

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE NO. ARB/20/44

**MR. NASIB HASANOV
(Claimant)**

v.

**GEORGIA
(Respondent)**

**DECISION ON COSTS
Inter-State Negotiation Objection**

Members of the Tribunal

Mr. Laurence Shore, President of the Tribunal
Professor Stanimir Alexandrov, Arbitrator
Mr. J. William Rowley QC, Arbitrator

Secretary of the Tribunal

Ms. Celeste Mowatt

August 2, 2022

I. INTRODUCTION

1. The Parties have each submitted, on May 5, 2022, succinct statements of costs and requests for allocation of costs in relation to the Tribunal's Decision on the Inter-State Negotiation Objection.

2. ICSID Convention Article 61(2) states as follows:

“In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.”

3. ICSID Arbitration Rule 28(1) (2006 edition) provides as follows:

“Without prejudice to the final decision on the payment of the cost of the proceeding, the Tribunal may, unless otherwise agreed by the parties, decide:

(a) at any stage of the proceeding, the portion which each party shall pay, pursuant to Administrative and Financial Regulation 14, of the fees and expenses of the Tribunal and the charges for the use of the facilities of the Centre;

(b) with respect to any part of the proceeding, that the related costs (as determined by the Secretary-General) shall be borne entirely or in a particular share by one of the parties.”

4. The Azerbaijan-Georgia BIT does not refer to costs allocation.

5. Although not applicable to this proceeding, the Tribunal notes that the recently amended ICSID Arbitration Rules (2022) contain guidance on costs decisions. New Rule 52 provides as follows:

“(1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:

(a) the outcome of the proceeding or any part of it;

- (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal;
- (c) the complexity of the issues; and
- (d) the reasonableness of the costs claimed.”

New Arbitration Rule 3(1) is also relevant to costs decisions: the “Tribunal and the parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.

- 6. The Parties agree that the Tribunal has discretion to allocate costs. The Tribunal briefly summarizes the Parties’ positions and then provides its analysis and ruling.

II. THE CLAIMANT’S POSITION

- 7. The Claimant seeks an award of all costs that he incurred. He states that his costs are reasonable and proportionate in view of the issues addressed and the work undertaken to respond to Georgia’s Objection. In particular, the Claimant asserts that the Objection was a wasteful, dilatory tactic. The Claimant accepts that the Tribunal found that Article 9 of the BIT contains an inter-State negotiation precondition, but comments that the Tribunal rejected Georgia’s view on how the precondition can be satisfied. Additionally, the inter-State negotiation had occurred long before the Request for Arbitration (“Request”) was filed, which Georgia obviously knew, and would have further understood from the Request and accompanying exhibits. The Claimant also asserts that even if the Objection had succeeded, the Claimant would simply have refiled the arbitration. For these reasons, the Claimant seeks recovery of his total costs of pounds sterling 420,671.39 and USD 89,733.00.

III. THE RESPONDENT’S POSITION

- 8. Georgia states that the Tribunal should use its discretion to order that each Party shall bear its own costs incurred in connection with the Objection. Georgia comments that its Objection was advanced in good faith and was reasonable, in view of the Tribunal’s Decision. Georgia points out that the Tribunal first granted its application for bifurcation and then endorsed Georgia’s positions that (a) the

BIT contains an inter-State negotiation requirement; and (b) the Claimant's non-compliance with the requirement would have brought the arbitration to an end (whether as a matter of jurisdiction or admissibility). While the Tribunal ultimately ruled that the Claimant has inadvertently complied with the requirement, the Claimant's position on the issue of compliance evolved significantly over the course of the proceedings. Georgia's total costs incurred amount to EUR 545,360.34, which it asserts is a reasonable amount given the issues and the Claimant's evolving positions.

IV. THE TRIBUNAL'S ANALYSIS

9. The Tribunal considers the following factors to be significant in reaching its costs allocation determination:
 - (i) Both sides conducted themselves with a very high degree of professionalism and civility, which the Tribunal expected but for which it is nonetheless grateful.
 - (ii) The written and oral submissions of both sides were uniformly excellent.
 - (iii) Georgia's Objection was lodged in good faith. Moreover, as Georgia notes, Georgia's application for bifurcation was successful, and resolution of the Objection entailed detailed consideration of important and very complex issues.
 - (iv) While the Claimant ultimately prevailed on the Objection, Georgia's position on the existence of the inter-State negotiation requirement was upheld, which the Claimant had strongly opposed, particularly in his initial written and oral submissions.
 - (v) The costs of each Party were reasonably incurred.
10. In view of these factors, the Tribunal considers that the appropriate allocation regarding the Decision on the Inter-State Negotiation Objection is for each Party to bear its own costs.
11. This allocation determination does not affect other allocation determinations that the Tribunal may be required to make. That is, this particular determination and

the reasoning underlying it does not constrain the Tribunal's discretion in reaching and rendering any future allocation determination(s).

V. DECISION

12. For the reasons set out above, the Tribunal decides and orders:

Each Party shall bear the costs that it incurred in relation to the Decision on the Inter-State Negotiation Objection.

[signed]

Stanimir Alexandrov
Arbitrator

[signed]

J. William Rowley
Arbitrator

[signed]

Laurence Shore
President of the Tribunal