**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Coropi Holdings Limited, Kalemegdan Investments Limited and Erinn Bernard Broshko**

**v.**

**Republic of Serbia**

**(ICSID Case No. ARB/22/14)**

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# PROCEDURAL ORDER NO. 5
# (DOCUMENT PRODUCTION)

***Members of the Tribunal***
Sir Daniel Bethlehem KC, Presiding Arbitrator
Mr. Andrés Jana, Arbitrator
Prof. Zachary Douglas KC, Arbitrator

***Secretary of the Tribunal***
Mr. Oladimeji Ojo

***Assistant to the Tribunal***
Professor Philippa Webb

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**8 December 2023**

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## I. PROCEDURAL BACKGROUND

1. Pursuant to Paragraph 19 of Procedural Order No. 1 ("PO1") and the applicable Alternative Schedule 3 of Annex A to Procedural Order No. 2 (the "Procedural Schedule"), the Parties exchanged their requests for the production of documents on 20 October 2023.

2. On 10 November 2023, the Parties exchanged non-objected documents and their respective objections to the remaining document production requests.

3. On 24 November 2023, each Party transmitted to the Tribunal its Schedule containing its outstanding requests for the production of documents, the objections raised by the opposing Party, and its replies thereto. The Claimants' Schedule details 60 requests for the production of documents or categories of documents ("Claimants' Request"). The Respondent's Schedule details 8 requests for the production of documents or categories of documents ("Respondent's Request").

## II. APPLICABLE STANDARDS

4. The procedural standards applicable to this arbitration are found principally in the ICSID Convention, the 2006 ICSID Arbitration Rules ("Arbitration Rules"), and PO1. The production of documents is governed by Article 43 of the ICSID Convention, Rule 34 of the Arbitration Rules, and Paragraph 19 of PO1. Insofar as is material for present purposes, these provide as follows:

> **Article 43, ICSID Convention**
>
> "Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings, (a) call upon the parties to produce documents or other evidence […]".
>
> **Rule 34, Arbitration Rules**
>
> "(1) The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value.
>
> (2) The Tribunal may, if it deems it necessary at any stage of the proceeding:
> (a) call upon the parties to produce documents, witnesses and experts; and
> (b) visit any place connected with the dispute or conduct inquiries there.
>
> (3) The parties shall cooperate with the Tribunal in the production of the evidence and in the other measures provided for in paragraph (2). The

Tribunal shall take formal note of the failure of a party to comply with its obligations under this paragraph and of any reasons given for such failure."

**Paragraph 19, PO1**

"19.1. The Tribunal takes note of the Parties' affirmation that, from the date of the commencement of the proceedings, they have taken all reasonable steps to preserve all documents relating to the matters in issue in this arbitration and their undertaking to take all necessary steps going forward to ensure the preservation of all documents relating to the matters in issue in this arbitration.

19.2. The Tribunal shall be guided by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2020) ('IBA Rules') in relation to document production in this case."

5. Insofar as may be material to the Tribunal's consideration of the Parties' document disclosure requests, Articles 3 and 9 of the IBA Rules provide as follows:

**Article 3.3**

"A Request to Produce shall contain:

(a) (i) a description of each requested Document sufficient to identify it, or

(ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;

(b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and

(c) (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and

(ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party."

**Article 3.4**

"Within the time ordered by the Arbitral Tribunal, the Party to whom the Request to Produce is addressed shall produce to the other Parties and, if the Arbitral Tribunal so orders, to it, all the Documents requested in its possession, custody or control as to which it makes no objection."

**Article 3.5**

"If the Party to whom the Request to Produce is addressed has an objection to some or all of the Documents requested, it shall state the objection in writing to the Arbitral Tribunal and the other Parties within the time ordered by the Arbitral Tribunal. The reasons for such objection shall be any of those set forth in Article 9.2 or 9.3, or a failure to satisfy any of the requirements of Article 3.3."

**Article 3.7**

"Either Party may, within the time ordered by the Arbitral Tribunal, request the Arbitral Tribunal to rule on the objection. The Arbitral Tribunal shall then, in consultation with the Parties and in timely fashion, consider the Request to Produce and the objection and any response thereto. The Arbitral Tribunal may order the Party to whom such Request is addressed to produce any requested Document in its possession, custody or control as to which the Arbitral Tribunal determines that (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Article 9.2 or 9.3 applies; and (iii) the requirements of Article 3.3 have been satisfied. Any such Document shall be produced to the other Parties and, if the Arbitral Tribunal so orders, to it."

**Article 9.2**

"The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons:

(a) lack of sufficient relevance to the case or materiality to its outcome;
(b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable (See Article 9.4 below);
(c) unreasonable burden to produce the requested evidence;
(d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
(e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;

(f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or

(g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling."

**Article 9.3**

"The Arbitral Tribunal may, at the request of a Party, or on its own motion, exclude evidence obtained illegally."

**Article 9.4**

"In considering issues of legal impediment or privilege under Article 9.2(b), and insofar as permitted by any mandatory legal or ethical rules that are determined by it to be applicable, the Arbitral Tribunal may take into account:

(a) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice;

(b) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of settlement negotiations;

(c) the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen;

(d) any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise; and

(e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules."

**Article 9.5**

"The Arbitral Tribunal may, where appropriate, make necessary arrangements to permit Documents to be produced, and evidence to be presented or considered subject to suitable confidentiality protection."

**Article 9.6**

"If a Party fails without satisfactory explanation to produce any Document requested in a Request to Produce to which it has not objected in due time or fails to produce any Document ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party."

6. Having regard to Paragraph 27 of PO1, addressing "Publication, Transparency and Confidentiality", the Tribunal, by Procedural Order No. 3, dated 19 July 2023, issued a Confidentiality Order governing, *inter alia*, the publication of documents and confidential information. Pursuant to Paragraph B(1)(b) of the Confidentiality Order, "the principal pleadings of the Parties" are to be made public. Publication is, however, subject to restrictions laid down in Paragraph D of the Confidentiality Order with respect to "confidential information", this being defined in Paragraph D(2) of the Confidentiality Order as follows:

"Confidential information consists of:

(a) Confidential business information;

(b) Information that is protected from publication, in the case of the information of the Respondent, under the Respondent's laws, and in the case of other information, under any law or rules determined by the Tribunal to be applicable to the disclosure of such information;

(c) Information the disclosure of which would impede law enforcement; or

(d) Information the disclosure of which would compromise the Respondent's essential security interests."

7. Pursuant to Paragraph D(7) of the Confidentiality Order, if, in accordance with the procedure established by the Confidentiality Order, the Tribunal determines that the information identified by a Party is not to be treated as confidential information, "the Party introducing the document into the record shall be permitted to withdraw all or part of the document from the record within 15 days of the Tribunal's decision."

## III. THE PARTIES' GENERAL SUBMISSIONS

8. The Parties' submissions in support of their respective document requests are advanced principally on a request-by-request basis. The Tribunal assesses and addresses these requests in the Schedules attached at Annexes 1 and 2 below. The Parties also make a number of general, headline submissions to frame their respective requests. These are

briefly summarised below.

9. In its Request, the Claimants contend that the documents requested are "relevant to the case and material to its outcome",[1] this element also being addressed with respect to each of the 60 itemised requests. The Claimants further aver that, "[t]o the best of the Claimants' knowledge, the requested documents are not in their [possession, custody or control[2]], and the Claimants reasonably believe the documents requested are within Serbia'[s] possession, custody or control, and their production would not be unduly burdensome."[3]

10. In its general comments on the Claimants' Request, the Respondent makes two overarching submissions: *first*, that the Claimants' requests do not conform to the specificity requirements of Article 3.3 of the IBA Rules and best practice in international arbitration,[4] and, *second*, that "almost all of the requested documents are in the public domain, as these documents can be accessed by submitting a request to the relevant authority, in accordance with Serbian law."[5]

11. Elaborating on the issue of the claimed lack of specificity of the Claimants' requests, the Respondent states (*inter alia*):

> "Claimants have requested the production of a wide range of documents spanning several decades. The temporal scope and subject matter of these requests are excessively broad and the relevance difficult to assess if not altogether doubtful, particularly given Claimants' failure to link each request to specific facts in issue or paragraphs in the Parties' respective pleadings. It would be unduly burdensome for Respondent to identify, review and produce such all-encompassing requests, if granted.
>
> Claimants have not shown that the requested documents and relevant and material to the outcome of the case."[6]

12. The Respondent's contention that almost all of the Claimants' requested documents are in the public domain is in effect a contention that documents that "can be accessed by submitting a request to the relevant authority" are, in the words of the tribunal in *ADF Group Inc. v. United States of America*, "equally and effectively available to both parties".[7]

13. Addressing the Respondent's objections to their Request, the Claimants assert, *inter alia*,

[1] Claimants' Request, paragraph 2.
[2] The parenthetical text is missing from the Claimants' schedule but can be inferred from the context of the quoted statement.
[3] Claimants' Request, paragraph 3.
[4] Claimants' Request, paragraph 9.
[5] Claimants' Request, paragraph 13.
[6] Claimants' Request, paragraphs 10–11.
[7] *ADF Group v. United States of America*, ICSID Case No. ARB (AF)/00/1, Procedural Order No. 3, 4 October 2001, paragraph 4.

as follows:

a. The issue of whether the Claimants' requests comply with Article 3.3 of the IBA Rules must be assessed on a request-by-request basis. Each of the Claimants' requests complies fully with the requirements of that provision.[8]

b. The Claimants' requests do not aim at documents that are in the public domain. Further, the Respondent misrepresents the "public domain" standard, which only operates in circumstances in which the documents in question are equally and effectively available to both parties.[9]

14. Elaborating on the latter point concerning when documents can be considered to be in the public domain, the Claimants contend that:

> "… none of the requested documents are in the public domain. The relevant responsive documents are supposedly stored in the archives of various Serbian authorities—which Claimants cannot access online or even in person *without the prior consent of the relevant Serbian authorities*. This fact, on its own, demonstrates that the requested documents are not in the public domain and cannot be considered to be in Claimants' possession, custody or control.
>
> … Claimants are not able to access the requested documents without the assistance from various Serbian authorities."[10]

15. The Respondent's submissions in support of its Request are advanced on an item-by-item basis. Addressing the Respondent's Request, the Claimants contend (*inter alia*) as follows:

> "Besides specific responses and/or objections raised by Claimants in Annex A, Claimants object, pursuant to Articles 9(2)(b) and 9(4) of the IBA Rules, to production of any documents covered by privilege under legal or ethical rules. Claimants are willing to provide a list of privileged documents responsive to each of Serbia's requests, together with an explanation of applicable privilege rules, in a privilege log. The offer to submit a privilege log, however, does not apply to documents the production of which Claimants object to on the basis that such documents were created in preparation for and/or in connection with the conduct of the present arbitration."[11]

16. Addressing the Claimants' response to its requests, the Respondent states, *inter alia*, as

[8] Claimants' Request, paragraphs 27–29.
[9] Claimants' Request, paragraphs 30–47.
[10] Claimants' Request, paragraphs 34–35 (emphasis in the original).
[11] Respondent's Request, paragraph 2.

follows:

a. The party asserting privilege has the burden of proving why privilege applies to each and every document requested. Insofar as the Claimants contend that it would be unduly burdensome to provide relevant detail in support of a claim of privilege, the reason for this needs to be provided.[12]

b. The grant of legal privilege is not automatic but subject to the Tribunal's consideration and decision, in accordance with Article 9.3 of the IBA Rules.[13]

## IV. TRIBUNAL'S ANALYSIS

17. The Tribunal will be guided by the standards and principles identified above in its assessment of the Parties' requests for the production of documents. In headline terms, these include the following:

a. **Specificity of description:** a request for the production of documents or categories of documents must describe the documents in question with sufficient detail and specificity to enable them to be identified and, as appropriate, located in an efficient and economical manner.

b. **Relevance and materiality**: a request for the production of documents or categories of documents must establish the relevance of documents in question, and their materiality, to the outcome of the case.

c. **Possession, custody or control**: the documents or categories of documents requested must not be within the possession, custody or control of the requesting party, must be believed to be within the possession, custody or control of the requested party, and should not otherwise be readily accessible to the requesting party through its own enquiries and efforts.

d. **Legal impediment, privilege and confidentiality**: documents that are subject to legal impediments, privilege or confidentiality restraining disclosure are presumptively excluded from production subject to the Tribunal's assessment of whether special arrangements may properly be made to enable production subject to appropriate protections.

e. **Burden and proportionality**: in assessing document production requests, the Tribunal must undertake an evaluation of the burden of production of the requested documents as well as questions of procedural economy, proportionality, fairness and the equality of the Parties, i.e., the Tribunal must address the proportionality

[12] Respondent's Request, paragraph 6.
[13] Respondent's Request, paragraph 7.

balance of the respective interests of the Parties.

18. It follows from these elements that document production cannot be a vehicle for open-ended enquiry – the proverbial fishing expedition – and must strike a fair balance between the rights of the requesting party to obtain access to documents held by the other party that are material to its case, on the one hand, and the burden placed on the requested party to search for, locate and produce such documents, on the other. While document production is an important component of enabling an asserting party to meet its burden of proof, and of ensuring that the adverse party cannot hide evidence, it cannot be used to impose disproportionate burdens on the requested party.

19. On the issue of when a document is to be considered to be in the public domain, the Tribunal considers that this can only properly be said to be the case in circumstances in which the document is readily accessible to the requesting party through its own enquiries and efforts, without the intermediation of the opposing party. The fact of a charge for access or obtaining a copy of the document is not of itself an indicator that the document is not in the public domain. Nor is the issue of ease of access, or relative ease of access, of itself a determining factor. Document disclosure in investment arbitration does not rest on a duty of candour that requires a party to presumptively search for and disclose any and all documents that may potentially be relevant to the opposing party's case. Such a standard would be disproportionate and unfairly burdensome to litigants on both sides of the proceedings. The critical question, in the Tribunal's view, is whether the requesting party is in a position to readily access the document in question through its own enquiries and efforts in a timely and effective manner that comports with the schedule of the arbitral proceedings.

20. As the issue is material to the present enquiry, the Tribunal also observes that organs, agencies and instrumentalities (including departments and ministries) of a State are presumptively part of the State for purposes of State responsibility. It follows that there is a reasonable, though rebuttable, presumption that documents in the possession, custody or control of an organ, agency or instrumentality of a State are within the possession, custody or control of that State for document production purposes. The document search and production challenges to which this gives rise, however, properly require that a careful proportionality assessment is undertaken to ensure that document production does not become unreasonably burdensome.

21. Having regard to the applicable standards and principles, the Tribunal's decision on the Parties' respective disputed requests for the production of documents is set out in the Schedules appended to this Order as **Annex 1** (Claimants' Schedule) and **Annex 2** (Respondent's Schedule).

22. Pursuant to the applicable Procedural Schedule, each Party is required to produce the documents indicated in Annex 1 and Annex 2 to the requesting Party by 22 December 2023. This said, given the tightness of this production schedule, the Tribunal notes that it

would be open to considering an application (preferably on agreed terms) for an extension of time for the production of documents and associated consequential revisions to the post-document production schedule.

23. For the avoidance of doubt, the Tribunal notes that its decisions on the Parties' document production requests do not imply a decision by the Tribunal on any issue in dispute between the Parties or prejudge any question of the relevance or weight of any argument, witness testimony or other evidence advanced by either Party.

24. Insofar as documents ordered to be produced are not produced or not fully produced pursuant to this Order without an adequate explanation as provided under paragraphs 25 and 26 below, the Tribunal will take this into account in its evaluation of the respective factual allegations and evidence and may draw adverse inferences against the Party refusing production.

25. With respect to the Tribunal's decision ordering the production of any document or documents, in the event that no document/s responsive to a particular request are found in the possession, custody or control of the requested Party, that Party shall provide to the requesting Party and to the Tribunal (a) a description of the searches that it has undertaken for the documents in question, (b) a statement averring that the document/s in question are not within the possession, custody or control of the said Party, and, as appropriate, (c) a full explanation addressing any circumstances in which the document/s in question, although once in the possession, custody or control of the requested Party, were subsequently lost or destroyed, including the date or likely date of the loss or destruction of the document/s.

26. In any case in which a Party asserts a claim of legal impediment, privilege or confidentiality that precludes the disclosure of the entirety of a document the disclosure of which has been ordered, the claim must be accompanied by a full explanation supporting the claim to enable the requesting Party and the Tribunal to assess whether the claim is justified. In any case in which a Party asserts a claim of legal impediment, privilege or confidentiality in respect of only a part of a document the production of which has been ordered, the entirety of the document in question must be produced within the deadline prescribed subject to redaction of that part of the document in respect of which legal impediment, privilege or confidentiality is asserted. Each redaction shall be the subject of a full explanation supporting the claim in sufficient detail to enable the requesting Party and the Tribunal to assess whether the claim is justified.

27. Reliance, whether direct or indirect, by a Party on a document or documents the disclosure of which was requested by the other Party (whether specifically or by reference to a defined class of documents) but resisted by the Party subsequently relying thereon, and not the subject of an order of production, will presumptively give rise to a requirement for the Party relying on the document/s to produce the document/s or class of documents originally requested and a right of submission by the Party making the original document production

request.

## V. DECISION

28. The Tribunal decides as follows:

a. The Tribunal decides on each contested document production request as stated in the "Decision" row of each request in **Annexes 1** and **2** hereto. These Annexes form an integral part of the present Order.

b. In accordance with the applicable Procedural Timetable indicated in Procedural Order No.2 (Alternative Schedule 3), subject to the directions in paragraphs 25 and 26 of this Order, each Party shall produce all documents ordered to be produced by 22 December 2023.

c. The documents produced shall not be communicated to the Tribunal at this stage and shall not be considered part of the record, unless and until one of the Parties submits them as exhibits to a submission.

On behalf of the Tribunal,

[signed]

_____

Sir Daniel Bethlehem KC

President of the Tribunal

Date: 8 December 2023

# ANNEX 1
## CLAIMANTS' REQUEST FOR PRODUCTION OF DOCUMENTS

| **NO.** | **1.** |
|---|---|
| **REQUESTED DOCUMENTS** | Any and all annexes to agreements submitted as Serbia's exhibits R-007, R-008, R-009, R-010, R-012, R-013, R-014, R-015, R-016, R-017 and RJ-011, including but not limited to the "*scheme*" referred to in Article 1 of exhibit R-007 and the "*outlines*" referred to in Article 1 of exhibits R-012, R-013, R-014, R-015, R-016, R-017 and RJ-011. |
| **RELEVANCE** | Serbia relies on certain agreements submitted as exhibits R-007 to R-010, R-012 to R-017 and RJ-011 to argue that Obnova allegedly did not have the right of use over its premises at Dunavska 17-19 and Dunavska 23.[14] According to their respective wording, most of these agreements were supposed to include, at minimum, a "*scheme*" or "*outline*" depicting premises that were object of these agreements.<br>However, the copies of the agreements submitted by Serbia do not include *any* annexes. As a result, the agreements submitted by Serbia are incomplete and do not make it clear to which land plots and/or buildings these agreements relate. For example, the agreement submitted as R-008 merely refers to "*the land-warehousing area in the cargo port zone on the Danube in Belgrade with a surface area of 7630 m2*."[15] This description is clearly insufficient to identify the exact location of the land in question and thus to assess whether it relates to Obnova's current premises.<br>The requested documents are therefore relevant and material to assess whether the agreements submitted by Serbia: (*i*) relate to Obnova's current premises at Dunavska 17-19 and Dunavska 23 in the first place and, if so; (*ii*) what was the exact extent of rights and obligations that Obnova had under each of these agreements with respect to its current premises. |
| **OBJECTIONS** | **PCC**: The requested documents must be in Obnova's, i.e., Claimants', possession, custody or control since all requested documents appear to be the annexes of the agreements concluded by Obnova. In any event, Respondent is not in possession of these documents. |

[14] *E.g.* Counter-Memorial, ¶¶ 30-42.
[15] Lease agreement between Obnova and the Directorate, 7 April 1960, Art. 1, **R-008**.

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| **REPLY** | Claimants note Serbia's representation that it is not in possession of annexes to agreements that Serbia itself submitted as its exhibits R-007, R-008, R-009, R-010, R-012, R-013, R-014, R-015, R-016, R-017 and RJ-011.<br>No decision is required. |
| **DECISION** | **No decision is requested.** |
| **NO.** | **2.** |
| **REQUESTED DOCUMENTS** | Decision of the First Municipality Court in Belgrade no. I. n. 6447/64 dated 14 October 1964 referred in Articles 1, 3 and 4 of the agreement submitted by Serbia as its exhibit R-009, together with the complete file for the proceedings in which the decision was issued. |
| **RELEVANCE** | Serbia's exhibit R-009 is an undated "*Agreement*" between Obnova and Luka Beograd according to which Obnova supposedly agreed to vacate certain premises in Belgrade—defined only as "*the open warehousing area on the cadastre plots no. 47, 49 and 50 CM-1 amounting to surface area of 9,565 m2*."[16]<br>According to Article 1 of the Agreement, Obnova was allegedly ordered to vacate the premises by the decision of the First Municipality Court in Belgrade no. I. n. 6447/64 dated 14 October 1964.[17]<br>The requested documents are relevant and material to assess: (*i*) exactly which premises Obnova was apparently supposed to vacate; (*ii*) whether such premises correspond, in full or at least in part, to Obnova's current premises at Dunavska 17-19 or 23; and (*iii*) the reasons for the First Municipality Court's decision. |
| **OBJECTIONS** | **PCC**: According to Respondent's best knowledge, the requested court files from 1964 are no longer in Respondent's possession, custody or control due to the passage of time.[18] In addition, Claimants have not explained why the requested documents are not already in its possession, custody or control since Obnova was a party to this court proceeding. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants note Serbia's comment that "*to Respondent's best knowledge, the requested court files from 1964 are no longer in Respondent's possession, custody or control due to the passage of time.*" However, Serbia |

[16] Agreement between Luka Beograd and Obnova, undated, Art. 1, **R-009**.
[17] Agreement between Luka Beograd and Obnova, undated, Art. 1, **R-009**.
[18] Article 241 of the Serbian Court Rules of Procedure provides that Serbian courts are not obliged to store court files after a maximum of thirty years as of closure of the proceedings. *See* Court Rules of Procedure (Official Gazette of RS, No. 110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015 – correction, 39/2016, 56/2016, 77/2016, 16/2018, 78/2018, 43/2019, 93/2019 and 18/2022), Art. 241, **Annex-6**.

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| | does not explain what, if anything, it has done to confirm that the requested documents indeed are not in its possession, custody or control. Claimants therefore requests that Serbia either produces the requested documents or explains what efforts it undertook to verify that the requested documents indeed are no longer in its possession, custody or control.<br>With respect to Serbia's allegation that Claimants "*have not explained why the requested documents are not already in its possession, custody or control since Obnova was a party to this court proceeding*", Claimants note that the court proceedings took place in the 1960s, *i.e.* when Obnova was a socially-owned enterprise and over 40 years prior to Claimants acquiring ownership and control over Obnova. Claimants have reviewed Obnova's archives that are available to them and confirm that they do not contain the requested documents. |
| **DECISION** | **The request is <u>upheld</u> with regard to the "Decision of the First Municipality Court in Belgrade no. I. n. 6447/64 dated 14 October 1964 referred in Articles 1, 3 and 4 of the agreement submitted by Serbia as its exhibit R-009". The request is <u>denied</u> with regard to "the complete file for the proceedings in which the decision was issued" on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **3.** |
| **REQUESTED DOCUMENTS** | Agreement number 71 dated 13 January 2003 and Agreement number 72 dated 13 January 2003 – both referred in Article 2 of an agreement submitted as Serbia's exhibit R-015. |
| **RELEVANCE** | Serbia's exhibit R-015 is an "*AGREEMENT ON PROVISION AND USE OF PORT AND WAREHOUSE SERVICES.*" As explained above, this is one of the agreements on which Serbia relies to argue that Obnova allegedly did not have the right of use over its premises at Dunavska 17-19 and/or 23.<br>According to Article 1 of this agreement, the agreement relates to premises "*warehouse space of LUKA "Beograd", at the address: 17-19 Dunavska Str., on a part of the cadastral parcel 39/1 – cadastral municipality Stari Grad.*"[19] However, cadastral parcel 39/1 is not part of Dunavska 17-19.[20] It is therefore unclear to what premises the agreement relates.<br>According to Article 2 of the agreement, Obnova agreed to "*pay LUKA "BEOGRAD" all due liabilities of company "Petko" d.o.o. under Agreement number 71 dated 13 January 2003 and under Agreement number* |

[19] Agreement on provision and use of port and warehouse services between Luka Beograd and Obnova, 7 November 2003, Art. 1, **R-015**.
[20] *E.g.* Memorial, Annex A."

| | |
|---|---|
| | *72 dated 13 January 2003 […].*"[21] Agreements number 71 and 72 may be relevant to identifying the premises that agreement R-015 relates to.<br>The requested documents are therefore relevant and material to assess whether agreement R-015 relates to Obnova's current premises at Dunavska 17-19 and/or 23. |
| **OBJECTIONS** | **PCC:** The requested documents must be in Obnova's, i.e., Claimants', possession, custody or control since "*AGREEMENT ON PROVISION AND USE OF PORT AND WAREHOUSE SERVICES*" (exhibit R-015) was concluded by Obnova. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Requested documents were concluded before Obnova's privatization and, therefore, before Claimants acquired ownership and control over Obnova. Claimants have reviewed Obnova's archives that are available to them and confirm that they do not contain the requested documents. |
| **DECISION** | **The request is upheld.** |
| **NO.** | **4.** |
| **REQUESTED DOCUMENTS** | Any and all lease agreements, agreements on use of warehousing space, land and/or buildings, including all of their annexes, concluded between Serbia or Luka Beograd on one side and Obnova on other side between 1948 and 26 April 2012 related to Dunavska 17-19, Dunavska 23 and/or the Surrounding Area, including, but not limited to, Agreement no. 619 dated 15 March 1994 referred to in Article 16 of Serbia's exhibit R-013 and Agreement no. 1819 for providing and using port and warehousing services dated 16 March 2006 referred to on page 3 of Serbia's exhibit R-028. |
| **RELEVANCE** | As explained above, Serbia relies on various agreements purportedly concluded between Obnova and Serbian authorities or Luka Beograd between 1959 and 2000 (submitted as exhibits R-007 to R-010, R-012 to R-017 and RJ-011) to argue that Obnova allegedly did not have the right of use over its premises at Dunavska 17-19 and 23.<br>The documents submitted by Serbia refer to certain other agreements between Obnova and Serbia or Luka Beograd relating to use of warehousing space, land or buildings. For example, Article 16 of exhibit R-013 refers to Agreement no. 619 dated 15 March 1994 and Serbia's exhibit R-028 refers, on its page 3, to |

[21] Agreement on provision and use of port and warehouse services between Luka Beograd and Obnova, 7 November 2003, Art. 2, **R-015**.

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| | Agreement for providing and using port and warehousing services number 1819 dated 16 March 2006.<br>Serbia may have other agreements allegedly relating to Obnova's premises that it did not to exhibit to its Counter-Memorial.<br>The requested documents are relevant and material to fully understand contractual relations between Obnova, Serbia and Luka Beograd with respect to Obnova's premises in the period preceding Claimants' investment in Obnova. |
| **OBJECTIONS** | **PCC**: The requested documents must be in Obnova's, i.e., Claimants' possession, custody or control since these agreements were concluded by Obnova.<br>In any event, Agreement no. 1819 dated 16 March 2006 has already been provided as exhibit R-016.<br>Respondent has already conducted a reasonable search and has not located any other lease agreements concluded between Serbia or Luka Beograd on one side and Obnova on other side. |
| **REPLY** | Claimants note Serbia's representation that Serbia "*has already conducted a reasonable search and has not located any other lease agreements concluded between Serbia or Luka Beograd on one side and Obnova on other side*".<br>No decision is required. |
| **DECISION** | **No decision is requested.** |
| **NO.** | **5.** |
| **REQUESTED DOCUMENTS** | Request no. Is pov-3/21 of 26 June 2023 based on which Serbia obtained document submitted as Serbia's exhibit R-043. |
| **RELEVANCE** | In its Counter-Memorial, Serbia relies on a "*NOTICE*" prepared by the Serbian Republic Geodetic Authority, submitted as Serbia's exhibit R-043, that compiles various information related to Obnova's premises at Dunavska 17-19 and 23 supposedly available to the Serbian Cadaster Office, including excerpts of various sketches (*in Serbian: Skice*). The document was compiled and provided on the basis of Request no. Is pov-3/21 of 26 June 2023.<br><br>The requested document is relevant and material to determine what information Serbia asked the Republic Geodetic Authority to compile and, thus, assess whether exhibit R-043 includes all relevant information or should be updated to include additional data. |
| **OBJECTIONS** | **R, M**: The requested document is not relevant to the case or material to its outcome. Claimants are only requesting the document in question to assess "whether exhibit R-043 includes all relevant information or |

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| | should be updated to include additional data." If Claimants consider that the information contained in the exhibit R-043 may be inaccurate or incomplete, they could have sought additional information they consider relevant from the Cadastre. Instead, they seek Respondent's initial request to the Cadastre, which obviously cannot be relevant for the case at hand or material for its outcome as it does not address any issue in dispute and does not serve any legitimate purpose in the resolution of the dispute.<br>**P**: The requested document is also protected from disclosure on the grounds of privilege, as it was prepared by counsel for Respondent in connection with this proceeding. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**The requested document is relevant and material**<br>As Claimants explained above, the requested document represents a request based on which the Serbian Republic Geodetic Authority prepared a "*NOTICE*" submitted as Serbia's exhibit R-043. Serbia relies on this document to argue that Obnova's buildings at Dunavska 17-19 were allegedly "*built before Obnova was established in December 1948.*"[22] Based on this assertion, Serbia argues that there is no evidence that Obnova acquired these buildings.[23]<br>Serbia, therefore, uses Exhibit R-043 as an important part of its defense. However, as explained above, this exhibit was compiled by Serbia's own authorities (the Serbian Republic Geodetic Authority) for the sole purpose of this arbitration and based on Serbia's own request. Needless to say, the scope of Serbia's request necessarily predetermines the scope of the response, on which Serbia now relies in this arbitration.<br>The requested document will show whether exhibit R-043 was compiled in an objective manner and thus represents reliable evidence. As a result, the requested document is directly relevant and material to assess the veracity of Serbia's claim that Obnova did not build the buildings at Dunavska 17-19 and does not have any rights to these buildings.<br>For the avoidance of doubt, Serbia's argument that if "*Claimants consider that the information contained in the exhibit R-043 [sic] may be inaccurate or incomplete, they could have sought additional information they consider relevant from the Cadastre*" is not serious. Enough to say, Claimants requested production of certain documents necessary to assess completeness and accuracy of exhibit R-043 in some of their other requests (*e.g.* Requests Nos. 6-7 and 9-12). However, Serbia *objects* to production of any such documents as well. |

[22] Counter-Memorial, ¶ 63.
[23] Counter-Memorial, ¶ 63.

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| | **Information provided by Serbia is insufficient to assess whether the requested document is privileged**<br>Serbia claims that the requested document is "*protected from disclosure on the grounds of privilege*" because it was supposedly "*prepared by counsel for Respondent in connection with this proceeding.*" That, however, is not enough.<br>To begin with, Serbia does not explain what privileged information the document supposedly contains and thus what type of privilege applies to this document. The mere fact that the document was prepared by Respondent's counsel is not sufficient to invoke privilege. To the extent that Serbia intends to invoke privilege with respect to any requested documents, Claimants submit that the appropriate approach is for Serbia to prepare a privilege log listing the privileged documents and explaining the reasons for the alleged privilege. Claimants can then review the privilege log and provide their comments, if any.<br>In any case, this discussion is moot in the present case. This is because Serbia waived any applicable privilege when it submitted the document it received on the basis of its request as an exhibit in this arbitration. The Guide to the IBA Rules confirms that "*affirmative use*" of privileged documents, which in general means "*positive reliance on the evidence, or use of it in such a way that there is no doubt about the intention to rely on it*" represent a waiver of privilege.[24] Importantly, an affirmative use can also mean a "*reference to a privileged document/communication in evidence.*"[25]<br>This is exactly what happened in the present case. While it is true that Serbia did not submit the request itself as an exhibit in the arbitration, it submitted the response from the Serbian Republic Geodetic Authority prepared based on this request and expressly referring to this request. As a result, Serbia waived any privilege potentially applicable to this request. |
| **DECISION** | **The request is upheld.** |
| **NO.** | **6.** |
| **REQUESTED DOCUMENTS** | Complete version of any and all sketches (*in Serbian: skice*), excerpts of which are included in Serbia's exhibit R-043.<br>Where the requested documents cover a large area, it is sufficient to produce only the part of the document showing Dunavska 17-19, Dunavska 23 and the Surrounding Area plus the legend and any textual part of the document. |

[24] R. M. Khodykin *et al., 12. Commentary on the IBA Rules on Evidence, Article 9 [Admissibility and Assessment of Evidence]*, in A Guide to the IBA Rules on the Taking of Evidence in International Arbitration, (2019), ¶12.220, **Annex-26**.
[25] R. M. Khodykin *et al., 12. Commentary on the IBA Rules on Evidence, Article 9 [Admissibility and Assessment of Evidence]*, in A Guide to the IBA Rules on the Taking of Evidence in International Arbitration, (2019), ¶ 12.223, **Annex-26**.

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| **RELEVANCE** | As explained above, exhibit R-043 includes excerpts from various sketches. These excerpts, however, are insufficient to properly identify the original documents from which they were taken.<br>Requested documents are therefore relevant and material to assess (*i*) which exact documents served as a source material for the excerpts included in R-043; and (*ii*) veracity of the documents that served as a source for the individual excerpts.<br>The requested documents are also relevant and material to assess whether the information provided in exhibit R-043 is presented in an objective manner and includes all information relevant for the present case. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Cadastre, in accordance with the applicable regulations.[26] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[27] Respondent, just like Claimants, must address the Cadastre in order to obtain documents in question.[28] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents, so it is not justified encumbering Respondent with a task that can be performed by Claimants themselves. As Claimants have already obtained certain documentation from the Cadastre (see for example, exhibits C-162 to C-166 and C-329), there is no compelling reason why they cannot also request the documents whose production they now seek.<br>**R, M**: Claimants have not established the purported relevance and materiality of the requested documents. Claimants seek the requested documents in order to assess the source material for the sketches contained in Exhibit R-043. They do not, however, explain why this information is relevant and material for their case. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control** |

[26] Article 62 (1) of the Law on State Survey and Cadastre, provides that Cadastre data are public. See **Annex 7**. Moreover, Article 19 (1) of the Law on Procedure on Registration in the Real Estate and Infrastructure Cadastre lists data available online via Republic Geodetic Authority's ("**RGA**") website free of charge, while Article 19 (2) stipulates that interested parties can access other data, not contained in Geodetic Cadastral Information System, as well as Cadastre documentation that has not been presented in electronic form, directly on the premises of the RGA. See **Annex 8**. Also, Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[27] See above para 14..

[28] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is simply incorrect.<br>To begin with, Serbia as a whole—*i.e.* including its internal organs, agencies and other bodies—is a party to this arbitration. Serbia therefore cannot artificially create a distinction between Serbia as a party to the arbitration, on the one hand, and its organs, agencies and other bodies, on the other hand. On the contrary, as explained above,[29] relevant authorities confirm that if "*a government has a legal right to request documents from its constituent parts (such as municipalities), a tribunal may find that the documents are in the control of the government party.*"[30] This is exactly the case here.<br>As again explained above, the State Attorney Office, which represents Serbia in this arbitration, is entitled to request any document which it finds necessary for protection of rights and interests of the Republic of Serbia from *any legal entity*—including all Serbian authorities. All such entities are, in turn, *obliged* to comply with the State Attorney's requests.[31]<br>Serbia is correct that Claimants also can submit written requests to relevant authorities in an attempt to obtain the responsive documents. However, the process for dealing with such requests would be completely different than the process for dealing with requests from the State Attorney.<br>According to the Law on Free Access to Information of Public Importance, the relevant authority would have 15 days to inform Claimants whether it possesses the requested information and, potentially, to allow inspection of the document(s) containing the requested information (or issue/send a copy of the document to Claimants).[32] However, if the relevant authority decided it would not provide the requested information, it would actually have 40 days to inform Claimants accordingly.[33]<br>If the relevant authority decided to reject Claimants' request—or simply ignore it (which, as explained below, has been the case in the past[34])—Claimants would have to file a complaint with the Commissioner for Information of Public Importance and Personal Data Protection. The Commissioner would then officially |

[29] *Supra* ¶ 45.

[30] R. M. Khodykin *et al., 6. Commentary on the IBA Rules on Evidence, Article 3 [Documents]*, in A Guide to the IBA Rules on the Taking of Evidence in International Arbitration (2019), ¶ 6.197, **Annex-1**.

[31] Law on State Attorney Office (Official gazette of the RS, no. 55/2014), Art. 8 (5), **Annex-11**.

[32] Law on Free Access to Information of Public Importance (Official Gazette of the RS, no. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021), Art. 16 (1), **Annex-12**.

[33] Law on Free Access to Information of Public Importance (Official Gazette of the RS, no. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021), Art. 16 (4), **Annex-12**.

[34] *See infra* Claimants' Replies to Serbia's Objections to Request No. 26.

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| | have another 60 days to issue a decision.[35] However, in practice, due to the large number of cases before the Commissioner, this deadline is often extended.<br>But even if the statutory deadline was observed, the Commissioner would most probably issue its decision only *after* the deadline for submission of the Claimants Reply (being 23 February 2024)—and such decision could still reject Claimants' request.<br>Furthermore, even if the Commissioner decided in Claimants' favour, it often happens that the relevant state authorities simply ignore the Commissioner's decisions. Indeed, according to information available on the Commissioner's website, as of 30 October 2023, more than 800 public authorities—*including the Republic Geodetic Authority (which also maintains the Cadastre*)—have not complied with the Commissioner's decisions.[36]<br>As a result, if Claimants tried to obtain the requested documents pursuant to the Law on Free Access to Information of Public Importance, they would need go through a process that would potentially take months—and without any guarantee whatsoever that they would actually obtain the requested documents at the end. This is in a stark contrast to the position of the State Attorney, who can order production of the same information "*without delay*".[37]<br>Claimants' position would not be substantially different even if they tried to obtain the requested documents based on the laws specifically governing access to Cadastral information, *i.e.* the Law on State Survey and Cadastre and the Law on Procedure on Registration in the Real Estate and Infrastructure Cadastre, which Serbia also cites in its objections.<br>To begin with, to access any information pursuant to these two laws, Claimants would first need to prove that they have legal interest to access such information. The decision on whether such legal interest exists or |

[35] Law on Free Access to Information of Public Importance (Official Gazette of the RS, no. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021), Art. 24 (1), **Annex-12**.

[36] The up-to-date list of public authorities that have not complied even after the Commissioner's decision or have not informed the Commissioner's Office, along with providing evidence of their handling of the request or the order from the decision is available at the following link: https://www.poverenik.rs/sr-yu/pristup-informacijama/%D0%BF%D1%80%D0%B5%D0%B3%D0%BB%D0%B5%D0%B4-%D0%BE%D1%80%D0%B3%D0%B0%D0%BDa-%D0%BA%D0%BE%D1%98%D0%B8-%D0%BD%D0%B8%D1%81%D1%83-%D0%BF%D0%BE%D1%81%D1%82%D1%83%D0%BF%D0%B8%D0%BB%D0%B8-%D0%BF%D0%BE-%D1%80%D0%B5%D1%88%D0%B5%D1%9A%D1%83-%D0%BF%D0%BE%D0%B2%D0%B5%D1%80%D0%B5%D0%BD%D0%B8%D0%BA%D0%B0-2.html List of authorities as of 31 October 2023, **Annex-13**.

[37] *Supra* ¶ 43.

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| | not would be taken by the Cadaster. As a result, there is no guarantee that Claimants' request would be upheld.[38]<br>On the other hand, as explained above, the Cadaster is *obliged* to provide any information requested by the State Attorney. In addition, the State Attorney's Office is also authorized to review, free of charge, any data in the Cadastre data information system and official records.[39]<br>In addition, while the official deadline for a decision on Claimants' request would be shorter than in case of a request pursuant to the Law on Free Access to Information of Public Importance—only 8 days[40]—the Cadaster is one of Serbian administration bodies that most often exceeds legal deadlines. Enough to say, there are currently 1,521 pending complaints against the Cadaster—most of them based on the failure to obtain statutory deadlines.[41] As a result, even if the Cadaster accepted Claimants' request, it is not possible to estimate how long it would take for Claimants' to actually obtain the requested documents.<br>In sum, while Serbia's authorities are obliged to provide documents requested by the State Attorney "*without delay*", Claimants would need to go through a process that would take at least several months—and without any guarantee whatsoever that they would, at the end, actually receive the requested documents.<br>As explained above, in order to assume that a document is in the control of a party, that party must have "*the ability to obtain the document* ***without any assistance from the tribunal or any other third party*** *[…].*"[42]<br>This is not the case here because Claimants are not able to access the requested documents without assistance from various Serbian authorities.<br>It is therefore clear that the requested documents are *not* "*equally and effectively available to both parties*", as Serbia incorrectly asserts in its objection. Furthermore, as explained above,[43] authorities cited by Serbia itself merely confirm that the only consequence of the fact that the requested documents are "*equally and effectively available to both parties*" is that Serbia does not need to physically produce such documents to |

[38] Law on Procedure on Registration in the Real Estate and Infrastructure Cadastre (Official Gazette of the RS, no. 41/2018, 95/2018, 31/2019, 15/2020 and 92/2023), Art. 19 (2), **Annex-21**.
[39] Law on Electronic Administration (Official Gazette of the RS, no. 27/2018), Arts. 8, 33, **Annex-24**.
[40] Law on Administrative Procedure (Official Gazette of the RS, no. 18/2016, 95/2018 - authentic interpretation, and 2/2023 - CC decision), Art. 65, **Annex-23**.
[41] Report of the Protector of Citizens of the Republic of Serbia for 2022, *Protector of Citizens (Ombudsman)*, https://www.ombudsman.rs/attachments/article/7685/Redovan%20GI%20za%202022.%20god.pdf (last accessed on 23 November 2021), **Annex-25**.
[42] R. M. Khodykin *et al., 6. Commentary on the IBA Rules on Evidence, Article 3 [Documents]*, in A Guide to the IBA Rules on the Taking of Evidence in International Arbitration (2019), ¶ 6.174 (emphasis added), **Annex-1**.
[43] *Supra* ¶ 41.

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| | Claimants. Serbia would still, however, have an obligation to allow Claimants to access the responsive documents in offices of relevant Serbian authorities—in this case in a Cadaster office.[44]<br>Thus, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.<br>**The requested documents are relevant and material**<br>As explained above,[45] Serbia relies on exhibit R-043 to argue that Obnova does not have rights to its buildings at Dunavska 17-19.<br>However, as also explained above, R-043 only includes excerpts from various sketches referred in R-043. These excerpts are insufficient to properly identify the original documents from which they were taken. The requested documents will show which specific documents were used to compile R-043 and, in turn, whether such documents support Serbia's claim that Obnova does not have any rights to buildings at Dunavska 17-19. The documents will also make it possible to check whether the Serbian Republic Geodetic Authority made any mistakes when preparing Exhibit R-043 for the purposes of this arbitration. The requested documents are therefore directly relevant and material to assess the veracity of Serbia's claim that Obnova does not have any rights to these buildings and evaluate the evidence that Serbia adduces to support that claim. |
| **DECISION** | **The request is <u>upheld</u> with regard to complete versions of the sketches included in Exhibit R-043.** |
| **NO.** | **7.** |
| **REQUESTED DOCUMENTS** | Any and all sketches (*in Serbian: skice*) that have been prepared for Dunavska 17-19 and Dunavska 23 between 1946 and 1995. |
| **RELEVANCE** | Serbia argues in the Counter-Memorial that Claimants did not prove that Obnova built the buildings presently existing at its premises and argue that all Obnova's buildings at Dunavska 17-19 had been built before the creation of Obnova's predecessor Otpad.[46]<br>The requested documents are relevant and material to assess Serbia's contemporaneous understanding of the: (*i*) existence of buildings at Obnova's premises at Dunavska 17-19 and Dunavska 23; and (*ii*) ownership and other rights to these buildings and the land plots at these premises. |

44 *Supra* ¶ 37.
45 *See* Claimants' reply to Request No. 5.
46 *E.g.* Counter-Memorial, ¶ 63.

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| **OBJECTIONS** | **B, V, U**: The request is unduly and overly broad and burdensome. Claimants' request does not specify the State authority from which these documents would originate, and, in addition, it covers a period of no less than 49 years. Respondent cannot reasonably be requested to detect the relevant State authority, instead of Claimants, nor to produce all documents from the time period extending almost to half century that relate to Dunavska Plots. Obviously, Claimants' request is a classic fishing expedition as they are casting about for documents, the existence of which they can only surmise, which they hope will support their case.<br>**PCC**: Claimants have failed to prove that at least some of these documents are not accessible to them (for example, if Claimants have in mind sketches that are in Cadastre's possession they could have obtained these documents themselves as explained at Request No. 6 above).<br>**R, M**: The requested documents are also irrelevant to Claimants' case and are not material for the outcome of the proceedings. The requested documents do not answer the question who built the Objects, i.e., whether Obnova built the Objects, or who is the owner of the Objects. These documents can only reveal whether a certain object existed or not at a certain point of time This fact however may be of importance only for the period before 1948, as that was when Obnova was established,[47] meaning that it could not have possibly constructed the objects that already existed at that time.[48] |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Claimants request is neither broad nor vague and does not represent an unreasonable burden to Serbia**<br>Serbia's objections are disingenuous. The term "*sketch*" or in Serbian "*skica*" is a specific term used in the Rulebook on cadaster surveying, renewal of cadasters and surveying works in the maintenance of the Real Estate Cadaster and the Rulebook on cadaster Survey and Real Estate Cadaster.[49] Additionally, according to the Rulebook on Cadaster Survey and Real Estate Cadaster, a sample sketch of cadaster survey is set out in attachment 7 of the mentioned rulebook.[50] |

[47] Confirmation from the Serbian Business Registers Agency, 8 February 2021, **C-149**.
[48] Counter-Memorial, ¶ 63.
[49] Rulebook on cadaster Surveying, renewal of cadasters and surveying works in the maintenance of the Real Estate Cadaster and Rulebook on cadaster Survey and Real Estate Cadaster (Official gazette of the RS, no. 7/2019, 26/2020 and 93/2023), Art. 20, **Annex-14**.
[50] Rulebook on Cadaster Survey and Real Estate Cadaster (Official gazette of the RS, no. 7/2016, 88/2016 and 7/2019 – other rulebooks), Attachment 7, **Annex-15**.

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| | Furthermore, all the requested documents are available at the Republic Geodetic Authority.[51] Serbia's argument that it cannot be reasonably requested to "*detect the relevant State authority*" thus clearly does not stand. In any event, Claimants are willing to narrow the request to only cover documents in possession, custody or control of the Republic Geodetic Authority or the custodian of the archives of the Republic Geodetic Authority and its legal predecessors, if any (as the name of the organ of Republic of Serbia responsible for the preparation of the requested documents may have changed in time).<br>Serbia's argument that the requested documents cover the time period of "*extending almost to half century*" is equally disingenuous. As noted above, all the requested documents are available at the Republic Geodetic Authority. Serbia provides no explanation whatsoever for why it would be overly burdensome to obtain these documents from this authority, even if they cover a longer time period. Specifically, Serbia does not argue that the number of responsive documents would be too numerous or that they would otherwise be too difficult to identify and produce.<br>Finally, the long time period covered by the request is due to the nature of Serbia's defense that Obnova did not have the claimed rights to the buildings and land at Dunavska 17-19 because of the alleged pre-existence of some of the buildings in the 1940s and because of Obnova's contracts with the City of Belgrade and Luka Beograd starting in the early 1950s. Therefore, the long time period stems from Serbia's defenses and the need to check their veracity.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply to Serbia's objection to Request No. 6 above.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents will demonstrate Serbia's contemporaneous understanding of the: (*i*) existence of buildings at Obnova's premises at Dunavska 17-19 and Dunavska 23; and (*ii*) ownership and other rights to these buildings and the land plots at these premises. As such, the requested documents are relevant and material to assess the veracity of Serbia's claim that Obnova does not have any rights to these buildings.<br>Serbia's argument that the requested documents "*do not answer the question who built the Objects, i.e., whether Obnova built the Objects, or who is the owner of the Objects*" is contradicted by Serbia's own exhibits. Specifically, the exhibit submitted as R-043 contains excerpts of two sketches that describe |

[51] Law on State Survey and Cadastre (Official Gazette of the RS, no. 72/2009, 18/2010, 65/2013, 15/2015 - CC decision, 96/2015, 47/2017 - authentic interpretation, 113/2017 - other law, 27/ 2018 - other law, 41/2018 - other law, 9/2020 - other law and 92/2023), Art. 10 (1), point 19, **Annex-22**.

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| | Obnova as the "*user*" and the "*owner*" of buildings at Dunavska 17-19.[52] This fact shows that the Cadaster documents contain notes about Obnova's rights to its premises at Dunavska 17-19 and Dunavska 23.<br>Serbia's argument that the only relevant question related to the time when the buildings were constructed is whether they were constructed before 1948 or not is equally incorrect. Knowledge of the exact time when the buildings were built is relevant to assess what rights Obnova acquired to these buildings and to the land on which they were built.<br>As Claimants explained in their Memorial,[53] Serbian regulation of rights to buildings and land has extensively evolved from 1948 to today. Knowledge of when exactly the buildings were built is therefore directly relevant and material for assessment of Obnova's rights to these buildings, as well as to the land on which they were built. |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **8.** |
| **REQUESTED DOCUMENTS** | Request No. 952-02-6-74/2004 referred to on pages 5 and 7 of exhibit R-043 and any and all documents and information used for the preparation of the sketch (*in Serbian: skica*), which was prepared based on that request. |
| **RELEVANCE** | One of the excerpts presented in exhibit R-043 is an excerpt from a sketch (*in Serbian: skica*) allegedly prepared based "*upon request 952-02-6-74/2004*". This excerpt includes a note "*Owner of the Buildings: 'Obnova' JSC, Belgrade Dunavska St., 17-19.*"[54]<br>The requested documents are relevant and material to assess which authority prepared the sketch and determined that Obnova is the owner of the buildings depicted therein. |
| **OBJECTIONS** | **R, M**: Claimants' request is irrelevant and immaterial. The question of "which authority prepared the sketch and determined that Obnova is the owner of the buildings depicted therein" can be determined on the basis of an exhibit submitted by Claimants themselves, i.e. exhibit C-329. This sketch is referenced on page 42 of Claimants' Memorial. Exhibit C-329 shows that the sketch was prepared by privately-owned geodetic company Beta[55] (in other words, there was no Serbian authority that "prepared the sketch and determined that Obnova is the owner of the buildings depicted therein"). Therefore, the requested documents are not |

52 Information from the Cadastre, 31 July 2023, pp. 3, 5 (pdf) **R-043**; Memorial, ¶ 145.
53 *E.g.* Živković Milošević ER, ¶¶ 73-121, 160-174; Memorial, ¶¶ 134-135.
54 Information from the Cadastre, 31 July 2023, p. 5 (pdf), **R-043**.
55 *See* Letter from Geodetic Authority of Serbia to Obnova, 18 February 2021, p. 9 (pdf), **C-329** (bottom left corner has a stamp from company Beta).

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| | relevant nor material since the fact that Claimants intend to determine from them can be also determined from the document that is already in the case files.<br>Claimants' request is further irrelevant and immaterial since the purported relevance of this document is simply to ascertain the "authority which prepared the sketch". This information does not address any issue in dispute and does not serve any legitimate purpose in the resolution of the present dispute.<br>**PCC**: In addition, the requested documents are accessible to Obnova/Claimants who can address the Cadastre and request the documents in question (though, it is unlikely that documents and information used for preparation of the sketch by the privately-owned geodetic company are in Cadastre's possession). |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested document is relevant and material**<br>As explained above, the requested document is a request upon which a sketch included in Serbia's exhibit R-043 (as well as Claimants' exhibit C-329) was prepared. Furthermore, as also explained above, the sketch includes the following note: *Owner of the Buildings: 'Obnova'JSC, Belgrade Dunavska St., 17-19.*"[56] The requested documents will show under what circumstances this sketch was prepared, who exactly included the note about Obnova's ownership of the buildings at Dunavska 17-19 and, thus, also whether Serbia recognized Obnova's ownership before the commencement of this arbitration.<br>Serbia's argument that it is allegedly clear that this document was prepared by a private company is both incorrect and irrelevant. It is incorrect because, besides the stamp of the geodetic company Beta, the top part of the document, above the sketch itself, also states "*REPUBLIC OF SERBIA, MUNICIPALITY: Stari Grad, CADASTRAL MUNICIPALITY: Stari grad*" and includes the following reference: "*RECORD No., LAYOUT No. 952-02-6-74/04.*"[57]<br>As a result, it is clear that this document was either prepared based on a request from Serbia or was, at the very least, recorded by Serbian authorities. There does not seem to be any other explanation for why the document would have a record number—and Serbia itself also does not provide any.<br>Further, the fact that Serbia may have outsourced the preparation of the requested documents to a private company is irrelevant. The requested documents are official documents commissioned by the organs of Serbia. There is no indication on the record that the commissioning authority disagreed with the content of |

[56] Information from the Cadastre, 31 July 2023, p. 5 (pdf), **R-043**. *See also* Letter from Geodetic Authority of Serbia to Obnova, 18 February 2021, p. 4 (pdf), **C-329**.
[57] Letter from Geodetic Authority of Serbia to Obnova, 18 February 2021, p. 4 (pdf), **C-329**.

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| | the document. Quite the opposite, the sketch was one of the source documents for Exhibit R-043 that Serbia prepared specifically for the purposes of this arbitration.<br>As a result, the requested documents are directly relevant for the key issue in this dispute—*i.e.* whether Obnova owned buildings at Dunavska 17-19 and whether Serbia recognized Obnova's ownership before the commencement of this dispute.<br>**Requested document is not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply to Serbia's objection to Request No. 6 above. |
| **DECISION** | **The request is upheld as regards "Request No. 952-02-6-74/2004 referred to on pages 5 and 7 of exhibit R-043". The request is denied as regards "any and all documents and information used for the preparation of the sketch … which was prepared based on that request" on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **9.** |
| **REQUESTED DOCUMENTS** | Cadaster Plans (*in Serbian: katastarski planovi*) that have been prepared between 1946 and 1995 and include Dunavska 17-19, Dunavska 23 and the Surrounding Area. |
| **RELEVANCE** | Serbia argues in the Counter-Memorial that Claimants did not prove that Obnova built the buildings presently existing at its premises and argue that all Obnova's buildings at Dunavska 17-19 had been built before the creation of Obnova's predecessor Otpad.[58]<br>The requested documents are relevant and material to assess Serbia's contemporaneous understanding of the: (*i*) existence of buildings at Obnova's premises at Dunavska 17-19 and Dunavska 23; and (*ii*) ownership and other rights to these buildings and the land plots at these premises. |
| **OBJECTIONS** | **B, U**: the request is unduly and overly broad and burdensome as it covers a time period of five decades, going back to 1946 (prior to the establishment of Obnova). Respondent cannot reasonably be requested to produce all documents from this time period extending almost to half century that relate to Dunavska Plots. Obviously, Claimants' request is nothing else but a fishing expedition as they are casting about for documents, the existence of which they can only surmise (as evidenced by the fact that Claimants are unable to identify a specific document or date on which the document was prepared), which they hope will support their case. |

[58] *E.g.* Counter-Memorial, ¶ 63.

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| | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Cadastre, in accordance with the applicable regulations.[59] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[60] Respondent, just like Claimants, must address the Cadastre in order to obtain documents in question.[61] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents, so it is not justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants already obtained certain documentation from the Cadastre (see for example, exhibits C-162 to C-166 and C-329), so they can also request the documents whose production they now seek.<br><br>**R, V**: The requested documents are irrelevant to Claimants' case and are not material for the outcome of the proceedings. The requested documents do not address the question of who built the Objects, i.e., whether Obnova built them, let alone who is the owner of the Objects. These documents can only reveal whether a certain object existed or not at a certain point of time. This fact however may be of importance only for the period before 1948, as that was when Obnova was established,[62] meaning that it could not have possibly constructed the objects that already existed at that time.[63] |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Claimants request is not overbroad and does not represent an unreasonable burden to Serbia** |

[59] Article 62 (1) of the Law on State Survey and Cadastre, provides that Cadastre data are public. See **Annex 7**. Moreover, Article 19 (1) of the Law on Procedure on Registration in the Real Estate and Infrastructure Cadastre, lists data available online via RGA website free of charge, while Article 19 (2) stipulates that interested parties can access other data, not contained in Geodetic Cadastral Information System, as well as Cadastre documentation that has not been presented in electronic form, directly on the premises of the RGA. See **Annex 8**. Also, Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[60] See above para 14.

[61] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[62] Confirmation from the Serbian Business Registers Agency dated 8 February 2021**, C-149**.

[63] Counter-Memorial, ¶ 63.

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| | The only issue that Serbia raises is that the request supposedly covers a long period of time. However, Serbia does not explain why this fact should be an issue. Indeed, it is not. Cadaster Plans are prepared only sporadically and, therefore, the number of responsive documents is presumably low despite the long time period. Further, all the requested documents are stored *in a digital form* at the Republic Geodetic Authority. As a result, it should not be burdensome to identify and produce the responsive documents.<br>In addition, the fact that Claimants' request covers 49 years (including 2 years before the establishment of Obnova) is due to the nature of Serbia's defense that Obnova did not have the claimed rights to the buildings and land at Dunavska 17-19 because of the alleged pre-existence of some of the buildings in the 1940s and because of Obnova's contracts with the City of Belgrade and Luka Beograd starting in the early 1950s. Therefore, the long time period stems from Serbia's defenses and the need to check their veracity.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply to Serbia's objection to Request No. 6 above.<br>**The requested documents are relevant and material**<br>As explained above, the requested documents are relevant and material to assess Serbia's contemporaneous understanding of the: (*i*) existence of buildings at Obnova's premises at Dunavska 17-19 and Dunavska 23; and (*ii*) ownership and other rights to these buildings and the land plots at these premises.<br>Serbia's argument that the requested documents "*do not answer the question who built the Objects, i.e., whether Obnova built the Objects, or who is the owner of the Objects*" is contradicted by Serbia's own exhibits. Specifically, exhibit submitted as R-043 contains excerpts of two sketches that describe Obnova as the "*user*" and the "*owner*" of buildings at Dunavska 17-19.[64] This fact shows that Cadaster documents can contain notes about Obnova's rights to its premises at Dunavska 17-19 and Dunavska 23.<br>Serbia's argument that the only relevant question related to the time when the buildings were constructed is whether they were constructed before 1948 or not is equally incorrect. Knowledge of the exact time when the buildings were built is relevant to assess what rights Obnova acquired to these buildings and the land on which they were built.<br>As Claimants explained in their Memorial,[65] Serbian regulation of rights to buildings and land has extensively evolved from 1948 to today. Knowledge of when exactly the buildings were built is therefore directly relevant and material for assessment of Obnova's rights to these buildings, as well as to the land on which they were built. |

64 Information from the Cadastre, 31 July 2023, pp. 3, 5 (pdf), **R-043**; Memorial, ¶ 145.
65 *E.g.* Živković Milošević ER, ¶¶ 73-121, 160-174; Memorial, ¶¶ 134-135.

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| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **10.** |
| **REQUESTED DOCUMENTS** | Any and all notes prepared during geometric surveys that served as basis for preparation, changes, revisions and/or edits to sketches and Cadastral Plans relating to Dunavska 17-19 and Dunavska 23 prepared between 1945 and 1995. |
| **RELEVANCE** | Preparation of, as well as any changes, revisions and/or edits to sketches and Cadastral Plans must be preceded by geometric surveys. Geometers conducting these surveys prepare notes that reflect their findings.<br>As explained above, Serbia argues in the Counter-Memorial that Claimants did not prove that Obnova built the buildings presently existing at its premises and argue that all of Obnova's buildings at Dunavska 17-19 had been built before the creation of Obnova's predecessor Otpad.[66]<br>The requested documents are relevant and material to confirm when the buildings at Dunavska 17-19, as well as Dunavska 23, were built. |
| **OBJECTIONS** | **B, V, U**: The request is unduly burdensome as it covers a period of 50 years. Respondent cannot reasonably be bound to produce all documents from this time period that relate to the Dunavska Plots. The request is also unduly broad and vague in that it captures all notes prepared in the course of conducting a geometric survey, regardless of whether said notes (or survey) concerned or had any bearing on the Objects in dispute.<br>**PCC**: Claimants could have obtained these documents themselves by submitting a request to the Cadastre (see above request no. 9).<br>**R, M**: The requested documents are also irrelevant to Claimants' case and are not material for the outcome of the proceedings, as explained at request no. 9 above. Claimants' request is little more than a fishing expedition for documentation proving "when the buildings at Dunavska 17-19, as well as Dunavska 23, were built". Claimants have not identified any specific documents or category of documents that are in Respondent's possession which provide this information and instead are casting about for any potentially relevant information which might be in Respondent's possession. However, if Obnova built the Objects, as Claimants allege, Obnova (and therefore Claimants) would be in possession of documents proving the construction. |

[66] *E.g.* Counter-Memorial, ¶ 63.

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| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Claimants request is neither broad nor vague and does not represent an unreasonable burden to Serbia**<br>While Serbia claims that this request is unduly burdensome because "*it covers a period of 50 years*", it does not explain how this time period makes the requests unduly burdensome. Specifically, it is unclear whether Serbia complains of a potential number of responsive documents or something else.<br>The number of potentially responsive documents should be limited. To the best of Claimants' knowledge, there were only two state surveys performed between 1945 and 1995.<br>As for Serbia's argument that the request is "*also unduly broad and vague in that it captures all notes prepared in the course of conducting a geometric survey, regardless of whether said notes (or survey) concerned or had any bearing on the Objects in dispute*" this is simply not true. The request is expressly limited to notes "*prepared during geometric surveys that served as basis for preparation, changes, revisions and/or edits to sketches and Cadastral Plans* ***relating to Dunavska 17-19 and Dunavska 23***." As such, the request clearly relates only to the premises at dispute.<br>Finally, the fact that Claimants' request covers 49 years (including 2 years before the establishment of Obnova) is due to the nature of Serbia's defense that Obnova did not have the claimed rights to the buildings and land at Dunavska 17-19 because of the alleged pre-existence of some of the buildings in the 1940s and because of Obnova's contracts with the City of Belgrade and Luka Beograd starting in the early 1950s. Therefore, the long time period stems from Serbia's defenses and the need to check their veracity.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply to Serbia's objection to Request No. 6 above.<br>**The requested documents are relevant and material**<br>As explained above, the requested documents will show when Obnova's buildings were built. This determination is, in turn, relevant and material to rebut Serbia's argument that Obnova's buildings at Dunavska 17-19 were built before Obnova's establishment and Obnova thus does not have any rights to these buildings.[67]<br>Serbia's argument that the requested documents are not relevant and material because "*Claimants have not identified any specific documents or category of documents that are in Respondent's possession which provide this information*", supposedly being the information about when the buildings were built, is clearly |

[67] Counter-Memorial, ¶ 63.

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| | incorrect. Claimants identified a very specific category of documents—notes prepared during geometric surveys that served as basis for preparation, changes, revisions and/or edits to sketches and Cadastral Plans relating to Dunavska 17-19 and Dunavska 23 prepared between 1945 and 1995.<br>Finally, Serbia's argument that "*if Obnova built the Objects, as Claimants allege, Obnova (and therefore Claimants) would be in possession of documents proving the construction*" is both irrelevant to assess the relevance and materiality of Claimants' request, and factually incorrect because Obnova's buildings at Dunavska 17-19 were built decades before Claimants acquired ownership of Obnova. At that time, Obnova was a socially-owned enterprise, de facto controlled by Serbia's predecessor, communist Yugoslavia. Thus, the absence of such documents in Obnova's archive (for certain of Obnova's buildings) cannot be used to deny the fact that Obnova built the buildings it has been using without any interruption or interference for more than 70 years. |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **11.** |
| **REQUESTED DOCUMENTS** | Any and all available geodetic surveys, situational backgrounds (*in Serbian: situacione podloge*) prepared for Dunavska 17-19 and Dunavska 23 between 1945 and 1995. |
| **RELEVANCE** | Serbia argues in the Counter-Memorial that Claimants did not prove that Obnova built the buildings presently existing at its premises and argue that all Obnova's buildings at Dunavska 17-19 had been built before the creation of Obnova's predecessor Otpad.[68]<br>Requested documents are documents prepared by the authorities maintaining Cadastral Plans for other public authorities in connection with urban planning projects.<br>The requested documents are relevant and material to assess Serbia's contemporaneous understanding of the: (*i*) existence of buildings at Obnova's premises at Dunavska 17-19 and Dunavska 23; and (*ii*) ownership and other rights to these buildings and the land plots at these premises. |
| **OBJECTIONS** | **B, U**: the request is unduly and overly broad and burdensome as Claimants failed to specify the State authority from which these documents would originate, i.e. "authorities maintaining Cadastral Plans for other public authorities in connection with urban planning projects". In addition, Claimants' request covers a period of no less than 50 years. Respondent cannot reasonably be bound to detect the relevant State authority, instead of Claimants, nor requested to produce all documents from this time period extending |

[68] *E.g.* Counter-Memorial, ¶ 63.

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| | almost to half century that relate to Dunavska Plots. Obviously, Claimants' request is nothing else but a fishing expedition. Claimants have not identified any specific documents or category of documents that are in Respondent's possession which would shed light on when the Objects were built or who owned or other rights over these Objects and the Dunavska Plots. Claimants are casting about for any documents which might be in Respondent's possession and which might contain such information.<br>**PCC**: Claimants could have obtained these documents themselves by submitting a request to the Cadastre (see above request no. 9).<br>**R, V**: The requested documents are irrelevant to Claimants' case and are not material for the outcome of the proceedings, as explained at request no. 9 above. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Claimants request is neither broad nor represent an unreasonable burden to Serbia**<br>While Serbia claims that this request is unduly burdensome because it "*covers a period of 50 years*", it does not explain how this time period makes the requests unduly burdensome. Specifically, it is unclear whether Serbia complains of a potential number of responsive documents or something else.<br>Furthermore, as explained above, Claimants' request covers 49 years (including 2 years before the establishment of Obnova) because of the nature of Serbia's defense that Obnova did not have the claimed rights to the buildings and land at Dunavska 17-19 because of the alleged pre-existence of some of the buildings in the 1940s and because of Obnova's contracts with the City of Belgrade and Luka Beograd starting in the early 1950s. Therefore, the long time period stems from Serbia's defenses and the need to check their veracity.<br>As for Serbia's argument that "*Claimants failed to specify the State authority from which these documents would originate*", Claimants note that, to the best of their knowledge, all the situational backgrounds and geodetic surveys should be kept by the Republic Geodetic Authority.[69]<br>Serbia's argument that "*Respondent cannot reasonably be bound […] to produce all documents from this time period extending almost to half century that relate to Dunavska Plots*" is equally misplaced. Claimants clearly do not request production of "*all documents from this time period extending almost to half century* |

[69] Law on State Survey and Cadastre (Official Gazette of the RS, no. 72/2009, 18/2010, 65/2013, 15/2015 - CC decision, 96/2015, 47/2017 - authentic interpretation, 113/2017 - other law, 27/ 2018 - other law, 41/2018 - other law, 9/2020 - other law and 92/2023), Art. 10 (1), point 19, **Annex-22**.

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| | *that relate to Dunavska Plots.*" Claimants request only geodetic surveys, situational backgrounds (*in Serbian: situacione podloge*) prepared for Dunavska 17-19 and Dunavska 23.<br>**Requested document is not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply to Serbia's objection to Request No. 6 above.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents are documents prepared by the authorities maintaining Cadastral Plans for other public authorities in connection with urban planning projects. The requested documents will show when exactly, according to Serbia's own records, Obnova's buildings at Dunavska 17-19 were built. This determination is directly relevant and material to show that Serbia's assertion that these buildings were built before establishment of Obnova and, as a result, Obnova does not have any rights to these buildings, is false.[70]<br>As for Serbia's reference to its objections to Request No. 9, Claimants note that their Request No. 9 seeks production of different documents that were, in addition, prepared by different entities. That being said, to the extent that the Tribunal finds Serbia's objections relevant with respect to this Request No. 11, Claimants hereby incorporate their response to Serbia's objections to Request No. 9. |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **12.** |
| **REQUESTED DOCUMENTS** | Any and all aerial and/or satellite photos of Belgrade, which include any part of Dunavska 17-19, Dunavska 23 and/or the Surrounding Area, made, commissioned and/or otherwise acquired or possessed by Serbian authorities, including but not limited to the Ministry of Defense, the Ministry of Construction, Infrastructure and Transportation and/or the Republic Geodetic Authority (and their legal predecessors) between 1946 and 2005. |
| **RELEVANCE** | As explained above, Serbia disputes that Obnova built the buildings presently existing at its premises.<br>The requested documents are relevant and material to demonstrate that Obnova's buildings at its premises at Dunavska 17-19 and 23 were built after Obnova's establishment in 1948. |
| **OBJECTIONS** | **B, U**: The request is unduly and overly broad and burdensome as it covers a period of no less than 59 years. Respondent cannot reasonably be requested to produce all existing aerial and/or satellite photos from this time period extending almost to half century that relate to the Dunavska Plots. In the same vein, it would be unreasonably burdensome to require Respondent to identify other authorities, not listed in Claimants' |

[70] Counter-Memorial, ¶ 63.

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| | request, which might be in possession of the requested documentation and require them to search their archives for any responsive documents. Obviously, Claimants' request is nothing else but a fishing expedition.<br>**R, M**: The requested photos are irrelevant to Claimants' case and are not material for the outcome of the proceedings, as explained at request no. 9 above. |
| **REPLY** | To facilitate Serbia's search for responsive documents, Claimants agree to limit their request to: "*Any and all aerial and/or satellite photos of Belgrade, which include any part of Dunavska 17-19, Dunavska 23 and/or the Surrounding Area, made, commissioned and/or otherwise acquired or possessed by the Ministry of Defense, the Ministry of Construction, Infrastructure and Transportation and/or the Republic Geodetic Authority (and their legal predecessors) between 1946 and 1960.*"<br>Claimants respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents will show that Obnova's buildings at its premises at Dunavska 17-19 and 23 were built after Obnova's establishment in 1948. As a result, the requested documents are directly relevant and material to show that Serbia's assertion that these buildings were built before establishment of Obnova and, as a result, Obnova does not have any rights to these buildings, is false.[71]<br>As for Serbia's reference to its objections to Request No. 9, Claimants note that that request seeks production of different documents that were, in addition, prepared by different entities. That being said, to the extent that the Tribunal finds Serbia's objections relevant with respect to this Request No. 12, Claimants hereby incorporate their response to Serbia's objections to Request No. 9.<br>**Claimants request is neither broad nor represent an unreasonable burden to Serbia**<br>Claimants note Serbia's objections. Claimants have limited the temporal scope of their request to the years 1946 – 1960 during which Obnova's buildings were built.<br>As for Serbia's allegation that "*it would be unreasonably burdensome to require Respondent to identify other authorities, not listed in Claimants' request, which might be in possession of the requested documentation and require them to search their archives for any responsive documents*," Claimants note that Serbia is clearly better positioned to identify their own relevant public authorities than Claimants are. |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |

[71] Counter-Memorial, ¶ 63.

| **NO.** | **13.** |
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| **REQUESTED DOCUMENTS** | Spatial Development Program, Construction Land Development Program and Port Program referred to in Article 7 of the agreement submitted by Serbia as exhibit R-060. |
| **RELEVANCE** | As explained above, Serbia argues that Obnova allegedly did not have the right of use over its premises at Dunavska 17-19 and 23. According to Serbia this is, amongst other things, because the right of use purportedly belonged to Luka Beograd which leased the premises to Obnova.[72]<br>The agreement submitted by Serbia as R-060 is an agreement dated 6 March 1975 under which: (*i*) Luka Beograd agreed to transfer back to the City of Belgrade the right of use over the entirety of the land it had received from the City of Belgrade in 1961; and (*ii*) the City of Belgrade agreed to grant Luka Beograd the right of use over the land that Luka Beograd actually needed for its activities.<br>According to Article 7 of the agreement, "*The development of the construction land referred to in Article 4 of this contract will be carried out in accordance with the provisions of the Decision on the Development and granting of construction land for construction (Official Gazette of the City of Belgrade No. 22/72) and in accordance with the Spatial Development Program of the Company as well as the Construction Land Development Program, with the provision that the land which according to the Port Program needs to be developed must also be entered into the Construction Land Development Program.*"[73]<br>The requested documents address the scope of the development envisaged by Luka Beograd and may determine whether Obnova's premises at Dunavska 17-19 and/or 23 were within the area that was necessary for Luka Beograd's development. Therefore, the requested documents may show whether Obnova's premises at Dunavska 17-19 and 23 were part the land over which Luka Beograd was granted the right of use under the agreement submitted as R-060. |
| **OBJECTIONS** | **B, V, U**: Claimants' request is unduly burdensome. It follows from Article 7 of the agreement, submitted as Exhibit R-060, that the requested documents were created by Luka Beograd, which is a private company, not a state authority. Accordingly, Respondent cannot be bound to obtain the documents in question. Further, Claimants' request is unduly broad and vague as Claimants have failed to specify the State authority which could be in possession of these documents. Respondent cannot reasonably be required to identify the relevant State authority. |

[72] *E.g.* Counter-Memorial, ¶¶ 22, 27, 32 *et seq.*
[73] Agreement concluded between the City of Belgrade and Luka Beograd, 6 March 1975, Art. 7, **R-060**.

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| | **R, M**: The requested documents are also irrelevant and immaterial. Claimants do not explain why the requested documents would resolve issues related to Obnova's alleged ownership of or entitlement to use the Dunavska Plots. Indeed, Claimants confirm the speculative nature of this request when they state that "the requested documents *may* show whether Obnova's premises at Dunavska 17-19 and 23 were part the land over which Luka Beograd was granted the right of use" (emphasis added). As with so many of Claimants' other requests, this request is a classic fishing expedition. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Claimants request is neither broad nor vague and does not represent an unreasonable burden to Serbia**<br>Claimants request aims at *three* specific documents referred in an agreement signed by Serbia. Serbia's argument that it cannot be asked to produce these documents because they were prepared by Luka Beograd is not serious. First, at the time of the signing of the agreement submitted as Exhibit R-060, Luka Beograd was *not* a "*private company*". It was a publicly owned company under full control of Serbia. *Second*, it is reasonable to assume that upon signing of the agreement, Serbia had been provided with these documents so that it could review them—indeed, Serbia does not claim otherwise.<br>Serbia's assertions that "*Claimants' request is unduly broad and vague as Claimants have failed to specify the State authority which could be in possession of these documents*" and that Serbia "*cannot reasonably be required to identify the relevant State authority*" are borderline absurd. The agreement was concluded by the City of Belgrade. It should not be overly difficult for Serbia to come to the conclusion that the requested documents could be in possession of the City of Belgrade or any governmental entity that has custody of the City of Belgrade's archive. Thus, Serbia cannot seriously claim that it is unable to identify the relevant authority that is in possession of the responsive documents.<br>Similarly, Serbia is the best placed to know which other governmental entities had to approve the agreement at the time of its conclusion and, therefore, may be in its possession.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents address the scope of the development envisaged by Luka Beograd, which was decisive for the extent of land to which Luka Beograd was granted a right of use in 1975. The requested documents will show that Obnova's premises at Dunavska 17-19 and/or 23 were not within the area that was necessary for Luka Beograd's development and, as a result, Obnova's premises at |

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| | Dunavska 17-19 and 23 were not part the land over which Luka Beograd was granted the right of use under the agreement submitted as R-060.<br>These determinations are, in turn, directly relevant and material to show that Serbia's assertion that Obnova did not have any permanent rights to its premises at Dunavska 17-19 and Dunavska 23 because Luka Beograd had the right of use to these premises and Obnova only leased them, is false. |
| **DECISION** | **The request is upheld.** |
| **NO.** | **14.** |
| **REQUESTED DOCUMENTS** | Any and all documents included in the files for the proceedings that led to the issuance of the administrative decisions submitted by Serbia as exhibits R-037, R-038 and R-039 including, but not limited to (*i*) the requests, including all annexes, based on which the decisions were issued; and (*ii*) minutes from meetings referred to in these decisions. |
| **RELEVANCE** | Serbia argues that Obnova's buildings are allegedly temporary because, amongst other things, Obnova (at that time existing under the name "Otpad") only prepared main designs for some of the buildings, while permanent objects would require also preliminary designs.[74]<br>To support this argument, Serbia relies on exhibits R-037 to R-039, which seem to be decisions approving certain main designs submitted by Obnova. However, these decisions (*i*) do not identify the location of the buildings for which the designs were approved, making it impossible to verify whether these buildings correspond to the existing buildings at Obnova's premises at Dunavska 17-19 and 23; and (*ii*) do not state whether the main designs were the only designs submitted by Obnova or whether they were preceded by preliminary designs.<br>The requested documents are therefore relevant and material to clarify whether the decisions submitted by Serbia relate to buildings within Obnova's premises at Dunavska 17-19 and 23 and what was Obnova and Serbia's contemporaneous understanding of the status of these buildings—mainly whether Obnova and Serbia considered them to be temporary or not. |
| **OBJECTIONS** | **PCC**: Respondent objects to this request on the basis that Claimants have failed to explain why the requested documents are not in their possession, custody or control. These documents must be in Obnova's, i.e., Claimants' possession, custody or control as documents submitted as exhibits R-037, R-038 and R-039 concern Obnova. |

[74] *E.g.* Counter-Memorial, ¶¶ 51-52.

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| | Alternatively, the requested documents are accessible to Obnova/Claimants who can obtain the documents from Historical Archive of Belgrade in accordance with the applicable regulations.[75] In other words, the requested documents "are in the public domain and are equally and effectively available to both parties".[76] Respondent, just like Claimants, must address the Archive in order to obtain documents in question.[77] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>To begin with, Claimants confirm that the requested documents are not in their possession, custody or control. Serbia's argument that the requested documents "*must be in Obnova's, i.e., Claimants' possession, custody or control as documents submitted as exhibits R-037, R-038 and R-039 concern Obnova*" is not serious. While Claimants do not dispute that these decisions do concern Obnova, they were issued decades before Claimants acquired ownership of Obnova and are not in Obnova's archives available to Claimants. As for Serbia's allegation that "*the requested documents are accessible to Obnova/Claimants who can obtain the documents from Historical Archive of Belgrade in accordance with the applicable regulations*", this argument is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objection to Request No. 6. Claimants hereby incorporate all those arguments.[78] |

[75] Article 41(1) of the Law on Archive Material and Archive Activity states that everyone has the right to use archive material stored in the archives under equal conditions. See **Annex 10**. Moreover, Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[76] See above para 14.

[77] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[78] *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.

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| | As explained above, the State Attorney Office, on the other hand, is entitled to request any document which it finds necessary for protection of rights and interests of the Republic of Serbia from Serbian authorities and Serbian authorities are obliged to comply with such requests "*without delay*".[79]<br>Finally, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced. |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **15.** |
| **REQUESTED DOCUMENTS** | Any and all documents representing "*Analysis of the location for the new trolleybus turnout including part of the new route of the trolleybus network to the new turnout*" as referred to on page 3 (pdf) of Serbia's exhibit R-100. |
| **RELEVANCE** | The requested documents are relevant and material to assessing the inputs that Serbia considered when deciding on the location of the new bus loop, which it ultimately decided to place on Obnova's premises. Such consideration includes, but is not limited to, whether Serbia considered placing the bus loop on land plots located across the street (*i.e.* at the location of a bus depo that Serbia subsequently decided to convert to residential use) or the land plots identified in the Memorial.[80] |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Urban Planning Institute of Belgrade in accordance with the applicable regulations.[81] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[82] Respondent, just like Claimants, must address the Institute in order to obtain documents in question.[83] |

[79] Law on State Attorney Office (Official gazette of the RS, no. 55/2014), Art. 8 (3), **Annex-11**.

[80] Memorial, ¶¶ 106-108.

[81] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[82] See above para 14.

[83] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request the documents whose production they now seek. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Request No. 6. Claimants hereby incorporate all those arguments.[84]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[85] |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **16.** |
| **REQUESTED DOCUMENTS** | Any and all documents representing researches conducted to find a new location for the trolleybus turning point mentioned in Chapters five and ten of Serbia's exhibit R-101. |
| **RELEVANCE** | Exhibit R-101 is "*Benefit analysis of locations for organizing trolleybus turning point in Dorcol*". This document discusses four possible locations for the turning point[86] and refers to several researches conducted to find a new location for the trolleybus turning point.[87] |

84 *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.
85 *Supra* ¶¶ 36-38.
86 Analysis of suitability of the locations for organizing trolleybus terminus in Dorćol, January 2006, pp. 8-9, **R-101**.
87 Analysis of suitability of the locations for organizing trolleybus terminus in Dorćol, January 2006, pp. 6-7, 19, **R-101**.

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| | The requested documents are relevant and material to assess: (*i*) how and why Serbia picked the four locations presented in exhibit R-101; (*ii*) what other locations, if any, Serbia had considered for a new bus loop; and (*iii*) whether such other locations would be also appropriate for development of a bus loop. Such assessment is relevant and material to consider whether Serbia acted in line with the proportionality principle when it decided to place the bus loop on Obnova's premises. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain these documents from the Urban Planning Institute of Belgrade (which prepared exhibit R-101), in accordance with the applicable regulations.[88] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[89] Respondent, just like Claimants, must address the Institute in order to obtain documents in question.[90] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request the documents whose production they now seek. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 15 above. |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **17.** |
| **REQUESTED DOCUMENTS** | Any and all documents representing "*Elaborate on the relocation of the trolleybus turning point from Rajiceva street*" referred in Section 9.3 of Serbia's exhibit R-101. |

[88] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[89] See above para 14.

[90] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| **RELEVANCE** | According to Serbia's exhibit R-101, the requested document contains a costs study for building a new bus loop at various different locations.[91]<br>The requested document is relevant and material to assess whether Serbia's decision to place the bus loop at Obnova's premises was reasonable with respect to the envisaged costs and their comparison with costs that would be potentially incurred in other locations, as well as to assess whether Serbia acted in compliance with the proportionality principle when it decided to place the bus loop at Obnova's premises. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Urban Planning Institute of Belgrade (which prepared exhibit R-101) in accordance with the applicable regulations.[92] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[93] Respondent, just like Claimants, must address the Institute in order to obtain documents in question.[94] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request the documents whose production they now seek.<br>**R, M**: Claimants' request is not sufficiently relevant or material. Claimants' request for the documents underlying the implementation costs for the construction of the bus loop is wholly speculative and of limited relevance to the dispute. Claimants and Respondent have not argued that implementation costs played any role in respect of the decision to locate the bus loop on the Dunasvka Plots. This is a classic "fishing expedition" as Claimants are merely casting about for any documents which might exist and which might contain information they consider helpful for their case. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents. |

[91] Analysis of suitability of the locations for organizing trolleybus terminus in Dorćol, January 2006, p. 15, **R-101**.

[92] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[93] See above para 14.

[94] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | **Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 15 above.<br>**Requested documents are relevant and material**<br>Serbia does not seem to dispute that the requested documents indeed are material and relevant. Serbia merely asserts that the requested documents are "*not sufficiently*" relevant and material. However, Serbia does not propose any test nor refers to any authority that would establish when documents requested in a document production process are "*sufficiently*" relevant.<br>For the avoidance of doubt, the requested documents clearly are relevant and material. As explained above, the requested documents will show the envisaged costs of building a bus loop at Obnova's premises and their comparison with the costs that would be potentially incurred at other locations. As such, the requested documents are relevant and material to assess: (*i*) whether Serbia's decision to put the bus loop at Obnova's premises was reasonable in light of the envisaged costs (or, on the contrary, arbitrary); and (*ii*) whether Serbia acted in compliance with the proportionality principle when it decided to place the bus loop at Obnova's premises. Serbia's claim that "*Claimants' request for the documents underlying the implementation costs for the construction of the bus loop is wholly speculative and of limited relevance to the dispute*" is thus clearly incorrect.<br>Finally, as for Serbia's argument that "*Claimants and Respondent have not argued that implementation costs played any role in respect of the decision to locate the bus loop on the Dunasvka [sic] Plots*", it seems that Serbia misunderstood Claimants arguments in their Memorial. Claimants clearly pointed out that in order to comply with requirements under the Cyprus-Serbia BIT, the decision to put the bus loop on Obnova's premises cannot be arbitrary and, at the same time, must respect the proportionality principle.[95] The comparison of implementation costs for building of the bus loop at Obnova's premises and potential other locations is directly relevant to assess both whether the eventual decision to put the bus loop on Obnova's premises was reasonable, *i.e.* not arbitrary, and whether it respected the proportionality principle. |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **18.** |
| **REQUESTED DOCUMENTS** | Any and all documents relied upon in the preparation of the tables summarizing the evaluation of the four potential locations for a new bus loop presented on pages 12, 13, 14, 15 and 16 of exhibit R-101. |

[95] Memorial, ¶¶ 222-224.

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| **RELEVANCE** | As explained above, exhibit R-101 discusses four possible locations for a new bus turning point[96] and evaluates these four locations based on various criteria. The requested documents are relevant and material to considering what was the basis for this evaluation. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Urban Planning Institute of Belgrade (which prepared exhibit R-101) in accordance with the applicable regulations.[97] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[98] Respondent, just like Claimants, must address the Institute in order to obtain documents in question.[99] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request the documents whose production they now seek. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 15 above. |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **19.** |
| **REQUESTED DOCUMENTS** | Any and all documents relied upon to estimate implementation costs of the 2013 DRP presented in the Concept of the 2013 DRP prepared in 2010 (submitted as exhibit C-330). |

96 Analysis of suitability of the locations for organizing trolleybus terminus in Dorćol, January 2006, pp. 8-9, **R-101**.

97 Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

98 See above para 14.

99 State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| **RELEVANCE** | The requested documents will show how Serbia estimated implementation costs of the 2013 DRP presented in the Concept of the 2013 DRP prepared in 2010 (C-330). These costs include, among other things, "*compensation for destroyed buildings*" and "*Land expropriation*."[100]<br>The requested documents are relevant and material to assess why Serbia decided to include in the 2010 Concept of the 2013 DRP "*compensation for destroyed buildings*" and "*Land expropriation*" even though no such costs were envisaged in "*Benefit analysis of locations for organizing trolleybus turning point in Dorcol*" submitted be Serbia as exhibit R-101. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the requested documents from the Urban Planning Institute of Belgrade (which prepared exhibit C-330) in accordance with the applicable regulations[101]. In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[102] Respondent, just like Claimants, must address the Institute in order to obtain documents in question.[103] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves, especially in view of the broad scope of their request. In fact, Claimants obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request the documents whose production they now seek.<br>**R, M**: Claimants do not explain why the requested documents are relevant to the facts in issue or material to their case. The Urban Planning Institute's assessment of the potential costs of compensating for destroyed buildings and land expropriation do not constitute proof of ownership rights or other rights over the land and buildings encompassed by the 2013 DRP. As such, the requested documents would not have a material effect on the Tribunal's determination of issues in dispute. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control** |

[100] Concept of the 2013 DRP, 2010, pp. 2-3 (pdf), **C-330**.

[101] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[102] See above para 14.

[103] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | Claimants hereby incorporate their reply from Request No. 15 above.<br>**Requested documents are relevant and material**<br>As described above, the requested documents will show how Serbia estimated the implementation costs of the 2013 DRP presented in the Concept of the 2013 DRP prepared in 2010 (C-330), including, among other things, "*compensation for destroyed buildings*" and "*Land expropriation*."[104] Contrary to Serbia's incorrect objections the assessment of these costs is directly relevant for the determination of who has rights to Obnova's premises at Dunavska 17-19 and Dunavska 23, and what was Serbia's contemporaneous understanding of these rights. Indeed, if Serbia believed, as it claims in this arbitration,[105] that the premises belonged to Serbia, there would have been no reason to budget any funds as "*compensation for destroyed buildings*" and "*Land expropriation*."[106] |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **20.** |
| **REQUESTED DOCUMENTS** | Any and all minutes and recordings of the Belgrade City Assembly meeting that took place on 3 March 2006. |
| **RELEVANCE** | During the meeting on 3 March 2006, the Assembly adopted Decision No. 350-5/06-c, which constitutes the basis for the later adoption of the 2013 DRP.[107]<br>The requested documents are relevant and material to assess the factors that the City of Belgrade took into consideration when it decided to prepare a detailed regulation plan for the area including Obnova's premises at Dunavska 17-19 and Dunavska 23—including whether Serbia considered Obnova's rights to its premises at Dunavska 17-19 and 23 and, if so, what was its contemporaneous understanding of the extent of these rights. |

104 Concept of the 2013 DRP, 2010, pp. 2-3 (pdf), **C-330**.
105 *E.g.* Counter-Memorial, ¶ 75.
106 Concept of the 2013 DRP, 2010, pp. 2-3 (pdf), **C-330**.
107 Decision on the drafting of a Detailed Regulation Plan for the area between: Francuska, Cara Dušana and Tadeuša Košćuška streets and the existing railway at Dorcól, municipality of Stari Grad, 6 March 2006, **C-313**.

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| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the requested documents from the Assembly of the City of Belgrade in accordance with the applicable regulations[108]. In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[109] Respondent, just like Claimants, must address the Assembly in order to obtain documents in question.[110] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Request No. 6. Claimants hereby incorporate all those arguments.[111]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[112] |
| **DECISION** | **The request is upheld.** |

[108] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[109] See above para 14.

[110] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[111] *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.

[112] *Supra* ¶¶ 36-38.

| **NO.** | **21.** |
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| **REQUESTED DOCUMENTS** | Development program for the 2013 DRP. |
| **RELEVANCE** | The Development program is a document issued by the Urban Institute of Belgrade, which offers general information concerning the plan's adoption, such as conditions, deadlines and/or budgeting for its development. This document is an annex and an integral part of Decision No. 350-5/06-c, in accordance with Article 11 of the aforementioned decision.[113]<br>The requested document is relevant and material to assess which inputs the City of Belgrade took into consideration when preparing the 2013 DRP—including whether Serbia considered Obnova's rights to its premises at Dunavska 17-19 and Dunavska 23 and if so, the City of Belgrade's contemporaneous understanding of the extent of these rights. |
| **OBJECTIONS** | **PCC**: To the best of Respondent's knowledge, the document Claimants are referring to is the document that is already in the case files as exhibit R-100.<br>Alternatively, the requested documents are accessible to Obnova/Claimants who can obtain the documents from the Urban Planning Institute of Belgrade (who prepared the document according to Article 11 of the said Decision)[114] in accordance with the applicable regulations.[115] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[116] Respondent, just like Claimants, must address the Institute in order to obtain documents in question.[117] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants |

[113] Decision on the drafting of a Detailed Regulation Plan for the area between: Francuska, Cara Dušana and Tadeuša Košćuška streets and the existing railway at Dorcól, municipality of Stari Grad, 6 March 2006, Art. 11, **C-313**.

[114] Decision on the drafting of a Detailed Regulation Plan for the area between: Francuska, Cara Dušana and Tadeuša Košćuška streets and the existing railway at Dorcól, municipality of Stari Grad, 6 March 2006, Art. 11, **C-313.**

[115] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[116] See above para 14.

[117] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request the document whose production they now seek. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>The requested document is not the same as the document submitted by Serbia as its exhibit R-100.<br>Claimants request production of the "*Development program for 2013 DPR*" (*in Serbian: Program za izradu plana detaljne regulacije*), not the "*Program for making a decision on the preparation of a general regulation plan with elements of detailed regulation for the area between the streets: Francuska, Cara Dusana, Tadeusa Kocuskog and existing railways at Dorcol*" (*In Serbian: Program za donošenje odluke o izradi plana generalne regulacije sa elementima detaljne regulacije za područje između ulica: Francuske, Cara Dušana, T.Košćuškog i postojeće pruge na Dorćolu*), which was submitted as exhibit R-100.<br>In addition, pursuant to Article 11 of the Decision on drafting the 2013 DPR,[118] the requested document is from 2006, while the document submitted as exhibit R-100 is from September 2005.[119]<br>As for the rest of Serbia's objections, Claimants hereby incorporate their reply from Request No. 15 above. |
| **DECISION** | **The request is <u>upheld</u>.** |
| **NO.** | **22.** |
| **REQUESTED DOCUMENTS** | Any and all minutes and recordings from the Secretariat for Urban Planning and Construction's internal meetings related to the preparation of the 2013 DRP. |
| **RELEVANCE** | According to Article 46 of the Decision on city administration ("Official Gazette of the City of Belgrade," No. 36/2004, 1/2005 - corr., 18/2006), the Secretariat for Urban Planning and Construction is the authority that was responsible for the preparation of the 2013 DRP.[120]<br>The requested documents are relevant and material to assess the factors that the Secretariat took into consideration when working on the 2013 DRP—including whether it considered Obnova's rights to its |

[118] Decision on the drafting of a Detailed Regulation Plan for the area between: Francuska, Cara Dušana and Tadeuša Košćuška streets and the existing railway at Dorcól, municipality of Stari Grad, 6 March 2006, Art. 11, **C-313**.
[119] Program for rendering of the decision on preparation of the General Regulation Plan with elements of the detailed regulation plan for the area between streets: Francuska, Cara Dusana, T. Koscuskog and existing railway in Dorćol, Municipality Stari grad, September 2005, **R-100**.
[120] *See also* Law on Planning and Construction (Official Gazette of the RS, no. 72/09, 81/09, 64/10-Decision CC, 24/11, 121/12, 42/13-Decision CC and 50/13-Decision CC), Art. 47, **C-169**.

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| | premises at Dunavska 17-19 and 23 and if so, the Secretariat's contemporaneous understanding of the extent of these rights. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Secretariat for Urban Planning and Construction in accordance with the applicable regulations[121]. In other words, requested documents are "in the public domain and equally and effectively available to both parties".[122] Respondent, just like Claimants, must address the Secretariat in order to obtain documents in question.[123] Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**U**: Claimants' request for "any and all minutes or recordings" of internal meetings concerning the 2013 DRP would put Respondent in the difficult position of searching both physical archives and electronic files (including emails) of the Urban Planning Institute dating back more than a decade. In yet another example of a classic "fishing expedition", Claimants are seeking production of a time-unlimited category of documents, which may or may not contain information concerning Obnova's purported rights and the decision to locate the bus loop at the Dunavska Plots. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Request No. 6. Claimants hereby incorporate all those arguments.[124] |

[121] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[122] See above para 14.

[123] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[124] *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.

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| | **The requested documents are not unreasonably burdensome to produce**<br>It is unclear what Serbia is actually arguing on this issue. To begin with, Serbia argues that searching for responsive documents would put Serbia "*in the difficult position of searching both physical archives and electronic files (including emails) of the Urban Planning Institute (sic) dating back more than a decade.*" First and foremost, Serbia does not provide any explanation whatsoever for what the alleged "*difficult position,*" that it allegedly finds itself in, is. And that is not a surprise as Serbia certainly is not in any difficult position.<br>It is not extraordinary to search both physical and electronic files. Indeed, Serbia's own requests for production of documents require the same thing of Claimants, who objected to exactly none of Serbia's requests.[125] It is thus difficult to see how the search required to identify responsive documents puts Serbia "*in the difficult position*".<br>Furthermore, while Serbia notes that the responsive documents potentially date back "*more than a decade*", Serbia again does not explain how this fact supposedly puts Serbia "*in the difficult position*". On the contrary, several of Serbia's own requests also are for documents dating back more than a decade , showing that Serbia considers such requests appropriate.[126] Serbia now takes an inconsistent position when it objects to Claimants' requests that are similar to Serbia's (contrary to Claimants, who have not objected to Serbia's requests).<br>Furthermore, according to the information available in the 2013 DRP documentation,[127] this authority issued approximately 20 letters related to the preparation of the 2013 DRP during the relevant time. It is reasonable to expect that the number of internal meeting minutes should not deviate significantly from that number.<br>Finally, with respect to Serbia's allegation that this request supposedly represents "*yet another example of a classic 'fishing expedition'*", this allegation is clearly incorrect. Indeed, Serbia does not make any objections based on the relevance and materiality of the requested documents. Any such objection would obviously fail because the decision to zone Obnova's premises for public use in the 2013 DRP is at the heart of Claimants' case. Claimants claim that Serbia's decision was, among other things, arbitrary, unreasonable, discriminatory and not in accordance with the principle of proportionality. The requested documents will show the factors that were taken into account in the preparation of the 2013 DRP, which directly relates to the question whether the decision was arbitrary, unreasonable, discriminatory and/or not in accordance with |

[125] Claimants' objections to Serbia's requests Nos. 1-8.
[126] Serbia's requests Nos. 2, 3, 6, 7.
[127] Explanation of the Department of Urban Planning and Construction, with the Report on the Strategic Assessment of the Environmental Plan, 3 December 2013, **Annex-20**.

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| | the principle of proportionality. It is therefore clear that this request does not represent a "fishing expedition". |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **23.** |
| **REQUESTED DOCUMENTS** | Any and all documents included in the files maintained by the Secretariat for Urban Planning and Construction with respect to its work on the 2013 DRP. |
| **RELEVANCE** | Claimants hereby incorporate the explanation provided at Request 22 above. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Secretariat for Urban Planning and Construction in accordance with the applicable regulations[128]. In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[129] Respondent, just like Claimants, must address the Secretariat in order to obtain documents in question.[130] Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**U**: Claimants' request for "any and all documents" concerning the 2013 DRP which are in the Secretariat for Urban Planning and Construction's files would put Respondent in the difficult position of searching both physical archives and electronic files (including emails) of the Secretariat dating back more than a decade. In yet another example of a classic "fishing expedition", Claimants are seeking production of a broad and time-unlimited category of documents, which may or may not contain information concerning Obnova's purported rights and the decision to locate the bus loop at the Dunavska Plots. |

[128] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[129] See above para 14.

[130] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 22 above.<br>**The requested documents are not unreasonably burdensome to produce**<br>It is unclear what Serbia is actually arguing on this issue. To begin with, Serbia argues that searching for responsive documents would put Serbia "*in the difficult position of searching both physical archives and electronic files (including emails) of the Secretariat dating back more than a decade.*" First and foremost, Serbia does not provide any explanation whatsoever for what the alleged "*difficult position,*" that it allegedly finds itself in, is. And that is not a surprise as Serbia certainly is not in any difficult position.<br>It is not extraordinary to search both physical and electronic files. Indeed, Serbia's own requests for production of documents require the same thing of Claimants, who objected to exactly none of Serbia's requests.[131] It is thus difficult to see how the search required to identify responsive documents puts Serbia "*in the difficult position*".<br>Furthermore, while Serbia notes that the responsive documents potentially date back "*more than a decade*", Serbia again does not explain how this fact supposedly puts Serbia "*in the difficult position*". On the contrary, several of Serbia's own requests also are for documents dating back more than a decade, showing that Serbia considers such requests appropriate.[132] Serbia now takes an inconsistent position when it objects to Claimants' requests that are similar to Serbia's (contrary to Claimants, who have not objected to Serbia's requests).<br>Furthermore, according to the information available in the 2013 DRP documentation,[133] this authority issued approximately 20 letters related to the preparation of the 2013 DRP during the relevant time. It is reasonable to expect that the number of internal meeting minutes should not deviate significantly from that number.<br>Finally, with respect to Serbia's allegation that this request supposedly represents "*yet another example of a classic 'fishing expedition'*" this allegation is clearly incorrect. Indeed, Serbia does not make any objections based on the relevance and materiality of the requested documents. Any such objection would obviously fail because the decision to zone Obnova's premises for public use in the 2013 DRP is at the heart of Claimants' case. Claimants claim that this decision was, among other things, arbitrary, unreasonable, discriminatory |

131 Claimants' objections to Serbia's requests Nos. 1-8
132 Serbia's requests Nos. 2, 3, 6, 7.
133 Explanation of the Department of Urban Planning and Construction, with the Report on the Strategic Assessment of the Environmental Plan, 3 December 2013, **Annex-20**.

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| | and not in accordance with the principle of proportionality. The requested documents will show the factors that were taken into account in preparation of the 2013 DRP, which directly relates to the question whether the decision was arbitrary, unreasonable, discriminatory and/or not in accordance with the principle of proportionality. It is therefore clear that this request does not represent a "fishing expedition". |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **24.** |
| **REQUESTED DOCUMENTS** | Any and all minutes and recordings from the Urban Planning Institute of Belgrade's internal meetings related to the preparation of the 2013 DRP. |
| **RELEVANCE** | The Urban Planning Institute of Belgrade was the holder of the plan development for the 2013 DRP.[134] As the holder of the plan, this authority was responsible for numerous important tasks in plan development, such as creating a plan draft, conducting strategic environmental impact assessments, collecting the relevant documents and information for plan preparation.<br>The requested documents are relevant and material to assess the factors the Institute took into consideration when working on the 2013 DRP—including whether it considered Obnova's rights to its premises at Dunavska 17-19 and Dunavska 23 and if so, the Institute's contemporaneous understanding of the extent of these rights. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Urban Planning Institute of Belgrade in accordance with the applicable regulations.[135] In other words, requested documents are "in the public domain and equally and effectively available to both parties".[136] Respondent, just like Claimants, must address the Institute in order to obtain documents in question.[137] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it |

[134] Decision on the drafting of a Detailed Regulation Plan for the area between: Francuska, Cara Dušana and Tadeuša Košćuška streets and the existing railway at Dorcól, municipality of Stari Grad, 6 March 2006, Art. 7, **C-313**.

[135] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[136] See above para 14.

[137] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request the documents whose production they now seek.<br>**U**: Claimants' request for "any and all minutes or recordings" of internal meetings concerning the 2013 DRP would put Respondent in the difficult position of searching both physical archives and electronic files (including emails) of the Urban Planning Institute dating back more than a decade. In yet another example of a classic "fishing expedition", Claimants are seeking production of a time-unlimited category of documents, which may or may not contain information concerning Obnova's purported rights and the decision to locate the bus loop at the Dunavska Plots. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 15 above.<br>**The requested documents are not unreasonably burdensome to produce**<br>It is unclear what Serbia is actually arguing on this issue. To begin with, Serbia argues that searching for responsive documents would put Serbia "*in the difficult position of searching both physical archives and electronic files (including emails) of the Urban Planning Institute dating back more than a decade.*" First and foremost, Serbia does not provide any explanation whatsoever for what the alleged "*difficult position,*" that it allegedly finds itself in, is. And that is not a surprise as Serbia certainly is not in any difficult position. It is not extraordinary to search both physical and electronic files. Indeed, Serbia's own requests for production of documents require the same thing of Claimants, who objected to exactly none of Serbia's requests.[138] It is thus difficult to see how the search required to identify responsive documents puts Serbia "*in the difficult position*".<br>Furthermore, while Serbia notes that the responsive documents potentially date back "*more than a decade*", Serbia again does not explain how this fact supposedly puts Serbia "*in the difficult position*". On the contrary, several of Serbia's own requests also are for documents dating back more than a decade, showing that Serbia considers such requests appropriate.[139] Serbia now takes an inconsistent position when it objects |

[138] Claimants' objections to Serbia's requests Nos. 1-8
[139] Serbia's requests Nos. 2, 3, 6, 7.

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| | to Claimants' requests that are similar to Serbia's (contrary to Claimants, who have not objected to Serbia's requests).<br>Furthermore, according to the information available in the 2013 DRP documentation,[140] this authority issued approximately 17 letters related to the preparation of the 2013 DRP during the relevant time. It is reasonable to expect that the number of internal meeting minutes should not deviate significantly from that number.<br>Finally, with respect to Serbia's allegation that this request supposedly represents "*yet another example of a classic 'fishing expedition'*" this allegation is clearly incorrect. Indeed, Serbia does not make any objections based on the relevance and materiality of the requested documents. Any such objection would obviously fail because the decision to zone Obnova's premises for public use in the 2013 DRP is at the heart of Claimants' case. Claimants claim that this decision was, among other things, arbitrary, unreasonable, discriminatory and not in accordance with the principle of proportionality. The requested documents will show the factors that were taken into account in preparation of the 2013 DRP, which directly relates to the question whether the decision was arbitrary, unreasonable, discriminatory and/or not in accordance with the principle of proportionality. It is therefore clear that this request does not represent a "fishing expedition". |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **25.** |
| **REQUESTED DOCUMENTS** | Any and all minutes and recordings from Beoland's internal meetings related to the adoption of the 2013 DRP. |
| **RELEVANCE** | Beoland was the plan commissioner for the 2013 DRP[141] and was responsible for, among other things, financing of the 2013 DRP and participating in the plan development.<br>The requested documents are relevant and material to assess the factors Beoland took into consideration when working on the 2013 DRP—including whether it considered Obnova's rights to its premises at Dunavska 17-19 and 23 and if so, Beoland's contemporaneous understanding of the extent of these rights. |

[140] Explanation of the Department of Urban Planning and Construction, with the Report on the Strategic Assessment of the Environmental Plan, 3 December 2013, **Annex-20**.
[141] Decision on the drafting of a Detailed Regulation Plan for the area between: Francuska, Cara Dušana and Tadeuša Košćuška streets and the existing railway at Dorcól, municipality of Stari Grad, 6 March 2006, Art. 9, **C-313**.

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| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Beoland in accordance with the applicable regulations[142]. In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[143] Respondent, just like Claimants, must address the Beoland in order to obtain documents in question.[144] Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**U**: Claimants' request for "any and all minutes or recordings" of internal meetings concerning the 2013 DRP would put Respondent in the difficult position of searching both physical archives and electronic files (including emails) of Beoland dating back more than a decade. In yet another example of a classic "fishing expedition", Claimants are seeking production of a time-unlimited category of documents, which may or may not contain information concerning Obnova's purported rights and the decision to locate the bus loop at the Dunavska Plots. As a result, production of the requested documents would be unreasonably burdensome for Respondent.<br>**R, M**: Claimants have not demonstrated that requested documents are relevant and material to the case. Claimants assert that the requested documents will demonstrate "Beoland's contemporaneous understanding" of Obnova's rights and do not explain why or how such this is relevant or material to an issue in question and how such documents will assist the Tribunal in determining this issue. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia's assertion that the requested documents are "*in the public domain and equally and effectively available to both parties*" is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Request No. 6. Claimants hereby incorporate all those arguments.[145] |

[142] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[143] See above para 14.

[144] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[145] *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.

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| | Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[146]<br>**The requested documents are not unreasonably burdensome to produce**<br>It is unclear what Serbia is actually arguing on this issue. To begin with, Serbia argues that searching for responsive documents would put Serbia "*in the difficult position of searching both physical archives and electronic files (including emails) of Beoland dating back more than a decade.*" First and foremost, Serbia does not provide any explanation whatsoever for what the alleged "*difficult position,*" that it allegedly finds itself in, is. And that is not a surprise as Serbia certainly is not in any difficult position.<br>It is not extraordinary to search both physical and electronic files. Indeed, Serbia's own requests for production of documents require the same thing of Claimants, who objected to exactly none of Serbia's requests.[147] It is thus difficult to see how the search required to identify responsive documents puts Serbia "*in the difficult position*".<br>Furthermore, while Serbia notes that the responsive documents potentially date back "*more than a decade*", Serbia again does not explain how this fact supposedly puts Serbia "*in the difficult position*". On the contrary, several of Serbia's own requests also are for documents dating back more than a decade, showing that Serbia considers such requests appropriate.[148] Serbia now takes an inconsistent position when it objects to Claimants' requests that are similar to Serbia's (contrary to Claimants, who have not objected to Serbia's requests).<br>**The requested documents are relevant and material**<br>As explained above, the requested documents will show what factors Beoland took into consideration when working on the 2013 DRP—including whether it considered Obnova's rights to its premises at Dunavska 17-19 and 23 and if so, Beoland's contemporaneous understanding of the extent of these rights. Beoland is a public company controlled by the City of Belgrade. As such, it is reasonable to assume that Beoland's understanding of Obnova's rights was the same as the City of Belgrade's and thus Serbia's.<br>The decision to zone Obnova's premises for public use in the 2013 DRP is at the heart of Claimants' case. Claimants claim that this decision was, among other things, arbitrary, unreasonable, discriminatory and not in accordance with the principle of proportionality. The requested documents will show the factors that were |

146 *Supra* ¶¶ 36-38.
147 Claimants' objections to Serbia's requests Nos. 1-8.
148 Serbia's requests Nos. 2, 3, 6, 7.

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| | taken into account in preparation of the 2013 DRP, which directly relates to the question whether the decision was arbitrary, unreasonable, discriminatory and/or not in accordance with the principle of proportionality.<br>The requested documents are therefore relevant and material to show whether Serbia's approach to Obnova's rights to its premises at Dunavska 17-19 and Dunavska 23 before the commencement of this arbitration was consistent with the position that Serbia takes in the arbitration, *i.e.* that Obnova does not have any rights to its premises.[149] |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **26.** |
| **REQUESTED DOCUMENTS** | Any and all minutes and recordings from meetings of the Planning Commission of the Assembly of the City of Belgrade during which the 2013 DRP was discussed by the Commission including, but not limited to, the minutes and recordings from:<br>1. 153rd session of the City Assembly of Belgrade's Planning Commission held on 20 May 2008;<br>2. 104th session of the City Assembly of Belgrade's Planning Commission held on 30 November 2010;<br>3. 204th session of the City Assembly of Belgrade's Planning Commission held on 28 August 2012;<br>4. 219th session of the City Assembly of Belgrade's Planning Commission held on 23 October 2012 (including both the public and closed parts of the session);<br>5. 251st session of the City Assembly of Belgrade's Planning Commission held on 7 February 2013; and<br>6. 9th session of the City Assembly of Belgrade's Planning Commission held on 14 May 2013. |
| **RELEVANCE** | The Planning Commission is a commission that was created by the Assembly of the City of Belgrade for providing expert assistance and performing tasks in the process of drafting and implementing planning documentation.[150]<br>The requested documents are relevant and material to assess the factors the Commission took into consideration when working on the 2013 DRP—including whether it considered Obnova's rights to its premises at Dunavska 17-19 and 23 and if so, the Commission's contemporaneous understanding of the extent of these rights. |

[149] *E.g.* Counter-Memorial, ¶ 23.
[150] Law on Planning and Construction ("Official Gazette of the RS" no. 72/09, 81/09, 64/10-Decision CC, 24/11, 121/12, 42/13-Decision CC and 50/13-Decision CC), Art. 52, **C-169**.

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| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Assembly of the City of Belgrade in accordance with the applicable regulations.[151] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[152] Respondent, just like Claimants, must address the Assembly in order to obtain documents in question.[153] Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**U**: Claimants' request for "any and all minutes or recordings" of internal meetings concerning the 2013 DRP is unreasonably burdensome. Claimants do not limit their request to the specific meetings identified in their request and instead seek production of an unspecified and time-unlimited category of documents. This would put Respondent in the difficult position of searching both physical archives and electronic files (including emails) from the Assembly of the City of Belgrade dating back more than a decade, which may or may not contain information concerning Obnova's purported rights and the decision to locate the bus loop at the Dunavska Plots. As a result, production of the requested documents would be unreasonably burdensome for Respondent. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 20 above. Additionally, Claimants note that they requested the responsive documents from the City Assembly of the City of Belgrade on 17 November 2022,[154] but have never received any response.<br>**The requested documents are not unreasonably burdensome to produce**<br>It is unclear what Serbia is actually arguing on this issue. To begin with, Serbia argues that searching for responsive documents would put Serbia "*in the difficult position of searching both physical archives and* |

[151] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[152] See above para 14.

[153] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[154] Request to the Assembly of the City of Belgrade, 17 November 2022, **Annex-16**.

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| | *electronic files (including emails) of the Assembly of the City of Belgrade dating back more than a decade.*"<br>First and foremost, Serbia does not provide any explanation whatsoever for what the alleged "*difficult position,*" that it allegedly finds itself in, is. And that is not a surprise as Serbia certainly is not in any difficult position.<br>It is not extraordinary to search both physical and electronic files. Indeed, Serbia's own requests for production of documents require the same thing of Claimants, who objected to exactly none of Serbia's requests.[155] It is thus difficult to see how the search required to identify responsive documents puts Serbia "*in the difficult position*".<br>Furthermore, while Serbia notes that the responsive documents potentially date back "*more than a decade*", Serbia again does not explain how this fact supposedly puts Serbia "*in the difficult position*". On the contrary, several of Serbia's own requests also are for documents dating back more than a decade, showing that Serbia considers such requests appropriate.[156] Serbia now takes an inconsistent position when it objects to Claimants' requests that are similar to Serbia's (contrary to Claimants, who have not objected to Serbia's requests).<br>In addition, the meetings of this body in connection with the 2013 DRP were not organized too frequently—the listed meetings are all meetings that were mentioned in any of the 2013 DRP documentation. Therefore, it is reasonable to assume that the total number of meetings should not deviate significantly from the number of the listed meetings. |
| **DECISION** | **The request is <u>upheld</u> as regards minutes and recordings from meetings of the Planning Commission of the Assembly of the City of Belgrade for the following sessions:**<br>**1. 153rd session of the City Assembly of Belgrade's Planning Commission held on 20 May 2008;**<br>**2. 104th session of the City Assembly of Belgrade's Planning Commission held on 30 November 2010;**<br>**3. 204th session of the City Assembly of Belgrade's Planning Commission held on 28 August 2012;**<br>**4. 219th session of the City Assembly of Belgrade's Planning Commission held on 23 October 2012 (including both the public and closed parts of the session);**<br>**5. 251st session of the City Assembly of Belgrade's Planning Commission held on 7 February 2013; and**<br>**6. 9th session of the City Assembly of Belgrade's Planning Commission held on 14 May 2013.** |

155 Claimants' objections to Serbia's requests Nos. 1-8.
156 Serbia's requests Nos. 2, 3, 6, 7.

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| | **The request is <u>denied</u> as regards all other minutes and recordings from meetings of the Planning Commission of the Assembly of the City of Belgrade on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **27.** |
| **REQUESTED DOCUMENTS** | Any and all conclusions of the Assembly of the City of Belgrade's Planning Commission related to the 2013 DRP including, but not limited to, the Conclusion of the City Assembly of Belgrade's Planning Commission IX-03 no. 350.1-35/2007 from 28 August 2012, including all its attachments. |
| **RELEVANCE** | Claimants hereby incorporate the explanation provided at Request 26 above. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the requested documents from the Assembly of the City of Belgrade in accordance with the applicable regulations[157]. In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[158] Respondent, just like Claimants, must address the Assembly in order to obtain documents in question.[159] Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 20 above. |
| **DECISION** | **The request is <u>upheld</u> as regards the "the Conclusion of the City Assembly of Belgrade's Planning Commission IX-03 no. 350.1-35/2007 from 28 August 2012, including all its attachments".** |

[157] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[158] See above para 14.

[159] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | **The request is <u>denied</u> as regards all other "conclusions of the Assembly of the City of Belgrade's Planning Commission related to the 2013 DRP" on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **28.** |
| **REQUESTED DOCUMENTS** | Any and all minutes and recordings of internal meetings, as well as documents related to the preparation of the 2013 DRP by the institutions that issued the following conditions for the 2013 DRP:<br>1. Secretariat for Environmental Protection's conditions no. 501.2-145/10-V-04 dated 17 November 2010;<br>2. Secretariat for traffic's conditions no. 346.5-1684/10 and 344.4-55/2010;<br>3. Public utility company Zelenilo-Beograd conditions no. 350-834/08;<br>4. Belgrade Waterworks and Sewerage's conditions no. 1707/I4-2/45914, from November 19, 2010 and on November 24, 2010;<br>5. Beograd put's conditions no. V27/123/2010, from October 11, 2010;<br>6. the Beogradske Elektrane's conditions no. II-18192/3, from April 11, 2011;<br>7. Srbija Gas' conditions no. 23946, from November 12, 2010;<br>8. Gradska cistoca Beograd's conditions 10658, from October 1, 2010;<br>9. City transport company Belgrade's conditions no. XI 331/2, from April 21, 2008;<br>10. Ministry of Internal Affairs' conditions no. 217-238/2007-06/4, dated October 30, 2007; and<br>11. Institute for Nature Protection of Serbia's conditions no. 03-2416/2, dated February 24, 2011. |
| **RELEVANCE** | The conditions set by the referenced competent institutions for the issuance of the 2013 DRP reflect these institutions' position towards the adoption of the 2013 DRP and the protection of public interest that each of these authorities is tasked to safeguard.<br>The requested documents are relevant and material to assess the factors considered by the individual authorities that were required, under Serbian law, to provide the conditions for adoption of the 2013 DRP—including whether they considered Obnova's rights to its premises at Dunavska 17-19 and Dunavska 23 and if so, their contemporaneous understanding of the extent of these rights. |
| **OBJECTIONS** | **R, M**: Claimants failed to demonstrate how requested documents are relevant to its case and material for the outcome of the proceedings. In particular, Claimants failed to explain how the opinions of *any* of the above mentioned authorities is relevant to the question of ownership rights. This is clearly a fishing expedition.<br>**U**: Claimants' request for "any and all minutes or recordings of internal meetings [and] documents related to the preparation of the 2013 DRP" would put Respondent in the difficult position of searching both physical |

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| | archives and electronic files (including emails) of each institution dating back more than a decade. Claimants are seeking production of a time-unlimited category of documents, which may or may not contain information concerning Obnova's purported rights and the decision to locate the bus loop at the Dunavska Plots. As a result, production of the requested documents would be unreasonably burdensome for Respondent.<br>**PCC**: In addition, the requested documents are accessible to Obnova/Claimants.[160] In other words, requested documents are in the public domain and are equally and effectively available to both parties.[161] Respondent, just like Claimants, must address mentioned authorities and companies in order to obtain documents in question.[162] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents will show what factors were considered by the individual authorities that were required, under Serbian law, to provide the conditions for adoption of the 2013 DRP—including whether they considered Obnova's rights to its premises at Dunavska 17-19 and Dunavska 23 and if so, their contemporaneous understanding of the extent of these rights.<br>The requested documents are therefore relevant and material to assess whether the understanding of the authorities issuing the binding conditions corresponded to Serbia's position in this arbitration, *i.e.* that Obnova does not have rights to its premises at Dunavska 17-19 and Dunavska 23.[163]<br>**Requested documents are not unreasonably burdensome to produce**<br>It is unclear what Serbia is actually arguing on this issue. To begin with, Serbia argues that searching for responsive documents would put Serbia "*in the difficult position of searching both physical archives and* |

[160] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[161] See above para 14.

[162] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[163] *E.g.* Counter-Memorial, ¶ 23.

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| | *electronic files (including emails) of each institution dating back more than a decade.*" First and foremost, Serbia does not provide any explanation whatsoever for what the alleged "*difficult position,*" that it allegedly finds itself in, is. And that is not a surprise as Serbia certainly is not in any difficult position.<br>It is not extraordinary to search both physical and electronic files. Indeed, Serbia's own requests for production of documents require the same thing of Claimants, who objected to exactly none of Serbia's requests.[164] It is thus difficult to see how the search required to identify responsive documents puts Serbia "*in the difficult position*".<br>Furthermore, while Serbia notes that the responsive documents potentially date back "*more than a decade*", Serbia again does not explain how this fact supposedly puts Serbia "*in the difficult position*". On the contrary, several of Serbia's own requests also are for documents dating back more than a decade, showing that Serbia considers such requests appropriate.[165] Serbia now takes an inconsistent position when it objects to Claimants' requests that are similar to Serbia's (contrary to Claimants, who have not objected to Serbia's requests).<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Request No. 6. Claimants hereby incorporate all those arguments.[166]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[167] |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |

164 Claimants' objections to Serbia's requests Nos. 1-8.
165 Serbia's requests Nos. 2, 3, 6, 7.
166 *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.
167 *Supra* ¶¶ 36-38.

| **NO.** | **29.** |
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| **REQUESTED DOCUMENTS** | Any and all documents based on which the company Selfnest doo was inscribed as an owner of a part of a former land plot No. 39/1 CM Stari grad (Claimants understand that the land plot was renumbered, and its borders changed recently). |
| **RELEVANCE** | Part of Obnova's premises at Dunavska 23 is located on a part of former land plot No. 39/1. According to excerpts from the Real Estate Cadaster, this land plot was registered as privately owned by Selfnest doo.[168] Claimants consider that this registration is incorrect and Obnova has the right of use over the respective part of this land plot.<br>Clarification of Selfnest's alleged ownership is relevant and material to establish the area subject to Obnova's rights. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Cadastre, in accordance with the applicable regulations.[169] In other words, the requested documents are "in the public domain, and equally and effectively available to both parties".[170] Respondent, just like Claimants, must address the Cadastre in order to obtain documents in question.[171] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents, so it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants already obtained certain documentation from the Cadastre (see for example, exhibits C-162 to C-166 and C-329), so they can also request the documents whose production they now seek.<br>**R, M**: The requested documents are irrelevant to Claimants' case and are not material for the outcome of the proceedings. Claimants have failed to explain how the registration in question is related to their claims in the |

168 Excerpt from Cadaster dated 23 March 2023, relating to land plot No. 39/1, **C-171**.

169 Article 62 (1) of the Law on State Survey and Cadastre, provides that Cadastre data are public. See **Annex 7**. Moreover, Article 19 (1) of the Law on Procedure on Registration in the Real Estate and Infrastructure Cadastre, lists data available online via RGA website free of charge, while Article 19 (2) stipulates that interested parties can access other data, not contained in Geodetic Cadastral Information System, as well as Cadastre documentation that has not been presented in electronic form, directly on the premises of the RGA. See **Annex 8**. Also, Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

170 See above para 14.

171 State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | present proceedings and material for their resolution. In addition, Claimants had the opportunity to contest Selfnest's inscription in the Cadastre, which apparently, they have failed to do. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply to Serbia's objection to Request No. 6 above.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents will show the basis for the inscription of Selfnest doo as the owner of a part of the former land plot 39/1 , on which a part of Obnova's premises at Dunavska 23 is located. Clarification of Selfnest's alleged ownership, its extent and its validity is relevant and material to establish whether the registration of Selfnest in any way affects the area subject to Obnova's rights. The area of land to which Obnova has rights at Dunavska 23 is clearly relevant and material for the outcome of this case. |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **30.** |
| **REQUESTED DOCUMENTS** | Any and all certificates of historical changes (*in Serbian: uverenje o istorijatu promena na nepokretnosti*) of all land plots at Dunavska 17-19, Dunavska 23 and the Surrounding Area. |
| **RELEVANCE** | Certificates of historical changes contain certain data about land plots since their registration in the Real Estate Cadaster, including ownership changes, the date when the registration in the Cadaster was made, any changes in the surface and borders of the land plots, etc.<br>The requested documents represent certificates of historical changes for all land plots constituting Obnova's premises at Dunavska 17-19 and Dunavska 23. As such, the requested documents are relevant and material to assess the historical development of rights to individual land plots registered in the Cadaster, as well as reasons for registration of such rights. |

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| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Cadastre, in accordance with the applicable regulations.[172] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[173] Respondent, just like Claimants, must address the Cadastre in order to obtain documents in question.[174] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents, so it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants already obtained, and provided as exhibit C-329, the Cadastre certificate related to the land plots at Dunavska 17-19, so it can equally request from the Cadastre the certificates whose production they now seek.<br>**B, U**: The request is unduly and overly broad and burdensome as it relates to <u>all</u> historical changes to the land plots at Dunavska 17-19 and 23 that are not even specified, and to the Surrounding Area, which is also unspecified. The request potentially covers a large number of documents, which are very hard to identify. Respondent cannot reasonably be bound to locate and produce all these documents. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply to Serbia's objection to Request No. 6 above.<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>Serbia's assertion that the request "*potentially covers a large number of documents, which are very hard to identify*" is demonstrably wrong. Certificate of historical changes is a *single* document which summarizes changes registered for a relevant land plot. In addition, the Cadastre should have all relevant documents and |

[172] Article 62 (1) of the Law on State Survey and Cadastre, provides that Cadastre data are public. See **Annex 7**. Moreover, Article 19 (1) of the Law on Procedure on Registration in the Real Estate and Infrastructure Cadastre, lists data available online via RGA website free of charge, while Article 19 (2) stipulates that interested parties can access other data, not contained in Geodetic Cadastral Information System, as well as Cadastre documentation that has not been presented in electronic form, directly on the premises of the RGA. See **Annex 8**. Also, Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[173] See above para 14.

[174] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | information about the changes stored in electronical form, which means that they should be easy to review.[175]<br>Serbia's assertion that the request covers also the Surrounding Area, which "*is also unspecified*", is nothing short of absurd. The "Surrounding Area" is a defined term—its definition, delimitating also the exact extent of the Surrounding Area, is included at the beginning of the general part above.[176] Dunavska 17-19 and Dunavska 23 are also terms defined at the beginning of the general part above. Serbia's assertion is therefore yet another example of the fact that Serbia's objections are not made in a good faith—Serbia clearly included in its objections whatever arguments it could think of, without any thought whatsoever whether such arguments have any merit or not.<br>Finally, Serbia's argument that the production of responsive documents would be unduly burdensome is in direct contradiction to its argument—made with respect to the PCC objection—that the responsive documents are equally accessible to both Serbia and Claimants. Serbia cannot argue that Claimants should obtain the responsive documents themselves because they are equally accessible to both Parties and, at the same time, that it would be actually overly burdensome for Serbia to produce the same documents. |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **31.** |
| **REQUESTED DOCUMENTS** | Any and all land book excerpts (*in Serbian: izvod iz zemljišnih knjiga*) for land plots at Dunavska 17-19, Dunavska 23 and the Surrounding Area starting from 1945 until the establishment of the Real Estate Cadaster for these land plots. |
| **RELEVANCE** | With its Counter-Memorial, Serbia submitted "*land book insertion No. 1689 for parcel no. 47*" (exhibit R-011). This "*insertion*" only contains information from 1972/1973 and 1997 and only for land plots at Dunavska 17-19.<br>The requested documents contain relevant historical information about all land plots at Dunavska 17-19, Dunavska 23 and the Surrounding Area. |

[175] Regulation on office operations of state administration bodies (Official Gazette of the RS, no. 21/2020, 32/2021 and 14/2023), Art. 8, **Annex-18**; Regulation on the digital geodetic plan (Official Gazette of the RS, no. 15/2003, 18/2003 - corrected and 85/2008), **Annex-17**.
[176] *Supra* ¶ 5.

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| | The requested documents are therefore relevant and material for the outcome of the dispute because they confirm, among other things, whether Obnova's buildings at Dunavska 17-19 and 23 indeed existed before Obnova's establishment—as Serbia asserts in its Counter-Memorial.[177] |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Cadastre, in accordance with the applicable regulations.[178] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[179] Respondent, just like Claimants, must address the Cadastre in order to obtain documents in question.[180] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents, so it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants already obtained the Cadastre excerpts related to the land plots at Dunavska 17-19 (exhibits C-162 to C-164) as well as excerpts related to the plots located nearby (for example, exhibits C-323 to C-325), so they can also request the documents whose production they now seek.<br>**U, B**: The request is unduly and overly broad and burdensome as it relates to <u>all</u> land book excerpts for land plots at Dunavska 17-19 and 23, which are not even specified, and to the Surrounding Area, which is also unspecified. The request potentially covers a large number of documents, which are very hard to identify. Also, Claimants' request covers period of at least 56 years, even before the establishment of Obnova.[181] Respondent cannot reasonably be bound to produce all these documents. |

177 *E.g.* Counter-Memorial, ¶ 63.

178 Article 62 (1) of the Law on State Survey and Cadastre, provides that Cadastre data are public. See **Annex 7**. Moreover, Article 19 (1) of the Law on Procedure on Registration in the Real Estate and Infrastructure Cadastre, lists data available online via RGA website free of charge, while Article 19 (2) stipulates that interested parties can access other data, not contained in Geodetic Cadastral Information System, as well as Cadastre documentation that has not been presented in electronic form, directly on the premises of the RGA. See **Annex 8**. Also, Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

179 See above para 14.

180 State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

181 Counter-Memorial, ¶ 76.

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| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply to Serbia's objection to Request No. 6 above. In addition, Claimants note that exhibits C-162 to C-164 and C-323 to C-325 are excerpts from electronic database of the Cadastre, where only the current situation can be seen. These are, therefore, completely different from the requested documents, which are not available online.<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>Serbia's assertion that the "*request potentially covers a large number of documents, which are very hard to identify*" is demonstrably incorrect. The responsive documents are, in essence, scans of land books which have been maintained for individual land plots covered by the request. There is no reason for why production of such scans should be unreasonable burdensome or make the request overbroad. In fact, Serbia clearly can prepare such scans when it suits its needs—as demonstrated by the fact that it submitted such a scan as exhibit R-011.<br>Serbia's assertion that the request covers also the Surrounding Area, which "*is also unspecified*", is nothing but absurd. The "Surrounding Area" is a defined term—its definition, delimitating also the exact extent of the Surrounding Area, is included at the beginning of the general part above.[182] Dunavska 17-19 and Dunavska 23 are also terms defined at the beginning of the general part above. Serbia's assertion is therefore yet another example of the fact that Serbia's objections are not made in a good faith—Serbia clearly included in its objections whatever arguments it could think of, without any thought whatsoever whether such arguments have any merit or not.<br>Serbia's argument that the production of responsive documents would be unduly burdensome is in direct contradiction to its argument—made with respect to the PCC objection—that the responsive documents are equally accessible to both Serbia and Claimants. Serbia cannot argue that Claimants should obtain the responsive documents themselves because they are equally accessible to both Parties and, at the same time, that it would be actually overly burdensome for Serbia to produce the same documents.<br>Finally, Claimants' request covers 56 years (including 3 years before the establishment of Obnova) only because it is Serbia's position that Obnova continuous 75-year-long use of the premises at Dunavska 17-19 and Dunavska 23 is not sufficient to show that Obnova had a right of use to the respective land plots. Serbia purports to base its argument on agreements from the 1950s and 1960. Therefore, it is Serbia's own case in |

182 *Supra* ¶ 5.

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| | this arbitration that that distant time period is relevant for the assessment of Obnova's rights. Therefore, Serbia cannot claim that documents dating from that time period are irrelevant. |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **32.** |
| **REQUESTED DOCUMENTS** | Any and all documents based on which the Real Estate Cadaster issued decisions No. 952-02-9-31/03 dated 22 November 2003[183] permitting inscription of the City of Belgrade as the user of Obnova's buildings on land plots Nos. 47 and 39/1 in CM Stari Grad. |
| **RELEVANCE** | The requested documents will show the basis for inscription of the City of Belgrade as the user of Obnova's buildings at land plots Nos. 49 and 39/1.<br>The documents are relevant and material for the outcome of the dispute because they will show that the inscription of the City of Belgrade was incorrect and Obnova was and still is the rightful user and owner of the buildings as Claimants argue in their Memorial[184] and Serbia denies in its Counter-Memorial.[185] |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Cadastre, in accordance with the applicable regulations.[186] In other words, the requested documents are "in the public domain, and equally and effectively available to both parties".[187] Respondent, just like Claimants, must address the Cadastre in order to obtain documents in question.[188] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents, so it would not be justified encumbering |

[183] Cadaster decision No. 952-02-9-31/03 relating to Dunavska 17-19 dated 22 November 2003, **C-165**; Cadaster decision No. 952-02-9-31/03 relating to Dunavska 23 dated 22 November 2003, p. 2, **C-184**.

[184] *E.g.* Memorial, ¶ 71.

[185] *E.g.* Counter-Memorial, ¶ 80.

[186] Article 62 (1) of the Law on State Survey and Cadastre, provides that Cadastre data are public. See **Annex 7**. Moreover, Article 19 (1) of the Law on Procedure on Registration in the Real Estate and Infrastructure Cadastre, lists data available online via RGA website free of charge, while Article 19 (2) stipulates that interested parties can access other data, not contained in Geodetic Cadastral Information System, as well as Cadastre documentation that has not been presented in electronic form, directly on the premises of the RGA. See **Annex 8**. Also, Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[187] See above para 14.

[188] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | Respondent with the task that can be performed by Claimants themselves. In fact, Claimants already obtained certain documentation from the Cadastre (see for example, exhibits C-162 to C-166 and C-329), so they can also request the documents whose production they now seek. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply to Serbia's objection to Request No. 6 above. In addition, Claimants note that certain exhibits mention by Serbia, *e.g.* exhibits C-162 to C-164, are excerpts from a part of the electronic database of the Cadastre, which can be accessed online. These are, therefore, completely different than the requested documents, which are not available online. |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **33.** |
| **REQUESTED DOCUMENTS** | Any and all documents based on which the Real Estate Cadaster issued decision No. 952-02-9-31/03 dated 7 December 2003[189] permitting inscription of the City of Belgrade as the owner of Obnova's buildings on land plots Nos. 47 and 39/1 in CM Stari Grad. |
| **RELEVANCE** | The requested documents will show the basis for inscription of the City of Belgrade as the owner of Obnova's buildings at land plots Nos. 49 and 39/1.<br>The documents are relevant and material for the outcome of the dispute because they will show that the inscription of the City of Belgrade was incorrect and Obnova was and still is the rightful user and owner of the buildings as Claimants argue in their Memorial[190] and Serbia denies in its Counter-Memorial.[191] |
| **OBJECTIONS** | **E**: As stated in Respondent's Counter-Memorial, the case file for this decision does not exist as this is a draft decision.[192] In fact, this draft concerns the same case file from Claimant's request no. 32. |
| **REPLY** | Claimants note Serbia's representation that no responsive documents exist. Claimants will address Serbia's assertion that decision No. 952-02-9-31/03 dated 7 December 2003 is only a draft decision, as well as |

189 Cadaster decision No. 952-02-9-31/03 dated 7 December 2003, **C-166**.
190 *E.g.* Memorial, ¶ 71.
191 *E.g.* Counter-Memorial, ¶ 80.
192 Counter-Memorial, ¶ 80.

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| | Serbia's contradictory claim that "*the case file for this decision does not exist*" yet, at the same time, it is supposedly "*the same case file from Claimant's request no. 32*" in detail in their Reply. |
| **DECISION** | **No decision is required.** |
| **NO.** | **34.** |
| **REQUESTED DOCUMENTS** | Letter from the Institute for the Protection of Nature of Serbia to the Secretariat for Urban Planning and Construction No. 03-853/2 dated 14 April 2008, together with all accompanying attachments. |
| **RELEVANCE** | This letter contains an opinion of the competent authority on a draft of the 2013 DRP provided pursuant to Article 44 of the Regulation on the Content, Method, and Procedure for the Preparation of Planning Documents ("Official Gazette of the Republic of Serbia," No. 31/2010, 69/2010, and 16/2011).<br>The requested document is relevant and material to assess whether the competent authorities, in this case the Institute for the Protection of Nature of Serbia, considered Obnova's rights to its premises at Dunavska 17-19 and 23 during the preparation of the 2013 DRP, and if so, what was its contemporaneous understanding of these rights. |
| **OBJECTIONS** | **R, M**: Claimants failed to demonstrate how the requested documents are relevant to its case and material for the outcome of the proceedings. In particular, Claimants failed to explain how the opinion of the Institute for the Protection of Nature of Serbia is relevant to the question of Obnova's alleged property rights or material the Tribunal's determination of this question. This is a classic "fishing expedition", with Claimants simply casting about for any documents which might contain information they consider helpful in substantiating their (unsubstantiated) case.<br>**PCC**: The requested documents are accessible to Obnova/Claimants.[193] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[194] Respondent, just like Claimants, must address the mentioned authority in order to obtain documents in question.[195] |

[193] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[194] See above para 14.

[195] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents will show whether the competent authorities, in this case the Institute for the Protection of Nature of Serbia, considered Obnova's rights to its premises at Dunavska 17-19 and 23 during the preparation of the 2013 DRP and, if so, what was its contemporaneous understanding of these rights. This determination is directly relevant and material to assessing whether Serbia's contemporaneous view on Obnova's rights to its premises at Dunavska 17-19 and Dunavska 23 was consistent with the position that Serbia takes in this arbitration—*i.e.* that Obnova does not have any rights to its premises at Dunavska 17-19 and Dunavska 23.[196]<br>Importantly, while Serbia disputes the relevance and materiality of the documents requested under this request, it does not dispute relevance and materiality of the documents requested under Request No. 37 below—which incorporates the explanation provided in this request. This is therefore yet another example of the fact that Serbia's objection are not made in a good faith—Serbia clearly included in its objections whatever arguments it could think of, without any consideration whatsoever whether such arguments have any merit or not.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Request No. 6. Claimants hereby incorporate all those arguments.[197]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[198] |

196 *E.g.* Counter-Memorial, ¶ 23.
197 *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.
198 *Supra* ¶¶ 36-38.

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| **DECISION** | **The request is upheld.** |
| **NO.** | **35.** |
| **REQUESTED DOCUMENTS** | Letter from the Secretariat for Environmental Protection to the Secretariat for Urban Planning and Construction No. 501.3-10/08-V-03 dated 24 April 2008, together with all accompanying attachments. |
| **RELEVANCE** | Claimants hereby incorporate explanation from Request No. 34 above. |
| **OBJECTIONS** | **R, M**: Claimants failed to demonstrate how the requested documents are relevant to its case and material for the outcome of the proceedings. In particular, Claimants failed to explain how the opinion of the Secretariat for Environmental Protection is relevant to the question of Obnova's alleged property rights or material to the Tribunal's determination of this question. This is a classic "fishing expedition", with Claimants simply casting about for any documents which might contain information they consider helpful for in substantiating their (unsubstantiated) case.<br>**PCC**: The requested documents are accessible to Obnova/Claimants.[199] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[200] Respondent, just like Claimants, must address the mentioned authority in order to obtain documents in question.[201] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material** |

[199] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[200] See above para 14.

[201] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | Claimants hereby incorporate their response provided to Serbia's objections to Request No. 34 above.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Requests No. 6. Claimants hereby incorporate all those arguments.[202]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[203] |
| **DECISION** | **The request is upheld.** |
| **NO.** | **36.** |
| **REQUESTED DOCUMENTS** | Letter from the Public Utility Company "Zelenilo Beograd" to the Secretariat for Urban Planning and Construction No. 3325/2 dated 17 April 2008, together with all accompanying attachments. |
| **RELEVANCE** | Claimants hereby incorporate explanation from Request No. 34 above. |
| **OBJECTIONS** | **R, M**: Claimants failed to demonstrate how the requested documents are relevant to its case and material for the outcome of the proceedings. In particular, Claimants failed to explain how the opinion of a public utility company is relevant to the question of Obnova's alleged property rights or material to the Tribunal's determination of this question. This is a classic "fishing expedition", with Claimants simply casting about for any documents which might contain information they consider helpful in substantiating their (unsubstantiated) case. |

202 *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.
203 *Supra* ¶¶ 36-38.

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| | **PCC**: The requested documents are accessible to Obnova/Claimants.[204] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[205] Respondent, just like Claimants, must address the mentioned authority in order to obtain documents in question.[206] Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material**<br>Claimants hereby incorporate their response provided to Serbia's objections to Request No. 34 above.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Request No. 6. Claimants hereby incorporate all those arguments.[207]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[208] |
| **DECISION** | **The request is upheld.** |

[204] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[205] See above para 14.

[206] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[207] *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.

[208] *Supra* ¶¶ 36-38.

| **NO.** | **37.** |
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| **REQUESTED DOCUMENTS** | Letter from the Directorate for Construction Land and Urban Development of Belgrade to the Secretariat for Urban Planning and Construction No. 19111/96000-VI-I dated 14 April 2010, together with all accompanying attachments. |
| **RELEVANCE** | Claimants hereby incorporate explanation from Request No. 34 above. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Directorate for Construction Land and Urban Development of Belgrade in accordance with the applicable regulations.[209] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[210] Respondent, just like Claimants, must address the Directorate in order to obtain documents in question.[211] Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Request No. 6. Claimants hereby incorporate all those arguments.[212]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the |

[209] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[210] See above para 14.

[211] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[212] *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.

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| | responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[213] |
| **DECISION** | **The request is upheld.** |
| **NO.** | **38.** |
| **REQUESTED DOCUMENTS** | Letter from the Secretariat for Transport – Department for Temporary and Planned Traffic Management IV-05 No. 344.16-1694/2012 dated 21 September 2012. |
| **RELEVANCE** | Claimants hereby incorporate explanation from Request No. 34 above. |
| **OBJECTIONS** | **R, M**: Claimants failed to demonstrate how requested documents are relevant to its case and material for the outcome of the proceedings. In particular, Claimants failed to explain how the opinion of the Secretariat for Transport – Department is relevant to the question of Obnova's alleged property rights or material to the Tribunal's determination of this question. This is a classic "fishing expedition", with Claimants simply casting about for any documents which might contain information they consider helpful in substantiating their (unsubstantiated) case.<br>**PCC**: The requested documents are accessible to Obnova/Claimants.[214] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[215] Respondent, just like Claimants, must address the mentioned authority in order to obtain documents in question.[216] Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. |

213 *Supra* ¶¶ 36-38.

214 Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

215 See above para 14.

216 State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material**<br>Claimants hereby incorporate response provided to Serbia's objections to Request No. 34 above.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Requests No. 6. Claimants hereby incorporate all those arguments.[217]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[218] |
| **DECISION** | **The request is upheld.** |
| **NO.** | **39.** |
| **REQUESTED DOCUMENTS** | Any and all letters, including all their attachments, exchanged between the Secretariat for Urban Planning and Construction and the Public Urban Planning Company "Urban Planning Institute of Belgrade" during the preparation of the 2013 DRP, including but not limited to:<br>1. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-2003/06 dated 27 December 2007;<br>2. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-465/06 dated 10 March 2008;<br>3. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. IX-03 No. 350.1-35/2007 dated 22 April 2008;<br>4. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-653/08 dated 12 January 2010; |

217 *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.
218 *Supra* ¶¶ 36-38.

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| | 5. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-1242/10 dated 4 June 2010;<br>6. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. IX-03 No. 350.1-36/2007 dated 22 June 2010;<br>7. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-1242/10 dated 24 March 2011;<br>8. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. IX-03 No. 350.1-35/2007 dated 19 April 2012;<br>9. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-214/2011 dated 8 August 2012;<br>10. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. IX-03 No. 350.1-35/2007 dated 22 August 2012;<br>11. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-214/2011 dated 28 August 2012;<br>12. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.1-35/2007 dated 4 October 2012;<br>13. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.1-35/2007 dated 11 October 2012;<br>14. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.1-35/2007 dated 16 October 2012;<br>15. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.12-487/2012 dated 28 September 2012;<br>16. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.12-497/2012 dated 8 October 2012;<br>17. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.12-517/2012 dated 8 October 2012;<br>18. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.12-568/2012 dated 17 October 2012;<br>19. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction dated 22 October 2012;<br>20. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-802/2012 dated 30 November 2012; |

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| | 21. Letter from the Secretariat for Urban Planning and Construction Affairs to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.1-35/2007 dated 21 December 2012;<br>22. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-802/12 dated 28 January 2013;<br>23. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-244/13 dated 20 August 2013; and<br>24. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-244/13 dated 21 October 2013. |
| **RELEVANCE** | The Secretariat for Urban Planning and Construction and the Public Urban Planning Company "Urban Planning Institute of Belgrade" are authorities with the most significant roles in the process of adopting the 2013 DRP.<br>The Secretariat for Urban Planning and Construction is responsible for the preparation and supervision of the adoption and implementation of the 2013 DRP.<br>Public Urban Planning Company "Urban Planning Institute of Belgrade" was entrusted with the preparation of the 2013 DRP and was designated as the plan holder (*in Serbian: nosilac izrade plana*). As such, the Public Urban Planning Company "Urban Planning Institute of Belgrade" was responsible for numerous important tasks in plan development, such as creating a draft 2013 DRP, conducting strategic environmental impact assessments and collecting the relevant documents and information for the preparation of the 2013 DRP.<br>The requested documents contain various drafts of the 2013 DRP as well as comments, corrections and opinions on the same, as well as supporting documents prepared during the process of the 2013 DRP's preparation exchanged between the Secretariat for Urban Planning and Construction and the Public Urban Planning Company "Urban Planning Institute of Belgrade".<br>As such, the requested documents are relevant and material to assess (*i*) whether Serbia intended to place the bus loop at Obnova's premises from the very beginning of the process of the 2013 DRP's preparation; and (*ii*) whether either the Secretariat for Urban Planning and Construction or the Public Urban Planning Company "Urban Planning Institute of Belgrade" had considered Obnova's rights to its premises at Dunavska 17-19 and 23 during the preparation of the 2013 DRP and, if so, what was their contemporaneous understanding of these rights. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Secretariat for Urban Planning and/or Urban Planning Institute of Belgrade in accordance with the applicable |

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| | regulations.[219] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[220] Respondent, just like Claimants, must address the Secretariat/Institute in order to obtain documents in question.[221] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request the documents which production they now seek.<br>**R, M**: Claimants' request is yet another example of a fishing expedition, with Claimants simply casting about for any information which they consider could be helpful in substantiating their (unsubstantiated) case. Claimants do not explain why documents establishing "whether Serbia intended to place the bus loop at Obnova's premises from the very beginning of the process of the 2013 DRP's preparation" are relevant or material to their case. Claimants also do not explain how the contemporaneous understanding of the Secretariat for Urban Planning and Construction or the Public Urban Planning Company "Urban Planning Institute of Belgrade" as to Obnova's alleged ownership rights is relevant and material to their case.<br>**U**: Claimants' request for "any and all letters, including all their attachments, […] concerning the 2013 DRP" is unreasonably burdensome. Claimants do not limit their request to a specific time period or to correspondence addressing to Obnova's alleged ownership rights. It would put Respondent in the difficult position of searching physical archives and electronic files (including emails) from both the Secretariat for Urban Planning and Construction and the Public Urban Planning Company "Urban Planning Institute of Belgrade", dating back more than a decade, which may or may not contain information concerning Obnova's purported rights and the decision to locate the bus loop at the Dunavska Plots. As a result, production of the requested documents would be unreasonably burdensome for Respondent. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents. |

[219] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[220] See above para 14.

[221] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | **Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 15 above.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents will show: (*i*) whether Serbia intended to place the bus loop at Obnova's premises from the very beginning of the process of the 2013 DRP's preparation; and (*ii*) whether either the Secretariat for Urban Planning and Construction or the Public Urban Planning Company "Urban Planning Institute of Belgrade" had considered Obnova's rights to its premises at Dunavska 17-19 and 23 during the preparation of the 2013 DRP and, if so, what was their contemporaneous understanding of these rights.<br>The requested documents are therefore relevant and material for two issues in this case. First, they are relevant and material to assess whether the decision to put the bus loop on Obnova's premises was unreasonable, arbitrary, discriminatory and in line with the principle of proportionality. Second, they are relevant and material to assess whether Serbia's contemporaneous view on Obnova's rights to its premises at Dunavska 17-19 and Dunavska 23 was consistent with the position that Serbia takes in this arbitration—*i.e.* that Obnova does not have any rights to its premises at Dunavska 17-19 and Dunavska 23.[222]<br>**The requested documents are not unreasonably burdensome to produce**<br>The letters listed in the request represent all letters exchanged between the Secretariat for Urban Planning and Construction and the Public Urban Planning Company "Urban Planning Institute of Belgrade" that are mentioned in the 2013 DRP documentation available to Claimants. As a result, it is reasonable to assume that if there are any additional responsive documents, their number should be limited. |
| **DECISION** | **The requested is <u>upheld</u> as regards the letters particularised in the request, and their attachments, namely:**<br>**1. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-2003/06 dated 27 December 2007;**<br>**2. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-465/06 dated 10 March 2008;**<br>**3. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. IX-03 No. 350.1-35/2007 dated 22 April 2008;**<br>**4. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-653/08 dated 12 January 2010;** |

[222] *E.g.* Counter-Memorial, ¶ 23.

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| | **5. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-1242/10 dated 4 June 2010;**<br>**6. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. IX-03 No. 350.1-36/2007 dated 22 June 2010;**<br>**7. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-1242/10 dated 24 March 2011;**<br>**8. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. IX-03 No. 350.1-35/2007 dated 19 April 2012;**<br>**9. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-214/2011 dated 8 August 2012;**<br>**10. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. IX-03 No. 350.1-35/2007 dated 22 August 2012;**<br>**11. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-214/2011 dated 28 August 2012;**<br>**12. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.1-35/2007 dated 4 October 2012;**<br>**13. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.1-35/2007 dated 11 October 2012;**<br>**14. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.1-35/2007 dated 16 October 2012;**<br>**15. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.12-487/2012 dated 28 September 2012;**<br>**16. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.12-497/2012 dated 8 October 2012;**<br>**17. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.12-517/2012 dated 8 October 2012;**<br>**18. Letter from the Secretariat for Urban Planning and Construction to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.12-568/2012 dated 17 October 2012;**<br>**19. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction dated 22 October 2012;**<br>**20. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-802/2012 dated 30 November 2012;** |

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| | **21. Letter from the Secretariat for Urban Planning and Construction Affairs to the Public Urban Planning Company "Urban Planning Institute of Belgrade" No. 350.1-35/2007 dated 21 December 2012;**<br>**22. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-802/12 dated 28 January 2013;**<br>**23. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-244/13 dated 20 August 2013; and**<br>**24. Letter from the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction No. 350-244/13 dated 21 October 2013.**<br><br>**The request is <u>denied</u> as regards all other requests in this category on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **40.** |
| **REQUESTED DOCUMENTS** | Letter from the Ministry of Environmental Protection and Spatial Planning to the Secretariat for Urban Planning and Construction No. 350-01-226/10-07 dated 20 April 2010, together with all accompanying attachments. |
| **RELEVANCE** | This letter contains an opinion of the competent authority on the Report on the Strategic Environmental Impact Assessment of the 2013 DRP.<br>The requested document is relevant and material to assess whether the Ministry of Environmental Protection and Spatial Planning considered Obnova's rights to its premises at Dunavska 17-19 and 23 during the preparation of the 2013 DRP, and if so, what was its contemporaneous understanding of these rights. |
| **OBJECTIONS** | **R, M**: Claimants failed to demonstrate how the requested documents are relevant to its case and material for the outcome of the proceedings. In particular, Claimants failed to explain how the opinion of the Ministry of Environmental Protection and Spatial Planning is relevant to the question of Obnova's alleged property rights or material to the Tribunal's determination of this question. This is a classic "fishing expedition", with Claimants simply casting about for any documents which might contain information they consider helpful in substantiating their (unsubstantiated) case. |

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| | **PCC**: In addition, the requested documents are accessible to Obnova/Claimants.[223] In other words, the requested documents are "in public domain and equally and effectively available to both parties".[224] Respondent, just like Claimants, must address mentioned authority in order to obtain documents in question.[225] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material**<br>Claimants hereby incorporate their response provided to Serbia's objections to Request No. 34 above.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Requests No. 6. Claimants hereby incorporate all those arguments.[226]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[227] |
| **DECISION** | **The request is upheld.** |

[223] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[224] See above para 14.

[225] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[226] *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.

[227] *Supra* ¶¶ 36-38.

| **NO.** | **41.** |
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| **REQUESTED DOCUMENTS** | Any and all responses to the objections submitted during the public insight period for the 2013 DRP, which were provided by the Public Urban Planning Company "Urban Planning Institute of Belgrade" to the Secretariat for Urban Planning and Construction, including but not limited to the revised responses provided in accordance with the conclusions of the City Assembly of Belgrade's Planning Commission from the 251st session held on 7 February 2013. |
| **RELEVANCE** | The requested documents are relevant and material to assess whether the Secretariat for Urban Planning and Construction and/or the Public Urban Planning Company "Urban Planning Institute of Belgrade" considered Obnova's rights to its premises at Dunavska 17-19 and 23 during the preparation of the 2013 DRP, and if so, what was their contemporaneous understanding of these rights. |
| **OBJECTIONS** | **B, R, M**: Claimants' request is overly broad and of questionable relevance and materiality as there is no indication that any objection or response by the Public Urban Planning Company "Urban Planning Institute of Belgrade" concerned Obnova's alleged property rights over the Dunavska Plots. This is a classic "fishing expedition", with Claimants simply casting about for any documents which might contain information they consider helpful in substantiating their (unsubstantiated) case.<br>**PCC**: In any event, the requested documents are accessible to Obnova/Claimants who can obtain the documents from the Secretariat for Urban Planning and/or Urban Planning Institute of Belgrade in accordance with the applicable regulations.[228] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[229] Respondent, just like Claimants, must address the Secretariat/Institute in order to obtain documents in question.[230] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants |

[228] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[229] See above para 14.

[230] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request the documents which production they now seek. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material and the request is not overbroad**<br>Claimants hereby incorporate their response provided to Serbia's objections to Request No. 34 above.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their replies from Requests Nos. 15 and 22. |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **42.** |
| **REQUESTED DOCUMENTS** | Letter from the Secretariat for Urban Planning and Construction No. 350.1-35/2007 dated 23 September 2013. |
| **RELEVANCE** | By this letter, the Secretariat for Urban Planning and Construction submitted:<br>1. the Environmental Impact Assessment Report of the 2013 DRP with a Report on the participation of the public, interested authorities and organizations in the public inspection of the Environmental Impact Assessment Report of the 2013 DRP;<br>2. the Amendment and Supplement to the Report on the participation of the public, interested authorities and organizations in the public inspection of the Environmental Impact Assessment Report of the 2013 DRP;<br>3. the Report on public inspection; and<br>4. the Amendment and Supplement to the Report on public inspection.<br>The requested document is relevant and material to assess whether the Secretariat for Environmental Protection considered Obnova's rights to its premises at Dunavska 17-19 and Dunavska 23 during the preparation of the 2013 DRP, and if so, what was its contemporaneous understanding of these rights. |
| **OBJECTIONS** | **R, M**: Claimants failed to demonstrate how requested documents are relevant to its case and material for the outcome of the proceedings. In particular, Claimants failed to explain how the documentation relating to the Environmental Impact Assessment is relevant to the question of Obnova's alleged property rights or material to the Tribunal's determination of this question. This is a classic "fishing expedition", with Claimants simply casting about for any documents which might contain information they consider helpful in substantiating their (unsubstantiated) case. |

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| | **PCC**: In any event, the requested documents are accessible to Obnova/Claimants.[231] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[232] Respondent, just like Claimants, must address mentioned authority in order to obtain documents in question.[233] Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material**<br>Claimants hereby incorporate their response provided to Serbia's objections to Request No. 34 above.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Requests No. 6. Claimants hereby incorporate all those arguments.[234]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[235] |
| **DECISION** | **The request is <u>denied</u> on grounds of relevance and materiality.** |

[231] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[232] See above para 14.

[233] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[234] *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.

[235] *Supra* ¶¶ 36-38.

| **NO.** | **43.** |
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| **REQUESTED DOCUMENTS** | Letter from the Secretariat for Environmental Protection to the Secretariat for Urban Planning and Construction No. 501.3 – 45/2013-V-04 dated 10 October 2013. |
| **RELEVANCE** | This letter contains certain objections to the Environmental Impact Assessment Report of the 2013 DRP. The requested document is relevant and material to assess whether the Secretariat for Environmental Protection considered Obnova's rights to its premises at Dunavska 17-19 and 23 during the preparation of the 2013 DRP, and if so, what was its contemporaneous understanding of these rights. |
| **OBJECTIONS** | **R, M**: Claimants failed to demonstrate how requested documents are relevant to its case and material for the outcome of the proceedings. In particular, Claimants failed to explain how the documentation relating to the Environmental Impact Assessment Report is relevant to the question of Obnova's alleged rights or material to the Tribunal's determination of this question. This is a classic "fishing expedition", with Claimants simply casting about for any documents which might contain information they consider helpful in substantiating their (unsubstantiated) case.<br>**PCC**: In any event, the requested documents are accessible to Obnova/Claimants.[236] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[237] Respondent, just like Claimants, must address mentioned authority in order to obtain documents in question.[238] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material** |

[236] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[237] See above para 14.

[238] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | Claimants hereby incorporate their response provided to Serbia's objections to Request No. 34 above.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Requests No. 6. Claimants hereby incorporate all those arguments.[239]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[240] |
| **DECISION** | **The request is denied on grounds of relevance and materiality.** |
| **NO.** | **44.** |
| **REQUESTED DOCUMENTS** | Letter from the Secretariat for Environmental Protection with reference number 501.3 – 45/2013-V-04 dated 10 October 2013, addressed to the Secretariat for Urban Planning and Construction. |
| **RELEVANCE** | This letter contains certain objections to the Report on the Strategic Environmental Assessment of the 2013 DRP.<br>The requested document is relevant and material to assess whether the Secretariat for Environmental Protection considered Obnova's rights to its premises at Dunavska 17-19 and 23 during the preparation of the 2013 DRP, and if so, what was its contemporaneous understanding of these rights. |
| **OBJECTIONS** | **R, M**: Claimants failed to demonstrate how requested documents are relevant to its case and material for the outcome of the proceedings. In particular, Claimants failed to explain how the documentation relating to the Report on the Strategic Environmental Assessment is relevant to the question of Obnova's alleged property rights or material to the Tribunal's determination of this question. This is a classic "fishing expedition", with Claimants simply casting about for any documents containing information which Claimants consider to be helpful in substantiating their (unsubstantiated) case. |

239 *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.
240 *Supra* ¶¶ 36-38.

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| | **PCC**: In addition, in any event, the requested documents are accessible to Obnova/Claimants.[241] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[242] Respondent, just like Claimants, must address the mentioned authority in order to obtain documents in question.[243] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material**<br>Claimants hereby incorporate their response provided to Serbia's objections to Request No. 34 above.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Requests No. 6. Claimants hereby incorporate all those arguments.[244]<br>Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[245] |
| **DECISION** | **The request is <u>denied</u> on grounds of relevance and materiality.** |

[241] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[242] See above para 14.

[243] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[244] *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.

[245] *Supra* ¶¶ 36-38.

| **NO.** | **45.** |
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| **REQUESTED DOCUMENTS** | Public Transport System Work Plan from 24 October 2007. |
| **RELEVANCE** | The requested document, referred on page 14 of the 2013 DRP, includes, among other things, an analysis of traffic frequency considered as one of the parameters for deciding on optimal location of a bus loop.<br>The requested document is relevant and material to assess whether the decision to place the bus loop at Obnova's premises at Dunavska 17-19 and Dunavska 23 was reasonable in light of the conclusions in the Public Transport System Work Plan or whether there was a more appropriate location. |
| **OBJECTIONS** | **R, M**: Claimants failed to demonstrate how requested documents are relevant to its case and material for the outcome of the proceedings. This is a classic "fishing expedition". Claimants are seeking any underlying documentation which might not support the decision to place the bus loop on the Dunavska Plots, but they have no reasonable basis for assuming that the work plan will contain anything relevant or material to the outcome of the dispute.<br>**PCC**: The requested document is accessible to Obnova/Claimants who can obtain the documents from the Urban Planning Institute of Belgrade in accordance with the applicable regulations.[246] In other words, the requested document is "in the public domain and equally and effectively available to both parties".[247] Respondent, just like Claimants, must address the Institute in order to obtain documents in question.[248] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request document whose production they now seek. |

[246] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[247] See above para 14.

[248] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are relevant and material**<br>As explained above, the requested document includes, among other things, an analysis of traffic frequency considered as one of the parameters for deciding on the optimal location of a bus loop. The requested document will therefore show whether the decision to place the bus loop at Obnova's premises at Dunavska 17-19 and Dunavska 23 was reasonable in light of the conclusions in the Public Transport System Work Plan or whether there was a more appropriate location.<br>As such, the requested document is relevant and material to assess whether the decision to place the bus loop on Obnova's premises was unreasonable and arbitrary and whether it was in line with the proportionality requirement.[249]<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 15. |
| **DECISION** | **The request is upheld.** |
| **NO.** | **46.** |
| **REQUESTED DOCUMENTS** | Any and all decisions by the City of Belgrade regarding the determination of the fee for the use of urban construction land (*in Serbian: naknada za korišćenje građevinskog zemljišta*) for Dunavska 17-19 and/or Dunavska 23. |
| **RELEVANCE** | The requested documents are relevant and material because they will show that the City of Belgrade considered Obnova to be the user of its premises at Dunavska 17-19 and Dunavska 23 and charged Obnova a fee for the use of the land at Dunavska 17-19 and Dunavska 23. This is inconsistent with Serbia's position in this arbitration that Obnova was not a rightful user of its premises at Dunavska 17-19 and Dunavska 23. |
| **OBJECTIONS** | **B, U**: Claimants' request is insufficiently narrow and specific as it does not specify the time period in which these unspecified decisions were issued or to whom were they issued (i.e. who was obliged to pay the fee for the use of urban construction land). For the same reason the request is overly burdensome because it requires Respondent to search the decisions of the City of Belgrade over a decades-long period of time.<br>**R, M**: Claimants failed to demonstrate how the requested documents are relevant to its case and material for the outcome of the proceedings. In particular, Claimants failed to explain how the decisions of the City of Belgrade are relevant to the question of Obnova's alleged property rights or material to the Tribunal's |

[249] Memorial, ¶¶ 222-224.

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| | determination of this question. This is a classic "fishing expedition", with Claimants simply casting about for any documents which Claimants consider to be helpful in substantiating their (unsubstantiated) case.<br>**PCC**: Insofar as Claimants are referring to the decisions that obliged Obnova to pay the fee for the use of urban construction land, such decisions (if any) must be in Obnova's, i.e. Claimants possession, custody or control. |
| **REPLY** | To facilitate Serbia's search for responsive documents, Claimants agree to limit their request to: "*Any and all decisions by the City of Belgrade regarding the determination of the fee for the use of urban construction land (in Serbian:* naknada za korišćenje građevinskog zemljišta*) for Dunavska 17-19 and/or Dunavska 23, issued before 2004*."<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>The request is specific enough because it defines land plots for which the relevant decisions were issued (*i.e.* land plots at Dunavska 17-19 and Dunavska 23, as defined above[250]). To further facilitate Serbia's search for responsive documents, Claimants confirm that their request relates only to decisions issued to Obnova and to narrow their request to all such decisions issued before 2004.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents will show that the City of Belgrade considered Obnova to be the user of its premises at Dunavska 17-19 and Dunavska 23 and charged Obnova a fee for the use of the land at Dunavska 17-19 and Dunavska 23. This is inconsistent with Serbia's position in this arbitration that Obnova was not a rightful user of its premises at Dunavska 17-19 and Dunavska 23.<br>This fact also supports Claimants' position that Obnova had the right of use over the land plots at Dunavska 17-19 and Dunavska 23, as the City of Belgrade would not have otherwise charged Obnova the fee for the use of these land plots.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Requested documents were issued before Obnova's privatization and, therefore, before Claimants acquired ownership and control over Obnova. Claimants have reviewed Obnova's archives that are available to them and confirm that they do not contain the requested documents. |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |

[250] *Supra* ¶ 5.

| **NO.** | **47.** |
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| **REQUESTED DOCUMENTS** | Any and all minutes and recordings from meetings of the Secretariat for Urban Planning and Construction related to the preparation of the 2015 DRP |
| **RELEVANCE** | The Secretariat for Urban Planning and Construction is the authority that was responsible for the preparation of the 2015 DRP.<br>The requested documents are relevant and material for evaluating the factors that the Secretariat took into account when developing the 2015 DRP, especially the reasons for the decision to rezone for residential purposes a significantly larger land plot, owned by the City of Belgrade, which was already designated and used for traffic infrastructure, located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the requested documents from the Secretariat for Urban Planning and Construction in accordance with the applicable regulations[251]. In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[252] Respondent, just like Claimants, must address the Secretariat in order to obtain documents in question.[253] Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**B, U**: The request is overly broad as Claimants seek "any and all" meeting minutes and recordings related to the preparation of the 2015 DRP in general, without specifying the time frame, and not only those dealing specifically with the rezoning of the land plot located across the street from Dunavska 17-19 and 23 (in particular, the reasons therefor). As a result, production of the requested documents would be unreasonably burdensome for Respondent. |

[251] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[252] See above para 14.

[253] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | **R, M**: Claimants have not demonstrated the relevance and materiality of the requested documents. It is irrelevant in the context of the 2013 DRP that the 2015 DRP rezoned the land across from the Dunavska Plots, where a bus depot was located, for residential developments. At the time of preparation of the 2013 DRP (or before), the bus depot was not considered as a possible location for the bus loop and the relocation of the bus depot was considered only in June 2015.[254] This request is yet another example of a "fishing expedition", with Claimants seeking production of a time-unlimited category of documents, which may or may not contain information which Claimants consider to be helpful in substantiating their (unsubstantiated) case. |
| **REPLY** | To facilitate Serbia's search for responsive documents, Claimants agree to limit their request to: "*Any and all minutes and recordings from meetings of the Secretariat for Urban Planning and Construction related to the preparation of the 2015 DRP discussing the rezoning of the land plot located across the street from Dunavska 17-19 and 23 for residential purposes prepared between 1 January 2006 and 31 December 2015.*" Claimants respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 22 above.<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>Claimants note that Serbia's objections relate to the lack of a specific time period and the fact that the request was not limited to documents related to the rezoning for residential purposes of the land plot located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. Claimants have limited the scope of the request accordingly.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents will show what factors the Secretariat took into account when developing the 2015 DRP, especially the reasons for the decision to rezone for residential purposes a significantly larger land plot, owned by the City of Belgrade, which was already designated and used for traffic infrastructure, located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. |

[254] Counter-Memorial, para 176.

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| | As such, the requested documents are directly relevant and material for Claimants' claim that the City of Belgrade decided to place the bus loop on Obnova's premises, rather than on its own land plot across the street, because it intended to benefit from the rezoning of its land plots for residential purposes.[255] |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **48.** |
| **REQUESTED DOCUMENTS** | Any and all documents included in the files maintained by the Secretariat for Urban Planning and Construction with respect to its work on the 2015 DRP. |
| **RELEVANCE** | Claimants hereby incorporate the explanation provided at Request 47 above. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the requested documents from the Secretariat for Urban Planning and Construction in accordance with the applicable regulations.[256] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[257] Respondent, just like Claimants, must address the Secretariat in order to obtain documents in question.[258] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**B, U**: The request is overly broad as Claimants seek "any and all" documents related to the preparation of the 2015 DRP in general, without specifying the time frame, and not only those addressing the reasons for rezoning the land plot located across the street from Dunavska 17-19 and 23 or addressing Obnova's alleged property rights. As a result, production of the requested documents would be unreasonably burdensome for. |

[255] Memorial, ¶¶ 6, 118-120.

[256] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[257] See above para 14.

[258] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | **R**, **M**: Claimants have not demonstrated the relevance and materiality of the requested documents. It is irrelevant in the context of the 2013 DRP that the 2015 DRP rezoned the land across from the Dunavska Plots, where a bus depot was located, for residential developments. At the time of preparation of the 2013 DRP (or before), the bus depot was not considered as a possible location for the bus loop and the relocation of the bus depot was considered only in June 2015.[259] This request is yet another example of a "fishing expedition", with Claimants seeking production of a time-unlimited category of documents, which Claimants consider to be helpful in substantiating their (unsubstantiated) case. |
| **REPLY** | To facilitate Serbia's search for responsive documents, Claimants agree to limit their request to: "*Any and all documents included in the files maintained by the Secretariat for Urban Planning and Construction with respect to its work on the 2015 DRP discussing the rezoning of the land plot located across the street from Dunavska 17-19 and 23 for residential purposes prepared between 1 January 2006 and 31 December 2015.*" Claimants respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 22 above.<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>Claimants note that Serbia's objections relate to the lack of a specific time period and the fact that the request was not limited to documents related to the rezoning for residential purposes of the land plot located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. Claimants have limited the scope of their request accordingly.<br>**Requested documents are relevant and material**<br>Claimants hereby incorporate the response provided at Request No. 47 above. |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **49.** |
| **REQUESTED DOCUMENTS** | Any and all minutes and recordings from all meetings of the Urban Planning Institute of Belgrade related to the preparation of the 2015 DRP. |
| **RELEVANCE** | The Urban Planning Institute of Belgrade was the holder of the plan development (*in Serbian: nosilac izrade plana*) for the 2015 DRP with responsibilities described at Request 39 above. |

[259] Counter-Memorial, para 176.

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| | The requested documents are relevant and material for evaluating the factors that the Urban Planning Institute of Belgrade took into account when developing the 2015 DRP, especially the reasons for the decision to rezone for residential purposes a significantly larger land plot, owned by the City of Belgrade, which was already designated and used for traffic infrastructure, located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Urban Planning Institute of Belgrade in accordance with the applicable regulations.[260] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[261] Respondent, just like Claimants, must address the Institute in order to obtain documents in question.[262] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request the documents whose production they now seek.<br>**B, U**: The request is overly broad as Claimants seek documents related to the preparation of the 2015 DRP in general, without specifying the time frame, and not only those addressing the reasons for the rezoning of the land plot located across the street from Dunavska 17-19 and 23. As a result, production of the requested documents would be unreasonably burdensome for Respondent.<br>**R**, **M**: Claimants have not demonstrated the relevance and materiality of the requested documents. It is irrelevant in the context of the 2013 DRP that the 2015 DRP rezoned the land across from the Dunavska Plots, where a bus depot was located, for residential developments. At the time of preparation of the 2013 DRP (or before), the bus depot was not considered as a possible location for the bus loop and the relocation of the bus depot was considered only in June 2015.[263] This request is yet another example of a "fishing |

[260] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[261] See above para 14.

[262] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[263] Counter-Memorial, para 176.

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| | expedition", with Claimants seeking production of a time-unlimited category of documents, which may or may not contain information which Claimants consider to be helpful in substantiating their (unsubstantiated) case. |
| **REPLY** | To facilitate Serbia's search for responsive documents, Claimants agree to limit their request to: "*Any and all minutes and recordings from all meetings of the Urban Planning Institute of Belgrade related to the preparation of the 2015 DRP discussing the rezoning of the land plot located across the street from Dunavska 17-19 and 23 for residential purposes prepared between 1 January 2006 and 31 December 2015.*" Claimants respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 15 above.<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>Claimants note that Serbia's objections relate to the lack of a specific time period and the fact that the request was not limited to documents related to the rezoning for residential purposes of the land plot located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. Claimants have limited the scope of their request accordingly.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents will show the factors that the Urban Planning Institute of Belgrade took into account when developing the 2015 DRP, especially the reasons for the decision to rezone for residential purposes a significantly larger land plot, owned by the City of Belgrade, which was already designated and used for traffic infrastructure, located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23.<br>As such, the requested documents are directly relevant and material for Claimants' claim that the City of Belgrade decided to place the bus loop on Obnova's premises, rather than at its own land plot across the street, because it intended to benefit from the rezoning of its land plots for residential purposes.[264] |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |

[264] Memorial, ¶¶ 6, 118-120.

| **NO.** | **50.** |
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| **REQUESTED DOCUMENTS** | Any and all documents included in the files maintained by the Urban Planning Institute of Belgrade's with respect to its work on the 2015 DRP. |
| **RELEVANCE** | Claimants hereby incorporate the explanation provided at Request No. 48 above. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Urban Planning Institute of Belgrade in accordance with the applicable regulations.[265] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[266] Respondent, just like Claimants, must address the Institute in order to obtain documents in question.[267] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants obviously already obtained certain documentation from the Urban Planning Institute of Belgrade (exhibit C-025), so they can also request the documents whose production they now seek.<br>**B, U**: The request is overly broad Claimants seek "any and all" documents related to the preparation of the 2015 DRP in general, without specifying the time frame, and not only those dealing specifically with the reasons for rezoning the land plot located across the street from Dunavska 17-19 and 23 or addressing Obnova's alleged property rights. As a result, production of the requested documents would be unreasonably burdensome for Respondent.<br>**R**, **M**: Claimants have not demonstrated the relevance and materiality of the requested documents. It is irrelevant in the context of the 2013 DRP that the 2015 DRP rezoned the land across from the Dunavska Plots, where a bus depot was located, for residential developments. At the time of preparation of the 2013 DRP (or before), the bus depot was not considered as a possible location for the bus loop and the relocation of the bus depot was considered only in June 2015.[268] This request is yet another example of a "fishing |

[265] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[266] See above para 14.

[267] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[268] Counter-Memorial, para 176.

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| | expedition", with Claimants seeking production of a time-unlimited category of documents, which Claimants consider to be helpful in substantiating their (unsubstantiated) case. |
| **REPLY** | To facilitate Serbia's search for responsive documents, Claimants agree to limit their request to: "*Any and all documents included in the files maintained by the Urban Planning Institute of Belgrade's with respect to its work on the 2015 DRP discussing the rezoning of the land plot located across the street from Dunavska 17-19 and 23 for residential purposes prepared between 1 January 2006 and 31 December 2015.*"<br>Claimants respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 15 above.<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>Claimants note that Serbia's objections relate to the lack of a specific time period and the fact that the request was not limited to documents related to the rezoning for residential purposes of the land plot located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. Claimants have limited the scope of their request accordingly.<br>**Requested documents are relevant and material**<br>Claimants hereby incorporate their reply from Request No. 49 above. |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **51.** |
| **REQUESTED DOCUMENTS** | Any and all minutes and recordings from Beoland's meetings related to the preparation of the 2015 DRP. |
| **RELEVANCE** | Beoland was the plan commissioner for the 2015 DRP, with responsibilities described at Request No. 25 above.<br>The requested documents are relevant and material for evaluating the factors that Beoland took into account when developing the 2015 DRP, especially the reasons for the decision to rezone for residential purposes a significantly larger land plot, owned by the City of Belgrade, which was already designated and used for traffic infrastructure, located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. |

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| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Beoland in accordance with the applicable regulations.[269] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[270] Respondent, just like Claimants, must address the Beoland in order to obtain documents in question.[271] Therefore, it is equally burdensome for Respondent as it is for Claimants, to obtain these documents and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**B, U**: The request is overly broad as Claimants seek generally documents related to the preparation of the 2015 DRP in general, without specifying the time frame, and not only those dealing specifically with the reasons for rezoning the land plot located across the street from Dunavska 17-19 and 23 or addressing Obnova's alleged property rights. As a result, production of the requested documents would be unreasonably burdensome for Respondent.<br>**R**, **M**: Claimants have not demonstrated the relevance and materiality of the requested documents. It is irrelevant in the context of the 2013 DRP that the 2015 DRP rezoned the land across from the Dunavska Plots, where a bus depot was located, for residential developments. At the time of preparation of the 2013 DRP (or before), the bus depot was not considered as a possible location for the bus loop and the relocation of the bus depot was considered only in June 2015.[272] This request is yet another example of a "fishing expedition", with Claimants seeking production of a time-unlimited category of documents, which may or may not contain information which Claimants consider to be helpful in substantiating their (unsubstantiated) case. |
| **REPLY** | To facilitate Serbia's search for responsive documents, Claimants agree to limit their request to: "*Any and all minutes and recordings from Beoland's meetings related to the preparation of the 2015 DRP discussing the rezoning of the land plot located across the street from Dunavska 17-19 and 23 for residential purposes, prepared and/or recorded between 1 January 2006 and 31 December 2015.*"<br>Claimants respectfully request the Tribunal to order the production of the responsive documents. |

[269] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[270] See above para 14.

[271] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[272] Counter-Memorial, para 176.

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| | **Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 25 above.<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>Claimants note Serbia's objections related to the lack of a specific time period and the fact that the request was not limited to documents related to the rezoning of for residential purposes of the land plot located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. Claimants have limited the scope of their document requests accordingly.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents will show the factors that Beoland took into account when developing the 2015 DRP, especially the reasons for the decision to rezone for residential purposes a significantly larger land plot, owned by the City of Belgrade, which was already designated and used for traffic infrastructure, located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23.<br>As such, the requested documents are directly relevant and material for Claimants' claim that the City of Belgrade decided to place the bus loop on Obnova's premises, rather than at its own land plot across the street, because it intended to benefit from the rezoning of its land plots for residential purposes.[273] |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **52.** |
| **REQUESTED DOCUMENTS** | Any and all documents included in the files maintained by Beoland with respect to its work on the 2015 DRP. |
| **RELEVANCE** | Claimants hereby incorporate the explanation provided at Request No. 50 above. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the requested documents from the Beoland in accordance with the applicable regulations.[274] In other words, the requested |

[273] Memorial, ¶¶ 6, 118-120.

[274] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

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| | documents are "in the public domain and equally and effectively available to both parties".[275] Respondent, just like Claimants, must address the Beoland in order to obtain documents in question.[276] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**B, U**: The request is overly broad as Claimants seek "any and all" documents related to the preparation of the 2015 DRP in general, without specifying a time frame, and not only those dealing specifically with the reasons for rezoning the land plot located across the street from Dunavska 17-19 and 23 or addressing Obnova's alleged property rights. As a result, production of the requested documents would be unreasonably burdensome for Respondent.<br>**R**, **M**: Claimants have not demonstrated the relevance and materiality of the requested documents. It is irrelevant in the context of the 2013 DRP that the 2015 DRP rezoned the land across from the Dunavska Plots, where a bus depot was located, for residential developments. At the time of preparation of the 2013 DRP (or before), the bus depot was not considered as a possible location for the bus loop and the relocation of the bus depot was considered only in June 2015.[277] This request is yet another example of a "fishing expedition", with Claimants seeking production of a time-unlimited category of documents, which may or may not contain information which Claimants consider to be helpful in substantiating their (unsubstantiated) case. |
| **REPLY** | In order to facilitate Serbia's search for responsive documents, Claimants agree to limit their request to: "*Any and all documents included in the files maintained by Beoland with respect to its work on the 2015 DRP discussing the rezoning of the land plot located across the street from Dunavska 17-19 and 23 for residential purposes prepared between 1 January 2006 and 31 December 2015.*"<br>Claimants respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 25 above.<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>Claimants note that Serbia's objections relate to the lack of a specific time period and the fact that the request was not limited to documents related to the rezoning for residential purposes of the land plot located |

[275] See above para 14.
[276] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.
[277] Counter-Memorial, para 176.

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| | directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. Claimants have limited the scope of their request accordingly.<br>**Requested documents are relevant and material**<br>Claimants hereby incorporate their reply from Request No. 51 above. |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **53.** |
| **REQUESTED DOCUMENTS** | Any and all minutes and recordings from all meetings of the Planning Commission of the Assembly of the City of Belgrade during which the 2015 DRP was discussed by the Commission. |
| **RELEVANCE** | The Planning Commission provided expert assistance and performed tasks in the process of drafting and implementing 2015 DRP.<br>The requested documents are relevant and material for evaluating the factors that the Planning Commission took into account when developing the 2015 DRP, especially the reasons for the decision to rezone for residential purposes a significantly larger land plot, owned by the City of Belgrade, which was already designated and used for traffic infrastructure, located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Assembly of the City of Belgrade in accordance with the applicable regulations.[278] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[279] Respondent, just like Claimants, must address the Assembly in order to obtain documents in question.[280] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it |

[278] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[279] See above para 14.

[280] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | would not be justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**U, B**: The request is overly broad as Claimants seek documents related to the preparation of the 2015 DRP in general, without specifying a time frame, and not only those specifically dealing with the reasons for rezoning the land plot located across the street from Dunavska 17-19 and 23. As a result, production of the requested documents would be unreasonably burdensome for Respondent.<br>**R**, **M**: Claimants have not demonstrated the relevance and materiality of the requested documents. It is irrelevant in the context of the 2013 DRP that the 2015 DRP rezoned the land across from the Dunavska Plots, where a bus depot was located, for residential developments. At the time of preparation of the 2013 DRP (or before), the bus depot was not considered as a possible location for the bus loop and the relocation of the bus depot was considered only in June 2015.[281] This request is yet another example of a "fishing expedition", with Claimants seeking production of a time-unlimited category of documents, which may or may not contain information which Claimants consider to be helpful in substantiating their (unsubstantiated) case. |
| **REPLY** | To facilitate Serbia's search for responsive documents, Claimants agree to limit their request to: "*Any and all minutes and recordings from all meetings of the Planning Commission of the Assembly of the City of Belgrade related to the preparation of the 2015 DRP discussing the rezoning of the land plot located across the street from Dunavska 17-19 and 23 for residential purposes prepared between 1 January 2006 and 31 December 2015.*"<br>Claimants respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 20 above.<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>Claimants note that Serbia's objections relate to the lack of a specific time period and the fact that the request was not limited to documents related to the rezoning for residential purposes of the land plot located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. Claimants have limited the scope of their request accordingly.<br>**Requested documents are relevant and material**<br>The requested documents will show the factors that the Planning Commission took into account when developing the 2015 DRP, especially the reasons for the decision to rezone for residential purposes a |

[281] Counter-Memorial, para 176.

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| | significantly larger land plot, owned by the City of Belgrade, which was already designated and used for traffic infrastructure, located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23.<br>As such, the requested documents are directly relevant and material for Claimants' claim that the City of Belgrade decided to place the bus loop on Obnova's premises, rather than at its own land plot across the street, because it intended to benefit from the rezoning of its land plots for residential purposes.[282] |
| **DECISION** | **The request is denied on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **54.** |
| **REQUESTED DOCUMENTS** | Any and all documents included in the files maintained by the Planning Commission of the Assembly of the City of Belgrade's with respect to its work on the 2015 DRP. |
| **RELEVANCE** | Claimants hereby incorporate the explanation provided at Request No. 52 above. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the requested documents from the Assembly of the City of Belgrade in accordance with the applicable regulations.[283] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[284] Respondent, just like Claimants, must address the Assembly in order to obtain documents in question.[285] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents and it would not be justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**B, U**: The request is overly broad as Claimants seekliter "any and all" documents related to the preparation of the 2015 DRP in general, without specifying a time frame, and not only those dealing specifically with the |

[282] Memorial, ¶¶ 6, 118-120.

[283] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[284] See above para 14.

[285] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| | reasons for rezoning the land plot located across the street from Dunavska 17-19 and 23. As a result, production of the requested documents would be unreasonably burdensome for Respondent.<br>**R**, **M**: Claimants have not demonstrated the relevance and materiality of the requested documents. It is irrelevant in the context of the 2013 DRP that the 2015 DRP rezoned the land across from the Dunavska Plots, where a bus depot was located, for residential developments. At the time of preparation of the 2013 DRP (or before), the bus depot was not considered as a possible location for the bus loop and the relocation of the bus depot was considered only in June 2015.[286] This request is yet another example of a "fishing expedition", with Claimants seeking production of a time-unlimited category of documents, which may or may not contain information which Claimants consider to be helpful in substantiating their (unsubstantiated) case. |
| **REPLY** | To facilitate Serbia's search for responsive documents, Claimants agree to limit their request to: "*Any and all documents included in the files maintained by the Planning Commission of the Assembly of the City of Belgrade's with respect to its work on the 2015 DRP discussing the rezoning of the land plot located across the street from Dunavska 17-19 and 23 for residential purposes prepared between 1 January 2006 and 31 December 2015.*"<br>Claimants respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 20 above.<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>Claimants note that Serbia's objections relate to the lack of a specific time period and the fact that the request was not limited to documents related to the rezoning for residential purposes of the land plot located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. Claimants have limited the scope of their request accordingly.<br>**Requested documents are relevant and material**<br>Claimants hereby incorporate their reply from Request No. 53 above. |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |

[286] Counter-Memorial, para 176.

| **NO.** | **55.** |
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| **REQUESTED DOCUMENTS** | Any and all documents referred to on page 14 (pdf) of exhibit R-052 based on which Luka Beograd' right of use over land plot No. 47 in the CM Stari grad was registered in the land book. |
| **RELEVANCE** | Claimants position in this arbitration is that Obnova has a right of use over land plot No. 47 ever since it constructed its buildings on this land plot. The requested documents will show the basis on which Serbia registered Luka Beograd as the user of this land plot No. 47 and that the inscription was incorrect. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the documents from the Cadastre, in accordance with the applicable regulations.[287] In other words, the requested documents are "in public domain, and are equally and effectively available to both parties".[288] Respondent, just like Claimants, must address the Cadastre in order to obtain documents in question.[289] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents, so it is not justified encumbering Respondent with the task that can be performed by Claimants themselves. In fact, Claimants already obtained decisions based on which the City of Belgrade was inscribed in the Cadastre as the user/owner of certain Objects on Dunavska Plots (exhibits C-165 and C-166), so they can also request the documents whose production they now seek.<br>**B, U**: The request is overly broad and unduly burdensome as Claimants failed to specify a narrow and specific category of requested documents. Respondent cannot reasonably be requested to identify and locate "any and all documents referred to on page 14 (pdf) of exhibit R-052", instead of Claimants. |

[287] Article 62 (1) of the Law on State Survey and Cadastre, provides that Cadastre data are public. See **Annex 7**. Moreover, Article 19 (1) of the Law on Procedure on Registration in the Real Estate and Infrastructure Cadastre, lists data available online via RGA website free of charge, while Article 19 (2) stipulates that interested parties can access other data, not contained in Geodetic Cadastral Information System, as well as Cadastre documentation that has not been presented in electronic form, directly on the premises of the RGA. See **Annex 8**. Also, Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[288] See above para 14.

[289] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

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| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply to Serbia's objection to Request No. 6 above.<br>**Request is not overbroad and the requested documents are not unreasonably burdensome to produce**<br>Serbia allegation that it "*cannot reasonably be requested to identify and locate 'any and all documents referred to on page 14 (pdf) of exhibit R-052'*", essentially meaning that Serbia cannot be reasonably requested to read one page in one document, is nothing short of absurd.<br>Page 14 (pdf) of exhibit R-052, submitted in this arbitration by Serbia itself, is a clear reference to a specific document. The page very clearly refers to the following documents related to Dunavska 17-19: (*i*) Decisions of the Institute for the Protection of Cultural Monuments of the City of Belgrade dated 30 December 1965, No. 643/6, 25 December 1965, No. 278/7, 20 April 1966, No. 247/7 and 3 March 1966, No. 205/3; (*ii*) Decision No. Dn 4563/66 dated June 13, 1966; (*iii*) Conclusion of the People's Municipal Committee –Stari Grad No. 29553/1-58 dated 27 January 1959; (*iv*) Confirmation from the Secretariat for Communal and Construction Affairs No. 8905/1 dated 22 October 1963; (*v*) Decision of the District Commercial Court in Belgrade No. 867/64 dated 7 May 1964; and (*vi*) Decision No. Dn 8509/66 dated 1 December 1966.[290] All that Serbia was requested to do is to read this one page of the document and search for the documents referred to therein. Claimants submit that it is entirely appropriate to request that Serbia make that effort. |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |
| **NO.** | **56.** |
| **REQUESTED DOCUMENTS** | The following documents referred to on pages 1 and 2 of exhibit R-061 and described therein as follows:<br>1. Report on the arrangement of property and legal relations regarding the use of construction land for the spatial development of Luka "Beograd", signed by the members of both commissions from December 5, 1974;<br>2. List of construction land on which the Preduzece luka I skladista "Beograd" transfers the right of use to the City of Belgrade with a Site plan at a scale of 1:2500;<br>3. List of buildings and construction facilities on which the Preduzece luka i skladista "Beograd" transfers the right of use to the City of Belgrade; |

[290] Land Book insertion no. 5, pp. 5, 14 (pdf), **R-052**.

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| | 4. List of construction land and facilities that temporarily remain in the possession of Preduzece Luka i skladista "Beograd" until the land needs to be brought to its purpose in accordance with the urban plan and the situational plan; and<br>5. The List of construction land to be transferred to the Preduzece Luka i skladista "Beograd" for use in accordance with business activity and purpose of land, which is intended for spatial development of the company by the detailed urban plan. |
| **RELEVANCE** | The requested documents will show over which land plots and buildings Luka Beograd had the right of use prior and subsequent to the conclusion of the agreement between Luka Beograd and Serbia dated 6 March 1975 submitted as R-060.<br>The requested documents are therefore relevant and material to demonstrate that Luka Beograd did not have the right of use over Obnova's premises at Dunavska 17-19 and Dunavska 23—as Serbia incorrectly argues in this arbitration. |
| **OBJECTIONS** | Respondent agrees to produce the requested documents that are available to it. |
| **REPLY** | Claimants note Serbia's agreement to produce the responsive documents.<br>Claimants also note that Serbia has produced some of the responsive documents. However, Serbia has not produced a Site plan at a scale of 1:2500 that should be attached to the list of construction land on which the Preduzece luka I skladista "Beograd" transfers the right of use to the City of Belgrade with (see description of document No. 2 in the Claimants' request). In addition, the documents produced by Serbia do not seem to be complete as they do not include certain annexes.<br>Claimants will approach Serbia to resolve these issues but reserve their right to approach the Tribunal in case Serbia's refuses to produce complete versions of all responsive documents. |
| **DECISION** | **The Tribunal notes the Respondent's agreement to produce the requested documents that are available to it. No decision is required.** |
| **NO.** | **57.** |
| **REQUESTED DOCUMENTS** | The following documents referred to on pages 1 and 2 of exhibit R-062 and described therein as follows:<br>1. Letter from the Luka "Beograd" dated October 12, 2001;<br>2. Minutes from the public hearing held on June 25, 2003, page 2, II paragraph; and<br>3. List No. III with the list of facilities. |

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| **RELEVANCE** | Exhibit R-062 is an appeal submitted by Luka Beograd against the Real Estate Cadastre Office's decision registering the City of Belgrade's alleged rights to various land plots—including certain land plots located at Dunavska 17-19 and Dunavska 23.<br>The requested documents will show the reasoning Luka Beograd provided to the Cadaster to support its alleged rights to these land plots and are therefore relevant and material to demonstrate that Luka Beograd's reasoning was incorrect and Luka Beograd did not have rights to these land plots. |
| **OBJECTIONS** | Letter from the Luka "Beograd" dated 12 October 2001 is already in the case files as Exhibit R-061.<br>As to other two documents, Respondent agrees to produce the requested documents as they are already in its possession, custody or control. |
| **REPLY** | Claimants note Serbia's agreement to produce the responsive documents. |
| **DECISION** | **The Tribunal notes the Respondent's agreement to produce the requested documents. No decision is required.** |
| **NO.** | **58.** |
| **REQUESTED DOCUMENTS** | Any and all documents representing the objection discussed as item 5 "*JKP Gradsko-saobraćajno preduzeće "Belgrade", Belgrade, 29 Kneginje Ljubice Str. (case file IX-03 No. 350.12-308/2014 as of 22/12/2014)*" at the 74th session of the Planning Committee of the Belgrade City Assembly, held on 18 June 2015, and referred to on page 2 (pdf) of exhibit R-103. |
| **RELEVANCE** | The requested documents are relevant and material because they will show the reasons for which JKP Gradsko-saobraćajno preduzeće "Belgrade" proposed to rezone for residential purposes a significantly larger land plot, owned by the City of Belgrade, which was already designated and used for traffic infrastructure, located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23. |
| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the requested documents from the Assembly of the City of Belgrade in accordance with the applicable regulations.[291] In other words, the requested documents are "in the public domain and equally and effectively available to both |

[291] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

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| | parties".[292] Respondent, just like Claimants, must address the Assembly in order to obtain documents in question.[293] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents, and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**R**, **M**: Claimants have not demonstrated the relevance and materiality of the requested documents. It is irrelevant in the context of the 2013 DRP that the 2015 DRP rezoned the land across from the Dunavska Plots, where a bus depot was located, for residential developments. At the time of preparation of the 2013 DRP (or before), the bus depot was not considered as a possible location for the bus loop and the relocation of the bus depot was considered only in June 2015.[294] This request is yet another example of a "fishing expedition", with Claimants seeking production of a time-unlimited category of documents, which may or may not contain information which Claimants consider to be helpful in substantiating their (unsubstantiated) case. |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Claimants hereby incorporate their reply from Request No. 20 above.<br>**Requested documents are relevant and material**<br>As explained above, the requested documents will show the reasons for which JKP Gradsko-saobraćajno preduzeće "Belgrade" proposed to rezone for residential purposes a significantly larger land plot, owned by the City of Belgrade, which was already designated and used for traffic infrastructure, located directly across the street from Obnova's premises at Dunavska 17-19 and Dunavska 23.<br>As such, the requested documents are directly relevant and material for Claimants' claim that the City of Belgrade decided to place the bus loop on Obnova's premises, rather than at its own land plot across the street, because it intended to benefit from the rezoning of its land plots for residential purposes.[295] |
| **DECISION** | **The request is <u>denied</u> on grounds of specificity, proportionality, burden and materiality.** |

[292] See above para 14.
[293] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.
[294] Counter-Memorial, para 176.
[295] Memorial, ¶¶ 6, 118-120.

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| **NO.** | **59.** |
| **REQUESTED DOCUMENTS** | Any and all documents representing "*the basic report of the Republic Geodetic Authority No. 952-297/03 of April 9, 2003*" as referred to on page 1 of the Additional Report Regarding the Registration of Enterprise in Real Estate Cadaster prepared by the Republic Geodetic Institute of Serbia on 20 May 2003 (exhibit R-130) |
| **RELEVANCE** | According to exhibit R-130, the requested documents show "*immovables*" owned or used by Obnova in April 2003. The requested documents are therefore relevant and material to establish what was Serbia's and Obnova's contemporaneous understanding of Obnova's rights to its premises at Dunavska 17-19 and Dunavska 23. |
| **OBJECTIONS** | The requested document is already submitted as exhibit R-067. Respondent confirms that there are no other documents responsive to this request. |
| **REPLY** | Claimants note Serbia's representation that there are no other responsive documents besides the documents submitted by Serbia as exhibit R-067.<br>No decision is required. |
| **DECISION** | **No decision is requested.** |
| **NO.** | **60.** |
| **REQUESTED DOCUMENTS** | The following documents referred to on page 1 of the letter from the Department of Construction Affairs to Obnova dated 27 November 2009 (exhibit R-131) and described therein as follows:<br>1. the Report of the Executive Board of the Municipality Assembly Commission Stari Grad dated 26 November 2004, consisting of the conclusion of the Executive Board no. 06-55/03 for the assessment of conditions and possibilities for the issuance of approval for objects that were constructed or reconstructed without construction permit by 13 May 2003;<br>2. letter mailed to Miljan Milić dated 27 December 2004; and<br>3. the letter not allowing for the continuation of the legalization procedure. |
| **RELEVANCE** | The requested documents were prepared by Serbia in connection with Obnova's requests for legalization of its buildings at Dunavska 17-19 and Dunavska 23. As such, the requested documents are relevant and material to assess the reasons for which Serbia failed to legalize Obnova's buildings. |

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| **OBJECTIONS** | **PCC**: The requested documents are accessible to Obnova/Claimants who can obtain the requested documents from the Municipality of Stari grad in accordance with the applicable regulations.[296] In other words, the requested documents are "in the public domain and equally and effectively available to both parties".[297] Respondent, just like Claimants, must address the Municipality in order to obtain documents in question.[298] Therefore, it is equally burdensome for Respondent as it is for Claimants to obtain these documents, and it is not justified encumbering Respondent with the task that can be performed by Claimants themselves.<br>**R, M**: Claimants do not specify the relevance and materiality of the requested documents beyond a general statement that these documents were "prepared by Serbia in connection with Obnova's requests for legalization of its buildings at Dunavska 17-19 and Dunavska 23". This falls short of the requirement to establish that the requested documents will "add something to<br>The evidence on a factual issue that is on the critical path to a determination of the dispute".[299] |
| **REPLY** | Claimants maintain their request and respectfully request the Tribunal to order the production of the responsive documents.<br>**Requested documents are not in Claimants' possession, custody or control**<br>Serbia does not seem to dispute that the requested documents are *not* in Claimants' possession, custody or control. Serbia only asserts that the requested documents are "*in the public domain and equally and effectively available to both parties.*" This assertion is incorrect for the same reasons that Claimants already explained in paragraphs 30 to 47 above and in their response to Serbia's objections to Requests No. 6. Claimants hereby incorporate all those arguments.[300] |

[296] Article 5(2) of the Law on Free Access to the Information of Public Importance states that everyone has the right to have the information of public importance made available to them, by providing them with an access to a document containing information of public importance, the right to a copy of that document, and the right to have a copy of the document sent to him by mail, fax, by email or otherwise, upon their request. Article 2(1) defines information of public importance as information at the disposal of a State authority, created in the work or in connection with the work of the State authority, contained in a certain document, and refers to everything that the public has a legitimate interest in knowing. See **Annex 9**.

[297] See above para 14.

[298] State Attorney Office, representing Serbia in arbitration proceedings, is not in physical possession of the requested documents and thus has to address the relevant state authorities to obtain the documentation, just like Claimants are entitled to do.

[299] Roman Mikhailovich Khodykin, Carol Mulcahy, *et al.*, "6. Commentary on the IBA Rules on Evidence, Article 3 [Documents]", in *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* (2019), **Annex 1**, para 6.102.

[300] *Supra* ¶¶ 30-47; Claimants' reply to Serbia's objections to Request No. 6.

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| | Furthermore, as explained above, even if the requested documents had been "*equally and effectively available to both parties*" (*quod non*), Serbia would still be obliged to allow Claimants access to the responsive documents—as long as the Tribunal concluded that the documents are relevant and material and thus should be produced.[301]<br>**Requested documents are relevant and material**<br>Serbia's assertion that Claimants' explanation of relevance of the requested documents is limited to "*a general statement that these documents were 'prepared by Serbia in connection with Obnova's requests for legalization of its buildings at Dunavska 17-19 and Dunavska 23'*" is clearly incorrect. In fact, this statement only describes the documents.<br>Claimants explained that the requested documents are relevant and material because they will show the reasons for which Serbia failed to legalize Obnova's buildings. Serbia does not dispute the fact that the reasons for which it failed to legalize Obnova's buildings are relevant and material to the outcome of the dispute. |
| **DECISION** | **The request is upheld.** |

[301] *Supra* ¶¶ 36-38.

# ANNEX 2
## RESPONDENT'S REQUEST FOR PRODUCTION OF DOCUMENTS

| **NO.** | **1.** |
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| **DOCUMENTS OR CATEGORY OF DOCUMENTS REQUESTED** | A copy of the agreement concluded between Luka Beograd and Obnova on 15 March 1994 (as referred to in the Agreement on Provision and Use of Transhipment and Warehousing Services between Luka Beograd and Obnova of 25 January 2000, **R-013**), as well as a copy of all lease agreements entered into by Obnova with regard to the Dunavska Plots or the Objects, to the extent such agreements have not already been submitted in this arbitration. |
| **RELEVANCE AND MATERIALITY**<br><br>**a. Ref. to Submissions**<br><br>**b. Comments** | Memorial, para. 137.<br>Counter-Memorial, paras 26-41.<br><br>Claimants allege that Obnova had the right of use (property right) over the Dunavska Plots, which was later expropriated by the adoption of the 2013 DRP.<br><br>Respondent disputes that Obnova had property rights over the Dunavska Plots and argues that Obnova merely had a right to use the Dunavska Plots pursuant to several lease agreements. Respondent located a number of lease agreements concluded by Obnova and the City of Belgrade and Luka Beograd. However, Respondent was not able to locate the lease agreement from 15 March 1994, referred to in the Agreement on Provision and Use of Transhipment and Warehousing Services between Luka Beograd and Obnova of 25 January 2000 (**R-013**). This also indicates that there might be other lease agreements that Obnova concluded but that Respondent was not able to locate.<br><br>The requested documents are relevant and material to the outcome of the dispute in that they address the property rights of Obnova which Claimants claim were expropriated by the adoption of the 2013 DRP. As Claimants are Obnova's shareholders, the requested documents are in their possession, custody or control. |
| **OBJECTIONS** | Claimants have conducted a reasonable search for any responsive documents and confirm that no responsive documents are in their possession and control. |

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| | Claimants note that the agreement concluded between Luka Beograd and Obnova on 15 March 1994 (as referred to in the Agreement on Provision and Use of Transhipment and Warehousing Services between Luka Beograd and Obnova of 25 January 2000, R-013), as well as any other potentially responsive documents concluded before September 2003,[302] predate Obnova's privatization. Any responsive documents from this period should therefore be in the possession and control of Serbia, rather than Claimants. Indeed, with its Counter-Memorial, Serbia submitted no less than ten different agreements concluded between Obnova and Serbia and/or Luka Beograd, which have been concluded between years 1959 and 2006 (*i.e.* even three years after Obnova's privatization).[303] |
| **REPLY** | Respondent takes notes of Claimant's response.<br><br>For the avoidance of doubt, Respondent has already conducted a search and has not located any lease agreements concluded between Obnova and Serbia and/or Luka Beograd other than the ones already on the record. Claimants' statement that documents from the period predating Obnova's privatization should be in the possession and control of Serbia, rather than Claimants is erroneous. There is no reason for the documentation of the entity undergoing privatization to be in Serbia's possession. On the contrary, such documentation always remains within privatization entity, i.e. Obnova. Therefore, all Obnova's documentation should be available to Claimants. |
| **TRIBUNAL'S DECISION** | **The Tribunal notes the Claimants' statement that they have conducted a reasonable search for any responsive documents and confirm that no responsive documents are in their possession and control. No decision is required.** |
| **NO.** | **2.** |
| **DOCUMENTS OR CATEGORY OF DOCUMENTS REQUESTED** | Documents showing the exercise of Coropi's management and control from 26 April 2012 until today, including in particular minutes of the meetings of the board of directors of Coropi during which the topic of Obnova was discussed or internal notes and communications between the shareholders and/or Coropi's directors concerning decisions related to Obnova. |

302 Memorial, § III.B.
303 See exhibits R-007 to R-010, R-012 to R-013 to R-016 and RJ-011.

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| **RELEVANCE AND MATERIALITY**<br><br>**a. Ref. to Submissions**<br><br>**b. Comments** | Memorial, para. 157.<br>Counter-Memorial, paras 252, 267-271, 387-396; RLO-002, paras 8.19-8.31.<br><br>The Cypriot Claimants allege they are investors protected under the Cyprus-Serbia BIT as they have their seat in Cyprus.<br><br>Respondent disputes this. Respondent points to Article 1(3)(b) of the Cyprus-Serbia BIT, which requires the investor to prove its seat is in the territory of Cyprus and argues that regardless of whether the Tribunal applies international law or Cyprus law to determine what "seat" means under the BIT, the term "seat" requires effective management by the Cyprus entity, which the Cypriot Claimants failed to prove.<br><br>The requested documents are relevant and material to the outcome of the dispute as they should demonstrate where Coropi's management and control were exercised. i.e. whether Coropi has seat in Cyprus.<br><br>Claimants also allege that Coropi exercised control over and directed the business decisions of Kalemegdan, and indirectly Obnova. In particular, Claimants refer to the so-called letter of instruction dated 26 April 2012 and the two trust deeds dated 26 April 2012 and 12 August 2012, which purport to give Coropi control over Mr Djura Obradović's shares in Kalemegdan (and by extension, Kalemegdan's shares in Obnova).<br><br>The requested documents should also serve to establish whether Coropi engaged in managing the investment activities of Kalemegdan with respect to Obnova, which is relevant and material for the decision on Tribunal's jurisdiction, since, as<br>pointed out by Respondent (Counter-Memorial, paras. 387-396), Coropi's disputed beneficial ownership of Kalemegdan, and its disputed indirect beneficial ownership of the Obnova shares, does not suffice to qualify as an "investment" under Article 1(1) of the Cyprus-Serbia BIT and Article 25(1) of the ICSID Convention. |
| **OBJECTIONS** | Claimants agree to conduct a reasonable search for and produce documents responsive to this request, with the exception of any documents created in preparation for and/or in connection with the conduct of the present arbitration. Claimants object to production of such documents on two grounds: |

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| | *First*, the vast majority, if not all, of the documents related to the present arbitration would be covered by legal privilege (Articles 9(2)(b) and 9(4) of the IBA Rules).<br><br>*Second*, given the vague wording of Serbia's request, potential responsive documents would cover, for example, any forms of communication between Coropi's shareholders and/or Coropi's directors and Claimants' legal or other advisors. There are potentially hundreds of such responsive documents. A search for all such documents and their potential production, or even their inclusion in a privilege log, would be unreasonably burdensome (Article 9(2)(c) of the IBA Rules).<br><br>For the avoidance of any doubt, Claimants also reiterate their general objection to the production of any documents covered by privilege under legal or ethical rules and express their disagreement with Serbia's interpretation of the Cyprus-Serbia BIT and, by extension, with Serbia's description of alleged relevance and materiality of the requested documents. Claimants will address Serbia's arguments in detail in their Reply. |
| **REPLY** | Respondent notes that in principle Claimants do not object to this request, "with the exception of any documents created in preparation for and/or in connection with the conduct of the present arbitration" However, Claimants' willingness to produce the documents is made uncertain and is overshadowed by the fact that they have raised the two grounds based on which they in fact object to produce.<br><br>As to the first ground, Claimants failed to specify *which* of the documents related to the present arbitration would be covered by legal privilege. It would be obviously erroneous to claim that all documents showing the exercise of Coropi's management and control where the topic was Obnova are covered by legal privilege. Claimants, therefore, should have explained which of these documents are privileged and why. For the avoidance of doubt, Respondent does not seek communications with Claimants' counsel in relation to the present arbitration or which were otherwise prepared for the purpose of providing or obtaining legal advice. In case the documents responsive to this request include communications with the advisors of Coropi and/or Kalemegdan in relation to Coropi's putative management or control of Kalemegdan, particularly at the time of Coropi's alleged investment in 2012, such communications are relevant and material to the outcome of the case, as explained by Respondent above. Accordingly, to the extent Claimants seek to exclude such documents from production, Respondent should be afforded a reasonable opportunity to consider the basis for their exclusion. Since |

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| | the party that asserts a privilege bears the burden of proving why the privilege applies, Respondent requests Claimants to provide a privilege log as explained in Respondent's general comments above.<br><br>As to the second ground, Respondent further notes that Claimants fail to explain why this exercise would be unreasonably burdensome aside from their speculative claim that this might encompass "hundreds" of communications with "Claimants' legal or other advisors". In other words, it could happen that there are only several documents corresponding to Respondent's requests.<br><br>Given the lack of clarity regarding the nature and extent of Claimants' voluntary production, Respondent asks the Tribunal to order production of all documents requested under this point, excluding the documents related to communications with Claimants' counsel in relation to the present arbitration or which were otherwise prepared for the purpose of providing or obtaining legal advice. |
| **TRIBUNAL'S DECISION** | **The request is upheld.** |
| **NO.** | **3.** |
| **DOCUMENTS OR CATEGORY OF DOCUMENTS REQUESTED** | Documents showing the exercise of Kalemegdan's management and control from 26 April 2012 until today, including in particular the minutes of the meetings of the board of directors of Kalemegdan during which the topic of Obnova was discussed or internal notes and communications between the shareholders concerning decisions related to Obnova. |
| **RELEVANCE AND MATERIALITY**<br><br>**a. Ref. to Submissions**<br><br>**b. Comments** | Memorial, para. 157.<br>Counter-Memorial, paras 252, 267-271; RLO-002, paras 8.19-8.31.<br><br>The Cypriot Claimants allege they are investors protected under the Cyprus-Serbia BIT as they have their seat in Cyprus.<br><br>Respondent disputes this. Respondent points to Article 1(3)(b) of the Cyprus-Serbia BIT, which requires the investor to prove that its seat is in the territory of Cyprus and argues that regardless of whether the Tribunal applies international law or Cyprus law to determine what "seat" means under the BIT, the term "seat" requires effective management by the Cyprus entity, which the Cypriot Claimants failed to prove. |

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| | According to Claimants, Mr William Archibald Rand (a Canadian national) plays a decisive role in the affairs of Kalemegdan and his approval was necessary in Kalemegdan's business decisions.<br><br>The requested documents are relevant and material to the outcome of the dispute in that they demonstrate whether Kalemegdan has seat in Cyprus (seat in Cyprus requires exercise of control as confirmed by Mr Ioannides). |
| **OBJECTIONS** | Claimants agree to conduct a reasonable search for and produce documents responsive to this request, with the exception of any documents created in preparation for and/or in connection with the conduct of the present arbitration. Claimants object to production of such documents on two grounds:<br><br>*First*, the vast majority, if not all, of the documents related to the present arbitration would be covered by legal privilege (Articles 9(2)(b) and 9(4) of the IBA Rules).<br><br>*Second*, given the vague wording of Serbia's request, potential responsive documents would cover, for example, any forms of communication between Kalemegdan's shareholders and/or Kalemegdan's directors and Claimants' legal or other advisors. There are potentially hundreds of such responsive documents. A search for all such documents and their potential production, or even their inclusion in a privilege log, would be unreasonably burdensome (Article 9(2)(c) of the IBA Rules).<br><br>For the avoidance of any doubt, Claimants also reiterate their general objection to production of any documents covered by privilege under the legal or ethical rules.<br><br>Claimants disagree with Serbia's interpretation of the Cyprus-Serbia BIT and, by extension, with Serbia's description of alleged relevance and materiality of the requested documents. Claimants will address Serbia's arguments in detail in their Reply. |
| **REPLY** | Respondent reiterates *mutatis mutandis* its Reply and request for an order of the Tribunal made under request no 2 above. |

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| **TRIBUNAL'S DECISION** | **The request is upheld.** |
| **NO.** | **4.** |
| **DOCUMENTS OR CATEGORY OF DOCUMENTS REQUESTED** | Any agreement concluded by, or correspondence or other documents exchanged between, Mr Obradović or his advisors or representatives, Mr Rand or his advisors or representatives, the Ahola Family Trust, the directors of Coropi, and/or the directors of Kalemegdan in the time period between 23 March and 12 August 2012, concerning Mr Obradović's decision to contribute his shares in Obnova to Kalemegdan on or about 26 April 2012. |
| **RELEVANCE AND MATERIALITY**<br><br>**a. Ref. to Submissions**<br><br>**b. Comments** | Memorial, paras 90-96<br>Counter-Memorial, paras 357-359, 492-495<br><br>Kalemegdan was registered in the Cypriot corporate register on 23 March 2012. According to Claimants, on 26 April 2012, Mr Obradović, acting upon Mr Rand's instruction, contributed his shares in Obnova and in four other Serbian companies to Kalemegdan, of which he was the sole legal owner, in exchange for additional share capital in Kalemegdan (**C-318**). As a result of Mr Obradović's in-kind contribution, Kalemegdan became the nominal and direct beneficial owner of the Obnova shares. That same day, Mr Obradović purportedly concluded the first of two trust deeds with Coropi in respect of his shares in Kalemegdan. Claimants allege that Coropi acquired a beneficial interest in Kalemegdan (and an indirect beneficial interest in the Obnova shares) through the conclusion of these two trust deeds.<br><br>It is Respondent's case that Claimants have not discharged their burden of proof in establishing that Kalemegdan has made an "investment" within the meaning of both Article 1(1) of the Cyprus-Serbia BIT and Article 25(1) of the ICSID Convention. They have provided no evidence that Kalemegdan made a contribution or otherwise "caused" an investment to be made in Serbia, whether through the expenditure of money or some other effort in exchange for the Obnova shares. On the contrary, Kalemegdan passively acquired the Obnova shares, without having paid any consideration and without any apparent ability to fund Obnova.<br><br>It is also Respondent's case that the decision to transfer ownership of the Obnova shares in April 2012 was made with the knowledge and intention to bring Mr Obradović's investment in these shares under the protection of the Cyprus-Serbia BIT. This is because, by April 2012, it was evident that Obnova's purported rights of use and ownership over the Objects and Dunavska Plots were disputed by the |

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| | relevant Serbian authorities. It was further evident that the City of Belgrade was planning a new detailed regulation plan which would designate the Dunavska Plots as the land for the public transportation terminus. An investment dispute over the Dunavska Plots and Objects was thus foreseeable to Mr Obradović, who then made the decision to transfer his shares to Kalemegdan and to enter into the two trust deeds with Coropi.<br><br>The requested documents are relevant and material to the outcome of the dispute as they will shed much-needed light on the circumstances in which Mr Obradović's in-kind contribution was made, including who directed or initiated the decision to transfer the Obnova shares to Kalemegdan and whether Kalemegdan has made any contributions in respect of the Obnova shares. These matters are at the heart of Respondent's objections to the Tribunal's jurisdiction *ratione materiae* under the Cyprus-Serbia BIT which, if successful, would dispense with the Cypriot Claimants' claims and thus with a substantial part of Claimants' case against Respondent.<br><br>The requested documents are further relevant and material to the outcome of the dispute, as they would serve to corroborate Respondent's objections to the admissibility of the Cypriot Claimants' claims, specifically Respondent's objection that Kalemegdan's acquisition of the Obnova shares was an abuse of process. |
| **OBJECTIONS** | Claimants agree to conduct a reasonable search for and produce documents responsive to this request that are in the Claimants' possession and/or control.<br><br>For the avoidance of any doubt, Claimants reiterate their general objection to production of any documents covered by privilege under the legal or ethical rules. |
| **REPLY** | Respondent takes note of Claimants' agreement to conduct a search for and to produce non-privileged documents that are responsive to this request. Respondent requests Claimants to provide a privilege log as explained in Respondent's general comments above. |
| **TRIBUNAL'S DECISION** | **The Tribunal notes the Claimants' agreement to produce the requested documents that are available to it. No decision is required.** |

| **NO.** | **5.** |
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| **DOCUMENTS OR CATEGORY OF DOCUMENTS REQUESTED** | Documents including communications and e-mails exchanged between Mr Obradović or his advisors and representatives, Mr Rand or his advisors or representatives, the Ahola Family Trust, the directors of Coropi, and/or the directors of Kalemegdan during the time period between 23 March and 12 August 2012, concerning Coropi's purported acquisition of a beneficial interest in Kalemegdan. |
| **RELEVANCE AND MATERIALITY**<br><br>**a. Ref. to Submissions**<br><br>**b. Comments** | Memorial, paras. 92-96<br>Counter-Memorial, paras. 364-380, 398-403<br><br>Kalemegdan was registered in the Cypriot corporate register on 23 March 2012. According to Claimants, on 26 April 2012, Mr Obradović, acting upon Mr Rand's instruction, contributed his shares in Obnova and in four other Serbian companies to Kalemegdan, of which he was the sole legal owner, in exchange for additional share capital in Kalemegdan (**C-318**). As a result of Mr Obradović's in-kind contribution, Kalemegdan became the nominal and direct beneficial owner of the Obnova shares. That same day, Mr Obradović purportedly concluded the first of two trust deeds with Coropi in respect of his shares in Kalemegdan. Claimants allege that Coropi acquired a beneficial interest in Kalemegdan (and an indirect beneficial interest in the Obnova shares) through the conclusion of these two trust deeds. The trust deeds state that Coropi "*for consideration given is beneficially interested and entitled to*" Mr Obradović's shares in Kalemegdan (**C-066,** Whereas (a), and **C-067**, Whereas (a)).<br><br>It is Respondent's case that Claimants have not discharged their burden of proof in establishing that Coropi has made an "investment" within the meaning of both Article 1(1) of the Cyprus-Serbia BIT and Article 25(1) of the ICSID Convention. In its Counter-Memorial, Respondent pointed out the discrepancy between Claimants' contention that "[b]*ased on the trust deeds*" Coropi "*became the 100% beneficial owner of Kalemegdan*" (para 95) and the trust deeds themselves, which presuppose that Coropi had already acquired an interest in Kalemegdan. If Coropi's beneficial interest was pre-existing, then it could not have been created by the trust deeds. At the same time, Claimants have provided no evidence that Coropi ever acquired an interest in Kalemegdan (or, for that matter, Obnova) through the payment of consideration, as indicated by the wording of the trust deeds, or otherwise "caused" an investment to be made in Serbia, whether through the expenditure of money or some other effort in exchange for the Obnova shares. Claimants have not shown that Coropi was involved in any investment activities in |

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| | Serbia or that it ever made any expenditure for the benefit of Kalemegdan's or Obnova's activities in Serbia.<br><br>The requested Documents are relevant and material to the outcome of the dispute in that they will address whether and if so how Coropi acquired a beneficial interest in Kalemegdan and/or an indirect beneficial interest in Obnova through the payment of consideration. These matters are at the heart of Respondent's objections to the Tribunal's jurisdiction ratione materiae under the Cyprus-Serbia BIT which, if successful, would dispense with the Cypriot Claimants' claims and thus with a substantial part of Claimants' case against Respondent. This is because it is Respondent's case that Coropi never made a contribution or otherwise "caused" an investment to be made in Serbia in exchange for a beneficial interest in the Kalemegdan or Obnova shares. |
| **OBJECTIONS** | Claimants agree to conduct a reasonable search for and produce documents responsive to this request that are in the Claimants' possession and/or control.<br><br>For the avoidance of any doubt, Claimants reiterate their general objection to production of any documents covered by privilege under the legal or ethical rules. |
| **REPLY** | Respondent takes note of Claimants' agreement to conduct a search for and to produce non-privileged documents that are responsive to this request. Respondent requests Claimants to provide a privilege log as explained in Respondent's general comments above. |
| **TRIBUNAL'S DECISION** | **The Tribunal notes the Claimants' agreement to produce the requested documents that are available to it. No decision is required.** |
| **NO.** | **6.** |
| **DOCUMENTS OR CATEGORY OF DOCUMENTS REQUESTED** | Contemporaneous documents concerning any due diligence or inquiry into the rights of Obnova as regards the Objects and the Dunavska Plots until 26 April 2012, the date of alleged investment, including any communications, e-mails, analyses, notes, or memoranda on this issue, in particular exchanged between (i) Mr Rand or his advisors or representatives, and/or the Ahola Family Trust and/or Coropi and/or Kalemegdan or their advisors or representatives on the one hand, and (ii) Mr Obradović and/or his advisors or representatives, and/or Obnova and/or its advisors or representatives on the other hand. |
| **RELEVANCE AND MATERIALITY** | Memorial, paras 10, 73-78, 81, 86, 90-99, 109, 169-171.<br>Counter-Memorial, paras 491-503 and 6. |

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| **a. Ref. to Submissions**<br><br>**b. Comments** | Claimants allege that at the time of the alleged investment in Obnova, it was very valuable due to its ownership of the Objects and right of use of the Dunavska Plots, which were capable of being converted into ownership since the adoption of a new Law on Planning and Construction on 11 September 2009. The Cypriot Claimants claim to have acquired shares in Obnova in April 2012 due to alleged contributions of Mr Obradović, acting upon Mr Rand's instructions. At the same time, Claimants allege that Mr Obradović acquired the privatized shares in Obnova in December 2005, acting according to directions from Mr Rand and that these directions resulted from "*Obnova's ownership of the buildings and the right of use over the land at Dunavska 17-19 and 23*". Claimants argue that the central location of the Dunavska Plots made them a very interesting investment with the potential for a significant increase in value and that Mr Rand "*anticipated*" that privatized companies would be able to acquire ownership of the land to which they had the right of use. Claimants' case is also that the 2013 DRP allegedly deprived Obnova of its right to convert the right to use the Dunavska Plots into ownership. Claimants allege that the 2013 DRP breached the Cyprus-Serbia BIT.<br><br>Respondent argues that Claimants' investment does not deserve protection as it was not made in good faith, in particular because the investment dispute was foreseeable at the time of the alleged investment of the Cypriot Claimants in April 2012. Claimants' allegations also concern multiple circumstances concerning Obnova's rights pre-dating the Cypriot Claimants' investment, such as (i) Obnova's unsuccessful attempt to be inscribed at the holder of the right of use over the Objects in March 2003, (ii) the inscription of the City of Belgrade as the holders of the rights of use over the Objects and Dunavska Plots in November 2004, and (iii) the adoption of the decision on 6 March 2006 on drafting a Detailed Regulation Plan concerning an geographic area covering the Dunavska Plots. This shows that as of April 2012, an investment dispute over the Dunavska Plots was objectively foreseeable. Respondent also disputes the actual rights held by Obnova and the possibility of conversion.<br><br>The requested Documents are relevant and material to the outcome of the dispute in that they address (i) the expectations of the Cypriot Claimants and/or Mr Obradović as regards Obnova's rights to the Dunavska Plots, and (ii) the Cypriot Claimants' knowledge at the time of making the investment and foreseeability of the investment dispute. |

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| | As the Cypriot Claimants claim to have perceived Obnova as valuable investment due to its rights to the Dunavska Plots, the requested documents (serving as the basis for such perception) are in Cypriot Claimants' possession, custody or control. |
| **OBJECTIONS** | Claimants agree to conduct a reasonable search for and produce documents responsive to this request that are in the Claimants' possession and/or control.<br><br>For the avoidance of any doubt, Claimants reiterate their general objection to production of any documents covered by privilege under the legal or ethical rules. |
| **REPLY** | Respondent takes note of Claimants' agreement to conduct a search for and to produce non-privileged documents that are responsive to this request. Respondent requests Claimants to provide a privilege log as explained in Respondent's general comments above. |
| **TRIBUNAL'S DECISION** | **The Tribunal notes the Claimants' agreement to produce the requested documents that are available to it. No decision is required.** |
| **NO.** | **7.** |
| **DOCUMENTS OR CATEGORY OF DOCUMENTS REQUESTED** | Contemporaneous documents concerning any information about, due diligence on, or inquiry into, the rights of Obnova as regards the Objects and the Dunavska Plots and/or Obnova's entitlement to compensation in relation to the 2013 DRP obtained by Mr Broshko from 2012 onwards, and in particular between 24 February 2016 and 14 November 2017, i.e. between the Land Directorate's letter announcing the planned demolition of Obnova's buildings affected by the 2013 DRP and the time of the alleged investment, including any communications, e-mails, analyses, notes, or memoranda on this issue, in particular exchanged between (i) Mr Broshko and/or his advisors or representatives or MLI on the one hand and (ii) Mr Rand or his advisors or representatives, and/or the Ahola Family Trust and/or their advisors or representatives, and/or the Cypriot Claimants and/or their advisors or representatives, and/or Mr Obradović and/or his advisors or representatives, and/or Obnova and/or its advisors or representatives on the other hand. |
| **RELEVANCE AND MATERIALITY** | Request for Arbitration, paras 82-86<br>Memorial, paras. 121-125. |

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| **a. Ref. to Submissions**<br><br>**b. Comments** | Counter-Memorial, paras 508-520 and 6.<br><br>Mr Broshko alleges that he decided to invest in Obnova's shares independently from Mr Rand (in November 2017, indirectly through MLI) because he believed that Obnova would either be able to resolve the issue with the 2013 DRP or be awarded compensation due under Serbian law. Mr Broshko argues that the lack of compensation breached the Canada-Serbia BIT.<br><br>Respondent argues that Claimants' investment does not deserve protection as it was not made in good faith, in particular because the investment dispute was foreseeable at the time of the alleged investment of Mr Broshko in November 2017. Mr Broshko acted as a liaison to Mr Rand from as early as 2012 and must have been aware of Obnova's situation, including the adoption of the 2013 DRP pre-dating both the entry into force of the Canada-Serbia BIT and Mr Broshko's alleged investment, the Land Directorate's announcement of the planned demolition of the Objects on 24 February 2016, and Obnova's court proceedings to establish its ownership rights in respect of Dunavska 17-19, initiated in November 2016, and legalization requests, still pending in 2017. Respondent also disputes the actual rights held by Obnova and the possibility of conversion or Obnova's entitlement to any compensation.<br><br>The requested Documents are relevant and material to the outcome of the dispute in that they address (i) the expectations of Mr Broshko regards Obnova's rights to the Dunavska Plots and compensation, and (ii) Mr Broshko's knowledge at the time of making the investment and foreseeability of the investment dispute.<br><br>As Mr Broshko claims to have "*believed*" that Obnova would obtain compensation, the requested documents (serving as a basis for such belief) are in Claimants' possession, custody or control. |
| **OBJECTIONS** | Claimants agree to conduct a reasonable search for and produce documents responsive to this request that are in the Claimants' possession and/or control, with the exception of any documents created in preparation for and/or in connection with the conduct of the present arbitration. Claimants object to production of such documents on two grounds:<br><br>*First*, the vast majority, if not all, of the documents related to the present arbitration would be covered by legal privilege (Articles 9(2)(b) and 9(4) of the IBA Rules). |

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| | *Second*, given the vague wording of Serbia's request, potential responsive documents would cover, for example, any forms of communication between Mr. Broshko and Claimants' legal or other advisors. There are potentially hundreds of such responsive documents. A search for all such documents and their potential production, or even their inclusion in a privilege log, would be unreasonably burdensome (Article 9(2)(c) of the IBA Rules).<br><br>For the avoidance of any doubt, Claimants also reiterate their general objection to production of any documents covered by privilege under the legal or ethical rules. |
| **REPLY** | Respondent notes that in principle Claimants do not object to this request, "with the exception of any documents created in preparation for and/or in connection with the conduct of the present arbitration". However, Claimants' willingness to produce the documents is made uncertain and is overshadowed by the fact that they have raised the two grounds based on which they in fact object to produce.<br><br>As to the first ground, Claimants failed to specify *which* of the documents related to the present arbitration would be covered by legal privilege. It would be obviously erroneous to claim that all documents showing the exercise of Coropi's management and control where the topic was Obnova are covered by legal privilege. Claimants, therefore, should have explained which of these documents are privileged and why. For the avoidance of doubt, Respondent does not seek communications with Claimants' counsel in relation to the present arbitration or which were otherwise prepared for the purpose of providing or obtaining legal advice.<br><br>In case the documents responsive to this request include communications with the advisors of Claimants in relation to Mr Broshko's decision to acquire shares in Obnova, such communications are relevant and material to the outcome of the case, as explained by Respondent above.<br><br>Accordingly, to the extent Claimants seek to exclude such documents from production, Respondent should be afforded a reasonable opportunity to consider the basis for their exclusion. Since the party that asserts a privilege bears the burden of proving why the privilege applies, Respondent requests Claimants to provide a privilege log as explained in Respondent's general comments above. |

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| | As to the second ground, Respondent further notes that **Claimants fail to explain why this exercise would be unreasonably burdensome aside from their speculative claim that this might encompass "hundreds" of communications between Mr Broshko and "Claimants' legal or other advisors". In particular,** Claimants do not explain how documents exchanged with or prepared for Mr Broshko in relation to his acquisition of the Obnova shares in 2017 could encompass "potentially hundreds" of documents "created in preparation for and/or in connection with the conduct of the present arbitration", which was commenced four and half years later**.**<br>Given the lack of clarity regarding the nature and extent of Claimants' voluntary production, Respondent asks the Tribunal to order production of all documents requested under this point, excluding the documents related to communications with Claimants' counsel in relation to the present arbitration or which were otherwise prepared for the purpose of providing or obtaining legal advice. |
| **TRIBUNAL'S DECISION** | **The request is upheld.** |
| **NO.** | **8.** |
| **DOCUMENTS OR CATEGORY OF DOCUMENTS REQUESTED** | Contemporaneous documents concerning any due diligence or inquiry into the City of Belgrade's 2006 decision on drafting the DRP or the possible designation or use of the Dunavska Plots between 6 March 2006 and 26 April 2012, i.e. between the adoption of the 2006 decision on drafting the DRP and the time of the Cypriot Claimants' alleged investment, in particular that the Dunavska Plots could be used for commercial and residential purposes, including any communications, e-mails, analyses, notes, or memos on this issue, in particular exchanged between (i) Mr Rand or his advisors or representatives, and/or the Ahola Family Trust and/or Coropi and/or Kalemegdan or their advisors or representatives on the one hand, and (ii) Mr Obradović and/or his advisors or representatives, and/or Obnova and/or its advisors or representatives on the other hand. |
| **RELEVANCE AND MATERIALITY**<br><br>**a. Ref. to Submissions**<br><br>**b. Comments** | Memorial, paras. 76-78. 102 and 258; C-314.<br>Counter-Memorial, paras 177, 494-495.<br><br>Claimants allege that they expected to be able to develop Obnova's premises for residential and commercial purposes, based on the 2003 RP. Claimants' case is that the 2013 DRP breached the Cyprus-Serbia BIT because it changed this designation to the bus loop. At the same time, Claimants admit that already in 2008 Obnova heard about the City of Belgrade's idea to designate the Dunavska Plots for the bus loop and wrote a letter to the City asking for relocation of the bus loop. |

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| | Respondent argues that Claimants' investment does not deserve protection as it was not made in good faith, in particular because the investment dispute stemming from the designation of the Dunavska Plots for the bus loop was foreseeable at the time of the alleged investment of the Cypriot Claimants in April 2012.<br><br>The requested Documents are relevant and material to the outcome of the dispute in that they address (i) the expectations of the Cypriot Claimants as regards the possible use and development of the Dunavska Plots by Obnova, and (ii) the Cypriot Claimants' knowledge at the time of making the investment regarding the possible designation of the Dunavska Plots for use for the bus loop and hence the foreseeability of the investment dispute.<br><br>As the Cypriot Claimants claim that Mr Obradović and Mr Rand relied on the 2003 RP in their expectation to develop the Dunavska Plots, the requested documents (serving as the basis for such reliance) are in the Cypriot Claimants' possession, custody or control. |
| **OBJECTIONS** | Claimants agree to conduct a reasonable search for and produce documents responsive to this request that are in the Claimants' possession and/or control.<br><br>For the avoidance of any doubt, Claimants also reiterate their general objection to production of any documents covered by privilege under the legal or ethical rules. |
| **REPLY** | Respondent takes note of Claimants' agreement to conduct a search for and to produce non-privileged documents that are responsive to this request. Respondent requests Claimants to provide a privilege log as explained in Respondent's general comments above. |
| **TRIBUNAL'S DECISION** | **The Tribunal notes the Claimants' agreement to produce the requested documents that are available to it. No decision is required.** |