IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE TREATY BETWEEN CANADA AND ROMANIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENS DATED 8 MAY 2009, WHICH ENTERED INTO FORCE ON 23 NOVEMBER 2011, AND/OR THE TREATY BETWEEN CANADA AND ROMANIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENS DATED 17 APRIL 1996, WHICH ENTERED INTO FORCE ON 11 FEBRUARY 1997

-and-

THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW AS REVISED IN 2010

-between-

MR. EDWARD SUKYAS

(CLAIMANT)

v.

ROMANIA

(RESPONDENT)

Final Award

The Arbitral Tribunal

Prof. Bernard Hanotiau (Presiding Arbitrator)
Prof. Dr. Stephan W. Schill
Ms. Loretta Malintoppi

Secretary to the Tribunal

Mr. Juan Camilo Jiménez Valencia

Date of dispatch to the Parties: 6 November 2024

REPRESENTATION OF THE PARTIES

(As submitted by the Parties in September 2024)

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CHAPTER I. THE PARTIES TO THE ARBITRATION

1. The Claimant is Mr. Edward Sukyas, a Canadian national who also holds Turkish nationality ("**Claimant**").[1] Whether or not Claimant has always held Turkish nationality is disputed by the Parties.

2. Claimant has been represented in these proceedings by the attorneys and counsel mentioned at page "i" above.

3. Respondent is the Romanian State ("**Romania**" or "**Respondent**").

4. Romania has been represented in these proceedings by the attorneys and counsel identified at page "i" above.

5. Claimant and Respondent are jointly referred to as "**Parties**" and individually as a "**Party**".

CHAPTER II. THE ARBITRAL TRIBUNAL

6. The Tribunal was constituted as follows:

(i) On 18 February 2020, Claimant appointed Professor Dr. Stephan W. Schill, a German national, as the first arbitrator. Professor Schill's contact details are:

Prof. Dr. Stephan W. Schill
c/o Max Planck Institute for Comparative Public Law and International Law
Im Neuenheimer Feld 535
69120 Heidelberg
Germany

(ii) On 8 September 2020, Respondent appointed Ms. Loretta Malintoppi, an Italian national, as the second arbitrator. Ms. Loretta Malintoppi's contact details are:

Ms. Loretta Malintoppi
39 Essex Chambers
Maxwell Chambers Suites

[1] The Tribunal clarifies that there is a parallel proceeding initiated by Mr. Jak Sukyas against Romania. As indicated in paragraph 16.1 of the Terms of Appointment "the proceedings initiated by Mr. Jak Sukyas and Mr. Edward Sukyas against Romania are legally distinct but shall be procedurally coordinated. In this sense, both proceedings shall follow identical procedural timetables, and the Parties will file a single set of pleadings addressing both claims".

28 Maxwell Road #03-04, 04-04
Singapore 069120
Tel.: (+65) 6320 9272
loretta.malintoppi@39essex.com

(iii) On 1 November 2020, the Parties appointed Professor Bernard Hanotiau, a Belgian national, as presiding arbitrator. Professor Hanotiau's contact details are:

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CHAPTER III. THE TREATIES INVOKED BY CLAIMANT AND THE APPLICABLE ARBITRATION RULES

7. By Notice of Arbitration dated 18 February 2020, Mr. Edward Sukyas commenced arbitration proceedings against Romania pursuant to: (i) Article XIII of the Treaty between the Government of Canada and the Government of Romania for the Promotion and Reciprocal Protection of Investments dated 8 May 2009, which entered into force on 23 November 2011 ("**2009 Canada-Romania BIT**" or "**2009 BIT**"); and / or (ii) Article XIII of the Treaty between the Government of Canada and the Government of Romania for the Promotion and Reciprocal Protection of Investments dated 17 April 1996, which entered into force on 11 February 1997 ("**1996 Canada-Romania BIT**", or "**1996 BIT**" or collectively, the "**Canada-Romania BITs**").

8. Article XIII of the 2009 Canada-Romania BIT provides as follows:

"ARTICLE XIII

Settlement of Disputes between an Investor and the Host Contracting Party

1. Any dispute between one Contracting Party and an investor of the other Contracting Party, relating to a claim by the investor that a measure taken or not taken by the former Contracting Party is in breach of this Agreement, and that

the investor has incurred loss or damage by reason of, or arising out of, that breach, shall, to the extent possible, be settled amicably between them.

2. If a dispute has not been settled amicably within a period of six months from the date on which it was initiated, it may be submitted by the investor to arbitration in accordance with paragraph 4. For the purposes of this paragraph a dispute is considered to be initiated when the investor of one Contracting Party has delivered notice in writing to the other Contracting Party alleging that a measure taken or not taken by the latter Contracting Party is in breach of this Agreement, and that the investor has incurred loss or damage by reason of, or arising out of, that breach. It is agreed, subject to the provisions of this Article, that the Contracting Parties encourage investors to make use of domestic courts and tribunals for the resolution of disputes."

3. An investor may submit a dispute as referred to in paragraph 1 to arbitration in accordance with paragraph 4 only if:

(a) the investor has consented in writing thereto;

(b) the investor has waived its right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned or in a dispute settlement procedure of any kind;

(c) if the matter involves taxation, the conditions specified in paragraph 5 of Article XII (Taxation Measures) have been fulfilled; and

(d) 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.

4. The dispute may, at the election of the investor concerned, be submitted to arbitration under:

[…]

(c) the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

5. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Article".[2]

9. Article XIII of the 1996 Canada-Romania BIT reads:

[2] **Exhibit CL-41/ RL-2**, Article XIII of the 2009 Canada-Romania BIT.

"ARTICLE XIII

Settlement of Disputes between an Investor and the Host Contracting Party

1. Any dispute between one Contracting Party and an investor of the other Contracting Party, relating to a claim by the investor that a measure taken or not taken by the former Contracting Party is in breach of this Agreement, and that the investor has incurred loss or damage by reason of, or arising out of[,] that breach, shall[,] to the extent possible, be settled amicably between them[.]

2. If a dispute has not been settled amicably within a period of six months from the date on which it was initiated, it may be submitted by the investor to arbitration in accordance with paragraph (4)[.] For the purposes of this paragraph, a dispute is considered to be initiated when the investor of one Contracting Party has delivered notice in writing to the other Contracting Party alleging that a measure taken or not taken by the latter Contracting Party is in breach of this Agreement, and that the investor has incurred loss or damage by reason of, or arising out of, that breach[.] It is agreed, subject to the provisions of this Article, that the Contracting Parties encourage investors to make use of domestic courts and tribunals for the resolution of disputes[.]

3. An investor may submit a dispute as referred to in paragraph (1) to arbitration in accordance with paragraph (4) only if[:]

(a) the investor has consented in writing thereto;

(b) the investor has waived its right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned or in a dispute settlement procedure of any kind,

(c) if the matter involves taxation, the conditions specified in paragraph 5 of Article XII have been fulfilled, and

(d) 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[.]

4. The dispute may, at the election of the investor concerned, be submitted to arbitration under[:]

[…]

(c) an international arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)[.]

> 5. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Article".[3]

10. The relationship between, and the applicability of, the two Canada-Romania BITs is contested among the Parties.

11. The Parties agreed by correspondence dated 8 and 17 August 2020, that the 2010 UNCITRAL Arbitration Rules shall govern the proceedings ("**UNCITRAL Arbitration Rules**").

12. Pursuant to paragraph 6.1 of the Terms of Appointment, the legal place (or the "seat") of the arbitration is Paris, France.

13. On 1 April 2022, Claimant filed his Statement of Claim ("**SoC**"). In his SoC, Claimant advanced claims against Romania also pursuant to Article 6(3)(b) of the Agreement between the Government of the Republic of Turkey and the Government of Romania on the Reciprocal Promotion and Protection of Investments, dated 3 March 2008, which entered into force on 8 July 2010 ("**Turkey-Romania BIT**").

14. Article 6 of the Turkey-Romania BIT reads as follows:

> "ARTICLE 6
> Settlement of Investment Disputes
>
> (1) For the purposes of this Article, an investment dispute is defined as a dispute involving:
>
> (a) interpretation or application of any investment authorization granted by a Contracting Party's foreign investment authority to an investor of the other Contracting Party. or
>
> (b) a breach of any right conferred or created by this Agreement with respect to an investment.
>
> (2) Any dispute between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be settled as far as possible amicably by consultations and negotiations between the parties to the dispute.

[3] **Exhibit CL-40 / RL-88**, Article XIII of the 1996 Canada-Romania BIT.

(3) If the dispute cannot be settled by consultations and negotiations within six months from the date of request for settlement then the dispute shall be submitted to, as the investor may, choose to:

(a) the International Center for Settlement of Investment Disputes (ICSID) set up by the 'Convention on Settlement of Investment Disputes Between States and Nationals of other States' done at Washington, on March 16, 1965, in case both Contracting Parties become signatories of this Convention.

(b) an ad hoc court of arbitration laid down under the Arbitration Rules or Procedure of the United Nations Commission for International Trade Law (UNCITRAL).

[…]

(5) The arbitral tribunal shall decide on the basis of the law, taking into account the sources of law in the following precedence:

- the provisions of this Agreement and other relevant Agreements between the Contracting Parties;
- the law in force in the Contracting Party concerned;
- the provisions of special agreements relating to investments;
- the general principles of international law as recognized by both Contracting Parties.

[…]

(7) The arbitration awards shall be final and binding for all parties in dispute. Each Contracting Party commits itself to execute the award according to its national law".[4]

CHAPTER IV. THE PROCEDURAL HISTORY

15. On 18 February 2020, Claimant filed a Notice of Arbitration, pursuant to Articles XIII of the Canada-Romania BITs. At the time the Notice of Arbitration was filed, Claimant was represented by: (i) Mayer Brown; (ii) Pierce Bainbridge Beck Price & Hecht ("**Pierce Bainbridge**"); and (iii) Crina Baltag Law Office. On even date, Claimant appointed Prof. Dr. Stephan W. Schill as the first arbitrator.

16. In or around July 2020, Claimant informed Respondent that Pierce Bainbridge was no longer representing him, and that Hecht Partners LLP ("**Hecht Partners**") had joined his legal team.

[4] **Exhibit CL-58**, Turkey-Romania BIT, Article 6.

17. On 8 September 2020, Romania appointed Ms. Loretta Malintoppi as the second arbitrator.

18. On 15 September 2020, Romania filed its Response to the Notice of Arbitration. At the time the Response to the Notice of Arbitration was filed, Respondent was represented by: (i) Stoica & Asociaţii; (ii) Savoie Laporte s.e.l.a.s.u; (iii) Savoie Laporte s.e.n.c.r.l; (iv) Professor Alina Miron; and (v) Laborde Law.

19. On 1 November 2020, the Parties appointed Professor Bernard Hanotiau as presiding arbitrator.

20. On 2 December 2020, Respondent sent a letter to Claimant, without copying the Tribunal, requesting the disclosure of any existing third-party funder.

21. On 7 December 2020, Claimant confirmed that he had no third-party funder arrangement. However, Claimant asserted that Hecht Partners "has general portfolio funding arrangements in place from various sources and the [Claimant's] present case against Romania is among a number of cases in the portfolio". On even date, Claimant confirmed that Maravela Mihaela Law Office had joined his legal team.

22. On 10 December 2020, the first procedural meeting was held virtually.

23. On 15 January 2021, with the agreement of the Parties, the Tribunal issued the Terms of Appointment dated 13 January 2021. In this document, the Tribunal, *inter alia*, confirmed the appointment of Mr. Juan Camilo Jiménez Valencia as Tribunal Secretary. On even date, the Tribunal issued Procedural Order No. 1, including a procedural timetable. According to the procedural timetable, Claimant was scheduled to file his Statement of Claim on 1 April 2021.

24. On 15 February 2021, Claimant confirmed that Maravela Mihaela Law Office was no longer representing him, and that Zamfirescu Racoti Vasile & Partners had joined his legal team.

25. On 19 March 2021, Respondent filed two applications: (i) seeking an order for Claimant to provide a bank guarantee of EUR 750,000,[5] on account of security for Respondent's costs ("**Application for Security for Costs**"); and (ii) seeking an order for Claimant to disclose any third-party funder and method of funding

[5] The Tribunal clarifies that the **EUR 750,000** requested by Romania were deemed to cover Respondent's costs in this arbitration as well as in the parallel proceeding initiated by Mr. Jak Sukyas.

("**Application for Disclosure of Third-Party Funder and Method of Funding**" jointly "**Respondent's Applications**").

26. On 22 March 2021, the Tribunal acknowledged receipt of Respondent's Applications and invited Claimant to provide his comments by 15 April 2021.

27. On 30 March 2021, Claimant's counsel informed the Tribunal that: (i) they were no longer instructed by Claimant to represent him in these proceedings, effective immediately; (ii) Claimant was in the process of retaining new counsel; and (iii) Claimant requested to stay the proceeding for a period of at least four months to find a new legal team. On even date, the Tribunal invited Respondent to provide its comments by 6 April 2021.

28. On 6 April 2021, Respondent requested the Tribunal to dismiss Claimant's request and proposed a new procedural timetable for the conduct of the proceedings.

29. On 7 April 2021, the Tribunal acknowledged receipt of Respondent's response and invited Claimant to provide any further comments by 12 April 2021.

30. On 12 April 2021, Mr. Jak Sukyas sent an email to the Tribunal from his personal e-mail account, noting that both he and his brother, Mr. Edward Sukyas (Claimant in the present proceedings), were still in the process of assembling a new legal team and that therefore they were not in a position to comment on Respondent's letter dated 6 April 2021.

31. On 12 April 2021, the Tribunal decided: (i) to order the suspension of the proceedings for four months; (ii) to instruct Claimant to update the Tribunal every month on the progress made in retaining new counsel; and (iii) that a new procedural timetable would be discussed after lifting the suspension.

32. On 4 May 2021, Mr. Jak Sukyas informed the Tribunal that he and Mr. Edward Sukyas were "actively in the process of investigating the retention of new counsel and new funding terms in order to continue the matter".

33. On 29 June 2021, Mr. Jak Sukyas informed the Tribunal that he and Mr. Edward Sukyas were presently "working on the most important issue, the funding" and that he hoped to finalise this before the end of the four-month suspension period.

34. On 16 July 2021, Mr Jak Sukyas, writing on his own and on Mr. Edward Sukyas' behalf, indicated that "[o]ur new counsel is very actively and intensely working on the case. To this end he has reached out to Romania [sic] counsel to attempt a settlement for the security of costs, but our settlement compromise offer, after two weeks, was refused. In the meantime our counsel contacted a relevant institution to insure the security of the cost. Presently this institution is pursuing its due diligence". Furthermore, he informed the Tribunal that he might require an extension of the suspension of the proceedings to be able to conclude the financial arrangements.

35. On 9 August 2021, Mr Jak Sukyas, writing on his own and on Mr. Edward Sukyas' behalf, requested the Tribunal for an additional extension of the suspension of the proceedings, until the end of September 2021.

36. On 10 August 2021, the Tribunal noted that Claimant had already confirmed that he had retained new counsel on 16 July 2021. The Tribunal requested Claimant to: (i) reveal the identity of his new counsel; and (ii) provide an update on the progress made on the funding of the case. In addition, the Tribunal invited Respondent to comment on Claimant's request by 12 August 2021.

37. On even date, Mr Jak Sukyas, writing on his own and on Mr. Edward Sukyas' behalf, indicated that "[w]e have retained M. Duarte G. Henriques and Mr. George Yates [from Victoria Associates] for the sole purpose (at this time) of negotiating settlement of security of costs and for getting funding in place. We are still working on both".

38. On 12 August 2021, Respondent agreed to extend the suspension of the proceedings until 30 September 2021. In addition, Respondent enquired as to the role of Ms. Kathryn Lee Boyd (partner in Hecht Partners) after her resignation as one of Claimant's counsel. Respondent pointed out that Ms. Boyd also appeared as a member of Victoria Associates, Claimant's new counsel.

39. On the same day, Mr Jak Sukyas, writing on his own and on Mr. Edward Sukyas' behalf, clarified that "Victoria Associates is not a law firm, but a network of arbitration specialists".

40. On 13 August 2021, the Tribunal decided to extend the suspension of the proceedings until 30 September 2021.

41. On 1 October 2021, Mr. Duarte G. Henriques and Mr. George Yates, from Victoria Associates, informed the Tribunal that they had been instructed by Claimant to represent him in the present proceedings.

42. On the same day, the Tribunal took note of the pending issues before the suspension of the proceedings and invited the Parties to discuss a new procedural timetable.

43. On 8 October 2021, both Parties submitted their proposals for a revised procedural timetable. On even date, Claimant confirmed that Ms. Sofia Cozac had joined his legal team.

44. On 27 October 2021, after discussing with the Parties, the Tribunal issued an amended procedural timetable.

45. On 2 November 2021, Claimant submitted his Response to the Respondent's Applications (see paragraph 24 above) dated 19 March 2021.

46. On 12 November 2021, Respondent filed a request for disclosure of evidence relating to the existence, nature, and extent of the alleged funding commitments of Hecht Partners towards Claimant. Respondent requested the Tribunal to order Claimant to produce evidence regarding his funding arrangement with Hecht Partners, so that Respondent would be able properly to respond to this issue.

47. On 13 November 2021, Claimant objected to submitting information regarding the role of Hecht Partners, other than that which had already been provided.

48. On 16 November 2021, the Tribunal ordered Claimant to: (i) explain in detail the existence, nature, and extent of his funding arrangement with Hecht Partners; and (ii) clarify at which points in time since the initiation of these proceedings Hecht Partners had been acting as Claimant's (a) on-the-record counsel, (b) off-the-record counsel, (c) funder, or (d) in any other capacity. The Tribunal instructed Claimant to provide these clarifications by 26 November 2021.

49. On the same day, Claimant responded as follows:

> "Claimant[] have in place a contingency fee arrangement with Hecht Partners, which was executed on or around 7 December 2020. This agreement was subject to an amendment on 28 September 2021 and it is still in force since December 2020.

> The contingency fee agreement is under strictly confidential terms and subject to attorney-client privilege, the contents of which may not be further disclosed.
>
> In this regard, Claimant[] may only report to the Tribunal that Hecht Partners is committed to pay the Tribunal's costs (here comprising arbitrators' fees and administrative fees, and any other costs associated with the functioning of the Tribunal) and the opposing party's attorneys' fees (as well as costs and expenses) in the event of an unsuccessful arbitral award.
>
> […]
>
> Hecht Partners acted as Claimant['s] 'on-the-record' counsel from 7 December 2020 through 30 March 2021 and Ms. Lee Boyd (through Hecht Partners) has acted as 'off-the-record' counsel (as previously reported, in Ms. Lee Boyd's capacity of US liaison counsel) since 28 September 2021. Hecht Partners and Ms. Lee Boyd are not acting nor have acted in any capacity other than those aforementioned".[6]

50. On 6 December 2021, Respondent filed its Reply to the Respondent's Applications.

51. On 26 December 2021, Claimant filed his Rejoinder to the Respondent's Applications.

52. On 30 January 2022, the Tribunal issued Procedural Order No. 2: (i) ordering Claimant to provide a written undertaking from Hecht Partners, confirming that it is committed to pay an adverse costs award (the "**Undertaking**"); and (ii) dismissing Respondent's Application for Disclosure of Third-Party Funder and Method of Funding.

53. On even date, Claimant confirmed that Mr. George Yates was no longer representing him in these proceedings and that Ms. Kathryn Lee Boyd had joined his legal team.

54. The Parties were unable to agree on the text of the Undertaking. On 15 March 2022, after hearing the Parties' positions, the Tribunal issued Procedural Order No. 3, setting out the text of the Undertaking.

55. On 1 April 2022, Claimant submitted Hecht Partners' written Undertaking confirming that it is committed to pay an adverse costs award.

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[6] Claimant's email dated 16 November 2021.

56. On even date, Claimant filed his SoC. The SoC included: (i) the First Witness Statement of Mr. Jak Sukyas, dated 31 March 2022; (ii) the First Witness Statement of Mr. Edward Sukyas, dated 31 March 2022; (iii) the First Expert Report of Professor Lavinia Stan, dated 30 March 2022; (iv) the First Expert Report of Professor Dr. Flavius Antoniu Baias, dated 31 March 2022; (v) the First Expert Report of Mr. David Nolte, dated 1 April 2022; and (vi) factual and legal exhibits. As mentioned earlier, for the first time, Claimant also advanced claims pursuant to the Turkey-Romania BIT ("**Turkey-Romania BIT Claims**") in his SoC. On the same date, Claimant confirmed that International Arbitration Chambers New York had joined his legal team.

57. On 15 April 2022, Claimant confirmed that Mr. Duarte G. Henriques was no longer representing him in these proceedings.

58. On 28 May 2022, Respondent filed an application requesting the Tribunal to: (i) declare that the Turkey-Romania BIT Claims were inadmissible prior to Romania's filling of its Memorial on Jurisdiction and Admissibility ("**J&A Memorial**"); and (ii) grant a two-month extension of time to file its J&A Memorial.

59. On 2 June 2022, Claimant filed his response, objecting to Respondent's application.

60. On 9 June 2022, the Tribunal issued Procedural Order No. 4: (i) deciding that the Tribunal's jurisdiction and the admissibility of the Turkey-Romania BIT Claims should be addressed within the normal course of submissions regarding the first tranche of these proceedings; and (ii) granting an extension of time for Respondent to file its J&A Memorial.

61. On 20 July 2022, the Government of Canada requested the Tribunal to confirm whether Procedural Order No. 2 could be made public. On 22 July 2022, the Tribunal clarified that Procedural Order No. 2 could not be made public.

62. On 8 August 2022, Respondent filed its J&A Memorial. The J&A Memorial included: (i) the First Expert Report of Professor Răzvan Dincă, dated 5 August 2022; and (ii) factual and legal exhibits.

63. On 14 November 2022, Claimant filed his Counter-Memorial on Jurisdiction and Admissibility ("**Counter-Memorial on J&A**"). The Counter-Memorial on J&A included: (i) the Second Expert Report of Professor Dr. Flavius Antoniu Baias, of even date; and (ii) factual and legal exhibits.

64. On 13 January 2023, Respondent submitted its Statement of Reply on Jurisdiction and Admissibility ("**SoR**"). The SoR included: (i) the Second Expert Report of Professor Răzvan Dincă, dated 11 January 2023; and (ii) factual and legal exhibits.

65. On 20 February 2023, the Parties agreed to hold the hearing at Hôtel du Louvre in Paris.

66. On 14 March 2023, Claimant filed his Statement of Rejoinder on Jurisdiction and Admissibility ("**SoRj**"). The SoRj included: (i) the Third Expert Report of Professor Dr. Flavius Antoniu Baias, of even date; and (ii) factual and legal exhibits.

67. On 8 April 2023, the Government of Canada confirmed that, pursuant to Annex C(II)(3) of the 2009 Canada-Romania BIT, it would file a written submission on questions of interpretation of the treaty on the date set out in the procedural calendar.

68. On 13 April 2023, the Government of Canada submitted its Non-Disputing Contracting Party Submission.

69. On 19 April 2023, the Tribunal sent a letter to the Parties concerning the hearing arrangements.

70. On 18 May 2023, Respondent confirmed that Mr. Pierre-Olivier Laporte and Ms. Justine Touzet from Savoie Laporte s.e.n.c.r.l., were no longer representing Romania in these proceedings and that Mr. Daniel Müller from FAR Avocats had joined Respondent's legal team.

71. On 18 May 2023, the Parties filed their comments on Canada's Non-Disputing Contracting Party Submission.

72. On 1 June 2023, the Tribunal sent an additional letter to the Parties concerning the hearing arrangements.

73. On 10 June 2023, Claimant submitted a letter to the Tribunal, including a proposal concerning how to conduct a public hearing. The Parties actively discussed this issue until 30 June 2023.

74. On 26 June 2023, the Government of Canada submitted a letter confirming that it would not send any representative to attend the hearing.

75. On 3 July 2023, the Tribunal ruled as follows regarding the transparency of the hearing:[7]

> "In order to comply with Annex C of the 2009 Canada-Romania BIT, the Parties should secure a room in the Hotel, or in a different venue (the 'Viewing Room'), in which the hearing will be live-streamed but without any recording being made. Any issue concerning confidentiality shall be raised and decided during the hearing without it being transmitted to the Viewing Room. The Parties shall ensure that there is also a camera at the Viewing Room, to ensure that the Tribunal is able to see the participants in the Viewing Room.
>
> The Parties are invited to liaise with the PCA to issue a Press Release announcing when the hearing will be held and how the transparency obligations will be respected. The Parties shall bear these costs in equal shares, which should not be paid from the funds held by the PCA".

76. On 5 July 2023, the PCA issued a press-release concerning the publicity of the hearing.

77. From 10-13 July 2023, an in-person hearing was held at Hôtel du Louvre in Paris.

78. On 15 September 2023, the Parties filed a joint list of corrections to the hearing transcripts.

79. On 15 September 2023, the Parties filed their costs submissions.

80. On 29 September 2023, Respondent filed its comments on Claimant's costs submission.

81. On 6 October 2023, Claimant replied to Respondent's comments.

82. On 25 March 2024, Claimant confirmed that International Arbitration Chambers was no longer representing him in these proceedings and that Potestas Partners had joined his legal team.

[7] As mentioned above, there is a parallel proceeding initiated by Mr. Jak Sukyas against Romania. As indicated in paragraph 16.1 of the Terms of Appointment, "the proceedings initiated by Mr. Jak Sukyas and Mr. Edward Sukyas against Romania are legally distinct but shall be procedurally coordinated. In this sense, both proceedings shall follow identical procedural timetables, and the Parties will file a single set of pleadings addressing both claims". There was one single hearing for both cases, and the Parties agreed that it had to comply with the transparency requirements under Annex C of the 2009 Canada-Romania BIT.

CHAPTER V. THE ABRIDGED FACTUAL BACKGROUND[8]

Section I. Messrs Melik and Vahram Sukyas and Messrs Jak and Edward Sukyas

83. According to Claimant, Mr. Melik Sukyas ("**Melik**") was born in Turkey in or about 1892. After immigrating to the U.S. and settling in New York, he became an American citizen in 1919 and remained one until his death in 1959. Melik's brother, Mr. Vahram Sukyas ("**Vahram**"), was born in Turkey on 25 January 1897. Messrs. Melik and Vahram Sukyas are hereinafter referred to as the "**Late Sukyas Brothers**".[9]

84. Out of the marriage between Vahram and Mrs. Anjel Bogcaliyan, Messrs Jak and Edward Sukyas were born in 1943 and 1946 respectively (the "**Sukyas Brothers**").[10]

85. Claimant submits that the Sukyas Brothers hold the following nationalities: (i) Mr. Jak Sukyas: (a) Turkish nationality by birth; and (b) U.S. citizenship acquired on 28 November 1990; and (ii) Mr. Edward Sukyas: (a) Turkish nationality by birth; and (b) Canadian citizenship acquired in 1977.[11]

86. The following diagram illustrates Claimant's relevant family tree.

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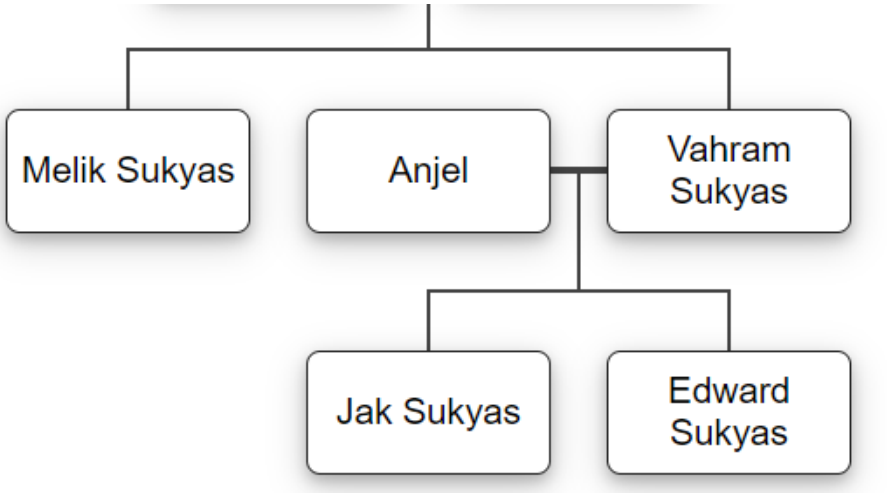
[8] The Tribunal clarifies that this section is an "abridged" factual background as opposed to a full factual background. Respondent has not presented its case concerning some of the historic events which led to the dispute between the Parties. Accordingly, the Tribunal has only set out the essential facts required to contextualize the dispute and to solve the preliminary objections in this Award..

[9] SoC, paras. 33-34; **Exhibit C-001**, Foreign Claims Settlement Commission Statement of Claim, dated 29 September 1956; **Exhibit C-002**, American Foreign Service Report of the Death of an American Citizen, dated 4 May 1959; **Exhibit C-003**, Vahram Sukyas Probate Documentation, dated 22 November 1983.

[10] SoC, para. 120; J&A Memorial, para. 35; **Exhibit C-003**, Vahram Sukyas Probate Documentation, dated 22 November 1983; WS of Mr. Jak Sukyas, paras. 1.1.1, 1.1.5; WS of Mr. Edward Sukyas, paras. 1.1.1, 1.1.5.

[11] WS of Mr. Jak Sukyas, para. 1.1.2; WS of Mr. Edward Sukyas, para. 1.1.2.



Section II. The Late Sukyas Brothers' Businesses in Romania

87. Around the 1920s, Melik used his savings to start a film export business in New York. Soon thereafter, Melik brought Vahram into his business. Vahram began to travel regularly and then moved to Romania to handle the distribution of American films in that country.[12]

88. According to Claimant, through hard work and favorable market factors, in the 1930s, the Late Sukyas Brothers became the most important film distributors in Romania. The success allowed Vahram to acquire one of Bucharest's landmark residential mansions located at 10 Strada Herastrau.[13]

89. Around 1939-40, Melik acquired Cinegrafia Română, a privately held Romanian "corporation limited by shares" doing business under the "CIRO-FILM" trademark ("**CIRO**"). CIRO was organized as a joint-stock company under the laws of Romania.[14]

90. Claimant further explains that CIRO owned a fully functioning film production and post-production studio named Laboratorul Mogoşoaia (the "**Laboratory**"), which operated principally out of its facilities in Mogoşoaia in the outskirts of Bucharest. The term "laboratory" is customarily used in Romania to refer to the film facilities providing post-production processes, such as dubbing, editing, subtitling,

[12] SoC, para. 36; WS of Mr. Jak Sukyas, paras. 1.1.2-1.1.10.
[13] SoC, para. 42.
[14] SoC, paras. 44-45; **Exhibit C-012**, CIRO 23 June 1940 and 16 December 1940 Submitted shares and shareholder meeting minutes, dated 1940, p. 8; **Exhibit C-022**, Shareholders attending ordinary general meeting, dated 29 June 1945.

synchronization, and copying. These processes required the purchase and assembly of a complex of machines and apparatuses. The Late Sukyas Brothers made the Laboratory into a state-of-the-art pre-production, production, and post-production plant, performing a full range of services.[15]

Section III. The Alleged Seizure of CIRO in 1942 and its Restauration in 1946

91. In April 1941, Marshal Antonescu's government issued a decree nationalizing foreign cinematographic laboratories. Because of Melik's U.S. citizenship, CIRO was considered an American company. After some court proceedings in Bucharest, and further decrees, on 30 March 1942, the Commercial Administration of the National Cinematographic Office ("**ONC**") of the Ministry of Propaganda physically seized CIRO's entire Laboratory.[16]

92. In mid-1944, Marshal Antonescu was overthrown and arrested and, on 12 September 1944, the U.S., the UK, and the USSR entered into an Armistice Agreement with Romania. Among other provisions, Article 13 of the Armistice Agreement obligated Romania to "[…] restore all legal rights and interests of the United Nations and their nationals on Rumanian territory as they existed before the war and to return their property in complete good order".[17]

93. Claimant avers that eventually, on 4 January 1946, the Late Sukyas Brothers regained control of the Laboratory and took immediate action to repair the damage, including purchases of new equipment, with the hope to return CIRO to pre-war operational status.[18]

94. Claimant submits that by 11 September 1946, the Late Sukyas Brothers were CIRO's only shareholders, each owning 50% pursuant to 1946 notarized conventions.[19] The Tribunal notes that the record shows inconsistent statements

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15 SoC, para. 47; WS of Mr. Jak Sukyas, paras. 1.2.1- 1.2.6; WS of Mr. Edward Sukyas, paras. 1.2.1- 1.2.6.

16 SoC, paras. 57-59. **Exhibit CL-001**, Decree Law no. 960 of 1941, dated 7 March 1941; **Exhibit C-009**, 1946 Memorial, dated 31 March 1946, pp. 9, 26, 33; **Exhibit C-039**, Letter to Chairman of the Court of Appeal 3rd Section, dated 30 March 1942.

17 SoC, paras. 63-64; **Exhibit C-189**, Agreement Between the Governments of the United States of America, the United Kingdom, and the Union of Soviet Socialist Republics, on the One Hand, and the Government of Rumania, on the Other Hand, Concerning an Armistice, dated 12 September 1944.

18 SoC, para. 73; **Exhibit C-046**, Vahram Sukyas Affidavit in Support of Foreign Claims Settlement Commission Statement of Claim, dated 11 September 1956, p. 2.

19 SoC, paras. 44-45; **Exhibit C-009**, 1946 Memorial, dated 31 March 1946, pp. 1-8; **Exhibit C-012**, CIRO 23 June 1940 and 16 December 1940 Submitted shares and shareholder meeting minutes, dated 1940, p. 8; **Exhibit C-022**, Shareholders attending ordinary general meeting, dated 29 June 1945; **Exhibit C-015**, Agreement between Melik Sukyas and Vahram Sukyas re Astoria Film, dated 11 September 1946.

concerning CIRO's ownership between 1946 and 1948.[20] However, at this juncture, it is not required to determine exactly how CIRO's ownership was distributed between the Late Sukyas Brothers before the alleged taking of the company in 1948.

Section IV. The Alleged Taking of CIRO's Shares in 1948 and Subsequent Operation of the Laboratory by Romania

95. According to Claimant, a month after the Yalta conference, with the Red Army still stationed in the country, Stalin pressured King Mihai to install Dr. Petru Groza as Prime Minister of Romania, who took office on 6 March 1945.[21]

96. The Romanian secret police maintained a file on Vahram. The file described his ethnicity, citizenship, "rich relatives in America", and "enviable material situation". The secret police also knew that the Late Sukyas Brothers owned CIRO and Astoria Film, S.A. ("**Astoria**"), which was the exclusive distributor for Metro Goldwyn Mayer in Romania.[22]

97. Claimant alleges that, in January 1948, Romania effectively shut Astoria down.[23] Claimant avers that with the safety of his family in mind, and hoping to forestall a seizure of CIRO, Vahram approached the Romanian Ministry of Information to try to smooth relations with the authorities. The Ministry allegedly requested Vahram to sell CIRO to the government and to propose a sale price.[24]

98. Claimant avers that, Vahram suggested a symbolic price of USD 166.000 hoping to salvage something of his and his brother's business, but the offer was rejected. Instead, on or about 15 February 1948, Romanian officials (the General Audit Directorate of the Ministry of Industry and Commerce) came to CIRO's offices to inspect its books.[25]

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[20] See **Exhibit C-008**, Vahram Sukyas Letter to the American Legation, dated 10 July 1948, pp. 1-4; **Exhibit C-009**, 1946 Memorial, dated 31 March 1946, p. 9; **Exhibit C-015**, Agreement between Melik Sukyas and Vahram Sukyas re Astoria Film, dated 11 September 1946, p. 1; **Exhibit C-016**, Agreement between Melik Sukyas and Vahram Sukyas re Astoria Film, dated 11 September 1946, p.1.

[21] SoC, para. 97; **CE-1**, Report of Professor Lavinia Stan, para. 13.

[22] SoC, para. 111; **Exhibit C-007**, Vahram Sukyas Securitate File, dated 12 February 2013, p. 6.

[23] **Exhibit C-047**, Vahram Sukyas Affidavit re Astoria Films in Support of Foreign Claims Settlement Commission Statement of Claim, dated 11 September 1956, pp. 2-3.

[24] SoC, para. 116; **Exhibit C-046**, Vahram Sukyas Affidavit in Support of Foreign Claims Settlement Commission Statement of Claim, dated 11 September 1956, p. 3; **Exhibit C-008**, Vahram Sukyas Letter to the American Legation, dated 10 July 1948, p. 3.

[25] SoC, paras. 117-119; **Exhibit C-008**, Vahram Sukyas Letter to the American Legation, dated 10 July 1948, p. 3; WS of Mr. Jak Sukyas, paras. 1.8.9.

99. Claimant posits that on 19 February 1948, Romanian secret police stormed Vahram's home without a warrant or formal charges to arrest him for crimes ostensibly relating to the "inspection" that took place a few days prior.[26]

100. According to Claimant, from the moment of his detention, agents of the state continually interrogated and psychologically tortured Vahram, making him believe that they would inflict harm upon himself, his family, and his co-workers if he did not capitulate to the state's "suggestion" that he relinquish CIRO on the state's terms.[27]

101. Claimant submits that on 20 March 1948, after having been "arrested and imprisoned" on charges of economic sabotage and illegal speculation (based on a piece of legislation —Law No. 351/1945— introduced by the communist regime on 2 May 1945), a court convicted Vahram and ordered him to pay a 30.000 lei fine, which he paid on the same day.[28] According to Claimant, although the court did not sentence Vahram to jail, Romania continued to detain him after he paid the penalty.[29]

102. On 27 March 1948, Romania released Vahram from the Vacaresti Penitentiary allegedly only after he agreed to cooperate in CIRO's "sale".[30]

103. Claimant submits that after Vahram's release on 27 March 1948, the latter met with the Ministry of Information and, acting on the "coerced" promise he had made in the Vacaresti Penitentiary, proposed to give CIRO to Romania for USD 66,666. Vahram's only condition was that he and his family would not be harmed but given exit visas to leave Romania. Claimant further avers that the Ministry of Information dictated to Vahram that he had to accept only a tenth of the proposed amount, which was, in any event, never paid.[31]

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[26] SoC, para. 119; WS of Mr. Jak Sukyas, paras. 1.8.9-1.8.10; **Exhibit C-008**, Vahram Sukyas Letter to the American Legation, dated 10 July 1948, p. 3.

[27] SoC, para. 122. WS of Mr. Jak Sukyas, para. 1.8.11; WS of Mr. Edward Sukyas, paras. 1.5.11.

[28] SoC, paras. 124-127; WS of Mr. Jak Sukyas, paras. 1.8.10-1.8.13; **Exhibit C-064**, Arrest Warrant No. 731 A/946 for Vahram Sukyas from the Ministry of Industry and Commerce dated 2 March 1948, p. 2; **Exhibit C-008**, Vahram Sukyas Letter to the American Legation, dated 10 July 1948, p. 3.

[29] SoC, para. 129; WS of Mr. Jak Sukyas, para. 1.8.14.

[30] SoC, paras. 130-131; WS of Mr. Jak Sukyas, para. 1.8.13-1.8.14; **Exhibit C-008**, Vahram Sukyas Letter to the American Legation, dated 10 July 1948, pp. 3-4.; **Exhibit C-069**, Release Certificate No. C12764 re Vahram Sukyas on 27 March 1948.

[31] SoC, para. 132; WS of Mr. Jak Sukyas, para. 1.8.15; **Exhibit C-046**, Vahram Sukyas Affidavit in Support of Foreign Claims Settlement Commission Statement of Claim, dated 11 September 1956, p. 3; **Exhibit C-008**, Vahram Sukyas Letter to the American Legation, dated 10 July 1948, pp. 3-5.

104. According to Claimant, on 14 April 1948, the Ministry of Information (under which the Secret Police operated) "forced" Vahram to place his signature on the following minutes (the "**1948 Minutes**"):[32]

> "MINUTES
> Of the Extraordinary General Meeting of
> CINEGRAFIA ROMANA Company with CIRO FILM logo of
> April 14, 1948
>
> Today, April 14, 1948, at 10 a.m., an extraordinary general meeting took place in the central office, consisting of the following officers:
>
> President Vahram Sukyas, secretary Attorney M. Savulescu, and secretaries Tudor Posmantir and Engineer C. C. Craciunescu.
>
> It turns out that all the shares are the property of the 'National Cinematography Office' Business Administration, which is represented at the meeting by its Manager, Mr. Ion Vaida.
>
> Following the items on the agenda of the extraordinary general meeting, it is decided unanimously:
>
> 1) The dissolution of the company in liquidation today, April 14, 1948.
>
> 2) Attorney M. Savulescu is appointed as liquidator and will be in charge of all the legal formalities and the deregistration of the company
>
> 3) All the assets and liabilities resulted from the liquidation shall be taken over by the Business Operations.
>
> 4) The entire personnel of the company shall be taken over by the 'National Cinematography Office' Business Administration.
>
> As the agenda was completed, the meeting was adjourned.
>
> […]
>
> The sole shareholder present at the meeting, the 'National Cinematography Office' Business Administration".[33]

[32] SoC, para. 135; **Exhibit C-046**, Vahram Sukyas Affidavit in Support of Foreign Claims Settlement Commission Statement of Claim, dated 11 September 1956, p. 4; **Exhibit C-031**, George Posmantir Affidavit dated 11 June 1959, p. 3; **Exhibit C-075**, Minutes of CIRO Extraordinary Meeting of 14 April 1948.

[33] **Exhibit C-075**, Minutes of CIRO Extraordinary Meeting of 14 April 1948.

105. On 21 April 1948, CIRO sent a letter to the President of the court of Ilfov county in Bucharest, acting as Trade Register for CIRO, to request the approval and registration of the resolutions in the 1948 Minutes.[34]

"CINEGRAFIA ROMANA S.A.R.
CIRO-FILM
Registered in the Trade Register with no. 76/936 Company CINEMATOGRAPHY STUDIO AND LABORATORY Bucharest Soseaua Mogosoaia without number warehouse next to 'Distributia'
Telegraph: CIROFILM)

[stamp:] ILFOV, DIVISION [illegible]
9108 of 04/21/1948
INGOING [illegible handwriting]

[stamp:] [NATIONAL ARCHIVES]

-2-

MISTER PRESIDENT,

The undersigned S.A.R. CINEGRAFIA ROMANA (Ciro-Film), with address for service at the Ministry of Arts and Information National Cinematography Office in Bucharest, str. Wilson. No. 8, has the honor to ask you to deliver a decision of approval of the dissolution of our company, which was decided by the Extraordinary General Assembly on April 14, 1948, as well as the deregistration of the company by the Trade Register Office in Bucharest. [illegible handwriting]

The National Cinematography Office, upon buying all the shares of the company at the stock exchange on April 12, 1948, decided, in its capacity as sole shareholder in the Extraordinary General Assembly of April 14, 1948, to dissolve the company ant to enter it to liquidation on the same date. All the assets and liabilities as well as the entire personnel of the dissolved and liquidated company shall be taken over by the National Cinematography Office.

We attach the approval by the Ministry of Commerce as well as the approval of the Prosecutor at the Prosecutor's Office of the Ilfov Tribunal.

We also attach the minutes of the Extraordinary General Assembly of April 14, 1948.

Sincerely,
CIROFILM CINEGRAFIA ROMANA S.A.R. [signature]
TO THE PRESIDENT OF THE ILFOV COURT, 2ND CIVIL COMMERCIAL DIVISION".[35]

[34] SoC, para. 151.
[35] **Exhibit C-073**, Letter from CIRO to Ilfov Tribunal, dated 21 April 1948.

106. The judge approved the registration request. The Official Gazette published the approval on 23 April 1948, formally dissolving CIRO. On 29 April 1948, ONC formally took over CIRO's Laboratory.[36]

107. Two weeks after ONC definitively took possession of CIRO's Laboratory, on 11 May 1948, a criminal panel in Bucharest acquitted Vahram, his co-workers, and CIRO of any wrongdoing or criminal charges.[37]

108. In the 1980s, ONC changed its name to "Centrul Național al Cinematografiei" ("**CNC**"). After the revolution and fall of communism in Romania, in 1991, the Romanian government created *Regia Autonomă de Distribuție și Exploatare a Filmelor România Film* by Government Decision No. 530 of 1 August 1991 ("**RADEF**"). RADEF is wholly owned by the Romanian government. In 1991, RADEF took over from CNC the Laboratory, which operated in the same building complex that CIRO was in when it was owned by Melik and Vahram.[38]

Section V. The Compensation Treaties Entered into by Romania between 1951 and 1971

109. Romania concluded settlement treaties, *inter alia,* with the following countries: (i) the United States, on 30 March 1960 ("**1960 US-Romania Compensation Treaty**"); (ii) Turkey, on 22 June 1965; and (iii) Canada, on 13 July 1971.[39]

110. Prior to the conclusion of the 1960 US-Romania Compensation Treaty, the United States put in place a domestic claims programme to address claims against Romania, which was based on the 1949 International Claims Settlement Act, as amended in 1955 by Public Law 285 ("**ICSA**"). ICSA created the Foreign Claims Settlement Commission ("**FCSC**"), which was vested with the power to adjudicate *inter alia*

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[36] SoC, para. 158; WS of Mr. Jak Sukyas, paras. 1.8.20-1.8.21; **Exhibit C-073**, Letter from CIRO to Ilfov Tribunal, dated 21 April 1948, p. 2; **Exhibit C-077**, Decision No. 6587 from 29 September 2011 in case 26916/3/2008 (Court of Cassation, Civil and Intellectual Property Division), p. 4; **Exhibit C-078**, Letter from National Office of Cinematography to CIRO (No. 186) dated 29 April 1948.

[37] SoC, para. 165; **Exhibit C-080**, Ruling No. 4541 from 11 May 1948 in case 2400/948 (Bucharest Court of Appeal).

[38] SoC, paras. 171-172; **Exhibit C-092**, Excerpt from the Official Gazette of Romania (Part I) No. 178 for 2 September 2011, pp. 1-2; **Exhibit C-093**, History - CNC - National Cinematography Center, dated 10 February 2016, p. 2; **Exhibit C-023**, U.S. Action Deposition Transcript of Dana Marie Georgescu, dated 14 December 2016, pp. 30-31, 117-118, 128-129, 138.

[39] **Exhibit CL-070**, 1960 US-Romania Agreement, 371 UNTS 163 (UNTS Reg. No. 5278), dated 30 March 1960; **Exhibit RL-082**, Agreement between the Government of the Romanian People's Republic and the Government of the Republic of Turkey for the settlement of pending financial issues, dated 22 June 1965; **Exhibit CL-072**, 1971 Canada-Romania Agreement, dated 13 July 1971.

the legal claims under both the domestic claims programme and the 1960 US-Romania Compensation Treaty and created the Romanian Claims Fund ("**RCF**").[40]

111. Under the 1960 US-Romania Compensation Treaty, Romania paid to the United States a lump sum amount of USD 24.5 million to settle all outstanding war and nationalisation claims against Romania.[41] Articles I and III of the US-Romania Compensation Treaty provide as follows:

> "(1) The Government of the United States of America and the Government of the Rumanian People's Republic agree that the lump sum of $24,526,370, as specified in Article III, will constitute full and final settlement and discharge of the claims described below:
>
> (a) Claims for the restoration of, or payment of compensation for, property, rights and interests of nationals of the United States of America, as specified in Articles 24 and 25 of the Treaty of Peace with Rumania which entered into force on September 15, 1947.[]
> (b) Claims for the nationalization, compulsory liquidation; or other taking, prior to the date of this Agreement of property, rights and interests of nationals of the United States of America in Rumania; […]
>
> The sum of $24,526,370 referred to in Article I of this Agreement shall be made up as follows:
>
> (a) The proceeds resulting from the liquidation of assets in the United States of America which were subject to wartime blocking controls and which belonged to the Rumanian Government and its nationals, other than natural persons, amounting in value to $22,026,370.
>
> (b) A sum of $2,500,000 which shall be paid by the Government of the Rumanian People's Republic to the Government of the United States of America in five installments, each of which shall be in the amount of $500,000. The first installment shall be paid on July 1, 1960. The four remaining installments shall be paid on July 1, 1961, July 1, 1962, July 1, 1963, and July 1, 1964, respectively".[42]

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40 J&A Memorial, para. 56; Counter-Memorial on J&A, para. 20; **Exhibit CL-219**, Pub. L. No. 84-285 (1955), 22 U.S.C. 1631 et seq., dated 9 August 1955.

41 J&A Memorial, para. 55.

42 **Exhibit RL-003**, Articles I, and III, 1960 US-Romania Compensation Treaty.

Section VI. The Alleged Compensation towards Mr. Melik Sukyas by the U.S. and his Succession

112. By a Final Decision of 17 July 1959, the FCSC awarded Melik Sukyas[43] USD 49,500 in compensation and USD 17,340.42 in interests (according to Respondent, in August 2022's currency, about USD 600,000[44]). Of the compensation amount, just a little over half (USD 25,000) was provided specifically for the alleged nationalisation of CIRO ("**FCSC Final Decision**").[45] Whether this claim fell within the domestic claims programme, or within the international claims programme under the US-Romania Compensation Treaty is a disputed issue between the Parties.[46]

113. Melik Sukyas passed away on 9 April 1959, shortly before the FCSC Final Decision. As a result, the four payments for a total of USD 18,583.45 made pursuant to this decision (two in 1960, one in 1968, and a last one in 1972) went to Melik's sole heir and legatee: his brother Vahram, the father of the Sukyas Brothers.[47]

114. The Parties seem to agree that, just like other successful claimants against Romania before the FCSC, Melik (respectively his successor Vahram, as explained above) would have received only a percentage of his award, based on the amount of funds available for distribution.[48]

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43 The Tribunal notes that it is undisputed that the claims Melik submitted to the FCSC were for *inter* alia, 100% of the shares of CIRO and the property located at 10 Strada Herastrau. J&A Memorial, para. 79. See also, **Exhibit C-046**, Vahram Sukyas Affidavit in Support of Foreign Claims Settlement Commission Statement of Claim, dated 11 September 1956, p. 1; **Exhibit C-271**, Foreign Claims Settlement Commission Final Decision dated 17 July 1959.

44 J&A Memorial, para. 120.

45 **Exhibit C-271**, Foreign Claims Settlement Commission Final Decision dated 17 July 1959.

46 SoC, para. 510, Footnote No. 758; Counter-Memorial on J&A, para. 28; J&A Memorial, paras. 58, 76.

47 SoC, Footnote No. 758; Counter-Memorial on J&A, paras. 23, 33; J&A Memorial, para. 77; **Exhibit C-273**, Statement of Account re Award of the Foreign Claims Settlement Commission to the estate of Melik Jacques Soukias; **Exhibit R-006**, Last Will and Testament of Melik Soukyas, dated 12 January 1957; **Exhibit R-007**, Petition to the Surrogate's Court of the County of New York attaching Melik's Last Will and Testament, dated 9 April 1959; **Exhibit R-008**, Release document signed by Vahram Sukyas, dated 24 July 1962; **Exhibit C-345**, American Foreign Service, Report of the Death of an American Citizen; Last will of Melik Sukyas, dated May 4, 1959. The Tribunal notes that the Parties have used the terms "heir" and "legatee" interchangeably throughout their submissions.

48 SoC, Footnote No. 758; J&A Memorial, para. 124.

Section VII. The Various Proceedings Initiated by the Sukyas Brothers before Romanian Courts

I. The Proceedings Brought by the Sukyas Brothers under Law 10 of 2001

A. The Administrative Proceedings under Law 10 of 2001

115. In 2001, Romania adopted Law 10 of 2001 ("**Law 10/2001**"). The most relevant articles of Law 10/2001 are transcribed below.

116. Articles 1, 3, and 4 of Law 10/2001 provide as follows:

> "Article 1.
> (1) The immovable property abusively taken over by the state, cooperatives or any other legal entity during 6 March 1945 - 22 December 1989, and those taken by the State under Law no. 139/1940 on requisitions and not restituted, shall be restituted in kind, as a general rule, under the conditions of the present law […]
>
> Article 3.
> (1) There are entitled to reparatory measures consisting of restitution in kind or, by equivalent, as the case may be, within the meaning of this law:
>
> a) individuals, owners of immovable property on the date of the abusive takeover […]
>
> Article 4 […]
> (2) The heirs of the entitled persons also benefit from the provisions of this law".[49]

117. Article 2(h) of Law 10/2001 reads as follows:

> "[…] For the purposes of this law, abusively taken over immovable property means: […]
>
> h) any other immovable property taken without valid title or without the observance of the legal provisions in force on the date of the taking over, as well as the ones taken without legal grounds by acts of disposition of the local bodies of power or state administration".[50]

118. Article 7 of Law 10/2001 provides that:

> "(1) As a general rule, immovable property abusively taken over will be restituted in kind.

[49] **Exhibit CL-10**, Articles 1, 3, and 4 of Law 10/2001.
[50] **Exhibit CL-10**, Article 2(h) of Law 10/2001.

(2) If restitution in kind is possible, the entitled person may not choose reparatory measures by equivalent except for the cases expressly provided by this law".[51]

119. Article 20 of Law 10/2001 reads as follows:

"(1) Abusively taken over immovable properties – land and buildings –, regardless of the destination, which are owned on the date of entry into force of this law by an autonomous regie, a national company or enterprise, a commercial company in which the state or an authority of the central or local public administration is a majority shareholder or associate, by a cooperative organization or by any other legal person, will be restituted in kind to the entitled person, by a grounded decision or disposition of the management bodies of the holding unit, as the case may be […]".[52]

120. Article 23 of Law 10/2001 provides that:

"(1) Within 60 days from the registration of the notification or from the date of submission of the underlying documents as per art. 22, as the case may be, the holding unit must decide on the request for restitution in kind, by reasoned decision or disposition, as the case may be […]".[53]

121. Finally, Article 1(e) of the Methodological Norms for the Uniform Application of Law 10/2001 ("**Methodological Norms**") reads as follows:

"(e) the burden of proof of ownership and legal possession at the time of the abusive takeover shall lie with the person claiming to be entitled, in accordance with the provisions of Articles 3(a) and 22 of the Law. If formal proof of the taking of the property by the State cannot be provided (e.g. the administrative decision is not found and the property is in the State's ownership after the date claimed as the date of the taking of the property), the notification will also be decided on the basis of this element - the fact that the property is in the State's ownership constitutes a relative presumption of wrongful taking - i.e. without title".[54]

122. On 23 October 2001, the Sukyas Brothers filed an application requesting the restitution of the plot of land (3,000 m²) and the Laboratory's building on that plot of land against RADEF.[55]

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[51] **Exhibit CL-10**, Article 7 of Law 10/2001.
[52] **Exhibit CL-10**, Article 20 of Law 10/2001.
[53] **Exhibit CL-10**, Article 23 of Law 10/2001.
[54] **Exhibit CL-12**, Article 23 of the Methodological Norms for the Uniform Application of Law 10/2001.
[55] **Exhibit C-110**, Notification from Jak and Edward Sukyas to the Authority for Privatization and Management of the State Participations (No. 4189), dated 23 October 2001.

123. After some exchanges, on 21 August 2002, RADEF requested the Sukyas Brothers to provide a list of documents to assess their application.[56] According to Claimant, the Sukyas Brothers filed with RADEF all the relevant documents between March and May 2003.[57]

124. In late 2003, the Sukyas Brothers requested the courts to compel RADEF to comply with its obligations under Article 23(1) of Law 10/2001 to issue a decision on the request for restitution. On 20 January 2004, RADEF replied that it had no legal standing since the Laboratory had been transferred to CNC on 3 December 2003. On 20 May 2004, the Sukyas Brothers requested to join CNC to the abovementioned court proceedings. On 30 May 2005, the court issued Decision 5382 granting the Sukyas Brothers' motion and ordering CNC to issue a decision on their restitution request.[58]

125. According to Claimant, CNC did not comply with the court's decision and instead transferred the control of the Laboratory back to RADEF.[59]

126. On 6 February 2007, the Sukyas Brothers filed a further request with the Bucharest Tribunal to order RADEF to issue a decision on the request for restitution. On 9 March 2007, the Bucharest Tribunal ordered RADEF to issue a decision.[60]

127. On 1 July 2008, RADEF issued Decision 102, denying restitution on the ground that the Sukyas Brothers had failed to prove the abusive taking of the assets ("**Decision 102**"). Decision 102 reads as follows:

> "The General Manager of RADEF Romania Film
>
> DECIDES
>
> Art.1. Rejects the claim for restitution in kind of a part of the real estate 'Laboratorul de prelucrare a peliculei Mogosoaia' located in Sos, Straulescti no. 3-5 (former Mogosoaia Road), 1st district, Bucharest, submitted by Mr. Jak Sukyas and Edvard Sukyas through notification no. 4190/23.10/2001, to which the plaintiffs have referred to in notifications no: No. 4191/23.10.2001, 4189/23.10.2001, 946/21.04.2001 and 947/21.04.2004, based on the ground that

[56] SoC, paras. 220-221; **Exhibit C-116**, Letter from RADEF to Jak and Edward Sukyas (No. 3849) dated 21 August 2002.
[57] SoC, para. 221; **CE-2**, Report of Professor Baias, para. 53.
[58] **Exhibit C-120**, Statement of Defense RADEF (File no. 4412/2003), dated 13 January 2004; **Exhibit C-125**, Ruling No. 5382 from 30 May 2005 in case 6002/2004 (Bucharest District 1 Court), dated 30 May 2005; SoC, paras. 225-230.
[59] SoC, paras. 231-233; **CE-2**, Report of Professor Baias, para. 59.
[60] **Exhibit C-144**, Claim against RADEF (File no. 4214/3/2007), dated 6 February 2007; **Exhibit C-145**, Decision no. 354 from 9 March 2007 in case 4214/3/2007 (Bucharest Tribunal), dated 9 March 2007.

the latters have not proved that according to the law, the undertaking of the real estate from their predecessors, respectively Melik Soukias and Vahram Sukyas, has been done abusively […]".[61]

B. The Judicial Review of RADEF's Decision under Law 10/2001

128. On 10 July 2008, the Sukyas Brothers challenged Decision 102 before the Bucharest Tribunal acting as a first instance court. On 6 April 2009, the Bucharest Tribunal dismissed the Sukyas Brothers' request. The most relevant parts of the decision are transcribed below:[62]

> "The opponents proved the capacity as person entitled, by the rules of Law 10/2001, but the tribunal holds that they did not prove, pursuant to Law 10/2001 that the immovable property composed of a plot of land and a construction whose restitution is requested was transferred to the state abusively.
>
> From the evidence submitted in the case file the tribunal holds that the immovable property composed of a construction and a plot of land with an area of 3,000 sqm situated in 3-5 Straulesti (former Mogosoaia Road) district 1, Bucharest, identified as a part of Mogosoaia Film Processing Laboratory belonged to [CIRO] and became a national property on 14 April 1948 by the unanimous decision of the extraordinary general meeting of said company' [sic] shareholders, formed of the claimants' predecessors.
>
> Thus, since 14 April 1948 the immovable property […] has become the property of the Romanian state, who used it effectively by various institutions and is now managed by R.A.D.E.F. 'Romania Film' - autonomous administration of national interest.
>
> Tribunal rejects the allegations of claimants that the immovable property […] became a national property abusively based on Law 119/1948 since on the date of coming into effect of said regulation, i.e. 11 June 1948, the immovable property had already become a national property and on 14 April 1948 by the unanimous decision of the extraordinary general meeting of the shareholders of said company, formed of claimants' predecessors, i.e. Melik Soukias and Vahram Sukyas.
>
> Thus, the predecessors of claimants, Melik Soukias and Vahram Sukyas, as former associates of [CIRO], who owned the immovable property, decided in the extraordinary general meeting dated 14 April 1948 to dissolve the company and transfer all the assets and liabilities deriving from the liquidation to the Commercial Administration [ONC], as recorded both in the archives of the Chamber of Commerce and Industry of Bucharest […]".[63] [emphases added].

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61 **Exhibit C-146**, Decision RADEF No. 102, dated 1 July 2008.
62 SoC, para. 248.
63 **Exhibit C-148**, Ruling No. 488 from 6 April 2009 in case 26916/3/2008 (Bucharest Tribunal).

129. According to Claimant, the Bucharest Tribunal held that the Sukyas Brothers had discharged their burden of proof under Law 10/2001, but then instead of requiring RADEF to discharge theirs and show how the Romanian state acquired CIRO's shares, it continued to state that the Sukyas Brothers had not made a showing that the claimed real estate was transferred to the state abusively – a burden that was legally placed on RADEF to discharge, not on the Sukyas Brothers.[64]

130. On 27 May 2009, the Sukyas Brothers filed an appeal to the Bucharest Court of Appeal ("**BCA**").[65] On 22 March 2010, the BCA rendered its decision. The most relevant parts of the decision are reproduced below:

> "[…] the application filed to the Ilfov County from 04.21.1948 (hence previous to the nationalization of the stock exchange on 11 June 1948) […] the National Film Office on 12/04/1948 bought through the stock exchange all shares of [CIRO], thus becoming the sole shareholder […]
>
> According to the content of this application, based on this stock transaction, becoming the sole shareholder of the company Ciro Film, the National Film Office convened the general meeting of shareholders on 04.14.1948 and decided to liquidate the company, transferring all assets to the sole shareholder. […]
>
> The Court Ilfov certified the legality of the measures taken under this general meeting, and thus the legality of the ownership structure, without which the judge at the Trade Registry could not take note of the modifications […]
>
> The Court is unable to endorse the appellant's critics that in fact Vahram Sukyas was forced to preside over the general assembly and that in fact, that was the moment when the expropriation by the communist state took place amid his unlawful arrest, because as previously shown, the shares' transfer was carried out previously by purchasing them on the stock market on 04.12.1948, any pressure exerted afterwards being irrelevant. As on 04.14.1948, the national office was already the main shareholder and as the immovable asset in dispute belonged to the company, it is obvious that the decision dated 14.04.1948 could not operate the transfer of ownership, the mention contained in paragraph 3 of the minute assigning only the destination of the assets after the liquidation of the company and nothing more. On the other hand, the arrest of the appellants' father was performed in a pending criminal trial, his release being executed prior to trading shares on the stock market and prior to the general meeting, hence the causal link invoked by the appellants could not be established on the basis of the evidence. Moreover, if indeed the criminal trial was oriented towards an abusive takeover of the company, then buying any stock under the conditions of the free

[64] SoC, para. 256.
[65] **Exhibit C-153**, Appeal against decision 488 / 6 April 2009 file no. 26916/3/2008, dated 26 May 2009.

market and any subsequent acquittal of Vahram Sukyas wouldn't be justified".[66] [emphases added].

131. According to the Claimant, "[t]he Court then made the absurd and nothing short of cynical conclusion that if the state had purchased the shares on the stock exchange on 12 April 1948, Vahram must not have been under duress 2 days later when he voluntarily signed the 1948 Minutes, thereby consenting to the dissolution. In making this conclusion the Court entirely ignored the allegations of torture and abuse prior to 12 April 1948 (not to mention the additional facts of confiscation of the Sukyases' home during the same time which the Romanian court had acknowledged) and failed to inquire about what were the terms of this sale, was any consideration paid, and if so, what was its amount".[67]

132. On 18 August 2010, the Sukyas Brothers filed a recourse against the decision of the BCA to the High Court of Cassation and Justice ("**Court of Cassation**").[68]

133. Claimant submits that on 22 September 2011, before the set hearing date in the Court of Cassation (on 29 September 2011), the Sukyas Brothers' lawyers received a document from the National Archives of Romania indicating that CIRO "was not included in the list of companies listed on the BUCHAREST STOCK ECHANGE, SHARES AND EXCHANGES and did not appear in any transactions on the stock exchange in 1948", which they submitted to the Court of Cassation.[69]

134. On 29 September 2011, the Court of Cassation issued Decision No. 6587 denying the Sukyas Brothers' cassation appeal and affirming the decision of the BCA ("**Decision No. 6587**").[70]

135. On 10 October 2011, the Sukyas Brothers filed an extraordinary recourse of annulment against the decision of the Court of Cassation.[71] On 12 November 2012, the Court of Cassation denied the annulment.[72]

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66 **Exhibit C-187**, Decision No. 212A from 22 March 2010 in case 26916/3/2008 (Bucharest Court of Appeal).
67 SoC, para. 289.
68 **Exhibit C-194**, Second appeal filed by Jak and Edward Sukyas dated 18 August 2010 in case 26916/3/2008 (Bucharest Court of Appeal).
69 **Exhibit C-79**, Letter from National Archives dated 12 April 2011 re CIRO was not in transactions on the stock exchange in 1948. The Tribunal notes that the date of the document appears to be 12 April 2011.
70 **Exhibit C-077**, Decision No. 6587 from 29 September 2011 in case 26916/3/2008 (Court of Cassation, Civil and Intellectual Property Division).
71 **Exhibit C-199**, Objection for Annulment by Jak and Edward Sukyas from 10 October 2011 (Court of Cassation).
72 **Exhibit C-201**, Decision No. 6893 from 12 November 2012 in case no. 8033/1/2011 (Court of Cassation).

II. The Proceedings Brought by the Sukyas Brothers under Law 221 of 2009

136. In June 2009, Romania enacted the law on politically motivated convictions and administrative measures pronounced between 6 March 1945 and 22 December 1989 ("**Law 221/2009**"). The purpose of Law 221/2009 was to make it significantly easier for victims of takings that occurred through politically motivated convictions or as a matter of the effect of administrative measures to prove their claims.[73]

137. Article 1 of Law 221/2009 reads as follows:

> "(1) There shall constitute a political conviction any conviction ordered by means of a final judgment, rendered during the timeframe 6 March 1945 – 22 December 1989, for acts committed before the date of 6 March 1945, or after that date, whose purpose was the opposition to the totalitarian regime established on 6 March 1945.
>
> (2) There shall constitute de jure political convictions, the convictions rendered for the deeds provided by: […] of the Criminal Code of 1936, republished in the Official Gazette, Part I, no. 48 of 2 February 1948, as subsequently amended and completed […]".[74]

138. Article 3 of Law 221/2009 provides:

> "There shall constitute an administrative measure of a political nature any measure taken by the former militia or security bodies, having as object the deployment and establishment of forced domicile, the internment in labour units and labour colonies, the establishment of a mandatory workplace, if these measures were based on one or more of the following legal provisions: […]".[75]

139. Article 5 of Law 221/2009 reads as follows:

> "(1) Any individual having suffered a political conviction during the timeframe 6 March 1945 – 22 December 1989, or who has been subject of administrative measures of a political nature, as well as, after the death of this individual, the spouse or the descendants up to the second degree inclusively, may request the court within a timeframe of three years from the entry into force of this law, to order the State to:
>
> a) grant compensation for the moral damage suffered through the conviction. […];

[73] **CE-2**, Report of Professor Baias, para. 171.
[74] **Exhibit CL-135**, Article 1 of Law 221/2009.
[75] **Exhibit CL-135**, Article 3 of Law 221/2009.

> b) grant compensation representing the equivalent value of the assets confiscated through the conviction decision, or as an effect of the administrative measure […]".[76]

140. On 25 May 2012, the Sukyas Brothers filed an action pursuant to Law 221/2009 with the Bucharest Tribunal, requesting the court to ascertain the political nature of the conviction of Vahram Sukyas in 1948. The complaint requested compensation for the value of CIRO's shares and the value of the business of Astoria as well as moral damages in the amount of EUR 10,000.[77]

141. On 21 May 2014, the Bucharest Tribunal rejected the Sukyas Brothers' request for damages under Law 221/2009, concluding that the conviction of Vahram Sukyas in 1948 was not politically motivated ("**Decision 611/2014**"). The Bucharest Tribunal added that, even if it were to find that the conviction was political in nature, it would have still rejected the claims based on the Court of Cassation's earlier holding in the Law 10/2001 action that the transfer of CIRO's shares resulted from a consensual sale transaction on the stock exchange, which was *res judicata*.[78]

142. On 25 May 2015, the Sukyas Brothers filed an appeal against Decision 611/2014. On 22 September 2015, the BCA rejected the appeal and upheld the Bucharest Tribunal's Decision 611/2014 ("**Decision 871 R/2015**"). It is undisputed that this was the final recourse available to the Sukyas Brothers on their Law 221/2009 claims.[79]

III. The Civil Proceedings Brought by the Sukyas Brothers under Articles 480-482 of the Romanian Civil Code

143. On 24 August 2011, the Sukyas Brothers filed a revindication claim with the Bucharest Tribunal against the Romanian government, Bucharest Municipality, and the General Council of the Bucharest Municipality under Articles 480 and 481[80] of the Romanian Civil Code, as well as the European Convention on Human Rights ("**ECHR**") and Article 1 of Additional Protocol No. 1 to the ECHR ("**Revindication**

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76 **Exhibit CL-135**, Article 5 of Law 221/2009.

77 **Exhibit C-203**, Claim of Jak and Edward Sukyas against the Romanian state political conviction dated 25 May 2012 in case 19192/3/2012 (Bucharest Tribunal).

78 **Exhibit C-211**, Decision No. 611 from 21 May 2014 in case 19192/3/2012 (Bucharest Tribunal), pp. 8-9.

79 SoC, para. 326; **Exhibit C-213**, Decision No. 871 R from 22 September 2015 in case 19192/3/2012 (Bucharest Court of Appeal).

80 Claimant's translation of Articles 480-481 of the Romanian Civil Code reads "the right to enjoy and dispose of an asset exclusively and absolutely, but within the limits determined by law". "[n]o one may be compelled to hand over its estate, except for a public utility cause and on receipt of fair and prior compensation". **Exhibit CL-171**, Romanian Civil Code of 1864.

Action"). The Revindication Action sought: (i) relief in the form of an order for the restitution in kind of the Laboratory (the building and the plot of land); and (ii) the granting of moral damages in the amount of EUR 2 million.

144. In a supplemental complaint filed on 19 March 2013, the Sukyas Brothers requested the Bucharest Tribunal to ascertain the absolute nullity of the 1948 Minutes.[81] The relevant part of the supplemental complaint reads as follows:

> "We are the owners of the real estate located in Bucharest, Str. Straulesti 3, sector 1, as heirs of our father and uncle, Vahram Sukyas and Melik J. Soukias, based on the ownership deeds that we enclosed as evidence (Annex 1) and on our right of succession (Annex 2).
>
> We point out that, by forging the official documents that we request to be declared null and void, we were robbed of our property by the communist regime during 1948 and we are entitled to have our property returned, because during the communist period the properties were confiscated or nationalized by law. In our case, being protected by our status as foreign shareholders, the property could not be nationalized, therefore they resorted to forging official documents as well as to register as true, some facts that were false such as 'the shares were bought through the stock exchange' which is completely untrue, because we have the proof that the shares of that company were not even listed on the stock exchange. Also, the company stamp and logo were used to forge the documents and up to publishing them in the Official Gazette of that time".[82]

145. On 4 February 2014, the Bucharest Tribunal declared certain claims inadmissible as follows:

> "Given the considerations retained in Decision no. 27/2011 and in Decision no. 33/2008 ruled by the HCCJ in the interest of the law, the Tribunal allows the plea of inadmissibility of the heads of the main claim aimed at finding the absolute nullity of the minutes of the Extraordinary General Meeting of the company 'Cinegrafia Romana', of the petition formulated by Cinegrafia Romana of deregistration of this company, of the other subsequent deeds, as well as of the head of the claim regarding the restitution in kind of the building located in Bucharest, 3 Straulesti street, sector 3.
>
> Even if the main claim has as object not only the restitution in kind of the real estate, but also the finding of the absolute nullity of the previously mentioned deeds, this last aspect is a component part of the analysis of the restitution claim under law no. 10/2001, necessary in order to assess the state of 'property

[81] **Exhibit C-225**, Claim for restitution of property against the state from 24 August 2011 in case 57922/3/2011 (Bucharest Tribunal); **Exhibit C-279**, Supplemental Claim with Bucharest Tribunal against Romania, Mayor of Bucharest, General Council of Bucharest (File no. 57922/3/2001), dated 19 March 2013.

[82] **Exhibit C-279**, Supplemental Claim with Bucharest Tribunal against Romania, Mayor of Bucharest, General Council of Bucharest (File no. 57922/3/2001), dated 19 March 2013, pp. 3-4.

> abusively taken over' (art. 2). By HCCJ decisions, it was established that the direct revendication [sic] proceedings based on common law are inadmissible, as they breach the principle '*specialia generalibus derogant*'. The solution of regulating these proceedings by a special law does not violate [ECtHR] jurisprudence either, considering the wide margin of appreciation enjoyed by the states in establishing the method of compensation for nationalized real estate (the cases Paduraru vs. Romania, Maria Atanasiu and others vs. Romania).
>
> In the present case, the plaintiffs formulated an action in restitution based on Law no. 10/2001, which was the subject of the case file no. 26916/3/2008, being irrevocably dismissed by decision no. 6587 / 29.09.2011, ruled by the high court of cassation and justice in the mentioned case file, the legality of the transmission of the share of Cirofilm company to the state on 12 April 1948 was established and, implicitly, of the subsequent deeds. This decision has the res judicata force, not being possible to change those upheld by an irrevocable decision".[83]

146. On 10 June 2014, the Bucharest Tribunal confirmed its decision dated 4 February 2014 and dismissed the Sukyas Brothers' claims for moral damages.[84] On 16 September 2014, the Sukyas Brothers filed an appeal with the BCA against the Bucharest Tribunal's decision of 10 June 2014.[85]

147. On 14 January 2015, the BCA upheld the Bucharest Tribunal's decision. It ruled as follows:

> "The present claim registered with the Court on 24.08.2011, after exhausting all the administrative and judicial procedures provided by Law no. 10/2001, is inadmissible.
>
> The claim is inadmissible because it violates the principles '*Lex specialis derogat legi generali*' and '*electa una via*' […]
>
> The claim lodged by the plaintiffs has been registered with the Court on 24.08.2011, after the enactment of the special law, Article 6 of Law no. 213/1998 restricting the scope of the common law, given that there are special laws on reparation, which Law no. 10/2001 is by definition and after the irrevocable settlement of the complaint grounded on the provisions of Law no. 10/2001. […]
>
> It is correct that, in the content of the special law in questions, there are no provisions that expressly prohibits the possibility to lodge a claim for the recovery of property grounded on the common law, namely Article 480 of the

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83 **Exhibit C-227**, Decision from 4 February 2014 in case 57922/3/2011 (Bucharest Tribunal), p. 2. The Tribunal notes that Claimant's translation uses the acronym "HCCJ" when referring to Romania's High Court of Cassation and Justice, which had been defined by the Tribunal above as "Court of Cassation".

84 **Exhibit C-228**, Decision No. 685 from 10 June 2014 in case 57922/3/2011 (Bucharest Tribunal).

85 **Exhibit C-229**, Appeal by Jak and Edward Sukyas against Decision No. 685 in case 57922/2011 (Bucharest Tribunal), dated 16 September 2014.

> Civil code, in order to recognize the right of property claimed by the plaintiffs against a third party and in order to obtain the possession of the asset.
>
> The inapplicability of the common law derives from a fundamental law principle, namely '*specialia generalibus derogant*' ('The special law derogates from general law'). According to this principle, where the scope of the general law overlaps with the scope of the special law, the special law shall be applied, the provisions of the general law being removed. […]
>
> In the present case, the plaintiffs have chosen and used the procedure enshrined by Law no. 10/2001, procedures which ended with a decision that acquired the authority of a final decision stating that 'the 12.04.1948 acquisition by the State of the shares of the Company Ciro Film, through the Stock Exchange, is included in the scope of the private legal act and, as a result, it falls outside the scope defined by Article 1 paragraph 1 letter h of the Law no. 10/2001.' […]
>
> However, for the reasons stated above, the present claim cannot be successfully lodged by the plaintiffs considering the fact that their right has already been examined from the perspective and in the light and under the Law no.10/2001".[86]

148. On 1 April 2015, the Sukyas Brothers filed a recourse against the BCA's decision.[87] On 22 October 2015, the Court of Cassation held that the BCA erred in rejecting the Sukyas Brothers' claims as inadmissible.[88]

149. On 23 November 2016, the BCA (on remand) dismissed the Sukyas Brothers' revindication claim for lack of standing:

> "In relation to the above, the Court notes that the proof of shareholder status of the claimants' predecessors, regardless of the proportion held in the share capital, cannot replace the lack of title to the property, which was never owned by the claimants, whose assets could have been confused with that of the company [CIRO], the sole owner of the property. Thus, the Court finds that the claimants do not justify their standing to sue in their claim. The conclusion on the objection of the lack of standing to sue is, moreover, reflected in the jurisprudence of the High Court of Cassation and Justice which, in a case […], held that it did not justify its standing to sue, given that it was not the claimant's predecessor who owned the property right, but the company in which it was a shareholder, and the latter's patrimony is not to be confused with that of the shareholders".[89]

150. On 30 March 2017, the Court of Cassation confirmed the BCA's decision.[90]

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86 **Exhibit C-230**, Decision No. 6A from 14 January 2015 in case 57922/3/2011 (Bucharest Court of Appeal), pp. 15-18.
87 **Exhibit C-231**, Second appeal by Jak and Edward against Decision 6A in case 57922/3/2011 (Bucharest Court of Appeal), dated, 1 April 2015.
88 **Exhibit C-232**, Decision No. 2308 from 22 October 2015 in case 57922/3/2011 (Court of Cassation).
89 **Exhibit C-233**, Decision No. 813A from 23 November 2016 in case 57922/3/2011 retrial (Bucharest Court of Appeal).
90 **Exhibit C-234**, Decision No. 624 from 30 March 2017 in case 57922/3/2011 retrial (Court of Cassation).

Section VIII. The Proceedings Initiated by the Sukyas Brothers before U.S. Courts

151. On 16 March 2015, the Sukyas Brothers filed a lawsuit against Romania and RADEF under the Foreign Sovereign Immunities Act of 1976 ("**FSIA**") for expropriation of and tortious interference with CIRO.[91]

152. Under the FSIA, U.S. courts have exclusive jurisdiction over foreign nations and their agencies and instrumentalities in specific circumstances, such as when the action involves a commercial activity, or when rights in property taken in violation of international law are at issue, as long as a sufficient nexus with the U.S. exists.[92]

153. In March 2016, Romania appeared in the proceedings and requested the court to dismiss the case on several grounds.[93]

154. On 21 September 2017, the U.S. Federal Court declared its lack of jurisdiction on the basis that the Sukyas Brothers did not demonstrate that RADEF had sufficient recent commercial links with the U.S.[94]

155. The Sukyas Brothers appealed and on 19 March 2019, the Ninth Circuit Court of Appeal reversed the lower court's decision.[95]

156. Mr. Edward Sukyas requested the US District Court of the Central District of California that its case in the U.S. be dismissed "with prejudice" so that he could bring his claims in arbitration under the Canada-Romania BIT. On 30 March 2020, the California Court granted this motion.[96]

Section IX. The Proceedings Initiated by the Sukyas Brothers before the European Court of Human Rights

157. On 6 March 2012, after the issuance of Decision No. 6587 by the Court of Cassation on 29 September 2011, the Sukyas Brothers filed an application with the European

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91 **Exhibit C-235**, U.S. Action Complaint, dated 16 March 2015.
92 **Exhibit CL-028**, 28 U.S.C. § 1605 (General exceptions to the jurisdictional immunity of a foreign state).
93 **Exhibit C-241**, U.S. Action Defendants' 15 March 2016 Notice of Motion to Dismiss, dated 15 March 2016.
94 **Exhibit CL-34**, Sukyas v. Romania, No. 2:15-cv-01946 (FMO), 2017 WL 6550588 (C.D. Cal. 21 September 2017), dated 21 September 2017.
95 **Exhibit CL-35**, Sukyas v. Romania, 765 F. App'x 179, 180 (9th Cir. 2019), dated 19 March 2019.
96 **Exhibit C-249**, Order Granting Edward Sukyas' Motion to Dismiss with Prejudice, dated 30 March 2020.

Court of Human Rights ("**ECtHR**") concerning the proceedings brought under Law 10/2001.[97]

158. On 31 May 2012, the ECtHR ruled that the application was inadmissible.[98]

159. On 12 October 2017, after the issuance of the Court of Cassation's decision dated 30 March 2017, the Sukyas Brothers filed another application with the ECtHR regarding the Revindication Action.[99]

160. On 19 April 2018, the ECtHR ruled that the application was inadmissible.[100]

CHAPTER VI. THE PARTIES' REQUESTS FOR RELIEF

Section I. Claimant's Requests for Relief

161. In his SoC, Claimant requested as follows:

> "As a result, Claimant[] respectfully request[s] the Tribunal to issue an award:
>
> i. declaring that the dispute is within the jurisdiction and competence of the Tribunal and Claimant['s] claims are admissible;
>
> ii. allowing Claimant['s] claims arising out of the Turkey-Romania BIT (2008) be heard in the present arbitration proceeding;
>
> iii. declaring that Respondent violated the applicable BITs with respect to Claimant['s] investment;
>
> iv. ordering Respondent to pay damages to Claimant[] for [its] losses from the breaches of the applicable BITs and incremental expenditure/loss in an amount no less than US $ 2,060,145,997.43;
>
> v. ordering Respondent to pay a pre- and post-award interest at the rate of US Treasury / LIBOR + 2% compounded semi-annually until the date of Respondent's full and effective payment starting from the relevant dates as described in Section VI.C;
>
> vi. ordering Respondent to pay all of Claimant['s] costs of the present arbitration proceedings inclusive of all of its attorneys' fees and expenses; and

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97 **Exhibit C-258**, Sukyas v. Romania, ECtHR, App no. 18467/12, Application of 6 March 2012.
98 **Exhibit C-260**, Sukyas v. Romania, ECtHR, App no 18467/12, Letter Decision (Admissibility), dated 31 May 2012.
99 **Exhibit C-259**, Sukyas v. Romania, ECtHR, App no. 74426/17, Application, dated 12 October 2017.
100 **Exhibit C-261**, Sukyas v. Romania, ECtHR, App no. 74426/17, Decision (Admissibility), dated 19 April 2018.

vii. ordering such other relief that the Tribunal may deem just and proper".[101]

162. In his Counter-Memorial on J&A and SoRj, Claimant requested as follows:

> "Wherefore, (sic) Claimant[] respectfully request an award from the Tribunal with the following relief:
>
> i. dismissing Respondent's Jurisdictional and Admissibility Objections;
>
> ii. declaring that it has jurisdiction to hear Claimant['s] claims under the US-Romania BIT (1992), Canada-Romania BIT (1996), Canada-Romania BIT (2009) and Turkey-Romania BIT (2008);
>
> iii. declaring that Claimant['s] claims (including Claimant['s] Turkey BIT Claims) are admissible;
>
> iv. awarding an immediate costs order against Respondent in respect of the costs incurred by Claimant[] to address Respondent's out-of-schedule and untimely Application of 28 May 2022 and Respondent's Jurisdictional and Admissibility Objections".[102]

Section II. Respondent's Requests for Relief

163. In its J&A Memorial and SoR, Respondent requested as follows:

> "Romania hereby requests that:
>
> 1) The Tribunal find that the Claimant['s] attempt to submit a claim with a basis of jurisdiction as the 2008 Romania-Turkey BIT must be rejected;
>
> 2) The Tribunal has no jurisdiction to apply the 1996 Romania-Canada BIT, which has been terminated;
>
> 3) The Tribunal find the dispute and claims are outside the Tribunal's jurisdiction and/or inadmissible;
>
> 4) The Tribunal award Romania all of its costs in these arbitrations".[103]

[101] SoC, para. 727. The Tribunal notes that these requests for relief are made by Messrs Jak Sukyas and Edward Sukyas jointly, with respect to the two proceedings initiated against Romania.
[102] Counter-Memorial on J&A, para. 355; SoRj, para. 147.
[103] J&A Memorial, para. 430; SoR, para. 186.

CHAPTER VII. THE ISSUES TO BE DETERMINED BY THE TRIBUNAL

164. The Tribunal has relied on the entire record before it, including the Parties' written submissions and oral pleadings. To the extent that some arguments included in the Parties' submissions are not reproduced in this Award, they must be considered subsumed in the Tribunal's analysis.

165. The Tribunal notes that Respondent has raised the following objections to the Tribunal's jurisdiction and the admissibility of Claimant's claims: (i) the Tribunal lacks jurisdiction to decide the Turkey-Romania BIT Claims; (ii) the Tribunal lacks jurisdiction to decide Claimant's claims under the 1996 Canada-Romania BIT; (iii) the Tribunal lacks jurisdiction to decide Claimant's claims under the 1996 and the 2009 Canada-Romania BITs pursuant to the "cultural industries" exception; (iv) Claimant's claim has been settled and there is no dispute with Respondent; (v) Claimant has not established that he had continuously held the relevant nationality to bring his claims; (vi) the Tribunal lacks jurisdiction *ratione materiae* under any of the relevant BITs; (vii) Claimant's claim does not satisfy the legality requirement under any of the BITs; (viii) the Tribunal lacks jurisdiction *ratione temporis* under any of the relevant BITs; (xi) Claimant's claim fails to respect the waiver of other litigation requirement under the 2009 Canada-Romania BIT; and (x) Claimant's claim constitutes an abuse of process.[104]

166. In the Tribunal's view, it is sufficient, for reasons of judicial economy, to address only the determinative preliminary objections that exclude the Tribunal's jurisdiction under each of the three BITs invoked.

167. Against this background, and having considered the Parties' positions, the Tribunal finds that it can limit itself to addressing the following key issues:

- Issue No. 1: Whether the Tribunal has jurisdiction to decide the Turkey-Romania BIT Claims

- Issue No. 2: Whether the Tribunal has jurisdiction to decide Claimant's claims under the 1996 and the 2009 Canada-Romania BITs, pursuant to the "cultural industries" exception set out in the respective Articles VI(3) of the Canada-Romania BITs

[104] J&A Memorial, Sections VI to VII. SoR, Sections III to X.

- Issue No. 3: How to allocate the arbitration costs.

168. In the following sections of this Award, whenever applicable, the text under the headings "Claimant's Position" and "Respondent's Position" is a summary of the submissions made by the Parties. Likewise, the text under the heading "Canada's Position" is a summary of Canada's Non-disputing Contracting Party Submission filed on 13 April 2023, pursuant to Annex C(II)(3) of the 2009 Canada-Romania BIT. The Tribunal's analysis and decisions are set out under the heading "Decision".

Section I. – Issue No. 1 - Whether the Tribunal Has Jurisdiction to Decide the Turkey-Romania BIT Claims

I. Respondent's Position

169. According to Respondent, the Tribunal does not have jurisdiction over the Turkey-Romania BIT Claims.[105]

170. Respondent avers that, months after the Notice of Arbitration was filed on 18 February 2020, Claimant attempted to submit his Turkey-Romania BIT Claims by filing his SoC in the present proceedings on 1 April 2022, instead of initiating a separate arbitration proceeding.[106]

171. In Respondent's view, the Tribunal's jurisdiction needs to be assessed as of the date of the commencement of the arbitration proceedings, *i.e.*, as of 18 February 2020.[107]

172. In this regard, Respondent submits that: (i) Claimant accepted Romania's offer to arbitrate set out in the respective Articles XIII of the 1996 and the 2009 Canada-Romania BITs on 18 February 2020; and (ii) Claimant only accepted Romania's offer to arbitrate under the Turkey-Romania BIT when he filed his SoC on 1 April 2022. Accordingly, the Tribunal cannot exercise jurisdiction pursuant to an arbitration agreement that was formed later in the course of the proceedings.[108]

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[105] J&A Memorial, para. 108; SoR, para. 97.

[106] J&A Memorial, para. 99.

[107] Hearing Transcript, Respondent's Opening Statement, Day 1, p. 103, lines 2-4. **Exhibit RL-254**, *Spółdzielnia Pracy Muszynianka v. Slovak Republic*, PCA Case No. 2017-08/AA629, Award dated 7 October 2020, para. 263; **Exhibit RL-119**, Christoph Schreuer and others, The ICSID Convention: a Commentary, 2nd ed, Excerpts, dated 2009, paras. 37-39.

[108] J&A Memorial, paras. 102, 385; Hearing Transcript, Respondent's Opening Statement, Day 1, p. 103, line 2 to p. 106, line 23.

173. In its view, given that the Tribunal's jurisdiction derives from the consent of the Parties, it is not possible to alter the jurisdictional basis (absent the express consent of the Parties) after the Tribunal has been constituted.[109] Instead, in Respondent's view, Claimant's belated invocation of the Turkey-Romania BIT Claims is "an abuse of process in that it puts the investment arbitration system to improper use",[110] *inter alia*, because it is "the latest iteration of the Claimant[']s endless forum shopping, which has been extremely wasteful of judicial resources".[111]

174. Furthermore, Respondent argues that Claimant is not allowed to introduce the Turkey-Romania BIT Claims pursuant to Article 22 of the UNCITRAL Arbitration Rules since these "new claims" are manifestly outside of the Tribunal's jurisdiction.[112]

175. Finally, Respondent contends that in any event the Tribunal should not entertain the Turkey-Romania BIT Claims *inter alia* because: (i) the pre-arbitration requirements found in Article 6 of the Turkey-Romania BIT were not respected; and (ii) the Turkey-Romania BIT Claims are outside the Tribunal's mission as set out in the Terms of Appointment, which may lead to the annulment of the award.[113]

II. Claimant's Position

176. According to Claimant, by filing the SoC, he accepted Respondent's offer to arbitrate disputes arising under the Turkey-Romania BIT. Thus, an arbitration agreement in respect of the Turkey-Romania BIT Claims was formed between Claimant and Respondent at the time of the submission of the SoC, *i.e.*, on 1 April 2022.[114]

177. Claimant submits that the arbitration agreement formed between the Parties under the Turkey-Romania BIT grants jurisdiction to UNCITRAL tribunals (as well as to ICSID tribunals) constituted by the Parties to hear the Turkey-Romania BIT Claims. There is therefore no question that the present Tribunal—a tribunal constituted by

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[109] J&A Memorial, para. 102.
[110] SoR, para. 76. See further J&A Memorial, paras. 374-381.
[111] J&A Memorial, para. 427.
[112] J&A Memorial, para. 106. Article 22 of the UNCITRAL Arbitration Rules reads as follows: "During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal".
[113] J&A Memorial, paras. 366-373, 382-385; SoR, paras. 78-91, 92-97.
[114] Counter-Memorial on J&A, para. 63.

the Parties under the UNCITRAL Arbitration Rules—has jurisdiction over the Turkey-Romania BIT Claims. In Claimant's view, the "undeniable fact that an agreement was formed between the Parties as to the submission of the [Turkey-Romania BIT Claims] to UNCITRAL or ICSID arbitration when Claimant accepted Respondent's offer to arbitrate under the [Turkey-Romania BIT] puts it beyond doubt that there is no issue with the Parties' consent to the jurisdiction of the present [] Tribunal over the [Turkey-Romania BIT Claims]".[115]

178. It is Claimant's case that Respondent has not been able to identify any single rule or principle which could possibly preclude Claimant from bringing the Turkey-Romania BIT Claims in these proceedings.[116]

179. On the contrary, in Claimant's view, Respondent is committing an abuse of process by trying to prevent the Claimant from having these claims heard in the present proceeding. Claimant contends that "[i]t is abuse of process by Respondent to maintain its objections to Turkey BIT Claims knowing that these objections may, if successful, trigger the initiation of another arbitration based on the very same facts and causes of action. […] it should be obvious to Respondent that there is no point in forcing Claimant[] to initiate separate parallel arbitration proceedings against Romania in respect of the very same breaches and the very same damage incurred by Claimant[]."[117]

180. Moreover, Claimant submits that he is entitled to introduce the Turkey-Romania BIT Claims pursuant to Article 22 of the UNCITRAL Arbitration Rules.[118]

181. Finally, Claimant contends that: (i) the pre-arbitration requirements set out in Article 6 of the Turkey-Romania BIT were satisfied; and (ii) the Turkey-Romania BIT Claims are not outside the Tribunal's mission.[119]

III. Decision

182. The Tribunal needs to determine whether it has jurisdiction to rule over the Turkey-Romania BIT Claims.

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[115] Counter-Memorial on J&A, para. 64.
[116] Hearing Transcript, Claimant's Opening Statement, Day 1, p. 210, lines 3-18.
[117] Counter-Memorial on J&A, para. 353.
[118] Counter-Memorial on J&A, para. 76.
[119] Counter-Memorial on J&A, paras. 79-106, 115-127; SoRj, paras. 50-68, 69-81.

183. As mentioned in paragraph 13 above, the relevant excerpts of Article 6 of the Turkey-Romania BIT read as follows:

> "ARTICLE 6
> Settlement of Investment Disputes
>
> (1) For the purposes of this Article, an investment dispute is defined as a dispute involving:
>
> (a) interpretation or application of any investment authorization granted by a Contracting Party's foreign investment authority to an investor of the other Contracting Party. or
>
> (b) a breach of any right conferred or created by this Agreement with respect to an investment.
>
> (2) Any dispute between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be settled as far as possible amicably by consultations and negotiations between the parties to the dispute.
>
> (3) If the dispute cannot be settled by consultations and negotiations within six months from the date of request for settlement then the dispute shall be submitted to, as the investor may, choose to:
>
> (a) the International Center for Settlement of Investment Disputes (ICSID) set up by the 'Convention on Settlement of Investment Disputes Between States and Nationals of other States' done at Washington, on March 16, 1965, in case both Contracting Parties become signatories of this Convention.
>
> (b) an ad hoc court of arbitration laid down under the Arbitration Rules or Procedure of the United Nations Commission for International Trade Law (UNCITRAL). […]".[120]

184. The Tribunal recalls that on 18 February 2020, Claimant filed a Notice of Arbitration, pursuant to the respective Articles XIII of the 1996 and 2009 Canada-Romania BITs. The relevant extracts of the Notice of Arbitration provide:

> "<u>According to Article 3(3)(d) of the 2010 Rules, Article 3(3)(d) of the 1976 Rules, or both, this submission to arbitration is made pursuant to two treaties, on a cumulative or alternative basis</u>:
>
> 5.1 the Agreement between the Government of Romania and the Government of Canada for the Promotion and Reciprocal Protection of Investments dated 8 May

[120] **Exhibit CL-58**, Turkey-Romania BIT, Article 6.

> 2009 ('2009 Romania-Canada BIT').[] The 2009 Romania-Canada BIT entered into force on 23 November 2011.[]
>
> 5.2 the Agreement between the Government of Canada and the Government of Romania for the Promotion and Reciprocal Protection of Investments (with annex) dated 17 April 1996 ('1996 Canada-Romania BIT').[] The 1996 Canada-Romania BIT entered into force on 11 February 1997. […]
>
> Pursuant to Article 3(3)(c) of the 2010 Rules, Article 3(3)(c) of the 1976 Rules, or both, the arbitral tribunal's jurisdiction over Mr E. Sukyas' claims arises from both of the BITs, individually or cumulatively. Article XIII of the [Canada-Romania BITs] contains the arbitration agreement and is set out below: […]
>
> As indicated in the consent enclosed herewith,[] and in accordance with Article XIII(3)(a) of the BITs, Mr E. Sukyas consents to submit this dispute to arbitration. […]".[121] [emphases added].

185. Romania's offer to arbitrate disputes set out in the respective Articles XIII of the 1996 and 2009 Canada-Romania BITs was accepted by Claimant on 18 February 2020.[122] These are the instruments of consent that form the basis of the Tribunal's jurisdiction as recorded in the Terms of Appointment. On this date, the arbitration agreements—pursuant to which this Tribunal was constituted—were formed.[123]

186. The most relevant passages of the Terms of Appointment read as follows:

> "2.1. The present proceedings have been initiated by Mr. Edward Sukyas, a Canadian national, on the one hand, against Romania, on the other hand. The Claimant claims to hold a series of assets, rights, or both that qualify as an investment in Romania, and that there is a dispute relating to that investment between the Disputing Parties.
>
> 2.2. By Request for Arbitration dated 18 February 2020, the Claimant commenced arbitration proceedings against the Respondent pursuant to: (i) Article XIII of the Treaty between the Government of Canada and the Government of Romania for the Promotion and Reciprocal Protection of Investments dated 8 May 2009, which entered into force on 23 November 2011 ("**2009 Canada-Romania BIT**"); and / or (ii) Article XIII of the Treaty between the Government of Canada and the Government of Romania for the Promotion and Reciprocal Protection of Investments dated 17 April 1996, which entered into force on 11 February 1997 ("**1996 Canada-Romania BIT**", or collectively, the "**Treaties**") […]

[121] Claimant's Notice of Arbitration dated 18 February 2020, paras. 5- 11-12, 15.
[122] Claimant's Notice of Arbitration dated 18 February 2020, para. 15.
[123] The Tribunal clarifies that whether an arbitration agreement was indeed formed with respect to the 1996 Canada-Romania BIT is a disputed issue which will be analyzed below.

> 5.1. The Disputing Parties agreed by correspondence dated 8 and 17 August 2020, that the 2010 UNCITRAL Rules shall govern the proceedings. Thus, the proceedings shall be governed by Article XIII of the Treaties, the mandatory laws of the place of arbitration, and the 2010 UNCITRAL Rules. […]
>
> 16.1. By the Disputing Parties' agreement, the proceedings initiated by Mr. Jak Sukyas and Mr. Edward Sukyas against Romania are legally distinct but shall be procedurally coordinated. In this sense, both proceedings shall follow identical procedural timetables, and the Disputing Parties will file a single set of pleadings addressing both claims".[124] [bold in the original; other emphases added].

187. It is a well-established principle that the Tribunal's jurisdiction must be assessed with reference to the date on which the proceedings commenced.[125]

188. In the words of Professor Schreuer:

> "It is an accepted principle of international adjudication that jurisdiction will be determined by reference to the date on which judicial proceedings are instituted. This means that on that date all jurisdictional requirements must be met. It also means that events taking place after that date will not affect jurisdiction".[126] [emphases added].

189. This principle has been recognised by both ICSID and UNCITRAL investment tribunals. For instance, the tribunal in *CSOB v. Slovakia* ruled as follows:

> "In assessing the effect of the June 25, 1998 assignment (and of the April 24, 1998 assignment it superseded) on the Centre's jurisdiction to hear this dispute, the Tribunal notes, in the first place, that the Request for Arbitration in the instant case was filed on April 17, 1997 and that the case was registered on April 25, 1997. Hence, at the time when these proceedings were instituted, neither of these assignments had been concluded. Second, it is generally recognized that the determination whether a party has standing in an international judicial forum for purposes of jurisdiction to institute proceedings is made by reference to the date on which such proceedings are deemed to have been instituted. Since the Claimant instituted these proceedings prior to the time when the two assignments were concluded, it follows that the Tribunal has jurisdiction to hear this case regardless of the legal effect, if any, the assignments might have had on

[124] Terms of Appointment, dated 13 January 2021, paras. 2.1, 2.2, 5.1, 16.1.

[125] **Exhibit RL-254**, *Spółdzielnia Pracy Muszynianka v. Slovak Republic*, PCA Case No. 2017-08/AA629, Award dated 7 October 2020, para. 263; **Exhibit RL-119**, Christoph Schreuer and others, The ICSID Convention: a Commentary, 2nd ed, Excerpts, dated 2009, para. 39 (citing *CSOB v. Slovakia*, Decision on Jurisdiction, 24 May 1999, para. 31); see also, **Exhibit RL-119**, Christoph Schreuer and others, The ICSID Convention: A Commentary, 2nd ed, Excerpts, dated 2009, para. 37 (citing *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)*, Judgment, 14 February 2002, I.C.J. Reports 2002, p. 1).

[126] **Exhibit RL-119**, Christoph Schreuer and others, The ICSID Convention: a Commentary, 2nd ed, Excerpts, dated 2009, paras. 36-40.

> Claimant's standing had they preceded the filing of the case".[127] [emphasis added].

190. Similarly, the Tribunal in the *Spółdzielnia Pracy Muszynianka v. Slovak Republic* case, decided that:

> "It is a well-settled principle that jurisdiction is determined at the time of the institution of the proceedings,[] here on 18 August 2016 when the Notice of Arbitration was filed".[128] [emphasis added].

191. Pursuant to Article 3(2) of the UNCITRAL Arbitration Rules, this arbitration commenced on the date on which the Notice of Arbitration was received by Respondent, *i.e.*, 18 February 2020.[129]

192. As recorded in the Terms of Appointment set out in paragraph 183 above, at that point in time, however, the Tribunal did not have, and could not have had jurisdiction to rule on the Turkey-Romania BIT Claims because the Claimant had not yet accepted Respondent's offer to arbitrate under Article 6 of the Turkey-Romania BIT. As Claimant has candidly admitted throughout the proceedings, the relevant arbitration agreement under the Turkey-Romania BIT was formed only approximately twenty-five months later, on 1 April 2022, when Claimant filed his SoC.[130]

193. In this regard, the Tribunal refers to Claimant's SoC, which reads as follows:

> "In [his] Notice[] of Arbitration, Claimant[] brought [his] claims under the Canada-Romania BITs (1996) and (2009) and the US-Romania BIT (1992). Claimant[] now further wish[es] to rely on the Turkey-Romania BIT (2008) in addition to the aforementioned BITs, on the basis of [his] Turkish nationality.[] For reasons of procedural economy, instead of initiating a separate arbitration proceeding for the same dispute, Claimant[] hereby submit [his] claims under the Turkey-Romania BIT (2008) in the present arbitration proceedings. […]
>
> [] Claimant[] being [a] Turkish national[] now also accept[s] Romania's offer to arbitrate investment treaty disputes under the Turkey-Romania BIT (2008)".[131] [emphases added].

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[127] **Exhibit RL-119**, Christoph Schreuer and others, The ICSID Convention: a Commentary, 2nd ed, Excerpts, dated 2009, para. 37. Citing *CSOB v. Slovakia*, Decision on Jurisdiction, 24 May 1999, para. 31.

[128] **Exhibit RL-254**, *Spółdzielnia Pracy Muszynianka v. Slovak Republic*, PCA Case No. 2017-08/AA629, Award dated 7 October 2020, para. 263.

[129] 2010 UNCITRAL Arbitration Rules, Article 3(2).

[130] SoC, paras. 451, 458; Counter-Memorial on J&A, paras. 63, 70; SoRj, para. 46; See also, Hearing Transcript, Claimant's Opening Statement, Day 1, p. 209 line 6 to p. 210, line 6.

[131] SoC, paras. 451, 458.

194. Moreover, in his SoRj, Claimant conceded that:

> "By filing [his] Memorial, Claimant[] submitted [his] Turkey BIT Claims under the Turkey-Romania BIT (2008) in the present arbitration proceedings,[] and thereby accepted Respondent's offer to arbitrate disputes arising out of the Turkey-Romania BIT (2008). That is to say, an arbitration agreement in respect of Claimant['s] Turkey BIT Claims was formed between Claimant[] and Respondent at the time of the submission of Claimant['s] Memorial".[132] [emphases added].

195. Therefore, at the point in time when these proceedings commenced, the Tribunal did not have jurisdiction to rule over the Turkey-Romania BIT Claims.

196. The Tribunal further disagrees with Claimant's proposition according to which:

> "It follows that the arbitration agreement formed between the Parties under the Turkey-Romania BIT (2008) grants jurisdiction to UNCITRAL tribunals (as well as to ICSID tribunals) constituted by the Parties to hear Claimant['s] Turkey BIT Claims. There is therefore no question that the present Tribunal—an UNCITRAL tribunal constituted by the Parties under the UNCITRAL Arbitration Rules—has jurisdiction over Claimant['s] Turkey BIT Claims. The undeniable fact that an agreement was formed between the Parties as to the submission of Claimant['s] Turkey BIT Claims to UNCITRAL or ICSID arbitration when Claimant[] accepted Respondent's offer to arbitrate under the Turkey-Romania BIT (2008) puts it beyond doubt that there is no issue with the Parties' consent to the jurisdiction of the present UNCITRAL Tribunal over the Turkey BIT Claims".[133] [emphases added].

197. The acceptance of Romania's offer to arbitrate set forth in the Turkey-Romania BIT would grant jurisdiction to a specific tribunal constituted pursuant to that arbitration agreement to rule over the Turkey-Romania BIT Claims. It does not, as Claimant suggests, grant jurisdiction to just about any tribunal constituted on the basis of a different instrument of consent simply because it is an UNCITRAL tribunal constituted for a different dispute between the same Parties. Claimant's argument simply assumes that Respondent would appoint the same arbitrator, and agree to the appointment of the same presiding arbitrator, in an arbitration under the Turkey-Romania BIT as it did in the case of the present arbitration, thereby essentially depriving Respondent of the choice for its party-appointed arbitrator and

[132] SoRj, para. 46.
[133] Counter-Memorial on J&A, para. 64.

participation in the appointment of the presiding arbitrator. Such an outcome cannot be accepted.

198. As mentioned above, this Tribunal was constituted pursuant to Romania's offer to arbitrate set out in the respective Articles XIII of the 1996 and 2009 Canada-Romania BITs which were accepted by Claimant on 18 February 2020.[134] Since this Tribunal is not a standing body with its own independent existence or powers, it cannot simply enlarge its jurisdiction on the basis of an arbitration agreement that was formed after its own constitution on the basis of an entirely different BIT, except if the Parties agree otherwise. Such agreement, however, is missing, since Romania has repeatedly indicated that it does not consent to the Turkey-Romania BIT Claims being heard in these proceedings.[135]

199. On the basis of the above, the Tribunal concludes that it does not have jurisdiction to decide the Turkey-Romania BIT Claims.

200. Bearing in mind that the instruments of consent are entirely different, the Turkey-Romania BIT Claims should have commenced with a Notice of Arbitration, followed by the constitution of an arbitral tribunal pursuant to that instrument of consent. Instead, Claimant attempted to avoid these steps and introduce new claims in an already pending arbitration.

201. The Tribunal's jurisdiction can also not be based, as argued by Claimant, on the right to amend or supplement a claim or defence during the course of the arbitral proceedings laid down in Article 22 of the UNCITRAL Arbitration Rules, which reads as follows:

> "During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal".[136] [emphasis added].

[134] Claimant's Notice of Arbitration dated 18 February 2020, para. 9.
[135] Respondent's letter dated 28 May 2022; J&A Memorial, paras. 99-110, 366-385; SoR, paras. 77-97.
[136] Article 22 of the UNCITRAL Arbitration Rules.

202. Contrary to Claimant's contention, the Tribunal is of the view that Article 22 of the UNCITRAL Arbitration Rules does not allow Claimant to introduce the Turkey-Romania BIT Claims into these proceedings by means of amending or supplementing its claim because, as explained above, the Turkey-Romania BIT Claims fall outside the Tribunal's jurisdiction, which derives solely from the Parties' agreement to arbitrate based on the Canada-Romania BITs. Such claims are thus for a tribunal that is properly constituted under the Turkey-Romania BIT to decide.

203. In this context, the Tribunal notes that its jurisdiction can also not be based on the consideration that Respondent is committing an abuse of right or process by refusing its consent to the Turkey-Romania BIT Claims being brought by Claimant together with his claim for breach of the Canada-Romania BITs. Although Respondent has argued that bringing the Turkey-Romania BIT Claims is part of a larger scheme of forum-shopping that Respondent considers to be abusive under international law, the Tribunal is of the view that Respondent's refusal to consent is not an abuse of right or process. Respondent's refusal to consent is not "tainted by an ulterior motive to evade its duty to arbitrate [Claimant's] claims", which is, as stated by the tribunal in *Renco v. Peru*, in a comparable situation relating to the respondent's insistence on receiving a waiver that complies with certain formal requirements under the applicable treaty, the relevant test to apply to determine the existence of an abuse of right or process in respect of objections to jurisdiction.[137]

204. Having established that the Tribunal does not have jurisdiction to rule on the Turkey-Romania BIT Claims, it is not necessary to address the additional arguments raised by Respondent in paragraph 175 above.

Section II. – Issue No. 2 - Whether the Tribunal Has Jurisdiction to Decide Claimant's Claims under the 1996 and the 2009 Canada-Romania BITs, Pursuant to the "Cultural Industries" Exception Set out in the Respective Articles VI(3) of the Canada-Romania BITs

I. Respondent's Position

205. According to Respondent, the Tribunal does not have jurisdiction pursuant to the "cultural industries" exception set out in Article VI(3)[138] of the 2009 Canada-

[137] **Exhibit RL-160**, *The Renco Group Inc v. Republic of Peru*, ICSID Case No. UNCT/13/1, Partial Award on Jurisdiction (15 July 2016) paras. 185-186 (quote at para 186).

[138] **Exhibit CL-41 / RL-2**, Article VI(3) of the 2009 Canada-Romania BIT: "Investments in cultural industries are exempt from the provisions of this Agreement. 'Cultural industries' means natural persons or enterprises engaged in any of the following activities: (a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing; (b) the

Romania BIT, which is also found in the 1996 Canada-Romania BIT.[139]

206. Respondent suggests that the Tribunal may focus on the first sentence of Article VI(3) of the 1996 and 2009 Canada-Romania BITs since the second sentence merely defines the term "cultural industries" and Claimant has never denied that his purported investment falls within this definition. In any event, Claimant's original investment has been presented as the ownership of CIRO (which included a "pre-production, production, and post-production film laboratory") which falls squarely within Article VI(3)(b).[140]

207. Concerning the first sentence in Article VI(3), Respondent contends that the ordinary meaning of the terms of this provision is clear. To "[e]xempt from" means to "free a person from an obligation or liability imposed". In other words, "investments in cultural industries, like the one relied upon by Claimant, do not fall under" the scope of the 1996 and 2009 Canada-Romania BITs.[141]

208. Respondent disagrees with Claimant's interpretation of the first sentence in Article VI(3) which is set out in paragraph 212 below. In its view, Claimant's interpretation contradicts the ordinary meaning of the provision, as explained above. Furthermore, Respondent avers that, had the contracting parties wanted to create exceptions for regulatory measures concerning investments that would otherwise fall within the 1996 and 2009 Canada-Romania BITs, they would have employed the language used in Article XVII, which has exactly that purpose.[142]

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production, distribution, or sale or exhibition of film or video recordings; (c) the production, distribution, sale or exhibition of audio or video music recordings; […]".

139 J&A Memorial, para. 419; Respondent's Comments on Canada's non-Disputing Party Submission, dated 18 May 2023, para. 23. **Exhibit CL-40 / RL-88**, Article VI(3) of the 1996 Canada-Romania BIT: "Investments in cultural industries are exempt from the provisions of this Agreement. 'Cultural industries' means natural persons or enterprises engaged in any of the following activities[:] (a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typewriting any of the foregoing, (b) the production, distribution, sale or exhibition of film or video recordings, (c) the production, distribution, sale or exhibition of audio or video music recordings, […]".

140 J&A Memorial, paras. 409-411; SoR, para. 182; Hearing Transcript, Respondent's Opening Statement, Day 1, p. 113, lines 16-24.

141 Hearing Transcript, Respondent's Opening Statement, Day 1, p. 114, lines 4-15.

142 Hearing Transcript, Respondent's Opening Statement, Day 1, p. 115, lines 7-19. See **Exhibit CL-41 / RL-2**, Article XVII of the 2009 Canada-Romania BIT: "1. This Agreement shall apply to any investment made by an investor of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement. 2. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns. 3. Subject to the requirement that such measures are not applied in a manner that would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or enforcing measures necessary: (a) to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement; (b) to protect human, animal or plant life or health; or (c) for the conservation of living or non-living exhaustible natural

209. Respondent concludes that the applicability of the "cultural industries" exception affects the Tribunal's jurisdiction in the case at hand since Romania never offered to arbitrate disputes with respect to investments made in cultural industries.[143]

210. Furthermore, contrary to Claimant's argument in paragraph 214 below, Respondent contends that a most-favoured-nation ("**MFN**") clause cannot override specific carveouts or exceptions in a BIT. It finds support to this effect in the *Mesa Power Group LLC v. Canada* case.[144]

211. Finally, Respondent confirms its agreement with the points raised by Canada in its Non-Disputing Party Submission, which are summarized below in **Sub-Section III**.[145]

II. Claimant's Position

212. According to Claimant, the Tribunal has jurisdiction under the 1996 and 2009 Canada-Romania BITs.[146]

213. Claimant contends that Respondent's position is untenable for the following reasons.

214. First, the fact that the definition of investment provided in the respective Articles I(f-g)[147] of the 1996 and 2009 Canada-Romania BITs does not exclude

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resources". **Exhibit CL-40 / RL-88**, Article XVII of the 1996 Canada-Romania BIT: "1. This Agreement shall apply to any investment made by an investor of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement. This Agreement shall not, however, be applicable to any disputes which have arisen prior to its entry into force. 2. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns. 3. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Contracting Parry from adopting or maintaining measures including environmental measures: (a) necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement, (b) necessary to protect human, animal or plant life or health, or (c) relating to the conservation of living or non-living exhaustible natural resources, if such measures are made effective in conjunction with restrictions on domestic production or consumption".

143 J&A Memorial, para. 419; Respondent's Comments on Canada's non-Disputing Party Submission, dated 18 May 2023, para. 23; Hearing Transcript, Respondent's Opening Statement, Day 1, p. 117, lines 9-24.

144 SoR, para. 183; Hearing Transcript, Respondent's Opening Statement, Day 1, p. 118, lines 10-22; *Mesa Power Group, LLC v. Government of Canada*, PCA Case No. 2012-17, dated 24 March 2016, para. 401.

145 Respondent's Comments on Canada's non-Disputing Party Submission, dated 18 May 2023, para. 26.

146 Counter-Memorial on J&A, paras. 342-348; SoRj, para. 144; Claimant's Comments on Canada's non-Disputing Party Submission, dated 18 May 2023, paras. 27-29.

147 **Exhibit CL-41 / RL-2**, Article I(g) of the 2009 Canada-Romania BIT: "'investment' means any kind of asset owned or controlled either directly, or indirectly through an investor of a third state, by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and, in particular, though not exclusively,

investments made in the cultural industries and the fact that the "cultural industries" exception is set out in a clause entitled "Miscellaneous Exceptions" (together with some other industry specific carve-outs) demonstrate that the purpose of the "cultural industries" exception is to safeguard the contracting parties' regulatory autonomy in that specific industry.[148]

215. In Claimant's view, since his claims "are not concerned with regulatory or individual measures adopted by Romania in cultural industries", they are not barred by such provision.[149]

216. Second, Claimant argues that pursuant to the MFN clauses in the 1996 and 2009 Canada-Romania BITs, he may invoke any of the other BITs that do not contain the "cultural industries" exception, such as the 1992 U.S.-Romania BIT or the Turkey-Romania BIT. That being the case, Claimant's claims based on the 1996 and 2009 Canada-Romania BITs cannot be excluded from the Tribunal's jurisdiction.[150]

217. Finally, Claimant submitted that non-disputing party submissions, such as the one filed by Canada, do not have a special status of an authoritative interpretation and thus could only be afforded weight in proportion to their persuasive merit.[151]

III. Canada's Position

218. Canada submits that the respective exception under Article VI(3) of the 1996 and 2009 Canada-Romania BITs has an effect on the Tribunal's jurisdiction since the

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includes: (i) movable and immovable property and any related rights, such as mortgages, liens or pledges, (ii) shares, stock, bonds and debentures or any other form of participation in a company, business enterprise or joint venture, (iii) money, claims to money, and claims to performance under contract having a financial value, goodwill, (v), intellectual property rights, (vi) rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources, but does not mean real estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes; Any change in the form of an investment does not affect its character as an investment". **Exhibit CL-40 / RL-88**, Article I(f) of the 1996 Canada-Romania BIT: "'investment' means any kind of asset owned or controlled either directly, or indirectly through an investor of a third State, by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and, in particular, though not exclusively, includes: (i) movable and immovable property and any related rights, such as mortgages, liens or pledges, (ii) shares, stock, bonds and debentures or any other form of participation in a company, business enterprise or joint venture, (iii) money, claims to money, and claims to performance under contract having a financial value, (iv) goodwill, (v), intellectual property rights, (vi) rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources but does not mean real estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes; Any change in the form of an investment does not affect its character as an investment".

148 Counter-Memorial on J&A, para. 343; Claimant's Comments on Canada's non-Disputing Party Submission, dated 18 May 2023, para. 28.

149 Counter-Memorial on J&A, paras. 344, 346.

150 Counter-Memorial on J&A, para. 347.

151 Claimant's Comments on Canada's non-Disputing Party Submission, dated 18 May 2023, para. 4.

contracting parties have not consented to arbitrate disputes with respect to "investments in cultural industries".[152]

219. In Canada's view, the respective Articles VI(3) are broadly worded and entirely remove the applicability of both Canada-Romania BITs to "investments in cultural industries". The text of the respective Articles VI(3) are not focused on the measure of the contracting party, but on the nature of the investment itself. If the "investment" as defined in Article I(f) of the 1996 Canada-Romania BIT, respectively Article I(g) of the 2009 Canada-Romania BIT is made "in cultural industries", then the proper interpretation of the words "exempt from the provisions of this Agreement" means that the contracting parties have no obligations under the 1996, and respectively the 2009 Canada-Romania BIT with respect to that investment.[153]

220. Finally, Canada avers that the application of the respective Articles VI(3) cannot be avoided by invoking the MFN clause in the relevant BIT to rely on a different treaty which does not contain such an exception. In its view, since the respective Articles VI(3) state explicitly that "investments in cultural industries are exempt from the provisions of this Agreement", the MFN clauses in the Canada-Romania BITs cannot be engaged as they do not apply to such investments.[154]

IV. Decision

221. The Tribunal needs to determine whether it has jurisdiction to rule on Claimant's claims under the 1996 and the 2009 Canada-Romania BITs, pursuant to the "cultural industries" exception set out in the respective Articles VI(3) of the Canada-Romania BITs.

222. Article I(f) of the 1996 Canada-Romania BIT provides:

> "'investment' means any kind of asset owned or controlled either directly, or indirectly through an investor of a third State, by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and, in particular, though not exclusively, includes:
>
> (i) movable and immovable property and any related rights, such as mortgages, liens or pledges,

[152] Canada's Non-disputing Party Submission, paras. 28, 30.
[153] Canada's Non-disputing Party Submission, paras. 28-29.
[154] Canada's Non-disputing Party Submission, paras. 28, 31.

(ii) shares, stock, bonds and debentures or any other form of participation in a company, business enterprise or joint venture,

(iii) money, claims to money, and claims to performance under contract having a financial value,

(iv) goodwill,

(v), intellectual property rights,

(vi) rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources

but does not mean real estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes.

Any change in the form of an investment does not affect its character as an investment".[155]

223. In turn, Article VI(3) of the 1996 Canada-Romania BIT reads as follows:

"Investments in cultural industries are exempt from the provisions of this Agreement. 'Cultural industries' means natural persons or enterprises engaged in any of the following activities[:]

(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typewriting any of the foregoing,

(b) the production, distribution, sale or exhibition of film or video recordings,

(c) the production, distribution, sale or exhibition of audio or video music recordings,

(d) the publication, distribution, sale or exhibition of music in print or machine readable form, or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all satellite programming and broadcast network services".[156] [emphases added].

[155] **Exhibit CL-40 / RL-88**, Article I(f) of the 1996 Canada-Romania BIT.
[156] **Exhibit CL-40 / RL-88**, Article VI(3) of the 1996 Canada-Romania BIT.

224. The relevant provisions in the 2009 Canada-Romania BIT are almost identical. Thus, Article I(g) of the 2009 Canada-Romania BIT provides:

> "'investment' means any kind of asset owned or controlled either directly, or indirectly through an investor of a third state, by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and, in particular, though not exclusively, includes:
>
> (i) movable and immovable property and any related rights, such as mortgages, liens or pledges,
>
> (ii) shares, stock, bonds and debentures or any other form of participation in a company, business enterprise or joint venture,
>
> (iii) money, claims to money, and claims to performance under contract having a financial value,
>
> (iv) goodwill,
>
> (v) intellectual property rights,
>
> (vi) rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources,
>
> but does not mean real estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes;
>
> Any change in the form of an investment does not affect its character as an investment;".[157]

225. In turn, Article VI(3) of the 2009 Canada-Romania BIT reads as follows:

> "Investments in cultural industries are exempt from the provisions of this Agreement. 'Cultural industries' means natural persons or enterprises engaged in any of the following activities:
>
> (a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;
>
> (b) the production, distribution, or sale or exhibition of film or video recordings;

[157] **Exhibit CL-41 / RL-2**, Article I(g) of the 2009 Canada-Romania BIT.

(c) the production, distribution, sale or exhibition of audio or video music recordings;

(d) the publication, distribution, sale or exhibition of music in print or machine readable form; or

(e) radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all satellite programming and broadcast network services".[158] [emphases added].

226. Article 31 of the VCLT reads as follows:

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: […]

3. There shall be taken into account, together with the context: […]

4. A special meaning shall be given to a term if it is established that the parties so intended".[159] [emphasis added].

227. The Tribunal concludes that it does not have jurisdiction to rule over Claimant's claims under the 1996 or the 2009 Canada-Romania BITs, pursuant to the "cultural industries" exception set out in the respective Articles VI(3) of the Canada-Romania BITs. The Tribunal clarifies that it does not need to assess what weight to give to Canada's Non-Disputing Party Submission. The Tribunal has reached its conclusion for the reasons set forth below, and its reasoning is merely confirmed by Canada's interpretation concerning how the respective Articles VI(3) of the 1996 and the 2009 Canada-Romania BITs operate.

228. The Tribunal is of the view that the ordinary meaning of the first sentence in the respective Articles VI(3) of the 1996 and 2009 Canada-Romania BITs is clear.

[158] **Exhibit CL-41 / RL-2**, Article VI(3) of the 2009 Canada-Romania BIT.

[159] **Exhibit RL-28**, Article 31 of the Vienna Convention on the Law of Treaties, dated 1969. The Tribunal notes that although Romania is not a part of the VCLT, the rules of treaty interpretation remain applicable since they are the codification of customary international law.

229. As done in the past by Canada,[160] the contracting parties carefully designed a clear and broad exception to the applicability of the BITs. The correct interpretation of the first sentence in the respective Articles VI(3) is that any "[i]nvestment[] in [the] cultural industries [is] exempt[ed] from the provisions of [the] [Canada-Romania BITs]".[161] Essentially, pursuant to the unambiguous text of the respective Articles VI(3), the provisions of the 1996 and the 2009 Canada-Romania BITs simply do not apply to investments made in the cultural industries.

230. According to Claimant, however, the exception is not applicable since "the purpose of the 'cultural industries' exception is to safeguard the Contracting States' regulatory autonomy in that specific industry" and his claims "are not concerned with regulatory or individual measures adopted by Romania in cultural industries".[162]

231. Claimant's whole case theory relies on the fact: (i) that Article I(f) of the 1996 Canada-Romania BIT, respectively Article I(g) of the 2009 Canada-Romania BIT, does not exclude investments made in the cultural industries; and that (ii) the respective Articles VI(3) are within a clause entitled "Miscellaneous Exceptions".

232. In the Tribunal's view, Claimant has not demonstrated that contrary to its clear and unambiguous meaning, the actual purpose of the respective Articles VI(3) of the Canada-Romania BITs is merely intended by the contracting states parties to safeguard their regulatory autonomy in the cultural industries.

233. Claimant did not even attempt to explain how the facts mentioned in paragraph 231 above could lead to the conclusion he contends to be correct. The Tribunal is particularly unpersuaded by Claimant's interpretation of the text of the respective Articles VI(3) of the 1996 and the 2009 Canada-Romania BITs given that: (i) the text of the respective Articles VI(3) is not focused on the measure of the contracting party (regulatory or otherwise), but on the nature of the investment itself; and (ii) the contracting parties could have drafted equally broad exceptions either in the definition of an investment in Article I(f) of the 1996 Canada-Romania BIT, respectively Article I(g) of the 2009 Canada-Romania BIT, or in a "miscellaneous exception" clause, such as in the respective Articles VI(3). Contrary to what Claimant suggests, the fact that contracting parties did so in the latter, instead of in

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[160] See **Exhibit RL-157**, *United Parcel Service of America, Inc. (UPS) v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on Merits, dated 24 May 2007, para. 162.

[161] **Exhibit CL-40 / RL-88**, Article VI(3) of the 1996 Canada-Romania BIT; **Exhibit CL-41 / RL-2**, Article VI(3) of the 2009 Canada-Romania BIT.

[162] Counter-Memorial on J&A, paras. 343-344.

the definition of an investment, makes no difference for the Tribunal's analysis and the interpretation of the treaties.

234. Moreover, had the contracting parties wanted to incorporate certain limited exceptions to safeguard their regulatory autonomy, they would not have drafted the broad text currently found in the respective Articles VI(3) of the 1996 and 2009 Canada-Romania BITs. Notably, the respective Articles XVII confirm that the contracting parties knew how to, and indeed included, a specific exception to safeguard their regulatory autonomy concerning the protection of the environment.

235. Thus, Article XVII of the 1996 Canada-Romania BIT provides in relevant part:

> "2. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.
>
> 3. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Contracting Parry from adopting or maintaining measures including environmental measures:
>
> (a) necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement,
>
> (b) necessary to protect human, animal or plant life or health, or
>
> (c) relating to the conservation of living or non-living exhaustible natural resources, if such measures are made effective in conjunction with restrictions on domestic production or consumption".[163] [emphases added].

236. Similarly, Article XVII of the 2009 Canada-Romania BIT provides in relevant part:

> "2. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.
>
> 3. Subject to the requirement that such measures are not applied in a manner that would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment,

[163] **Exhibit CL-40 / RL-88**, Article XVII of the 1996 Canada-Romania BIT.

> nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or enforcing measures necessary:
>
> (a) to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
>
> (b) to protect human, animal or plant life or health; or
>
> (c) for the conservation of living or non-living exhaustible natural resources".[164] [emphases added].

237. In these circumstances, the Tribunal rejects Claimant's narrow interpretation of the respective Articles VI(3) which contradicts the ordinary meaning of the terms of this provision in their context within the 1996 and 2009 Canada-Romania BITs.

238. The second sentence in the respective Articles VI(3) merely clarifies that "'cultural industries' means natural persons or enterprises engaged in any of the following activities: […] (b) the production, distribution, sale or exhibition of film or video recordings".[165]

239. Since the Notice of Arbitration, Claimant identified his investment to be:

> "Cinegrafia Romana a/k/a CIRO Films (the 'Company' or 'CIRO'), which included Laboratorul Mogoşoaia (the 'Property' or 'Laboratorul Mogoşoaia'), a well-established, state-of-the-art pre-production, production, and post-production film laboratory. Incorporated and located in Bucharest, Romania, the Company and the Property were developed by Messrs Melik and Vahram into one of the premier post-production film enterprises for the entire Balkan region".[166] [emphasis added].

240. Claimant also indicated as follows in his SoC:

> "This investment dispute arises out of Respondent Romania's wanton, repeated, and willful disregard of its own post-communism laws to obstruct justice and prohibit [] Jak Sukyas and Edward Sukyas (US-Turkish and Canadian-Turkish nationals, respectively) from regaining ownership and control over their family's legacy—a film production and post-production laboratory and business in

[164] **Exhibit CL-41 / RL-2**, Article XVII of the 2009 Canada-Romania BIT.
[165] **Exhibit CL-40 / RL-88**, Article VI(3) of the 1996 Canada-Romania BIT; **Exhibit CL-41 / RL-2**, Article VI(3) of the 2009 Canada-Romania BIT. The Tribunal notes that the only difference between the two sentences in these treaties is that the 2009 Canada-Romania BIT includes the term "or" between "distribution," and "sale" which does not appear in the 1996 Canada-Romania BIT. The Tribunal clarifies that it does not find this minor difference to be relevant for its analysis.
[166] Claimant's Notice of Arbitration dated 18 February 2020, para. 20.

> Bucharest—and from receiving compensation for the stolen business once built and owned by their father Vahram Sukyas and their uncle Melik Sukyas. […]
>
> Claimant['s] predecessors, Messrs. Melik and Vahram Sukyas, started to invest in Romania in the 1920s and 1930s. In 1939, they became the majority shareholders of CIRO, which was the industry leading film production, post-production, and distribution factory in Romania. By 1946, they became the only shareholders in the company. […]
>
> The investment made by Claimant['s] predecessors starting from the 1930s, Claimant[']s[] right to claim the restitution of the Laboratorul Mogoşoaia, and their right to claim the enterprise value of CIRO under Romanian law, constitute investment for the purposes of the applicable BITs".[167] [emphases added].

241. At the hearing, Claimant further confirmed that the original investment was made in CIRO:

> "I want to start with this, it's a very basic point. Ratione materiae, under the residual rights doctrine, requires two elements. The first element is the establishment showing the establishment of the investment. […]
>
> Now I'm going to talk later about why Cinegrafia Romana as a business satisfied all elements as an investment, even under the most stringent Salini standard -- which doesn't apply to you because you're not an ICSID tribunal – but Cinegrafia Romana satisfied that anyway.
>
> So this is precisely what Claimant[] [is] saying and ha[s] been saying from the get-go. Melik and Vahram made an investment in Romania in the '30s and '40s. In 1948 their investment was taken. They continued to live. Melik died and was succeeded by Vahram through universal succession, who was succeeded through universal succession by the two sons who are right here before you".[168] [emphases added].

242. In the Tribunal's view, Claimant's investment falls squarely under the respective Articles VI(3)(b) of the Canada-Romania BITs: "the production, distribution, sale or exhibition of film or video recordings". Notably, this has never been objected to by Claimant.

243. Accordingly, the Tribunal concludes that the "cultural industries" exception under the respective Articles VI(3) of the Canada-Romania BITs applies in the case at hand, since Claimant's original investment was made in Romania's cultural industries.

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[167] SoC, paras. 1, 479, 483.
[168] Hearing Transcript, Claimant's Closing Statement, Day 4, p. 810, lines 5-9, p. 814, lines 2-16.

244. As the "the provisions of this Agreement" as set out in the respective Articles VI(3) include Romania's offer to arbitrate under the Canada-Romania BITs, the application of this exception has a bearing on the Tribunal's jurisdiction. Essentially, Romania did not agree to arbitrate disputes with respect to "investments in cultural industries".

245. Claimant's final attempt to avoid the "cultural industries" exception through the MFN clauses in the Canada-Romania BITs reads as follows:

> "Second, the most-favoured-nation ('MFN') treatment clause envisaged in Article III of the Canada-Romania BITs (1996) and (2009) requires Romania to accord Mr. Edward Sukyas's investment 'treatment no less favourable than that which, in like circumstances, it grants to investments or returns of investors of any third State.' Romania entered into BITs with states other than Canada, which do not contain a so-called 'cultural exception,' including, but not limited to, the US-Romania BIT (1992) and Turkey-Romania BIT (2008).
>
> In fact, to the best of Claimant[] counsel's knowledge, none of the Romanian BITs—other than the Canada-Romania BITs— contain such 'cultural exception.' The MFN clause in Article III of the Canada-Romania BITs entitles Mr. Edward Sukyas to invoke such more favourable BITs. That being the case, Mr. Edward Sukyas's claims based on the Canada-Romania BITs cannot be excluded from the scope of the Tribunal's jurisdiction".[169]

246. Article III of the 1996 Canada-Romania BIT provides:

> "1. Each Contracting Par1y shall grant to investments, or return, of investors of the other Contracting Party, treatment no less favourable than that which, in like circumstances, it grants to investments or return, of investors of any third State.
>
> 2. Each Contracting Par1y shall grant investors of the other Contracting Party, as regards their management. use, enjoyment or disposal of their investments or returns, treatment no less favourable than that which, in like circumstances, it grants to investors of any third State. […]".[170]

247. Article III of the 2009 Canada-Romania BIT is similarly worded and provides:

> "1. Each Contracting Party shall grant to investments, or returns of investors of the other Contracting Party, treatment no less favourable than that which, in like circumstances, it grants to investments or returns of investors of any third state.

[169] Counter-Memorial on J&A, para. 347.
[170] **Exhibit CL-40 / RL-88**, Article III of the 1996 Canada-Romania BIT.

> 2. Each Contracting Party shall grant investors of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments or returns, treatment no less favourable than that which, in like circumstances, it grants to investors of any third state.
>
> 3. Each Contracting Party shall grant to investments or returns of investors of the other Contracting Party treatment no less favourable than that which, in like circumstances, it grants to investments or returns of its own investors with respect to the expansion, management, conduct, operation and sale or disposition of investments".[171]

248. The Tribunal considers that Claimant cannot circumvent the "cultural industries" exception via the respective MFN clauses in the Canada-Romania BITs. The MFN clauses are part of the Canada-Romania BITs, hence, if Claimant does not have access to "the provisions of" the 1996 and 2009 BITs, it also does not have access to the respective MFN clauses within the BITs. In the words of the tribunal in *Mesa Power Group LLC v. Canada*:

> "For an MFN clause in a base treaty to allow the importation of a more favorable standard of protection from a third party treaty, the applicability of the MFN clause in the base treaty must first be established. Put differently, one must first be under the treaty to claim through the treaty. Thus, the Claimant must first establish that the MFN provision of the base treaty applies. Then, relying on that provision, it may be able to import a more favorable standard of protection from a third party treaty. Here, the base treaty is the NAFTA. Thus, the Claimant must first establish, that the MFN provision, i.e., Article 1103 of the NAFTA, is applicable. As Article 1108(7) expressly excludes the application of Article 1103 in cases of procurement by a Party or State enterprise, for the Claimant to establish that Article 1103 of the NAFTA applies, it must show that the FIT program does not constitute procurement".[172] [emphasis added].

249. On the basis of the above, the Tribunal concludes that it does not have jurisdiction to decide Claimant's claims under either the 1996 or the 2009 Canada-Romania BITs, pursuant to the "cultural industries" exception set out in the respective Articles VI(3) of the Canada-Romania BITs. Consequently, Claimant's claims under both BITs are dismissed.

Section III. – Issue No. 3 – How to Allocate the Arbitration Costs

250. The Tribunal must decide how to allocate the arbitration costs between the Parties.

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[171] **Exhibit CL-41 / RL-2**, Article III of the 2009 Canada-Romania BIT.
[172] *Mesa Power Group, LLC v. Government of Canada*, PCA Case No. 2012-17, dated 24 March 2016, para. 401.

251. Each Party requests the Tribunal to award full compensation for the costs incurred in these proceedings.[173]

252. Article 40 of the UNCITRAL Arbitration Rules provides:

> "1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
>
> 2. The term "costs" includes only:
>
> (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;
>
> (b) The reasonable travel and other expenses incurred by the arbitrators;
>
> (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
>
> (d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
>
> (e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
>
> (f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA. […]".[174] [emphases added].

253. In turn, Article 42 of the UNCITRAL Arbitration Rules reads as follows:

> "1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
>
> 2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs".[175] [emphasis added].

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[173] Claimant's Costs Submission, dated 15 September 2023, pp. 1-8; Respondent's Costs Submission, dated 15 September 2023, pp. 1-3. Respondent's Reply Costs Submission, dated 29 September 2023, pp. 1-4; Claimant's Reply Costs Submission, dated 6 October 2023.

[174] 2010 UNCITRAL Arbitration Rules, Article 40.

[175] 2010 UNCITRAL Arbitration Rules, Article 42.

254. Claimant's legal costs are summarised below:[176]

Category	USD
Legal fees	
Crina Baltag	126,000.00
Cozac Sofia-Elena	127,671.50
Mayer Brown	959,156.42
Duarte Henriques	65,000.00
George Yates	2,500.00
International Arbitration Chambers New York	2,889,900.00
Hecht Partners LLP	2,547,362.00
Subtotal	**6,717,589.92**
Expenses	
Cozac Sofia-Elena	916.00
Mayer Brown	1,173.18
Hecht Partners LLP	388,354.44[177]
Subtotal	**390,443.62**
Total	**7,108,033.54**

255. Respondent's legal costs are also summarised as follows:[178]

Category	Total in EUR
Attorneys' fees between May 2020 - April 2023	382,325.00
VAT on Attorneys' fees between May 2020 - April 2023	72,641.75
Attorneys' fees between May - September 2023	90,970.00
VAT on Attorneys' fees between May - September 2023	17,284.30
Disbursements	184,355.91[179]
Total	**747,576.96**

256. The additional arbitration costs are fixed as follows:

Category	Total in EUR
PCA's Fees	6,712.00
Prof. Dr. Stephan W. Schill's Fees	107,008.80

[176] The Tribunal notes that Claimant's Costs Submission reflects the entire legal fees expended in the two arbitration proceedings initiated by Messrs Jak Sukyas and Edward Sukyas against Romania which have been "procedurally coordinated" as agreed by all Parties. Therefore, Claimant's legal fees in this case amount to **EUR 3,554,016.77**.

[177] The Tribunal subtracted the "arbitration fees" paid by Hecht Partners LLP from the total expenses incurred by this law firm.

[178] The Tribunal notes that Respondent's Costs Submission reflects the entire legal fees expended in the two arbitration proceedings initiated by Messrs Jak Sukyas and Edward Sukyas against Romania which have been "procedurally coordinated" as agreed by all Parties. Therefore, Respondent's legal fees in this case amount to **EUR 373,788.48**.

[179] The Tribunal subtracted the arbitration fees paid by Respondent from the total expenses incurred.

Prof. Dr. Stephan W. Schill's VAT Claims	8,277.23
Prof. Dr. Stephan W. Schill's Expenses	1,400.96
Ms. Loretta Malintoppi's Fees	76,450.00
Ms. Loretta Malintoppi's Expenses	4,620.64
Professor Bernard Hanotiau's Fees	261,800.00
Professor Bernard Hanotiau's Expenses	4,785.71
Additional Expenses	2,237.79
Total	473,293.13

257. The advance on costs has been paid by the Parties to the PCA as follows: EUR 247,500 by Claimant and EUR 247,500 by Respondent. The unexpended balance of the advance on costs, in the amount of EUR 21,706.87, will be reimbursed to the Parties in equal shares.[180]

258. The Tribunal notes that both sides have made an outstanding performance in adducing well-crafted written and oral submissions in a legally and factually complex case. That being said, the Tribunal finds no reason to depart from the well-established principle according to which "costs follow the event", which is crystalised in Article 42 of the UNCITRAL Arbitration Rules.

259. Concerning Respondent's legal costs, the Tribunal has no motive to conclude that they are unreasonable. Notably, Respondent's legal costs are merely a minimal fraction of Claimant's legal costs in these proceedings.

260. Therefore, the Tribunal rules that Claimant shall bear: (i) the entirety of the arbitration costs fixed in paragraph 256 above in the amount of **EUR 473,293.13** and therefore must reimburse Respondent for the advance on costs it paid to the PCA in the amount of **EUR 236,646.57**; (ii) its own legal costs; and (iii) Respondent's legal costs in these proceedings which amount to **EUR 373,788.48**.

[180] The Tribunal notes that Respondent's advance on costs (EUR 247,500) minus half of the unexpended cost advances which will be reimbursed to Respondent by the PCA (EUR 21,706.87 / 2) equals **EUR 236,646.57**.

CHAPTER VIII. DECISIONS

261. On the basis of the above, the Tribunal:

i. Decides that it does not have jurisdiction to rule over the Turkey-Romania BIT Claims;

ii. Decides that it does not have jurisdiction to rule over Claimant's claims under both the 1996 or the 2009 Canada-Romania BITs;

iii. Decides that Claimant shall bear the entire arbitration costs in the amount of **EUR 473,293.13**, and therefore must reimburse Respondent for the advance on costs it paid to the PCA in the amount of **EUR 236,646.57**; and

iv. Decides that Claimant shall bear its own legal costs and pay Respondent's legal costs, i.e., **EUR 373,788.48.**

Place of arbitration: Paris, France

Date: 6 November 2024

The Tribunal:

Professor Dr. Stephan W. Schill
Arbitrator

Ms. Loretta Malintoppi
Arbitrator

Professor Bernard Hanotiau
President