

PCA CASE N° 2022-49

**IN AN ARBITRATION PURSUANT TO THE AGREEMENT BETWEEN THE
GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN AND THE
GOVERNMENT THE AZERBAIJAN REPUBLIC ON THE RECIPROCAL
PROMOTION AND PROTECTION OF INVESTMENTS**

MOHAMMAD REZA KHALILPOUR BAHARI

Claimant

-and-

THE REPUBLIC OF AZERBAIJAN

Respondent

RESPONDENT'S POST-HEARING BRIEF

6 May 2025

The Arbitral Tribunal

Professor Gabrielle Kaufmann-Kohler
Sir Daniel Bethlehem KC
Mr Laurence Shore

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I. INTRODUCTION AND OVERVIEW

1. This post-hearing brief is submitted on behalf of Azerbaijan further to paragraph 4.2 of Procedural Order No. 8 dated 3 February 2025.
2. This brief does not repeat the matters already addressed at length in Azerbaijan's previous written submissions (which are maintained and relied upon by Azerbaijan in full), including specifically the fraud on the Tribunal addressed in its separate post-hearing brief on admissibility dated 28 February 2025 (the **Admissibility Brief**). That brief concerned the egregious matter of the so-called Chartabi Contracts, and in the Respondent's respectful submission, the matters referred to there should be dispositive of this case.
3. This post-hearing brief addresses the further reasons why Azerbaijan should prevail in this arbitration, focusing on matters arising at the evidentiary hearing (the **Hearing**) and the Tribunal's questions.

Part II restates Azerbaijan's position that the Tribunal does not have jurisdiction to determine these claims.

Part III focuses on evidentiary matters arising at the Hearing, highlighting the woeful lack of credibility in both the witness and documentary evidence upon which Mr Bahari relies.

Part IV explains why none of the alleged conduct giving rise to a Treaty breach is in fact conduct attributable to the State of Azerbaijan.

Part V recalls why the alleged conduct does not breach the Treaty or applicable law.

Part VI addresses Mr Bahari's case on quantum, if it should need to be considered, and why it is grossly overstated, unsupported and conceptually flawed.

4. The claims before the Tribunal stand or fall on the testimony of a single individual, Mr Bahari himself. Mr Bahari says he does not have the contemporaneous documents to

support his claims,¹ and the evidence of his witnesses given oftentimes 25 years after the fact is largely hearsay, repeating matters they say Mr Bahari told them.

5. Mr Bahari is prone to fantasy and exaggeration, and his claim is an opportunistic shakedown. After leaving Azerbaijan in 2001, he made no claim against the State for almost 13 years.² When he finally did, in June 2013, by emailing a press service to complain about the alleged “[REDACTED]”,³ according to the unchallenged evidence of Mr Kalantarli, he was in debt, in need of an income, desperate and looking for a job from Mr Heydarov.⁴
6. Since then, it is apparent that Mr Bahari has become obsessed with Azerbaijan. He appears to believe that the State has mobilised against him in the most nefarious ways.⁵

(1) This includes claiming that Azerbaijan has gone to the lengths of producing almost 100 fabricated or “[REDACTED]” documents in the course of these proceedings, including the documents from his own Islamic Republic of Iran.⁶ Mr Bahari’s generic and wholly implausible response to the documents Azerbaijan has produced is that they cannot be trusted, merely because it is Azerbaijan who produced or obtained them.⁷ Azerbaijan has, emphatically, not forged any evidence.

(2) Mr Bahari claims that Azerbaijan had his daughter killed in 2009.⁸ Although Mr Bahari sought to withdraw the allegation during his cross-examination, he

¹ Reply, para. 580.

² On Mr Bahari’s own case (which is not accepted), the lawyer he claims to have instructed in 2004, Mr Serhat Kilic, was instructed “[REDACTED]”: First Bahari Statement, para. 86.

³ Email from Mr Bahari to ANS Press dated 28 June 2013, **R-145**.

⁴ Kalantarli Statement, para. 4; Defence, para. 295; District Court for Graz (Austria) default judgment against IAV GmbH dated 15 June 2011, **R-143**; Defence, para. 185(b); Coolak Shargh Financial Statements for the year ending September 2013, dated 21 December 2013, **R-161**.

⁵ See, e.g. Respondent’s Rejoinder, para. 427; Claimant’s Reply, paras. 324, 560.

⁶ Respondent’s Opening Slides dated 20 January 2025, slide 40.1.

⁷ Transcript of Hearing on Jurisdiction and Merits, Day 2, 53:24-25; 54:1-10 ([REDACTED]).

⁸ Transcript of Hearing on Jurisdiction and Merits, Day 2, 132:16-18; Statement of Claim, para. 309.

could not help himself but resurrect it when the Tribunal asked him questions.⁹ He claims to believe that the State wants him murdered.¹⁰ On the stand, he claimed this threat extended to one of his witnesses, Mr Khalilov,¹¹ even though that witness himself said no such thing and seemingly travelled from The Hague back to Azerbaijan without incident.¹² Plainly, Mr Bahari has a tendency to exaggerate and fantasise. He cannot genuinely believe the State is out to harm him and his associates. He allowed his infant son and wife to return to Azerbaijan numerous times after 2001,¹³ which is inconsistent with claims that he feared for their safety.¹⁴ He himself returned to Azerbaijan with his son, by then aged 10, in 2013, four years after his daughter's tragic accident in the UAE. His attempt to explain this was to claim that Mr Heydarov would not harm him if his son were travelling with him.¹⁵ None of this is plausible if he genuinely believed Azerbaijan was trying to kill him or was in fact responsible for the death of his daughter. He has embellished and sensationalised his claims in a misguided attempt to garner sympathy.

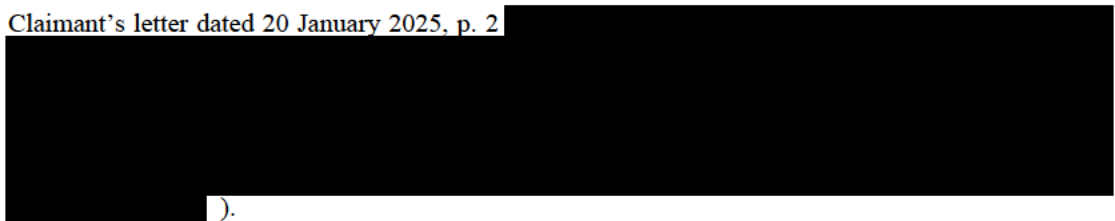
7. Mr Bahari made no attempt to lodge any complaint against Azerbaijan between 2001 and 2017, when a formal letter was issued.¹⁶ In 2019, an investment treaty claim was made, by Winston & Strawn LLP, but then withdrawn.¹⁷ This was inexplicable at the time, but can now be readily understood as brought about by Winston & Strawn's

⁹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 155:1-6; 159:18-21; Transcript of Hearing on Jurisdiction and Merits, Day 3, 151:7-10; First Bahari Statement, paras. 93-94.

¹⁰ Transcript of Hearing on Jurisdiction and Merits, Day 3, 47:6-17; First Bahari Statement, para. 94; Statement of Claim, para. 310.

¹¹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 81:9-12.

¹² Claimant's letter dated 20 January 2025, p. 2



¹³ Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues, R-58.

¹⁴ Transcript of Hearing on Jurisdiction and Merits, Day 3, 48:12-15.

¹⁵ Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues, R-58; First Bahari Statement, para. 95.

¹⁶ Letter from Slaney Advisors Limited to Minister of Justice dated 8 September 2017, C-26.

¹⁷ Transcript of Hearing on Jurisdiction and Merits, Day 2, 26:16-22.

ethical concerns about being associated with Mr Bahari and the Chartabi Contracts. It is only now, almost 25 years after the relevant events, that Mr Bahari's complaint is being brought. At the Hearing, the Tribunal queried why Mr Bahari would have waited so long to bring his case.¹⁸ Mr Bahari sought to explain the delay by reference to his daughter's death,¹⁹ although that sad loss occurred a decade before the Treaty claim was first brought.

8. The documents establish that Mr Bahari sold his interest in Caspian Fish in 2001, and that he left Azerbaijan in December 2001.²⁰ The documents similarly establish that he sold Ayna Sultan, remains the sole shareholder in Coolak Baku (and Shuvalan Sugar, to the extent that was a business of Coolak Baku) and was returned his carpets. He therefore had no complaint about any of his alleged investments and naturally brought no claim. It appears that it was only when Mr Bahari needed money that he and his advisors, including Mr Tabrizi, saw a way of trying to pressure Azerbaijan into paying Mr Bahari money to which he is not entitled.²¹ Even after Mr Bahari reached out to Mr Heydarov in 2013, he did not pursue the claim for a further six years, presumably because Mr Bahari was advised of its weaknesses, or because he was unable to persuade third parties to provide the funding to pursue it.
9. That is the background against which the Tribunal should view the issues in these proceedings. As the proceedings have progressed, Mr Bahari's evidence has evolved in increasingly inventive ways, with much of that evidence being conveyed for the very first time at the Hearing itself.
 - (1) Numerous hitherto unknown sources of documents were revealed or proffered by Mr Bahari during his oral testimony. These included documents said to be held by Mr Bahari's former accountant's son,²² the passport pages of Mr Bahari's late daughter,²³ documents concerning MCI Mining,²⁴ and documents

¹⁸ Transcript of Hearing on Jurisdiction and Merits, Day 3, 149:15-25; 150:1-14.

¹⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 150:15-25; 151:1-7.

²⁰ Buyer and Seller Agreement between Mr Bahari and Mr Khanghah dated 20 September 2001, **R-50**.

²¹ Defence, paras. 8-10.

²² Transcript of Hearing on Jurisdiction and Merits, Day 3, 90:13-17.

²³ Transcript of Hearing on Jurisdiction and Merits, Day 2, 65:13-22.

²⁴ Transcript of Hearing on Jurisdiction and Merits, Day 2, 134:9-18.

evidencing the existence of the Nader Shah carpet.²⁵ They never materialised, even when his counsel were asked to produce some of them in correspondence.²⁶ Obviously, these documents do not exist or support his case, otherwise Mr Bahari and his counsel would have produced them, and at a much earlier stage of the arbitration.

- (2) Mr Bahari backtracked from many of his earlier positions, including the date his central document, the Purported Shareholders' Agreement, was signed and why it has a different date on its face, both in handwritten and pre-printed form.²⁷
- (3) Mr Bahari pleaded ignorance to vast swathes of Azerbaijan's evidence, claiming only to have seen them for the first time during his cross-examination,²⁸ but that explanation requires the Tribunal to conclude that Mr Bahari's counsel failed to put allegations to Mr Bahari in preparation for the hearing. The Tribunal may conclude that it was obvious that Mr Bahari was being deliberately evasive, given that he repeatedly professed that he "[REDACTED]" even after being taken to a document he claimed never to have seen before.²⁹
- (4) Mr Bahari was defensive, unfamiliar with the documents, evasive and, at times, rude. He veered from scolding counsel for the Respondent to "[REDACTED]"³⁰ to telling Mr Jagusch that he would pray for him.³¹ Instead of answering the questions addressed to him, Mr Bahari's asked counsel for the Respondent to bring different witnesses to respond.³² He made bizarre, unfounded and

²⁵ Transcript of Hearing on Jurisdiction and Merits, Day 3, 129:7-11.

²⁶ Respondent's letter to Claimant dated 10 April 2024; Respondent's letter to Claimant dated 21 January 2025.

²⁷ Transcript of Hearing on Jurisdiction and Merits, Day 2, 14:13-25; 15:1-25; 18:13-25; 19:1-25; 20:1-2.

²⁸ Transcript of Hearing on Jurisdiction and Merits, Day 2, 91:11-19; 106:9-12; 115:3-6; 130:4-9; Transcript of Hearing on Jurisdiction and Merits, Day 3, 58:12-17.

²⁹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 174:5-14.

³⁰ Transcript of Hearing on Jurisdiction and Merits, Day 2, 39:14-15.

³¹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 168:10-12.

³² Transcript of Hearing on Jurisdiction and Merits, Day 2, 117:1-23.

perverse claims including that he had “ [REDACTED]
[REDACTED]”,³³ that Caspian Fish “ [REDACTED]
[REDACTED]”,³⁴ and that Qeshm Fish Processing “ [REDACTED]
[REDACTED]”.³⁵

10. Although Azerbaijan was not a party to Caspian Fish, as far as it understands this was a project that Mr Bahari oversaw in its implementation and expected to manage in return for a 40% interest.³⁶ While Mr Bahari managed the construction of the facility, he did not fund it, and did not have the financial resources to fund it.³⁷ Mr Heydarov, the Chairman of the State Customs Committee at the relevant time, owned 50% of the project and he was the one who funded it.³⁸ This was an investment made by Mr Heydarov in his private capacity.
11. Mr Bahari’s legal case has always been, and remains, difficult to decipher. It has flip-flopped throughout, including notably with regard to Mr Bahari’s claim for expropriation that was only clarified (and abandoned in all but one respect) at the Hearing itself.³⁹ Leaving aside the important jurisdictional issue of Article 9 of the Treaty, to which no meaningful response has been given, Mr Bahari’s legal case suffers fundamental and ultimately fatal flaws.
 - (1) First, key to Mr Bahari’s claims is the allegation that the alleged actions of at least Mr Heydarov can be attributed for the State.⁴⁰ In his Rejoinder, Mr Bahari abandoned the position initially taken in his Reply that it is impossible for a person like Mr Heydarov to act in a private capacity.⁴¹ That was obviously not correct as a matter of law. Instead, Mr Bahari now claims that a series of

³³ Transcript of Hearing on Jurisdiction and Merits, Day 2, 169:14-16.

³⁴ Transcript of Hearing on Jurisdiction and Merits, Day 2, 88:1-3.

³⁵ Transcript of Hearing on Jurisdiction and Merits, Day 2, 81:23-24.

³⁶ Claimant’s Reply, para. 1086.

³⁷ Respondent’s Defence, paras. 237-244.

³⁸ Respondent’s Defence, para. 231.

³⁹ Statement of Claim, paras. 574-616; Claimant’s Reply, paras. 1077-1096; Claimant’s Rejoinder on Jurisdiction, para. 461; Transcript of Hearing on Jurisdiction and Merits, Day 1, 235:11-13.

⁴⁰ See Claimant’s Rejoinder on Jurisdiction, para. 513.

⁴¹ Respondent’s Rejoinder, para. 36-40; Claimant’s Reply, paras. 694-701; Claimant’s Rejoinder, para. 516; Allan & Makarenko Report, para. 153.

(unevidenced and baseless) alleged actions were carried out at the “*direction*” or “*with [the] involvement*” of Mr Heydarov, especially Mr Bahari’s alleged expulsion from Caspian Fish and Azerbaijan. Mr Bahari claims that Mr Heydarov acted in an “*apparently official capacity*” as he was “*cloaked with the authority of his position and us[ed] the tools available to him as a result of his position*”.⁴² Leaving aside the fact that save for Mr Bahari’s highly unreliable testimony there is no evidence that these events occurred at all, Mr Bahari does not even present a factual case that Mr Heydarov’s alleged actions were “*cloaked*” with official authority.

- (2) Second, Mr Bahari’s claim for expropriation, now limited to Caspian Fish, requires him to establish that any ‘taking’ or ‘substantial deprivation’ occurred after the Treaty entered into force on 20 June 2002. He cannot do so. The documents establish that he sold his interest in 2001. But even assuming there were a taking, it would have been complete at the moment he was allegedly expelled from the country, as his own case originally pleaded.⁴³ Of course, none of this is accepted, and the truth is that Mr Bahari left Azerbaijan of his own volition in December 2001.
- (3) Third, as for fair and equitable treatment, the only alleged actions which post-date the Treaty’s entry into force are the State’s alleged refusal to allow Mr Bahari to re-enter the country, the alleged harassment of his witnesses, and the claims made in respect of Coolak Baku and Ayna Sultan about due process in the Azerbaijani Courts. There is no objective evidence that Mr Bahari was expelled from the country and not permitted to re-enter. Indeed, the documentary evidence demonstrates the opposite.⁴⁴ The passport pages of Mr Bahari’s late wife would have corroborated this but, notably after having the opportunity to study them, Mr Bahari refused to let them enter the record. Further, Mr Bahari failed to produce evidence of his life in the UAE from 2001 because such evidence would have contradicted his invented story about being deported from Azerbaijan in early 2001. With regard to the claims of

⁴² Claimant’s Rejoinder on Jurisdiction, para. 518.

⁴³ Statement of Claim, para. 568.

⁴⁴ Respondent’s Rejoinder, paras. 437-447.

harassment, there is nothing to support them but unreliable testimony, and there is no evidence any harassment (the existence of which is not accepted) was directed by the State. Finally, with regard to his claims for denial of justice, Mr Bahari cannot point to any conduct of the Azerbaijani Courts that rises to the level of breach of Treaty. In fact, the documents establish that Mr Bahari was represented, given the opportunity to appeal adverse Court's decisions, and chose not to do so.⁴⁵

12. Mr Bahari's quantum claim has also evolved during the course of the proceedings. On the last day of the Hearing, Mr Bahari's counsel tried to proffer a new basis for calculation of the quantum of Mr Bahari's claim, relying primarily on news articles, photos and public speeches to support the alleged invested sum of USD 56 million in Caspian Fish, together with letters that are decried as forgeries by Mr Bahari in support of the USD 28 million allegedly invested into Coolak Baku.⁴⁶ These new submissions are meritless and cannot stand.
13. Azerbaijan maintains its position that the exercise of quantification of damages undertaken by Mr Sequeira and Mr Millner of Secretariat is inappropriate, amongst other things, because it adopts a weak methodology but above all because it is almost exclusively based on inferences and assumptions supported only by Mr Bahari's testimony. Particularly in the light of the admissions that the Purported Chartabi Contracts are forgeries, Mr Bahari's evidence alone cannot be relied upon to support any claims, whether by inference or otherwise.

II. THE TRIBUNAL HAS NO JURISDICTION

14. The Tribunal does not have jurisdiction to determine Mr Bahari's claims, whether under the Treaty or customary international law. In this regard, Azerbaijan affirms its previous submissions and states that: (A) his alleged investments were not approved by the Competent Authority of Azerbaijan and are therefore barred by Article 9 of the Treaty; (B) with respect to Mr Bahari's FPS and effective means claims, the Tribunal lacks jurisdiction as those substantive protections cannot be imported by virtue of the MFN clause in Article 2(3) of the Treaty; (C) the dispute arose before the Treaty entered

⁴⁵ Respondent's Rejoinder, paras. 355(d); 654.

⁴⁶ Letter from ASFAN Ltd to Mr Bahari dated 8 January 1997, **R-24**.

into force; and (D) Mr Bahari did not have a protected investment at the date of the alleged breach. These matters are addressed in turn below, in the light of the oral submissions and evidence provided at the Hearing.

A. Article 9 bars the application of the Treaty to the alleged investments

15. From his counsel's opening submissions at the Hearing it is plain that Mr Bahari would prefer the Tribunal to overlook Article 9 of the Treaty. He needed to be invited for another opportunity to address Azerbaijan's submissions, in closing,⁴⁷ and even then, he sought to trivialise this important issue. Mr Bahari had admitted in his first witness statement in these proceedings that he was not aware of potential Treaty protections until 2017,⁴⁸ so he never sought the requisite approval under Article 9. He has since been forced to contrive arguments that the threshold requirement in Article 9 of the Treaty is somehow met or does not apply. These arguments have been comprehensively rebutted in Azerbaijan's pleadings.⁴⁹
16. When Mr Bahari did respond to Azerbaijan's Article 9 objection at the Hearing, his submissions were confused, contradictory and not convincing for the reasons set out below.
 - (1) During Mr Bahari's opening presentation, his submissions were largely limited to arguing that Article 9 does not apply to pre-existing investments by operation of Article 12, which he described as a "[REDACTED]".⁵⁰ However, during the closings, Mr Bahari walked back from this submission, stating that Article 12 only created an alleged "[REDACTED]"⁵¹ in the Treaty and that the Tribunal had three interpretive options. Counsel had to admit that one option was to "[REDACTED]". "[REDACTED]" supported that there has to be some kind of "[REDACTED]" to access Treaty protections, namely a restriction on access to Treaty protection for only approved investments.⁵² Mr Bahari's counsel could not, however,

⁴⁷ Tribunal's question no. 1.

⁴⁸ First Bahari Statement, paras. 99-100.

⁴⁹ Respondent's Rejoinder, paras. 204-253; Defence, paras. 127-157.

⁵⁰ Transcript of Hearing on Jurisdiction and Merits, Day 1, 110:17-22, 111:22-25.

⁵¹ Transcript of Hearing on Jurisdiction and Merits, Day 9, 52:23-25, 53:1-9.

⁵² Transcript of Hearing on Jurisdiction and Merits, Day 9, 54:11-25, 55:1-3.

offer any harmonious interpretation of Articles 9 and 12 of the Treaty consistent with his submissions, and tried to downplay his difficulty by calling it “[REDACTED]”.⁵³

- (2) It was then submitted on behalf of Mr Bahari in closing submissions that the “[REDACTED]” may come under Article 1(1), in the sense that investments are to be made “[REDACTED]”, apparently contradicting the admission made in his openings that approval for the purposes of Article 9 “[REDACTED]”.⁵⁴ In light of these shifting submissions, it is not clear if Mr Bahari has abandoned his written pleading that Article 9 was a “*general approval*” requirement that he met as he allegedly “*acted in good faith or ... the Azeri Government approved his investments*”.⁵⁵
- (3) Mr Bahari’s counsel also appeared to contradict his legal expert, Prof Schill, by submitting that Azerbaijan “[REDACTED]”⁵⁶ to reflect any change in its Competent Authority, when Prof Schill accepted that Article 9 “[REDACTED]”⁵⁷ Indeed, the internal re-organisation of Azerbaijan’s Ministries, and thus the Ministry that would act for the state as Competent Authority, was not a matter calling for amendment of the Treaty.
- (4) Mr Bahari’s counsel did not mount any challenge to the evidence of Mr Valiyev, Dr Mehrinfar and Mr Mustafayev. Their evidence went to the core of both the interpretation and application of Article 9. While Mr Bahari argued in his openings that the lack of implementing legislation made a “[REDACTED]” to establish a

⁵³ Transcript of Hearing on Jurisdiction and Merits, Day 9, 54:4-10.

⁵⁴ Transcript of Hearing on Jurisdiction and Merits, Day 1, 113:13-15.

⁵⁵ Statement of Claim, paras. 448, 451.

⁵⁶ Transcript of Hearing on Jurisdiction and Merits, Day 1, 114:16-22; *see also* Transcript of Hearing on Jurisdiction and Merits, Day 9, 56:8-18.

⁵⁷ First Schill Report, para. 29.

prior approval requirement for Treaty protection,⁵⁸ he rowed back in his closings, seemingly accepting the premise that the Treaty automatically forms part of Azerbaijani law without the need for domestic legislation,⁵⁹ pivoting his submissions to concocting “*problems*” with that system, when there are none in reality.

17. Mr Bahari’s response to the jurisdictional threshold issue of Article 9 is without merit. The correct position has been fully addressed in Azerbaijan’s written and oral pleadings, which are briefly summarized below.

1. Article 9 governs the applicability of the Treaty and requires specific approval of investments by the Competent Authority

18. Article 9 governs the applicability of the Treaty, and establishes a condition precedent to access the Treaty protections, i.e. qualifying investments must receive specific additional approval by the Competent Authority. Article 9 is an essential condition of state consent to be bound by the Treaty, and on what terms.⁶⁰ Article 9 preserves the unfettered discretion of Azerbaijan and Iran to approve particular investments of particular investors to receive Treaty benefits.⁶¹ For Azerbaijan, this reservation was crucial in light of the cautious socio-political relationship between Iran and Azerbaijan in the 1990s.⁶²
19. Mr Bahari questions whether Article 9 was “██████” to Azerbaijan because there was no implementing domestic legislation.⁶³ He speculates that Azerbaijan claims Article 9 is “██████” only to avoid the effects of Article 44 of the VCLT.⁶⁴ This argument has no basis in law or fact. Treaties automatically form part of domestic law of Azerbaijan, as Mr Mustafayev confirmed, and there is no need for any implementing

⁵⁸ Transcript of Hearing on Jurisdiction and Merits, Day 1, 113:21-25.

⁵⁹ Transcript of Hearing on Jurisdiction and Merits, Day 1, 55:25, 56:1-5.

⁶⁰ Second Vandevelde Report, para. 5.

⁶¹ First Mustafayev Report, para. 42; First Vandevelde Report, para. 46; Respondent’s Rejoinder, paras. 210, 233.

⁶² First Valiyev Statement, para. 29.

⁶³ Transcript of Hearing on Jurisdiction and Merits, Day 9, 57:20-25, 58:1-18; Transcript of Hearing on Jurisdiction and Merits, Day 1, 114:23-25, 115:1-8.

⁶⁴ Transcript of Hearing on Jurisdiction and Merits, Day 9, 58:19-25, 59:1-8.

legislation.⁶⁵ The Treaty stands very high in the hierarchy of the Azerbaijani legal system and creates self-standing legal obligations that are directly enforceable.⁶⁶ The lack of domestic implementing legislation is irrelevant and cannot support an argument that Article 9 was not an “[REDACTED]” of Azerbaijan to the Treaty. To the contrary, it was, as explained in the unchallenged testimony of Mr Valiyev.⁶⁷

20. Further, contrary to Mr Bahari’s submissions, the lack of implementing legislation does not signify any lack of intention by Azerbaijan to enforce Article 9,⁶⁸ and *a fortiori* does not signify any waiver or estoppel in relation to Article 9 approval. Perhaps recognising the weakness of the argument, Mr Bahari did not delve into waiver or estoppel in his oral submissions at the hearing. Azerbaijan reaffirms what it has submitted in pleadings, namely that the very high thresholds for waiver and estoppel under international law are not met, and Mr Bahari has failed to show otherwise.⁶⁹
21. In any event, the arguments of severance, waiver or estoppel are founded on a false premise that Azerbaijan somehow failed to “*operationalize*” Article 9 (which is denied).⁷⁰ This argument is addressed next.

2. Article 9 has always been operative

22. Contrary to Mr Bahari’s submissions, Article 9 of the Treaty has been operative at all times as between the Contracting Parties and specifically in Azerbaijan.⁷¹ The Competent Authority for Azerbaijan was identified as the Ministry of Foreign Economic Relations (**MFER**). Despite its abolition in 1997, there was simultaneously decreed a legal successor, and there have been at all times since successor Ministries available to consider applications for approval under Article 9.⁷² Mr Bahari has offered no challenge to the evidence of Mr Valiyev or Mr Mustafayev on both the continuity of Azerbaijani ministries, and the conclusion that there was at all times a Competent

⁶⁵ First Mustafayev Report, paras. 38, 41; Second Mehrinfar Report, para. 19; Transcript of Hearing on Jurisdiction and Merits, Day 1, 55:25, 56:1-5.

⁶⁶ First Mustafayev Report, para. 38.

⁶⁷ First Valiyev Statement, para. 29.

⁶⁸ Transcript of Hearing on Jurisdiction and Merits, Day 1, 113:21-24.

⁶⁹ Respondent’s Rejoinder, para. 252.

⁷⁰ Respondent’s Rejoinder, paras. 241, 251.

⁷¹ Respondent’s Rejoinder, para. 237; Transcript of Hearing on Jurisdiction and Merits, Day 9, 56:19-22.

⁷² Defence, paras. 139-145.

Authority for Azerbaijan.⁷³ There is therefore no basis for Mr Bahari's submissions – having admittedly failed even to attempt to obtain approval – that there was no entity ready and available to consider any application,⁷⁴ and he cannot maintain this argument having not challenged Azerbaijan's legal expert on this point, Mr Mustafayev, or its witness with knowledge of the relevant Ministries, Mr Valiyev.

23. While Mr Bahari continues to fault Azerbaijan for not notifying Iran about the re-organisation of its Ministries,⁷⁵ there was in fact no obligation on Azerbaijan to notify Iran, or potential Iranian investors, and there is no need to imply any such notification requirement to ensure the operability of Article 9.⁷⁶ At a minimum an applicant could have addressed an inquiry to the Competent Authority named in the Treaty, leaving the responsibility to Azerbaijan to ensure that it was processed by the right agency. There was also no need to amend the Treaty each time Azerbaijan or Iran re-organised its government, as even Prof Schill accepted.⁷⁷
24. In practice, the specific approval process under Article 9 requires an application to be made to the relevant Ministry at the address provided in the Treaty (where there has been housed a government agency at all relevant times).⁷⁸ Even if the letter was sent for the attention of the MFER, it would have been forwarded internally to the appropriate person.⁷⁹
25. Further, Article 9 sets out a specific approval requirement for investments from the Competent Authority, and this is not satisfied by any other type of approval or registration that an investment might receive in the normal course.⁸⁰ Failing to appreciate that, Mr Bahari argues that he allegedly "*acted in good faith or [] the Azeri Government approved his investments*".⁸¹ He makes various allegations of alleged

⁷³ Transcript of Hearing on Jurisdiction and Merits, Day 9, 97:20-25, 98:1.

⁷⁴ Respondent's Defence, para. 146.

⁷⁵ Transcript of Hearing on Jurisdiction and Merits, Day 9, 56:11-16.

⁷⁶ Respondent's Rejoinder, para. 214.

⁷⁷ Respondent's Defence, para. 137; First Schill Report, para. 29.

⁷⁸ Respondent's Defence, para. 146.

⁷⁹ Respondent's Rejoinder, para. 215; Respondent's Defence, para. 141; Transcript of Hearing on Jurisdiction and Merits, Day 1, 178: 5-25, 179:1-17; First Valiyev Statement, paras. 35-36.

⁸⁰ Defence, para. 151.

⁸¹ Statement of Claim, paras. 448, 451.

approval, including registration of the charter of Caspian Fish’s representative office and the reference in the Purported Shareholders Agreement to the issuance of “[REDACTED]”, without particularisation. None are relevant or sufficient. Ordinary administrative approvals do not suffice under Article 9, either for Iran or Azerbaijan.⁸²

26. At best, these administrative formalities would ensure that the investment was made “*in conformity with the hosting Party’s laws and regulations*” and meets the legality requirement in Article 1(1). Contrary to Mr Bahari’s submissions, they would not satisfy Article 9 approval.⁸³

3. Article 12(1) does not curtail Article 9

27. Mr Bahari focused heavily on an alleged ambiguity perceived in the last sentence of Article 12 of the Treaty, which provides that the Treaty “*shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter*”.⁸⁴ There is no ambiguity. Article 12 governs the temporal scope of the Treaty, extending potential Treaty protection to pre-existing investments, which otherwise meet the Treaty requirements for protection. Such requirements are that they are qualifying investments of qualifying investors with specific approval under Article 9. There is no conflict between Article 12 and the express condition under Article 9, which contains no exceptions to the absolute threshold requirement that the Treaty “*shall only apply to the investments approved by the competent authorities of the host Party*”.⁸⁵
28. Should Article 12 be interpreted as an exception to the jurisdictional gateway under Article 9, it would lead to the absurd result that Article 9 and the jurisdictional gateways under the Treaty (such as qualifying investors, qualifying investment in the territory) are not required to be met to obtain protection for pre-existing investments. This absurdity would imply a nonsensical policy. Pre-existing investments would be treated preferentially in comparison to investments made following the entry into force of the

⁸² Mustafayev Report, para. 65; First Mehrinfar Report, para. 31.

⁸³ Transcript of Hearing on Jurisdiction and Merits, Day 1, 179:22-25, 180:1-2.

⁸⁴ Treaty, **CLA-1**, Article 12.

⁸⁵ Treaty, **CLA-1**, Article 9.

Treaty, when the whole purpose of the Treaty is to incentivise investment.⁸⁶ Such an interpretation is untenable.

29. None of Mr Bahari's arguments to evade the application of Article 9 are sustainable. Article 9 is and remains an absolute bar to the Tribunal's jurisdiction.

B. The Tribunal has no jurisdiction over the FPS and Effective Means claims

30. At the Hearing, Mr Bahari did not engage at all with the MFN provision in Article 2(3) of the Treaty except to clarify, in response to the Tribunal's question, that he maintains his FPS and effective means claims on the basis of the MFN clause.⁸⁷ In the light of the objections in Azerbaijan's submissions, Mr Bahari appears to have lost any faith in the prospects of his MFN claims, resorting instead to argue that the Tribunal need not determine the operation and scope of the MFN clause at all.⁸⁸ This was clarified at the Hearing to mean that the alleged facts "[REDACTED]"⁸⁹ but no further analysis was offered as to the legal bases for the FPS and effective means claims.
31. These confused submissions exemplify Mr Bahari's pleadings, which seek to conflate FET, FPS, and effective means standards of protection.⁹⁰ They go no further, and Azerbaijan reaffirms its submissions that the scope of the MFN in Article 2(3) is limited to the FET standard, it cannot be used to import wholly foreign substantive protections such as FPS or effective means, and in any event, Mr Bahari has not demonstrated actual less favourable treatment in order to invoke the MFN clause.
32. It follows that the Tribunal does not have jurisdiction to hear Mr Bahari's claims with respect to FPS, and effective means.

C. The Tribunal lacks temporal jurisdiction

33. Contrary to Azerbaijan's submissions under Article 9, if the Tribunal should find that Mr Bahari's alleged investments benefit from treaty protection, Azerbaijan submits that

⁸⁶ Second Vandevelde Report, para. 28.

⁸⁷ Transcript of Hearing on Jurisdiction and Merits, Day 9, 63:6-11.

⁸⁸ Claimant's Rejoinder on Jurisdiction, para. 508.

⁸⁹ Transcript of Hearing on Jurisdiction and Merits, Day 9, 63:12-17.

⁹⁰ Respondent's Rejoinder, paras. 258-260; Reply, para. 906.

on Mr Bahari's own case, any dispute arose before the Treaty entered into force, and is not covered by the Treaty.

34. Azerbaijan has demonstrated that Mr Bahari's case is premised on events that allegedly occurred before the Treaty entered into force and falls outside the Tribunal's temporal jurisdiction.⁹¹ In response, Mr Bahari has attempted to recast his case in myriad ways to shoehorn it within the Treaty's temporal scope. He has argued that the alleged breaches have a continuing character, the impugned events are composite acts, and that the dispute crystallised post-Treaty or existed at the time the Treaty entered into force.⁹² Mr Bahari even contrived an argument just weeks before the Hearing that Article 10 of the Treaty brings customary international law breaches within its scope.⁹³
35. However, none of these arguments have any merit. The well-established principle enshrined in Article 28 of the VCLT confirms that a treaty is not retrospective unless "*a different intention appears*".⁹⁴ The dispute settlement provision in Article 10 of the Treaty expresses no such "*different intention*". It is not clear if Mr Bahari alternatively argues that Article 12 of the Treaty somehow brings customary international law breaches into the Treaty's scope.⁹⁵ Any such argument would be legally flawed as Article 12 is not a bypass to the other provisions of the Treaty, as explained above. Plainly, the combined effect of Article 28 of the VCLT and Article 10 of the Treaty is that the temporal scope of the Treaty does not extend to disputes that arose before its entry into force.⁹⁶ Indeed, the tribunal in *Salini v Jordan*, when faced with similar provisions found that the language does not cover disputes that arose pre-BIT.⁹⁷
36. Faced with the fact that the central alleged breaches occurred prior to entry into force Mr Bahari has asserted that the alleged acts constitute continuing breaches, such that

⁹¹ Respondent's Defence, para. 51.

⁹² Claimant's Reply, paras. 737, 738, 741; Respondent's Rejoinder, para. 156.

⁹³ Claimant's Rejoinder on Jurisdiction, para. 435.

⁹⁴ Vienna Convention on the Law of Treaties, **CLA-36**, Article 28.

⁹⁵ Claimant's Rejoinder on Jurisdiction, para. 438; Transcript of Hearing on Jurisdiction and Merits, Day 1, 77:15-22.

⁹⁶ Transcript of Hearing on Jurisdiction and Merits, Day 1, 198:19-25, 199:1-22.

⁹⁷ *Salini Costruttori SpA v Jordan*, ICSID Case No. ARB/02/13 ICSID, Decision on Jurisdiction, 29 November 2004, **RLA-138**, para. 170; also *MCI Power Group v Ecuador*, ICSID Case No. ARB/03/6, Award, 31 July 2007, **RLA-71**, para. 61; Defence, paras. 71-74.

the alleged breaches began on 10 February 2001 but continue to this day.⁹⁸ This submission is also meritless. It is uncontroversial that as a matter of international law, “*continuing courses of conduct constitute continuing breaches of legal obligations*”.⁹⁹ However, Mr Bahari fails to acknowledge the distinction between “*an act of a continuing character and an act, already completed, which continues to cause loss or damage*”.¹⁰⁰ This critical distinction is drawn out in Article 14(1) and (2) of the ILC Articles, where the key questions are whether the act itself is of “continuing character”,¹⁰¹ and at what point did the loss become final and the State’s responsibility to make reparations become engaged.¹⁰²

37. As explained in Azerbaijan’s pleadings, the allegations at issue comprise simple or instantaneous acts, which would have been completed before the Treaty entered into force, giving rise to any State responsibility.¹⁰³ Continuing effects do not alter the nature of the alleged acts.
38. At the Hearing, Mr Bahari contrived an argument that the alleged “ [REDACTED] ” and that it was a “ [REDACTED] ”¹⁰⁴ that “ [REDACTED] ” once the Treaty entered into force.¹⁰⁵ First, Azerbaijan denies there was any intimidation, and Mr Bahari has failed to show concrete evidence of it to discharge his burden of proof.¹⁰⁶ In any event, this approach lacks merit. As the Tribunal pointed out, this approach to assessing the continuing character of acts is likely to result in the absurd situation that claimants are incentivised to sit on claims,

⁹⁸ Statement of Claim, para. 460; Claimant’s Overview Chart in response to Tribunal’s Question 6.

⁹⁹ *UPS v Canada*, Ad Hoc Arbitration, Award on the Merits (24 May 2007), **RLA-258**, para. 28.

¹⁰⁰ *Mondev International Ltd v United States of America*, ICSID Case No ARB(AF)/99/2 Award (11 October 2002), **CLA-39**, paras 57-58.

¹⁰¹ Commentary to ILC Articles, **CLA-37**; Defence, paras. 53-55.

¹⁰² Defence, para. 55; *Mondev International Ltd v USA*, ICSID Case No. ARB(AF)/99/2, Award (11 October 2002), **CLA-39**, para. 61.

¹⁰³ Respondent’s Rejoinder, paras. 156, 158.

¹⁰⁴ Transcript of Hearing on Jurisdiction and Merits, Day 1, 87:7-17.

¹⁰⁵ Transcript of Hearing on Jurisdiction and Merits, Day 1, 85:19-25, 86:1.

¹⁰⁶ *Manolium Processing v Belarus*, PCA Case No. 2018-06, Decision on Claimant’s Interim Measures Request, 7 Dec. 2018, **RLA-232**, paras 121, 141; *Churchill Mining v Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Procedural Order No. 14, 22 Dec. 2014, **CLA-227**, at paras 72, 87.

and assert that the breaches continue until they are brought before a tribunal.¹⁰⁷ It would also mean that all breaches, in a sense, are continuing breaches and is thus not a tenable interpretation.

39. On the facts of Mr Bahari's pleaded case, a breach amounting to an internationally wrongful act would have arisen at the time of his alleged expulsion (the fact of which being staunchly denied, as explained below). That was before the Treaty entered into force. However, to meet the Treaty's temporal scope, Mr Bahari has – without basis or rationale – asserted that 1 January 2003 is the date of dispute, until he veered away at Hearing to advance for the first time an "[REDACTED]" that the dispute only crystallised when Mr Amirahmadi allegedly attempted to negotiate a settlement for Mr Bahari with Azerbaijan in 2009.¹⁰⁸ Neither of these dates have any basis.
40. Azerbaijan understands from Mr Bahari's pleaded case that the date of the dispute should be in February or March 2001, or at the latest 15 June 2002.
- (1) Mr Bahari alleges that he was deported from Azerbaijan in February or March 2001 following his exclusion from the opening ceremony and management of Caspian Fish. Mr Bahari claims he took steps to oppose his exclusion from the opening ceremony by calling Mr Aliyev on the telephone, when Mr Aliyev – allegedly speaking for the State – threatened him.¹⁰⁹ Mr Bahari further alleges that he protested against "[REDACTED]" who ultimately deported him from Azerbaijan.¹¹⁰ While Azerbaijan denies there was any exclusion or deportation, on Mr Bahari's case, that's when there were opposing views between the parties so as to give rise to a dispute.¹¹¹ It is also the date when an independent cause of action would have arisen for Mr Bahari.¹¹² Indeed, every claim Mr Bahari makes in these proceedings flows from or is based on his alleged expulsion and *persona non grata* status.

¹⁰⁷ Transcript of Hearing on Jurisdiction and Merits, Day 1, 86:2-9.





¹⁰⁸ Statement of Claim, para. 463; Transcript of Hearing on Jurisdiction and Merits, Day 9, 42:8-21.

¹⁰⁹ First Bahari Statement, para. 71; Statement of Claim, para. 135.

¹¹⁰ First Bahari Statement, paras. 70-71.

¹¹¹ *EuroGas v Slovakia*, ICSID Case No. ARB/14/14, Award of the Tribunal, 18 August 2017, **RLA-142**, para. 437.

¹¹² Transcript of Hearing on Jurisdiction and Merits, Day 1, 199:25, 200:1-25, 201:1-10.

- (2) Alternatively, on Mr Bahari’s case, a dispute arose at the latest by 15 June 2002, when Azerbaijan understands Mr Khanghah met with Mr Bahari to discuss the final payment tranche of the 2001 Sale Agreement.¹¹³ Mr Bahari challenges the 2002 Amendment as “*Forced Sale Terms*”, complaining that Messrs Aliyev and Heydarov “*improperly pressured Mr. Bahari into selling Caspian Fish*”, acting on behalf of the State (which is denied).¹¹⁴ Taking Mr Bahari’s case at its highest, any dispute arose on 15 June 2002, when according to Mr Bahari he objected to the “Forced Sale Terms”, and the parties communicated their opposing views.¹¹⁵
41. On Azerbaijan’s case, Mr Bahari willingly settled his interests pursuant to the sale agreement dated 20 September 2001, with Mr Bahari agreeing to exit the business and transfer his shares in the BVI Co to one of his ex-partners, Mr Khanghah, for the sum of USD 4.5 million, with further additional payments of approximately USD 800,000 subsequently also agreed and actually paid.¹¹⁶ Given that Mr Bahari considers the 2001 Agreement was an act of State (which is denied), and that Mr Bahari contests that sale, any dispute arising from these facts arose on the date of the 2001 Sale Agreement.
42. It follows that on any view, the dispute arose at the latest by 15 June 2002, before the Treaty entered into force. Yet, Mr Bahari – ignoring all evidence, including his own – arbitrarily proposes 1 January 2003 as the date of dispute. He asserts that it was only after that date “*that he understood that there was no chance*” of recovering his investments,¹¹⁷ and that “

”.¹¹⁸ There is no factual foundation for the supposed date of dispute being 1 January 2003. Mr Bahari’s alleged subjective “” is irrelevant,¹¹⁹ and

¹¹³ 2002 Amendment, **C-17**; Respondent’s Rejoinder, para. 168, 169.

¹¹⁴ Statement of Claim, para. 168.

¹¹⁵ Defence, para. 74; First Bahari Statement, paras. 81-84.

¹¹⁶ 2001 Sale Agreement, **R-50**.

¹¹⁷ Claimant’s Rejoinder on Jurisdiction, paras. 473, 475.

¹¹⁸ Transcript of Hearing on Jurisdiction and Merits, Day 1, 89:16-21.

¹¹⁹ Transcript of Hearing on Jurisdiction and Merits, Day 9, 123:9-22.

no objective and relevant events are said to have occurred between 20 June 2002 and 1 January 2003 except that the Treaty entered into force.

43. As for Mr Bahari's new – and poorly pleaded – claim that the dispute arose in 2009, there is no evidence that Mr Amirahmadi participated in any negotiations with the State, or otherwise sought to negotiate any settlement on Mr Bahari's behalf in 2009, or at any time, whether on the authority of a POA or at all.¹²⁰ Rather, the documentary evidence, including the terms of the POA itself, demonstrate that Mr Amirahmadi was in Azerbaijan to instruct local advocate Mr Kazimov to represent Mr Bahari in domestic proceedings related to Ayna Sultan.¹²¹ There is no reference to negotiations with the State, and Azerbaijan denies that there were any such negotiations. As such, there is no factual basis to Mr Bahari's latest submission that the dispute arose only at the time of the alleged 2009 negotiations.
44. Mr Bahari also maintains 1 January 2003 as the alleged date of expropriation despite admitting it was "[REDACTED]".¹²² That artificial date is not consistent with the reality of the evidence as explained in Azerbaijan's pleadings.¹²³ Taking Mr Bahari's case at its highest, any substantial deprivation (which is denied) would have occurred when Mr Bahari claims he was expelled from Azerbaijan in March 2001 and consequently "*shut off from his investments and any administrative or judicial means to recover them*".¹²⁴ Indeed, Mr Bahari himself has pleaded that on 15 June 2002, Azerbaijan tendered "*a remarkably candid admission that [his] investments had been unlawfully seized*".¹²⁵ That is denied, but on Mr Bahari's case, it can only mean one thing: the alleged expropriation took place before the Treaty entered into force, thereby falling outside the temporal jurisdiction of the Tribunal.¹²⁶

¹²⁰ Respondent's Rejoinder, para. 538(b); Power of Attorney issued by Mr Bahari to Mr Amirahmadi dated 20 April 2009, **R-152**.

¹²¹ Respondent's Rejoinder, paras. 539-541; Letter from State Border Service to State Service on Property Issues in respect of Mr Amirahmadi, **R-416**; Power of Attorney issued by Mr Amirahmadi to Mr Kazimov dated 1 May 2009 (disclosed at p. 289 of Respondent's Production 182_31), **R-285**.

¹²² Transcript of Hearing on Jurisdiction and Merits, Day 1, 92:5-8.

¹²³ Respondent's Rejoinder, paras. 662-666.

¹²⁴ Statement of Claim, paras. 473(iii), 609.

¹²⁵ Statement of Claim, para. 169.

¹²⁶ Respondent's Rejoinder, para. 153.

45. Mr Bahari claims that it is “[REDACTED]” that the alleged creeping expropriation crystallised by 1 January 2003, or “[REDACTED]” through composite acts.¹²⁷ However, the composite acts doctrine in Article 15 of the ILC Articles has no application where there is an identifiable act of taking, as alleged in the case of Caspian Fish.¹²⁸ Notwithstanding this, at the Hearing, Mr Bahari argued that it was only after the Treaty entered into force that “[REDACTED]”,¹²⁹ but he was unable to identify any relevant events post entry into force that could have caused the alleged permanent dispossession.¹³⁰

46. It follows that the core matters said to breach the Treaty, or from which all breaches flowed, took place pre entry into force¹³¹ and fall outside of the Tribunal’s temporal jurisdiction.

D. Mr Bahari had no qualifying investment at the time of the alleged breach, or at all

47. Azerbaijan reaffirms its submissions that Mr Bahari lacked any protected investment at the date of the alleged breach, or at all.¹³² Mr Bahari has consistently sought to gloss over the threshold requirements for an asset to qualify as an investment under the Treaty. He has argued against any sort of objective criteria to assess the meaning of the term “investment”.¹³³ Even at the Hearing, submissions on Mr Bahari’s alleged investments were elided with the “[REDACTED]”, and not addressed as a matter of law at all.¹³⁴ Mr Bahari limited his oral submissions to repeating the various alleged investments as set out in his written pleadings – without evidence or analysis, much less any engagement with Azerbaijan’s objections.¹³⁵

¹²⁷ Claimant’s Reply, para. 1090; Transcript of Hearing on Jurisdiction and Merits, Day 1, 88:5-12.

¹²⁸ Respondent’s Rejoinder, para. 161; *Aaron C Berkowitz and ors (formerly Spence International Investments and ors) v Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (25 Oct. 2016), **RLA-136**, para. 271.

¹²⁹ Transcript of Hearing on Jurisdiction and Merits, Day 1, 89:10-21.

¹³⁰ Respondent’s Rejoinder, para. 163.

¹³¹ Respondent’s Defence, para. 58.

¹³² Respondent’s Defence, paras. 75-126.

¹³³ Claimant’s Reply, para. 753; *Romak SA v Uzbekistan*, PCA Case No. 2007-07/AA280, Award (26 November 2009), **RLA-19**, para. 180.

¹³⁴ Transcript of Hearing on Jurisdiction and Merits, Day 1, 75:2-11.

¹³⁵ Transcript of Hearing on Jurisdiction and Merits, Day 1, 8:18-25, 9:1-9.

48. By way of summary, Azerbaijan has demonstrated that none of Mr Bahari's alleged investments in Caspian Fish, Coolak Baku (and Shuvalan Sugar), Ayna Sultan or Carpets constitute qualifying investments in its territory for the following reasons:

- (1) Mr Bahari claims that his alleged shares in Caspian Fish BVI, contractual rights in the Purported Shareholders Agreement, and the assets of Caspian Fish, including its goodwill, technical process, and alleged "[REDACTED]" constitute his investments under the Treaty.¹³⁶ However, shares in a BVI company are not investments in the territory of Azerbaijan.¹³⁷ Any rights conferred by the Purported Shareholders Agreement of Caspian Fish BVI are *in personam* rights vis-à-vis the other alleged shareholders of the same BVI company, and not choses-in-action which could amount to a qualifying asset in the territory of Azerbaijan.¹³⁸ As to the other alleged assets (including goodwill, technical process and alleged licences), there is no evidence that Mr Bahari provided any such contributions to Caspian Fish, and Azerbaijan's witnesses only confirm the contrary.¹³⁹ In any event, even if Mr Bahari could prove he contributed to the assets of Caspian Fish, they would not qualify as his protected investments as they are one-off transactions and the assets belong to Caspian Fish (as opposed to Mr Bahari in his personal capacity).¹⁴⁰
- (2) As to Coolak Baku, Mr Bahari alleges that his "[REDACTED]" in the JVA and the assets of Coolak Baku including its equipment and goodwill are his investments under the Treaty.¹⁴¹ The assets of the JV company are not an investment of Mr Bahari. There are also no financial obligations owing to Mr Bahari under the 1999 Agreement (which he does not challenge, and in fact relies upon in other respects).¹⁴² With regard to his shareholding in Coolak

¹³⁶ Claimant's Opening Presentation, slides 1.06-1.08, pp. 9-11; Claimant's Overview Chart, pp. 1-3.

¹³⁷ Respondent's Defence, para. 83; Respondent's Rejoinder, para. 184.

¹³⁸ Respondent's Rejoinder, para. 185

¹³⁹ Respondent's Defence, paras. 98-99; First Hasanov Statement, para. 19-21.

¹⁴⁰ Respondent's Defence, para. 100; Respondent's Rejoinder, para. 186; *Casinos Austria International v Argentina*, ICSID Case No. ARB/14/32, Decision on Jurisdiction (29 June 2018), **CLA-59**, paras 183-184; *Kaloti Metals v Peru*, ICSID Case No. ARB/21/29, Award (14 May 2024), **RLA-327**, at para. 348.

¹⁴¹ Claimant's Opening Presentation, slide 1.09, p. 12; Transcript of Hearing on Jurisdiction and Merits, Day 1, 25:1-5; Claimant's Overview Chart, pp. 4-5.

¹⁴² Respondent's Rejoinder, para. 361; Claimant's Rejoinder on Jurisdiction, paras. 127(b), 146(a).

Baku, there is no expropriation claim made in respect of it, and Mr Bahari remains its sole shareholder.¹⁴³

- (3) As to Shuvalan Sugar, Mr Bahari continues to assert that its “ [REDACTED] ”, goodwill and know-how are qualifying investments under the Treaty.¹⁴⁴ However, it is undisputed that Shuvalan Sugar was not a company, and there is no evidence it had any operations.¹⁴⁵ The alleged contribution of equipment and construction, goodwill and know-how are not established either on the facts.
- (4) As to Ayna Sultan, it is a small 45 square metre residential dwelling that Mr Bahari initially misrepresented in these proceedings as a 1000 square metre land plot.¹⁴⁶ The purchase of a “*relatively modest residential property*” that was not predominantly (or at all) used for rental purposes would not meet the criteria of expectation of economic return or assumption of risk so as to qualify as an investment.¹⁴⁷ Mr Bahari attempts to overcome this obstacle by asserting that he intended to use it as a “ [REDACTED] ” but there is no evidence for this assertion except for his unreliable testimony, and it not credible that a small apartment could be put to such use.¹⁴⁸
- (5) Lastly, in respect of the carpets, they are not investments in the territory of Azerbaijan as Mr Bahari himself claims at least some of the carpets were purchased abroad, and his own carpet ledger confirms they were of insignificant value.¹⁴⁹ To impute commercial value to the carpets, Mr Bahari has alleged that he intended to set up a carpet museum but he confirmed at the Hearing that he

¹⁴³ Respondent’s Rejoinder, para. 191.

¹⁴⁴ Claimant’s Opening Presentation, slide 1.09, p. 12; Claimant’s Overview Chart, pp. 4-5.

¹⁴⁵ Defence, para. 114; Respondent’s Rejoinder, paras. 195-196.

¹⁴⁶ Statement of Claim, para. 95; Title Registration Certificate issued by the Executive Authorities of Baku City to Mr Bahari and Technical Passport dated 28 January 1998, **C-16**.

¹⁴⁷ *Seo v Korea*, HKIAC Case No. 18117, Final Award, 27 Sep. 2019, **RLA-150**, para. 139.

¹⁴⁸ Respondent’s Rejoinder, paras. 199-200; First Bahari Statement, para. 48.

¹⁴⁹ Respondent’s Defence, para. 123.

had “[REDACTED]”.¹⁵⁰ Hence, the carpets should not be considered to be an investment.

49. It follows that Mr Bahari held no protected investment in Azerbaijan. Even assuming he did, Azerbaijan has established that he had no investment at the date of alleged breaches. Mr Bahari sold any interest in Caspian Fish in 2001 and was paid for it;¹⁵¹ he sold the Ayna Sultan dwelling in December 1999;¹⁵² he claims to have lost his carpets in August 2001, and even if true, they were returned to him;¹⁵³ and he abandoned Coolak Baku (and Shuvalan Sugar) when he left Azerbaijan in December 2001.¹⁵⁴

50. It follows that Mr Bahari has not shown he owned any qualifying investments on the appointed date of breaches, or at all.

III. EVIDENTIAL MATTERS ADDRESSED AT THE HEARING

51. The following sections address the key evidential matters arising out of the Hearing.

A. Mr Bahari’s memory is not reliable and he has a penchant for hyperbole and misstatement

52. Mr Bahari was described in many ways over the course of the Hearing. His own counsel opened their submissions by calling him a man without “[REDACTED]” and who is “[REDACTED]”.¹⁵⁵ Mr Bahari described himself as someone not having “[REDACTED]”.¹⁵⁶ In reality, Mr Bahari has demonstrated repeatedly that he has a penchant for hyperbole and does not consider detail to be relevant. He also misled the Tribunal, the Respondent and its counsel, and even his own experts, about the Chartabi Contracts. And yet Mr Bahari asks the Tribunal to rely

¹⁵⁰ Transcript of Hearing on Jurisdiction and Merits, Day 3, 147:24-25, 148:1-8.

¹⁵¹ Buyer and Seller Agreement between Mr Khanghah and Mr Bahari dated 20 September 2001, **R-50**; Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**; Email from Mr Bahari A Kalantarli, copied to President’s Office dated 4 December 2013, **R-53**; Email from Mr Bahari to ANS Press dated 28 June 2013, **R-145**.

¹⁵² Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Guliyev and Mr Bahari dated 28 September 1996, **R-79**.

¹⁵³ First Moghaddam Statement, para. 69; First Zeynalov Statement, para. 50; R-37.

¹⁵⁴ Respondent’s Openings, slides 90, 92, 93.

¹⁵⁵ Transcript of Hearing on Jurisdiction and Merits, Day 1, 6:3-12.

¹⁵⁶ Transcript of Hearing on Jurisdiction and Merits, Day 2, 43:6.

construction work in Azerbaijan.¹⁶¹ Nor has Mr Bahari presented any other evidence of its existence, or documents from its archives, notwithstanding numerous opportunities to do so. The Tribunal should conclude that Chartabi Contracting did not exist, and it could not have been and was not the contractor for Caspian Fish, Coolak Baku or Shuvalan Sugar.

(3) Mr Bahari claimed that the Qeshm Fish project was “[REDACTED]”.¹⁶² However, this claim was contradicted by Mr Bahari’s own testimony in which he classified Caspian Fish as “[REDACTED]” and Qeshm Fish “[REDACTED]”.¹⁶³ Azerbaijan has submitted evidence that Petroqeshm (the parent company of Qeshm Fish) was dissolved in 2013 and therefore cannot be the “[REDACTED]” fish powder company in the world.¹⁶⁴

(4) Similarly, Mr Bahari volunteered his belief that “[REDACTED]”.¹⁶⁵ Cyrillic was replaced as the official alphabet of Azerbaijan in the early 1990s but continued to be used until the adoption of the Law on Language, which came into force on 31 January 2003. However, Cyrillic has never been “[REDACTED]”, and can still be used lawfully.

2. The details in Mr Bahari’s oral evidence are contradicted by the record or defy logic

56. Many of Mr Bahari’s statements were made without care or appreciation for accuracy, and are either contradicted by other parts of his own testimony, or the contemporaneous record, or simply defy logic.

57. For example, Mr Bahari claims both that “[REDACTED]”¹⁶⁶ and that “[REDACTED]”.¹⁶⁷ Even in circumstances where these two dates did not

¹⁶¹ Respondent’s Defence, para. 90; Letter from State Tax Service to Khirdalan city attorney’s office dated 18 December 2023, **R-86**.

¹⁶² Transcript of Hearing on Jurisdiction and Merits, Day 2, 81:23-24.

¹⁶³ Transcript of Hearing on Jurisdiction and Merits, Day 2, 91:7-10.

¹⁶⁴ UAE Government Portal search regarding Petroqeshm International Trading LLC business licence, accessed on 7 December 2023, **R-142**.

¹⁶⁵ Transcript of Hearing on Jurisdiction and Merits, Day 2, 115:15-16.

¹⁶⁶ Transcript of Hearing on Jurisdiction and Merits, Day 2, 27:12-13.

¹⁶⁷ Transcript of Hearing on Jurisdiction and Merits, Day 2, 54:17.

contradict each other, they are both disproved by the contemporaneous record and Mr Bahari's own case. Mr Bahari was only in Azerbaijan from 1994 to 2001, a period of seven years.¹⁶⁸

58. He claimed at the Hearing to "[REDACTED]".¹⁶⁹ He had made similar claims in previous interviews, where he spoke in Russian, claiming to "[REDACTED]" and "[REDACTED]".¹⁷⁰ He explicitly confirmed during the Hearing that one of those languages was English, stating "[REDACTED]".¹⁷¹ However, minutes later, when asked whether he would understand a document drafted in English, he confirmed that he "[REDACTED]".¹⁷² While this may, of course, have been a tactic to avoid a difficult question, equally, it may reveal that Mr Bahari exaggerated about his proficiency in English.
59. Other facts claimed by Mr Bahari are simply misstatements. For example, he claimed that his son was five years old at the time he left Azerbaijan.¹⁷³ However, moments later he went on to admit that his son was born in 2002, i.e. after he had left Azerbaijan.¹⁷⁴ Whether this misstatement arose as a result of Mr Bahari's forgetfulness or his disregard for detail, it must call into question Mr Bahari's credibility.
60. Mr Bahari often contradicted himself in the same breath. For example, he stated that "[REDACTED]".¹⁷⁵ Clearly Mr Bahari could not have been in a "[REDACTED]" at the same time (or at any time) he alleges he was "[REDACTED]".¹⁷⁶

¹⁶⁸ Statement of Claim, para. 38.

¹⁶⁹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 16:16-18.

¹⁷⁰ Azerbaijan Saati: Transcript of Interview with Mr Bahari, 8 April 2019, **R-1**, p. 9.

¹⁷¹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 16:20.

¹⁷² Transcript of Hearing on Jurisdiction and Merits, Day 2, 28: 9.

¹⁷³ Transcript of Hearing on Jurisdiction and Merits, Day 2, 33:11-12.

¹⁷⁴ Transcript of Hearing on Jurisdiction and Merits, Day 2, 36:12.

¹⁷⁵ Transcript of Hearing on Jurisdiction and Merits, Day 2, 34:4-6.

¹⁷⁶ Transcript of Hearing on Jurisdiction and Merits, Day 2, 34:4-6.

61. Other statements made by Mr Bahari are simply unbelievable on their face, or were not pleaded prior to the Hearing:

(1) Mr Bahari advanced evidence about ownership of several cars, in the mistaken belief that this might denote wealth. Mr Bahari claimed “ [REDACTED] ”
[REDACTED]
[REDACTED]”¹⁷⁷ and “[REDACTED]”
[REDACTED]
[REDACTED]”.¹⁷⁸ First, these vehicles are not evidence of the wealth Mr Bahari claims to have had and would have needed to fund the development of Caspian Fish. Secondly, these claims are not evidenced. No documents have been put forward in these proceedings to evidence his ownership of any such cars, assuming “[REDACTED]” had actually been given to his lawyers.

(2) Mr Bahari also claimed that his “ [REDACTED] [REDACTED] ”,¹⁷⁹ but this is empty exaggeration, based on no documents, and in fact contradicted by several items of other evidence on the record, including the German-law sworn affidavit of Mr Hansen, who painted Mr Bahari as a chancer and con-man, relying on other people’s money.

62. In one of Mr Bahari's many less cogent moments during his cross-examination, he appears to have also claimed to have been the inventor of a form of binary code (or similar) although he did not register it:¹⁸⁰

[REDACTED]

177 Transcript of Hearing on Jurisdiction and Merits, Day 2, 89:10-12.

178 Transcript of Hearing on Jurisdiction and Merits, Day 2, 96:1-4.

179 Transcript of Hearing on Jurisdiction and Merits, Day 2, 97:9-15.

180 Transcript of Hearing on Jurisdiction and Merits, Day 2, 169:14-25; 170:1-9.

- [REDACTED]
- [REDACTED]
63. While his claimed development of this alleged mathematical code is of course entirely irrelevant to these proceedings, and indeed his answer was also completely unrelated to the question Mr Bahari was actually asked, this answer is representative of the unencumbered nature of Mr Bahari's imagination and perhaps the lies he even tells himself.

3. Mr Bahari's testimony concerned even his own lawyers who continuously had to step in to assist him

64. Mr Bahari's conduct and responses during cross-examination was a cause of concern even to his own lawyers.
65. In an unconventional and inappropriate approach, on numerous occasions Mr Bahari's own counsel interrupted him to try and keep him on script, stating, for example: "[REDACTED] 181 and "[REDACTED] 182 This usually occurred when Mr Bahari was getting excited and speaking before a question was put to him. His counsel on occasion had to remind Mr Bahari to "[REDACTED] 183 or even, dejectedly, "[REDACTED] 184 when he would not answer the question that was asked.
66. If these interjections were meant to assist Mr Bahari's credibility, they did not. Instead, they had the opposite effect, highlighting that his own counsel recognised themselves as unable to control his narcissistic soliloquies.

¹⁸¹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 42:18-19.

¹⁸² Transcript of Hearing on Jurisdiction and Merits, Day 2, 74:14-16.

¹⁸³ Transcript of Hearing on Jurisdiction and Merits, Day 2, 102:4.

¹⁸⁴ Transcript of Hearing on Jurisdiction and Merits, Day 2, 177:6.

B. Mr Bahari's case has evolved throughout the years and continued to evolve at the Hearing

67. A feature of Mr Bahari's factual case has been its evolution and its inconsistency. The passage of time cannot excuse the notable changes in the pleaded facts since Mr Bahari first sent a notice of dispute to Azerbaijan in 2017 and gave his first public interviews. Other facts emerged on the stand. None of these add credibility to Mr Bahari's claim at all.

1. Mr Bahari's claim that he was forced to depart Azerbaijan is false and was not made prior to these proceedings

68. The central tenet of Mr Bahari's story is that he was expelled from Azerbaijan in March 2001, following the grand opening of Caspian Fish. That narrative is essential for Mr Bahari's claim, as had he not been expelled from Azerbaijan, there is no reason why he would not have had full control of his assets in Azerbaijan and access to documentary evidence in support of his claim. Nor is there any reason why Mr Bahari would need to rely on others to obtain information on his alleged investments on his behalf, thereby putting them at risk of alleged intimidation and harassment.

69. Mr Bahari did not reference this alleged forced expulsion in his previous written submissions in the 2019 arbitration. Nor did he mention this allegation in his contemporaneous media interviews. The absence of any reference at that time to his alleged expulsion is telling, and is a clear indicator that the story has been fabricated more recently for the purpose of these proceedings.

70. When faced with this proposition, the only evidence that Mr Bahari could rely upon was that in fact he did not return to Azerbaijan until 2013.¹⁸⁵ The fact that Mr Bahari did not return to Azerbaijan until 2013 does not evidence that he was prevented from visiting at any time earlier. It simply demonstrates that he chose not to return to Azerbaijan for reasons which are outside of Azerbaijan's knowledge.

71. Furthermore, Mr Bahari has provided no evidence at all of his new life in the UAE in 2001 following his departure from Azerbaijan. Had he been forced to depart Azerbaijan in early 2001, he must have had documents evidencing his daily life in another country, such as school records, tenancy agreements, real estate purchases, utility contracts,

¹⁸⁵ Transcript of Hearing on Jurisdiction and Merits, Day 2, 51:23.

invoices or payments, residence permits or visas. The absence of such evidence is consistent with Mr Bahari remaining in Baku until December 2001, as Azerbaijan maintains.

2. Mr Bahari invented new detail regarding the alleged global plot to kill him

72. In his first witness statement, Mr Bahari claimed that following the death of his daughter, he has “ [REDACTED] [REDACTED] [REDACTED] [REDACTED] ”.¹⁸⁶ Mr Bahari did not explain the basis of his fear, and the Tribunal should note that his claim that Azerbaijan was even involved in the death of his daughter was admitted at the Hearing to be false.¹⁸⁷
73. During the Hearing, Mr Bahari went further in his oral testimony, stating that “ [REDACTED] [REDACTED] [REDACTED] ”,¹⁸⁸ “ [REDACTED] [REDACTED] [REDACTED] ”¹⁸⁹ and “ [REDACTED] [REDACTED] [REDACTED] ”.¹⁹⁰ However, in typical fashion, Mr Bahari has not produced any documents to support these outrageous claims. Again, the Tribunal should conclude from the absence of evidence that the allegations are not true.
74. For the avoidance of doubt, Azerbaijan denies any plot to harm Mr Bahari. He is a fantasist and his claims are readily contradicted by his own evidence, not least since he has clearly visited Turkey and that he has lived for some time in Georgia. For example:

¹⁸⁶ Bahari First Statement, para. 94.

¹⁸⁷ Transcript of Hearing on Jurisdiction and Merits, Day 2, 159:18-21.

¹⁸⁸ Transcript of Hearing on Jurisdiction and Merits, Day 2, 40:4-6.

¹⁸⁹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 160:7-18.

¹⁹⁰ Transcript of Hearing on Jurisdiction and Merits, Day 2, 160:22.

- (1) the Azerbaijani visa granted to Mr Bahari in 2013 shows, on its face, that it was issued in Turkey, whereas Mr Bahari's evidence was that it was issued by the ambassador in person at a hotel in Dubai;¹⁹¹
- (2) Mr Bahari's passport contains stamps from the cities of Mersin and Istanbul, Turkey, in 2015;¹⁹²
- (3) Mr Bahari has pleaded in both these proceedings and in the 2019 arbitration that he moved to Georgia in 2009.¹⁹³

75. Mr Bahari's testimony in respect of any alleged plot against him should be disregarded wholesale. His paranoid and exaggerated statements in this regard should be yet another reason for the Tribunal to deem Mr Bahari's testimony unreliable.

3. Mr Bahari invented a brand-new factual case regarding the entrance visa to Azerbaijan granted to him in 2013

76. In his written testimony, Mr Bahari claimed that in 2013, he was "[REDACTED]"¹⁹⁴ Mr Heydarov and that he was "[REDACTED]"¹⁹⁵ and Mr Heydarov was "[REDACTED]".¹⁹⁶ He offered no further detail of the visa arrangements prior to the Hearing.
77. The Respondent has continuously questioned this narrative, noting that the application and granting for a visa for Azerbaijan is a standardised practice for any foreign visitor from non visa-exempt countries.¹⁹⁷ In support, the Respondent submitted evidence from the assistant of Mr Heydarov at the time, Mr Kalantarli, which was unchallenged at the Hearing. Mr Kalantarli confirms that he does not recall Mr Heydarov ever arranging for any visa to be granted to Mr Bahari.¹⁹⁸ The Tribunal should conclude

¹⁹¹ Azerbaijan Visa for Mr Bahari dated 7 October 2013, **C-183**; cf. Transcript of Hearing on Jurisdiction and Merits, Day 2, 70:20-24; 71:23-25.

¹⁹² Azerbaijan Visa for Mr Bahari dated 7 October 2013, **C-183**.

¹⁹³ Notice of Arbitration, para. 67. *See also* Notice of Arbitration dated 5 April 2019, **R-54**, para. 45.

¹⁹⁴ Bahari First Witness Statement, para. 95.

¹⁹⁵ Bahari First Witness Statement, para. 95.

¹⁹⁶ Bahari Second Witness Statement, para. 36.

¹⁹⁷ Respondent's Rejoinder, para. 446; Kalantarli Statement, para. 8.

¹⁹⁸ Kalantarli Statement, para. 8.

that Mr Bahari arranged it himself, without difficulty, in accordance with standard practice.

78. Yet Mr Bahari presented a brand new story during his oral examination. Notwithstanding that the visa itself states that it was issued in Turkey, Mr Bahari claimed that the Ambassador of Azerbaijan came to him personally, in a hotel in Dubai, to handwrite the visa in his passport:¹⁹⁹

[REDACTED]

[REDACTED]

[REDACTED]

79. The purpose of this new story is not clear, but it is contradicted by the visa itself and inherently unbelievable. Plainly the story about the personal intervention of the ambassador in Dubai is a concoction. The Respondent can only speculate, but perhaps Mr Bahari continues to fabricate these stories to seem more important than he really is.

4. Mr Bahari invented a brand-new factual case regarding the “price” column of the Carpet Ledger, which is false

80. The Ledger was described by Mr Bahari as a something to “[REDACTED]”.²⁰⁰ It is a handwritten document in Farsi with seven columns. Mr Bahari submitted with his Statement of Claim two versions of the translation of the Ledger. The first is the translation at Exhibit C-79, which contains just five columns. The fourth column in that document is titled “[REDACTED]”, however, no data was included in the corresponding rows. C-79 was therefore not a true translation of the original Ledger. The second translation of the Ledger is included in Mr Iselin’s first report at Appendix A. That translation includes, at Column 5, the “[REDACTED]”, for which there is a number listed in almost every row. The Respondent has no knowledge of why there are discrepancies between the two translations, but can only assume that it was deliberate on the part of Mr Bahari or his counsel to omit the figures from the

¹⁹⁹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 70:20-24; 71:23-25.

²⁰⁰ Bahari First Statement, para 58.

“[REDACTED]” or “[REDACTED]” column in the factual exhibit at C-79. The Respondent refers to the fuller translation of the Ledger included in the Iselin Report.

81. Neither Mr Bahari nor Mr Iselin discussed the price column of the Ledger at the time of the Statement of Claim. This must have been a deliberate omission given the translation accompanying the Iselin Report. The price column was highlighted for the first time by the Respondent in its Defence, when it stated that the price column “*presumably indicates the price at which each carpet was purchased in US dollars*”.²⁰¹
82. Yet still, Mr Bahari did not give any evidence on the price column in any of his subsequent witness statements. The only mention of the carpets in any of his subsequent witness statements was simply that he “[REDACTED]
[REDACTED]” had he retained his carpets.²⁰² The evidential value of that statement, even without reference to Mr Bahari’s penchant for lying and hyperbole, should be zero.
83. Mr Iselin was unable to completely ignore the position of the Respondent regarding the price column. However, his only comment was that “[REDACTED]
[REDACTED]”.²⁰³ This is an astonishing approach for an expert. It is clearly not the place of an expert to make assumptions contrary to common sense or the plain language of a document on the basis of a party’s choice to look the other way and not discuss it. Indeed, Mr Iselin should have, at the very least, clarified with Mr Bahari what the “[REDACTED]” column meant if he was to offer any opinion that it did not in fact mean price.
84. The narrative regarding the “[REDACTED]” column developed further during the Hearing. Mr Bahari claimed that the “[REDACTED]” column in the carpet Ledger reflected “[REDACTED]
[REDACTED]”.²⁰⁴ This is an unfortunate untruth, either created in the course of Mr Bahari’s preparation for cross-examination or on the witness stand. It is not supported by his own evidence, the evidence of his expert on carpets, or indeed common sense.

²⁰¹ Defence, para. 123.

²⁰² Bahari Second Statement, para. 27.

²⁰³ Iselin Second Report, para. 23.

²⁰⁴ Transcript of Hearing on Jurisdiction and Merits, Day 3, 117:11.

85. First, Mr Bahari claimed that he would never have included the price of his carpets in the Ledger because the fact that he was allegedly spending such significant sums on carpets was confidential from his employees.²⁰⁵

[REDACTED]

86. That assertion is also demonstrably false. Mr Bahari claims in his written evidence that he asked Mr Adil Sharabiani to create the Ledger.²⁰⁶ He also claims that Mr Sharabiani assisted him in both “[REDACTED]”.²⁰⁷ Indeed Mr Moghaddam in his statement asserts that “[REDACTED]”
[REDACTED]
[REDACTED]”.²⁰⁸ If these assertions are true, there is no reason why Mr Bahari would have hidden the purchase price of the carpets, and in fact he was not hiding that information from them. Both Mr Moghaddam but also Mr Adil Sharabiani would have been well aware of the amounts paid, having paid for the carpets.

87. Second, Mr Bahari separately claimed during his oral evidence that the Ledger was “[REDACTED]”.²⁰⁹ This is contradicted by his claim that his intention “[REDACTED]”
[REDACTED]
[REDACTED]”.²¹⁰ Indeed, Mr Bahari also confirmed earlier in his oral testimony that the purpose of the Ledger was to keep “[REDACTED]”
[REDACTED]”.²¹¹ The purpose of the Ledger was clearly not for any security guard (the existence of which was only mentioned at the Hearing), nor did Mr Bahari provide any explanation as to

²⁰⁵ Transcript of Hearing on Jurisdiction and Merits, Day 3, 122:11-18.

²⁰⁶ Bahari First Statement, para. 58.

²⁰⁷ Bahari First Statement, para. 57.

²⁰⁸ Moghaddam First Statement, para. 53.

²⁰⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 130:12-13.

²¹⁰ Bahari First Statement, para. 58.

²¹¹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 123:25, 124:1-4.

why the security guard would require a ledger at all, let alone one containing the information it does.

88. Third, the idea that the numbers listed in the “[REDACTED]” column were records of commissions is contradicted on the face of the document by sale prices listed in the Ledger. For example, at row 71 of the Ledger, a carpet is listed as having the “price” of 200, and in the next column referred to as having been “[REDACTED]”. Had Mr Bahari paid USD 200 in commission for the carpet, he would then not have sold the same carpet for almost the same price as the value of the commission, unless he was taking a significant loss. It makes more sense that he purchased it for USD 200, and sold it for USD 250 at a 25% profit.
89. Fourth, Mr Iselin agrees that the average value of at least 211 of Mr Bahari’s carpets is USD 500.²¹² This is commensurate with the numbers listed in the “[REDACTED]” column of the Ledger, and contradicts Mr Bahari’s claim that this column only reflects commissions.
90. Finally, the title of the column in Mr Bahari’s own exhibits is “[REDACTED]” or “[REDACTED]”. This was confirmed by the translators during the Hearing, as well as by Mr Moghaddam.²¹³ Therefore on its face, the column reflects the price or consideration paid for those carpets. Mr Bahari has presented no credible evidence at all to the contrary. His lie that it only lists commissions has been ill-advisedly created to attempt to salvage his claim with respect to his carpets, since they are worth significantly less than claimed.

5. Mr Bahari invented a brand-new factual case regarding his departure from Coolak Shargh, which is confused and evidently false

91. Mr Bahari’s exit from the Iranian company Coolak Shargh also evolved dramatically on the stand. Azerbaijan identified records from the Official Gazette of Iran which demonstrate that Mr Bahari exited Coolak Shargh in August 1999.²¹⁴ When faced with this evidence, Mr Bahari claimed that his shareholding in Coolak Shargh had been

²¹² Second Hasanov Report, para. 27 and Annex B (Analysis of 211 Carpets).

²¹³ Transcript of Hearing on Jurisdiction and Merits, Day 3, 175:10-12; 20-21.

²¹⁴ Defence, para. 185(b).

“[REDACTED]” by “[REDACTED]”.²¹⁵ The testimony given by Mr Bahari on this point was convoluted, unclear and contradictory.

92. The Tribunal will recall that Mr Bahari has produced the Purported Cheque, a Bank Melli cheque held in the account of Coolak Shargh purportedly dated 30 September 2000 and made out to Mr Chartabi for a sum of approximately USD 25 million.²¹⁶ This purported cheque is relied upon by Mr Bahari as the principal piece of evidence for the single largest financial contribution Mr Bahari allegedly made. As set out in the Admissibility Brief, the Purported Cheque is likely forged.²¹⁷ When questioned about how he could have issued a cheque on behalf of Coolak Shargh in September 2000, nearly a full year after his exit, Mr Bahari claimed that his shares had been expropriated but somehow he could still issue cheques for USD 25 million. He claimed that “[REDACTED]” and he that he could in fact “[REDACTED]” in the company’s name at that time, and even apparently today.²¹⁸ There is no evidence of the alleged expropriation but were it to be true Mr Bahari could not have lost his interest in Coolak Shargh as a result of expropriation by the Iranian government but had an ability to write cheques in its name. Mr Bahari explained that the alleged expropriation occurred “[REDACTED]”
[REDACTED]
[REDACTED]”.²¹⁹ However, Mr Bahari was clearly not fearful of this alleged threat as just two years later in mid-2001, he was operating in Iran again, through Qeshm Fish. In reality, Mr Bahari’s story regarding alleged expropriation by Iran does not answer why Coolak Shargh’s financial statements describe Mr Bahari as a “[REDACTED]” and record the substantial unpaid debt he owed to the company.²²⁰

93. The truth must be that Mr Bahari did sell his shares in Coolak Shargh at the time recorded in the documents, and the Purported Cheque is a fraud.

²¹⁵ Transcript of Hearing on Jurisdiction and Merits, Day 3, 99:18-21.

²¹⁶ Respondent’s Rejoinder, para. 54; Iran Melli Bank cheque from Coolak Shargh to Ahad Chartabi, 30 September 2000, **C-281**.

²¹⁷ Admissibility Brief, para. 50.

²¹⁸ Transcript of Hearing on Jurisdiction and Merits, Day 3, 101:12-13; 102:3.

²¹⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 99:21-24.

²²⁰ Coolak Shargh Financial Statements for the year ending September 2013, dated 21 December 2013, **R-161**.

6. Mr Bahari advanced new facts regarding Petroqeshm

94. The Respondent in its Defence submitted that Mr Bahari incorporated Petroqeshm in the UAE in or around August 2001, which at least partially financed the construction and operation of Qeshm Fish, a fish processing and production facility on Qeshm island in the Republic of Iran.²²¹ The Respondent submitted that Mr Bahari's focus shifted from Caspian Fish to Qeshm Fish, which explained Mr Bahari's voluntary departure from Azerbaijan and, in part, the sale of his interest in the Caspian Fish project. While there is a single mention of this enterprise in Mr Moghaddam's first witness statement,²²² both Mr Bahari's written witness evidence and written submissions are entirely silent as to the Qeshm Fish business and Mr Bahari's involvement with it.
95. However, in his oral testimony, Mr Bahari acknowledged that Petroqeshm was his company.²²³ He also claimed that Qeshm Fish was "[REDACTED]"²²⁴ and that he and Petroqeshm had "[REDACTED]"²²⁵ The Respondent has no direct knowledge of the Iranian fish processing market, however Mr Bahari's claims are not supported by any evidence and are assumed to be untrue and a deliberate misstatement by Mr Bahari to appear like a pre-eminent and sophisticated entrepreneur. Plainly he is not.
96. Mr Bahari even went on to claim that Qeshm Fish was also "[REDACTED]"²²⁶ presumably by the Iranian Government. But none of this story stacks up. Mr Bahari wants the Tribunal to believe that wherever he goes, governments threaten him and his assets are expropriated. That is obviously nonsense.

7. Mr Bahari advanced new facts regarding his involvement with MCI

97. The Respondent in its Defence provided evidence in the form of a default judgment of the Austrian courts in respect of a debt of more than half a million euros that Mr Bahari, via his company IAV, failed to pay to MCI Mining Austria. It is understood that this

²²¹ Defence, para. 279.

²²² Moghaddam First Statement, para. 80 ("[REDACTED]").

²²³ Transcript of Hearing on Jurisdiction and Merits, Day 2, 80:15-16.

²²⁴ Transcript of Hearing on Jurisdiction and Merits, Day 2, 81:23-24.

²²⁵ Transcript of Hearing on Jurisdiction and Merits, Day 2, 82:1-2.

²²⁶ Transcript of Hearing on Jurisdiction and Merits, Day 2, 82:3-5.

debt remains unpaid today.²²⁷ Mr Bahari did not deny this in any of his written submissions.²²⁸ With its Rejoinder, the Respondent provided witness evidence from Mr Topf, the director of MCI Mining, describing how Mr Bahari (via IAV) defrauded him.²²⁹ Mr Bahari studiously overlooked this evidence in his responsive written submissions and witness statement, and Mr Topf was not called to be cross-examined at the Hearing, nor was his evidence in any other way seriously challenged.

98. In his oral testimony, Mr Bahari put forward a brand new factual claim that he owned MCI Mining, having saved it from bankruptcy.²³⁰ While Mr Bahari indicated that he had on his person documents which evidenced this supposed sale,²³¹ there is absolutely nothing on the record to support it.

99. If Mr Bahari had evidence to support this new, nonsensical but self-serving contention, he would have put it in the record.

C. Mr Bahari was forced to resile from previously pleaded aspects of his factual case, and cannot reconcile his admissions with his narrative

1. The Purported Chartabi Contracts, which make up the majority of Mr Bahari's case, are forged documents

100. The Respondent's submissions regarding Mr Bahari's fraud on the Tribunal with respect to the Purported Chartabi Contracts are set out in full in its Admissibility Brief. This issue is dispositive of the dispute, but to avoid repetition, the arguments are not repeated here at length. However, to show how Mr Bahari's case has twisted and turned, it is recalled that Mr Bahari relied in his written submissions on the Purported Chartabi Contracts to show that:²³²

²²⁷ Respondent's Defence, para. 295.

²²⁸ Respondent's Rejoinder, para. 118(b).

²²⁹ Respondent's Rejoinder, para. 443; Topf Statement, paras. 15-16.

²³⁰ Transcript of Hearing on Jurisdiction and Merits, Day 2, 132:2-4; 134:14-15.

²³¹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 132:6-7; 133:9; 134:9-10.

²³² Admissibility Brief, para. 8; Purported contract between Chartabi Contracting and Coolak Baku Company dated 16 May 1996, **C-84**; Purported contract between Chartabi Contracting and Coolak Baku Company dated 10 July 1997, **C-85**; Purported contract between Chartabi Contracting and Caspian Fish Company dated 10 May 1999, **C-92**.

- (1) Mr Bahari was “ [REDACTED] ” in Caspian Fish, Coolak Baku and Shuvalan Sugar;²³³
 - (2) Shuvalan Sugar existed as a separate entity or business venture;
 - (3) Mr Bahari contracted with Chartabi Contracting for the purpose of construction in Azerbaijan;
 - (4) construction work was undertaken at the projects;
 - (5) at least USD 36.605 million in construction costs was paid to Chartabi Contracting; and
 - (6) construction had been completed on the scheduled date and Chartabi Contracting received all of the funds payable under the contracts at the designated times.
101. The Purported Chartabi Contracts are central to Mr Bahari’s alleged investments and claims regarding Caspian Fish, Coolak Baku and Shuvalan Sugar.
102. However, Mr Bahari was forced to resile from his position that the Purported Chartabi Contracts were simply “ [REDACTED] ” contracts.²³⁴ Instead, he made the enlightening admission for the first time at the Hearing – as a result of continued demands for clarity from the Respondent – that the Purported Chartabi Contracts were non-contemporaneous documents that were prepared by himself and his brother-in-law for the purpose of this arbitration. In other words, Mr Bahari had originally sought to defraud Azerbaijan – and the Tribunal – and would have continued that fraud had Azerbaijan not forced him to clarify the true nature of the Purported Chartabi Contracts and the process by which they were created.
103. While Mr Bahari continues to insist that the terms of the Purported Chartabi Contracts are identical to the supposed contemporaneous contracts, he has provided no evidence of that and obviously cannot. In fact, as set out in the Admissibility Brief, the evidence

²³³ Purported contract between Chartabi Contracting and Coolak Baku Company dated 16 May 1996, **C-84**; Purported contract between Chartabi Contracting and Coolak Baku Company dated 10 July 1997, **C-85**; Purported contract between Chartabi Contracting and Caspian Fish Company dated 10 May 1999, **C-92**.

²³⁴ Transcript of Hearing on Jurisdiction and Merits, Day 3, 74:1-22; 77:15-23.

on all sides indicates that the Purported Chartabi Contracts (as well as the existence of Chartabi Contracting as the purported general contractor) are a total fabrication which should lead to the dismissal of Mr Bahari's case or, in the alternative, be disregarded by the Tribunal in full.

2. Mr Bahari misstated the date of the Purported Shareholders Agreement

104. A key document relied upon by Mr Bahari in these proceedings is the Purported Shareholders Agreement, which Mr Bahari claimed to be dated 27 April 1999. That document is the only commercial document on the record, aside from the Vereinsbank account opening form, that allegedly bears the signatures of Messrs Aliyev, Heydarov and Khanghah.
105. Mr Bahari relies on the Purported Shareholders Agreement to evidence:
- (1) that on the same date as the Charter of the Caspian Fish Representative Office, a shareholder's agreement was signed;²³⁵
 - (2) that he was the foreign investor in Caspian Fish and that he "[REDACTED]";²³⁶
 - (3) that Mr Ilham Aliyev and Mr Heydarov were shareholders (via their alleged company ICCI Limited);²³⁷
 - (4) that Mr Khanghah was also a shareholder, though his narrative has shifted as to how Mr Khanghah was granted his shares in Caspian Fish.²³⁸
106. The existence of the Purported Shareholders Agreement, and Mr Bahari's possession of the original, also forms an essential element of Mr Bahari's harassment claims.²³⁹

²³⁵ Statement of Claim, para. 75.

²³⁶ Statement of Claim, para. 76(i).

²³⁷ Statement of Claim, para. 76(iii).

²³⁸ Statement of Claim, para. 76(iv); Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68**, p. 1.

²³⁹ Ramazanova Statement, paras. 29, 33, 38; Abdulmajidov Statement, paras. 15-16, 20, 22, 25, 27, 35, 37, 69; Respondent's Rejoinder, para. 575; Azerbaijan's Response to Provisional Measures, 5 April 2024, paras. 9(c), 20, 86(b).

Agreement not being an authentic document upon which the Tribunal can rely, as claimed.

110. Likely because the Respondent had pointed out that Mr Bahari had never addressed the Purported Shareholders Agreement in any of his prior written witness,²⁴⁴ Mr Bahari for the first time gave evidence in respect of the Purported Shareholders Agreement in his Third Witness Statement, submitted with his Rejoinder on Jurisdiction just a month before the Hearing. In particular he stated:²⁴⁵

[REDACTED]

[REDACTED]

111. In short, Mr Bahari once again insisted that the Purported Shareholders Agreement was signed on 27 April 1999. Alongside this explanation, Mr Bahari provided a photo of three unidentified individuals in the foyer at Caspian Fish, which he describes as “ [REDACTED] ”.²⁴⁶ He relied on this photograph to state that German bankers travelled to Baku to complete the paperwork for somehow converting a Vereinsbank Account that had been personally held by Mr Bahari to an account of Caspian Fish. The names of the individuals pictured in the photo are not provided, though it appears that at least one of them is present in the video of the opening ceremony.²⁴⁷ But this explanation does not hold up, given at the very least it

²⁴⁴ Respondent’s Rejoinder, para. 44.

²⁴⁵ Bahari Third Witness Statement, paras. 8-9 (emphasis added).

²⁴⁶ Alleged German Bankers at Caspian Fish, November 2000, C-509.

²⁴⁷ Video news report of Caspian Fish Grand Opening, 10 February 2001, C-94. One man in the photograph could be seen following the President throughout his visit at the opening ceremony, see for e.g., at timestamps 12:12, 21:07, 24:55, 26:03, 31:30 *etc.*

is clear from the face of the Vereinsbank opening document that it was for the creation of a new account.²⁴⁸

112. However, just six weeks after submitting his final witness statement in which he gave this explanation, Mr Bahari seemingly felt he had to come up with yet another story regarding the Purported Shareholders Agreement. He stated at the Hearing, by way of pre-prepared alleged correction to his witness statement:²⁴⁹

[REDACTED]

113. When asked specifically by counsel for the Respondent Mr Bahari confirmed this position:²⁵⁰

[REDACTED]

114. Mr Bahari's counsel tried to downplay the importance of the incorrect date appearing on the Purported Shareholders Agreement, claiming that its date is effectively irrelevant:

[REDACTED]

²⁴⁸ Vereinsbank Opening of Account dated 13 November 2000, C-7.

²⁴⁹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 15:4-25; 16:1.

²⁵⁰ Transcript of Hearing on Jurisdiction and Merits, Day 2, 19:24-25; 20:1-2.

[REDACTED]

115. But that submission has no merit. As with all of the examples made throughout this brief and the course of these proceedings, that mistake – as well as its timing – impugns Mr Bahari’s credibility. In circumstances where his entire case relates to activities which occurred over 25 years ago, and his claims are supported predominantly by Mr Bahari’s own memory, the fact that Mr Bahari does not recall specific details that he vehemently claimed were true in the written phase of the proceedings is damning.
116. Regardless of the date Mr Bahari claims the Purported Shareholder Agreement was signed, it is clear that it is a forgery. Azerbaijan assumes that Mr Bahari originally claimed that the document was signed on 27 April 1999 because it was the date of registration of the Caspian Fish Representative Office. However, in the light of the evidence that the Respondent identified, Mr Bahari has had to change his story. But that story still does not withstand scrutiny. There is no commercial reason why the Purported Shareholders Agreement would have been signed in November 2000: Caspian Fish had opened a Representative Office in April 1999, and also incorporated the local LLC in September 2000,²⁵¹ the majority of the construction works had already been completed and the grand opening was just a few months away. If it were an authentic agreement between true shareholders, and if it were signed by them in November 2000, the text of the agreement would have been very different.
117. All of this is simply a further example of Mr Bahari trying to concoct another unbelievable story, in the light of proof submitted by the Respondent that his originally pleaded claim was false.

3. Mr Bahari admitted that he knew the death of his daughter was not the fault of Azerbaijan

118. Mr Bahari, in his first witness statement, made the extraordinary, and unvidenced, claim that “[REDACTED]” and that he was “[REDACTED]”.²⁵² His counsel

²⁵¹ Application for the Registration of the LLC dated 29 August 2000, **R-56**; Certificate of State Registration No. 893 for the LLC dated 19 September 2000, **R-116**; Application to the Ministry of Justice for the registration of the Representative Office dated 19 April 1999, **R-85**.

²⁵² Bahari First Statement, para. 94 (emphasis added).

tempered this statement²⁵³ and did not adopt it in full in his Statement of Claim, merely stating “ [REDACTED] [REDACTED] ”.²⁵⁴

119. Azerbaijan categorically denies this allegation. While Azerbaijan has no knowledge of the specific circumstances in which Gloria Bahari died, it appears from media reports that she was tragically killed in a car accident in Dubai in 2009. Mr Hansen believes that her death may have been a suicide, as explained in his affidavit and in the Defence.²⁵⁵ Faced with this, Mr Bahari did not resile from his previous claim that he was “ [REDACTED] ” that Azerbaijan was involved in the death of his daughter. However, there was no further reference to his daughter’s death in the Statement of Reply. In his Rejoinder on Jurisdiction, he simply stated that on 21 May 2009, “*Mr Bahari’s 13-year-old daughter, Gloria, was killed in Dubai in a hit-and-run car accident*”, with no reference to alleged involvement by Azerbaijan.²⁵⁶
120. This incident is terribly sad. Unfortunately, it has been leveraged in these proceedings in an attempt to garner sympathy and portray Azerbaijan in the worst possible light. Mr Hansen was critical of this misuse of Gloria’s death in his affidavit. However, from the outset it was an unbelievable claim. First, Mr Bahari did not make this extraordinary allegation in any of his media interviews in 2017 or 2019, or in any correspondence he exchanged with the President’s office laying out his complaints.²⁵⁷ Had he truly believed Azerbaijan was involved in the death of his daughter, he would have said so. No explanation has been given for why he did not. Second, it beggars belief that if Mr Bahari had thought that Azerbaijan killed his daughter, he would have voluntarily brought his son (Ashkan Bahari) with him to Baku three years later, when he claims to have arranged to meet with Mr Heydarov.²⁵⁸ When these points were put to Mr Bahari at the Hearing, he provided no credible answers.

²⁵³ Respondent’s Defence, para. 360.

²⁵⁴ Statement of Claim, para 309.

²⁵⁵ Respondent’s Defence, para. 361; Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 6.

²⁵⁶ Claimant’s Rejoinder, para. 390.

²⁵⁷ Transcript of Hearing on Jurisdiction and Merits, Day 2, 157-159; 162-163.

²⁵⁸ Transcript of Hearing on Jurisdiction and Merits, Day 2, 169: 4-5.

121. In fact, Mr Bahari changed his narrative regarding the death of his daughter at the Hearing. Instead of stating with certainty that Azerbaijan had been involved in the death of his daughter, as he had done in his written witness evidence, he relied on various types of indirect causation, namely that:

(1) he did not know who else would have had something to do with his daughter's death, besides Azerbaijan: "[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]";²⁵⁹ and

(2) had he not been allegedly expelled from Azerbaijan, he and his daughter would not have lived in Dubai and therefore she would not have been tragically killed in a car accident in that city.²⁶⁰

[REDACTED]

122. Azerbaijan respectfully submits that while the death of his daughter is of course traumatic and devastating, it is not related to Azerbaijan or these proceedings. Mr Bahari's decision to assert a narrative of victimhood based on his own daughter's death is also indicative of the lengths to which he will go in order to forge a narrative against Azerbaijan and calls into question the credibility of his testimony generally.

D. New arguments raised that contradict his own case

1. Mr Bahari now claims that neither Mr Heydarov nor Mr Pashayev were wealthy men at the time of his alleged investments

123. Mr Bahari spends 16 pages of his Statement of Claim describing the alleged kleptocratic system of governance in Azerbaijan, to "*corroborate[] his account of the illegal raid against his investments*".²⁶¹ He made sweeping statements in respect of the

²⁵⁹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 153:10-14.

²⁶⁰ Transcript of Hearing on Jurisdiction and Merits, Day 2, 154:24-25; 155:1-7 (emphasis added).

²⁶¹ Statement of Claim, para. 326.

means via which the Aliyev, Pashayev and Heydarov families allegedly amassed power and wealth in Azerbaijan and were the “[REDACTED]”.²⁶²

124. However, during his oral evidence, Mr Bahari claimed that Mr Heydarov could not have made any financial contributions to Caspian Fish as he “[REDACTED]”.²⁶³ These two statements are at their core contradictory.

125. Mr Bahari also challenges the role of Mr Heydarov in funding Caspian Fish through his company, Gilan.²⁶⁴ The basis of this challenge appears to be that the State Register of Commercial Entities provides that the company Gilan Holding was incorporated as a company only in 2005 in Azerbaijan.²⁶⁵ Gilan Holding was not, however, the initial company in the Gilan group. Mr Bahari has not challenged the evidence that Gilan is a large corporate group that has existed since 1987, as evident from its website, and which over time has undergone corporate restructuring and rebranding.²⁶⁶ In fact, Mr Bahari admits that Gilan Holding was recently renamed as Khazri Solutions LLC.²⁶⁷ The Gilan group of companies has operated since the 1980s and was capable of investing in Caspian Fish. It is irrelevant that one entity within the Gilan group was incorporated in 2005.²⁶⁸

2. Mr Bahari now claims that he did know that Mr Hansen was to give the speech at Caspian Fish

126. Mr Bahari’s witness, Mr Klaus, claims that at the grand opening Mr Hansen was presented as Caspian Fish’s representative and made a speech. Mr Moghaddam claimed that Mr Bahari was intended to speak at the opening ceremony.²⁶⁹ Mr Bahari himself did not provide any evidence at all about Mr Hansen. In the Reply, Mr Hansen

²⁶² Statement of Claim, para. 7.

²⁶³ Transcript of Hearing on Jurisdiction and Merits, Day 3, 88:6.

²⁶⁴ Claimant’s Rejoinder on Jurisdiction, paras. 237-239.

²⁶⁵ Claimant’s Rejoinder on Jurisdiction, para. 237.

²⁶⁶ “About Us” page of gilanholding.com as of 30 January 2019, **R-408**; Respondent’s Rejoinder, para. 427.

²⁶⁷ Claimant’s Rejoinder on Jurisdiction, para. 238.

²⁶⁸ Following the entry into force of the new Civil Code of Azerbaijan in 2000, it is likely that Gilan Holding was re-registered under the new regime, thereby resulting in a 2005 incorporation date. In its Defence, Azerbaijan noted at footnote 562 that re-registration under the new Civil Code may explain the 2003 registration of ASFAN LTD LLC (*see C-177*), which both parties understand has existed since 1995 (*see R-41*).

²⁶⁹ Moghaddam First Statement, para. 55.

consistent with the reality that he was not one of the financial investors, and that he was never forcibly removed from the grand opening or, for that matter, from Azerbaijan.

129. These admissions should cause serious doubt about Mr Bahari's reliability, as well as the reliability of each of his witnesses who have testified to the same matters, based on what they learned from Mr Bahari alone.

E. Mr Bahari's response to uncomfortable facts was to claim he has not seen relevant documents or that such documents are forged

1. Mr Bahari claims that all contemporaneous evidence that is unhelpful to his case has been forged

130. Elsewhere, Mr Bahari simply claims – without support or reason – that evidence produced by Azerbaijan is forged. He disrespectfully claims that Azerbaijan is easily able to forge any document, stating:

(1) “ [REDACTED] ”,²⁷⁷

(2) “ [REDACTED] ”,²⁷⁸ and

(3) “ [REDACTED] ”.²⁷⁹

131. Mr Bahari has no evidence that Azerbaijan has forged any documents. The review of original documents by Mr Bahari's forensic document examiner did not lead to any specific concerns regarding Azerbaijan's documents. To the extent there were any issues in the Caspian Fish tax returns, they have been explained, and in any event, Azerbaijan does not bear responsibility for the documents of third parties who voluntarily supplied documents.²⁸⁰

132. Where Mr Bahari claims to have reasons for his suspicions, his concerns are illogical and false:

²⁷⁷ Transcript of Hearing on Jurisdiction and Merits, Day 2, 53:24-25.

²⁷⁸ Transcript of Hearing on Jurisdiction and Merits, Day 2, 53:25.

²⁷⁹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 54: 10.

²⁸⁰ Letter from Caspian Fish to Quinn Emanuel, 24 October 2024, **R-356**; Respondent's Rejoinder, paras. 68-70.

- (1) In some instances, Mr Bahari claims that references cannot be to him because his name is misspelled.²⁸¹ However, Mr Bahari's name is frequently written originally in Farsi. There are multiple ways to transliterate a Farsi name into Azerbaijani, Russian, or English and variation may also arise if the name is written in Cyrillic or Latin script. For example, his name has been transliterated as "[REDACTED]" and "[REDACTED]" in various documents he signed where his name was written in Latin script.²⁸² Variation in the spelling of Mr Bahari's name is very weak evidence upon which to assert forgery.
- (2) When presented with a document which stated it was addressed to Alirza Bahari as the president of Caspian Fish – Alirza being understood to be Mr Bahari's nickname – the best Mr Bahari could manage to dispute this document was claim: "[REDACTED]"²⁸³ Given the letter was addressed to Mr Bahari, as the president of Caspian Fish, and given there is no evidence of another Mr Bahari at Caspian Fish, the opposition based on this ground is farcical.
- (3) Mr Bahari attempts to state that documents evidencing the sale of his shares in Caspian Fish are forged because they are not notarised.²⁸⁴ However, he has pointed to no requirement that the sale document be notarised, nor evidence that it would not still be a legally binding agreement if notarisation were required, or seriously disputed that in fact he did receive the specified consideration. Contemporaneous emails from Mr Bahari himself confirm that he did.²⁸⁵

133. In short, while Mr Bahari exclaimed with respect to the September 2001 Buyer and Seller Agreement "[REDACTED]"²⁸⁶ the record points to the conclusion that the agreement was indeed valid and it was duly performed. The Tribunal should have no regard for

²⁸¹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 64:5-9; 67:13-21; 108:20-25; 117:1-4; 121:8-14; Transcript of Hearing on Jurisdiction and Merits, Day 3, 108:13-18.

²⁸² See e.g. Contract between Super-Pufft Popcorn Corp and Mr Bahari dated 30 November 1998, **SEC-76**.

²⁸³ Transcript of Hearing on Jurisdiction and Merits, Day 2, 117:1-4.

²⁸⁴ Transcript of Hearing on Jurisdiction and Merits, Day 2, 102:24-25.

²⁸⁵ Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

²⁸⁶ Transcript of Hearing on Jurisdiction and Merits, Day 2, 102:20-21.

Mr Bahari's desperate claims that documents have been forged, a claim he assuredly raises when documents harm his case.

2. Mr Bahari allegedly claims to have never seen relevant documents

134. A further tactic enlisted by Mr Bahari at the Hearing was to deny that he had seen documents on the record, even when they had been on the record for months or years. For example, he implausibly denied seeing:

- (1) the 2019 Notice of Arbitration, that was submitted on his behalf;²⁸⁷
- (2) a news report of the IRNA of Iran which spoke about Mr Bahari's management of Petroqeshm;²⁸⁸
- (3) a work plan for the commissioning of Caspian Fish, submitted as evidence by Azerbaijan in its Rejoinder;²⁸⁹
- (4) a memo from Mr Sabuhi Hamidov addressed to Mr Bahari himself dated 4 April 2001, where he went so far as to say "[REDACTED] [REDACTED]",²⁹⁰ as well as numerous other similar reports prepared discussing issues with Caspian Fish;²⁹¹

²⁸⁷ Transcript of Hearing on Jurisdiction and Merits, Day 2, 25:14-22; Notice of Arbitration dated 5 April 2019, **R-54**.

²⁸⁸ Transcript of Hearing on Jurisdiction and Merits, Day 2, 91:11-19; Islamic Republic News Agency, *The executive operation of the fish powder production unit in Qeshm has started* dated February 2002, **R-132**.

²⁸⁹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 108:10-25; Caspian Fish Co Azerbaijan Plant Commissioning Work Plan, undated, **R-293**.

²⁹⁰ Transcript of Hearing on Jurisdiction and Merits, Day 2, 114:24-25; 115:1-6; Memorandum prepared by Mr Hamidov to Mr Bahari titled "Information about shortcomings in facilities, dated 4 April 2001, **R-247**.

²⁹¹ Presentation from G Valiyev to Mr Kerimov dated 4 April 2001, **R-250**; Transcript of Hearing on Jurisdiction and Merits, Day 2, 125:8-17; Document prepared by Mr Kerimov for Mr Heydarov titled "Reference on works carried out at CF and other issues", undated, **R-246**; Transcript of Hearing on Jurisdiction and Merits, Day 2, 126:15-25; 127:1-6.

- (5) A letter from Mr Hansen to Mr Bahari dated 21 April 2010, resigning from his position at IAV²⁹² as well as an extract of the German corporate register for IAV;²⁹³
 - (6) the affidavit of Mr Janke Hansen submitted by the Respondent with its Statement of Claim;²⁹⁴ and
 - (7) the witness statement of Mr Arguj Kalantarli, which was ultimately unchallenged by Mr Bahari and his counsel.²⁹⁵
135. While Azerbaijan has no knowledge of what documents on the record in these proceedings Mr Bahari's counsel showed to him, as the Claimant in these high-value proceedings it should be expected that he reviewed all of the relevant and substantive documents. Mr Bahari certainly should not be allowed to hide behind an alleged unfamiliarity with the record in order to deny the content of documents.
136. In any event, it is clear that on certain occasions where Mr Bahari had claimed to have never seen the documents, such as the affidavit of Mr Hansen, he was still aware of their content and prepared to answer questions about them.²⁹⁶

3. Mr Bahari alleged that he had supporting documents and witnesses that he had not previously put forward

137. Finally, where Mr Bahari attempted to create new narratives, he also attempted to pull additional evidence from out of his sleeves. By way of example:
- (1) When discussing his daughter, Mr Bahari brought out a pouch from his suit jacket, which he waved conspicuously.²⁹⁷ What it contained remained unclear. The stunt may have been orchestrated with his counsel, or may have taken them

²⁹² Letter from Mr Hansen to Mr Bahari dated 21 April 2010, **R-136**; Transcript of Hearing on Jurisdiction and Merits, Day 2, 129:1-11.

²⁹³ Extract from Company Register (Hamburg) for IAV Industrie-Anlagen-Vertrieb GmbH, accessed 16 January 2023, **R-135**; Transcript of Hearing on Jurisdiction and Merits, Day 2, 130:2-9.

²⁹⁴ Transcript of Hearing on Jurisdiction and Merits, Day 2, 151:1-13; Affidavit of Janke Hansen dated 10 November 2023, **R-114**.

²⁹⁵ Kalantarli Statement; Transcript of Hearing on Jurisdiction and Merits, Day 3, 53:2-25; 54:1-5; 58:10-17.

²⁹⁶ Transcript of Hearing on Jurisdiction and Merits, Day 2, 174:14-16.

²⁹⁷ Transcript of Hearing on Jurisdiction and Merits, Day 2, 154:1-11.

by surprise too, but in any event it demonstrates a lack of respect (or awareness) for the rules governing this process.

- (2) When faced with the allegation that Mr Bahari, via his company IAV, owed money to MCI Mining, he attempted to hand up unknown documents that were not on the record which he said: “ [REDACTED]

[REDACTED] ”²⁹⁸

- (3) In alleged support for his contention that he loaned money to Mr Heydarov, Mr Pashayev and even Mr Ilham Aliyev, he states “ [REDACTED]

[REDACTED]
[REDACTED] ”²⁹⁹

- (4) With respect to the carpets, Mr Bahari simply stated “ [REDACTED]

[REDACTED] ”³⁰⁰

138. Had Mr Bahari been in possession of any relevant evidence helpful to his case, that evidence would have been submitted in the course of these proceedings. Other evidence may have been produced in response to disclosure requests. While of course it is not for Mr Bahari to provide any further evidence to the Tribunal either during the Hearing or in these post-hearing submissions, Azerbaijan submits that his claims that he even had these new documents should be seen as what they are: an *act*, developed whether in advance or spontaneously, in a misguided attempt to garner support.

F. Mr Bahari’s witnesses are unreliable and have no relevant evidence to give

139. Mr Bahari’s witnesses were also not reliable sources of evidence for the Tribunal. Much of what each of Mr Bahari’s witnesses state in their evidence is outside of their knowledge. Many of his witnesses are inherently unreliable given they have admitted that they do not have good recollections of events which transpired over two decades ago. Not less than three of Mr Bahari’s witnesses have been convicted and imprisoned as a result of criminal charges, unrelated to this case, for crimes of dishonesty including theft, fraud or embezzlement. Witnesses are likely being compensated by Mr Bahari

²⁹⁸ Transcript of Hearing on Jurisdiction and Merits, Day 2, 134:9-11.

²⁹⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 111:24-25; 112: 1-2.

³⁰⁰ Transcript of Hearing on Jurisdiction and Merits, Day 3, 129:8-10.

(whether in cash or promises of alternative forms of compensation, including assistance with an asylum application). Finally, even if his witnesses may have had relevant evidence to provide, that evidence is unreliable as it is contradicted by the documents or by the witness' own witness evidence on the stand.

1. Mr Bahari's witnesses have no knowledge of the facts on which they have provided evidence

140. Mr Bahari relies on the testimony of his witnesses to fill the gaps in his story given the absence of documents on the record which support his claim. However, their evidence cannot be trusted. Either the witnesses simply repeat Mr Bahari's version of events with no deviation or any documents to support them, or purport to give evidence on matters of which they could not – and admittedly do not – have any personal knowledge.
141. By way of example, Mr Suleymanov is one of Mr Bahari's key witnesses. His witness testimony was only proffered with Mr Bahari's Statement of Reply, after the Respondent had highlighted the dearth of evidence to support Mr Bahari's case. Mr Suleymanov offered evidence on the state of Coolak Baku, Shuvalan Sugar and Caspian Fish for the period from 1996 to 2001. He commented on the equipment of Caspian Fish, describing it as "[REDACTED]".³⁰¹ Mr Suleymanov also described the beer produced at Coolak Baku as "[REDACTED]" and "[REDACTED]".³⁰² However, Mr Suleymanov's words ring hollow. In 1996, Mr Suleymanov was 19 years old,³⁰³ had just been released from prison,³⁰⁴ had no formal qualifications³⁰⁵ and confirmed that he had no particular training or experience in food processing or fish processing³⁰⁶ and was not "[REDACTED]".³⁰⁷
142. Similarly, Mr Suleymanov is presented by Mr Bahari as a key witness in both Caspian Fish and Coolak Baku. While Azerbaijan understands that Mr Suleymanov did

³⁰¹ Transcript of Hearing on Jurisdiction and Merits, Day 4, 20:19.

³⁰² Transcript of Hearing on Jurisdiction and Merits, Day 4, 37:15-16; 20.

³⁰³ Transcript of Hearing on Jurisdiction and Merits, Day 4, 12:8-10.

³⁰⁴ Transcript of Hearing on Jurisdiction and Merits, Day 4, 11:9-14.

³⁰⁵ Transcript of Hearing on Jurisdiction and Merits, Day 4, 14:1-25. [

³⁰⁶ Transcript of Hearing on Jurisdiction and Merits, Day 4, 20: 20-23.

³⁰⁷ Transcript of Hearing on Jurisdiction and Merits, Day 4, 37: 15-16.

Iran.³¹⁵ The source of his detailed knowledge of every single aspect of Mr Bahari's alleged business, 25 years after the event, is unexplained. The most likely reason is that his testimony has been designed not based on his own memory, but in a way that is most likely to assist Mr Bahari's claim. Furthermore, had Mr Moghaddam and Mr Bahari had such a close relationship, and had Mr Bahari truly believed his life was in danger as a result of his dealings in Azerbaijan, he would never have asked his friend to risk his wellbeing to remain in Azerbaijan and continue to "[REDACTED]" his alleged investments after having been allegedly beaten and even kidnapped. The whole episode of alleged monitoring and investigating the status of investments is contrived and contrary to common sense.

145. Mr Moghaddam in his first statement claimed that he "[REDACTED]"³¹⁶ How Mr Moghaddam managed finances for several companies as large as claimed with no more than a high school education has not been explained. It transpired, however, at the Hearing that this was yet another overstatement. Mr Moghaddam admitted that he "[REDACTED]"³¹⁷ and that with respect to Caspian Fish he "[REDACTED]"³¹⁸ save [REDACTED]"³¹⁹ This renders Mr Moghaddam's testimony that he "[REDACTED]"³²⁰ effectively null. That an individual who was not involved in depth with the accounting or finances of a company did not see any documents indicating that others paid expenses or invoices has zero evidential value. Mr Moghaddam's over-reaching is also evidenced by his admission that his knowledge of the prices of machinery was nothing more than, at best, hearsay: "[REDACTED]"³²¹

³¹⁵ Moghaddam First Statement, para. 5.

³¹⁶ Moghaddam First Statement, para. 47.

³¹⁷ Transcript of Hearing on Jurisdiction and Merits, Day 3, 160:3-4.

³¹⁸ Transcript of Hearing on Jurisdiction and Merits, Day 3, 160:9-10.

³¹⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 160: 22-24.

³²⁰ Moghaddam First Statement para. 47.

³²¹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 167:3-5.

146. Confusingly, in his written evidence, Mr Moghaddam claimed that he:

- (1) “ [REDACTED]
[REDACTED] ”,³²²
- (2) “ [REDACTED] ”,³²³ and
- (3) “ [REDACTED]
[REDACTED] ”.³²⁴

147. These statements cannot all be correct. When faced with this discrepancy, Mr Moghaddam’s response was to disclaim responsibility entirely, noting he “ [REDACTED]
[REDACTED] ”.³²⁵ While this contradicts his written testimony,³²⁶ if Mr Moghaddam was not the individual directly in charge of the carpets, his evidence regarding their quality or price is of little or no value.

148. Mr Moghaddam also purports to provide testimony regarding Mr Bahari’s departure from the opening ceremony of Caspian Fish. However, he has no direct knowledge of what transpired. His witness evidence is double hearsay, based on what Mr Sharabiani told him that in turn a security guard told Mr Sharabiani, that Mr Aliyev had allegedly said or done.³²⁷ Mr Moghaddam confirmed that he had not witnessed anything happen to Mr Bahari on the day of the grand opening.³²⁸ Similarly, he confirmed that he had no knowledge of any conversation that Mr Bahari had with Mr Kousedghi (whose evidence has been excluded from the record in these proceedings as a result of his unexplained non-attendance at the hearing). Mr Moghaddam therefore has no relevant evidence to provide with respect to Mr Bahari’s departure from either Caspian Fish or Azerbaijan.

³²² Moghaddam First Statement, para. 50.

³²³ Moghaddam First Statement, para. 52.

³²⁴ Moghaddam First Statement, para. 53.

³²⁵ Transcript of Hearing on Jurisdiction and Merits, Day 3, 177:23-25.

³²⁶ Moghaddam First Statement, para. 52.

³²⁷ Moghaddam First Statement, para. 57.

³²⁸ Transcript of Hearing on Jurisdiction and Merits, Day 3, 179: 2-25.

149. Mr Klaus aims to support Mr Bahari's claim regarding his alleged funding into each of Caspian Fish, Coolak Baku and Shuvalan Sugar, as well as his general status as a serious entrepreneur. But Mr Klaus on his own admission "[REDACTED]"³²⁹ and "[REDACTED]"³³⁰ There is therefore no basis for Mr Klaus to be able to provide direct evidence as to what the funds in Mr Bahari's bank accounts were used for,³³¹ the origin of those funds including whether they were transferred from Caspian Fish or Mr Heydarov, the amount of funds that Mr Bahari may have spent on his projects,³³² whether Mr Bahari received any payments from third party banks³³³ or his ownership or contractual arrangements regarding the ownership of either Caspian Fish or Coolak Baku.³³⁴ And the documentary evidence produced concerning the Commerzbank certainly does not support the wealth Mr Bahari claimed to have. Any evidence Mr Klaus has provided on those topics must therefore be hearsay, at best, obtained from Mr Bahari himself.

2. The memories of Mr Bahari's witnesses are unreliable

150. Given the 25 years that have elapsed since the alleged events took place, the credibility and reliability of each of Mr Bahari's witnesses must be questioned. Many of his witnesses have specifically confirmed that they do not recall information given the time that has passed. The memory of other witnesses, as well as their credibility more generally, is questionable given their contradictory, and at times obstructive, testimonies.
151. For example, Mr Hay, a witness that Mr Bahari put forward only with his Statement of Reply, suffered from a stroke in 2005.³³⁵ Notwithstanding this medical condition which has unfortunately afflicted Mr Hay and caused him to retire, Mr Bahari put forward his witness testimony. Mr Hay's evidence was adduced to attempt to contradict

³²⁹ Transcript of Hearing on Jurisdiction and Merits, Day 4, 167: 18.

³³⁰ Transcript of Hearing on Jurisdiction and Merits, Day 4, 161:8-11.

³³¹ Klaus First Statement, para. 11.

³³² Klaus First Statement, paras 16, 18.

³³³ Klaus First Statement, para. 11.

³³⁴ Transcript of Hearing on Jurisdiction and Merits, Day 4, 168:22-25.

³³⁵ Hay Statement, para. 4; Transcript of Hearing on Jurisdiction and Merits, Day 3, 20:2.

Azerbaijan's clear documentary evidence that his company, Victroplex, was paid for equipment from an Azerbaijani bank account of Caspian Fish. That is the same bank account from which Mr Bahari was advanced funds as repayment for a Nissei invoice, as evidenced by a clear transfer record that contradicts Mr Bahari's claim that he funded all payments towards, and on behalf of Caspian Fish.³³⁶

152. However, during Mr Hay's cross-examination, Mr Hay explicitly admitted that he "██" ³³⁷ That admission alone should call into question the entirety of Mr Hay's evidence, including his adamant conviction as to specific details he claimed he could remember.

153. Even without that admission, Mr Hay's evidence was effectively that he can precisely recall the specific transactions with Caspian Fish, including which bank account he was paid from by Caspian Fish and which specific machinery he sold to Caspian Fish, but he cannot recall the same details of any of his other clients from the same time period.³³⁸ That beggars belief, and the Tribunal should consider that all of Mr Hay's testimony is unreliable.

154. As to Mr Moghaddam, it is not clear whether he admitted (and corroborated, by his estranged wife) historic drug use affected his memory. In any event, anyone would struggle to recall with precision events that happened 25 years ago. Mr Moghaddam, when faced with problematic documents on the stand simply stated, "██" ³³⁹ and "██" ³⁴⁰ "██" ³⁴⁰

155. A final example of this is Mr Klaus, who purports to explain in his witness statement transactions allegedly made from Mr Bahari's account 25 years ago.³⁴¹ However,

³³⁶ Atabank payment order dated 18 August 2000 from "Caspian Fish Co. Inc." to Mr Bahari's account at Commerzbank, **R-91**.

³³⁷ Transcript of Hearing on Jurisdiction and Merits, Day 3, 21:2.

³³⁸ Transcript of Hearing on Jurisdiction and Merits, Day 3, 27:15-20.

³³⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 168:18-19.

³⁴⁰ Transcript of Hearing on Jurisdiction and Merits, Day 3, 169:1-2.

³⁴¹ Klaus First Statement, paras. 12-19.

Mr Klaus admitted during the course of his testimony that [REDACTED]
[REDACTED]”³⁴²

3. Mr Bahari’s witnesses are unreliable as their evidence is contradictory, illogical or obstructive

156. Many of Mr Bahari’s witnesses should not be considered reliable by the Tribunal because their witness testimony is either contradictory of their own previous evidence, or Mr Bahari’s narrative, or simply obstructive. These discrepancies may be explained in part as a result of the time that has elapsed or point simply to the lack of credibility of Mr Bahari’s witnesses more generally. Either way, their witness testimony should be considered unreliable by the Tribunal.

157. For example, Ms Ramzanova and Mr Abdulmajidov both claimed in their written statements that they visited Caspian Fish in July 2021 to gather information and “[REDACTED]
[REDACTED]”³⁴³ and took “[REDACTED]
[REDACTED]”³⁴⁴ It is allegedly as a result of those photographs that they were stopped, their phone searched and a photograph identified of the Purported Shareholders Agreement. It is that alleged identification of a single photo on a camera roll that led to alleged harassment of them and their families and which caused them to have to leave Azerbaijan and seek asylum. This is an entirely contrived fiction. In reality, Ms Ramzanova had to admit that the gate was boarded up when she attended Caspian Fish and she did not take photographs of anything:³⁴⁵

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁴² Transcript of Hearing on Jurisdiction and Merits, Day 4, 172:9-10.

³⁴³ Abdulmajidov Statement, para. 12.

³⁴⁴ Ramzanova Statement, para. 24.

³⁴⁵ Transcript of Hearing on Jurisdiction and Merits, Day 4, 98:22-25; 99:1-15.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

158. This is not a question of simple confusion. Ms Ramzanova and Mr Abdulmajidov's visit to Caspian Fish, and the photographs they claimed they took, form a crucial and nascent element of their claims of harassment. Ms Ramzanova states in particular that "[REDACTED] [REDACTED]".³⁴⁶

159. Ms Ramzanova went further and stated that while they could not take pictures through the gate, they did take pictures from the outside:³⁴⁷

[REDACTED]

[REDACTED]

160. But it is entirely unclear what photographs they may have taken given Mr Abdulmajidov states "[REDACTED]".³⁴⁸ Ms Ramzanova confirmed that they "[REDACTED]" or "[REDACTED]".³⁴⁹ So any photographs taken by Ms Ramzanova and Mr Abdulmajidov would have been not of the facility itself, but of a gate or wall outside of the facility. It cannot seriously be believed that any harassment arose from these two individuals taking photographs of a gate that cannot be seen through or a large wall. Nor was Ms Ramzanova able to explain how, if they were outside of the facility, security guards would even have seen them, but could only assume that it was via a camera that she did not see.³⁵⁰

161. The second limb of the origination of the harassment of Ms Ramzanova and Mr Abdulmajidov is that the security guards allegedly took their phones, "[REDACTED]"

³⁴⁶ Ramzanova Statement, para 28.

³⁴⁷ Transcript of Hearing on Jurisdiction and Merits, Day 4, 100:4-8.

³⁴⁸ Abdulmajidov Statement, para. 12.

³⁴⁹ Transcript of Hearing on Jurisdiction and Merits, Day 4, 101:16-17.

³⁵⁰ Transcript of Hearing on Jurisdiction and Merits, Day 4, 102:21-25.

[REDACTED]” (i.e. the photos of the wall) and somehow identified “[REDACTED] [REDACTED]”.³⁵¹ But, Ms Ramzanova had to amend her testimony on the stand.³⁵²

- [REDACTED]
- [REDACTED]
162. This was the second time Ms Ramzanova’s story was changed, as in her asylum application, she claims to have taken the photo of the Purported Shareholders Agreement herself.³⁵³ It is respectfully submitted that each of the iterations of Ms Ramzanova’s story is untrue and designed to garner sympathy for the purpose of an asylum application, which have also been deployed to create a narrative against Azerbaijan in these proceedings.
163. There were further inconsistencies in Ms Ramzanova’s evidence. Originally, Ms Ramzanova testified that she and her husband “[REDACTED] [REDACTED]”.³⁵⁴ Instead, it emerged that Ms Ramzanova and Mr Abdulmajidov had applied for visas to England in either February or March 2022.³⁵⁵ And yet, Ms Ramzanova and Mr Abdulmajidov continue to ask the Tribunal to believe that their intention was not to travel to England, but to travel to Turkey. They say they had no intention of travelling to London, notwithstanding that they had filed visa applications, until they received an alleged malicious phone call.³⁵⁶ This is a farcical invention. The far more likely explanation is that Ms Ramzanova and Mr Abdulmajidov have spun a

³⁵¹ Abdulmajidov Statement, paras 14-15.

³⁵² Transcript of Hearing on Jurisdiction and Merits, Day 4, 104:15-25; 105:1-3.

³⁵³ Asylum Witness Statement of Ms Ramzanova dated 26 February 2024, C-236, para. 16.

³⁵⁴ Ramzanova Statement, para. 59.

³⁵⁵ Transcript of Hearing on Jurisdiction and Merits, Day 4, 120:8-9.

³⁵⁶ Transcript of Hearing on Jurisdiction and Merits, Day 4, 121:1-22.

tale of lies to apply for asylum in the United Kingdom. Their story has been revealed, both at the provisional measures hearing, but also at the final Hearing, to be false and unable to withstand scrutiny. In the circumstances, Mr Bahari's reliance on Mr Abdulmajidov and Ms Ramazanova's story was likely used only to prejudice the Tribunal against Azerbaijan or, cynically, to extort a settlement.

164. Many of Mr Bahari's other witnesses were no more consistent. For example, Mr Suleymanov claimed that on 11 February 2001, he "[REDACTED]" and when he asked Mr Zeynalov, the latter "[REDACTED]".³⁵⁷ But during his oral evidence, Mr Suleymanov said that Mr Zeynalov told him instead that he would explain it to him later.³⁵⁸ Furthermore, Mr Suleymanov's testimony is contradicted by Mr Bahari's testimony that all of his employees were not evicted on the day after the grand opening, but "[REDACTED]".³⁵⁹
165. Mr Suleymanov described the branding of "Atilla" beer as "[REDACTED]".³⁶⁰ However, when presented with the label as submitted by Mr Bahari³⁶¹ – which does not have those features – he confirmed that he was mistaken and that the correct label was what was shown to him by Respondent's counsel.³⁶²
166. A further example of obstructive or false testimony came from Mr Klaus, who stated that he was unaware of the fact that in 2015 "[REDACTED]" and "[REDACTED]".³⁶³ However, as pointed out by counsel for the Respondent, the deferred prosecution agreement refers to a period from 2002 to 2008, when Mr Klaus was at Commerzbank and claimed to be relationship manager to

³⁵⁷ Suleymanov Statement, para. 42.

³⁵⁸ Transcript of Hearing on Jurisdiction and Merits, Day 4, 29:8-9.

³⁵⁹ Transcript of Hearing on Jurisdiction and Merits, Day 2, 87:3-5.

³⁶⁰ Transcript of Hearing on Jurisdiction and Merits, Day 4, 16:6-9.

³⁶¹ Attila Beer Logo ASFAN TLD MMC, C-176.

³⁶² Transcript of Hearing on Jurisdiction and Merits, Day 4, 16:15.

³⁶³ Transcript of Hearing on Jurisdiction and Merits, Day 4, 177:9-12.

an allegedly very wealthy Iranian client.³⁶⁴ It is inherently unlikely that if Mr Klaus indeed had the role, responsibility and insight he claimed to have had, as well as Iranian clients, he would have been unaware of these issues.

4. Mr Bahari's witnesses provided no, or only suspect evidence to support their testimony

167. The evidence of Mr Bahari's witnesses is generally not supported by any documentary evidence. And there is generally no good explanation for the lack of documents. Even where Mr Bahari's witnesses have exhibited documents, that evidence is either irrelevant, misdescribed or likely forgeries.
168. Mr Moghaddam, as described above, provides a wide breadth of testimony on behalf of Mr Bahari. Unlike Mr Bahari, Mr Moghaddam remained in Azerbaijan until 2014 and in the years after Mr Bahari had left, until he was jailed in 2009, he could have collected and transmitted documents to Mr Bahari. There is no allegation that his own personal files were searched, checked or destroyed. On his own evidence he retained access to the Nasimi District Warehouse after Mr Bahari's alleged expulsion from Azerbaijan. Had Mr Moghaddam or Mr Bahari actually been concerned about what was happening to any alleged investments, Mr Moghaddam would have been able to identify and preserve at least some documentation related to Mr Bahari's alleged investments. But Mr Moghaddam did not produce a single document in support of his written testimony, save for a reference to the Presidential pardon issued in 2014.³⁶⁵
169. Faced with the state border records that show that he was not present in Azerbaijan on the dates on which he claims to have been assaulted, Mr Moghaddam was also unable to provide any documentary evidence that he was actually in Azerbaijan at those times. Such evidence could have included passport stamps, visas, airplane reservations, hotel reservations or correspondence.³⁶⁶ He also notably did not provide any evidence from any witnesses to the alleged attacks, any medical records from visits to the hospital, or any evidence that he even attempted to obtain such information. While Mr Moghaddam

³⁶⁴ Transcript of Hearing on Jurisdiction and Merits, Day 4, 177:16-20.

³⁶⁵ First Moghaddam Statement, para. 88; Penitentiary Service of the Ministry of Justice of Azerbaijan Release Document for Naser Tabesh Moghaddam, dated 27 May 2014, C-71.

³⁶⁶ Transcript of Hearing on Jurisdiction and Merits, Day 3, 184:1-6.

said that he had made attempts to locate such documents, no evidence of those attempts was provided either.³⁶⁷

170. Similarly, while both Mr Moghaddam and Mr Allahyarov claim that Mr Moghaddam approached Mr Allahyarov in 2017 to look into Mr Bahari's alleged investments, there is scant evidence to support any such efforts. Nor did Mr Allahyarov provide any evidence that his alleged letter to the State Property Service had been delivered. His story changed on how the alleged letter was delivered, and despite multiple invitations to do so, he failed to identify the woman he allegedly spoke to and who threatened him.³⁶⁸ His failure to name this public official suggests the entire story was a fabrication and should be given no weight.
171. During his cross examination, it was put to Mr Hay that in order to have recalled his transactions with Caspian Fish in any level of detail, he must have had records of his transactions with Caspian Fish available to him in Kuala Lumpur, where he is based.³⁶⁹ While Mr Hay answered "[REDACTED]" to whether he had such records, he did not produce them.
172. Amongst the evidence provided by Mr Bahari's witnesses are the photos exhibited by Mr Suleymanov in his witness statement described as "[REDACTED]".³⁷⁰ Originally, counsel for Mr Bahari omitted to provide or exhibit the relevant photographs. The Respondent sought copies of the photographs on 7 August 2024 and was provided with C-505 on 13 August 2024.³⁷¹ During the course of its preparation for the Hearing, Azerbaijan identified that the photos provided were identical to photographs of newer machinery listed on the meatmetal.com website. When questioned about these photos, Mr Suleymanov stated:³⁷²
- [REDACTED]

³⁶⁷ Transcript of Hearing on Jurisdiction and Merits, Day 3, 184:14-25.

³⁶⁸ Respondent's Rejoinder, para. 580(a); Allahyarov First Statement, para. 11; Allahyarov Second Statement, para. 3; Transcript of Hearing on Jurisdiction and Merits, Day 4, 53:4-11; 77:1-12.

³⁶⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 28:2-24.

³⁷⁰ Suleymanov Statement, para. 45.

³⁷¹ Claimant's letter to the Tribunal dated 13 August 2024, p. 2.

³⁷² Transcript of Hearing on Jurisdiction and Merits, Day 4, 23:1-23.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

173. Mr Suleymanov's reference to these photos in his witness statement as equipment from Caspian Fish was deceptive. Had the Respondent not identified the photographs from another website, which were confirmed by Mr Suleymanov to be the same photographs,³⁷³ this is yet another deception that would never have been brought to the attention of the Tribunal.
174. Mr Suleymanov also exhibited two videos of the Safaraliyeva facilities. The videos have been relied upon by Mr Bahari to evidence the status of construction of those facilities at the time Mr Bahari was present in Azerbaijan.³⁷⁴ However, the Respondent has identified that those videos reflect the status of the Safaraliyeva facilities only years later, in 2004 or 2005, and therefore do not reflect any construction completed while Mr Bahari was still in Azerbaijan. The details of the years of the videos are, likely deliberately, omitted from Mr Suleymanov's witness evidence. During the course of the Hearing, however, he was unable to deny that the videos could have been taken in 2004 or 2005.³⁷⁵
175. The documentary evidence provided by Ms Ramazanova and Mr Abdulmajidov has been addressed in full in Azerbaijan's submissions, including in response to the interim

³⁷³ Transcript of Hearing on Jurisdiction and Merits, Day 4, 27:2.

³⁷⁴ Claimant's Reply, paras. 128-129; Videos of Safaraliyeva Production Facilities, undated, C-377 and C-378; Respondent's Rejoinder, para. 302.

³⁷⁵ Transcript of Hearing on Jurisdiction and Merits, Day 4, 17: 10-25.

measures application.³⁷⁶ The detailed complaints are not repeated here. Azerbaijan reaffirms its position, however, that each of the documents submitted as part of Ms Ramazanova and Mr Abdulmajidov's asylum application and exhibited in these proceedings is forged and should be entirely disregarded, together with the remainder of their evidence.

176. Mr Klaus exhibited to his witness statement photos from his trip to Azerbaijan, and of the Caspian Fish grand opening. Mr Bahari relies on these photos to argue that the grand opening was a significant event attended by many different important individuals, including then President Heydar Aliyev. Be that as it may, the photos do not, however, evidence Mr Bahari's claims in any way. What Mr Klaus did not exhibit to his statement is any evidence supporting his assertions as to Mr Bahari's financial situation, or his purported attempts to procure those documents, notwithstanding that he gave his statement in his capacity as Mr Bahari's former banking advisor at Commerzbank.

5. Many of Mr Bahari's witnesses are convicted criminals

177. Four of Mr Bahari's factual witnesses in these proceedings have been convicted in criminal proceedings and have spent years in prison. One of those four witnesses, Mr Kousedghi, was unable to be located and his witness evidence has been excluded from the record.³⁷⁷ The conviction of just one of these individuals, Mr Moghaddam, was disclosed by Mr Bahari himself. Mr Moghaddam was a drug addict convicted for possession with intention to sell drugs.³⁷⁸
178. Mr Allahyarov was convicted for crimes including embezzlement.³⁷⁹ Mr Allahyarov's conviction was not related to Mr Bahari's claim in any way. Mr Bahari only approached Mr Allahyarov for assistance after he was released from prison. Mr Allahyarov attempts to claim that his conviction was a result of some dispute between

³⁷⁶ Respondent's Rejoinder, paras. 589-597; Respondent's Responses to Provisional Measures dated 5 April 2024, paras. 46-53, 59-73; Mammadov First Statement, paras 6-37; Kishiyeva Statement, paras 5-10; Orujov Statement, paras 2-4.

³⁷⁷ Tribunal's letter dated 15 January 2025, paragraph 2.

³⁷⁸ Respondent's Defence, paras. 37(d), 183; Respondent's Rejoinder, paras. 119(a), 355-357; Mr Moghaddam's Handwritten Appeal Petition, undated, and judgment of the Baku Court on Grave Crimes dated 30 April 2014, **R-156**; Decision of the Baku Court on Grave Crimes dated 17 July 2009, **R-151**, pp. 7, 11; Opinion No. 434 of the Republican Narcological Dispensary of the Ministry of Health of the Republic of Azerbaijan dated 5 March 2009, **R-170**, p. 2; Decision of the Nasimi District Police Department dated 27 February 2009, **R-169**.

³⁷⁹ Judgment of Baku Appellate Court dated 17 July 2007, **R-151**.

himself and a particular prosecutor, Mr Naghiyev. That claim is untrue.³⁸⁰ The allegations against the prosecutor are not relevant to Mr Allahyarov's original conviction. In any event, it is irrelevant to these proceedings. Mr Allahyarov pleaded guilty in his conviction at least in part.³⁸¹ Had this fact not been discovered by Azerbaijan during the course of the proceedings, Mr Allahyarov would have never admitted to the Tribunal that he had serious convictions, specifically for dishonesty offences. Mr Allahyarov also did not volunteer that he had participated in the Ayna Sultan and ASFAN proceedings.

6. Mr Bahari's witnesses likely have been promised benefits for their testimony

179. Azerbaijan has no direct knowledge of the motivations of Mr Bahari's witnesses to provide evidence on his behalf. That notwithstanding, for many of the witnesses, Azerbaijan can only infer that they are providing evidence because they stand to benefit from doing so.

180. For example, Ms Ramazanova confirmed during the hearing that Mr Bahari had been her and her family's benefactor for many years, giving them money where they were struggling.³⁸² Given Ms Ramazanova has no alternative reason to assist Mr Bahari in this claim, it is reasonable to conclude that her support for Mr Bahari may have been financially motivated, but also motivated by Mr Bahari's support for her asylum application.

181. It is worth recalling that Mr Suleymanov previously told Mr Zeynalov that he wanted nothing to do with Mr Bahari,³⁸³ but he had told Mr Bahari that he was in debt.³⁸⁴ Just a few months later, Mr Suleymanov's witness statement appeared in these proceedings, submitted with Mr Bahari's Reply.³⁸⁵ In light of his stated financial difficulties and the

³⁸⁰ Respondent's Rejoinder, paras. 100(b), 528.

³⁸¹ Respondent's Rejoinder, paras. 100(b), 526; Judgment of Baku Appellate Court dated 17 July 2007, **R-151**, pp. 6 and 10.

³⁸² Transcript of Hearing on Jurisdiction and Merits, Day 4, 96:5-13.

³⁸³ Respondent's letter to the Tribunal dated 19 July 2024, para. 4.1.

³⁸⁴ Respondent's letter to the Tribunal dated 19 July 2024, para. 4.1.

³⁸⁵ Respondent's letter to the Tribunal dated 19 July 2024, para. 4.2.

abrupt change in position, it is difficult to identify any plausible explanation for his support for Mr Bahari other than that he was promised some compensation.

182. There are also serious questions regarding the credibility and motivation of Mr Klaus. As noted in the Affidavit of Mr Hansen, Mr Klaus “ [REDACTED] [REDACTED] ”.³⁸⁶ A witness with a history of financial misconduct and personal indebtedness to Mr Bahari has an obvious incentive to testify in a manner favourable to Mr Bahari, whether out of a sense of obligation, expectation of leniency, or in exchange for some form of compensation.
183. Mr Moghaddam is Mr Bahari’s life-long friend, but may have benefited from Mr Bahari’s financial assistance. While Mr Allahyarov’s precise motivation is unclear, it is more likely than not that financial incentives played a role.

7. The written evidence of Mr Bahari’s witnesses are a product of his legal team rather than the independent accounts of the witnesses

184. Azerbaijan also considers it necessary to address a number of issues surrounding the written evidence of Mr Bahari’s witnesses. There are multiple irregularities that cast doubt on how these statements were prepared and obtained. They appear, in substance and form, to be the product of Mr Bahari’s legal team rather than the independent accounts of the witnesses.
185. Many of the witness statements submitted by Mr Bahari have been signed in English by individuals who do not speak or read English.³⁸⁷ Following the incident during the Provisional Measures hearing when even Mr Bahari appeared visibly surprised to see his own signed statement in English, Mr Bahari’s counsel has adopted a practice of submitting what are evidently translations of English-language originals.³⁸⁸ However, this does not alter the fact that Mr Bahari’s witnesses, despite not speaking or understanding English, signed statements containing affirmations of truth in English. It logically follows that these witnesses likely neither authored nor fully understood the contents of the statements they signed.

³⁸⁶ Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 4.

³⁸⁷ Respondent’s Rejoinder, para. 104.

³⁸⁸ Respondent’s Rejoinder, para. 104.

186. For instance, during the Hearing, Mr Suleymanov confirmed that when he signed the English signature page of his witness statement, he had not yet seen the Azerbaijani version of the statement.³⁸⁹ It also appears that, in some instances, the date of the witness's signature does not match the date of the witness statement itself. As Mr Suleymanov testified during the hearing, he signed the statement first, and the date was later inserted by Mr Bahari's counsel.³⁹⁰ This is irregular. Further, during the hearing, Mr Suleymanov also confirmed that there were issues with the translation of his witness statement from English into Azerbaijani.³⁹¹ This again demonstrates the broader concern that the statements were not properly reviewed or understood by the witnesses before being signed.

G. The evidence adduced at the Hearing supported Azerbaijan's case in all material respects

1. Mr Bahari did not invest money in Caspian Fish

187. Mr Bahari claims to have invested USD 56 million into Caspian Fish. He did not. In support of his claim, Mr Bahari refers to his own evidence, as well as the evidence of Messrs Klaus, Moghaddam, Suleymanov and Khalilov. Mr Bahari's evidence has been shown to be at best hyperbolic and at worst actively deceitful and cannot be trusted. Similarly, the evidence of his witnesses has been shown to be unreliable. None of Messrs Klaus, Moghaddam, Suleymanov or Khalilov had direct or tangible knowledge of the amounts invested into Caspian Fish.

188. Mr Moghaddam admitted that he did not have full oversight of the payments made on behalf of Caspian Fish. He also alleged that the funds for Caspian Fish came "[REDACTED]".³⁹² There is no evidence at all that Mr Bahari remained a part of Coolak Shargh after 1999,³⁹³ or that it paid out sufficient dividends to Mr Bahari to support a USD 56 million investment. Furthermore, neither Mr Suleymanov or Mr Khalilov were anything more than workers at Caspian Fish and knew nothing about the amounts

³⁸⁹ Transcript of Hearing on Jurisdiction and Merits, Day 4, 8:6-8.

³⁹⁰ Transcript of Hearing on Jurisdiction and Merits, Day 4, 7:23-25; 8:1-3.

³⁹¹ Transcript of Hearing on Jurisdiction and Merits, Day 4, 9:9-17.

³⁹² Transcript of Hearing on Jurisdiction and Merits, Day 3, 170:23-25, 171:1-4.

³⁹³ Respondent's Rejoinder, para. 58(b).

invested into the project or the identity of the investor, save for what they may have been told by Mr Bahari. Similarly, Mr Klaus operated only as a banking advisor to Mr Bahari and did not have first-hand knowledge of the projects. He admitted he did not have direct knowledge of what payments were made for nor the source of funds.³⁹⁴

189. The documentary evidence relied upon by Mr Bahari takes him no further. As set out in full in the Admissibility Brief, the vast majority of the amounts allegedly spent by Mr Bahari are evidenced by the Purported Chartabi Contracts, which are forged.³⁹⁵ The remaining evidence is also likely forged³⁹⁶ or, on its face, does not evidence that payment was made by Mr Bahari.³⁹⁷
190. As further set out in the Admissibility Brief, the only other tangible document that allegedly evidences payment relied upon by Mr Bahari is the Purported Cheque.³⁹⁸ However, it is more likely than not that the Purported Cheque is a forgery. Mr Bahari has not explained how he was able to issue a cheque of a company which he was no longer a shareholder of, why he would use funds held by a separate entity in Iran to make a payment regarding construction in Azerbaijan or how the amount of the cheque correlates to the amounts spent on his alleged projects, not least as construction had long ceased as of the date of the Purported Cheque.³⁹⁹ It is also not explained, if Mr Bahari's Commerzbank account was the "project account" for his Azerbaijani projects as described by Mr Klaus,⁴⁰⁰ why payments would have been made for those projects out of a separate account in a different jurisdiction. Either Mr Klaus is mistaken in his description of the Commerzbank account, which he understands solely through hearsay from Mr Bahari, or it is clear that the purpose of the Purported Cheque (assuming it was in fact issued at all) is for something other than Mr Bahari's alleged projects in Azerbaijan. Either way, taking together all of the evidence, it is more likely than not that the Purported Cheque is simply a forgery.

³⁹⁴ Transcript of Hearing on Jurisdiction and Merits, Day 4, 168:4-13; 175:9-11.

³⁹⁵ Admissibility Brief, paras. 25-27; Defence, paras. 90-92; Respondent's Rejoinder, paras. 21-40.

³⁹⁶ Admissibility Brief, paras. 41-52.

³⁹⁷ Respondent's Rejoinder, paras. 41-61; First Shi Report, paras 2.9 and 3.9.

³⁹⁸ Respondent's Admissibility Brief, para. 50.

³⁹⁹ Respondent's Admissibility Brief, para. 50.

⁴⁰⁰ Transcript of Hearing on Jurisdiction and Merits, Day 4, 156:11.

191. Mr Bahari also refers to President Heydar Aliyev’s speech, which referred to the figure of USD 56 million and “[REDACTED]” in Azerbaijan more generally,⁴⁰¹ as well as subsequent media articles which repeat that same figure⁴⁰² and promotional documents including Caspian Fish’s own website.⁴⁰³ But Mr Bahari’s reliance on those documents is misplaced. First, it is clear from the terms of President Aliyev’s speech that he “[REDACTED]”⁴⁰⁴ It should not be expected that President Aliyev would have direct knowledge of the amounts invested into a private enterprise like Caspian Fish. It is also clear that the primary purpose of President Aliyev’s speech was to promote Azerbaijani businesses and the private sector after independence from the USSR, as well as to promote foreign investment into the country. President Aliyev did not state that the amount of funds invested into Caspian Fish was in fact fully a foreign investment. In sum, President Aliyev’s speech is not evidence of investment, much less foreign investment, and even less investment by Mr Bahari.
192. The figure of USD 56 million and the reference to foreign ownership was then repeated by the media for years. However, as described by Mr Kerimov, the Azerbaijani media did not necessarily fact check the figures that they cite:⁴⁰⁵



⁴⁰¹ President Heydar Aliyev’s Opening Speech for Caspian Fish Co. Inc dated 10 February 2001, **C-91**.

⁴⁰² Azertac, Tajik President Visited Caspian Fish Co. in Baku dated 13 August 2007, **SEC-11**; Azertac, Swiss President Familiarizes Himself with ‘Caspian Fish Co. Azerbaijan’ Corporation dated 11 May 2008, **SEC-12**; BastaInfo, Kamaladdin Heydarov sells his famous company dated 26 March 2018, **SEC-28**.

⁴⁰³ Caspian Fish Website, History of Foundation dated 25 February 2013 (accessed from the Wayback Machine), **SEC-15**.

⁴⁰⁴ President Heydar Aliyev’s Opening Speech for Caspian Fish Co. Inc dated 10 February 2001, **C-91**, p. 1.

⁴⁰⁵ Transcript of Hearing on Jurisdiction and Merits, Day 5, 86:2-25, 87:1-3.

[REDACTED]

193. It therefore cannot be said that any references to USD 56 million in the press are reliable evidence of amounts paid. Nor would the facilities as they stood then have cost USD 56 million to build. Mr Kerimov confirmed in his evidence:⁴⁰⁶

[REDACTED]

194. While Mr Bahari attempts to rely on the reference to Caspian Fish being a foreign investment, none of the articles relied upon by Mr Bahari reference the identity of the individual or entity which made such payments.

195. In contrast, and as set out in full in its Defence and Rejoinder, Azerbaijan has submitted clear evidence that it was in fact Mr Heydarov who invested all of the funds into Caspian Fish. First is the letter from Mr Heydarov himself in which he confirmed he paid for Caspian Fish with his own money.⁴⁰⁷ This was confirmed by both Mr Hasanov and Mr Kerimov in their examinations.⁴⁰⁸ While Mr Bahari now claims that Mr Heydarov did not have sufficient funds to invest in Caspian Fish, that is clearly false. As Mr Kerimov explained, Mr Heydarov, prior to his time at the Customs Committee was “[REDACTED]”⁴⁰⁹ As described above, his corporate group, Gilan, has invested in large scale projects since 1987⁴¹⁰ (not, as claimed by Mr Bahari, in 2005)⁴¹¹, and would have had sufficient funds to invest in Caspian Fish.

⁴⁰⁶ Transcript of Hearing on Jurisdiction and Merits, Day 5, 129:18-25; 13:1.

⁴⁰⁷ Letter from Mr Heydarov to Quinn Emanuel dated 25 October 2024, **R-301**.

⁴⁰⁸ Transcript of Hearing on Jurisdiction and Merits, Day 5, 120:9-25; 121:1-3; Transcript of Hearing on Jurisdiction and Merits, Day 6, 15:4-15.

⁴⁰⁹ Transcript of Hearing on Jurisdiction and Merits, Day 5, 115:7-9.

⁴¹⁰ About Us page of gilanholding.com as of 30 January 2019, **R-408**.

⁴¹¹ Claimant’s Rejoinder, para. 237.

2. Mr Bahari was given shares in Caspian Fish for sweat equity which he subsequently sold and was paid for

196. The Respondent has no reason to doubt that Mr Bahari managed the construction of the fish processing facility and was granted a power of attorney to manage the business of Caspian Fish. It is for that work that Azerbaijan understands that Mr Bahari was granted shares in Caspian Fish.⁴¹² However, contrary to Mr Bahari's claim, the evidence adduced at the Hearing demonstrated that Mr Bahari was not a sophisticated manager and made many mistakes in the construction, sourcing of equipment and its operation. As confirmed by Mr Rudman, this includes the absence of construction contracts with respect to the construction of Caspian Fish.⁴¹³ Witnesses spoke of Mr Bahari breaking the trust of Mr Heydarov.⁴¹⁴
197. As a result of this, issues arose between Mr Bahari and his business partners. This breakdown of trust led to an agreement that Mr Khanghah would buy out Mr Bahari's shares.⁴¹⁵ The documentary evidence shows that:
- (1) As Mr Bahari acknowledged contemporaneously, he was paid the first tranche of USD 1.5 million under the agreement, and pursuant to the parties' agreement, documents for the transfer of shares were signed, and beneficial ownership of the shares transferred from Mr Bahari. After this payment, consistent with the obligations in the last paragraph of the agreement, Mr Bahari executed a stock transfer form legally transferring his shares to Mr Khanghah,⁴¹⁶ and 10 days later Mr Bahari was removed as a director of Caspian Fish.⁴¹⁷
 - (2) In 2002, Mr Bahari acknowledged that he was paid a further tranche of USD 2 million, received via his various representatives.⁴¹⁸
 - (3) At a meeting on 15 June 2002, payment of the remaining USD 1 million was restructured, and various additional sums were agreed to be paid to Mr Bahari

⁴¹² Respondent's Rejoinder, para. 397.

⁴¹³ Rudman Statement, para. 9.

⁴¹⁴ Kerimov Statement, paras 12 and 21. *See also* Rudman Statement, paras 5, 10.

⁴¹⁵ Buyer and Seller Agreement between Mr Khanghah and Mr Bahari dated 20 September 2001, **R-50**.

⁴¹⁶ Stock Transfer Form, undated, **R-129**.

⁴¹⁷ BVI Co Registers and Datasheet as at 3 May 2007, **C-109**, at pp. 12-13.

⁴¹⁸ Receipt for payment of USD 2 million signed by Mr Bahari, undated, **R-52**.

making the total of the amount paid to Mr Bahari USD 5.3 million.⁴¹⁹ The Respondent has submitted a contemporaneous ledger as evidence of the payment in cash of some of these amounts to Mr Bahari. This ledger was obtained from the files of Mr Heydarov's late assistant.⁴²⁰ These payments closely correspond with the schedule agreed on 15 June 2002. It may be inferred that other payments were also made. Ultimately, Mr Bahari accepts that he received the agreed USD 5.3 million.⁴²¹

198. Mr Bahari of course resorted to crying fraud, stating "[REDACTED]
[REDACTED]
[REDACTED]"⁴²² But Mr Bahari's colourful rhetoric cannot cover up the fact that years later in an email to the President's Office, Mr Bahari acknowledged that he received USD 5.36 million from Mr Heydarov.⁴²³
199. Mr Bahari's explanation regarding the payments is that he advanced large loans to Mr Heydarov, years earlier, and these payments were repayments of these loans.⁴²⁴ There is absolutely no evidence that Mr Bahari lent money to Mr Heydarov (or Mr Pashayev as also alleged). Given the status of Mr Heydarov and Mr Pashayev at the time as successful businessmen in Azerbaijan, it beggars belief that they would have required (or accepted) a loan from an Iranian individual, if they needed to borrow money at all, and not local business partners, family members, or indeed, banks.
200. In any event, the documents exhibited by Azerbaijan together with the subsequent transfer of shares, confirm that the payments were in fact for the sale of Mr Bahari's shares in Caspian Fish, in accordance with the duly signed agreement. Forensic examination of the documents has not cast any doubt on them, and in fact showed that

⁴¹⁹ The 2002 Agreement. *See* Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**.

⁴²⁰ Respondent's Rejoinder, para. 469; Extracts of Notebooks containing records of payments in relation to Mr Heydarov's business affairs from 2002, **R-389**.

⁴²¹ Email from Mr Bahari to A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

⁴²² Transcript of Hearing on Jurisdiction and Merits, Day 2, 101:19-22.

⁴²³ Email from Mr Bahari to A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

⁴²⁴ Bahari Second Statement, para. 21(f); Bahari Third Statement, paras. 17-18; Transcript of Hearing on Jurisdiction and Merits, Day 2, 111:9-17.

the Stock Transfer Form was signed on top of the acknowledgement of the first payment tranche,⁴²⁵ which is consistent with the sequence of parties' obligations.

201. Finally, Mr Bahari's testimony has been demonstrated to be inherently unbelievable. In the light of the above, the Respondent submits that the Tribunal should find that Mr Bahari in fact sold his shares in Caspian Fish and was paid for them.

3. Mr Bahari was not the original investor in Coolak Baku and did not invest significant funds in Coolak Baku

202. Azerbaijan has no knowledge of the commercial negotiations that occurred with respect to Coolak Baku in the mid-1990s. It is however clear from the documentary evidence that Coolak Shargh and ASFAN were the original business partners.⁴²⁶

203. Mr Bahari's answer is that the relevant documents are forgeries. His logic is that Coolak Shargh would have never been involved in beer production, given its status as an Iranian company and "[REDACTED]".⁴²⁷ He states specifically that "[REDACTED]".⁴²⁸ But Mr Bahari fails to explain why he as an Iranian citizen would have been authorised to produce beer in circumstances where Coolak Shargh was not. In fact, as noted above, he claims that his shares in Coolak Shargh were expropriated by the Iranian government as a direct result of his production of beer.⁴²⁹ In any event, according to Mr Suleymanov, production of beer only began in 1998, which is after Mr Bahari replaced Coolak Shargh as a joint venture partner. As a result, and in the light of the documentary evidence, the Tribunal should find that Coolak Shargh was the original business partner of ASFAN in the Coolak Baku joint venture.

204. Furthermore, there is no evidence at all to suggest that Mr Bahari invested anything close to the amount of USD 27 or USD 28 million into Coolak Baku. At best, Mr

⁴²⁵ Briggs Report, paras 4.5.4-4.5.7; Transcript of Hearing on Jurisdiction and Merits, Day 7, 158:12-14.

⁴²⁶ Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 29 February 1996, **R-98**; Certificate of Registration for Coolak Baku dated 15 March 1996, **R-100**; Addendum to the 1996 Agreement dated 28 March 1996, **R-101**; Letter from ASFAN Ltd to Mr Bahari, President of Coolak Shargh, dated 8 January 1997, **R-24**.

⁴²⁷ Transcript of Hearing on Jurisdiction and Merits, Day 3, 107:11-13.

⁴²⁸ Transcript of Hearing on Jurisdiction and Merits, Day 3, 103:21-23.

⁴²⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 99:21-24.

Bahari has provided evidence that he invested between USD 134,577 to 846,822 in Coolak Baku.⁴³⁰ Neither Mr Suleymanov nor Mr Khalilov have any knowledge of the payments made into Coolak Baku. Mr Klaus confirmed that he was not able personally to confirm any of the payments made as he “ [REDACTED] ”.⁴³¹ Any evidence Mr Klaus could offer on payments into Coolak Baku, or any of Mr Bahari’s other alleged projects in Azerbaijan, are entirely based on hearsay and stories told to him by Mr Bahari himself.⁴³²

4. Coolak Baku was not a success under Mr Bahari’s management

205. Azerbaijan understands that there were plans to produce both soda and beer at different times during the Coolak Baku venture. However, at no point prior to Mr Bahari’s departure from Azerbaijan in 2001 was Coolak Baku a commercial success. Production only took place after his departure. This has been confirmed by the documentary evidence, as well as witnesses for both Azerbaijan and Mr Bahari during the course of the Hearing.
206. Contrary to what Mr Bahari would have the Tribunal believe, much of the construction and reconstruction work at the Safaraliyeva facilities necessary for the production of soft drinks or beer took place in or around 2004, years after Mr Bahari’s departure from Azerbaijan. Mr Bahari is not entitled to benefit from the capital and efforts of others. While Mr Suleymanov presented to the Tribunal as evidence two videos of the facility to “ [REDACTED] ”,⁴³³ implying that the videos were taken in or around 1997, that is not true. Mr Suleymanov admitted during the Hearing that he couldn’t “ [REDACTED] ”.⁴³⁴ However, he also claimed that he took the video with a phone equipped with a camera and video, which were not available in the late 1990s.⁴³⁵ More importantly, it is clear that in that video there are boxes of Attila beer, which was a

⁴³⁰ Second Shi Report, Table 2.2.

⁴³¹ Transcript of Hearing on Jurisdiction and Merits, Day 4, 185:25; 186:1-2.

⁴³² Transcript of Hearing on Jurisdiction and Merits, Day 4, 168:11-14.

⁴³³ Suleymanov Statement, para. 12.

⁴³⁴ Transcript of Hearing on Jurisdiction and Merits, Day 4, 18:14-15.

⁴³⁵ Transcript of Hearing on Jurisdiction and Merits, Day 4, 19:10-11.

brand that was not produced until at least 2004.⁴³⁶ The Tribunal should readily conclude that the videos were taken in 2004, at the earliest, and show works carried out by others, not Mr Bahari.

207. Mr Zeynalov also submitted a video with his witness evidence,⁴³⁷ which shows significant construction and reconstruction work being undertaken at the Safaraliyeva Facilities, together with the installation of equipment in April 2003. Mr Zeynalov confirmed in his evidence that in order for ASFAN to begin making beer it “ [REDACTED]

[REDACTED]
[REDACTED] ”. ⁴³⁸

208. This also aligns with the evidence submitted by Mr Habib Aliyev who confirmed that in order for ASFAN to subsequently produce beer at the Safaraliyeva facilities ASFAN

“ [REDACTED] ”⁴³⁹ and there was “ [REDACTED]
[REDACTED] ”. ⁴⁴⁰

209. As to the production itself, Mr Zeynalov confirmed that there was no production of soft drinks at all.⁴⁴¹ There was also no commercial production of beer prior to Mr Bahari’s departure from Azerbaijan, and any beer produced was in fact not sold. Mr Suleymanov confirmed in his evidence that the beer was not of good quality and was not fit for sale:⁴⁴²

[REDACTED]

210. As to the production of sugar, no witnesses mentioned sugar production at all. It is telling that counsel for Mr Bahari did not put any questions regarding sugar production to Mr H Aliyev. Mr H Aliyev gave evidence in his witness statement that he did

⁴³⁶ H Aliyev Second Statement, para. 7; Trademark Search Report signed by S.T. Zeynalli dated 25 September 2024, **R-243**.

⁴³⁷ Video of Coolak Baku provided by Mr Zeynalov, filmed in April 2003, **R-292**.

⁴³⁸ Transcript of Hearing on Jurisdiction and Merits, Day 5, 230:3-5.

⁴³⁹ Transcript of Hearing on Jurisdiction and Merits, Day 6, 171:13-14.

⁴⁴⁰ Transcript of Hearing on Jurisdiction and Merits, Day 6, 172:2-3.

⁴⁴¹ Transcript of Hearing on Jurisdiction and Merits, Day 5, 230:21-22.

⁴⁴² Transcript of Hearing on Jurisdiction and Merits, Day 4, 38:22-25; 39:1-4 (emphasis added).

produce a small amount of sugar lumps at a facility in Shuvalan but not as part of a formal or large scale operation.⁴⁴³ It can only be assumed that is because Mr Bahari no longer challenges Mr Aliyev's evidence on this point and acknowledges that no serious production of sugar ever took place that his counsel chose not to cross-examine him.

5. Mr Bahari was not expelled from Azerbaijan in March 2001 or at all

211. The foundation of Mr Bahari's claim is that he was expelled from Azerbaijan in or around March 2001, was declared *persona non grata* and was prevented from returning to the country. The evidence conclusively proves that this is false.
212. First, Mr Bahari has produced no evidence at all demonstrating when he left Azerbaijan. He has also produced no evidence at all of when his new life in Dubai began. He could have produced school records, bank statements, utility bills, visas or residence permits, lease or purchase agreements or evidence from friends, colleagues or acquaintances in Dubai. The range of potential evidence that he could have produced, if his allegations were true, is quite large. That there is no evidence available to the Tribunal is because no evidence exists. He did not depart Azerbaijan to Dubai in early 2001.
213. In contrast, Azerbaijan has submitted clear evidence from its own State Border Service that Mr Bahari in fact left Azerbaijan in December 2001.⁴⁴⁴ While Mr Bahari has cried fraud regarding the State Border records, he has produced no cogent evidence to dispute their content.
214. Second, Mr Bahari's narrative regarding his alleged expulsion from Azerbaijan is nonsensical. For example:
- (1) Mr Bahari alleges that he and his family were deported to Dubai. However, there is no reason why an individual would be deported not to his home country, Iran, but to a third location of his choice, the UAE. If it were true that Mr Bahari was in fact deported, he would be expected to recall all of the detail surrounding this memorable event. When asked about the reason for the destination, Mr Bahari confirmed that "[REDACTED]"

⁴⁴³ H Aliyev First Statement, para. 20.

⁴⁴⁴ Letter from the State Border Service of the Republic of Azerbaijan to the SSPI dated 2 November 2023, R-58.

contract with Ata Yolu.⁴⁵¹ Instead, Mr Bahari simply contends that he never received the carpets. However, the evidence shows that the carpets were shipped to Dubai on 3 October 2002.⁴⁵²

218. The Tribunal should therefore find that Mr Bahari has not been prevented from accessing his carpets, and in fact Azerbaijan permitted their export to him. Nothing Azerbaijan did or failed to do with regard to the carpets can possibly give rise to a Treaty breach.

219. In any event, Mr Bahari's carpets were not of any significant value. While Mr Bahari claims that he is an expert in carpets,⁴⁵³ it became apparent during his cross examination that this is yet another fiction. By way of example, Mr Bahari claimed that "[REDACTED]

[REDACTED]⁴⁵⁴ What Mr Bahari failed to appreciate, but that any carpet expert would know, is that carpets are woven in accordance with the tradition of a region. Each region has a typical style, including within the former Soviet Union.⁴⁵⁵ An individual who was an expert or collector in carpets ought to have been able to identify differences in carpets that were woven in the various former Soviet republics. His lack of knowledge of carpets may be why he claims his collection to be worth much more than reality. More likely, Mr Bahari knows very well the mundane quality of the carpets. His own expert readily accepted that the at least 211 of the carpets could be worth just USD 500 each, on average.⁴⁵⁶

220. Finally, in any event, Mr Bahari confirmed that even had the carpets been valuable, he did not intend to make any profit from them. It is therefore unclear how he thinks they amount to an investment under the Treaty, nor what damages Mr Bahari believes he

⁴⁵¹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 131:3-9.

⁴⁵² Export Declaration by ATA-YOLU for 211 carpets to be sent to Petro Geshm dated 3 October 2002, **R-37**.

⁴⁵³ Statement of Claim, para. 103.

⁴⁵⁴ Transcript of Hearing on Jurisdiction and Merits, Day 3, 113:24-25; 114:1-2.

⁴⁵⁵ Transcript of Hearing on Jurisdiction and Merits, Day 7, 335:4-13; Hasanov Second Report, paras. 32, 34-35.

⁴⁵⁶ Iselin Second Report, para. 32; Transcript of Hearing on Jurisdiction and Merits, Day 7 274:14-16.

may claim: “

”.⁴⁵⁷

7. Nothing in any of the local Court proceedings implicates Azerbaijan

221. Azerbaijan was not party to any of the local court proceedings, which were between private parties. Insofar as Azerbaijan is responsible for the conduct of its judiciary, nothing in those proceedings gives rise to any basis for state responsibility.
222. Mr Bahari amended his claim belatedly, at the Reply stage, to include denial of justice claims regarding both the Ayna Sultan and ASFAN proceedings.⁴⁵⁸ Neither proceeding was mentioned in Mr Bahari’s Statement of Claim. Their existence was only identified as a result of Azerbaijan’s investigations. Yet Mr Bahari was aware of the proceedings and participated in them. For instance, he challenged the Ayna Sultan court decision in 2009, acting through Mr Amirahmadi.⁴⁵⁹ If Mr Bahari had a complaint about them, he could have brought this earlier in the proceedings. His late amendment to bring denial of justice claims only shows his desperation to save his case.
223. Mr Allahyarov, a witness for Mr Bahari, admitted knowledge of the Ayna Sultan Proceedings. He was in fact a lawyer for one of the parties in that case, who at the time brought a claim *against* Mr Bahari.⁴⁶⁰ While Mr Allahyarov denied knowledge of the ASFAN proceedings, his evidence generally was not credible. The documents show that Mr Allahyarov, via his law firm Togrul Law Firm, represented ASFAN in the proceedings.⁴⁶¹
224. Mr Allahyarov confirmed during his cross examination that he had provided documents related to the Ayna Sultan Proceedings to Mr Bahari, including the decision of the court and evidence of his representation of one of the plaintiffs, Mr Samagda Pashayev.⁴⁶²

⁴⁵⁷ Transcript of Hearing on Jurisdiction and Merits, Day 3, 147:24-25.

⁴⁵⁸ Claimant’s Rejoinder, paras. 39(3), 41(c), 151-153, 343.

⁴⁵⁹ Power of Attorney issued by Mr Bahari to Mr Amirahmadi dated 20 April 2009, **R-152**; Power of Attorney issued by Mr Amirahmadi to Mr Kazimov dated 1 May 2009, **R-285**; Respondent’s Rejoinder, paras. 537-541.

⁴⁶⁰ Transcript of Hearing on Jurisdiction and Merits, Day 4, 57:2-5.

⁴⁶¹ Transcript of Hearing on Jurisdiction and Merits, Day 4, 65:12-16; 68:20-25; 69:1-3.

⁴⁶² Transcript of Hearing on Jurisdiction and Merits, Day 4, 67:5-13 (emphasis added).

[REDACTED]

225. However, no explanation has been forthcoming as to why, if those documents were provided to Mr Bahari's counsel, they were not either referenced or exhibited to his Statement of Claim. Azerbaijan can only assume that it was because it was decided that these documents were not helpful to Mr Bahari's case and it was easier to leave them out. Even if Mr Bahari's counsel were not aware of these facts at the time of filing the Statement of Claim, Mr Allahyarov confirmed that Mr Moghaddam at the very least was aware of his involvement in the Ayna Sultan Proceedings: "[REDACTED]"

[REDACTED] 463

226. Following Azerbaijan's investigations and evidence put forward in its defence, Mr Bahari changed track to argue a denial of justice claim. However, there is no evidence of any wrongdoing on the part of the Azerbaijani court system.

227. These proceedings were between private parties, with absolutely no involvement of the state. While there has been a concerted effort by Mr Bahari's counsel to obfuscate this fact, the fact of the matter is that:

(1) In the Ayna Sultan proceedings: Mr Bahari was brought to court in his private capacity, by a private party, complaining that Mr Bahari had committed fraud in trying to sell the apartment twice to two different people. Mr Allahyarov confirmed that only private parties were involved in the dispute.⁴⁶⁴

(2) In the ASFAN proceedings, Mr Bahari was named, but was not legally required to be a defendant. The relevant procedure, invoked by ASFAN, to exit the Coolak Baku joint venture did not as a matter of law require Mr Bahari's consent or observations.⁴⁶⁵

⁴⁶³ Transcript of Hearing on Jurisdiction and Merits, Day 4, 69:22-24.

⁴⁶⁴ Transcript of Hearing on Jurisdiction and Merits, Day 4, 70:1-17.

⁴⁶⁵ Respondent's Rejoinder, para. 338; Civil Code of the Republic of Azerbaijan, **RLA-292**, Article 95.

228. Mr Bahari has not been able to submit any evidence to suggest that Azerbaijan had anything to do with either the Ayna Sultan or ASFAN proceedings besides the fact that they were before its courts.
229. Mr Bahari complains about a power of attorney that Mr Zeynalov or others allegedly continued to rely upon after it had been revoked. But the relevance of this is unclear since Mr Zeynalov was not involved in either the Ayna Sultan Proceedings or the ASFAN Proceedings, nor is his conduct attributable to Azerbaijan.

8. There is no credible evidence of any threat or intimidation, let alone by Azerbaijan



230. Mr Bahari has alleged multiple acts of harassment, threats or intimidation against himself or individuals associated with him. Not one of those allegations is supported by any credible evidence that the alleged wrongdoing occurred at all, let alone that it was undertaken by Azerbaijan. There is ample evidence on the record to conclude that the allegations are in fact false, as discussed below.

(i) Mr Bahari's advisors

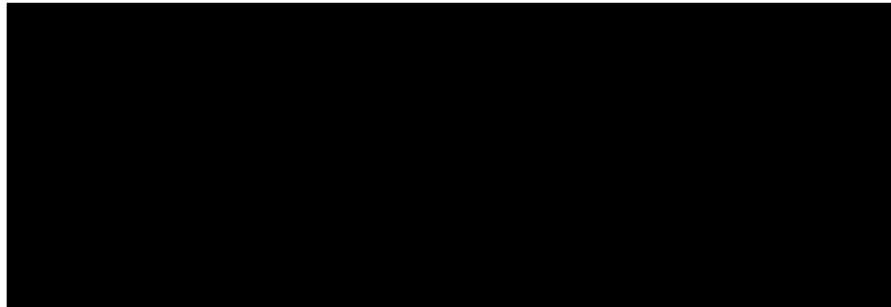
231. Mr Bahari alleges that two lawyers, Mr Kilic and Mr Allahyarov, have been intimidated or harassed by Azerbaijan.
232. As to Mr Kilic, Mr Bahari has not put forward any evidence that this individual existed, that he was engaged to represent Mr Bahari, and what in fact he did. Mr Bahari also does not assert any specific harm that was done to Mr Kilic or by whom. The story of Mr Kilic remains a mystery and is completely unproven.
233. With respect to Mr Allahyarov, it is claimed that he sent a request for information regarding certain of Mr Bahari's properties to the State Property Committee on 14 January 2019,⁴⁶⁶ following which he received a call, and subsequently that he attended a meeting.⁴⁶⁷ While Mr Allahyarov has produced a copy of the letter he allegedly sent to the State Property Committee, there is no evidence on the face of that document that it was ever actually sent (or delivered). Mr Allahyarov's story regarding the delivery

⁴⁶⁶ Letter from Yusuf Allahyarov to Chairman of the State Committee for Property Issues, dated 14 January 2019, **C-68**.

⁴⁶⁷ Allahyarov First Statement, paras. 11-13.

changed between his two witness statements, moving first from the letter having been “”⁴⁶⁸ to having been “”.⁴⁶⁹ When asked about the discrepancy, Mr Allahyarov deflected, and did not accept that there was any discrepancy between his two explanations. Azerbaijan’s witness, Ms Balakishyivea, however confirmed that she found no records of any letter from Yusif Allahyarov or his law firm Togrul Law Firm in January 2019.⁴⁷⁰

234. The letter exhibited by Mr Allahyarov at C-68 is also notable and appears to contain both the original stamp and signature.



There is no reason that Mr Allahyarov would have kept the original and sent a copy to the State Property Committee. In fact, during the course of his cross-examination, Mr Allahyarov confirmed:⁴⁷¹



235. What Mr Allahyarov retained and has produced as evidence, however, appears to be the original, implying that the letter was never sent.
236. The letter purportedly sent to the State Property Committee includes a request that Mr Allahyarov knew would not be granted, as he did not have the requisite status of an advocate to be entitled to the information sought.⁴⁷²

⁴⁶⁸ Allahyarov First Statement, para. 11.

⁴⁶⁹ Allahyarov Second statement, para 3.

⁴⁷⁰ Transcript of Hearing on Jurisdiction and Merits, Day 5, 55:12-23.

⁴⁷¹ Transcript of Hearing on Jurisdiction and Merits, Day 4, 76:1-6.

⁴⁷² Respondent’s Rejoinder, para. 366; Transcript of Hearing on Jurisdiction and Merits, Day 5, 51:1-13.

237. In the light of this, the most likely explanation is that Mr Allahyarov never sent this letter to the State Property Committee and rather, it is a *post hoc* creation made for the purpose of this arbitration to support Mr Bahari's claim.
238. Furthermore, there is no evidence at all that Mr Allahyarov ever received a call from or attended a meeting at the State Property Committee. He has presented no call logs or notes of either the alleged call or the alleged meeting (contemporaneous or otherwise). When asked about any supporting evidence that may have reasonably have been expected to be available to him or that would have been created, Mr Allahyarov was defensive and provided no credible answers:⁴⁷³

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

239. In particular, it is not credible that a lawyer, when attending an important meeting or one in which something happened which was allegedly untoward, would not know "[REDACTED]", or after.
240. Mr Allahyarov also claimed that at the meeting, the alleged, unnamed female Deputy Head of Legal Department of the State Property Committee made threats against him should he continue to look into the status of Mr Bahari's properties and businesses.⁴⁷⁴
241. However, Ms Balakishiyeva confirmed during her testimony that, having checked the HR records of the State Property Committee, the relevant head of legal was a man

⁴⁷³ Transcript of Hearing on Jurisdiction and Merits, Day 4, 78:22-25; 79:1-19.

⁴⁷⁴ Allahyarov First Statement, paras 11-13.

named Ulvi Nasibli,⁴⁷⁵ and there were no women in the position of deputy. At that time, the six women who were employed in the legal department did not have direct contact with individuals as part of their job descriptions and would have had no reason to meet with Mr Allahyarov or any individual who made requests of the State Property Committee.

242. When confronted with Ms Balakishiyeva's evidence, and when asked directly to confirm the identity of the woman to whom he allegedly spoke, Mr Allahyarov refused to do so: "[REDACTED]
[REDACTED]
[REDACTED]".⁴⁷⁶ The more plausible explanation of course is that Mr Allahyarov simply never sent the letter he has produced in evidence, never received a follow up call from the State Property Committee, never attended their offices and met with a mystery woman, and was never threatened. The entire saga is entirely unproven and should be dismissed.

(ii) Mr Bahari's associates

243. Mr Bahari also alleges that Azerbaijan harassed or intimidated other associates who were allegedly close to Mr Bahari now or in the past, such as Mr Moghaddam, Ms Ramazanova and Mr Abdulmajidov. However, no credible evidence has been put forward by Mr Bahari to support these claims and in fact each instance is put in serious doubt by the evidence on the record. Each of the relevant individuals who were cross-examined provided contradictory testimony and none of the claims withstand any scrutiny.
244. Mr Moghaddam alleges assaults against him in April 2001, June 2001 and the end of June 2002. While he claims that these assaults included bodily harm and violence, Mr Moghaddam has produced no corroborating evidence of these facts. In fact, while Mr Moghaddam alleged that he did go to the police to report at least one of those incidents, he did not make that claim in his witness evidence and has provided no evidence that he in fact did so.⁴⁷⁷ There are no photographs of injuries, nor doctors or hospital records

⁴⁷⁵ Balakishiyeva Statement, para. 15.

⁴⁷⁶ Transcript of Hearing on Jurisdiction and Merits, Day 4, 54:13-17.

⁴⁷⁷ Transcript of Hearing on Jurisdiction and Merits, Day 3, 185:4-6.

either. Furthermore, Mr Moghaddam's estranged wife, who was still living with him at the time, Ms Izmaylova, has no recollection of these events or of her husband "[REDACTED]"⁴⁷⁸

Mr Bahari chose not to examine Ms Izmaylova during the Hearing and therefore her evidence is unchallenged. The most likely explanation is because the claims Mr Moghaddam and Mr Bahari make about these alleged assaults is false.

245. When asked how he believed that the alleged plain clothes assailants were Azerbaijani police or security officers all Mr Moghaddam could say was that "[REDACTED]"⁴⁷⁹ That explanation is clearly not sufficient to prove that the mysterious individuals who allegedly assaulted Mr Moghaddam, if these events happened at all, were in any way associated with Azerbaijan and not, for instance, persons involved in the narcotics trade with whom Mr Moghaddam was acquainted.

246. The objective evidence directly contradicts Mr Moghaddam's story. State Border Service records exhibited by Azerbaijan,⁴⁸⁰ demonstrate that he was outside of Azerbaijan at the time of two of the alleged assaults. When challenged, Mr Moghaddam suggested that the dates might have been wrong:⁴⁸¹

[REDACTED]

247. That explanation is poor, likely developed by Mr Bahari and Mr Moghaddam to paper the cracks of the narrative in circumstances where they did not expect Azerbaijan to be able to defend against this false narrative many years after the fact. However, the discrepancies do not end there. For example, Mr Bahari's Notice of Arbitration

⁴⁷⁸ Izmaylova Statement, para. 9.

⁴⁷⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 186: 6-8.

⁴⁸⁰ Defence, paras. 37(d), 353(b); Rejoinder, para. 578(a); Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues under the Ministry of Economy of the Republic of Azerbaijan, **R-58**.

⁴⁸¹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 194:6-13.

contains details about the alleged assault in June 2002, which Mr Moghaddam confirmed were untrue.⁴⁸²

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

248. This incredible story has changed dramatically, but across the board there is no credible evidence that any of these alleged assaults or kidnapping ever occurred. These allegations are contradicted by evidence put forward by Azerbaijan, Mr Moghaddam's own testimony and that of his wife Ms Ismayilova. The Tribunal should reject the allegations that Mr Moghaddam was ever subject to any of the alleged assaults or in the alternative, to the extent they did occur, find that none of these events involved conduct of persons attributable to Azerbaijan. There is also no credible evidence to suggest that Mr Moghaddam's criminal prosecution and imprisonment was in any way improper, let alone connected to Mr Bahari. It is notable that Mr Moghaddam appealed but did so only against his sentence.⁴⁸³
249. While Ms Ramazanova and Mr Abdulmajidov both claim that they were subject to assaults and intimidation, none of these instances are supported by any credible evidence. The premise for these alleged assaults is (i) a trip to Caspian Fish in which they tried to photograph the facilities; and (ii) that while the security guards at Caspian Fish were questioning them, the guards somehow located and recognised a photograph of a German language document on their phone, recognised its content, and that this somehow attracted harsh recriminations. In sum, their story is preposterous. Given the copious contradictions from Ms Ramazanova and Mr Abdulmajidov on the stand, the Tribunal should dismiss their evidence. These are individuals who left their infant

⁴⁸² Transcript of Hearing on Jurisdiction and Merits, Day 3, 191:8-20.

⁴⁸³ Appeal of Mr Moghaddam and Decision of the Court dated 30 April 2014, **R-156**. *See also* Transcript of Hearing on Jurisdiction and Merits, Day 3, 197:7-8.

daughter in Azerbaijan by choice while they chose to seek asylum in the United Kingdom.

250. Mr Suleymanov's claims that he was intimidated or threatened for giving evidence also do not hold up. First, while Mr Suleymanov claims that he feared telling Mr Zeynalov that he did write the witness statement and therefore said that he did not write it, he was allegedly not fearful of confirming to an unnamed individual who phoned that he did write the statement.⁴⁸⁴ The reason for this difference was not explained. The most likely explanation is that Mr Suleymanov was never threatened and he never feared for his safety.
251. Finally, during the course of the Hearing Mr Bahari alleged that his witness, Mr Khalilov, who was at that time in the Hague, "[REDACTED]".⁴⁸⁵ This claim was never substantiated, as Mr Bahari's counsel had to admit.⁴⁸⁶ This event is categorically denied. Mr Khalilov was not on any "[REDACTED]", and it is telling that even though he was allegedly on such a list, what Mr Khalilov wanted to do was to return to Azerbaijan immediately. The more likely explanation is that Mr Khalilov simply decided not to support Mr Bahari, perhaps because he knew that his statement contained untrue statements that would be exposed under cross-examination.

IV. MR BAHARI'S CLAIMS DO NOT IDENTIFY ANY CONDUCT ATTRIBUTABLE TO THE STATE

252. Azerbaijan reaffirms its submissions that none of the alleged conduct gives rise to state responsibility. This is because there is no conduct attributable to the state. Nothing that emerged at the Hearing changed this position.
253. Mr Bahari's case is, at best, a private business dispute. To the extent any of the actions he alleges can even be established, they are grievances against individuals who acted in their private capacities. Faced with this reality, Mr Bahari has strived unsuccessfully throughout this proceeding to mischaracterise the alleged events in the garb of

⁴⁸⁴ Transcript of Hearing on Jurisdiction and Merits, Day 4, 5:1-25, 6:1-16.

⁴⁸⁵ Letter from Claimant to Tribunal dated 20 January 2025, p. 2.

⁴⁸⁶ Transcript of Hearing on Jurisdiction and Merits, Day 9, 8:25.

sovereign conduct. Consequently, his claims regarding attribution have been constantly reinvented in pleadings, and even during the course of the Hearing, and remain confusing and contradictory.

254. Mr Bahari initially argued that the alleged acts of both Messrs Aliyev and Heydarov constituted conduct of State organs in their official capacities under Article 4, that Azerbaijan directed Mr Khanghah's alleged conduct under Article 8, and that Azerbaijan acknowledged and adopted the alleged conduct of each of these persons and that of Mr Pashayev under Article 11 of the ILC Articles.⁴⁸⁷ However, Mr Bahari testified more than once at the Hearing that he does not know who was behind the alleged events,⁴⁸⁸ and accordingly, he supports no such claims. Notwithstanding Mr Bahari's own lack of knowledge, his counsel continued to submit without evidence that Messrs Heydarov and Aliyev were the perpetrators. With regard to the alleged conduct of Messrs Khanghah and Pashayev, at the Hearing Mr Bahari's counsel did not engage at all with his previously pleaded case – or Azerbaijan's defences to it, although Mr Bahari himself testified that it “[REDACTED]”⁴⁸⁹ and appeared to allege – for the first time in these proceedings – that Mr Arif Pashayev was responsible for orchestrating the transfer of Mr Bahari's property.⁴⁹⁰ Following the Hearing, the parties were invited to file a summary chart setting out their positions under Question 6 of the Tribunal's Questions (the **Overview Chart**). Yet Mr Bahari offered no further clarity in his Overview Chart, where he merely asserted Articles 4 and 11 of the ILC Articles, without joining these provisions to the facts – repeating himself in identical language across each of the alleged investments.⁴⁹¹ As such, it is not clear whether Mr Bahari has withdrawn these particular allegations of attribution.
255. All of Mr Bahari's claims of attribution asserted in these proceedings fail for the reasons explained in Azerbaijan's pleadings, and summarised below with reference to the Tribunal's questions 4 and 5.

⁴⁸⁷ Statement of Claim, paras. 473, 479, 483.

⁴⁸⁸ Transcript of Hearing on Merits and Jurisdiction, Day 2, 48:6-8, 23-25, 49:13-17, 145:12-13, 147:7-24.

⁴⁸⁹ Transcript of Hearing on Merits and Jurisdiction, Day 2, 47:17-19.

⁴⁹⁰ Transcript of Hearing on Merits and Jurisdiction, Day 2, 68:5-11.

⁴⁹¹ Claimant's Overview Chart, pp. 1-2, 4, 7, 9-10.

1. Any relevant conduct was purely private conduct

256. It is common ground that only the acts carried out in an official capacity by State organs would be attributable under Article 4.⁴⁹² Even if the State organs acting in official capacity exceeded their authority, their official conduct would remain attributable to Azerbaijan.⁴⁹³ It is also undisputed that state officials, including organs, are capable of purely private conduct.⁴⁹⁴ Hence, to attribute the alleged conduct of Messrs Aliyev and Heydarov to Azerbaijan, Mr Bahari is required to show that they were State organs who were acting in their official capacities.
257. There is no evidence – except for Mr Bahari’s assertions – that the alleged conduct of Messrs Aliyev and Heydarov, if it happened at all, was carried out in an official capacity or with State authority.⁴⁹⁵ In an attempt to fill the evidentiary void, Mr Bahari introduced the Allan & Makarenko Report, which has no probative value.⁴⁹⁶ He also attempted to argue at the Hearing that the Tribunal’s protective measures provide support for a finding of attribution regarding historic allegations:



258. This not a serious submission. The Tribunal’s protective measures were ordered as a matter of prudence, notwithstanding Azerbaijan’s consistent and substantiated denials, and without any determination of the facts.⁴⁹⁸ And as a matter of principle, recent unsubstantiated allegations cannot be any sort of proof of 20-year old allegations which remain similarly unsubstantiated.
259. Mr Bahari argued for the first time at the Hearing that the burden is on Azerbaijan to prove the alleged acts were not carried out in an official capacity, and were not private,

⁴⁹² Statement of Claim, paras. 472 and 473; Respondent’s Defence, para. 36.

⁴⁹³ Commentary to the ILC Articles, 2001, CLA-37, Article 7.

⁴⁹⁴ Transcript of Hearing on Merits and Jurisdiction, Day 1, 100:4-8.

⁴⁹⁵ Respondent’s Defence, para. 37.

⁴⁹⁶ Respondent’s Rejoinder, paras. 126, 135-136; Transcript of Hearing on Merits and Jurisdiction, Day 1, 207:20-25, 208:1-25, 209:1-12; Respondent’s Openings, slide 105.

⁴⁹⁷ Transcript of Hearing on Merits and Jurisdiction, Day 9, 37:16-23.

⁴⁹⁸ Transcript of Hearing on Merits and Jurisdiction, Day 9, 37:24-25, 38:1-24.

essentially demanding that Azerbaijan prove a negative.⁴⁹⁹ This is wrong as a matter of law. It is for Mr Bahari to establish and prove his allegations and he must do so with the necessary specificity.⁵⁰⁰ He has not done so and has thus failed to discharge his burden of proof.

260. In the case of Mr Aliyev, Azerbaijan has demonstrated that he only became a State organ when he became prime minister in 2003. At the time of the alleged wrongdoing, in 2001-2002, he was Vice-President of SOCAR and a Member of Parliament. He was not a State organ.⁵⁰¹ At the Hearing, Mr Bahari did not address any further the legal status of Mr Aliyev stating that “ [REDACTED] ”.⁵⁰² When questioned by the Tribunal whether it is Mr Bahari’s case that Mr Aliyev abused his official position in relation to SOCAR, Mr Bahari sought to evade it, falling back on the Allan & Makarenko report to argue that as the son of the then President, he was even more powerful than Mr Heydarov.⁵⁰³ However, the customary international law principles of attribution do not turn on familial relationships, and remain consistent across jurisdictions, regardless of any alleged unique “dynamics” in Azerbaijan.⁵⁰⁴
261. Although Mr Bahari has not, and cannot, establish that Mr Aliyev was a State organ before 2003, he continues to assert that Mr Aliyev’s alleged conduct is attributable to Azerbaijan under Article 4 of the ILC Articles. That argument should be readily dismissed. Mr Bahari conflates the alleged conduct of Messrs Aliyev and Heydarov in his submissions but when separated, the specific allegations against Mr Aliyev are limited. Prior to becoming a State organ, the only specific allegation against Mr Aliyev, besides baseless inferences, is an alleged telephone call following Mr Bahari’s purported removal from the Caspian Fish opening ceremony – in respect of which Mr Bahari’s previous story was that he visited Mr Aliyev in his summerhouse, but even

⁴⁹⁹ Transcript of Hearing on Merits and Jurisdiction, Day 9, 26:14-16.

⁵⁰⁰ *Binder v Czech Republic*, UNCITRAL, Final Award, 15 July 2011, **CLA-79**, para. 392.

⁵⁰¹ Constitution of the Republic of Azerbaijan, **CLA-16**, Article 81; Law on Civil Service, **RLA-181**, Article 8; *Burlington Resources, Inc. v Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability, 14 December 2012, **CLA-144**, para. 305 (the conduct of an individual member of a legislature is not attributable to the State).

⁵⁰² Transcript of Hearing on Merits and Jurisdiction, Day 1, 99:24-25, 100:1-3.

⁵⁰³ Transcript of Hearing on Merits and Jurisdiction, Day 9, 36:2-23.

⁵⁰⁴ Transcript of Hearing on Merits and Jurisdiction, Day 9, 36:12-19.

these are not all of the conflicting versions of this event that Mr Bahari has given in this case.⁵⁰⁵

262. Even if Mr Aliyev were a State organ on 10 February 2001, the alleged phone call, if it occurred at all, had no connection with any official duties of the Azerbaijani Parliament, or SOCAR. It would therefore not have been under the cover of any “*official status*”⁵⁰⁶ and it would have been done solely in Mr Aliyev’s private capacity.
263. It is common ground that Mr Heydarov has been a State organ from 1995 in his role as Chairman of the State Customs Committee, and later as Minister of Emergency Situations.⁵⁰⁷ However, his private business dealings are not attributable to Azerbaijan. In fact, even Mr Bahari admitted that that alleged stripping of Caspian Fish’s assets through the LLC “[REDACTED]”.⁵⁰⁸ Having recognised the principle, the only remaining question is whether the alleged conduct was official in nature.⁵⁰⁹ There is nothing to suggest it was.
264. Azerbaijan denies the factual premise of these allegations, which Mr Bahari has also failed to establish. There is no evidence that any alleged conduct was done with the colour of official authority.⁵¹⁰ It is inadequate for Mr Bahari’s counsel to merely plead that Mr Heydarov was an important figure at the “[REDACTED]” to try to establish that conduct involving Caspian Fish was under colour of official authority.⁵¹¹ That is a circular argument, which elides the distinction between acts carried out by State organs in their official versus purely private capacities. Taken to its natural extreme, it would mean that State organs are not capable of purely private conduct at all, which is incorrect as a matter of law, as recognised by both parties. That erroneous position is however precisely what has been advocated in the Allan & Makarenko

⁵⁰⁵ Defence, para. 258; Extract of transcript of Mr Bahari’s interview on Azerbaijan Saati with Mr Ganimat Zahid dated 6 April 2019, **R-124**; First Bahari Statement, paras 70-71; Notice of Arbitration dated 5 April 2019, **R-54**, para. 38.

⁵⁰⁶ Commentary to the ILC Articles, 2001, **CLA-37**, Article 7, commentary (2).

⁵⁰⁷ Respondent’s Rejoinder, footnote 280.

⁵⁰⁸ Transcript of Hearing on Merits and Jurisdiction, Day 9, 34:13-18.

⁵⁰⁹ Transcript of Hearing on Merits and Jurisdiction, Day 9, 29:1-25.

⁵¹⁰ Commentary to the ILC Articles, 2001, **CLA-37**, Article 4, commentary (13).

⁵¹¹ Transcript of Hearing on Merits and Jurisdiction, Day 9, 35:4-11, 113:12-21; Transcript of Hearing on Merits and Jurisdiction, Day 1, 104:1-4.

report, notwithstanding that it is contrary to long-standing jurisprudence on the law of attribution to States.⁵¹²

265. Mr Bahari stretched this point further at the Hearing, alleging that the Allan & Makarenko report was evidence of the “[REDACTED]” conduct that Azerbaijan “[REDACTED]” and “[REDACTED]”, as envisaged under the commentary to Article 7 of the ILC Articles.⁵¹³ However, the sensationalist allegations of the so-called experts are not evidence of any factual matters in dispute in these proceedings, and cannot form the basis for any inference of “[REDACTED]” conduct so as to give rise to attribution.⁵¹⁴ The unrelated allegations discussed in the Allan & Makarenko report were not considered at the Hearing, and cannot inform any factual findings by the Tribunal. It is for Mr Bahari to establish on the facts of this case that there was such systematic or recurring conduct of State organs exceeding their authority that knowledge of it should be imputed to Azerbaijan. Mr Bahari has failed to do so.
266. Mr Bahari also pleads that the alleged threats and intimidation are effective or even possible because they are “[REDACTED]”,⁵¹⁵ and that Messrs Aliyev and Heydarov used “[REDACTED]”.⁵¹⁶ The subjective belief of the purported victims is irrelevant to the question of whether the alleged acts were in fact undertaken under colour of authority. Without actual evidence that Mr Heydarov used an official title, any official document or other means to create a semblance or presumption of authority, the mere testimony of Mr Bahari and his witnesses that they believed Mr Heydarov acted under the colour of authority is unavailing.⁵¹⁷ Moreover, Mr Bahari has not challenged the evidence of Mr Kalantarli

⁵¹² The wanton trespass by a governor in *Bensley* was found to be under no official colour. See *John Bensley Case*, Award, 20 Feb. 1850, **RLA-263**, at 3018; The mixed commission in *Mallén* found that an assault committed by an individual who was also a police officer was a “malevolent and unlawful act of a private individual” not attributable to the State. See *Mallén (United Mexican States) v United States of America*, Mixed Commission, Award, 27 Apr. 1927, **RLA-130**, para 4.

⁵¹³ Commentary to the ILC Articles, 2001, **CLA-37**, Article 7, commentary (8); Transcript of Hearing on Merits and Jurisdiction, Day 9, 39:10-25, 40:1-15.

⁵¹⁴ *Rumeli Telekom and ors v Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 Jul. 2008, **CLA-52**; Respondent’s Rejoinder, para. 135.

⁵¹⁵ Transcript of Hearing on Merits and Jurisdiction, Day 9, 30:3-14.

⁵¹⁶ Transcript of Hearing on Merits and Jurisdiction, Day 9, 28:25, 29:1-4.

⁵¹⁷ *Petrolane, Eastman Whipstock Manufacturing and others v Iran and others*, IUSCT Case No. 131, Award No. 518-131-2 (14 Aug. 1991), **RLA-265**, para. 83.

as to the alleged meeting in 2013 when Azerbaijan understands Mr Bahari went to the Ministry begging for a job, and that Mr Bahari asked to meet Mr Heydarov saying “[REDACTED]”.⁵¹⁸ First Deputy Minister Mr Mirzayev met him only as a courtesy, because Mr Heydarov was not in the building. Mr Bahari himself did not think that his issues had anything to do with Mr Heydarov’s Ministry and hence, his official capacity.

267. As explained in *Gavrilović v Croatia*, the “acts that an organ commits in its purely private capacity are not attributable to the State, even if it has used the means placed at its disposal by the State for the exercise of its function”.⁵¹⁹ This is a recent authority that Mr Bahari attempts to brush aside by misstating that it does not “[REDACTED]” about whether an act “[REDACTED]”.⁵²⁰ As Mr Bahari himself recognises, the tribunal in *Gavrilović* went on to analyse whether there was “*compelling evidence*” that a State organ was acting for “*personal gain*”, so as to indicate they acted in purely private capacity.⁵²¹ In the case of Mr Heydarov, all evidence points to Caspian Fish being his private business interest, which was established and operated for his personal profit.⁵²² The alleged conduct in relation to this fish business was so remote to his official functions in the State Customs Committee or the Ministry of Emergency Situations to have the colour of authority.⁵²³
268. It follows that any alleged conduct of Mr Heydarov and Mr Aliyev (should the Tribunal find he was a State organ at the relevant time) would not constitute acts taken in their

⁵¹⁸ Respondent’s Rejoinder, para. 584; Kalantarli Statement, paras. 3-8.

⁵¹⁹ *Gavrilovic v Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018, **CLA-81**, para. 801.

⁵²⁰ Transcript of Hearing on Merits and Jurisdiction, Day 1, 102:23-25, 103:1-7.

⁵²¹ *Gavrilovic v Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018, **CLA-81**, para. 802.

⁵²² Letter from Mr Heydarov to Quinn Emanuel dated 25 October 2024, **R-304**; Transcript of Hearing on Merits and Jurisdiction, Day 5, 115:6-25 (“[REDACTED]”); Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68** (of the June 2002 meeting: “[REDACTED]”).

⁵²³ Transcript of Hearing on Jurisdiction and Merits, Day 9, 104:3-20; *Caire (France) v United Mexican States, Mixed Commission*, Award (7 June 1929), **RLA-264** at 531; Commentary to the ILC Articles, 2001, **CLA-37**, Article 7, commentary (7) (“*where the conduct is so removed from the scope of their official functions that it should be assimilated to that of private individuals, not attributable to the State*”).

official capacity, so as to be attributable to Azerbaijan under Article 4 of the ILC Articles.

2. The alleged acts are not otherwise attributable to Azerbaijan

269. Mr Bahari limited his submissions at the Hearing to the conduct of State organs, but referred to Article 11 in his Overview Chart, without any analysis. From what Azerbaijan could understand from previous written submissions, it appears that Mr Bahari asserts that the alleged conduct of the vaguely described “*Security Services*”, Ministry of Justice, State Tax Service, Ministry of Economy, State Customs Committee, Ministry of Emergency Situations are attributable under Articles 4 and 11.⁵²⁴ However, the threshold for attribution under Article 11 is high. Mr Bahari has failed to show there was a “*clear and unequivocal*” act of acknowledgement and adoption of the alleged conduct by Azerbaijan.⁵²⁵
270. Further, Mr Bahari has not engaged with Azerbaijan’s objections that the alleged conduct of third parties cannot be attributed to Azerbaijan by dint of any administrative acts or omissions of these State organs.⁵²⁶ As explained in *Resolute Forest Products v Canada*, accepting Mr Bahari’s argument “*would mean that many run-of-the-mill private conduct (e.g. the purchase of real property) would be rendered State acts simply because it is rubberstamped by the State (e.g. the registration in the land register). The same principle would apply to government approvals done for instance under competition laws, utility laws, or bankruptcy laws*”.⁵²⁷ As such, any approvals granted by the State, even if those approvals involved an evaluation process, would not rise to the level of acknowledgment and adoption under Article 11 of the ILC Articles.
271. It follows that Mr Bahari’s claims of attribution under Article 11 must fail.

⁵²⁴ Claimant’s Overview Chart, pp. 1-2, 4, 7, 9-10.

⁵²⁵ Commentary to the ILC Articles, 2001, **CLA-37**, Article 11, commentary (8).

⁵²⁶ Respondent’s Defence, paras. 39-40.

⁵²⁷ *Resolute Forest Products Inc v Canada*, PCA Case No. 2016-13, Final Award (25 July 2022), **RLA-133**; see also para. 306 (adopting the same reasoning under ILC Articles, Art. 11).

V. MR BAHARI'S MERITS CLAIMS REMAIN LEGALLY FLAWED AND UNPROVEN

272. Contrary to the oral submissions made by Mr Bahari's counsel, it is not the case that that the legal aspects of his claim have been "[REDACTED]".⁵²⁸ Mr Bahari has consistently failed to identify which specific acts or omissions of Azerbaijan that he alleges would constitute a breach, or explain why. As such, he has not discharged his burden of proof to the required standard, as articulated for instance in *Binder v Czech Republic*.⁵²⁹
273. Notwithstanding being invited to restate his case in the Overview Chart, Mr Bahari's legal case remains as vague, confused and unsubstantiated as it was in his Statement of Claim. Mr Bahari has failed to argue with any precision even a singular breach by Azerbaijan of the Treaty or customary international law. Notwithstanding the Tribunal's specific direction that the parties "[REDACTED]" in "[REDACTED]"⁵³⁰ in their respective Overview Charts, Mr Bahari's summary is generic, almost entirely repetitive between each of the four listed investments and does not contain any cross-references to the record. Mr Bahari maintains his blanket assertions of breaches, which do not engage properly with Azerbaijan's evidence in defence.
274. In stark contrast, Azerbaijan prepared its Overview Chart with the level of particularisation that it demanded. To assist the Tribunal, Azerbaijan summarised Mr Bahari's case (to the extent it could be discerned) and provided its specific responses to the various allegations, fully referenced to the record. It appears that Mr Bahari retained his broad-brush approach in a misguided attempt to conceal the flaws in his claims.
275. While they remain unparticularised, the content of Mr Bahari's legal claims have transformed over the course of his pleadings, the Hearing and the submission of his

⁵²⁸ Transcript of Hearing on Jurisdiction and Merits, Day 1, 105:23-25.

⁵²⁹ Defence, para. 375; *see also Binder v Czech Republic*, UNCITRAL Final Award, 15 July 2011, **CLA-79**, para. 392 ("The obligations in the BIT are defined in general terms, such as fair and equitable treatment, arbitrary or discriminatory measures and full protection and security, and the Claimant should indicate which particular acts or omissions; or which domestic laws or regulations, he considers to have violated the Claimant's rights under the BIT.")

⁵³⁰ Email dated 26 January 2025 from PCA to Parties, Tribunal's question no. 6.

Overview Chart. By way of example, Mr Bahari's expropriation claim has radically changed, being abandoned in all but one respect by the end of the Hearing. The claim shifted focus to denial of justice - as opposed to the other limbs of FET - in respect of the Coolak Baku and Ayna Sultan claims, and Mr Bahari failed to plead any breach of Effective Means in his Overview Chart (despite expressly confirming during the Hearing that he is not withdrawing that claim).⁵³¹ This unhelpful approach throughout these proceedings has required Azerbaijan to discern Mr Bahari's possible arguments as they shifted, and defend against them. The process of second-guessing Mr Bahari's case has been challenging and inefficient.

276. However, as demonstrated above and throughout the course of these proceedings, there is no credible factual evidence of any breach of the Treaty. In the following sections, Azerbaijan explains why each of the iterations of Mr Bahari's claims of breaches must fail both under customary international law and the Treaty. For the avoidance of doubt, Azerbaijan maintains in full its written pleadings, and its summary in the Overview Chart, and focuses here on addressing relevant additional points that emerged at the Hearing and also following the submission of its Rejoinder.

A. Azerbaijan has not breached Article 2(3) of the Treaty

277. In characteristically vague and sensationalist fashion, Mr Bahari alleges breaches of Azerbaijan's FET obligations under Article 2(3) of the Treaty. He claims Azerbaijan failed to respect his legitimate expectations, caused harassment, failed to provide transparency or due process, did not refrain from arbitrary or discriminatory treatment, failed to act in good faith, caused denial of justice and did not provide Effective Means.⁵³²
278. These allegations have been extensively addressed in Azerbaijan's written submissions, and summarised in its Overview Chart.⁵³³ In brief, Azerbaijan maintains that the alleged events never occurred, and even if they did, they would not meet the "high" threshold for breach of FET.⁵³⁴ Mr Bahari has not demonstrated that Azerbaijan gave

⁵³¹ Mr Chang's confirmation that Mr Bahari maintains his Effective Means claims: Transcript of Hearing on Jurisdiction and Merits, Day 9, 63:6-11.

⁵³² Statement of Claim, Section VIII.A.

⁵³³ Respondent's Overview Chart, rows 2-5.

⁵³⁴ *Biwater v Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, **CLA-127**, para. 597.

any assurances that could give rise to legitimate expectations on his part, or that he held any legitimate expectations “*in the exercise of an objectively reasonable business judgment*”.⁵³⁵ Assuming any such expectations could be established, Mr Bahari has never explained – either in his pleadings⁵³⁶ or at the Hearing – exactly how they were breached by Azerbaijan.

279. In the circumstances, Azerbaijan does not repeat its pleadings or its submissions at the Hearing, and limits itself to the following points in respect of the claims concerning harassment, coercion or abuse, denial of justice, and Effective Means.

1. Azerbaijan did not breach any obligation to refrain from harassment, coercion or abusive treatment

280. Mr Bahari’s claim for breach of FET has been pleaded seemingly in ignorance (or in flagrant disregard) of the basic principle that FET is afforded to “investments” of “investors” and not to the world at large.⁵³⁷ The corollary of the basic principle is that FET protection can only be claimed in respect of investments that are continued to be held by investors, and not in isolation.
281. On Mr Bahari’s own case, as reimagined at the Hearing, the loss of his investments in Coolak Baku occurred – at the latest – by 12 April 2006 i.e., the date of the writ of execution in the ASFAN Proceedings⁵³⁸ that Mr Bahari claims resulted in the reversion of the JV property to ASFAN.⁵³⁹ Mr Bahari’s alleged loss of his investments in fact precedes that date: he claims to have been deprived of Caspian Fish by 1 January 2003;⁵⁴⁰ he claims the loss of Ayna Sultan occurred by 24 June 2005, which is the date of the

⁵³⁵ *WCV Capital v. The Czech Republic*, PCA Case No. 2016-12, Award, 26 July 2023, **RLA-299**, para. 340.

⁵³⁶ Respondent’s Rejoinder, para. 614.



⁵³⁷ *See Rompetrol v Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2013, **CLA-51**, para. 198 (“A final important point is that when a treaty provision such as Article 3(1) establishes a requirement to secure ‘fair and equitable treatment’ for the investments of foreign investors, that requirement refers in the first instance to the host State’s treatment of the investment, taken as a whole”)

⁵³⁸ Writ of Execution in case No 1-96/03-45/2005 dated 12 April 2006, **R-106**; the Writ of Execution took effect from 14 July 2005, which is the date that Azerbaijan considers to be the latest when Mr Bahari could argue he lost all of his investments.

⁵³⁹ Claimant’s Reply, para. 1052(f).

⁵⁴⁰ Claimant’s Reply, para. 1083.

Baku Appellate Court Decision that he faults for alleged denial of justice;⁵⁴¹ and he claims to have lost his carpets permanently by 15 June 2002.⁵⁴² In any event, by 12 April 2006 at the latest, Mr Bahari – on his own case – no longer owned any investments that would be protected by the Treaty.

282. As FET protection is owed to investments, again looking at Mr Bahari’s own case, after 12 April 2006 Mr Bahari no longer had any investments entitled to FET protection under the Treaty. Any action taken by Azerbaijan after that date (which is in any event not accepted) would not have sufficient connection to harm to any investment. This means that allegations of harm to Mr Bahari, “*every person ever susceptible to provide any information to Mr Bahari*”, his “*two lawyers*”, his “*family and close ones*”⁵⁴³ after that date are not relevant to the FET obligation.
283. This covers at minimum the alleged harm to Mr Moghaddam in 2009, the alleged threat from Mr Heydarov’s associate in 2013, the alleged harm to Mr Allahyarov in 2019, to Mr Abdulmajidov and Ms Ramazanova from 2021 onwards, and the alleged “” against Parabellum in 2024.⁵⁴⁴ Mr Bahari himself recognizes that these events occurred after the loss of the alleged investment, but claims they “”.⁵⁴⁵ This is neither understood, nor explained by Mr Bahari. He has failed to provide concrete evidence of harassment and in the circumstances, there is no question of corroboration. In any event, these – and other – allegations of harassment are denied by Azerbaijan, and have been rebutted above, as well as at the Hearing and in Azerbaijan’s pleadings.⁵⁴⁶

2. There was no denial of justice or breach of effective means

284. Mr Bahari advanced new claims of denial of justice and breach of effective means in his Reply.⁵⁴⁷ Despite initially arguing denial of justice as a matter of both customary

⁵⁴¹ Claimant’s Opening Presentation dated 20 January 2025, slide 1.10, p. 13; Claimant’s Translation of R-149, the Baku Appellate Court Decision, 24 June 2005, C-309.

⁵⁴² Statement of Claim, paras. 183, 613.

⁵⁴³ Claimant’s Reply, para. 946.

⁵⁴⁴ Claimant’s Opening Presentation dated 20 January 2025, Timeline, pp. 158-160.

⁵⁴⁵ Transcript of Hearing on Jurisdiction and Merits, Day 1, 13:25, 14:12, 23:4-8.

⁵⁴⁶ Respondent’s Opening Presentation dated 20 January 2025, slides 123-124; Respondent’s Rejoinder, Part 3.VI.

⁵⁴⁷ Claimant’s Reply, para. 981.

international law and the FET obligation in Article 2(3),⁵⁴⁸ Mr Bahari subsequently limited it to a Treaty claim.⁵⁴⁹ Either way, Azerbaijan has demonstrated that the denial of justice claims were a non-starter, as Mr Bahari not only was represented, heard and in many instances prevailed, and he failed to exhaust local remedies.⁵⁵⁰ Mr Bahari has not shown that seeking recourse before the Azerbaijani courts would be “*futile, manifestly ineffective or simply unavailable*”.⁵⁵¹ Even if the exhaustion of local remedies requirement is set aside for the sake of argument, Azerbaijan has long established that Mr Bahari’s complaints against the Ayna Sultan and Coolak Baku proceedings do not rise to the level of a denial of justice.⁵⁵² As the claim for denial of justice was not developed meaningfully at the Hearing, or in the Claimant’s Overview Chart, Azerbaijan limits itself to the following summary.

285. The standard for denial of justice is a “*demanding one*”⁵⁵³ and Mr Bahari has failed to meet it. He has raised general complaints against the Azerbaijani judicial system, which prove nothing in the circumstances of the present case.⁵⁵⁴ He has impugned the judgments in the ASFAN and Ayna Sultan proceedings but as explained in Azerbaijan’s pleadings and summarised above, these issues do not rise to the level of flagrant substantive defects or gross procedural errors.⁵⁵⁵ There is no evidence of collusion involving the Azerbaijani courts, or any indication of bias against Mr Bahari.⁵⁵⁶
286. As to effective means, it is not clear if Mr Bahari maintains this claim. Mr Bahari originally argued that “*effective means of redress*” was part of the FPS standard,⁵⁵⁷ but in his Reply, sought to introduce it as a distinct substantive protection (based on MFN

⁵⁴⁸ Claimant’s Reply, para. 982.

⁵⁴⁹ Claimant’s Overview Chart, pp. 5, 8.

⁵⁵⁰ Respondent’s Rejoinder, paras. 653-654.

⁵⁵¹ *Gramercy v Peru*, ICSID Case No. UNCT/18/2, Final Award, 6 December 2022, **RLA-305**, para. 1044.

⁵⁵² Respondent’s Rejoinder, paras. 649-652.

⁵⁵³ *Oostergetel and ors v Slovakia*, UNCITRAL, Final Award, 23 April 2012, **CLA-100**, para. 273.

⁵⁵⁴ *Manolium Processing v Belarus*, PCA Case No. 2018-06, Final Award, 22 June 2021, **CLA-191**, para. 533.

⁵⁵⁵ Respondent’s Rejoinder, paras. 334-355, 356-365.

⁵⁵⁶ Respondent’s Rejoinder, para. 652(d); *Lidercón v. Peru*, ICSID Case No. ARB/17/9, Award, 6 March 2020, **CLA-307** para. 270

⁵⁵⁷ Statement of Claim para. 560.

in Article 2(3)).⁵⁵⁸ Azerbaijan objected, since the plain language of the MFN clause made it clear it was limited to the FET standard, and did not permit importation of other substantive Treaty protection.⁵⁵⁹ Failing to engage with Azerbaijan’s objections, Mr Bahari bizarrely argued there was no need to decide the operation of the MFN clause at all to determine the claims of FPS and Effective Means,⁵⁶⁰ prompting the Tribunal to invite Mr Bahari to clarify whether his claims based on MFN were withdrawn.⁵⁶¹ Mr Chang went on to confirm Mr Bahari indeed maintains the Effective Means claim on the basis of the MFN clause in Article 2(3).⁵⁶² Yet, no further particularisation of this claim was provided in oral submissions, nor is the alleged breach of Effective Means mentioned in the Claimant’s Overview Chart.⁵⁶³

287. Regardless of Mr Bahari’s position on effective means, Azerbaijan maintains that there is no separate standard of effective means applicable in this dispute,⁵⁶⁴ save that it may be contained within the minimum standard of treatment under customary international law.⁵⁶⁵ Assuming effective means could be relied upon due to breach of MFN (which is denied and addressed separately as a matter of jurisdiction), Azerbaijan maintains that effective means is limited to ensuring there is an available mechanism to bring claims or enforce rights without being subject to undue delay.⁵⁶⁶ It is also subject to a qualified requirement of exhaustion of local remedies.⁵⁶⁷
288. Therefore, the obligation of effective means would not impact Mr Bahari’s claims as he only ever claims he “*contemplated*” or “*attempted to*” initiate proceedings in

⁵⁵⁸ Claimant’s Reply, para. 981.

⁵⁵⁹ Respondent’s Rejoinder, paras. 255-257; Defence, paras. 159-169.

⁵⁶⁰ Claimant’s Rejoinder, para. 508.

⁵⁶¹ Transcript of Hearing on Jurisdiction and Merits, Day 1, 235:20-24.

⁵⁶² Transcript of Hearing on Jurisdiction and Merits, Day 9, 63:6-11.

⁵⁶³ It bears noting that effective means was not mentioned in the Claimant’s Opening Slides, or argued by the Claimant during the Hearing. *See* Claimant’s Opening presentation, slide 6.21, p. 138.

⁵⁶⁴ Respondent’s Rejoinder, para. 635; *Gramercy v Peru*, ICSID Case No. UNCT/18/2, Final Award, 6 December 2022, **RLA-305**, para. 1040 and 1044.

⁵⁶⁵ *H&H v. Egypt*, ICSID Case No. ARB/09/15, Final Award, 6 May 2014, **CLA-282**, para. 441; *Duke v. Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008, **CLA-286**, para. 391.

⁵⁶⁶ *Chevron and TexPet v. Ecuador (I)*, PCA, Partial Award on the Merits, 30 March 2010, **CLA-267**, paras. 247, 250.

⁵⁶⁷ *Chevron and TexPet v. Ecuador (I)*, PCA, Partial Award on the Merits, 30 Mar. 2010, **CLA-267**, paras. 323-324.

Azerbaijan.⁵⁶⁸ On his case, he did not *in fact* commence any proceedings. On Azerbaijan’s case, he participated in local proceedings where he was a relevant party, and was accorded fair process. As such, either way, the effective means standard (even if it applies as a separate standard to FET), does not impact the outcome of Mr Bahari’s claims.

289. Therefore, Mr Bahari’s claims of breach of FET under Article 2(3) of the Treaty – including any breach of denial of justice or effective means – must fail.

B. Azerbaijan has not breached the Minimum Standard of Treatment

290. Mr Bahari alleged breach of the minimum standard of treatment under customary international law for the first time in his Rejoinder on Jurisdiction.⁵⁶⁹ He maintained that allegation in his Opening slides,⁵⁷⁰ and the Overview Chart, but failed to meaningfully develop it.

291. In its Defence, Azerbaijan relied on *Waste Management v Mexico* to plead that the minimum standard of treatment:

is infringed by conduct attributable to the State and harmful to the claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety—as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process.⁵⁷¹

292. Azerbaijan articulated the standard in the context of its submission that “*the actual content of the treaty standard of fair and equitable treatment is not materially different from the content of the minimum standard of treatment in customary international law*”.⁵⁷² In his Reply, Mr Bahari described this argument as “*untenable*”⁵⁷³ and sought

⁵⁶⁸ Claimant’s Reply, paras. 1021, 1022, 1043, 955.

⁵⁶⁹ Claimant’s Rejoinder, paras. 434, 509.

⁵⁷⁰ Claimant’s Opening Presentation dated 20 January 2025, slides 1.06-1.11, 6.21-6.22, pp. 9-14, 138-139.

⁵⁷¹ Respondent’s Defence, para. 383; *Biwater v Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, **CLA-127**, para. 597.

⁵⁷² Respondent’s Defence, para. 381; *Biwater v Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, **CLA-127**, para. 592; *Saluka v Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, **CLA-56**, para. 291; *Azurix v Argentina*, ICSID Case No. ARB/01/12, Final Award, 14 July 2006, **CLA-57**, para. 361; *CMS v Argentina*, ICSID Case No. ARB/01/8, Award, 12 May 2005, **CLA-71**, paras. 282-284; *Occidental v Ecuador*, LCIA Case No. UN3467, Award, 1 July 2004, **CLA-149**, para. 190.

⁵⁷³ Claimant’s Reply, para. 919.

further discredited by the evidence that emerged during the cross-examination of Mr Bahari.

C. Azerbaijan has not expropriated Mr Bahari's alleged investments

295. Mr Bahari's expropriation claim under Article 4 of the Treaty has changed many times, betraying his lack of faith in its prospects. Mr Bahari originally pleaded expropriation in respect of all of his alleged investments.⁵⁸¹ In his Reply, he apparently limited his expropriation claim to Caspian Fish,⁵⁸² but reinstated the remainder of his expropriation claims in his Rejoinder on Jurisdiction,⁵⁸³ only to once again reverse course and limit it to Caspian Fish during the Hearing.⁵⁸⁴
296. There is no factual foundation for the expropriation claim. By way of summary, Mr Bahari claims that his interests were expropriated through the incorporation of a local LLC in Azerbaijan and accumulation under it of the Caspian Fish business assets without his knowledge or involvement even though the LLC was at all relevant times fully owned by Caspian Fish BVI and in fact Mr Bahari participated in its creation.⁵⁸⁵ The evidence shows that Mr Bahari signed the application to register the LLC, its charter and even paid an initial nominal capital contribution.⁵⁸⁶ As such, there can be no question of the LLC being used to deprive Mr Bahari of his investment in Caspian Fish.
297. Furthermore, as described above, Mr Bahari agreed to sell his 40% stake in Caspian Fish for USD 4.5 m, as recorded in the 2001 Sale Agreement,⁵⁸⁷ and further amendment agreed on 15 June 2002.⁵⁸⁸ Mr Bahari was paid for his shares, and he has himself

⁵⁸¹ Statement of Claim, para. 584, 613.

⁵⁸² Claimant's Reply, para. 1079.

⁵⁸³ Claimant's Rejoinder on Jurisdiction, para. 461.

⁵⁸⁴ Transcript of Hearing on Jurisdiction and Merits, Day 1, 88:1-4.

⁵⁸⁵ Claimant's Reply, para. 1085.

⁵⁸⁶ Application to the Ministry of Justice for the registration of the LLC dated 29 August 2000, **R-56**; Charter of the LLC dated 11 September 2009, **R-57**; Extract from the State Register of Commercial Organisations (ARHAD) dated 1 October 2002, **R-40**.

⁵⁸⁷ Buyer and Seller Agreement between Mr Khanghah and Mr Bahari dated 20 September 2001, **R-50**.

⁵⁸⁸ Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**.

admitted to receiving USD 5,361,000.⁵⁸⁹ There can be no expropriation where Mr Bahari voluntarily sold his shares to a third party and received fair consideration for them.

D. Azerbaijan has not breached any obligation of FPS

298. As with the rest of Mr Bahari’s legal claims, the claim of breach of FPS was not meaningfully developed at the Hearing, or in the Overview Chart. In fact, counsel for Mr Bahari did not raise FPS at the Hearing at all, except to confirm – in response to the Tribunal’s question – that they maintain the FPS claim on the basis of the MFN clause in Article 2(3).⁵⁹⁰ Azerbaijan denies that it owes any obligation of FPS to Mr Bahari. Should the Tribunal find that it does (contrary to Azerbaijan’s position on MFN), there is no credible evidence breach. Azerbaijan limits itself to two brief points.
299. First, the FPS obligation refers to the protection of investors from “*physical interference with their investments caused by third parties*”.⁵⁹¹ As explained above in the context of FET, the obligation concerns harm to the investment, and presupposes that a qualifying investment continues to exist. On his own case, Mr Bahari had no investment after 12 April 2006. It follows that there could be no breach of FPS after that date. As for the factual aspects of the FPS claim, they are essentially the same allegations that are said to constitute harassment under FET, and are premised on the unreliable testimony of Mr Bahari and his witnesses who were wholly discredited at the Hearing.⁵⁹² They are denied, and have been rebutted in Azerbaijan’s pleadings.⁵⁹³
300. Second, Azerbaijan reaffirms its submissions that FPS is limited to physical protection of the investment only.⁵⁹⁴ Should the Tribunal find (contrary to Azerbaijan’s primary

⁵⁸⁹ Email from Mr Bahari A Kalantarli, copied to President’s Office dated 4 December 2013, **R-53**; Email from Mr Bahari to ANS Press dated 28 June 2013, **R-145**; Extracts of Notebooks containing records of payments in relation to Mr Heydarov’s business affairs from 2002, **R-389**; Table of Payments from Mr Heydarov to Mr Bahari in 2002 (Respondent’s Rejoinder, para. 470).

⁵⁹⁰ Transcript of Hearing on Jurisdiction and Merits, Day 9, 63:6-11.

⁵⁹¹ *Gabriel Resources v. Romania (I)*, ICSID Case No. ARB/15/31, Award, 8 March 2024, **RLA-271**, para. 874.

⁵⁹² Respondent’s Rejoinder, para. 656.

⁵⁹³ Defence, Part 3.V.C; Respondent’s Rejoinder, Part 3.VI.

⁵⁹⁴ *Saluka Investments BV v Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, **CLA-56**, para. 484; *Olin Holdings Limited v Libya*, ICC Case No. 20355/MCP, Final Award, 25 May 2018, **RLA-169**, paras 362-366; *MTS v Turkmenistan (II)*, ICSID Award, 14 June 2023, **RLA-170**, para. 395; *IMFA v Indonesia*, PCA Final Award, 29 March 2019, **RLA-171**, para. 267 and cases cited therein.

position) that FPS extends to legal protection and security, even on Mr Bahari's own case, FPS only requires Azerbaijan to "*make a functioning system of courts and legal remedies available to the investor*".⁵⁹⁵ As explained in the context of Effective Means above, Mr Bahari's case on any legal protection standard of FPS is meritless as he claims he only ever "*contemplated*" claims in Azerbaijan,⁵⁹⁶ which is not sufficient to show a failure on Azerbaijan's part to make available an operational legal system; in any event, on Azerbaijan's case – as established by the documentary record and the evidence of Mr Kazimov at the Hearing – Mr Bahari did avail himself of the Azerbaijani courts. It follows that either way, Mr Bahari's claim for breach of FPS must fail.

E. There has been no breach of Mr Bahari's Right to Remain under Article 2(2)(a) of the Treaty

301. Mr Bahari's case of a breach of his right to remain under Article 2(2)(a) of the Treaty has been belatedly and poorly pleaded. In his Reply, Mr Bahari referred to the provision for the first time without alleging any breach of it.⁵⁹⁷ In his Rejoinder on Jurisdiction, he vaguely pleaded a continuous breach of Article 2(2)(a) in the light of Azerbaijan's alleged "*policy of keeping Mr. Bahari out of Azerbaijan over the period of his expulsion and until the present*"⁵⁹⁸ to support a jurisdiction *ratione temporis* argument.⁵⁹⁹ He appears to maintain that claim,⁶⁰⁰ but particularised it no further during the Hearing, except to argue "[REDACTED]".⁶⁰¹ Dr Gerbay decided against pleading it properly, ostensibly on the basis that "[REDACTED]". However, irrespective of the clarity of the objective meaning of the terms of the provision, a legal argument must be articulated.

595 Statement of Claim, para. 560, citing *Frontier Petroleum v Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, **CLA-123**, paras 263, 273.

596 Claimant's Reply, paras. 1021, 1043.

597 Claimant's Reply, paras. 956-957; Treaty, **CLA-1**, Article 2.2(a).

598 Claimant's Rejoinder on Jurisdiction, para. 456.

599 Claimant's Rejoinder on Jurisdiction, para. 23.

600 Claimant's Opening Presentation dated 20 January 2025, slides 1.06-1.11, pp. 9-14; Claimant's Overview Chart in Response to Tribunal's Question No. 6, pp. 2, 4-5, 7, 10.

601 Transcript of Hearing on Jurisdiction and Merits, Day 1, 107:1-5.

302. More importantly, as set out in detail above, there is simply no credible evidence of any “[REDACTED]” or any consequent breach. Mr Bahari has never been prevented from entering Azerbaijan and in fact did so without difficulty in 2013. That Mr Bahari chose not to otherwise return to Azerbaijan of his own accord is not a breach by Azerbaijan. As demonstrated during the Hearing and set out in full detail above, on Mr Bahari’s case, all of his claims arise from his alleged expulsion and designation as *persona non grata*. These claims lack any factual foundation, and without their support, the whole of his case collapses.

303. It follows that Mr Bahari’s case under Article 2(2)(a) must also fail.

VI. THE QUANTUM OF CLAIMED DAMAGES IS EXAGGERATED AND UNSUPPORTED

304. This section addresses certain issues concerning the quantification of Mr Bahari’s claims, following the close of the evidentiary phase. While Azerbaijan does not consider it necessary to repeat the detailed arguments already presented in its submissions, which it maintains, it takes this opportunity to respond to developments during the Hearing and to address the following key points.

A. Mr Bahari’s damages case hinges on the Chartabi Contracts

305. To recall, the Chartabi Contracts lie at the heart of Mr Bahari’s case regarding his alleged construction of the investments that constitute 97% of the total damages claimed.⁶⁰² The remaining 3% of the claim relates solely to the carpets and Ayna Sultan.

306. According to Mr Bahari’s own experts, the Chartabi Contracts also account for 97% of the amounts they confirmed were invested by Mr Bahari in Caspian Fish, Coolak Baku, and Shuvalan Sugar.⁶⁰³ The remaining portion is based not on documentary evidence, but on inference, relying solely on Mr Bahari’s unsubstantiated assertions. In a circular fashion, these inferences rest on Mr Bahari’s self-proclaimed status as a “*serial entrepreneur and investor*”,⁶⁰⁴ a claim which is said to be supported by the very same

⁶⁰² Claimant’s Reply, para. 1198.

⁶⁰³ Second Shi Report, paras. 2.8-2.10; Data for Tables 2.1 to 2.4 of Second Shi Report, **OX-26**.

⁶⁰⁴ Claimant’s Reply, paras. 101-102.

Chartabi Contracts and Mr Bahari's own unreliable testimony. If the Chartabi Contracts are, in fact, fraudulent, then no such inference can be drawn, and the foundation of Mr Bahari's case collapses.

307. Given the centrality of the Chartabi Contracts to Mr Bahari's damages case, their unreliability has a fundamental impact on quantum. Yet Mr Bahari fails to acknowledge this reality. This is apparent from the three alternative damages scenarios presented during the closing submissions, each of which inflates the amount claimed, even when purporting to exclude reliance on the Chartabi Contracts.
308. Mr Bahari cannot have it both ways – he cannot assert damages that are primarily based on investments in Caspian Fish, Coolak Baku and Shuvalan Sugar, while simultaneously suggesting that if Chartabi Contracts (representing the largest shares of those investments) are excluded, the damages figure somehow increases. This position is logically inconsistent.

B. Mr Bahari's newly introduced case on quantum is nonsensical

309. During the course of the hearing, the Tribunal invited the Parties to address the implications that would arise, particularly for the quantum of Mr Bahari's claims in respect of Caspian Fish, Coolak Baku, and Shuvalan Sugar, should the Tribunal find that the Chartabi Contracts cannot be relied upon as evidence.⁶⁰⁵
310. In response to the Tribunal's question regarding the implications of excluding the Chartabi Contracts as evidence, Mr Bahari presented three alternative approaches to quantifying damages:

- (1) Market Valuation for Caspian Fish and Amounts Invested for Coolak Baku (including Shuvalan Sugar) ("Option 1").⁶⁰⁶ Mr Bahari's preferred approach relies on a market-based valuation for Caspian Fish and a cost-based valuation for Coolak Baku and Shuvalan Sugar. Counsel for Mr Bahari submitted that
" [REDACTED]
[REDACTED] ",⁶⁰⁷

⁶⁰⁵ Tribunal's Questions for Parties' Oral Closing Remarks and/or PHBs, Question No 7(b).

⁶⁰⁶ Transcript of Hearing on Jurisdiction and Merits, Day 9, 71:8-25; 72:1-25; 73:1-11.

⁶⁰⁷ Transcript of Hearing on Jurisdiction and Merits, Day 9, 71:9-11.

even if the Chartabi Contracts are disregarded. The 40% interest in Caspian Fish, according to Mr Bahari, is based on an ex ante market valuation as of 1 January 2003, allegedly supported by expert evidence and “ [REDACTED] ” documents demonstrating Caspian Fish’ strong prospects at that time.⁶⁰⁸ As for Coolak Baku and Shuvalan Sugar, Mr Bahari noted that a market valuation was not feasible due to insufficient data, and proposed that the Tribunal rely instead on the full USD 28 million invested, which was “ [REDACTED] ”⁶⁰⁹

(2) Amounts Invested for Both Caspian Fish and Coolak Baku (“Option 2”).⁶¹⁰

The second approach, proposed by Mr Bahari, removes the market valuation entirely and bases the quantum solely on the amounts allegedly invested – USD 56 million for Caspian Fish and USD 28 million for Coolak Baku (including Shuvalan Sugar). Counsel argued that these figures have been consistently cited by Azerbaijan over the years and that “ [REDACTED] ”⁶¹¹

(3) Documentary Evidence Excluding the Chartabi Contracts (“Option 3”).⁶¹²

The third approach presented by Mr Bahari is to quantify damages strictly on the basis of documentary evidence already in the record, excluding the Chartabi Contracts. Mr Bahari pointed to a USD 25 million cheque allegedly paid by Mr Bahari in September 2000 for the completion of his projects.⁶¹³ While the specific allocation of this payment to Caspian Fish, Coolak Baku, or Shuvalan Sugar is unclear, Mr Bahari suggested that the amount should be accepted as a general contribution to the three projects.⁶¹⁴ This, according to Mr Bahari, would reduce the construction-related damages claim from USD 36.6 million (as per the Chartabi Contracts) to USD 25 million. In addition, Mr Bahari argued that Mr Bahari is entitled to recover USD 29.1 million for equipment

⁶⁰⁸ Transcript of Hearing on Jurisdiction and Merits, Day 9, 71:18-22.

⁶⁰⁹ Transcript of Hearing on Jurisdiction and Merits, Day 9, 73:3-6.

⁶¹⁰ Transcript of Hearing on Jurisdiction and Merits, Day 9, 73:12-20.

⁶¹¹ Transcript of Hearing on Jurisdiction and Merits, Day 9, 73:17-18.

⁶¹² Transcript of Hearing on Jurisdiction and Merits, Day 9, 73:21-25; 74:1-25; 75:1-15.

⁶¹³ Transcript of Hearing on Jurisdiction and Merits, Day 9, 74:6-9.

⁶¹⁴ Transcript of Hearing on Jurisdiction and Merits, Day 9, 74:11-22.

purchases and other capital and operating contributions, all of which are allegedly supported by documentation and expert analysis.⁶¹⁵ On this basis, Mr Bahari estimated a total damages figure of approximately USD 54.1 million.⁶¹⁶

311. This newly introduced approach to damages is fundamentally illogical. By excluding what he claims to be the largest portion of his alleged investment, namely, the Chartabi Contracts, which account for over USD 36 million, Mr Bahari nonetheless arrives at figures that in some instances exceed the quantum currently claimed in his pleadings, by inflating his alleged investment into Coolak Baku in both Options 1 and 2 from the amounts allegedly invested into Coolak Baku of 14,994,505⁶¹⁷ to the implausible and unevicenced USD 28 million. This alone renders the new scenarios implausible. Nevertheless, each scenario is addressed in turn below.

C. Mr Bahari’s quantum assessment excluding the Chartabi Contracts is fundamentally flawed and unreliable

312. Turning first to Option 1, and specifically to the first prong of that option, namely Mr Bahari’s submission that the Tribunal should award a 40% market valuation for Caspian Fish, this proposal is entirely without merit.
313. As explained in detail in Azerbaijan’s written submissions, it is not possible to reliably apply a market-based valuation to Caspian Fish.⁶¹⁸ As Dr Shi clearly stated, “[REDACTED]”
[REDACTED]
[REDACTED]
[REDACTED]”⁶¹⁹ Even Mr Bahari and his own experts have acknowledged this limitation.⁶²⁰
314. Mr Bahari’s second contention under Option 1, that the Tribunal should adopt a so-called “only amounts invested” approach and award the full USD 28 million for Coolak Baku, is equally without foundation. The bare assertion that “[REDACTED]”

⁶¹⁵ Transcript of Hearing on Jurisdiction and Merits, Day 9, 74:23-25; 75:1-4.

⁶¹⁶ Transcript of Hearing on Jurisdiction and Merits, Day 9, 75:5-7.

⁶¹⁷ Second Secretariat Report, Table 24.

⁶¹⁸ Respondent’s Rejoinder, paras. 685-708.

⁶¹⁹ Second Shi Report, para. 1.39.

⁶²⁰ Transcript of Hearing on Jurisdiction and Merits, Day 9, 71:23-25.

of construction services allegedly provided under the Chartabi Contracts.⁶²⁶ Therefore, even if accepting Mr Bahari's figures at face value and without scrutinizing the underlying documentation, given the admission that the Chartabi Contracts are forged, the amounts attributed to the Chartabi Contracts must be deducted, leaving an alleged investment of only USD 13,578,415. This is nearly USD 15 million less than the USD 28 million now claimed.

319. Further, even this reduced amount remains unproven. For instance, with respect to the purported capital contribution of USD 2 million to Coolak Baku, there is no documentary evidence showing that Mr Bahari ever made such a payment to the joint venture.⁶²⁷ As for the alleged investment in machinery and equipment, Mr Bahari's assertions are directly contradicted by the analysis by Dr Shi, which demonstrates that no such investments have been substantiated.⁶²⁸
320. In light of the foregoing, Mr Bahari's reliance on the USD 28 million figure is not merely unsubstantiated, it is plainly implausible. The number is inflated, contradicted by Mr Bahari's own evidence, and unsupported by any reliable documentation. It reflects, at best, a gross exaggeration and, at worst, a deliberate attempt to mislead the Tribunal.
321. With respect to Option 2, Mr Bahari's suggestion that he invested USD 56 million into Caspian Fish and USD 28 million into Coolak Baku (including Shuvalan Sugar), it is wholly unsupportable and does not withstand a minimal scrutiny.
322. According to Mr Bahari's own case, the total alleged "[REDACTED]" investment in Caspian Fish amounts to USD 44,417,931.⁶²⁹ Of that amount, more than half (i.e. USD 28,800,000) is attributed to the alleged construction services under the Chartabi Contracts. Excluding that component alone would reduce the alleged investment in Caspian Fish to USD 15,617,931, even before assessing the credibility of the remaining documentation, which is also contested.

⁶²⁶ Second Secretariat Report, para. 2.20, Table 2.

⁶²⁷ Respondent's Rejoinder, para. 313(a).

⁶²⁸ Respondent's Rejoinder, para. 313(c).

⁶²⁹ Second Secretariat Report, para. 2.20, Table 2.

323. Azerbaijan understands that Mr Bahari derives the USD 56 million figure from the conclusions of his valuation expert, Secretariat, as well as from several press reports, all purportedly supporting a USD 56 million investment.⁶³⁰ Neither source constitutes reliable evidence of such an expenditure. Secretariat's analysis relies heavily on press reports and content from the Caspian Fish website, which ultimately trace back to a speech delivered by President Aliyev during the Caspian Fish opening ceremony, in which he stated that [REDACTED]
[REDACTED]
[REDACTED]".⁶³¹ Notably, during cross-examination, Mr Bahari exposed the lack of credibility of news outlets in the region.⁶³²
324. Further, the Second Shi Report addressed this issue in detail, explaining that cost-to-capacity analysis does not support the conclusion that an investment of USD 56 million was reasonable or substantiated.⁶³³
325. In short, there is no credible evidence that USD 56 million was spent on the construction of Caspian Fish, and certainly no evidence to suggest that it was Mr Bahari who invested any funds. In the absence of any financial or accounting records, reliable evidence of expenditure would include proof of payment, such as bank transfers, invoices, and receipts, not unverified press articles or statements on a company website. Mr Bahari's claim that this amount was invested is, at best, speculative.
326. As for the repeated assertion that Mr Bahari invested USD 28 million in Coolak Baku (and Shuvalan Sugar), Azerbaijan has already explained above why this figure is entirely baseless.
327. Turning to Option 3, where Mr Bahari alleges a total investment of approximately USD 54.1 million, comprising USD 29.1 million in equipment allegedly installed in Caspian Fish, Coolak Baku, and Shuvalan Sugar, and an additional USD 25 million reflected in the Purported Cheque, Azerbaijan considers this approach equally unconvincing.

⁶³⁰ Respondent's Rejoinder, para. 402.

⁶³¹ BastaInfo, Kamaladdin Heydarov sells his famous company, 26 March 2018, **SEC-28**, p. 2.

⁶³² Transcript of Hearing on Jurisdiction and Merits, Day 2, 94:25; 95:1-5; 96:20-24.

⁶³³ Second Shi Report, paras. 2.66-2.70.

328. The Purported Cheque, as discussed above, it is a bank cheque from the account of Coolak Shargh, dated 30 September 2000, made out to Mr Chartabi in the amount of approximately USD 25 million.⁶³⁴ The Purported Cheque appears to be signed by Mr Bahari. However, as outlined in Respondent's submissions, there are serious concerns regarding its authenticity and reliability.⁶³⁵
329. First, as of the alleged date of issuance (13 September 2000), Mr Bahari no longer held any interest in Coolak Shargh.⁶³⁶ Second, the cheque is made out to Mr Chartabi personally rather than to Chartabi Contracting, the entity with which the Chartabi Contracts were purportedly concluded.⁶³⁷ Third, it is denominated in Iranian rials rather than in U.S. dollars, the currency specified in the alleged Chartabi Contracts.⁶³⁸ Finally, both the date and the amount stated on the purported cheque are inconsistent with the payment schedules set out in those contracts.⁶³⁹
330. In sum, none of the three options presented by Mr Bahari withstand scrutiny. Each is based on figures that are either inflated, unsupported by reliable evidence, or internally inconsistent, even when assessed against Mr Bahari's own submissions. This pattern of presenting arbitrary figures reflects Mr Bahari's broader approach throughout these proceedings, characterised by a selective use of facts, changing narratives, and a complete disregard for the evidentiary record. The Tribunal should therefore reject all three options in their entirety.

VII. PRAYER FOR RELIEF

331. For the foregoing reasons, the Respondent respectfully requests that the Tribunal
- (1) DECLARE that the Tribunal does not have jurisdiction over the dispute.
 - (2) DECLARE that the Claimant's claims are inadmissible.

⁶³⁴ Iran Melli Bank Check from Coolak Shargh to Ahad Chartabi dated 30 September 2000, **C-281**.

⁶³⁵ Respondent's Rejoinder, paras. 54-61.

⁶³⁶ Respondent's Rejoinder, para. 58(b).

⁶³⁷ Respondent's Rejoinder, para. 60.

⁶³⁸ Respondent's Rejoinder, para. 60.

⁶³⁹ Respondent's Rejoinder, para. 60.

- (3) DISMISS in their entirety all claims.
- (4) ORDER the Claimant to bear all attorney fees and expenses incurred by the Respondent in connection with these proceedings on a full indemnity basis, as well as all costs of the arbitration and the Centre, together with interest thereon at a rate to be determined.

Respectfully submitted,

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