the case *Air Canada v. Venezuela*, Venezuela failed—in breach of its local law and applicable international treaties—to address claimant's requests for acquisition of foreign currency.[293] The tribunal in that case concluded that Venezuela's conduct represented a breach of the FET standard found in the Canada-Venezuela BIT because the claimant had a legitimate expectation that Venezuela would process its requests in line with its local and international law.[294]

269. Worse yet, when Obnova itself tried to start this procedure and requested the compensation due to it under Serbian law, Serbia blatantly violated Serbian law and refused to provide any. The arguments raised by the Land Directorate in support of that refusal are incomplete, incorrect and unsubstantiated.[295] As already explained above:

270. Serbia rejected Obnova's Request for Compensation for the expropriation of its rights to its premises at Dunavska 23 based on a clearly incorrect argument that the 2013 DRP did not affect those premises. As explained above, this argument is in direct

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292 *E.g. B3 Croatian Courier Coöperatief U.A. v. Republic of Croatia*, ICSID Case No. ARB/15/5, Excerpts of Award, 5 April 2019, ¶ 840 ("*Further, the Tribunal agrees with Claimant that the FET standard is infringed not only when a State engages in a positive act, but also when it fails to discharge its duties and to comply with its statutory obligations […].*"), **CL-003**; *Spoldzielnia Pracy Muszynianka v. Slovak Republic*, UNCITRAL, PCA Case No. 2017-08, Award, 7 October 2020, ¶ 616 ("*It is therefore evident that the Exploitation Permit proceedings were conducted in willful disregard of Slovak administrative law and the transparency expected from State authorities. […] In the Tribunal's view, such treatment was in breach of the FET standard.*"), **CL-025**.

293 *Air Canada v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/17/1), Award, 13 September 2021, ¶ 460, **CL-026**.

294 *Air Canada v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/17/1), Award, 13 September 2021, ¶¶ 452-460, **CL-026**.

295 Živković Milošević ER, ¶ 270.

contradiction to the position that Serbia took in the legalization proceedings—where it decided (in several administrative and court instances) that the buildings located at Dunavska 23 cannot be legalized specifically because they *are* covered by the 2013 DRP. Serbia did not provide any explanation for why it believes that the 2013 DRP does *not* cover Obnova's premises, much less how this argument can be reconciled with its own previous decisions.

271. Furthermore, Serbia's refusal of the Request for Compensation referred to only one of the land plots at Dunavska 23 affected by the 2013 DRP (land plot No. 40/5 CM Stari grad). Serbia did not even bother to explain why it rejected the request with respect to Obnova's buildings located on the other land plots affected by the 2013 DRP.

272. Serbia invoked equally non-sensical reasons also with respect to Dunavska 17-19. As explained above, the first reason invoked by Serbia was that the buildings at Dunavska 17-19 are allegedly "*temporary*". Serbia raised this argument even though the buildings have existed since the 1940s and the data in the Cadaster indicates that Obnova's buildings are not temporary.[296] Serbia also ignored the fact that Serbian law did not even define temporary buildings and temporary permits before 1997.[297]

273. Serbia also claimed that Obnova's buildings could not have been the "*subject of privatization*."[298] As explained above, this argument is irrelevant. Obnova acquired ownership of its buildings upon the privatization *ex lege*—regardless of the fact that the "*subject of privatization*" was Obnova's shares.

274. Finally, Serbia relied on several issues that it itself caused—such as the incorrect Cadaster records or the unrealized legalization of Obnova's buildings. Serbia's reliance on its own mistakes and omissions to deny compensation is both unfair and unjust.

275. Serbia's arbitrary, unfair and unjust refusal of Obnova's Request for Compensation represents a breach of the FET standard under the Serbia-Cyprus BIT.

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296 Živković Milošević ER, ¶¶ 172-173.

297 Živković Milošević ER, ¶ 161.

298 Obnova Privatization Program, July 2003, **C-015**.

C. Serbia impaired Claimants' investment by unreasonable and discriminatory measures

1. Standard under the Treaties

276. The most favorite nation clause (the "**MFN Clause**") contained in Article 3(1) of the Serbia-Cyprus BIT states that each Contracting Party "*shall accord to such investment made by investors of the other Contracting Party treatment no less favourable than that accorded to investments of its own investors or of investors of any third State whichever is more favourable to the investor concerned.*"[299]

277. Investment tribunals unanimously recognize that MFN clauses allow the investor to attract the more favorable standards of treatment contained in an investment treaty concluded between the host State and a third state.[300]

278. Cypriot Claimants invoke the MFN Clause in the Serbia-Cyprus BIT to rely on the more favorable treatment provided to Moroccan investors under the non-impairment standard in Article 2(3) of the Morocco-Serbia BIT, which provides that "*neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment disposal of investments of investors in the territory of the other Contracting Party*."[301]

279. The MFN Clause is also contained in Article 5 of the Canada-Serbia BIT, which states the following:

> 1. Each Party shall accord to an investor of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.
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> 2. Each Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to investments of

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299 Serbia-Cyprus BIT, Art. 3(1), **CL-007(a)**.

300 *RosInvestCo UK Ltd. v. The Russian Federation*, SCC Case No. V079/2005, Award on Jurisdiction, 5 October 2007, ¶ 131, **CL-030**; *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, ¶ 575, **CL-002**; *Mr. Franck Charles Arif v. Republic of Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013, ¶ 396, **CL-031**; *EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v. Argentine Republic*, ICSID Case No. ARB/03/23, Award, 11 June 2012, ¶¶ 932-934, **CL-032**.

301 Agreement between Serbia and Morocco on Reciprocal Promotion and Protection of Investments, Art. 2(3), **CL-012**.

> investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.[302]

280. Mr. Broshko, on his own behalf and on behalf of MLI, invokes the MFN Clause included in the Canada-Serbia BIT to import the non-impairment standard from Article 3(4) of the Qatar-Serbia BIT, which provides that "*[n]either Contracting Party shall in any way impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investment in its territory by investors of the other Contracting Party.*"[303]

281. The standard of reasonableness—while broader in scope—is closely related to the concept of non-arbitrariness. According to Schreuer, the following kinds of measures are arbitrary under international investment law:

> [A.] a measure that inflicts damage on the investor without serving any apparent legitimate purpose. […]; [B.] a measure that is not based on legal standards but on discretion, prejudice or personal preference; [C.] a measure taken for reasons that are different from those put forward by the decision maker. […]; [D.] a measure taken in willful disregard of due process and proper procedure.[304]

282. In *LG&E Energy v Argentina*, the tribunal set out the criteria for determining the "arbitrariness" of the host State's measures in the following terms:

> It is apparent from the Bilateral Canada-Serbia BIT that Argentina and the United States wanted to prohibit themselves from implementing measures that affect the investments of nationals of the other Party without engaging in a rational decision-making process. Such process would include a consideration of the effect of a measure on foreign investments and a balance of the interests of the State with any burden imposed on such investments.[305]

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302 Canada-Serbia BIT, Art. 5, **CL-001**.

303 Agreement between the Government of the Republic of Serbia and the Government of the State of Qatar for the Reciprocal Promotion and Protection of Investments, Art. 3(4), **CL-004**.

304 Ch. Schreuer, *Protection against Arbitrary or Discriminatory Measures*, in C. A. Rogers, R. P. Alford (eds.), The Future of Investment Arbitration, p. 188, **CL-005**.

305 *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, ¶ 158, **CL-006**.

2. Serbia impaired Cypriot Claimants' investments by unreasonable and discriminatory measures when it expropriated Obnova's premises

283. As explained above, in the 2013 DRP, Serbia decided to put the bus loop on Obnova's premises without any justification and without explanation of why the bus loop could not be placed on land owned by Serbia literally across the street and designated for traffic infrastructure.[306] The adoption of the 2013 DRP caused harm to Obnova and, in turn, Cypriot Claimants, because it prevented Obnova from converting its right of use of the land at Dunavska 17-19 and Dunavska 23 into ownership and from developing the premises.[307]

284. The 2013 DRP clearly represents "*a measure that inflicts damage on the investor without serving any apparent legitimate purpose*"[308] and qualifies as arbitrary under the standard proposed by Schreuer. In addition, the adoption of the 2013 DRP clearly did *not* involve "*a consideration of the effect of a measure on foreign investments and a balance of the interests of the State with any burden imposed on such investments.*"[309] As such, it was arbitrary also under the standard proposed by the *LG&E Energy* tribunal.

3. Serbia impaired Claimants' investments by unreasonable and discriminatory measures when it refused to provide compensation to Obnova

285. As explained in detail above, Serbia did not initiate *any* expropriation proceedings that could lead to awarding compensation rightfully due to Obnova.[310] Thus, Serbia acted "*in willful disregard of due process and proper procedure*" and, thus, arbitrarily.[311]

286. Furthermore, the reasons for which Serbia refused Obnova's Request for Compensation were arbitrary as well. Claimants already addressed this point in detail above. In summary:

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306 *Supra* ¶¶ 102-104.

307 *Supra* ¶¶ 105-107.

308 Ch. Schreuer, *Protection against Arbitrary or Discriminatory Measures*, in C. A. Rogers, R. P. Alford (eds.), The Future of Investment Arbitration, p. 188, **CL-005**.

309 *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, ¶ 158, **CL-006**.

310 *Supra* ¶ 108.

311 Ch. Schreuer, *Protection against Arbitrary or Discriminatory Measures*, in C. A. Rogers, R. P. Alford (eds.), The Future of Investment Arbitration, p. 188, **CL-005**.

a. Serbia argued that Obnova's premises were not affected by the 2013 DRP—even though Serbia itself had refused to legalize certain of Obnova's buildings specifically because they were located on land affected by the 2013 DRP;

b. Serbia argued that Obnova's buildings are only temporary—even though they have existed for decades and in some cases over 70 years, they are not of a temporary nature and the Cadaster records indicate that the buildings are *not* temporary;

c. Serbia claimed that Obnova's buildings could not be the subject of privatization, which is wholly irrelevant for Obnova's ownership of the buildings and its right to compensation for their expropriation;

d. Serbia claimed that the City of Belgrade is the owner of Obnova's buildings—allegedly based on the 1975 Agreement concluded with Luka Beograd—even though this agreement does not even seem to purport to transfer rights to any buildings, Obnova constructed its buildings at Dunavska 17-19 before Luka Beograd was even founded and Obnova's buildings at Dunavska 23 did not even exist when the 1975 Agreement was concluded; and

e. Serbia relied on court proceedings in which Obnova pursues recognition of its rights to the premises at Dunavska 17-19 and 23—even though Obnova had to initiate these proceedings solely because Serbia had registered in error the City of Belgrade as the owner of Obnova's buildings and refused to correct such error.[312]

287. In sum, Serbia's refusal to provide any compensation for its expropriation of Obnova's property and rights was based on arguments that contradict previous decisions of Serbia's courts and administrative authorities, rely on Serbia's own mistakes and omissions and lack any proper explanation. Serbia's refusal to provide due

312 *Supra* § III.O.1.f.

compensation to Obnova, therefore, clearly does not represent an outcome of a "*rational decision-making process*", as required for a measure to be reasonable.[313]

D. Serbia breached its obligations under the umbrella clause

288. Cypriot Claimants also invoke the Serbia-Cyprus BIT's MFN clause to rely on the umbrella clause contained in Article 2(2) of the UK-Serbia BIT, which provides that "*[e]ach Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.*"[314]

289. The plain wording of the phrase "*any obligation*" makes it clear that this provision covers *any* obligations—regardless of their nature. It also covers obligations under Serbia law—including the obligation to provide compensation in case of expropriation.

290. This interpretation has been confirmed by investment tribunals interpreting similarly worded umbrella clause provisions. For example, the tribunal in *Enron v. Argentina* was called upon to interpret the provision in the Argentina-US BIT stating that "*[e]ach party shall observe any obligation it may have entered into with regard to investments […]*."[315] The *Enron* tribunal concluded that this provision covered both contractual obligations, as well as obligations "*assumed through law or regulation*":

> Under its ordinary meaning the phrase 'any obligation' refers to obligations regardless of their nature. Tribunals interpreting this expression have found it to cover both contractual obligations such as payment as well as obligations assumed through law or regulation.[316]

291. Similarly, the tribunal in *OIEG v. Venezuela* was faced with the provision stating the following: "*Each Contracting Party shall observe any obligation it may have entered into with regard to the treatment of investments of nationals of the other Contracting*

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313 *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, ¶ 158, **CL-006**.

314 Agreement between UK and Yugoslavia on Reciprocal Promotion and Protection of Investments, Art. 2(2), **CL-010**.

315 *Enron Corporation and Ponderosa Assets LP v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007, ¶ 273, **CL-033**.

316 *Enron Corporation and Ponderosa Assets LP v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007, ¶ 274 (emphasis added, references omitted), **CL-033**.

Party."[317] Same as the *Enron* tribunal, the *OIEG* tribunal concluded that the phrase "*any obligation*" includes obligations established by law:

> The Tribunal agrees with the Claimant that the Clause of Incorporation is broadly worded. As previous tribunals have reflected, *the term "any obligation" includes obligations entered into by law. Consequently, Venezuela has accepted the commitment to fulfil all of the legal obligations established in the Venezuelan legal system*.[318]

292. As explained above, Serbia breached its obligations under Serbian law when it failed to compensate Obnova for the expropriation of its premises at Dunavska 17-19 and Dunavska 23. It failed to initiate a proper expropriation procedure and expressly refused to provide Obnova with the compensation due under both the Serbian Constitution and the Law on Expropriation.[319] By breaching its obligations under Serbian law, Serbia also breached the umbrella clause.

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317 *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Award, 10 March 2015, ¶ 588, **CL-034**.

318 *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Award, 10 March 2015, ¶ 589 (emphasis added, references omitted), **CL-034**.

319 *Supra* ¶¶ 108-113, 124-151.

VI. CLAIMANTS ARE ENTITLED TO COMPENSATION FOR THEIR LOSSES

A. Cypriot Claimants suffered losses of EUR 26.2 million

1. Breaches claimed by Cypriot Claimants

293. As explained in **Section V** above, Cypriot Claimants invoke the following breaches of the Serbia-Cyprus BIT:

a. unlawful expropriation of Cypriot Claimants' investment in breach of Article 5 of the Serbia-Cyprus BIT;

b. breach of the FET standard based on the *de facto* expropriation of Cypriot Claimants' investment and Serbia's arbitrary, unfair and unjust refusal to provide Obnova compensation for expropriation of its premises due under Serbian law;

c. impairment of Cypriot Claimants' investment by unreasonable and discriminatory measures; and

d. breach of the umbrella clause by refusing to provide to Obnova compensation due under Serbian law.

294. As explained below, regardless of whether the Tribunal upholds Cypriot Claimants' claims related to one, two, three or any combination of these breaches, the finding of liability would always lead to the same amount of damages—EUR 26.2 million.[320]

2. Serbia must provide Cypriot Claimants with full reparation for breaches of its obligations under the Serbia-Cyprus BIT

295. Serbia must provide reparation for its breaches of the Serbia-Cyprus BIT under the full reparation standard. This standard was formulated by the Permanent Court of Justice in the *Chórzow Factory* case as follows:

> The essential principle contained in the actual notion of an illegal act – a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals – is that *reparation must, as far as possible, wipe out all the consequences of the illegal act*

320 Hern ER, ¶ 34.

> *and reestablish the situation which would, in all probability, have existed if that act had not been committed*.[321]

296. The full reparation standard is also reflected in the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (the "**ILC Articles**"). According to Article 31 of the ILC Articles:

> 1. The responsible State is under an obligation to make *full reparation* for the injury caused by the internationally wrongful act.
>
> 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.[322]

297. Investment tribunals have consistently confirmed that the standard of full reparation shall be applied in investor-state arbitrations—both to cases of unlawful expropriation[323] and cases of other breaches of applicable rules.[324]

298. For the sake of completeness, the Serbia-Cyprus BIT also contains rules governing the standard of compensation applicable in cases of *lawful* expropriation.[325] These rules can be found in Article 5(1) of the Serbia-Cyprus BIT, which states the following:

> 1. Investments of investors of either Contracting Party shall not be nationalized. (sic) expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except in cases in which such measures are taken in the public interest. The expropriation shall be carried out under due process of law. (sic) on a non-discriminatory basis and against adequate compensation which shall be effected without undue delay. Such compensation shall correspond to the market value of the investment expropriated immediately before the expropriation or before impeding expropriation became public knowledge, whichever is the earliest, shall

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321 *Case Concerning the Factory at Chorzów (Germany v Poland)*,Decision on the Merits, 13 September 1928, PCIJ Rep. Series A - No. 17, p. 47 (emphasis added), **CL-035**.

322 ILC Articles, Art. 31 (emphasis added), **CL-036**.

323 *E.g. ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶¶ 481-485, **CL-037**; *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶ 775, **CL-038**; *Saipem S.p.A. v. People's Republic of Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 201, **CL-039**; *UP (formerly Le Chèque Déjeuner) and C.D Holding Internationale v. Hungary*, ICSID Case No. ARB/13/35, Award, 9 October 2018, ¶¶ 511-512, **CL-040**.

324 *E.g. Enron Corporation and Ponderosa Assets LP v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007, ¶ 359, **CL-033**; *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Award, 21 May 2004, ¶ 238, **CL-041**; *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶ 776, **CL-038**.

325 Serbia-Cyprus BIT, Art. 5(1), **CL-007(a)**.

> include interest calculated on the six-month LIBOR basis until the date of payment (sic) shall be made without undue delay and be freely transferable.[326]

299. These rules, however, are inapplicable in the present case because they apply solely to calculation of *mandatory compensation* in cases of *lawful* expropriation.[327] The tribunal in *UP and C.D v. Hungary* confirmed that compensation standards included in BITs can apply to unlawful expropriation only if a BIT expressly states so:

> [A]s confirmed in investment jurisprudence, including ADC v. Hungary, unless a treaty contains a clear reference to damages due for unlawful expropriation, the compensation rule referred to in the BIT will only apply to lawful expropriation, with damages for unlawful expropriation being governed by customary international law.[328]

300. The Serbia-Cyprus BIT does *not* contain "*a clear reference to damages due for unlawful expropriation*". Article 5(1) of the Serbia-Cyprus BIT, thus, cannot be used to determine potential *damages* arising from *unlawful* expropriation, such as the one in the present case.[329]

301. As Claimants demonstrated in **Section V.A** above, in the present case, the expropriation of Cypriot Claimants' investment was indeed *unlawful*. In fact, Serbia did not fulfill any of the conditions for lawful expropriation in accordance with Article 5 of the Serbia-Cyprus BIT:

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326 Serbia-Cyprus BIT, Art. 5(1), **CL-007(a)**.

327 *E.g. Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic, ICSID Case No. ARB/97/3*, Award, 20 August 2007, ¶ 8.2.3., **CL-042**; Saipem S.p.A. v. People's Republic of Bangladesh, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 201, **CL-039**; *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶ 481, **CL-037**; *Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, ¶ 306, **CL-009**; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012, ¶ 306, **CL-009**; *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007, ¶ 349, **CL-043**.

328 *UP (formerly Le Chèque Déjeuner) and C.D Holding Internationale v. Hungary*, ICSID Case No. ARB/13/35, Award, 9 October 2018, ¶ 511, **CL-040**. Similar conclusion has been reached also by other tribunals. *E.g. Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, ¶ 306, **CL-009**; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012, ¶ 306, **CL-009**.

329 *E.g. Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007, ¶ 8.2.3, **CL-042**; Saipem S.p.A. v. People's Republic of Bangladesh, ICSID Case No. ARB/05/7, Award, 30 June 2009, ¶ 201, **CL-039**; *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶ 481, **CL-037**.

a. there is no evidence that the expropriation was done in public interest;

b. Serbia did not comply with the due process requirements;

c. the expropriation was conducted in a discriminatory manner; and

d. to this day, Serbia has not provided any compensation to Cypriot Claimants.

302. In addition, the expropriation of Cypriot Claimants' investment also breached the proportionality requirement.[330] It is therefore clear that the rules contained in Article 5(1) of the Serbia-Cyprus BIT governing the standard of compensation payable in cases of *lawful* expropriation are inapplicable in the present case. That being said, as explained below, even if the Tribunal concluded that Article 5(1) of the Serbia-Cyprus BIT did apply (*quod non*), its application would require the same approach to the calculation of damages as is required under international law—*i.e.* the payment of the fair market value of the expropriated investment.

3. The full reparation standard requires payment of the fair market value

303. In cases of unlawful expropriation, the full reparation standard entitles the investor to restitutionary damages, including the fair market value of the unlawfully expropriated investment, as well as consequential losses suffered by the investor:

> Expropriation: The standard of compensation for unlawful expropriation (being the relevant claim here), includes full reparation for, and consequential losses suffered as a result of, the unlawful expropriation. *Full reparation entitles the unlawfully expropriated investor to restitutionary damages which include, but are not limited to, the fair market value of the unlawfully expropriated investment* as determined by the application of an appropriate valuation methodology. *In addition, the unlawfully expropriated investor is entitled to damages for the consequential losses* suffered as a result of the unlawful expropriation. Such losses ordinarily include an entitlement to loss of profits suffered by the investor between the date of the expropriation and the award.[331]

304. As noted by the tribunal in *Enron v. Argentina*, the fair market value is a price at which a transaction would be realized between a hypothetical willing buyer and a hypothetical

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330 *Supra* ¶ 222.

331 *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶ 775 (emphasis added), **CL-038**.

willing seller, both having reasonable knowledge of facts and no compulsion to buy or sell, on an unrestricted market:

> The present Tribunal finds that the appropriate approach in the instant case is that of compensation for the difference in the 'fair market value' of the investment resulting from the Treaty breaches. The notion of 'fair market value' is generally understood as *the price at which property would change hands between a hypothetical willing and able buyer and an (sic) hypothetical willing and able seller, absent compulsion to buy or sell, and having the parties reasonable knowledge of the facts, all of it in an open and unrestricted market*.[332]

305. Therefore, an award of damages based on the fair market value of the unlawfully expropriated investment puts the investor into the position in which it would have been had its investment not been unlawfully expropriated and the investor been able to benefit from the sale of the investment under market conditions. The award of such damages "*reestablish[es] the situation which would, in all probability, have existed if [an unlawful] act had not been committed*", as required under the *Chórzow Factory* standard.[333]

306. For the avoidance of any doubts, even if the Tribunal were to conclude that the compensation standard in Article 5(1) of the Serbia-Cyprus BIT should apply, it would not change the fact that Cypriot Claimants are entitled to the fair market value of their investment. As concluded by the tribunal in *Devas v. India*, the use of the phrase "*market value*" in a treaty does not preclude application of the reparatory standard established in the *Chórzow Factory* case:

> Put in affirmative terms, the Tribunal determines that it should apply the standard language of reparation as set out in the *Chorzów Factory* case. In particular, the Tribunal finds that the phrase, "market value" used in Article 6 of the Treaty does not preclude reliance on these well-recognized and standard descriptions of what should be determined when deciding quantum or value of what was, in this case, unlawfully taken without compensation at the time.
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> […]
>
> The Tribunal will, therefore, review the issues raised in this quantum phase of the arbitration with the objective of finding an amount that

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332 *Enron Corporation and Ponderosa Assets LP v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007, ¶ 361 (emphasis added), **CL-033**.

333 *Case Concerning the Factory at Chorzów (Germany v Poland)*, Decision on the Merits, 13 September 1928, PCIJ Rep. Series A - No. 17, p. 47, **CL-035**.

> will, "as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."[334]

307. Compensation due for expropriation under Serbian law is based on similar principles. Namely, the compensation due under Serbian law is equal to the market value that the expropriated asset would have but-for the expropriation.[335]

308. In case that an investor suffered losses to the value of its investment as a result of other treaty breaches (*i.e.* other than unlawful expropriation), the full reparation standard entitles it to compensation equal to the reduction in the fair market value of the investment and other losses otherwise caused by the breaches.[336] As noted by the tribunal in *Sempra v. Argentina*:

> Fair market value is thus a commonly accepted standard of valuation and compensation. In the present case, the Claimant made its investment in Argentina in 1996 and increased it over the years. The Tribunal is of the view that fair market value would be the most appropriate standard to apply in this case to establish the value of the losses, if any, suffered by the Claimant as a result of the Treaty breaches which occurred, *by comparing the fair market value of the companies concerned with and without the measures adopted by Argentina in January 2002*.[337]

309. As explained above, only an award of damages equal to the fair market value of the investment (in cases of expropriation), or the change in such fair market value (in case of other breaches), will wipe out all the consequences of Serbia's unlawful conduct.

310. In the present case, the damages would be the same regardless of whether the Tribunal finds an expropriation or any other breach. Claimants' losses stem directly from two specific measures adopted by Serbia: (*i*) adoption of the 2013 DRP in 2013; and (*ii*) Serbia's express refusal to compensate Obnova for the effect of the 2013 DRP on

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334 *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited and Telcom Devas Mauritius Limited v. Republic of India*, PCA Case No. 2013-09, Award on Quantum, 13 October 2020, ¶¶ 205-206 (references omitted), **CL-045**.

335 Law on Expropriation, Official Gazette of the Republic of Serbia, No. 53/95; Official Gazette of the Federal Republic of Yugoslavia, No. 16/01; Official Gazette of the Republic of Serbia, Nos. 20/09, 55/13, 106/16, Art. 41, **C-032**.

336 *Enron Corporation and Ponderosa Assets LP v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007, ¶¶ 363, 445-448, **CL-033**; *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award, 28 September 2007, ¶¶ 403-404, 411-412, 467-469, **CL-044**.

337 *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award, 28 September 2007, ¶ 404 (emphasis added), **CL-044**.

Obnova's rights in 2021.[338] The first measure deprived Obnova of the rights to its premises at Dunavska 17-19 and Dunavska 23 that Obnova had before the adoption of the 2013 DRP. The second measure negated Obnova's right to compensation under Serbian law.

311. These two measures also deprived Cypriot Claimants of the value of their investment in Obnova—which depends on the value of Obnova's assets and rights. To wipe out all the consequences of Serbia's unlawful conduct, Claimants must be awarded damages corresponding to their share in the value of Obnova's rights lost as the result of such conduct.

4. The valuation date should be the date of the award

312. As explained above, under the *Chorzów Factory* standard, the award of the tribunal should "*reestablish the situation which would, in all probability, have existed if [an unlawful] act had not been committed*".[339] In the present case, but-for the adoption of the 2013 DRP, Obnova would have been able to convert its right of use over the land at Dunavska 17-19 and Dunavska 23 into ownership and develop and/or sell its premises at a time that would have allowed Obnova to achieve the highest profits.

313. The requirement to wipe out all the consequences of Serbia's measures means that Cypriot Claimants must have a choice between the valuation date being the date of the breach, or any subsequent date that would have allowed them to maximize their profits from the development and/or sale of Obnova's premises. Given the general trend of increasing valuation of real estate in Belgrade, Cypriot Claimants choose the date of the award as their valuation date. Claimants' right to choose a valuation date between the date of the breach and the date of the award has been repeatedly confirmed by investment case law and commentators.[340]

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338 *Supra* §§ III.K.3 and III.O.

339 *Case Concerning the Factory at Chorzów (Germany v Poland)*, Decision on the Merits, 13 September 1928, PCIJ Rep. Series A - No. 17, p. 47, **CL-035**.

340 *E.g. Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, UNCITRAL, PCA Case No. 2005-03/AA226, Final Award, 18 July 2014, ¶¶ 1767-1769, **CL-046**; *Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, ¶ 316, **CL-009**; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012, ¶ 316, **CL-009**; *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007, ¶ 352, **CL-043**; *Conocophillips Petrozuata B.V., Conocophillips Hamaca B.V. and Conocophillips Gulf of Paria B.V. v.*

314. For example, the tribunal in *Hulley v. Russia* observed that the application of the principles of restitution and compensation under international law to cases of unlawful expropriation leads to two important conclusions. First, investors must enjoy benefits of unanticipated events that increase the value of an expropriated asset up to the date of the decision. Any other approach would violate the basic rule of restitution under international law:

> First, investors must enjoy the benefits of unanticipated events that increase the value of an expropriated asset up to the date of the decision, because they have a right to compensation in lieu of their right to restitution of the expropriated asset *as of that date*. If the value of the asset increases, this also increases the value of the right to restitution and, accordingly, the right to compensation where restitution is not possible.[341]

315. Second, investors cannot bear the risk of unanticipated events decreasing the value of an expropriated asset over that time period. This is because "*in the absence of the expropriation the investor could have sold the asset at an earlier date at its previous higher value.*"[342] As a result, in cases of unlawful expropriation, the investor must be able to choose between a valuation as of the expropriation date and as of the date of the award:

> It follows for the several reasons stated above that in the event of an illegal expropriation an investor is entitled to choose between a valuation as of the expropriation date and as of the date of the award. The Tribunal finds support for this conclusion in the fact that this approach has been adopted by tribunals in a number of recent decisions dealing with illegal expropriation.[343]

Bolivarian Republic of Venezuela, ICSID Case No. ARB/07/30, Decision on Jurisdiction and the Merits, 3 September 2013, ¶ 343, **CL-047**; *Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, ¶¶ 763-764, **CL-048**; *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶ 499, **CL-037**; *LSG Building Solutions GmbH and others v. Romania*, ICSID Case No. ARB/18/19, Decision on Jurisdiction, Liability and Principles of Reparation, 11 July 2022, ¶ 1326, **CL-065**; *Eurus Energy Holdings Corporation v. Kingdom of Spain*, ICSID Case No. ARB/16/4, Award, 14 November 2022, ¶ 114, **CL-066**.

341 *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, UNCITRAL, PCA Case No. 2005-03/AA226, Final Award, 18 July 2014, ¶ 1767 (emphasis in the original), **CL-046**.

342 *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, UNCITRAL, PCA Case No. 2005-03/AA226, Final Award, 18 July 2014, ¶ 1768, **CL-046**.

343 *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, UNCITRAL, PCA Case No. 2005-03/AA226, Final Award, 18 July 2014, ¶ 1769 (references omitted), **CL-046**.

316. The *Unglaube* tribunal similarly concluded that: "*where property has been wrongfully expropriated, the aggrieved party may recover (1) the higher value that an investment may have acquired up to the date of the award and (2) incidental expenses.*"[344] The *Unglaube* tribunal reached this conclusion based on the fact that, without the unlawful expropriation of an investment, an investor would have been able to sell the investment at whichever date—depending on when the prices would have been highest:

> Had Mrs. Unglaube's property not been burdened by the effects of the various ineffectual efforts to expropriate the 75-Meter Strip, she would have remained free to deal with or dispose of her property at whatever date she wished between July 2003 and the present date – including the peak period in July 2006 when prices were rising sharply and buyers were plentiful.[345]

317. The conclusions of the above tribunals have been reached in the context of cases dealing with unlawful expropriation and they are also applicable with respect to other types of breaches claimed by Cypriot Claimants.[346] This is because compensation for all these breaches is also subject to the *Chorzów Factory* standard and the measures had the same effect on Obnova's, and by extension Claimants' rights.

318. As a result, it is irrelevant whether the Tribunal concludes that the adoption of the 2013 DRP represented an unlawful expropriation or a breach of the FET standard. In order to "*reestablish the situation which would, in all probability, have existed if [an*

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344 *Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, ¶ 307, **CL-009**; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012, ¶ 307, **CL-009**.

345 *Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, 16 May 2012, ¶ 316, **CL-009**; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012, ¶ 316, **CL-009**. Similar conclusions have been reached also by other investment tribunals. *E.g. Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007, ¶ 352 ("*Under customary international law, Siemens is entitled not just to the value of its enterprise as of May 18, 2001, the date of expropriation, but also to any greater value that enterprise has gained up to the date of this Award, plus any consequential damages*."), **CL-043**; *Conocophillips Petrozuata B.V., Conocophillips Hamaca B.V. and Conocophillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Decision on Jurisdiction and the Merits, 3 September 2013, ¶ 343 ("*The Tribunal, on the basis of principle and the authorities reviewed above, concludes that if the taking was unlawful, the date of valuation is in general the date of the award*."), **CL-047**; *Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, ¶¶ 763-764, **CL-048**; *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶ 499, **CL-037**.

346 As explained above, the adoption of the 2013 DRP also represents a breach of the FET standard and impairment of Cypriot Claimants' investment by unreasonable and discriminatory measures. *Supra* §§ V.B. and V.C.

unlawful] act had not been committed",[347] the Tribunal must assess Claimants' situation but-for the adoption of the 2013 DRP. As explained in **Section VI.A.6** below, but-for the adoption of the 2013 DRP, Obnova would be the owner of the land at Dunavska 17-19 and 23, which could be developed and/or sold under the currently existing conditions. The only way to assess the value of Claimants' investment in such a scenario is to set the valuation date as the date of the award.

319. Investment tribunals have repeatedly recognized that even in non-expropriation cases, it may be more appropriate to use the date of the award as the valuation date, rather than the date of a breach.[348] As explained by the tribunal in *Eurus Holdings v. Spain*, one of such cases is when the valuation as of the date of the award leads to significantly higher damages than the valuation as of the date of the breach:

> For the foregoing reasons, the jurisprudence on which the Respondent relies does not, in the Tribunal's view, support the application of a June 2014 valuation date. In addition, the Respondent has not demonstrated why the Tribunal should not follow the principles set out in the decisions in *Siemens v. Argentina* and *ADC v. Hungary*, pursuant to which a *tribunal's obligation to apply customary international law – an obligation that is undisputed by the Parties – means that an investor may not only be entitled to compensation for damages incurred at the date of the breach, but to compensation of the value at the date of the award, or its closest proxy*. The Tribunal is of the view that, *given that there is a considerable increase between the compensation calculated as of June 2014 and that calculated as of June 2021, the application of the principles of customary international law, as spelled out in the Chorzow Factory case, does not permit choosing the June 2014 valuation date, because doing so would not result in full reparation of the damages suffered*.[349]

320. The use of the date of the award is also mandated under Serbian law. Under Serbian law, Obnova is entitled to compensation for the *de facto* expropriation of its rights

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347 *Case Concerning the Factory at Chorzów (Germany v Poland)*,Decision on the Merits, 13 September 1928, PCIJ Rep. Series A - No. 17, p. 47 (emphasis added), **CL-035**.

348 *E.g. LSG Building Solutions GmbH and others v. Romania*, ICSID Case No. ARB/18/19, Decision on Jurisdiction, Liability and Principles of Reparation, 11 July 2022, ¶ 1326, **CL-065**; *Eurus Energy Holdings Corporation v. Kingdom of Spain*, ICSID Case No. ARB/16/4, Award, 14 November 2022, ¶ 114, **CL-066**.

349 *Eurus Energy Holdings Corporation v. Kingdom of Spain*, ICSID Case No. ARB/16/4, Award, 14 November 2022, ¶ 114 (emphasis added, references omitted), **CL-066**.

corresponding to the market value of its expropriated rights, calculated as of the date of the decision awarding the compensation.[350]

321. Serbia has not initiated any expropriation proceedings that could lead to the award of compensation.[351] There is also no indication that Serbia would initiate any such proceedings in the future. In this case, the Tribunal's award of damages would therefore replace the compensation that Serbia should have awarded to Obnova. Such compensation must be calculated pursuant to Serbian law. That includes the fact that it should be calculated as of the date of the decision.

5. Cypriot Claimants are entitled to interest

322. As explained in the previous section, the valuation date should be the date of the award. However, given that quantum experts calculate the damages as of a certain date preceding the award, additional interest should be added to such damages. Award of interest is in line with the full reparation standard, as confirmed by Article 38 of the ILC Articles, which states that:

> 1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.
>
> 2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.[352]

a. Interest shall be calculated pursuant to Serbian law

323. The interest to be added to the principal amount due to Claimants shall be calculated pursuant to Serbian law because the interest due under Serbian law is more advantageous than the interest usually awarded under public international law.

324. As a result, the respective provisions of Serbian law prevail in accordance with the preservation of rights clauses in Article 10 of the Serbia-Cyprus BIT. The preservation of rights clause in Article 10 of the Serbia-Cyprus BIT states the following:

> *If the laws of either Contracting Party* or international agreements, existing at present or established hereafter, between the Contracting

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350 Živković Milošević ER, ¶ 253.

351 *Supra* ¶¶ 108-113, 124-151.

352 ILC Articles, Art. 38, **CL-036**.

> Parties, or other international agreements whereof the Contracting Parties are signatories, *contain provisions entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such laws and agreements shall to the extent that they are more favourable prevail over the present Agreement*.[353]

325. As explained by *Newcombe and Paradell*, investors may rely on preservation of rights clauses to use more favorable domestic law provisions governing calculation of compensation:

> The clause, in its usual wording, simply says that in applying or enforcing the existing protections offered by the IIA, attention should be paid to any more favourable, but not unfavourable, provisions contained in domestic law or specific agreements. Thus, for example, a contractual clause providing for a mechanism to calculate compensation and resulting in a higher amount than that under the treaty's expropriation clause would need to be applied.[354]

326. This is exactly the case here. The Serbian interest rate leads to higher overall compensation and is therefore more favorable to Claimants than the interest rate commonly awarded by tribunals in the absence of treaty provisions regulating quantification of interest.

327. Specifically, Serbian law provides for simple interest calculated at a default interest rate, which Article 4 of the Law on Default Interest defines for debts denominated in euros as "*determined annually in the amount of the reference interest rate of the European Central Bank for main refinancing operations increased for eight percentage points.*"[355] The Law on Default Interest also sets out a formula for calculation of the default interest.[356] The interest rate applicable in the period since 31 December 2022, i.e. the proxy for the valuation date used by Dr. Hern, is set out in the following table:[357]

Start date	**End date**	**Applicable interest rate**
31 December 2022	7 February 2023	10.5%

353 Serbia-Cyprus BIT, Art. 10 (emphasis added), **CL-007(a)**.

354 A. Newcombe and L. Paradell, *Law and Practice of Investment Treaties: Standards of Treatment* (2009), p. 478, **CL-049**.

355 Law on Default Interest, Art. 4, **C-059**.

356 Law on Default Interest, Art. 6, **C-059**.

357 Hern ER, ¶ 169.

8 February 2023	21 March 2023	11%
22 March 2023	31 March 2023	11.5%

328. The calculation of interest under Serbian law is more favorable to Cypriot Claimants than the calculation of interest commonly awarded by tribunals in the absence of treaty provisions regulating quantification of interest.

b. Alternatively, Cypriot Claimants are entitled to interest equal to 6-month average EURIBOR + 2%, compounded semi-annually

329. In case the Tribunal finds that Cypriot Claimants cannot rely on the preservation of rights clause to claim interest calculated pursuant to Serbian law, Cypriot Claimants alternatively claim interest calculated at an interest rate equal to 6-month average EURIBOR + 2%, compounded semi-annually.

330. Tying the interest rate to a benchmark rate—such as EURIBOR—is a common practice in ICSID investment arbitration. Studies prepared by the Global Arbitration Review confirm that the majority of ICSID tribunals that awarded pre-award interest, tied the interest rate to a benchmark created by LIBOR.[358]

331. When damages are claimed in euros—such as in the present case—EURIBOR was found to be a more appropriate benchmark. This approach was expressly confirmed by the tribunal in *HEP v. Slovenia*:

> [I]t is common in investment treaty cases to tie the interest rate to LIBOR – although in the present case, where the currency is euros, it is more appropriate to use EURIBOR. This represents an objective, market-orientated rate, well suited to ensuring that the consequences of the breach are indeed wiped out.[359]

332. The base interest rate used by arbitral tribunals is in most cases further increased by a certain premium to reflect commercial interest rates. According to the above-cited studies published by the Global Arbitration Review, the majority of tribunals that tied the pre-award interest rate to LIBOR awarded interest equal to LIBOR plus a 2%

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358 *E.g.* J. Dow, *Pre-Award Interest*, in J. A. Trenor (ed.), The Guide to Damages in International Arbitration (2021), pp. 8-9, **CL-050**; T. Duarte-Silva, J. Mattamouros, *Prejudgment interest – a mere afterthought?* (2016), p. 2, **CL-051**.

359 *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, ICSID Case No. ARB/05/24, Award, 17 December 2015, ¶ 553, **CL-052**.

premium.[360] While it is more appropriate to use EURIBOR in the present case, there is no reason to deviate from the application of the 2% premium.

333. It is also a common international practice to award compound, rather than simple interest. As explained by the tribunal in *HEP v. Slovenia*, "*compound interest is appropriate, commercially sensible, and consistent with modern international practice.*"[361] Other tribunals awarding an interest rate tied to EURIBOR did so increased by 2%, compounded semi-annually.[362]

c. The tribunal shall award the same pre-award and post-award interest

334. As described above, pursuant to Article 38 of the ILC Articles, interest for late payment is part of the "*full reparation*" standard.[363] Tribunal in *Vivendi v. Argentina* summarized this principle as follows:

> The object of an award of interest is to compensate the damage resulting from the fact that, during the period of non-payment by the debtor, the creditor is deprived of the use and disposition of that sum he was supposed to receive.[364]

335. Therefore, in order to achieve full reparation, Cypriot Claimants are also entitled to interest from the valuation date until payment is made in full. There is no reason to differentiate between pre-award and post-award interest rates because they serve the same purpose.

336. In line with this generally accepted principle, tribunals in investment arbitration cases usually award pre-award and post-award interest at the same rate.[365] For example, the

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360 *E.g.* J. Dow, *Pre-Award Interest*, in J. A. Trenor (ed.), *The Guide to Damages in International Arbitration* (2021), pp. 8-9, **CL-050**; T. Duarte-Silva, J. Mattamouros, *Prejudgment interest – a mere afterthought?* (2016), pp. 2-3, **CL-051**.

361 *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, ICSID Case No. ARB/05/24, Award, 17 December 2015, ¶ 558, **CL-052**.

362 *E.g. Walter Bau AG (in liquidation) v. The Kingdon of Thailand*, UNCITRAL, Award, 1 July 2009, ¶ 16.1, **CL-053**.

363 ILC Articles, Art. 38, **CL-036**.

364 *Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007, ¶ 9.2.3, **CL-042**. *See also LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc .v. Argentine Republic*, ICSID Case No. ARB/02/1, Award, July 25, 2007, ¶ 55; **CL-067**.

365 *Olympic Entertainment Group AS v. Ukraine*, PCA, Award, 15 April 2021, ¶ 185, **CL-016**; *Zhongshan Fucheng v. Nigeria*, Ad hoc Arbitration, Final Award, 26 March 2021, ¶ 198, **CL-054**; *ESPF and others*

tribunal in *Micula v. Romania* found no reason to differentiate between the two rates, stating that:

> [T]he Tribunal does not see why the cost of the deprivation of money (which interest compensates) should be different before and after the Award, and neither Party has convinced it otherwise. Both are awarded to compensate a party for the deprivation of the use of its funds. *The Tribunal will thus award pre - and post-award interest at the same rate*.[366]

6. The but-for fair market value of Obnova's premises is EUR 38.2 million

a. Methodology used to value Obnova's premises

337. As explained above, the full reparation standard applicable to Cypriot Claimants' claim requires compensation equal to the fair market value of expropriated assets. Dr. Hern explains that the fair market value is defined as "*the amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.*"[367]

338. Dr. Hern further explains that the fair market value can be estimated through three main methods:

a. the income-based approach, which "*estimates the market value of an asset as the present value of the future cash-flows it is expected to generate*";

b. the market-based approach, which "*estimates the market value of an asset based on observable market values or transaction prices of comparable assets*"; and

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v. Italy, ICSID Case No. ARB/16/5, Award, 14 September 2020, ¶ 932, **CL-055**; *InfraRed Environmental Infrastructure and others v. Spain*, ICSID Case No. ARB/14/12, Award, 2 August 2019, ¶ 605, **CL-056**; *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, ICSID Case No. ARB/05/24, Award, 17 December 2015, ¶ 554, **CL-052**; *Veteran Petroleum v. Russia*, PCA Case No. AA 228, Final Award, 18 July 2014, ¶¶ 1687, 1692, **CL-058**; *Yukos Universal v. Russia*, PCA Case No. AA 227, Final Award, 18 July 2014, ¶ 1689, **CL-059**; *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, UNCITRAL, PCA Case No. 2005-03/AA226, Final Award, 18 July 2014, ¶ 1689, **CL-046**; *TECO Guatemala Holdings v. Guatemala*, ICSID Case No. ARB/10/17, Award, 19 December 2013, ¶ 768, **CL-057**; *Ioan Micula, Viorel Micula and others v. Romania*, ICSID Case No. ARB/05/20, Award, 11 December 2013, ¶ 1269, **CL-060**.

366 *Ioan Micula, Viorel Micula and others v. Romania*, ICSID Case No. ARB/05/20, Award, 11 December 2013, ¶ 1269 (emphasis added), **CL-060**.

367 Hern ER, fn. 5 at p. 7.

c. the cost-based approach, which "*estimates the market value of an asset based on the cost of creating it or replicating it.*"[368]

339. Dr. Hern also explains that, in case of development land, the following two valuation approaches exist:

a. the market comparison approach, which belongs to the general category of market-based approaches and under which the "*the value of the development land is estimated based on observable market values or transaction prices of comparable land*"; and

b. the so-called residual method, which belongs to the general category of income-based approaches and which the "*value of the development land is estimated as the net present value (NPV) of the difference between the revenues a developer could generate from developing the land and the costs of the development, excluding the cost of the land itself.*"[369]

340. Dr. Hern explains in his report that while the market comparison approach often represents the most direct evidence of the fair-market value of the valued asset, the reliability of this method depends in large part on the ability to identify market prices or transactions of land comparable to the one being valued.[370] Given that Dr. Hern has only been able to identify limited evidence of comparable land transactions, he primarily relies on the residual method. That being said, Dr. Hern still uses comparable transactions as a cross-check for his results based on the residual method.[371]

b. Residual value of Obnova's premises

341. As explained above, the residual value of Obnova's premises at Dunavska 17-19 and Dunavska 23 represents the difference between "*the revenues a developer could generate from developing the land and the costs of the development, excluding the cost*

368 Hern ER, ¶ 70.

369 Hern ER, ¶ 72.

370 Hern ER, ¶ 73.

371 Hern ER, ¶ 73.

of the land itself."[372] Claimants describe information used by Dr. Hern to calculate the residual value of Obnova's premises in the following sub-sections.

i. Development parameters

342. Dr. Hern bases his calculation on a hypothetical development reflecting drawings prepared by Arhinaut M d.o.o. ("**Arhinaut**"), a Serbian licensed architectural firm.[373] The envisaged development represents a mixed development, including both residential (represented by apartments and associated parking) and commercial (office and retail space and associated parking).

343. The drawings prepared by Arhinaut are, in turn, based on the development parameters provided for in the 2015 DRP.[374] As explained above, the 2015 DRP regulates the land surrounding Obnova's premises. It is therefore reasonable to assume that, but-for the adoption of the 2013 DRP, the 2015 DRP would have applied also to Obnova's premises.

344. This is confirmed by the fact that the 2006 Decision, which was the basis for the drafting and adoption of the 2015 DRP, envisaged that the plan would govern "*the area between: Francuska, Cara Dušana, Tadeuša Košćuška streets and the existing railway in Dorćol, Municipality of Stari Grad*".[375] This area includes also Obnova's premises. It is therefore clear that the only reason why the 2015 DRP does not apply to Obnova's premises is the adoption of the 2013 DRP.

ii. Pre-construction period

345. In order to calculate the present value of the potential revenues generated by the hypothetical development assumed by Dr. Hern, it is first necessary to establish the date from which such revenues could be generated. In order to do so, it is necessary to estimate how long it would take to get all permits necessary for the construction, conduct pre-construction works and how long the construction would take.

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372 Hern ER, ¶ 72.

373 Hern ER, ¶ 79.

374 Hern ER, ¶ 79.

375 2006 Decision, p. 1, **C-313**.

346. In the present case, the first step in the permitting process would be the initiation of the conversion procedure. As explained above, if Serbia had not adopted the 2013 DRP, Obnova would have been able to convert its right of use over the land at Dunavska 17-19 and Dunavska 23 into ownership. It is reasonable to assume that Obnova would have done so after the adoption of the 2015 Law on Conversion because, as explained in more detail below, Obnova would pay zero conversion fee under this law.[376] Claimants conservatively assume it would have taken Obnova approximately a year to go through the conversion process. As a result, Obnova would have been able to acquire ownership over the land at Dunavska 17-19 and 23 years before the valuation date.

347. After Obnova would have gone through the conversion process, Obnova would have been able to request all permits necessary for the hypothetical development assumed by Dr. Hern and conduct additional pre-construction works (such as design and tendering). Dr. Hern assumes that this phase of the project would commence as of the valuation date.[377]

348. Relying on a World Bank's "*Doing Business*" study, Dr. Hern estimates that it would take Obnova one year to finalize this phase. As a result, Dr. Hern assumes that the next phase of the project—*i.e.* the construction phase—would commence one year after the valuation date.[378]

349. For the sake of completeness, Claimants instructed Dr. Hern to construct also an alternative valuation assuming that Obnova would start the conversion process, and continue with all the remaining steps described above, only after the valuation date. This alternative scenario is also presented in Dr. Hern's report.[379]

iii. Revenues generated by the potential development

350. The hypothetical development based on the Arhinaut drawings would generate the following types of revenues: (*i*) revenues from sale of residential apartments and associated parking; and (*ii*) revenues form renting out the office and retail space,

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376 For the avoidance of doubt, Claimants' but-for scenario assumes that Obnova is officially registered as an owner of buildings at Dunavska 17-19.

377 Hern ER, ¶ 121.

378 Hern ER, ¶ 121.

379 Hern ER, ¶ 183.

together with associated parking. As explained by Dr. Hern, this is in line with "*the business model that real estate developers of new mixed-use developments in Belgrade commonly adopt.*"[380]

351. In order to estimate the price of residential apartments, Dr. Hern relies on prices of apartments in new developments in the Dorćol area where Obnova's land is located.[381] Dr. Hern relies on three public sources for the information regarding these prices: (*i*) information contained in the Serbian Republic Geodetic Authority report from February 2023; (*ii*) Serbian Cadaster data; and (*iii*) information published by CBRE.[382]

352. Based on these sources, Dr. Hern on an apartment price of 3,287 EUR/m^2.[383] As a cross-check, Dr. Hern relies on prices for the wider Stari Grad municipality, which includes the Dorćol area. According to the Serbian Statistical Office, the average price of newly built apartments in Q4 2022 in Stari Grad was 3,468 EUR/m^2, *i.e.* approximately 5% more than the price used by Dr. Hern.[384]

353. For parking spaces, Dr. Hern relies on prices of parking spaces in comparable developments in the vicinity of Obnova's premises.[385]

354. Dr. Hern assumes that residential units in the potential development would be uniformly sold over a period of 2.5 years.[386] Dr. Hern also models a specific payment plan based on information regarding payment plans for other new developments in Belgrade.[387]

355. In order to establish rent levels for the commercial part of the hypothetical development, Dr. Hern draws on data regarding average office and retail rent levels for new developments in Belgrade published by CBRE and CW CBS, two reputable real estate services firms which are among the largest commercial real estate agencies operating in

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380 Hern ER, ¶ 81.

381 Hern ER, ¶ 83.

382 Hern ER, ¶ 84.

383 Hern ER, ¶ 86.

384 Hern ER, ¶ 87.

385 Hern ER, ¶ 88.

386 Hern ER, ¶ 93.

387 Hern ER, ¶¶ 94-96.

Belgrade.[388] Based on this data, Dr. Hern concludes on an office rent level of 16.5 EUR/m2 per month and a retail rent level of 31 EUR/m2 per month.[389] Dr. Hern further concludes that a reasonable monthly rent of a parking space would be EUR 150.[390] Dr. Hern arrives to this conclusion based on listings of parking spaces for rent in central Belgrade as of the last quarter of 2022.[391]

356. Same as with respect to prices of residential units, Dr. Hern assumes that office and retail rent levels will grow over time in line with eurozone inflation forecasts.[392] In order to estimate the total revenues from the commercial area that can be rented, Dr. Hern applies average vacancy rates for office and retail space in Belgrade, as reported by market reports from CBRE and CW CBS to the total commercial areas envisaged by Arhinaut.[393]

iv. Costs related to the potential development

357. Dr. Hern assumes the following costs in his residual valuation: (*i*) construction costs; (*ii*) selling costs of residential units; (*iii*) ongoing costs of leasing commercial units; and (*iv*) taxes and fees.[394]

358. Construction costs include so-called hard costs (*i.e.* the direct costs associated with the physical construction of the developments), soft costs (*i.e.* indirect costs such as architect and design costs, project management costs, supervision costs and marketing costs) and contingencies.[395]

359. Dr. Hern estimates the hard construction costs based on cost estimates for the same three Dorćol comparator developments that he uses to model reasonable revenues.[396] For soft construction costs, Dr. Hern relies on estimates from valuation reports for other mixed-

388 Hern ER, ¶ 98.

389 Hern ER, ¶ 102.

390 Hern ER, ¶ 103.

391 Hern ER, ¶ 103.

392 Hern ER, ¶ 104.

393 Hern ER, ¶¶ 105-107.

394 Hern ER, ¶ 109.

395 Hern ER, ¶ 110.

396 Hern ER, ¶ 112.

use developments in Belgrade from reputable real estate firms in Serbia (CBRE and ERB Property Services Ltd.).[397] Finally, Dr. Hern applies a 5% contingency.[398]

360. As selling costs of residential units, Dr. Hern assumes a 2% sales fee, based on market reports which suggest that agents in Serbia typically charge a 2% commission to the buyer, and a 2% commission to the seller.[399]

361. Ongoing costs of leasing of commercial units involve: (*i*) ongoing operating costs of the development that are not passed on to the tenants; and (*ii*) replacement reserves.[400] To establish the operating costs, Dr. Hern relies on CBRE data based on which these costs typically amount to up to 15% of the yearly rent in the office segment, and 8% in the retail segment.[401]

362. As for the replacement reserves, these are "*intended to cover the cost of replacing the assets when they come to the end of their useful life*."[402] Dr. Hern calculates these reserves based on an assumed useful life of 40 years, in line with the asset life standard for investment property as set by the IFRS, which is applied in Serbia.[403]

363. Finally, Dr. Hern reflects in his calculation all applicable taxes and fees. These include:

a. the land development fee—which is a fee payable by all developers who commence construction in Serbia;

b. property taxes; and

c. Serbian corporate income tax.[404]

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397 Hern ER, ¶ 118.

398 Hern ER, ¶ 117.

399 Hern ER, ¶ 122.

400 Hern ER, ¶¶ 123-125.

401 Hern ER, ¶ 124.

402 Hern ER, ¶ 125.

403 Hern ER, ¶ 125.

404 Hern ER § 5.4.

364. As already explained above, Obnova would not be obliged to pay any conversion fee under the 2015 Law on Conversion. According to the original, *.i.e.* first version of the law, the amount of the conversion fee was calculated as follows:

> The amount of the conversion fee for the conversion is determined by the body authority of the local self-government unit responsible for property legal relations, in accordance with the act on determining the average price per square meter of the corresponding immovable propertyreal estate by zone for determining the property tax, adopted enacted by the local self-government unit, in the territory where the construction land is located for which thea request for conversion has beenwas submitted and the procedure carried out in accordance with this law is located, according to theat market value of the subject building construction land in question, in accordance with the regulation regulating governing the property tax.
>
> The amount of compensation from referred to in paragraph 1 of this article Article can may be reduced in accordance with the conditions prescribed by this law and the regulations on the control of state aid.[405]

365. In case of Obnova's land at Dunavska 17-19 and Dunavska 23, this would lead to the following conversion fees before deductions:

a. Dunavska 17-19: size of the land (9,099m^2)[406] times price per m^2 determined for purposes of property tax (49,500 RSD/m^2)[407] equals RSD 450,400,500; and

b. Dunavska 23: size of the land (1,218m^2)[408] times price per m^2 determined for purposes of property tax (49,500 RSD/m^2)[409] equals RSD 60,291,000.

366. According to Article 8 of the original version of the 2015 Law on Conversion, the conversion fee could be reduced by an amount equal to the value of the land for regular

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405 Law on Conversion of the Right of Use into Ownership on the Construction Land with a Fee (Official Gazette RS, No. 64/2015), Art. 3, **C-332**.

406 Excerpt from Cadaster dated 23 March 2023, relating to land plot No. 47/1, **C-162**; Excerpt from Cadaster dated 23 March 2023, relating to land plot No. 47/2, **C-163**; Excerpt from Cadaster dated 23 March 2023, relating to land plot No. 47/3, **C-164**.

407 Decision on determination of the amount of average price of a square meter of corresponding real estate by zones on the territory of the city of Belgrade for determining property tax for the year 2015, p. 1, **C-333**.

408 Geometer's report, 27 August 2021, p. 12 (pdf), **C-334**.

409 Decision on determination of the amount of average price of a square meter of corresponding real estate by zones on the territory of the city of Belgrade for determining property tax for the year 2015, p. 1, **C-333**.

use.[410] The value of the land for the regular use was calculated in the same way as the value of the land being converted—*i.e.* the total size of the land multiplied by the average price for m^2 determined for the purposes of property tax. The size of the land for regular use was calculated as follows:

> In the process of conversion of a cadastral plot of built construction building land, the area of land for regular use of the building is determined by dividing the total area of land under the buildings facilities built on that cadastral plot, which was determined based onon the basis of data from the copy of the real estate listfolio, by the maximum area allowed by the occupancy index on that cadastral plot, which is determined established by a valid planning document, and based on the issued location information, multiply the obtained quotient with the total area of the cadastral plot.
>
> As the area of land under buildings, the The area under all buildings built on the cadastral plot, in accordance with the law (buildings, auxiliary buildings, garages, silos, reservoirs, internal roads, etc.) is calculated as the area of land under buildings.
>
> If buildings are built on the cadastral plot that are not subject to registration in the public register book of immovable propertyreal estate records and rights to themthereto (internal road, etc.), the land under these buildings is also considered land for regular use in the sense of paragraph 3. of this article, and the area surface of the land under the that building is determined by an expert in the geodetic profession from the list of permanent court experts.[411]

367. Applying the above statutory definition, the area of Obnova's land for regular use would be calculated as follows:

a. Dunavska 17-19: the total area of land under the facilities built on that cadastral plot ($9{,}099m^2$)[412] divided by the maximum area ($6{,}369m^2$) allowed by the

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410 Law on Conversion of the Right of Use into Ownership on the Construction Land with a Fee (Official Gazette RS, No. 64/2015), Art. 8, **C-332**.

411 Law on Conversion of the Right of Use into Ownership on the Construction Land with a Fee (Official Gazette RS, No. 64/2015), Art. 8 (emphasis added), **C-332**.

412 The entire area of Obnova's land plots is covered by either buildings or a concrete plateau. The plateau is not registered in the cadaster, but it enters into the calculation by virtue of Article 8(5) quoted above. *See* Law on Conversion of the Right of Use into Ownership on the Construction Land with a Fee (Official Gazette RS, No. 64/2015), Art. 8(4), **C-332**.

occupancy index on that cadastral plot (0.7[413]) times the total area of the land plots (9,099m^2) equals 12,999m^2; and

b. Dunavska 23: the total area of land under the facilities built on that cadastral plot (1,218m^2)[414] divided by the maximum area (853m^2) allowed by the occupancy index on that cadastral plot (0.7[415]) times the total area of the land plots (1,218m^2) equals 1,740m^2.

368. The area of the land for regular use calculated pursuant to the formula in the original version of the 2015 Law on Conversion would therefore exceed the total area of the land to be converted. Given the market value of the land that is being converted and the land for regular use were calculated in the same way, this means that the value of the land for regular use would be higher than the value of the land that is being converted. As a result, the conversion fee would be zero.

369. The result under the currently applicable version of the 2015 Law on Conversion would be the same. Under the current version of the 2015 Law on Conversion, the starting point for the calculation of the conversion fee is again the market value of the land being converted. The current version of the 2015 Law on Conversion states that the market value is calculated "*in accordance with the act on determining the average price per square meter of construction land by zone for determining property tax, adopted by the local self-government unit […]*."[416] In case of Obnova's land at Dunavska 17-19 and Dunavska 23, this would lead to the following conversion fees before deductions:

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413 2015 DRP, p. 146 (pdf), **C-326**. As explained above, given that the 2015 DRP applies to land surrounding Obnova's premises, it is reasonable to assume that but-for the adoption of the 2013 DRP, the 2015 DRP would also apply to Obnova's premises. *See supra* ¶¶ 341-342.

414 The entire area of Obnova's land plots is covered by either buildings or a concrete plateau. The plateau is not registered in the cadaster, but it enters into the calculation by virtue of Article 8(4) quoted above. *See* Law on Conversion of the Right of Use into Ownership on the Construction Land with a Fee (Official Gazette RS, No. 64/2015), Art. 8(4), **C-332**.

415 2015 DRP, p. 146 (pdf), **C-326**.

416 Law on Conversion of the Right of Use into Ownership on the Construction Land with a Fee (Official Gazette RS, No. 64/2015, 9/2020), Art. 3, **C-027**.

a. Dunavska 17-19: size of the land (9,099m^2)[417] times price per m^2 determined for purposes of property tax (71,957 RSD/m^2)[418] equals RSD 654,736,743; and

b. Dunavska 23: size of the land (1,218m^2)[419] times price per m^2 determined for purposes of property tax (71,957 RSD/m^2)[420] equals RSD 87,643,626.

370. According to Article 8 of the 2015 Law on Conversion, the market value of the land calculated in the first step can again be reduced by "*the market value of the land for regular use*" of facilities located at the land plot being converted.[421] The market value of the land for the regular use is again calculated based an average price per m^2 determined for property tax purposes. The extent of the land for regular us is defined as follows:

> In the process of conversion of a cadastral plot of built building land, *the area of land for regular use of the building is determined by dividing the total area of land under the facilities built on that cadastral plot*, which was determined on the basis of data from the copy of the real estate folio, *by the maximum area allowed by the occupancy index on that cadastral plot*, which is established by a valid planning document, and based on the issued location information, *multiply the obtained quotient with the total area of the cadastral plot.*
>
> The area under all buildings built on the cadastral plot, in accordance with the law (buildings, auxiliary buildings, garages, silos, reservoirs, internal roads, etc.) is calculated as the area of land under buildings.[422]

371. Applying the above statutory definition, the area of Obnova's land for regular use would be calculated as follows:

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417 Excerpt from Cadaster dated 23 March 2023, relating to land plot No. 47/1, **C-162**; Excerpt from Cadaster dated 23 March 2023, relating to land plot No. 47/2, **C-163**; Excerpt from Cadaster dated 23 March 2023, relating to land plot No. 47/3, **C-164**.

418 Decision amending the decision on local administrative taxes, 26 October 2022, **C-335**.

419 Geometer's report, 27 August 2021, p. 12 (pdf), **C-334**.

420 Decision amending the decision on local administrative taxes, 26 October 2022, **C-335**.

421 Law on Conversion of the Right of Use into Ownership on the Construction Land with a Fee (Official Gazette RS, No. 64/2015, 9/2020), Art. 8 (emphasis added), **C-027**.

422 Law on Conversion of the Right of Use into Ownership on the Construction Land with a Fee (Official Gazette RS, No. 64/2015, 9/2020), Art. 8, **C-027**.

a. Dunavska 17-19: the total area of land under the facilities built on that cadastral plot (9,099m^2)[423] divided by the maximum area (6,369m^2) allowed by the occupancy index on that cadastral plot (0.7[424]) times the total area of the land plots (9,099m^2) equals 12,999m^2; and

b. Dunavska 23: the total area of land under the facilities built on that cadastral plot (1,218m^2)[425] divided by the maximum area (853m^2) allowed by the occupancy index on that cadastral plot (0.7[426]) times the total area of the land plots (1,218m^2) equals 1,740m^2.

372. Given that the total area of the land for regular use, calculated pursuant to the formula in the 2015 Law on Conversion, would again be bigger than the total area of the land plots to be converted, there would be no conversion fee payable under the current version of the 2015 Law on Conversion either.

v. Summary of residual valuation

373. Using all the above-mentioned inputs and assumptions, Dr. Hern concludes that the residual value of Obnova's premises as of 31 December 2022 is EUR 37.2 million:[427]

Table 5.13: My Estimate of the But-for Value of Obnova's Premises Based on the Residual Method as of 31 December 2022 in the Full Ownership Scenario

		Dunavska 17-19	Dunavska 23	Total
A	Residual Value (EURm)	34.2	3.7	37.9
B	Purchasing Costs (%)	2.0%	2.0%	2.0%
A/(1+B)	**Value of Obnova's Premises (EURm)**	33.5	3.6	37.2

Source: Hern analysis, tab "Residual Valuation", ***RH-XXX.***

423 As explained above, the entire area of Obnova's land plots is covered by either buildings or a concrete plateau. The plateau enters into the calculation by virtue of Articles 8(6) and 8(7) of the 2015 Law on Conversion. *See* Law on Conversion of the Right of Use into Ownership on the Construction Land with a Fee (Official Gazette RS, No. 64/2015, 9/2020), Arts. 8(6) to 8(7), **C-027**.

424 2015 DRP, p. 146 (pdf), **C-326**.

425 As explained above, the entire area of Obnova's land plots is covered by either buildings or a concrete plateau. The plateau enters into the calculation by virtue of Articles 8(6) and 8(7) of the 2015 Law on Conversion. *See* Law on Conversion of the Right of Use into Ownership on the Construction Land with a Fee (Official Gazette RS, No. 64/2015, 9/2020), Arts. 8(6) to 8(7), **C-027**.

426 2015 DRP, p. 146 (pdf), **C-326**.

427 Hern ER, ¶ 141.

c. Cross-checks used by Dr. Hern

374. Dr. Hern presents two cross-checks of his residual valuation. First, Dr. Hern relies on data from the Serbian Statistical Office on the decomposition of residential property prices into constituent elements, including land costs. Second, he relies on data regarding comparable land transactions.

i. Cross-check based on data from the Serbian Statistical Office

375. The Serbian Statistical Office publishes reports decomposing prices of newly built residential properties in Serbia into three categories: (*i*) the price of land; (*ii*) the cost of construction works; and (*iii*) other expenditures.[428] According to the data from the Serbian Statistical Office, the land price component accounted for 26% of the average sales price per m^2 of a newly built residential property in Belgrade over the period from 2010 to 2018.[429]

376. Assuming that the proportion of the final sales price accounted for by the land price is 26% and using the same price per m^2 for new residential property and the maximum living area as in his residual value calculation, Dr. Hern estimates the value of the expropriated Obnova premises to be EUR 40.5 million as of 31 December 2022.[430]

377. Dr. Hern observes that this higher valuation based on the land price decomposition from the Serbian Statistical Office is caused by the fact that the data from the Statistical Office only relates to residential development, while the hypothetical development assumed by Dr. Hern is a mixed development.[431] Dr. Hern explains that the "*latest data shows that residential sales prices have increased in light of rising construction costs, while commercial rents are yet to respond, suggesting that new residential property appears to be relatively more valuable compared to commercial at this time.*"[432]

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428 Hern ER, ¶ 143.

429 Hern ER, ¶ 146.

430 Hern ER, ¶ 148.

431 Hern ER, ¶ 160(B).

432 Hern ER, ¶ 160(B).

ii. Cross-check based on comparable land transactions

378. In his second cross-check, Dr. Hern compares the residual value of Obnova's premises with the only comparable transaction that he was able to identify. This comparable transaction is represented by the sale of the Marina Dorćol land by the City of Belgrade to a Czech real estate development company (Sebre Holding A.S.) for EUR 32.8 million in September 2019.[433]

379. As explained by Dr. Hern, even though the Marina Dorćol land is comparable to Obnova's premises, it has slightly different characteristics that warrant certain adjustments. After these adjustments, Dr. Hern arrives at the value of Obnova's premises implied by the Marina Dorćol transaction of EUR 36.1 million.[434] This value is consistent (3% lower) with that of Dr. Hern's value based on the residual method.[435]

* * *

380. In conclusion Dr. Hern's cross-checks are consistent (slightly higher) with Dr. Hern's residual valuation.[436]

d. Summary of Dr. Hern's valuation of Obnova's premises

381. As explained above, using the residual valuation approach, Dr. Hern arrives at a value of Obnova's premises of EUR 37.2 million.[437] This value is consistent (slightly lower) with the value estimated based on the two cross-checks used by Dr. Hern.

382. Dr. Hern carries the total value of Obnova's premises as of 31 December 2022 to the date of his report by applying the relevant pre-award interest. By doing so, Dr. Hern arrives at a value of EUR 38.2 million.[438]

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433 Hern ER, ¶¶ 150-151.

434 Hern ER, ¶¶ 154-158.

435 Hern ER, ¶ 160(A).

436 Hern ER, ¶ 160.

437 Hern ER, ¶ 141.

438 Hern ER, ¶¶ 167-174.

Table 7.5: Obnova's Losses Including Pre-award Interest as of 31 March 2023 in the Full Ownership Scenario

	Losses as of Valuation Date - 31 December 2022 (EURm)	Pre-Award Interest (EURm)	Losses as of Report Date - 31 March 2023 (EURm)
LDI-based interest	37.2	1.0	**38.2**
Euribor-based interest	37.2	0.5	**37.6**

*Source: Hern analysis.xlsx, tab "Losses", **C-190**.*

7. Cypriot Claimants suffered a loss of EUR 26.2 million

383. In order to calculate the loss of Cypriot Claimants, Dr. Hern calculates the value of Obnova's net liabilities, being EUR 733,633, and subtracts this amount from the total value of Obnova's expropriated premises.[439] Dr. Hern does so because the existence of the net liabilities means that "*some of the losses arising from the adoption of the 2013 DRP do not accrue to Obnova's shareholders, but instead result in a loss in value of liabilities held by Obnova's creditors, with only the residual amount after the creditors are satisfied accruing to shareholders.*"[440]

384. In order to calculate the specific loss incurred by Cypriot Claimants, Dr. Hern then multiplies the total losses accruing to shareholders with Cypriot Claimants' shareholding in Obnova of 70%. Dr. Hern thus calculates the loss accruing to Cypriot Claimants in the amount of EUR 26.2 million.[441]

385. As already explained above, the loss suffered by Cypriot Claimants would be the same regardless of whether the Tribunal upholds Cypriot Claimants' expropriation claim or any of its other claims under the Serbia-Cyprus BIT. This is because the compensation due for expropriation of Obnova's premises—being the fair market value of these premises—is the same under both international and Serbian law. There is, therefore, no difference between compensating Cypriot Claimants for the expropriation under international law and compensating Claimants for Serbia's arbitrary refusal to provide compensation to Obnova due under Serbian law.

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439 Hern ER, ¶¶ 176-178.

440 Hern ER, ¶ 74(D).

441 Hern ER, ¶ 180.

B. Mr. Broshko suffered a loss of EUR 3.8 million

1. Breaches claimed by Mr. Broshko

386. As explained in **Section V** above, Mr. Broshko invokes the following breaches of the Canada-Serbia BIT:

a. breach of the FET standard based on Serbia's arbitrary, unfair and unjust refusal to provide Obnova compensation due under Serbian law; and

b. impairment of Mr. Broshko' investment by unreasonable and discriminatory measures (being the unreasonable refusal to provide to Obnova compensation due under Serbian law).

2. Serbia must provide Mr. Broshko with full reparation for breaches of its obligations under the Canada-Serbia BIT

387. Serbia must provide reparation for its breaches of the Canada-Serbia BIT under the full reparation standard. As Claimants demonstrated in detail in **Sections VI.A1-V.A.2** above, this conclusion stems from Article 31 of the ILC Articles and it has also been confirmed by international tribunals.[442]

388. Furthermore, as Claimants explained in **Section VI.A.3** above, in cases where an investor suffered losses as a result of treaty breaches other than unlawful expropriation, the full reparation standard entitles it to compensation equal to the reduction in the fair market value of the investment and historical losses otherwise caused by the breaches.[443] As noted by the tribunal in *Sempra v. Argentina*:

> Fair market value is thus a commonly accepted standard of valuation and compensation. In the present case, the Claimant made its investment in Argentina in 1996 and increased it over the years. The Tribunal is of the view that fair market value would be the most appropriate standard to apply in this case to establish the value of the losses, if any, suffered by the Claimant as a result of the Treaty breaches which occurred, *by comparing the fair market value of the companies*

442 *Supra* § VI.A.2..

443 *Enron Corporation and Ponderosa Assets LP v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007, ¶ 363, 445-448, **CL-033**; *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award, 28 September 2007, ¶¶ 403-404, 411-412, 467-469, **CL-044**.

> *concerned with and without the measures adopted by Argentina in January 2002*.[444]

389. The award of damages equal to the difference between the actual and but-for fair market value of an investment allows investors to recover the part of their investment's value lost due to unlawful conduct of a state. It, therefore, puts them in the same position in which they would have been but-for the breaches of the treaty. This approach, thus, also "*reestablish[es] the situation which would, in all probability, have existed if [an unlawful] act had not been committed*", as required under the *Chorzów Factory* standard.[445]

390. In the case of Mr. Broshko, the difference between the fair market value of his investment with and without the measures amounts to Mr. Broshko's indirect share in the compensation that Obnova should have received under Serbian law. This is because, if Serbia had compensated Obnova for the adoption of the 2013 DRP—as it was obliged to do under both Serbian law and the Canada-Serbia BIT—Mr. Broshko would have had been able to participate in the proceeds of such compensation. Obnova would have been able to either distribute the compensation to its shareholders, including Mr. Broshko, or the shareholders would have been able to sell their shares in Obnova at a higher price (due to the fact that Obnova would have kept the entire amount of such compensation on its balance sheet).

391. Same as with respect to Cypriot Claimants, the damages due to Mr. Broshko would be the same regardless of whether the Tribunal upholds either of the claimed breaches or both of them. This is because both breaches claimed by Mr. Broshko stem from the same measure—*i.e.* the express refusal to provide Obnova with compensation due under Serbian law. There is only one loss caused by this measure—regardless of whether the Tribunal qualifies it as a breach of the FET standard or an impairment of Mr. Broshko' investment by unreasonable and discriminatory measures.

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444 *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award, 28 September 2007, ¶ 404 (emphasis added), **CL-044**.

445 *Case Concerning the Factory at Chorzów (Germany v Poland),* Decision on the Merits, 13 September 1928, PCIJ Rep. Series A - No. 17, p. 47, **CL-035**.

392. The valuation date should be the date of the award.[446] Given that Dr. Hern calculates the value of Obnova's premises as of 31 December 2022, this value must be brought forward to the date of his report using the applicable interest rate. Same as with respect to Cypriot Claimants, the interest shall be calculated pursuant to Serbian law.

393. This is because the interest due under Serbian law is more advantageous than the interest usually awarded by tribunals in the absence of treaty provisions regulating quantification of interest. Thus, the respective provisions of Serbian law prevail in accordance with the preservation of rights clauses in Article 13(1) of the Qatar-Serbia BIT, which Mr. Broshko invokes under the most-favored nation clause in Article 5 of the Canada-Serbia BIT.

394. Article 5 of the Canada-Serbia BIT states that:

> 1. Each Party shall accord to an investor of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.
>
> 2. Each Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.[447]

395. The most-favored nation clause in Article 5 of the Canada-Serbia BIT allows Mr. Broshko to invoke Article 13 of the Qatar-Serbia BIT, which provides for the following preservation of rights clause:

> 1.If the domestic law of either Contracting Party, or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contains a provision, whether general or specific, entitling investments by investor of the other Contracting Party to a treatment more favorable than is provided for by this Agreement, such provision shall, to the extent that it is more favorable to an investor, prevail over this Agreement.
>
> 2. Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party, according to its laws and

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446 *Supra* ¶¶ 310-319.

447 Canada-Serbia BIT, Art. 5, **CL-001**.

> regulations or other provisions of specific contract or investment authorization or agreement, is more favorable than that provided under this agreement, the most favorable treatment shall apply.[448]

396. As explained above, *Newcombe and Paradell* confirm that investors may rely on preservation of rights clauses to use more favorable domestic law provisions governing calculation of compensation.[449] As further explained above, this is exactly the case here because the Serbian interest rate leads to higher overall compensation and is, therefore, more favorable to Mr. Broshko than the interest rate commonly awarded by tribunals in the absence of treaty provisions regulating quantification of interest.[450]

397. In case the Tribunal finds that Mr. Broshko cannot rely on the preservation of rights clause to claim interest calculated pursuant to Serbian law, Mr. Broshko alternatively claims interest calculated at an interest rate equal to 6-month average EURIBOR + 2%, compounded semi-annually. As explained above:

a. tying the interest rate to a benchmark rate—such as EURIBOR—is a common practice in ICSID investment arbitration;

b. the base interest rate used by arbitral tribunals is in most cases further increased by a certain premium with the majority of tribunals awarding a 2% premium; and

c. it is also a common international practice to award compound, rather than simple interest.[451]

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448 Agreement between the Government of the Republic of Serbia and the Government of the State of Qatar for the Reciprocal Promotion and Protection of Investments, Art. 13, **CL-004**.

449 A. Newcombe and L. Paradell, *Law and Practice of Investment Treaties: Standards of Treatment* (2009), p. 478, **CL-049**.

450 *Supra* ¶¶ 321-326.

451 *Supra* ¶ 331.

3. Obnova is entitled to EUR 38.2 million compensation under Serbian law

a. Under Serbian law, Serbia is obliged to compensate Obnova for the expropriation of its premises

398. As explained above, under Serbian law, Obnova is entitled to compensation for its expropriated rights that cannot be lower than the market value of expropriated rights.[452] As further explained by Prof. Živković and Mr. Milošević, the specific amount representing the market value of these rights should be calculated as of the date of the court decision awarding the compensation.[453]

399. As already explained above, because Serbia had not initiated proper expropriation proceedings that could lead to a decision on compensation, the appropriate date for the assessment of the market value of Obnova's expropriated rights is the date of the award of this Tribunal.

b. Compensation due to Obnova is EUR 38.2 million

400. As explained in **Section III.K.3** above, the compensation due to Obnova under Serbian law is equal to the market value of the expropriated rights at the time of the decision awarding the compensation. Under international law, Mr. Broshko is also entitled to compensation equal to the difference between the fair market value of his investment before and after the disputed measure.

401. As further explained above, the calculation of the fair market value of Obnova's premises is the first step in Dr. Hern's analysis of losses suffered by Claimants. Furthermore, Dr. Hern calculates the value of Obnova's premises as of the date of the award. That is also a proper date for calculation of compensation due to Obnova under Serbian law. As a result, the value of Obnova's premises estimated by Dr. Hern can therefore be used to calculate the compensation due to Obnova under Serbian law.

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452 *See* 2006 Constitution of Republic Serbia (Official Gazette RS, No. 98/2006), Arts. 18, **C-031**.; 1995 Law on Expropriation (Official Gazette of RS, No. 53/95; Official Gazette of SRY, No. 16/01; Official Gazette of RS, No. 20/09, 55/13, 106/16), Art. 1, **C-032**.

453 Živković Milošević ER, ¶ 253.

402. As explained above, the total loss incurred by Obnova as of 31 March 2023 is equal to EUR 38.2 million.[454]

4. The value of Mr. Broshko's interest in Obnova's compensation claim is EUR 3.7 million

403. As explained above, given that Obnova has net liabilities in the amount of EUR 733,633, this value needs to be deducted from the amount of compensation due to Obnova before the calculation of losses accruing to individual shareholders.[455] As a result, the loss accruing to the shareholders of Obnova is equal to EUR 37.4 million.[456]

404. Mr. Broshko currently owns 10% of Obnova's shares through MLI. As a result, the total loss accruing to Mr. Broshko and MLI amounts to EUR 3.7 million.[457]

405. In addition, given that the value of loss incurred by Obnova is adjusted for the value of Obnova's net liabilities, Mr. Broshko and MLI also have a claim for unpaid receivables that they have against Obnova in the amount of EUR 82,114.[458]

454 Hern ER, ¶ 174.

455 Hern ER, ¶ 176.

456 Hern ER, ¶ 178.

457 Hern ER, ¶ 180.

458 Hern ER, ¶ 181.

VII. REQUEST FOR RELIEF

406. Claimants request that the Tribunal issues an award:

a. declaring that Serbia has breached the Serbia-Cyprus BIT with respect to Kalemegdan and Coropi;

b. declaring that Serbia has breached the Canada-Serbia BIT with respect to Mr. Broshko and MLI;

c. ordering Serbia to pay compensation to Cypriot Claimants of no less than EUR 26.2 million;

d. ordering Serbia to pay compensation to Mr. Broshko and MLI of not less than EUR 3.8 million;

e. ordering Serbia to pay interest on any amounts awarded at the rate of Serbian statutory default interest rate from 31 March 2023 until the payment is made in full;

f. ordering Serbia to pay the costs of this proceeding, including costs of legal representation; and

g. ordering such other relief as the Tribunal may deem appropriate in the circumstances.

407. Claimants reserve the right to supplement or otherwise amend their claims and the relief sought.

Submitted on behalf of Kalemegdan, Coropi and Mr. Broshko

Rostislav Pekař
Stephen Anway
Luka Misetic
Matej Pustay
SQUIRE PATTON BOGGS

Nenad Stanković
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ANNEX A

The current status of buildings and land plots constituting Obnova's premises

A. Dunavska 17-19, Belgrade

408. The current status of Obnova's premises at Dunavska 17-19 can be seen on the following map:[459]

409. Obnova is the unregistered owner and holder/possessor of all real estate objects located at Dunavska 17-19. Their current legal status is as follows:[460]

Land plot No.	**Object Identification**	**Note**
47/1 CM Stari grad	3	Entered into the records of the Geodetic Authority of the Republic of Serbia – Service for Real Estate Cadaster
	5	
	6	
	7	
	14	
	15	
	16	
	A	Not entered into the records of the Real Estate Cadaster

459 Drawings on the map are provided for illustration purposes only and are not intended to be a definitive representation of the configuration of the referenced objects or the size of land subject to Obnova's unregistered right of use.

460 This overview is prepared based on information available the web site of the Direction for construction land and development of Belgrade (https://gis.beoland.com/visios/gisBeoland). *See* Screenshots from Cadaster website dated 23 January 2023, **C-175**.

Land plot No.	Object Identification	Note
47/2 CM Stari grad	1	Entered into the records of the Real Estate Cadaster[461]
	2	
	3	
	4	
	5	
	B	Not entered into the records of the Real Estate Cadaster
	C	
47/3 CM Stari grad	D	Not entered into the records of the Real Estate Cadaster

B. Dunavska 23, Belgrade

410. Obnova's premises at Dunavska 23 can be seen on the following map:[462]

461 Object 3 on cadastral parcel 47/2 CM Stari grad is in fact a part of object 7 on cadastral parcel 47/1 CM Stari grad, extending partly to cadastral parcel 47/2 CM Stari grad, as registered in the records of the Cadaster.

462 Drawings on the map are provided for illustration purposes only and are not intended to be a definitive representation of the configuration of the referenced objects or the size of land subject to Obnova's unregistered right of use.

411. Obnova is the unregistered owner and holder/possessor of the following real estate objects located at Dunavska 23. Their current legal status is as follows:[463]

Land plot No.	**Objects**	**Note**
39/1 CM Stari grad	9	Entered into the records of the Real Estate Cadaster
	E	Not entered into the records of the Real Estate Cadaster[464]
39/12 CM Stari grad	1	Entered into the records of the Real Estate Cadaster
	F	Not entered into the records of the Real Estate Cadaster[465]
40/5 CM Stari grad	9	Entered into the records of the Real Estate Cadaster[466]
22/4 CM Stari grad	F	Not entered into the records of the Real Estate Cadaster[467]
39/15 CM Stari grad	-	Part of this land plot represents land necessary for regular use of Obnova's buildings listed above.

463 This overview is prepared based on information available the web site of the Direction for construction land and development of Belgrade (https://gis.beoland.com/visios/gisBeoland). *See* Screenshots from Cadaster website dated 23 January 2023, **C-175**.

464 Object E extends over two land plots: (*i*) 39/1; and (*ii*) 39/12.

465 Object F extends over two land plots: (*i*) 39/12; and (*ii*) 22/4.

466 Object 9 on cadastral parcel 40/5 CM Stari grad is in fact a part of object 1 on cadastral parcel 39/12 CM Stari grad, extending partly to cadastral parcel 40/5 CM Stari grad, as entered into the records of the Cadaster.

467 Object F extends over two land plots: (*i*) 39/12; and (*ii*) 22/4.