IN THE MATTER OF AN ARBITRATION UNDER THE 1976 ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

- between -

UAB "GARSU PASAULIS"

(Lithuania)

Claimant

- and -

THE KYRGYZ REPUBLIC

Respondent

Before: Mr Kaj Hobér

Mr Ian Laird

Professor Nina Vilkova

Monday, 12 June 2023

(Day 1)

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Monday, 12 June 2023

(9.30 am)

THE PRESIDENT: So good morning everyone. Welcome to Stockholm and welcome to the first day of our arbitration between Garsu Pasaulis as Claimant and the Kyrgyz Republic as Respondent.

The Tribunal consists of Professor Vilkova on my right, Mr Ian Laird on my left, and I'm Kaj Hobér and we have Tim Robbins who is our tribunal secretary.

I think the parties have agreed on a hearing schedule which takes us through Thursday, if I'm not mistaken. Are there any changes to that hearing schedule? Claimant?

MR DAUJOTAS: No changes.

MR BERTROU: And not on the Respondent's side.

THE PRESIDENT: You need to push the button.

I mean, as we said I think I said in correspondence, we are flexible. So to the extent we need more time, we could either sit longer on a couple of days or perhaps also sit on Friday. But for the time being, the plan is to stick to the hearing schedule.

If I could ask Claimant perhaps to quickly introduce your team. We have the list, but I would like to put a face to the names.

MR DAUJOTAS: Yes, of course. Mr Chairman, members of the

tribunal, so we have a Claimant's team here. First of all, it's me, Rimantas Daujotas from the Motieka law firm in Vilnius. We also have Denis Parchajev, who is also a counsel at Motieka law firm, Vilnius.

Next to him is Dmitrij Maciujin, also counsel from Motieka law firm, in Vilnius, and Mr Saulius Kleveckas, also counsel from Motieka law firm. That basically forms our team for the Respondent.

THE PRESIDENT: Thank you.

And Respondent, please?

MR BERTROU: Yes, Mr President and all the Tribunal. So my name is Grégoire Bertrou and I'm the co-chair of Willkie Farr arbitration group. I'm going to start with the representatives of the Kyrgyz Republic. So on my left, you have Aiaz Baetov, who is the Minister of Justice of the Republic. Then on the right you have Mr Kanybek Koshokov, deputy director of the Centre of Court Representation of the Minister of Justice of the Kyrgyz Republic. And remotely from Bishkek, Nurbek Sabirov.

THE PRESIDENT: And can he hear us now, have you checked that?

MR BERTROU: We have checked in principle it's working.

MR ALEKHIN: It's working for him.

MR BERTROU: So then let me introduce the Willkie Farr team.

So on my right you have Sergey Alekhin, Dmitrij Bayandin, Alexandra Koliakou, Alexander Mironov and Matthieu Guiraud-Chaumeil at the end of the table.

THE PRESIDENT: Thank you very much.

I understand we will not have any technological challenges today, but they may come, I understand, with translation and one of your witnesses is going to participate remotely, and I hope that you have made as far as you can today the necessary arrangements.

MR DAUJOTAS: Yes, I think everything is ready we are ready for tomorrow with the translators and Wednesday on the online cross-examination of our witness. So I think everything is ready and hopefully everything will work according to the plan.

THE PRESIDENT: Excellent.

So we start today then --

MR BERTROU: I'm sorry, we also have an intern attending by Zoom, Ms Angelika Shamoian. It's an intern from Willkie attending by Zoom.

THE PRESIDENT: Present in the room?

MR BERTROU: No.

THE PRESIDENT: I suppose you have no objection?

MR DAUJOTAS: No, of course.

THE PRESIDENT: Okay.

So unless there are any other preliminary issues

that we need to deal with, I give the floor to Claimant for their opening statement.

Housekeeping

MR DAUJOTAS: Yes. We will have a small housekeeping matter as well. My colleague will present.

MR PARCHAJEV: Members of the Tribunal, both parties want to add a couple of additional documents to the case file. Respondent will present their additional file and the Tribunal is probably aware of the YouTube video transcript which was submitted, I believe, Friday.

So late last week there was -- and there was with no objection of Claimant that the Respondent introduce that to the case file.

Today they will also introduce another legal exhibits to which the Claimant does not object.

From the Claimant's side, what we want to introduce is if a few translations of the files that are already on the record. So there were a few protocols, minutes of questioning of some of the witnesses by the Kyrgyz authorities and there were partial translations that were submitted into the case file, and we believe that some of the important parts were missing. So we wanted to basically submit the additional translation of the file that was already on the case file but is just the translation of the missing parts.

THE PRESIDENT: Any objection from Respondents to that?

MR BERTROU: No objection.

THE PRESIDENT: Okay.

So please go ahead and submit them either electronically or in hard copy.

MR PARCHAJEV: My colleague will send them by email while I start the introduction.

THE PRESIDENT: Is that it? Very good. Please.

MR DAUJOTAS: I'll just distribute the paper copies of the opening statement.

MR PARCHAJEV: Members of the Tribunal, that's not the opening as such. These are the slides, the demonstrative exhibits. Obviously you will have them in electronic form but we just thought that you might be more comfortable with the -- I just realised we didn't print one for the Tribunal Secretary. Apologies for that.

Shall I start?

Claimant's opening statement

Submissions by MR PARCHAJEV

MR PARCHAJEV: So Mr Chairman, Members of the Tribunal, colleagues, good morning to all of you. Together with my colleagues, I represent Garsu Pasaulis who is the Claimant in these proceedings. We believe the Tribunal will be well read-in and familiar with the witness

statements, the expert reports, documentary evidence, much of which is contemporaneous to the events leading up to the e-passports 2018 participants tender, as well as the subsequent unlawful involvement of the notorious Kyrgyz services called the GKNB. We will try and be brief and to the point. I cannot promise it, but we will try.

This is indeed an unusual case. However, once we guide the Tribunal through our main points of presentation, the Tribunal will see that the Claimant's case is consistent, it's straightforward, and it is clear.

Claimant, Garsu Pasaulis, despite its humble origins, has become one of the largest and the most modern printing houses in the Baltic states and a leader in terms of security printing worldwide.

Even before entering the Kyrgyz markets, Garsu Pasaulis was certified for working with state secrets in Lithuania and the European Union. It is officially authorised to work with information marked "EU secret", "NATO secret", and officially licensed to print safe security documents. Needless to say, the baseless allegations of corruption by the Kyrgyz authorities went a long way in damaging the business of Claimant in this sensitive segment.

The Kyrgyz market alone serves as a perfect case in point. Tribunal will know that prior to the Kyrgyz scandal, the Claimant was eagerly invited to participate both in the passports and in the excise stamps tenders. However, after the Kyrgyz scandal, the conditions of both tenders were abruptly and surprisingly changed in order to exclude Claimant, closing the doors to the Claimant's further lucrative ventures in the country.

We will remind the Tribunal that for the passports tender, the minimum experience requirement was unexpectedly raised from 2 million to 3 million passports in the last five years, which was of course not accidental, and that the authorities knew that the Claimant could not qualify for 3 million threshold, but the main competitor and the "preferred" supplier could. This was the Mühlbauer.

For the excise stamp tender, which at that point the Claimant won for several years in a row and had excellent facilities and infrastructure in place, and of course could definitely offer the best price, in 2020 the tender -- the new tender for the excise stamps was announced, showing clear interest and appetite from the State to have more good quality and cheap excise stamps.

However, once they saw that the Claimant participated in that tender, the tender got abruptly

cancelled and then the entire paperwork of the tender was changed in order for the Claimant not to be able to participate.

Garsu Pasaulis started to heavily invest in the Kyrgyz market in 2012. However, on the day of initiation of the investment case it remained a Lithuanian investor with significant investments in the Kyrgyz Republic.

Having invested in the Kyrgyz Republic for over six years, in 2018 the Garsu Pasaulis saw an opportunity to greatly enhance and expand its existing investments in the Respondent state once it announced the public tender for the passport blanks. Garsu Pasaulis succeeded to secure such an investment. However, the success was short-lived.

After awarding the passports contract to the Claimant, the local politics and cronyism allowed the Kyrgyz persons in power to engage the local services called the GKNB, who created and set in motion the shameless scheme of smear campaign, systematically feeding the local press with false accusations and thereby tarnishing the good name of Garsu Pasaulis and making sure that the tender win, the passports contracts, would be illegally taken away from the Claimant.

Now, although the Kyrgyz authorities and the Respondent in this case tried to conveniently cover up the breach of Garsu Pasaulis' rights, with various bureaucratic and formalistic arguments, eventually they had to admit that this was the doing of the GKNB and nobody else. They say in their procedural documents that the tender process was de facto suspended in view of the corruption investigation into the 2018 tender by the Kyrgyz authorities. Note the words "de facto suspended".

There is not a single piece of evidence that the criminal investigation would be the official reason for terminating the tender. Despite that, the contemporaneous evidence shows clear admission by the Respondent's authorities that in fact they prevented the signing of the contract.

Now let's look at the official statement by the GKNB which was made at the time of the cancellation of the tender.

They say:

"At the end of February 2019 the GRS officials intended to sign a contract with the winner of the tender for the supply of new generation electronic passports. However, the initiation of the criminal case by the Kyrgyz Republic law enforcement authorities

ruined the parties' plans to conclude the contract."

They say that the timely intervention of law enforcement bodies prevented the contract for the supply of the new generation e-passports. There was absolutely no legal basis for the discriminatory and destructive actions taken by the Kyrgyz authorities against the Claimant.

In its opening statement, the Claimant will demonstrate that although Garsu Pasaulis for years has successfully invested in the Kyrgyz Republic, the latter has forcefully expropriated the high value economic rights of Garsu Pasaulis and severely damaged its global reputation.

In the present arbitration, after the expert Banyte refined her calculations, the Claimant seeks the relief as we have set out in our Reply, which is as follows.

We want the Tribunal first of all to declare that the Kyrgyz Republic has breached its obligation under the BIT. We want the Tribunal to award monetary damages in the amount of no less than 16,740,000 euros. The breakdown of this amount will be presented to the Tribunal by the expert this Thursday.

We want this Tribunal to order the Republic to bear the costs of this arbitration, to award the Claimant the interest, to order that the Kyrgyz Republic publicly and

promptly deny all false statements, accusations and allegations it made about Garsu Pasaulis, and award claimants such relief that the Tribunal may deem appropriate.

In this opening statement, which will be presented by myself and my colleague, Dr Rimantas Daujotas, we will first of all set out the main facts leading up to the BIT violations by the Respondent State.

We will demonstrate to the Tribunal that it has jurisdiction to hear this case because the Claimant is a longstanding investor and this dispute relates to the Claimant's investments made in accordance with the Kyrgyz law. The Claimant will then show that the Respondent made specific breaches of BIT which entailed harm, compensation of which is being sought in the present case by the Claimants.

Submissions by MR RIMANTAS

MR DAUJOTAS: Yes, Mr Chairman, Members of the Tribunal, I will take on with the presentation, and I'm sure, as we have noted, the Tribunal is well read-in to the case file by now and for starters we would like to introduce who is the Claimant and what sort of business does Garsu Pasaulis actually do.

So Garsu Pasaulis has been in operation since 1994 and is very well known internationally for its

investments into e-government services and systems. Garsu Pasaulis is known in the niche market for production of security printing items and counterfeit-proof document forms secured by special security features such as e-passports, citizen registry, tax registry systems, licences, tracking of taxable goods etc.

So in particular, Garsu Pasaulis has won numerous public tenders for security printing around the world, especially for maintenance of sophisticated IT systems for biometric passports and it has cooperated with more than 55 countries around the world.

Naturally when with it comes to such complex and advanced systems, Garsu Pasaulis is not acting just as a printing facility. It must also ensure the implementation that such security documents and their issuance and maintenance comply with different government IT systems to synchronise everything and of course to train personnel.

So Garsu Pasaulis, especially before the Kyrgyz scandal, was a highly regarded and successful international company, investing into e-government systems all around the world. And of course had the best reputation for it.

Now, to start with the investments into Kyrgyz

Republic, I'll just spend a few minutes on the previous investments that Garsu Pasaulis in the Kyrgyz Republic, to show that Garsu Pasaulis investments certainly have a long and successful history. There seems to be not so much a dispute between the parties on that item.

Garsu Pasaulis was invited by the Kyrgyz Republic, and my colleague mentioned, to modernise its e-government services. As explained by our witness the Claimant's witness, Mr Mieliauskas, who we will hear in this week on Tuesday, Garsu Pasaulis first was visited by the Kyrgyz Republic. They came to Lithuania, the delegation included members of the national register, the so-called GRS, also an institution which we will hear a lot about today, and the members of the Kyrgyz Government, and explained by Mieliauskas and Lukoševicius, other witnesses in this arbitration, that Garsu Pasaulis was of course very interested in all projects related to the Kyrgyz Republic because Garsu Pasaulis saw the need for modern security, printing products and systems in this country.

Of course, Garsu Pasaulis had all the knowledge and systems and services and hoped for long cooperation and activities there.

Now, in 2011, the Kyrgyz Republic published the first tender for documentation for the upcoming 2012

tender which was for procurement of special equipment, identity documents with personalisation. The tender naturally of course envisioned the adaption of this the system with the data and current information documentation system of the country, as well as envisioned sets of equipment for data collection and registration of the population.

The tender was officially announced on 11 July 2012. Already at that stage Garsu Pasaulis was willing to invest significant amounts in the Kyrgyz Republic. They have submitted their bids for 50 million euros, and of course as explained by Mieliauskas, there were also other competitors, German and French bids, but as it was seen, their bids did not comply with the tender regulations which required -- and those companies required advance payment from the government which was not in accordance with the tender requirements. Of course for that reason Garsu Pasaulis hoped to win the tender as early at that stage.

However, after announcement of the bids submitted, the 2012 tender was abruptly cancelled, as explained by Mieliauskas, at that time, local interest groups have lobbied strongly to remain on private and lucrative contracts for the Kyrgyz Government, and that is why the 2012 tender was terminated.

So it seems that the private interests outweighed the benefits of foreign investments at that time. Of course, Garsu Pasaulis invested a lot of time and effort in the preparation for the 2012 tender, but at that time, as painful as it was, the Garsu Pasaulis reputation was not tarnished and allowed Garsu Pasaulis to successfully participate once again in the Kyrgyz Republic.

So despite cancelling of the 2012 tender, in 2016 the Kyrgyz Republic was interested again, but this time in developing its national ID cards, not passports yet, and as Mieliauskas explained, he travelled for various conferences related to the ID cards and met of course the Kyrgyz representatives both in London, Riga, and Kazakhstan.

He remembered that the development of ID cards for national was also discussed in meetings with the GRS officers at that time.

So this is an important caveat, because the Respondent floods the Tribunal with conspiracy theories about Mieliauskas' meetings with officials and conferences in 2016.

However, we will get -- we will of course get back to this a bit later in our opening, but it must be noted right away that the whole story of the Respondent

regarding the Claimant's meetings in 2016 is simply confused because the discussions in 2016 were about ID cards. There was nothing related to e-passports, contract or the 2018 tender. That was discussed by Mieliauskas at those meetings. And the ID cards project also did not develop. Instead the project was done and implemented by South Korean and Chinese companies.

Now let's turn to the first significant investment of Garsu Pasaulis in the Kyrgyz Republic. In 2013 Kyrgyz Republic announced a tender for provision of excise stamps for the Kyrgyz tax authorities. The overall value of the contract was almost 9 million US dollars. The excise stamps tender again envisioned a model of investment first and return later.

The winning company had to install and develop the excise stamp system in the Kyrgyz Republic at its own expense and the company's return on investment would only come after.

Eventually, having offered the best price, Garsu Pasaulis won this excise stamps tender as the best offer and as explained by witness Lukoševicius, this contract not only involved just a provision of the excise stamps themselves, it also included provision of the necessary software systems, hardware for efficient operation of the systems in the Kyrgyz Republic. Of

course they needed to install and develop track and trace system, purpose for tracking all the goods labelled with excise stamps in the Kyrgyz Republic, to provide the hardware, and of course connect them to the Kyrgyz public government systems, and train and provide know-how to the state personnel, public servants and private day-to-day services to the Kyrgyz Republic.

For the purposes of the records in this arbitration provides that Garsu Pasaulis first invested around 200,000 US dollars to get the system going.

Furthermore, Garsu Pasaulis also established local company called again Garsu Pasaulis LLC in the Kyrgyz Republic as a majority shareholder, a local company was necessary because the excise stamp contract required that Garsu Pasaulis pay all the import duties, and of course Garsu Pasaulis needed the specific and secure logistics in the Kyrgyz Republic for these kinds of documents, warehouses, technical assistance, service centre, an office, local IT specialists and technicians. And as explained by Mieliauskas, track and trace system installed by Garsu Pasaulis is still used by the Kyrgyz Republic today even when Garsu Pasaulis excise stamps contract is now over.

Of course, pursuant to the excise stamp contract, for years Garsu Pasaulis also trained local personnel in

Kyrgyz Republic to use and manage the system. As we can see in the photo, Garsu Pasaulis representatives in the Kyrgyz Republic, updated the security systems, industrial designs that provided constant day-to-day service for the system.

As claimed by Lukoševicius as well, he travelled all around the Kyrgyz Republic on training visits to all major Kyrgyz cities.

So these facts are not really disputed by the Respondent.

In 2013, the excise stamps contract was a success, implemented until 2016. In 2015 Kyrgyz Republic again announced a new tender for the same excise stamps. This time the planned value was even bigger, almost 17 million US dollars, and Garsu Pasaulis again participated and won this new tender with the best price, and of course they had an opportunity to offer the best price because they already had substantial investment in the country to get the system going and were able to give the best price offer.

In autumn of 2020, already after the Kyrgyz scandal, the Kyrgyz Republic announced a new tender for excise stamps, the planned value was 7 million US dollars, and of course Garsu Pasaulis was willing to participate again and finally timely submitted this bid in that

tender. However, by that time this arbitration was already underway, and the 2020 tender for stamps was cancelled. The timing suggests that upon realising the Claimant's potential to win this tender again, Respondent decided to block its way.

This tender was re-opened in 2021, unusually postponed for 12 times, and eventually cancelled altogether and never happened again.

As recalled by Lukoševicius, he thinks that, you know, the excise stamps contract did not happen any more because Kyrgyz Republic was looking for ways to expel Garsu Pasaulis again.

So in any case, the excise stamps contract successfully executed by Garsu Pasaulis for eight consecutive years, worth more than 20 million euros, have contributed significantly to the digitalisation efforts of the Kyrgyz Republic and systems developed and implemented by Kyrgyz Republic are still successfully used to this date and continue to have a positive impact on the Kyrgyz Republic for years to come.

MR PACHAJEV: Now, Members of the Tribunal, I would like to take us to the 2018, the tender for the passports blanks which sits in many respects at the forefront of this arbitration.

As the Tribunal will know, on 22 October 2018, the

Kyrgyz Republic officially announced the 2018 tender. The tender again required not only to design and produce the blanks, but also required associated investments from the winner, investments into the installation and various configurations of the IT systems.

As explained by Lukoševicius in his first witness statement, he says:

"This was a very important tender for Garsu Pasaulis. Garsu Pasaulis had all the necessary know-how, experience and expertise to develop the e-passport systems in the Kyrgyz Republic. Garsu Pasaulis also had the necessary software, hardware, and local company and trained personnel. Surely, the execution of the e-passports contract would have required Garsu Pasaulis to increase the personnel in the Kyrgyz Republic, take care of the specific and secure logistics, warehouses, ensure day-to-day technical assistance, provide training to the local civil servants, etc."

The preparation for the tender also tested the seriousness of the Claimant's intentions. This was not a click of a button participation in the tender. To participate in the tender, Lukoševicius personally travelled to Bishkek to take care of logistics, take care of all the approvals, notary confirmations and

other local matters. In addition, to participate in the tender, Garsu Pasaulis retained IT consulting services.

On 19 November 2018 the Claimant submitted its bid. On 1 February 2019 the Claimant was declared the winner of the tender. And now this is important: while the Respondent suggests that the Claimant was inactive, Claimant provided ample evidence that in February 2019 both parties took every essential step for concluding the contract and the contract was ready for signing, and in the "but for" scenario, but for the GKNB's illegal intervention, the contract would be signed.

The events are as follows.

On 1 February 2019 Garsu Pasaulis received a notification from the public procurement portal that Garsu Pasaulis is the winner of the tender. On the same date Garsu Pasaulis confirmed on the public procurement portal its readiness to sign the contract. The draft contract was automatically generated and sent to Claimant from the portal.

On 4 February Garsu Pasaulis received the request from the chief of the public procurement division of the GRS to send the technical requirements for the new generation passports. The same email confirmed that the supply contract will be concluded according to the form attached to the tender documentation.

No changes were intended.

On 6 February 2019 Garsu Pasaulis received an acknowledgment of receipt of all the originals that it had to send. Also it received a request to identify the responsible persons from Garsu Pasaulis for the co-ordination of technical issues. On 7 February 2019 Garsu Pasaulis received a questionnaire that it had to fill out. On 8 to 11 February 2019 there was a correspondence between Garsu Pasaulis and State Enterprise Infocom about the questionnaire and then the Claimant took the time to fill out the questionnaire thank was complete.

On 11 February Garsu Pasaulis purchased tickets to Bishkek and organised a conference where it has answered all the questions and also dealt with any allegations that there was something wrong with the tender and so forth. All the answers at that time were satisfactory.

On 17 and 18 February again there was correspondence with the Republic concerning the POA, notarisation, apostille and other formalities. On 21 February the secretary of the GRS informed the Garsu Pasaulis about the rejection of IDEMIA's and Mühlbauer's complaints, and asked the representative of Garsu Pasaulis to come to Bishkek as soon as possible to sign the contract; not negotiate, not talk about it, to sign the contract. At

that time there was unquestionable willingness by both parties to sign the contract.

On the same date Garsu Pasaulis informed the secretary that its representative will visit Bishkek on 24 February. In addition, Garsu Pasaulis requested for the final contract to be sent.

In addition to that, Garsu Pasaulis asked: should I pose the guarantee for the performance right now, or later on? Unfortunately, starting from 21 February 2019, the GRS stopped responding to the Claimant. That was of course, as is confirmed by the GKNB, it was its doing. The Tribunal will remember in my opening remarks that the GKNB confirmed that if it wasn't for their timely intervention, the contract would have been signed.

Starting from the late February 2019, the GKNB orchestrated a media led smear campaign against Claimant. This marked the beginning of unrelenting attempts by the GKNB to besiege the Claimant with unsubstantiated criminal allegations, manifesting the intent to expropriate the Claimant's investment.

Claimant's witness, Marat Sagyndykov, explains that in late February 2019, he says:

"Right after that, in order to speed up the process of signing the contract, I, having co-ordinated the

actions with Garsu Pasaulis, decided to provide the State Committee for National Security with all the available information refuting the false statements in the media."

And so forth. So he goes to the GKNB's office. Unfortunately, as is set out in paragraph 20 of his witness statement:

"Instead of clarifying the position of Garsu Pasaulis, Eldar [who was the interrogator of the GKNB], he interrogated me off the record. Interrogation left no doubt that I was being interrogated as a suspect despite the fact that officially no suspicions were presented to me. Eldar made it clear that he was confident in the guilt of Garsu Pasaulis. Eldar was not particularly interested in my detailed answers and explanations, including that Garsu Pasaulis was not involved in any financing of terrorism. No one was keeping the minutes, no one was taking any notes."

Obviously Marat Sagyndykov, the witness, told the Claimant not to come to the Kyrgyz Republic at the moment because he would be arrested.

In parallel, Garsu Pasaulis received the tip from the Ministry of Foreign Affairs of Lithuania not to go to the Kyrgyz Republic.

Hence two trusted sources told the Claimant that it

shouldn't arrive in the Kyrgyz Republic at that time. But what the Tribunal will see in the evidentiary record is that the Claimant has purchased first initially purchased the ticket for 24 February, then changed them for 4 and 7 March, still hoping that they would come and sign the contract, then postponing them to 20/22 March and then to 3 and 5 April. These were not some random purchases of the tickets. The Claimant intended to sign the contract and it believed that it would be able to.

Unfortunately, on 2 April 2019, in a completely arbitrary fashion, in breach of due process, the tender was de facto illegally terminated without issuing any proper decision in this respect. The Tribunal will hear from the experts this Wednesday on whether the tender was terminated legally and whether at that moment in time the investor had the rights that were protected by Kyrgyz law and which had the economic contents that were protected by the BIT.

For now, suffice it to say that both parties' experts agree that after 2 April 2019 any local proceedings had only a symbolic value. No tender related rights could have been successfully defended in local courts. Claimant's expert, Dr Crina Baltag, in her report, she says: yes, the Claimant won the appellate instance of the administrative proceedings,

but it won nothing. There was nothing left to defend because of how the tender was treated by the local authorities.

Their own expert -- this is their expert -- she says the right of the winning bidder to conclude the contract terminated after the expiration of the bid on 2 April 2019. From that point onward the tender de jure failed and from that date onward the cancellation, and the specific stages of the tender, that was not possible to rectify via the court judgment.

She says indeed Mühlbauer, a German producer, they have initiated the court proceedings, but those proceedings had symbolic sense. They were only lodged to deal with the reputational issues that Mühlbauer was not even accused of criminal proceedings, and still it had to go to court and try to defend their rights. The Claimant was convinced under the circumstances that no court proceedings would deal with their investments and the violation of the BIT properly and therefore the Claimant initiated this case.

MR DAUJOTAS: Now Members of the Tribunal, let's turn to the concrete facts which form the basis of the Garsu Pasaulis claims in this arbitration that we consider are the breaches of the agreement and accordingly request such a declaration from

the Tribunal.

Now, it is well-documented in our written submissions that while Garsu Pasaulis waited for the final step a ceremony of the signing of the e-passports contract, in parallel various interest groups, including the Kyrgyz officials, and the complaining bidders, exerted political pressure on the Kyrgyz authorities and they later budged taking the premeditated steps to erase the results of the tender and take away the Claimant's rights arising there from.

As explained in claimants' submissions, with extensive reference to evidentiary record, even the Government and the Office of the President of the Kyrgyz Republic have been involved in examining the tender results, at least from 8 February 2019, even together with foreign embassies who represented the interests of other competitors.

Now, there were a lot of, of course, very significant events, a lot of them well-documented, which all form a very good picture of what's happened. But in the interests of time, we will focus on the most significant ones.

First, to start with arbitrary GKNB investigation. As with the 2012 tender, many interest groups, including local state officers, the chief of the GKNB himself,

achieved the claims removal from the 2018 tender. They did so by the use and employment of the Kyrgyz state apparatus and the events that followed are well-documented and show clear breaches of the Claimant's rights. Although naturally it should have been in the interests of the Kyrgyz State to get the best offer and price for the e-passport contract, apparently after the Claimant's win, the Kyrgyz Republic u-turned against the Claimant.

Now, the record shows that after German Mühlbauer and French IDEMIA filed their complaints, Respondent activated the media to start forming a negative public opinion about the Claimant. Other competitors started using other means of pressure against the results of the tender. The evidence in the case shows that the highest executive authorities of the Kyrgyz Republic co-ordinated the process through the meetings with the representatives of competitors and even foreign embassies. It is also well-documented that even the chief of the GKNB also had its own interests in the same tender, the 2018 tender. He held secret meetings with the head of the GRS and her refusal to consider his office provided after that he was felt insulted and offended and this was well-documented in their case file.

So this is an important context. Let's turn to the main relevant facts.

On 20 February the Kyrgyz media even before the respective decision was officially taken was already briefed by the Kyrgyz authorities and announced that GKNB will open a criminal investigation concerning the tender results.

Now, don't get us wrong, Claimant does not dispute the local authority's right per se to conduct investigations. This is their right and duty. But as the Tribunal will observe, this investigation was premeditated, fabricated and completely arbitrary.

So after the pre-trial criminal investigation was initiated, throughout March 2019, consistent but arbitrary investigative actions were taken under the authority of GKNB. Many persons were summoned, questioned and even detained by the GKNB. The GKNB interrogated, searched homes, offices and other premises of more than 50 individuals, as well as gained access to their bank accounts and safety deposit box.

The threats and intimidation tactics were of course employed and this was confirmed by Claimant's witness, Mr Sagyndykov. As Mr Sagyndykov clarified, many other persons were pressured to give signed testimonies, dictated and signed by the GKNB. This is also

well-documented by the expert evidence. One of the members of the commission for complaints said in the press that GKNB forces members to write decisions under their dictation and those who do not succumb to the pressure exerted by the GKNB are subjected to pressure in various ways.

Surprisingly, even after many hours of interrogations and much intimidating of the persons of interest, after using various means of pressure, including threat of detainment, search of homes and premises, the GKNB still could not find any evidence confirming the allegations that the Claimant allegedly bribed or influenced anyone in the course of 2018 tender. In fact, there were never any formal declaration by the GKNB or any Kyrgyz authority stating in clear terms that Garsu Pasaulis or any persons related to Garsu Pasaulis did any wrongs.

However, that did not preclude GKNB from declaring publicly already on the first days of its investigation in April 2019 that Garsu Pasaulis won the e-passports contract through alleged bribes that GRS officers lobbied for the Claimant's interests in the tender.

On 24 April Mr Idris Kadyrkulov, the head of the GKNB, gave a speech at the Parliament in the public hearing about the tender. In his 11 minutes of speech,

Mr Kadyrkulov, giving further steam to the smear campaign, called the Claimant not a good company, and said that a tender specifications were tailor-made for the specific company.

Idris Kadyrkulov also made some vague concerns about Kyrgyz passports being used on black market, which of course had nothing to do with the Claimant or the 2018 tender.

So neither in April or May nor later the GKNB provided any concrete evidence confirming that Claimant had any affiliation with the officers of the GRS or that Claimant made any bribe payments. Of course there is simply no evidence that Claimant put pressure on the tender participants or the GRS officers.

As was mentioned even in this arbitration, Respondent himself confirms that it has no evidence against the Claimant.

In addition, we would like to remind the Tribunal that during the document production phase Claimant has repeatedly requested Respondent to produce any documentation that would confirm and prove any wrongdoing alleged by the GKNB. We said: please give us anything that would confirm Respondent's allegations.

At that time Respondent objected, saying that such documents are either irrelevant or are covered by the

secrecy of the investigation and cannot be produced.

So we submit that Respondent failed to produce any evidence which would confirm that any criminal investigation regarding tender has been actually initiated against the Claimant or its employees or its affiliates, no evidence that Claimant or its affiliates have been properly notified of any allegations of corruption; no evidence that Claimant has actually done any wrongdoings alleged by the Respondent.

Now, knowing these facts, let's see the position of the GKNB announced publicly and fed to the media. For example, the press release of GKNB dated 19 April 2019. This document is an excellent example of the smear campaign initiated against Claimant by the GKNB. GKNB here deliberately uses term "winning company" to disclose that it is Garsu Pasaulis and not any other company, to create a negative imagine of the Claimant. The press release also relies on undisclosed internet sources to suggest that Claimant allegedly was investigated for corruption, which is totally false. And refers to Claimant's alleged meetings with the members of the tender commission to discuss the tender documentation, also totally false.

GKNB praises itself that it was GKNB and its investigation, not the alleged bid expiration that

stopped GRS and Garsu Pasaulis from conclusion of the contract.

Even more, on 6 October GKNB published a YouTube video showing interrogation of director of the Infocom state enterprise, Mr Talant Abdullayev, where he stated that the former chairwoman of GRS allegedly gave him 20,000 for lobbying the interests of Garsu Pasaulis. We will see this witness statement testimony in a few moments.

But now it is difficult to comprehend how GKNB itself could publish a confidential tape of an ongoing investigation and material which Respondent claimed is protected by secrecy and what other purposes could it serve other than to distract, discredit the Claimant in the public.

Of course, the video did not explain in any further detail who gave him bribes or for what and when and why.

Of course, the YouTube video also had tarnished Garsu Pasaulis' international reputation and caused more negative and false media articles around the globe against Garsu Pasaulis.

So it appears clear from the evidential record in this arbitration and from the evidence produced by the Respondent himself that neither GKNB nor the Respondent's authorities initiated or carried out any

criminal investigation against the Claimant or its legal affiliates, but at the same time publicly smeared Garsu Pasaulis as corrupt company and fed false accusations to the media for the sole objective to take away the e-passports contract.

So the signing of the e-passports contract was precluded not by Garsu Pasaulis and not because of the alleged expiration of the Garsu Pasaulis bid, but because of this fabricated investigation by the GKNB.

We invite the Tribunal to refer to Claimant's Statement of Reply where Claimant analysed in detail all of GKNB's actions against Garsu Pasaulis that were in clear breach of the agreement.

Now let's talk about lack of due process. It should be noted also that there was a complete lack of due process in the way GKNB conducted their so-called investigation. Our witness, Mieliauskas, addressed this quite well in one of his first interviews he gave to the Kyrgyz media and this interview was given before Garsu Pasaulis engaged lawyers to prepare the notice of arbitration.

So this was surely an honest reflection of events that happened at that time.

And this is the YouTube video the Respondent asked to include just a few days earlier.

The evidentiary record is clear. To this day there were no formal allegations of requests to appear received by Garsu Pasaulis or any of its affiliates. Of course, when one is accused of such serious crimes publicly, one and should expect some formal requests for attendance or some formal enquiries, but GKNB sent none of those to Garsu Pasaulis or any of its employees. They did some informal calls and communication through intermediaries, but this is of course not a formal or legal way to go on in these circumstances.

Now, Respondent pointed out to some letters of GKNB allegedly sent to Claimant, for example the letter of GKNB dated 9 April, but the Claimant has never received this document and it was not proved otherwise.

There was also Claimant's lawyers' reply concerning the invitation of GKNB which was not received and the Claimant has not received this document either.

Lack of due process can also be observed in the interrogations and arrests done by the GKNB. As well-documented, in mid-April, and 4 March, Garsu Pasaulis local consultants, Mr Sagyndykov and Mr Uran Tynaev, were summoned for interrogation by the GKNB. As explained by Sagyndykov, the officers of GKNB have taken their phones and deleted important evidentiary information about the threats that

Mr Sagyndykov received from another person, Azamat Bekenov, who presented himself as working with the organisers of the tender and communicated with potential bidders and who worked for German competitor Mühlbauer.

We will get back to Mr Azamat Bekenov in a few moments, but in this part it is important to note that the officers of the GKNB, Mr Sagyndykov and Mr Tynaev, were threatened and pressured by the officers of GKNB to testify against Garsu Pasaulis and to admit false allegations of corruption put forward by GKNB. And this was well-documented.

This corroborates to the statements also made by others, as mentioned, for example members of the complaints commissions, who also were pressured to give testimonies to GKNB to tell lies and confess the actions that never occurred in reality.

Now let's turn to the falsified media campaign for a few minutes.

As mentioned, in parallel, GKNB also fuelled the negative media campaign. The negative media campaign is also well-documented in the Claimant's written submissions, but let's spend a few minutes here and see some concrete examples. As explained, the negative media campaign in which claims against Claimant were

launched immediately after Claimant won the tender.

Now, setting aside the negative media coverage which basically copy-pasted the text of the formal complaints filed by the competitors, it is important to note the very act of involvement of the GKNB in this media campaign, and accordingly take note of who was the source of the negative media articles.

The evidential record proves that most of the negative media articles often simply quote Respondent's officials, usually GKNB, who on their own behalf or on behalf of the State accuse the Claimant with false accusations.

So the first round of such articles appears on 2 April in 2019 in major Kyrgyz media portals, citing GKNB with a headline that leaves no place for any other interpretation. They say that GKNB found that Garsu Pasaulis had a connection with a tender and police and GRS.

The contents of this article are no better. It was full of biased accusations, accusing Claimant of having entered into criminal conspiracy with responsible officials of GRS. The article also points to conclusions of the materials obtained during the investigation, so that it is clear that it was GKNB that provided this information.

On the same day, similar articles appeared in other media, Kyrgyz media, providing the same message of the alleged criminal conspiracy based on information provided by GKNB, once again using the same terminology, "winner of the tender", "criminal conspiracy", when writing about the Claimant.

Same information provided in the article in Kaktus media, this time directly citing GKNB. Another good example of a negative media article is of course the articles that followed after the former chief of the GKNB Idris Kadyrkulov gave a speech at the Parliament. Of course, his speech went on the front pages of many media outlets on the very same day and the negative information about the Claimant was spread during his speech. They are directly quoting Kadyrkulov and making his unsubstantiated accusations.

Similar articles again published in many, many other media portals.

The evidentiary record is therefore clear. The source of the negative media campaign was Respondent and its government officials. These articles were the most damaging for the Claimant since the Kyrgyz media cited not some bystander or other journalist or some unidentified source, but they cited the official GKNB position, which, as it turned out, was completely false

and ungrounded by any proof whatsoever.

We now know that these allegations were false because Respondent itself here in this arbitration confirmed that it has no evidence to back this. No investigation was ever initiated against the Claimant or any of its employees. No findings were actually made.

So this was just all a farce. In fact, investigation into the Claimant was never even started, no enquiries were made, but this campaign was targeting Claimant and its investment with the objective to exclude the Claimant from the tender.

Announcing grave but false accusations in the press by the Kyrgyz authorities is a clear breach of fair and equitable treatment, especially when they cause huge losses.

Now let's turn to another authority, and the actions of the respondent, the GRS, with whom the Claimant should have signed and executed the e-passports contract, and the Claimant also has major complaints here.

As explained, after inviting the Claimant to sign the contract, in addition to the very troubling developments covered by the local media, GRS went into radio silence. Accordingly, Claimant constantly changed flights between Vilnius, Moscow and Bishkek.

The evidential record of what happened with GRS and its conduct is also well-documented in the Claimant's submissions.

So in essence, pressured by the GKNB, who bragged of stopping conclusion of the e-passports contract with Garsu Pasaulis, GRS itself looked for ways how to cancel the tender which was already concluded. As it was explained, GRS succeeded in expelling the Claimant after it has already won the tender, but did so in breach of the Kyrgyz law and agreement.

Although there were many instances where GRS acted arbitrarily, in an illegal way, we will now point to the main and fundamental ones which form the basis of our claims.

First, after announcing the Claimant, as mentioned, GRS went into radio silence. Claimant's enquiries were no longer responded, although everything was ready for signing.

Second, on 11 February, the department for the public procurement of the Ministry of Finance, an institution that had no competence to do so, suspended the tender proceedings.

Third, on 17 April GRS published the press release calling it the official declaration regarding the procurement of passports in which it had declared that

a tender allegedly failed due to the term validity of the bidder's bids that allegedly expired. This press release has no basis in law whatsoever.

For basically a year after the events, in violation of local law and the BIT, on 4 February 2020, GRS issued another and yet official order of declaring the tender for the procurement of passports as failed. By adopting this order, GRS tried to illegally legalise and formalise the State's actions retroactively, a year after they occurred. The order and its contents were also erroneous, as we will hear from Kyrgyz law experts.

Interestingly, this order was issued just weeks before announcing the new tender for the 2020 tender on passports.

And fifth, Garsu Pasaulis' rights were also breached by the announcement of the new 2020 tender requirements. As mentioned, the issue the Claimant has is that the additional requirements were added for experience of 3 million passports that eventually arbitrarily excluded Claimant and Garsu Pasaulis from further participation in the e-passports tender.

Now to rebut this, Respondent put forward four main arguments, and that the tender proceedings were suspended. The Claimant was allegedly passive and failed to exercise its rights and that the validity

period of the Claimant's bid expired and that GRS declaration of 2020 was allegedly legitimate.

Now, these arguments of the Respondent were addressed in detail in the Claimant's submissions, but let's spend a few minutes here on the most important facts and legal arguments.

The Tribunal will be convinced that the Respondent's actions in that regard were not only in violation of the agreement, but likewise violation of the Kyrgyz law. In essence, Respondent could not file legal grounds for proper expulsion of the Claimant from signing the e-passport contract and so chose illegal and arbitrary methods.

This record in this arbitration is clear. In February 2019, after winning the tender, Garsu Pasaulis and GRS have been closely cooperating and intensely working on the documents, constituting annexes to the passport, filling all the clerical details; in essence the parties performed all the necessary steps for preparation for the signing. Only physical signatures were needed. The same was confirmed by our Kyrgyz law expert, professor Alenkina.

So the applicable law did not provide for any additional conditions or steps. Respondent also had an obligation to sign the e-passports contract and it has

no excuse not to do so.

And as we know, eventually the contract was never signed, because of the silence of GRS.

Now, for the alleged suspension of the bid, of the tender, Professor Alenkina also confirmed that there was no valid decision to suspend the procurement procedure. And of course any decision made by incompetent body are null and void and create no legal consequences for the parties in this case.

Furthermore, under the applicable Kyrgyz law, the validity of the period of the bid was only important for the evaluation, examination of the bids. And before the announcement of the winner. Once the winning bid is selected, the validity period of the bid is no longer relevant and legally meaningful. Once the winner of the tender is determined, the parties proceeded to the next stage of the procurement procedure, similar to its nature as a preliminary contract.

So considering this, the Tribunal should find that the 2018 tender proceedings have not been validly suspended.

Now, although GKNB itself confirmed that the signing of the e-passports contract was prevented by its own actions, Respondent erred when suggesting that it was the Claimant who did not take any steps to sign the

passports contract. And of course due to bizarre and false accusations of very serious crimes, it was clearly unsafe for the Claimant to arrive in Bishkek, and as mentioned, the Respondent cannot rely on the Claimant's non-arrival as inaction because this situation was created by the Respondent itself. In any event, any purported inaction in the circumstances did not deprive the Claimant of its rights under the tender.

It is telling that if it was really the Claimant who would have for whatever reason refused to sign the e-passports contract, GRS should have retained under the law the bid guarantee of 200,000 euros which was purposed for such an event, ie refusal to sign by the Claimant, but the GRS never took this guarantee.

Finally, GRS' declaration of 5 February, as mentioned issued a year after the events of the purported failure, was inconsistent with the laws of the Kyrgyz Republic and thus is legally null and void. This was confirmed by Professor Alenkina as well under the Kyrgyz law. She said the practice of legalising and formalising state bodies' actions retroactively a year after they occurred is not legal.

So Claimant was effectively precluded from bringing for that reason any administrative or civil claims in the national courts forcing GRS to sign the contract

because the fate of its own win in 2018 tender was completely unclear.

The Supreme Court judgement as mentioned has no help to Respondent either, it did not affect the validity of the 2012 tender.

So to sum up, there was absolutely no legal basis for the GRS to deprive the Claimant of its right to sign and execute the contract under the Kyrgyz law. All excuses given by the Respondent in the present case fail as a matter of fact and law. Failure to act in accordance with its own law clearly evidences arbitrary treatment of the investor, which in turn purports a breach of the agreement.

Now just a few seconds on the other issue.

Now the evidentiary record again proves that after taking away the e-passports contract, the Kyrgyz Republic further expelled the Claimant from other investments, any further participation in the country. As mentioned, just weeks after announcing that tender has failed, in 2020, the Kyrgyz Republic publically announced another public tender for e-passports, this time the conditions were changed.

But surprise surprise, it was won by the German company, Mühlbauer, the same company that was praised by the former GKNB chief in his parliament speech as a very

good company, the same company which has -- which was represented by the same Azamat Bekenov who threatened Garsu Pasaulis and on whose testimony the GKNB made its kompromat against Garsu Pasaulis.

Secondly, as already mentioned, Claimant was precluded from excise stamps tender, which was eventually cancelled.

So this speaks to the lengths that Respondent took to get rid of the Claimant entirely from the Kyrgyz Republic.

Now, in the interests of time, we will not get into many more actions and details of the treatment of Garsu Pasaulis by the Kyrgyz Republic. We believe the evidential record is rather clear and events are well-documented. The main facts voiced again today make clear that that the Kyrgyz Republic has breached multiple times and occasions Garsu Pasaulis' rights and guarantees provided in the agreement.

So after briefly summarising the most significant facts we would like to turn now on the jurisdiction, but we suggest to do so after the planned 15 minute break.

THE PRESIDENT: Very good. So let's break for 15 minutes then. Thank you.

(10.39 am)

(A short break)

(10.54 am)

THE PRESIDENT: Please go ahead.

MR PARCHAJEV: Thank you, Mr Chairman.

So we will now address the jurisdictional issues.

Now, the thesis of the Claimant is that the Tribunal has jurisdiction because Claimant has made several protected investments, all of which relate to this case. Claimant submits that even in the unlikely event that the Tribunal finds that the Claimant's investment into the 2018 tender was not yet protected by the BIT -- we're not suggesting that, but if that happens -- the Claimant submits that the Tribunal still retains jurisdiction because of the other investments that are connected to this dispute.

Claimant further submits that in the unlikely event that the Tribunal finds that the investment into the 2018 tender was not made in accordance with the law, the Tribunal still retains jurisdiction because there are investments that are connected to this dispute.

Now let's talk about more specifics. The jurisdictional issues were addressed in depth by the Claimant's expert, Dr Crina Baltag. Respondent in this case chose not to call her for the cross-examination. That of course does not and cannot take away from the persuasiveness of her report. Quite the contrary. The

unwillingness of the Respondent to call her for the cross-examination when they called everybody else shows their lack of confidence on the issue.

We of course expect the Respondents to continue their ad hominem attacks against Dr Crina Baltag, first of all suggesting that she is biased, second of all suggesting that this Tribunal is well-versed in the issues of investment and therefore does not need an expert. Both of these are unpersuasive.

Now, on the allegation that Dr Baltag relied extensively on the materials made available to her by the Claimant, this does not show the bias. Far from it. At the time of the making of her report Respondent was largely unrepresented and did not put forward a robust defence for her to consider. They could of course have invited her and cross-examined her and said: well, if this is assumption was wrong, would your views still be the same? They chose not to do that, at their own risk.

On the allegation of jura novit curia and the fact that the Tribunal does not strictly need the expert, what we can show to the Tribunal is that both of the parties extensively rely on the other tribunal's awards, saying that the Tribunal you should follow this tribunal's award and that in that case. That is done not because the parties believe that this tribunal is

incompetent or that the Tribunal needs to copy-paste. Far from it. Both parties believe that the Tribunal is capable of exercising independent judgment, but it would benefit greatly from qualified opinion, and Dr Baltag's expert opinion is nothing but that: it is a qualified opinion given on the facts of the case. And it overviews the applicable case law.

So we believe that not only her report is helpful, but it is the only expert report on the issue and the Respondent chose not to cross-examine her, which gives it even more credibility.

Now, let's get to the substance of her report, and of course we will start with the notion of investor. So was Garsu Pasaulis an investor?

The Tribunal will know very well that under Article 1.2 of the Lithuania-Kyrgyz BIT, "the investor" means any legal person incorporated or constituted under the national legislation of the contracting party.

Further, Article 8.1 of the BIT covers disputes between one contracting party and the other contracting party's investor. Neither the BIT nor the UNCITRAL Rules impose any additional requirements on the notion of "investor". As such, one must give full and exclusive effect to the provisions of the Lithuania-Kyrgyzstan BIT.

Let's look at the case law. We want to draw the Tribunal's attention to the Saluka v Czech Republic, where the tribunal said:

"The parties had complete freedom of their choice in this matter. The Tribunal cannot in effect impose upon the parties a definition of 'investor' other than that they themselves agreed. That agreed definition requires only that the claimant investor should be constituted under the laws [in that case of the Netherlands] and it is not open to the tribunal to add any other requirements which the parties could themselves have added but which they omitted to add."

The same stands from other case law. For example, Tokios Tokelés v Ukraine, Yukos v Russia, where the tribunal says the tribunal is bound to interpret the terms of the treaty not as they might have been written but as they actually were written.

The evidence before the Tribunal is clear. Garsu Pasaulis is a Lithuanian company established under Lithuanian laws, and although it is not even required by the BIT, Garsu Pasaulis is a genuine company, carrying out a significant portion of its operations in Lithuania. Garsu Pasaulis has been and continues to manufacture the majority of Lithuanian passports, driving licences and other EU documents. I, for

example, in this lifetime have never had a passport, ID or drivers licence printed by anybody else other than Garsu Pasaulis.

In fact, the Respondent does not challenge Claimant's nationality or the fact that the Claimant meets the ratione personae requirements under BIT. There seems to be some remarks on this front in their statement of defence as noted in the Claimant's Reply, paragraphs 330 to 335, but those remarks largely relate to the investments, not to the status of the investor.

So consequently, for the purposes of establishing jurisdiction, ratione personae, for the Tribunal it is enough that the Claimant is incorporated in Lithuania, and that fact is not challenged.

Now let's look at the investments, which is a much more difficult issue.

So we will start with the preliminary remarks here. Article 1.1, as the Tribunal knows, of the BIT provides the following, that the investment means any assets invested in accordance with the national legislation, including but not limited to the following: shares, requests to carry out any action of economic value -- any action as long as it has economic value -- know-how, business reputation, any rights to engage in economic activities.

Furthermore, Article 8.1, which is a dispute resolution clause, says that the disputes have to be relating to investments. And then we have submitted in our Statement of Reply that articles 8.1 and 8.2 refer to the disputes concerning investments that were being made. Investments in the process. We have pointed to the Tribunal that the Russian language, the official language of the BIT, uses the word "osushchestvlyalis", not "byli osushchestvleny" which would be the past tense, but "osushchestvlyalis" which denotes a process. And I believe Professor Vilkova, who is a native speaker, could appreciate the difference between the two and could confirm that "osushchestvlyalis" is a process.

In support of this, Dr Crina Baltag in her report says Article 3.1 of the BIT expressly prohibits unjustified, ill considered or discriminatory measures affecting the development of the investor's investments. The interpretation of this provision in the BIT evidences that the Lithuania-Kyrgyz BIT is meant to promote and protect expansions of the investments, not only to protect and promote new investments, new independent investments.

The UNCITRAL arbitration rules do not impose any requirements on the notion of investment. As such, the Tribunal must give full and exclusive effect to the

provisions of the Lithuania-Kyrgyzstan BIT.

This BIT, comparable to other investment treaties, takes a very broad approach to the notion of investment. This broad wording of "is understood to include", according to Crina Baltag, as everything of economic value, virtually without limitation. As mentioned, the Tribunal must not impose any limitation on the notion of investment where there are no such limitations in the BIT.

Now let's talk about the Salini test. So the Respondent on several occasions attempts to incorporate the ICSID ratione materiae requirements into the BIT. Such attempts are of course of no avail. The Respondent is asking the question. They're saying: does it make sense that "investment" be interpreted differently depending on the form that the Claimant chooses? And the answer is a resounding "yes". It makes sense and it is the only way that the tribunal can read the BIT in accordance with the VCLT principles.

The Salini test, together with the requirements such as arising directly out of an investment, they come from Article 25 of the ICSID Convention. Interestingly, the Respondent itself admits that -- they say: on the law, the Claimant's arguments are highly confused and self-contradictory. For instance, it makes sporadic

references to the concept of entire operation and argues that the present dispute meets the criteria of a dispute arising directly out of an investment in the Kyrgyz Republic. Yet both notions specifically concern the establishment of jurisdiction ratione materiae under Article 25 of the ICSID Convention and thus have zero relevance to the present case.

Now, it is broadly accepted that under ICSID Convention the investment has to meet so-called double barrel test, wherein the first barrel is that you have to meet the requirements under the BIT or other instrument of consent and the second barrel, being the Salini test, which stems from ICSID Convention. I will not bore the Tribunal with the review of the case law on the issue of non-application of Salini criteria in a non-ICSID case. The Tribunal can find it in paragraphs 380 to 387 of our Reply.

Suffice it to say that the Claimant has failed to show why this tribunal should interpret the BIT in any different away than in accordance with the ordinary meaning of its provisions.

Now, they seem to suggest that the BIT gives an option to go to ICSID Convention, and therefore we should incorporate all the ICSID provisions into the BIT. That of course is not a persuasive argument.

I will give a hypothetical to the Tribunal here.

Now, say the BIT allowed me to go to the court or to ICSID arbitration. Can I then go to the court and tell the court, the judges: I now want six months for my Statement of Defence, or whatever statement I want, because the ICSID rules allow that? The court will quickly tell me that: you are not in ICSID, you are before the court, and you have to obey by the rules of the court.

So the option to go to the ICSID for an investment arbitration is nothing more than that, it is an option, which the Claimant did not choose in this proceeding.

The second barrel, the Salini test, stems from a separate treaty, the ICSID Convention, and thus naturally the Tribunal has no reason to imply these requirements into the text of a carefully negotiated BIT.

Now, why does the ICSID Convention impose additional jurisdictional requirements? The answer is simple. ICSID Convention affords the investor significant additional benefits, yet it also imposes a higher jurisdictional threshold.

Now, we've asked in our Reply the Respondents, we said: if you think that UNCITRAL and ICSID arbitration should be treated the same, are you willing to admit

that the future award should be enforced the same way as ICSID award? Are you willing to relinquish all the defence available to you under the New York Convention? Are you willing to forego the opportunity to set aside the award at the seat? To which of course they did not agree to. Well, there you have it. There is a difference between ICSID and non-ICSID proceedings, and therefore if you want to go to ICSID, you have to meet the ICSID test, if you go to UNCITRAL, that is what you meet, and the UNCITRAL itself does not impose the requirements, so you have to look into the BIT and BIT alone.

Now let's look into the investments made by the Claimant.

The Tribunal in the circumstances must decide whether the Claimant made investments and whether the dispute relates to such investments.

Garsu Pasaulis was not, as the Respondent tries to portray it, a small Lithuanian company with big hopes but not much to show for it. Claimant was an investor who continuously expended its investment in the Kyrgyz Republic, and but for the illegal measures imposed by the Respondent state, it would have even stronger investment footprint in the Kyrgyz Republic.

Let's look at a specific investments made by the

investor.

The first investment is a local company named also Garsu Pasaulis, including the ownership of its shares, and it constitutes a protected investment under the BIT.

The Tribunal knows very well that Article 1.1(b) of the applicable BIT is clear in providing that shares in a corporate business are the types of investments that qualify as investments under the BIT. The BIT does not impose any additional qualification on this asset as provided by expert Baltag.

It does not matter how much the shares cost. It does not matter what rights do the shares give to the Claimant. The possession of shares alone is enough to establish ratione materiae jurisdiction of the Tribunal.

Naturally, the bigger question in the mind of the Tribunal is whether there is a sufficient nexus between the Claimant's investment into the local company and the present dispute. Respondent disputes such nexus by suggesting that the 2018 application for the tender, it did not require that the Claimant possess a local company. The suggestion, as we explain, is of no avail. The 2016, for example, tender also did not require the Claimant to have a local company, but they did, and they did in order to produce stamps and disseminate those stamps according to that investment.

As Lukoševicius explains:

"For the purposes of implementation of the excise stamps contract, we have also established our local Garsu Pasaulis LLC company in the Kyrgyz Republic. The local company was necessary because the excise stamps contract required that Garsu Pasaulis pays all the import duties, DDP and so forth. We also needed specific secure logistics in the Kyrgyz Republic, warehouses, technical assistance, service centre and the office, local IT specialists and technicians."

In the same way, Lukoševicius explains that:

"Garsu Pasaulis had all the necessary know-how, expertise and experience to develop the e-passport system under the 2018 tender. Garsu Pasaulis also had the necessary software and training and so forth, but surely the execution of the e-passports contract would have required Garsu Pasaulis to increase its personnel in the Kyrgyz Republic, take care of the specifics and secure the specific and secure logistics, warehouses, ensure day-to-day technical assistance, provide training to the local servants, etc."

Is the local company an investment? Of course it is. Was it related to the 2018 tender? Again, yes. Claimant had set up a local company for the implementation of contracts with the State. It had

plans to use the company for the implementation of the new contract which was illegally taken away from the Claimant.

The fact that the Respondent prevented the use of the local company for the passport contracts cannot deprive Claimant from relying on its existing investment for the purposes of the jurisdiction.

Now let's look at the next investment of Garsu Pasaulis, which is the contracts won by Garsu Pasaulis in the public tender announced by the Kyrgyz Republic to procure and provide the tax stamps, excise stamps, and these obviously constitute an investment under the treaty.

Now, the Tribunal will know very well that under Article 1.1(f) of the BIT it includes any right to engage in economic activities under the contract.

Contracts in fact are a common form of investment. Investment treaty arbitration practice offers diverse examples of the contracts qualifying as investments. As noted by the tribunal in multitudinous, the tribunals have in fact accepted a broad range of economic activities under the notion of investments.

As explained by Mieliauskas in his witness statement, the excise stamp tender envisioned a model of investment first, return later. The winner company had

to install and develop the excise stamps system in the Kyrgyz Republic by its own funds. We needed to invest our own funds into the installation, operation of the software and hardware systems, put the necessary personnel in place, train the Kyrgyz public servants and take care of all the logistical and clerical matters. We install and co-ordinated the modern track and trace system in the Kyrgyz Republic and so forth.

The investment under the stamps contract was clear. Again, the main question in the Tribunal's mind is whether there is a sufficient nexus between the investment and the present dispute, to which we say yes, there is.

The most important thing is that the economic activity under the stamps contract was taking place at the time of the Respondent's illegal measures which lie at the heart of this arbitration.

Claimant had repeatedly emphasised that the stamps contract was performed until 2021, while the illegal measures were taken in 2019.

So Respondent seems to downplay the significance of the Kyrgyz scandal on the investments in the excise stamps market. What the Tribunal must bear in mind is that after the Kyrgyz scandal, the Claimant was no longer allowed to participate in the excise stamps

tenders. Reputational harm suffered by Claimant in this arbitration also directly relates to the goodwill and know-how invested in the Kyrgyz Republic during the several years of the implementation of those contracts. Again, the nexus requirement by the BIT related to is not a strict one. All the Tribunal must confirm is whether the present dispute relates to the investments already made in addition to the latest investment, the win in the 2018 tender.

Safe printing is a very sensitive segment. When state authorities spread misinformation about the company, saying that they are connected to the organised crime and so forth, those accusations cannot be unrelated to the investments in such segments.

Now let's look at the last investment of the Garsu Pasaulis and this is the win in the 2018 tender with the invitation to sign the contract and for the production and delivery of e-passports to the Kyrgyz Republic.

As mentioned, our starting position is that the Tribunal should look at Claimant's investment as an entire operation where the rights acquired under the 2018 tender, it was an expansion of the Claimant's existing investments, and the reference for that is Article 3.1 of the BIT.

Nonetheless, the winning of a tender with the invitation to sign the contract constitutes in itself an investment under Article 1.1(c) of the Lithuania-Kyrgyz BIT, meaning that it is a right to a monetary claim or request to carry out any other action of economic value. Any action of economic value.

Various cases come to our mind when we're talking about whether a tender win can generate an investment. I'll give a few examples to the Tribunal.

Nordzucker v Poland, the tribunal held that investments in the making qualified for the protection under the BIT. Lemire v Ukraine, the Tribunal relied on the provisions of the treaty protecting the expansion of the investment, just like the present BIT.

Bosca v Lithuania. The Tribunal held that becoming a tender winner and negotiating the SPA can be likened to making a contract with the grant to the tribunal of the jurisdiction.

In the present case, despite the Claimant being illegally prevented from signing the contract, there is no doubt that the Claimant gained a specific well-defined and protected right to supply passport blanks even if such right was preceded by signing. This Wednesday the Tribunal will get to hear from the Claimant's expert, Alenkina, who will explain the

correctness of the statement as a matter of Kyrgyz law.

Now, of course, the contemporaneous documents show that the GKNB has recognised that but for their intervention, the State was ready to sign the contract. I will read it again:

"At the end of February 2019 the GRS official intended to sign a contract with the winner of the tender for the supply of new generation electronic passports. However, the initiation of the criminal case by the Kyrgyz Republic law enforcement authorities ruined the parties' plans."

The plans were there, but they ruined them to conclude the contract.

Respondent tries to suggest that the terms of the contract were not yet agreed upon, which is simply not true. If the Tribunal will look into Professor Alenkina's report, which will be presented to the Tribunal this Wednesday, she has analysed this and she said indeed in theory the procuring company, the State, could change the terms of the contract if that was provided in the special terms of the tender. She analysed the special terms and she said that under these circumstances the State did not have that right.

She says:

"Thus neither the legislation nor the terms of the

tender provide for the stage of negotiations after the announcement of the winner. Such negotiations are not compatible with the norms of the legislation."

This is also confirmed by the facts of the case. After announcement of the result of the 2018 tender, Garsu Pasaulis and GRS never intended to renegotiate the contract. On 21 February 2019, the GRS urged Garsu Pasaulis to fly to the Kyrgyz Republic to sign the e-passports contract in person. By that time both parties have expressed their willingness to contract. Garsu Pasaulis planned their travel arrangements to the Kyrgyz Republic to sign the e-passports contract. That did not happen only because of the GKNB.

All of this is to show that every investment taken separately and all investments taken together form a solid basis for the Tribunal's jurisdiction to hear this case.

Now we have to address the more controversial part of the jurisdiction, and that is whether the investments were made in accordance with the Kyrgyz legislation.

It is common ground between the parties that Claimant's investments must be made in accordance with the Kyrgyz legislation. The relevance of this requirement, however, is limited. There seems to be no dispute that Claimant's investments, first of all into

the stamps segments, second of all investments in a local company, third of all, investments of know-how, fourth, investments of goodwill and reputation, were all made in accordance with the Kyrgyz law. All of these constitute a protected investment in accordance with the BIT.

The dispute between the parties refers only to whether the win in the 2018 tender, coupled with the exchange of willingness and readiness to contract, constitute a protected investment in accordance with the Kyrgyz law. This Wednesday the Tribunal will hear extensive presentations by both experts on whether a tender win constitutes a protected right with economic value under the Kyrgyz law. So I will not steal the march on the experts.

But let's talk about the false accusations by the Kyrgyz Republic.

Corruption allegations have sadly become somewhat of a knee-jerk reaction by the states who have no credible defence. States have repeatedly, although almost never successfully, used the corruption defence. Such defence is attractive because it automatically tarnishes the investor's credibility in the eyes of the Tribunal. Respondent recently had a very questionable win in the Belokon case which, by the looks of it, it tries to

replicate here. It liked the idea that it can rely on its own corruption. They are not alleging, there was never an allegation, official allegation that Garsu Pasaulis was corrupt. There was only allegations that their own people were corrupt. But they are using that against the investor.

Now, as my colleague already said, when Respondent first made the baseless accusation against the Claimant concerning corruption, Claimant immediately asked Respondent to produce all evidence of corruption. And the Respondent of course actively objected to the production of such documents. They said they are covered by the special political or institutional sensitivity, requested documents are covered by secrecy of investigation and cannot be produced.

Having failed to produce the evidence, Respondent with its Rejoinder, when the Claimant no longer had an opportunity to respond, submitted all of these new evidence. Claimant never saw these. The first time they were introduced into the case file was with the Rejoinder. They said during the document production "We have nothing to produce", or "They are so secret, we cannot produce them". Afterwards, we have all of these files.

We believe that in the circumstances the Tribunal

must be very sceptical of the evidence submitted in disregard of the Tribunal's procedural order and the Claimant must be given a full opportunity to comment on this new evidence.

The starting point for the assessment of this evidence is of course the Respondent's own admission that the Republic might not today have enough evidence at its disposal to formally charge the Claimant or its officers with corruption.

Respondent to this day, more than four years after the relevant events, does not have enough to suspect -- we are not talking about convicting here, they do not have enough evidence to suspect the Claimant. And this is of course a very convenient position for the Respondent. They never began an investigation. So the Claimant had nothing to refute. There are no proceedings where the Claimant participates in the Kyrgyz Republic. They are not asked to produce evidence into the cases.

However, the Claimant, by the looks of it, has already been convicted by the Respondent. Respondent, I'm sure, will talk about the red flags today and they will say there are these and these red flags. Well, the Claimant did not have an opportunity to refute them properly; and that of course constitutes one of the

breaches of the BIT.

This is not how the game is played.

None of the witnesses agreed to give witness statements in this arbitration. Respondent is clearly afraid that their fabricated charges will collapse under cross-examination. Which of course they would.

Members of the Tribunal, look at this beautiful line-up. We have almost 10 people on the other side. Clearly they had the means to bring people in. If they did not have the means, there's Zoom, there is Teams. One of the Claimant's witnesses is participating via the Zoom. How much does it cost? Nothing. You have to rent a room. So why is no one willing to testify to the facts that they are alleging? This is the question that I will leave with the Tribunal.

Now, as for the quality of their allegations, let's have a look at some of the evidence that we have.

Now, of course, as my colleague already said, it is well-documented that the GKNB has systematically operated on the basis of false confessions, and we have a beautiful example to the Tribunal today.

Now, what the Tribunal sees, and we will produce the translation hereof, but we wanted to use the originals just to prove the fact. These are two witnesses testifying on two separate occasions in front of the

GKNB. Both of these witnesses of course are testifying without lawyers.

At the bottom the Tribunal will see the witness statement taken five days later than the first witness statement. The highlighted parts are those that coincide between the answers of the two witnesses. The non-highlighted parts were added by the GKNB to make sure that the witness statements are not identical.

Can we go to the next slide, please.

It continues. Same two witnesses. Can the Tribunal believe the GKNB's luck? They collected perfect testimonies from two different witnesses, both without lawyers, both witnesses thinking the same way, the way that the GKNB wanted them to. Let's look at another example.

Now we have same things with -- no, I think that's the same people. Do we have another one? Yes, we have another one as well.

So what we are saying is that the question is: why would the GKNB bother to ask for the signatures of these people who are afraid to show up for the cross-examination? They could sign the statements themselves, as the authors of these statements.

So they are telling the Tribunal that the Claimant has no reason to cross-examine the witnesses. Well,

clearly I would beg to differ.

Let's look at what the Claimant's witness Marat Sagyndykov said about the testimony that he gave to the GKNB. He said the first time he arrived GKNB has refused to take any minutes of the first questioning. They have refused to reflect in the minutes any negative testimony concerning Azamat Bekenov, their main witness. We will talk about that in a second. GKNB deleted all evidence from Mr Sagyndykov's phone about Azamat's threats.

He was pressured to give false testimony against the Claimant. All of that is on the record.

Now let's quickly have a look at the two of their top witnesses, the two that they rely on. Nobody else says anything about Garsu Pasaulis, but there are two of them, one of them sort of says something, the other one really says something.

So let's begin with Talant Abdullayev, the person who says that he received 20,000 but he doesn't say who the 20,000 came from and he doesn't blame Garsu Pasaulis.

Now, Talant Abdullayev has cut a deal to cooperate with the GKNB and he agreed to give false testimony against Garsu Pasaulis. A few very telling facts are in front of the Tribunal.

First of all, once the Claimant won its administrative case. So the Tribunal is aware that after the tender was cancelled, there was the administrative case. First instance the Claimant lost, the second instance, Claimant won. Right after that win, a YouTube video of the questioning of Talant Abdullayev was leaked, and the question is, has the Tribunal ever seen the service publishing the questioning of the ongoing investigation on YouTube? Obviously this goes against all the rules of the secrecy of investigation which they refer to.

Now, their, of course, justification is the best. They say that the YouTube video was published anonymously and not by the GKNB. Who else had access to the video of the interrogation? Are they saying that the witness itself wanted to spread the word about his confession, or that maybe his lawyers stole the video from the GKNB and published it, or somebody else random people just had the video? Obviously not. This was systematic attack against the Claimant who just won the court case and they needed a pressure point on the judges to say: this is not a good company, you should not rule in their favour. And that happened. The Supreme Court quickly reversed the win of Garsu Pasaulis.

Let's look at the contents of the confession of Talant Abdullayev. Here is what he said:

"Do you know the ways in which Garsu Pasaulis was assisted in the legal ways?"

Obviously all the questions are quite leading. And he says:

"I don't know the details. It was never brought during the meetings."

I will leave the text with the Tribunal. I will not read too much into it.

And then they ask:

"Please clarify why Alina Shaikova gave you and Mr Dogoev $20,000 each in January 2019?"

He says:

"Before and after handing over the money there were no requests ... I was not asked to do anything. I thought this was a gift. There was no condition ever attached to this money."

And this is him talking in cooperation. He agreed to cooperate. This is reflected in the sentencing judgment.

The more interesting fact about the sentencing judgment is that he says he received 20,000. And this is where it gets interesting. In the sentencing decision, the court says that Talant Abdullayev had to

return to the State $1,700 and had to pay a fine of 3,000 euros. No jail time, no other sanction. So essentially, if there was a 20,000 bribe, Talant would have made a profit of around 15,000, because he had to return 1,700 and he had to pay 3,000, but according to his false testimony, he received 20,000. Could the Tribunal believe that a person would not only fail to get jail time, but would be allowed to keep a bribe? Clearly not.

And this shows the exact basis for our request. We want to cross-examine these people. They are saying: no, we have this under control. We have perfect testimonies, you can refer to those.

Let's look at their main man, Azamat Bekenov, their top of the hill, their man on whose testimony everything rests.

Now, he is the one who promised that Garsu Pasaulis would get a criminal case if they would not pay him. For that please refer to the witness statement of Marat Sagyndykov, paragraphs 24 and 25.

Azamat Bekenov was continuously protected by the GKNB of all charges of corruption. He was never facing any allegations.

Together with their Reply, for the first time the Respondent produced his first witness testimony.

Claimant never had a chance to comment on it, and the Statement of Reply, but we want to do so now.

When we look into his first witness testimony, which was given if February 2019, and this was fresh, so the events were very fresh, and this is his first testimony, he testifies under oath that he was a representative of the main competitor of Garsu Pasaulis since 2015. He says:

"I have represented Mühlbauer since 2015."

He also says that he prepared the complaint against Garsu Pasaulis. He wanted them out. His interest was to expel the Claimant from the tender.

So he was very interested in saying that they offered something. In neither of his witness statements does he say that there's evidence of the actual bribe, but he says: I heard them offering something to the officials. That is the basis for their allegations against the Claimant, that Azamat Bekenov, the main competitor of the Claimant, says: I heard them offering bribes.

Let's look into some of the other issues that he has said in his witness statement. He says: I as Mühlbauer's representative, was asked to give bribes so that we could win the tender. But he's not saying that Garsu Pasaulis was the one asking for bribes. He says

that Mühlbauer was approached by someone who he says he didn't know, he got this mysterious phone call and the mysterious phone call said, unless you get 20,000 -- by the way, 20,000 -- the creativity of GKNB must have been exhausted because 20,000 is the one which is circling around. But he says they asked for 20,000 in order for Mühlbauer to win, but he's not blaming -- in the first witness statement he's not blaming Garsu Pasaulis. That only occurred a month later when he changed his witness statement completely.

But more importantly, Azamat Bekenov says that various participants, including Mühlbauer, received requests in 2017 and in 2018 to comment on the technical specifications of the passports. This tribunal will remember that the main red flag that they wave around is that the Claimant has commented on the technical specifications of passports before the tender was released. Here is their main man saying that every contestant was asked. Why? Because the Republic did not know what the new generation passports are. So they asked around, "What do you think should be the requirements for the passports?", and everybody commented it. So what the Respondent does not tell the Tribunal is that many of the participants, and potential participants, were asked to comment on the

technical specifications.

The Respondent does not suggest that the Claimant's comments were in Claimant's favour. Claimant did give comments on specifications. They are not even suggesting that the Claimant was rigging the tender in its favour.

What they also are not telling is that the Claimant's comments were somehow accepted. They were not. Most of the Claimant's comments, yes, they were there, but they were not accepted.

So if Claimant was the corrupt company, obviously the tender would be clearly set in favour of the Claimant, and all of their comments would be taken on board.

And this is exactly why the Respondent never initiated any official investigation against the Claimant and its employees: it has zero credible evidence. The allegations are based on the words of a person who had directly benefited from the Claimant's exclusion from the tender, Mühlbauer's representatives.

As we know, Mühlbauer won the tender in the end and Azamat Bekenov, the same person, he was hired to oversee the new tender, as an independent person, I guess.

To sum up, the Respondent does not believe it had a case. They saw no reason to even start the

investigation -- not to convict, to even start the investigation. They now want this Tribunal to rely on the witnesses who do not agree to appear before the Tribunal for cross-examinations and to draw very harsh conclusions based on the clearly forced and replicated confessions. Claimant of course objects. The standard applicable to the corruption allegations is clear and convincing evidence. We have talked about that a lot in our Reply. The standard is clearly not reached and the Respondent cannot be allowed to benefit from the concocted allegations. The Tribunal must not assist the GKNB to build a case against the investor which the GKNB, the case, they don't have.

Submissions by MR RIMANTAS

MR DAUJOTAS: Mr Chairman, Members of the Tribunal, I will continue with the breach of the BIT, and I will try to be as brief as possible. And we want to demonstrate here in this section that the Kyrgyz Republic's unlawful conduct in carrying out and cancelling the 2018 tender, taking away also the e-passports contract, smearing Garsu Pasaulis, falsely accusing Garsu Pasaulis of grave crimes and severely damaging Garsu Pasaulis' reputation, violated the protections and guarantees as set out in articles 2 and 3 and 4 of the BIT.

We know the Tribunal of course is well vested in and

extensive experience in applying the international investor protection standards and principles similar to the ones found in the agreement. In addition, the Claimant, we believe, has extensively argued in its written submissions its position on the breaches of the agreement and of course Claimant fully stands by this position already submitted. Therefore we will only summarise the main arguments in the breach of the argument that have occurred and warrant declaring the Kyrgyz Republic did breach the agreement on multiple occasions.

So applying the standards established by Lemire and PCEG cases, the Tribunal will be in a position to clearly conclude the 2018 tender process and the so-called cancellation thereof as irregular, arbitrary and in the breach of the legal provisions.

While considering the breach of the agreement in this case, there are three key factors we believe are important.

Garsu Pasaulis was already an investor in the Kyrgyz Republic since 2013 when it won the excise stamp contract, established a local company and provided know-how and training to the Kyrgyz Republic, of course, contributed significantly to the digitalisation of the e-government systems and already from 2013

Garsu Pasaulis and its investments were protected by agreement.

Thus even considering the breach of Garsu Pasaulis' rights without any reference to the e-passports contract, Garsu Pasaulis' rights were breached by them damaging its reputation.

As we extensively showed in our written statements today, and in our opening, the 2018 tender process and cancellation were clearly tainted by interferences from the Kyrgyz authorities and political organs, in particular the GKNB, and of course Garsu Pasaulis was deprived of its economic right in illegal, irregular and arbitrary way without ensuring due process.

The smear campaign itself executed against Garsu Pasaulis has destroyed the reputation and caused significant damages. The smear campaign which in itself amounts to a breach in fair and equitable treatment was orchestrated by the Kyrgyz authorities who themselves had private interests for personal gain. This was very well-documented.

So of course the Tribunal can analyse these events separately and confirm the breach of the agreement on every separate occasion and of course the events and the 2018 tender process ended up mutually reinforcing each other against Garsu Pasaulis. Thus, the Tribunal must

also assess the totality of the circumstances which will also result in an award against the State.

So all manifestations of abuse of authority by the administrative negligence, false allegations, inconsistent legal acts lead to a conclusion that the fair and equitable treatment for security and protection standards and prohibition of expropriation have been breached by the Kyrgyz Republic.

And of course these breaches caused significant damages and entail the Kyrgyz Republic's international liability.

Now, the breach of the Kyrgyz law is also relevant for the analysis of the breach of the agreement. As already evidenced, the GKNB and the Respondent itself admitted that the e-passports contract was awarded to Garsu Pasaulis but was not signed due to GKNB's intervention. That is why there's also no legal justification under the Kyrgyz law for this expropriatory action.

We saw, as Kyrgyz law is concerned, there was absolutely no basis to deprive Garsu Pasaulis of its right to sign and execute the e-passports contract under the Kyrgyz law, not even taking into account the actions of the GKNB Respondent has formally breached the Kyrgyz law on at least two occasions: first, by announcing that

a tender or Garsu Pasaulis' bid has expired, and the second by adopting GRS order on cancellation of the tender on 4 February 2020.

As already explained, the legal grounds for this cancellation or recognition as invalid or expiration of the tender, they were not of course legally and factually appropriate.

Breach of its own law by the Kyrgyz Republic for the sole purpose of exclusion of Garsu Pasaulis in turn proves arbitrary treatment and breach of fair and equitable treatment under the agreement.

Now, as far as the FET standard is concerned, of course we will not go into very detail because the Tribunal is very well vested that it shall be interpreted in good faith and in accordance with the ordinary meaning.

The Claimant has submitted various authorities on international jurisprudence regarding interpretation and application of the FET standard in certain submissions. However, it is important to note that the State's responsibility extends to actions perpetrated by its organs and Respondent itself accepts that it undertook the FET obligation towards the Claimant.

Of course, based on international accepted interpretation of the FET standard, Claimant was

entitled to expect that Kyrgyz regulatory system and actions of its institutions would be consistent, transparent, fair, reasonable and enforced without any arbitrary or discriminatory decisions. As it was already explained, that was not the case.

As the Lemire tribunal pronounced, blatant disregard of applicable tender rules, distorting fair competition among tender participants, necessarily constitutes violation of the FET standard. Therefore, as already explained today, we submit that the FET standard was breached in the following instances: by the arbitrary GKNB investigation; by the lack of due process; by the falsified media campaign which in turn resulted in tarnished business reputation; by the illegal steps of the GRS; and by excluding the Claimant from further tenders and investments in the Kyrgyz Republic.

So Garsu Pasaulis' situation, like in the Lemire case, is one in which weakness in the legal procedure and lack of transparency in the tender resulted in arbitrary treatment.

Now, turning to the full protection and security, it is widely understood that this treatment, the treatment is not fair and equitable. That is not fair and equitable of course constitutes an absence of full protection and security.

International law has interpreted this due diligence to impose an objective standard of diligence and thus require the state to afford a degree of protection and security that should be legitimately expected by the secure and reasonably well-organised modern state.

Now, Respondent alleged that Claimant could not expect safety of its investment given the state of affairs in the Kyrgyz Republic. Claimant of course objects to such notion. There can be no doubt that the harassment and false accusations in the present case fall under the notion of full protection and security. Indeed, rather than protecting Garsu Pasaulis, the Kyrgyz Republic took all measures available to harm and threaten Garsu Pasaulis. Lack of good governance and failure of the rule of law do not justify the Kyrgyz Republic's repeated attacks on Garsu Pasaulis and its investments.

As already explained, we submit that the full protection and security standard was breached by the arbitrary treatment and by the GKNB, lack of due process, and by the illegal steps of the GRS.

Now, denial of justice. Claimant of course further submits that the Kyrgyz Republic has denied justice to Garsu Pasaulis. International law has long accepted the responsibility of the states for the actions of their

own law enforcement systems, especially where those actions involve judicial impropriety and malfunctions in the administration of justice. The substantive denial of justice may be found in instances of gross misapplication law, as we have in our case, but most often denial of justice will be related to procedural inadequacies, which will also have in our case.

Denial of justice may also concern criminal proceedings, which we also have in our case.

The Tribunal in Tokios Tokelés highlighted violations of basic principles of conduct in criminal proceedings as a manifestation of denial of justice.

And denial of justice may also concern local administrative proceedings, which we also have here, and this was notable in the Metalclad.

So in the present case, claimant says Respondent and its institutions have malfunctioned in administration of justice. As explained, accused the Claimant of very serious crimes such as bribes and corruption, disseminated false information, while in reality they never had and still does not have any actual proof of the alleged wrongdoings.

The investigation itself was clearly an example of judicial impropriety and malfunction of administration and justice. And of course no proper administrative

procedures were followed during the erroneous declarations of expiration of the bid or post fact formalisation of the fate of the tender.

Therefore, considering all the flaws in administration of justice, we believe that these are certainly arbitrary and do display wilful disregard of the due process by the Respondent.

Now turning to expropriation. In Article 4 of the agreement the Kyrgyz Republic guaranteed not to expropriate investments of Garsu Pasaulis or to apply measures similar and leading to the similar consequences.

As drafted, Article 4 of the agreement does not limit the expropriatory measures to a particular type of category for a state organ, not to a specific type of measure such as only administrative or only governmental, the Article 4 of course offers the broadest coverage possible.

With regard to the guarantee against expropriation, it was Garsu Pasaulis' freestanding right to execute the e-passports contract for a certain monetary amount, for a specific period of time, with a right to engage in economic activities under the contract that formed the subject of the Kyrgyz illegal actions.

In the specific circumstances of Garsu Pasaulis, in

the final stage of its investment operation, as a winning bidder, Garsu Pasaulis has acquired by law and by fact a right which the Government could no longer withdraw or cancel without violating Garsu Pasaulis' rights.

So we submit that the e-passport contract awarded by the winning of the tender was indirectly expropriated by the Kyrgyz Republic and it is the taking of this particular right to which the requirements of Article 4 must be applied.

Arbitral tribunals have repeatedly recognised and applied the principle that not only rights in rem rights may be expropriated but also intangible rights, including contractual rights. On the same note, the failure to recognise the investor's entitlement is a measure equivalent to expropriation. There is no difference between the cancellation of a right and non-recognition of that right as the investor in both cases is deprived of the economic right to which he is entitled.

Therefore, when considering what specific action characterises as an expropriatory act, we submit that it is GKNB's opening of the criminal investigation into the tender on 22 February 2019. This specific action of the GKNB commenced the attack on the Claimant that has

subsequently given way to further illegal acts such as GRS announcement of the expiration of the tender and later the declaring it as failed.

Now, turning to reputation, and of course while considering breaches of the agreement, equally egregious are the actions of the Kyrgyz Republic, as have destructive effects on the long established reputation of Garsu Pasaulis.

As already extensively argued, Kyrgyz Republic has severe damaged Garsu Pasaulis in very specific area of e-government services and security printing. It is undisputed that the agreement expressly includes business reputation in the list of assets that constitute an investment.

Of course the effect of the Kyrgyz Republic's allegations and conduct also had a direct effect on Garsu Pasaulis' entire business operations, including its commercial printing activities, as the witness Mieliauskas also confirmed.

So of course Respondent has completely failed to prove that the tender was created or organised in Claimant's favour. On the contrary, the record leaves no doubt that the tender took place without any of the Claimant's influence.

Now, the Respondent seeks to brush off any liability

for the fabricated accusations it made, suggesting it never intended for these damages to occur. Being ignorant of the consequences of one's actions is not a valid excuse, and the Respondent must pick up the tab for the damages it caused.

Now let's see how big is the tab.

So due to the falsified allegations, of course Garsu Pasaulis lost not only the e-passports contract itself, but also its longstanding and valuable contracts and income and lost part of its own market. As explained by Mieliauskas, this of course had a negative -- Kyrgyz scandal had a negative effect and a snowball effect on Garsu Pasaulis' international reputation, causing Garsu Pasaulis major and significant losses. As GKNB disseminated allegations in public, Garsu Pasaulis has immediately started to receive a wave of questions and enquiries from its international partners, major clients, certification agencies, public institutions and of course commercial banks. Immediately major banks with whom Garsu Pasaulis of course worked for many tens of years requested Garsu Pasaulis to close its accounts and refused to provide credit services or to issue guarantees, which are of course specifically needed for any public tender around the world.

Of course, Garsu Pasaulis suffers from this until today.

As for applicable standards, Respondent does not appear to disagree with Claimant's basic summary of damages standards under international law, as explained in Claimant's written submissions. Of course, the Claimant does not agree with Respondent's suggestion to apply national Kyrgyz law, for example provisions of the tender documentation, to argue that Claimant is not subject to compensation.

In contrast, the Tribunal must be very well aware that international and not the Kyrgyz law national standard, Chorzów Factory, is intended to wipe out all of the consequences of the illegal act and re-establish the situation which would in all probability have existed if that act had not been committed. This is the customary international law standard that should be applied in this case of unlawful expropriation and other breaches of international protections.

So in the present case, "but for the termination" is not at all complex or speculative. Had the Kyrgyz Republic not expropriated the e-passports contract from Garsu Pasaulis in arbitrary fashion and in breach of its own law, Garsu Pasaulis would have earned the very specific and concrete profit from the

e-passports contract, which would have in turn been further invested by Garsu Pasaulis. This was calculated by Dr Banyte, the Claimant's damages expert.

Second, had the Kyrgyz Republic not disseminated false information and initiated arbitrary investigation, publicly claiming that Garsu Pasaulis was sort of rigged and based on bribes, Garsu Pasaulis would have not lost its profitable contracts with long-term clients, and of course profit from those contracts. And Garsu Pasaulis would not have lost its international business reputation and accordingly would not have lost its market share and income as calculated by our damages expert.

What one must conclude from the evidence in this arbitration is that if Respondent had acted lawfully, the e-passports contract would have been signed by the parties and successfully executed. If the Respondent had acted unlawfully, Garsu Pasaulis would have maintained its business reputation and the most profitable clients.

Now, of course, Claimant has established its losses with certainty. Dr Banyte, Claimant's damages expert, was able to calculate Garsu Pasaulis' losses with extremely high precision. We will hear from her on Thursday, but in any case her job was not a complex

exercise.

For the e-passports contract which was expropriated, these losses are calculated by summing up all direct losses and adding the estimated indirect losses. Direct losses are expenses incurred by Garsu Pasaulis in the tender. Indirect losses are the free cash flow or the profit of the e-passports contract which is calculated based on the information about the planned income from the e-passports contract costs associated thereof and Garsu Pasaulis' usual profit margins.

It is not a complex exercise since the projected values and quantities were clear; they were already established in the tender documentation and Garsu Pasaulis' bid. The costs were also clear. There was no room for any speculation to establish Garsu Pasaulis' losses due to the taking of the e-passports contract.

Now for the long-term contracts that were cancelled due to the Kyrgyz accusations, calculation of these losses is also rather straightforward. As with the e-passports contract losses, these losses too can be calculated with very high precision applying the DCF method, the usual method applied in international arbitrations.

The third part of the Claimant's losses claimed in

this arbitration are the losses to Garsu Pasaulis' reputation. The basis of the calculation of these losses is the company's loss of income above the market trend. In accordance with the industry and international valuation standards, the costs were calculated using historical average data. So basically, what Garsu Pasaulis could have earned had its reputation been the same before the Kyrgyz scandal.

Now the valuation date, 31 December 2020, we submit it is appropriate date, although the Respondent's expert suggested calculating the loss after the incident. This would mean that all of the losses should be forecasted and then discounted. Such an approach may be possible, but in this specific case this is irrational, simply because there are unknown facts that did not need to be forecasted.

All in all, and per the explained in Claimant's submission, after thorough calculations and recalculations, also taking Malyugina's, Respondent's expert's critique, we made the major adjustments to the calculations and Dr Banyte found in summary that Claimant is entitled to damages of 16,740,000 euros under the agreement and general principles of international law.

Now, also a few words on the Respondent's main

critique due to alleged lack of supporting evidentiary evidence, documentary evidence, in particular when it comes to the long-term contracts terminated.

In addition, the Respondent provides its own speculations of why could the said contracts could have been terminated.

So now let's look into this in more detail for a moment.

So first of all, Claimant invites the Tribunal to simply look at the timeline of the relevant events, which clearly shows that all of the long-term terminated contracts, four of those we have here, that were analysed in this arbitration were concluded long before the Kyrgyz scandal. For example, the DALO or the Mozambique contract was concluded and successfully performed from 2017 until 12 April 2019. Again, the Baltiyskaya Tabachnaya Fabrika contract also was successfully performed since 2003, 20 years before.

So differently than suggested by the Respondent and in negative media regarding Semlex, Garsu Pasaulis' shareholder, did not have any impact towards those contracts. Naturally it could not have an impact because these contracts were concluded and performed by Garsu Pasaulis, not Semlex, and the negative media articles around that concerned Semlex, not

Garsu Pasaulis, and if negative media articles about Semlex would have been relevant to Garsu Pasaulis' clients, they would have terminated these contracts after negative media about Semlex has appeared, long before the Kyrgyz scandal.

Most importantly, it can be observed that the four main long-term contracts were actually terminated just after the Kyrgyz scandal erupted and the GKNB's accusations were disseminated by the journalists.

Now let's look again to the evidentiary record. If one takes the Swiss contract, for example, BBL, cites witness testimony, the relevant timing, the record in this arbitration proves that the Swiss media and the politicians started to question if Switzerland can work with the Claimant only after the Kyrgyz scandal erupted. There is no proper and no other explanation why the Swiss authorities and the Swiss Government immediately terminated their cooperation and refused to order any further products from Claimant.

If Semlex, for whatever reason, would have been the cause, Swiss contract would have been terminated a long time ago.

Similarly, when one takes Carlsberg contract, besides witness testimony, the written communication, which is in the record in this arbitration and relevant

timing, it is clear that Carlsberg refused to work with the Claimant exactly after the news started roll-out about the allegations in the Kyrgyz Republic. Written communication with Carlsberg proves this. Respondent also enquired Carlsberg itself when extensive enquiry indicating reasons of the Kyrgyz scandal damages sought by the Claimant due to its termination of the Kyrgyz -- of the Carlsberg contract.

Now, of course, Respondent's enquiries sounds like more like a legal threats from Garsu Pasaulis to Carlsberg, instead of enquiries simply asking to confirm some facts by the Respondent. However, unfortunately Carlsberg stood firm and never denied the fact that Carlsberg's contract was actually terminated after the Kyrgyz scandal. Carlsberg could have easily denied this, but chose not deny Garsu Pasaulis' and its witness' submissions. And rightly so.

Identical inquiry in Reply with no denial that Kyrgyz scandal was received from the Kaliningrad tobacco factory.

So the Tribunal could easily establish that the replies received by the Respondents sound more like a confirmation of the Claimant's case, rather than Respondent's speculations.

Now, turning to the interest. Claimant is entitled

to the award of interest on the damages described, in order to fully compensate it for the Kyrgyz wrongful breach of its domestic and international law. Where damages accrued, the principle of full reparations is central. It means that the interest should remedy the concrete loss incurred by the injured party because of the delayed payment. As already explained, in Claimant's submissions and by contrast Respondent's suggestion, compound interest is generally accepted and awarded in investment arbitration tribunals, instead of simple interest.

On that point it should be noted that Respondent still did not pay any of its share of advance costs on this arbitration and very likely will not voluntarily comply with the potential arbitration award. Therefore, compound interest is a must in this case to avoid such further disruptive practices of the Respondent.

22 February again is the relevant date of the breach, because on that date Claimant was already reconfirmed as a winner of the tender and that date the Kyrgyz Republic officially started all the subsequent actions, investigations, smear campaign, etc.

That led of course to the breach of the agreement, including expropriation of e-passports contract.

For the specific performance, of course, this is as

important as declaration of the breach and the award on damages. As explained on many occasions, the evidentiary record in this arbitration, or rather lack of it, proves without doubt that Claimant has never involved in any alleged corruption in the context of 2018 tender; the evidentiary record proves the opposite. It was GKNB that fabricated false accusations, to exclude Claimant from the 2018 tender, to take away the e-passports contract.

The Kyrgyz Republic should be stopped from making false, unfounded and misleading statements to the media and should be ordered to deny all false statements, accusations and allegations it made about Garsu Pasaulis. This would of course help a lot to Garsu Pasaulis and would help to vindicate its name internationally.

Now, turning to the last point, the request for relief, the Claimant's Statement of Relief stands as presented in the Claimant's Statement of Reply.

And of course we thank the Tribunal for its patience and consideration and we of course appreciate the tough job of the court reporters, and thank you. That concludes Claimant's opening statement.

THE PRESIDENT: Thank you very much. We are running ahead of time, which is always a nice start. But do my

co-arbitrators have any questions? Professor Vilkova any questions at this point?

I have some questions for clarification purposes to Claimant. So if you have any questions, Ian? Do you have any questions yourself?

Questions from the Tribunal

MR LAIRD: Yes.

For Claimant, just a few clarifications?

In slide number 37 you reference paragraph 31 of Mr Lukoševicius's witness statement. He's stated about halfway down, "We believe that Garsu Pasaulis' conflict with Kyrgyz Republic is the reason for that" and that he was referring to here in the previous sentence:

"The bid has been postponed for more than 12 times by the Kyrgyz Republic."

And #that's in a reference to the excise stamp announcement in the autumn of 2020. I guess we would ask him when he presents his testimony, but what do you understand since you brought it up today is the basis for that belief?

MR DAUJOTAS: Of course we have discussed this with Lukoševicius' witness statement, and of course he will tell it himself, but as we understand it as Claimant, that the Claimant Garsu Pasaulis had invested in the stamps, excise stamps market in Kyrgyz Republic quite

successfully, for more like eight years, as I recall, and of course they expected to do so in the upcoming years as well. And of course they had the necessary know-how and everything already set up a long time ago, and of course that's why they could provide the best bid proposal, and, as we believe that, the Claimant believes they should have won again this excise stamps contract again in 2020. And of course it seemed strange because this -- after Garsu Pasaulis submitted its bid, this tender was abruptly cancelled without any explanation and we believe this of course was the cause of the security scandal, that Garsu Pasaulis and Kyrgyz Republic no longer wanted to cooperate and to have Garsu Pasaulis in the country and for them to work on the excise stamps contract.

Of course we believe that the postponement and cancellation of the 2020 tender was actually the cause of this arbitration. The initiation of actions by Garsu Pasaulis against the Kyrgyz Republic.

MR LAIRD: Okay, thank you. I may follow up with the witness on that issue in the next few days.

Just a second question. This relates to slide 53. You reference exhibit C-029. And this is the email, as you recall, from Claimant to the SRS in respect of the signing, I believe, and there's references here to

a bank guarantee, but in the second line it says:

"We would like to ask you to send us the draft agreement so that we can co-ordinate it with our lawyers."

What is the explanation for the reference to a draft agreement? As I understand your arguments, you are saying it was effectively a complete contract. What was left to discuss? I'm not entirely clear on that point.

MR PARCHAJEV: Of course. So, Mr Arbitrator, our recollection of the events in this respect is that at no point in time was there any intent expressed by any of the parties to renegotiate the terms. However, the Tribunal must be mindful of the fact that in the beginning of February 2019 two complaints were lodged and were considered. The Claimant, before flying to the Kyrgyz Republic, wanted to make sure that nothing had changed in the process of that consideration of complaints and whatever they wanted to arrive to the Kyrgyz Republic and sign the contract.

You will see that the evidence is in the file that the lawyers of the Claimant had already vetted the contract in the beginning of February. All they wanted to do is to make sure that when they arrive in Kyrgyzstan, that they don't waste the trip, and that everything is in place and they can sign it.

MR LAIRD: Thank you for that. Just a follow-up question on that. I understand -- and we will get to this with the experts -- that one of the experts, I believe Claimant's expert, mentions that there was a question, I think, of the volume of the passports could be decreased or increased, and that this was an open term to be negotiated. Is that the case?

MR PARCHAJEV: No, Mr Laird, that's not the case at all.

As our expert Alenkina says, that could be the case if the special conditions of the tender would allow it. In the present case, having studied those conditions, she makes the conclusion that that would be not possible in the present case. Also, to say that the volume was somehow unknown is simply incorrect. The Claimant had to give a price, and the price was in millions. That was clearly not a price for one unit. It was a price for a specific amount of blanks.

So our answer is when they have made the bid, they have made the bid on the specific amount and that amount was set. The fact that there is a potential possibility in law to change that volume, that only exists if the special conditions allow for it.

But obviously the experts will talk to that.

MR LAIRD: Thanks. That gives us a heads up on that issue.

With regard to slide 84 and 157, there's reference

to this YouTube video that was published on the internet. I'll ask the same question of the Respondent during the question period, but what is your understanding of how that was released? Considering it was an official interview that was being recorded on government equipment, was someone else recording the interview that they were aware of? Is there an explanation that you can give?

MR DAUJOTAS: From the Claimant's side, of course all we know is that it was published. Of course, we should presume, a reasonable person would presume, that this was actually published by the GKNB, because it was GKNB's investigation and it was GKNB who did the interview. But for whatever reason, GKNB did not sort of publish it on its official sources, but again this video was sort of published anonymously, by someone, we don't know by whom, but of course objectively one can expect that it was the GKNB. We have no other explanation for that.

MR LAIRD: I think that's my questions for the time being. Thank you.

THE PRESIDENT: Thank you. I have a couple of questions as well.

If we start with your last page in your presentation, the Request for Relief, item 1, you want

us to declare that the Republic has breached its obligations under the terms of the agreement. I would like you to specify exactly which articles you say have been breached by the Republic. And I think you have already articulated that in the text, but we need it in the Request for Relief, very specific relief.

The same comment really relates to item 5 of your Request for Relief, that the Republic should publicly and promptly deny. I mean, I'm not sure what you want us to do. If you want us to say exactly those words in the award, that's fine. But if you want us to order them to say something specific, I don't know. But if that is what you mean, you have to tell us what those specific words are or should be.

MR DAUJOTAS: Understood.

THE PRESIDENT: And item 6 as well. I mean, at least a tribunal in this part of the world will never grant you that -- I mean, what do you mean? What kind of relief do you really want? If you really want something in addition to the other five points, you have to tell us very specifically.

Otherwise I suggest you withdraw that. Because if you don't specify it, you might as well withdraw it. It doesn't change anything for you. But it does change a lot for us.

MR DAUJOTAS: Understood. Understood on behalf of the Claimant. So I guess for the record, we will come back with this in writing, maybe that would be the best way to go.

THE PRESIDENT: Going to slide 146 of your presentation, we have a list of documents submitted by Respondent. Do you see that? Did I understand your comments such that you want an opportunity to comment on those documents, and if the answer is yes, is that opportunity to be under the hearing, or after the hearing, or what is your view on that?

MR PARCHAJEV: What we meant is that we wanted to give comments during our opening statements which we have given about some of the let's say interesting developments and how those were similar to one another. And those were not expressed in our Reply, but just because we didn't have these documents. That's all what we meant.

THE PRESIDENT: So you have now commented on those?

MR PARCHAJEV: Yes.

THE PRESIDENT: Very good.

My final question relates to a company called Semlex. We have seen references to it in your submissions from both sides, and today also in some of your slides, but could you explain to me anyway what the

relationship is or was, if any, between Semlex and Garsu Pasaulis?

MR DAUJOTAS: Yes, Mr Chairman. Of course the relationship was, I think, explained quite in detail in one of the witnesses. It's Mieliauskas' testimony. But in short, Semlex is the shareholder of the Claimant. It has been a shareholder since 2016.

THE PRESIDENT: And is still the shareholder?

MR DAUJOTAS: Yes, it is still a shareholder. But the arrangements are those that Garsu Pasaulis participates in the public tenders and all of its contracts as a separate entity, not together with Semlex. Semlex basically uses Garsu Pasaulis as a printing facility for its own contracts, but Garsu Pasaulis by itself participates in contracts separately from Semlex. That's the kind of relationship they have with Semlex.

THE PRESIDENT: And who is the owner of Semlex?

MR DAUJOTAS: The owner of Semlex is Mr Albert Karaziwan. I think this was also addressed in our submissions. Formally he's an owner, I think, of Semlex, like 80% and some other companies have 20%, but again the ultimate beneficiary owner is Mr Albert Karaziwan.

THE PRESIDENT: Thank you.

Well, I have no further questions, unless my colleagues have any.

I suggest we break for lunch now and listen to you after lunch rather than start now. Is that okay with you?

MR BERTROU: Yes, that's perfectly fine. Could we keep the initial schedule and start at 2.15 as initially planned?

THE PRESIDENT: That is a long lunch, but I would rather prefer to start a bit -- well, let's make a true arbitral compromise and say 2 o'clock.

MR BERTROU: Thank you very much. Thank you.

(12.27 pm)

(The short adjournment)

(2.00 pm)

MR BERTROU: Mr President, we are ready. The paper copies are on their way.

THE PRESIDENT: Okay. I think we can --

MR BERTROU: We can start.

THE PRESIDENT: We can start anyway. So please go ahead.

Submissions by MINISTER BAETOV

MR BERTROU: So what we were proposing, since we have the honour of having the Minister of Justice Mr Baetov with us, he would like to make a few preliminary remarks on behalf of the Republic and then we will move to the opening.

MINISTER BAETOV: Hi, dear esteemed members of the Arbitral Tribunal, dear president Hobér, dear Professor Vilkova,

dear Mr Laird, dear colleagues. My name is Aiaz Baetov, I am the Minister of Justice of the Kyrgyz Republic and I have the honour to appear before you today and on behalf of the Republic.

I would like to address the Honourable Tribunal with a few introductory points, before handing the floor to our counsel from Willkie Farr & Gallagher, and my remarks will be the following ones. Of course I shortly maybe address some remarks from the opening arguments of our colleagues.

By way of preliminary remark, the Kyrgyz Republic is dedicated to promoting and protecting legitimate foreign investments and even more so coming from the former Soviet Union regime. We are committed to demonstrating to the international community that we take our investment protection obligations seriously and welcome good faith investors.

At the same time, Kyrgyz Republic deems unacceptable when a development unfavourable to an investor, be it a loss in a court or in a tender procedure, is blown out of proportion, twisted out of size and packaged as a breach by the Kyrgyz Republic of its investment protection obligations. And all this while putting aside all favourable and positive elements of an investor's previous unrelated projects in the country.

Our colleagues and Claimant went much further. Listening to the opening remarks, I had the feeling that I live and work for the country with the absolute totalitarian regime that can orchestrate everything in the judicial sphere in criminal proceedings, can control everyone, media, international companies, anything, and where GKNB is an absolute evil that can do whatever it wants, out of any procedure of any other institutions.

Of course but in fact I think it's a universal -- let's call it a universal explanation that could be used for everything that you don't like about the dispute, because it's very easy to say that we -- the country has problems in corruption, the country has problems in its procedures and all unfavourable steps or decisions are not legitimate and credible, but those decisions of the government institution that is in your favour are legitimate and credible; it's a universal explanation that could be used to explain the weak parts of the argumentation. And I'll comment on some of them.

But before going further, I want to say that Kyrgyzstan is not a perfect country. It's a developing country and we call developing because of some problems, our functioning, in our procedures, in our administrative state service. There could be technical mistakes, there could be improper words in some

documents, for instance. We have a law, where we have technical mistakes where even years are different. It's a technical mistake. We have leaks of videos for different criminal cases. That's why we are a developing country.

But those imperfections sometimes are used by investors, abused by investors and as soon as we have a problem in a normal way, these imperfections are being used as part of intentional policy, an orchestrated policy from one institution that is not the biggest and the strongest one.

So I would follow to three main remarks.

The first one is about objective facts here. Members of the Tribunal, my first point is about objective, incontestable elements of this case. I won't go through details, it's for our lawyers.

First, this objective fact: two, bidders, German company Mühlbauer and France company IDEMIA contested the results of the tender in no legitimately available forums. It was complaints to the independent commission, to the court proceedings, letters to the government.

Yet to our knowledge Claimant never attempted to sue Mühlbauer or IDEMIA in any court for slander or damage to its business reputation.

The logic that was used in opening remarks shows that somehow we orchestrated their complaints too. But this is objective fact that they also participated in their complaints.

Second, I won't go for details, it's up to our more professional colleagues, but not everything was normal about the tender. I can tell you in my experience, as a minister, I'm responsible for tender procedures of the Ministry. And this was avoided in the opening remarks. Objectively, the tender in question was flawed. Just as one example, just only one example, I won't go further, the Claimant's tender bid was an extraordinary almost 40% higher than one of its competitors, German company, of course they complained. In my experience of a -- in the experience of a minister which conducts tens of medium procurement procedures per year, the disparity is highly abnormal. In any procurement procedures, difference of 40%, not just few million, but 40% difference between financial proposals is extremely strange. When the company wins with the prices that 40% higher, this factor says we can have questions.

So to say that everything is perfect and any questions are not legitimate is using that universal explanation that I mentioned. 40% difference price is there, it's an objective fact.

Third, the agreements of Mühlbauer, German company, and IDEMIA, France company, were examined not by GKNB, but by the Prosecutor's General Office, according to Criminal Procedural Code, which in turn instructed GKNB to conduct an investigation and investigate judges, judiciary, make control over every step of the start of the case investigation, etc.

I'm not even going to the fact that people accepted corruption, I'm just saying that procedures. It was not a sole decision of one institution just to go further.

Kyrgyzstan -- you can see it, you can check it -- has very strong freedom of press. Everything is discussed in society. A very strong parliament. And Parliament asks questions. So for this kind of cases, different institutions have a legitimate right to control, and especially for the case I heard no wording about role of Prosecutor General's Office, which is, I think, in my personal view, much stronger than GKNB. And judiciary, they also worked in this process.

According to logic of our colleagues, all institutions, including German, French company, prosecutors, everybody were orchestrated by one sole institution. It's a very -- again, it's a questionable.

Fourth, four, the tender was tainted with corruption. This was determined by different

institutions and different steps after an extensive investigation, and after confessions of the state officials involved.

Again, prosecutors and judges were involved in each step. Objectively, of course, this is not the end of the investigation, yet the GKNB is unable to make progress Claimant and its officers ignore the GKNB's request for questioning. And it's problematic for the Kyrgyz Republic to press any further given, first, lack of effective bilateral cooperation mechanism between the investigative organs of Lithuania and the Kyrgyz Republic, and second, the fact that Claimant was really quick to start this arbitration. We deem that any further criminal investigation into Claimant -- active criminal investigation into Claimant would have been presented as an improper attempt to affect the status quo of the dispute. And I'll provide comment a bit later, because arbitration was always used against the country as soon as we have issues with corruption.

Let me tell you this in advance: corruption is not the main issue with this case. He will say there was no investment, that the procurement law was there. Corruption is not the main issue. It's unfortunately the logical part of the situation, and not in all cases we have the corruption situation. But I'll comment on

this a bit later.

My second point, dear Members of the Tribunal, Claimant's case is based on very convenient but highly subjective interpretation of the Kyrgyz public procurement laws. Quite simply, a tender participant does not have full substantive rights as a contractual party before the contract is executed. Adversely, the procuring entity can terminate the procurement process in time before the contract is signed. This is what is written in laws. And more importantly, this is how these laws operate. Ten years before our dispute, and after the dispute. And we cannot say that for the first time out of thousand procurement procedures, we realise that these laws must be interpreted in the way that is convenient to support the claim.

The Kyrgyz authorities conduct hundreds of public procurement procedures every year and if every disgruntled bidder were to take the State to arbitration there would be a collapse, locally with the procurement system and internationally with the investment arbitration system.

For instance, postponements and cancellation, or in Russian we call it "nesostoyavshijsya". I saw it was translated as "fail". Is it so uncommon, unusual behaviour? You can just google right now any wording

you want, like "tender". Like tender is confirmed as "failed?

A. ". I just -- you can text it in Google and you will find very fresh messages that will be about clauses, about call, about infrastructure; about airports, bus, medicine. We have this practice before the dispute and after the dispute. This is how laws are interpreted and operate.

There was nothing exceptionally changed, modified to affect our dear potential, I hope, partner -- I don't know how to call it. Nothing was changed. Postponement, unfortunately in developing countries, is normal. It happens for all other tenders too. Tenders that are found as failed because of some issues, it's very often practice. Again, that's why it's surprising that Claimant found its own way of interpreting the law that the whole country didn't realise for the case.

Claimant is also very keen to find a motive everywhere, a motive and ascribe it to the Kyrgyz Republic. To do that, Claimant is left with relying on insinuations of a dismissed high-ranking state official in charge of the public procurement project in question, Ms Shaikova. She fled the country as investigation in the tender was unraveling. Dear Members of the Tribunal, unfortunately it's not the only case when

high-ranking minister ran out on the country. We have -- you can check it in the Google. We have -- unfortunately it's a practice when high level people, as soon as they are accused of corruption, they just run away from the country. We have former Prime Minister, we have Minister of Energy who run away from the country, etc.

So Ms Shaikova is a person that directly, according to criminal investigation -- according to their position was direct key person that communicated to Claimant. That's why we have the situation as is.

So her absence in the country and the stop of the investigation to Shaikova is being explained in a totally unusual way that was a surprise.

The Kyrgyz Republic takes offence with respect to any insinuations about Ms Shaikova's health conditions and whereabouts. I'm not sure, but I think that probably your client knows where she is much better than the Government at the moment.

She fled the Kyrgyz Republic, as was established by the investigative authorities. Unfortunately this is not the first time a high-ranking person ran from the country.

I want to say about the issue of corruption, because colleagues said: it's your own people with corruption,

it's your own corruption. Unfortunately we have problem with this. And if our own people did corruption, it doesn't mean that they are like would protect them, they are good people. We think that they must be punished too. But no corruptive behaviour from the investor should be tolerated also. That's how we see it. And actions of serious people who are accused of corruption before February 2021 cannot be considered as absolutely legitimate and credible because they are accused of corruption, and all other steps are not good because of orchestrated strategy. You can call it as you want.

What I want to say is that in this case we are not going for corruption issue. We are saying that procurement laws work like they work. We are saying that like artificial understanding of the investment is not there because nothing was there. And this approach would provide many problems to many countries if we go in the way how it's proposed.

Our colleagues mentioned some cases in their papers and here, trying to say that we sometimes use problem with corruption. Unfortunately, as I said, we had as a developing country problems with investors and its corruption. I'll comment only one case that's indicated in their paper and the biggest one about Canadian company Centerra. We were able to solve that problem

with them. But the problem is that the first and second president of the country not in the Kyrgyz Republic at the moment, they ran away, and we have court decisions about their participation in the corruption with that investor. And should this be interpreted as prohibition for the country to use -- to fight against corruption if our unfortunately high-level people were involved in this?

Just one example. The first president accepted -- it's a public -- his son, his wife's nephew, opened a company in Australia, and Canadian company transferred 50 million dollars there. I will not go into details. But this is corruption. I cannot ignore the fact that investors sometimes work with our own -- as you said, own people bad people, but they did corruption. But here it's not in the whole issue.

The last moment. The main financial claim against the Kyrgyz Republic is about reputation. To my last point concerning Claimant's reputational issues which Claimant directly or by association with its parent company Semlex experienced before this dispute, as well as after the dispute, unrelated to the Kyrgyz Republic.

It is an (inaudible) of Claimant to ignore or have this tribunal ignore investigative reports by the likes of Reuters, Organized Crime and Corruption Reporting

Project (OCCRP), Transparency International, into its business practices. Our understanding is that the conclusions of those reports were not contested either by Claimant or its parent company Semlex. These events happened, for instance, not only Kyrgyzstan has those reports. They rely more on practice in Madagascar, Mozambique, Congo, Gambia and other countries. There are messages from 2017, 2018 also.

This brings me to my conclusion, dear Members of the Tribunal.

What this arbitration is, we submit, is an attempt by Claimant to amend its failed reputation by attacking a sovereign state that at first thought may not have its disposal the full arsenal of legal defence tools another country may have. As I said, we are a developing country, we were not very effective in arbitrations. We lost some cases just because our lawyers -- we had no lawyers in the arbitrations. Arbitrations were always used to stop criminal investigations in the country. For example, in (inaudible) case that I mentioned, we were allowed to punish only nationals, but all foreigners are out of country and we don't have mechanisms, instruments, to reach them.

And we have no capacity to work, to conduct effective investigation at international level.

In this process, however, Claimant is not saying about its own reputation, it is destroying and attacking the Kyrgyz Republic's own reputation, which we cannot tolerate.

Dear Members of the Tribunal, the Kyrgyz Republic thanks you for the attention you give to this case and it is confident that you will render a decision based on facts and law which Respondent's case follows as opposed to generalised insinuations, misinterpretation of evidence including glaring logical gaps or words like (inaudible) GKNB, etc, the Claimant case is based on.

Dear Members of the Tribunal, this concludes my opening remarks and I leave it to our counsel Willkie Farr & Gallagher to make more detailed submissions. But I'm here of course. If there are questions to me, I'm ready to respond. Thank you very much.

THE PRESIDENT: Thank you very much.

MR BERTROU: I will leave the floor to Sergey Alekhin and Dmitry Bayandin.

MR ALEKHIN: Is this suitable in terms of my voice level?

THE PRESIDENT: Perhaps a bit closer.

MR ALEKHIN: One second.

Is this suitable? Thank you.

Submissions by MR ALEKHIN

MR ALEKHIN: Members of the Tribunal, as I was introduced,

by name is Sergey Alekhin, counsel from Willkie Farr and Gallagher, I will be starting the main part of this opening presentation after having heard the preliminary remarks by His Excellency, Minister Baetov.

There are six main parts in our presentation. You have the hard copies in front of you. There is also a demonstrative exhibit that was distributed or will be shortly distributed. It is a timeline, very simple timeline.

Of course in the span of the two hours and 40 minutes that are left, we are unable to cover every aspect of the case, but just to put it on the record of course that if anything is not addressed, that does not mean that we waive a position we have expressed in our written pleadings.

The opening presentation is structured as follows. I will address first the facts of the dispute. Mr Bayandin on my right will deal with admissibility and jurisdiction and merits, and I will do quantum and then conclude.

I think we would have to start, Members of the Tribunal, by asking ourselves why are we here, and the answer is rather straightforward.

The outcome of the 2018 tender has raised concerns as to the propriety of the process, the outcome. There

is a massive difference between two bids, that of Mühlbauer, a reputable Western, German company, and that of Claimant Garsu Pasaulis, a 36.9% difference in price. This is anomalous.

Now, that anomaly, the Claimant's profile and track record have prompted two complaints brought by creditworthy, reliable, Western competitors, German Mühlbauer, and French IDEMIA, and that is effectively why we're here today. Claimant is silent on the reasons why their allegedly legitimate win in this tender was such, despite the anomalous price difference. Those who asked themselves that question are those two companies.

That is the timeline that's being distributed. We will use it in the subsequent parts, thank you.

Then on the back of those complaints by Mühlbauer and IDEMIA, and the concerns that those companies raised, the grievances that they raised to the Kyrgyz Republic, the Kyrgyz investigation was therefore started, not arbitrary, not unlawful, but particularly legitimate to defend the State's reputation and prevent a waste of public funds.

Now, to the parties more specifically, and the background of this case, having had this key slide about why are we here.

So we will present the parties here, Garsu Pasaulis

and the Kyrgyz Republic, set out some background information relevant to the dispute.

Again, we emphasise at the outset of this section, and we have done so in our written pleadings, and it's really important, we do not seek to demonise Claimant. Contrary to what we heard from Claimant in their submissions, to implicate Claimant in certain events that happened outside of the Kyrgyz Republic, we have no interest in that.

The purpose of this section and the corresponding sections in our pleadings is to highlight the persistent reputational issues surrounding Claimant, its former and its current beneficial owners.

Why are we doing this? Well, because there are two very inaccurate overarching propositions that Claimant advances in this arbitration. Claimant's case is built around a purportedly illegitimate investigation by the Kyrgyz authorities into the outcome of the tender for manufacturing the blanks, the passport blanks, that was triggered by discovery of just a sliver of Claimant's reputational issues around the world. That is Claimant's case.

Another key allegation advanced by Claimant is that it had an impeccable reputation prior to the tender and because of what they call the Kyrgyz scandal, it went

all downhill from there, with a knockdown effect on Claimant's business operations around the world.

So those are the two overarching propositions that Claimant is making. We have to address them because again we do not specifically care about Claimant's reputational issues around the world for the purposes of this arbitration. What we care about is when we are presented by this picture of Claimant having a pristine, spotless reputation and because of us, it all went down downhill from there.

But before we even go to that, a very simple question: who is or what is Garsu Pasaulis, aside from all those reputational points. It's a modest-size supplier of securely printed documents coming from Lithuania. Their turnover oscillates, as we understand, between 40 to 55 million euros in the last -- in the good years. They were barely able to demonstrate to the Kyrgyz authorities, may I add, that they have successfully printed 2 million biometric passports on other projects. So this is just to give you an idea of the scale of that company.

So that Claimant's statement we heard that they are active in 55 countries, we submit should be considered and should be qualified bearing in mind that specific context and those figures.

So now on Claimant. The reality is that for years Claimant, its former and current beneficial owners, have been surrounded by reputational issues. We emphasise that.

So we start with the pre-2015 period, as we call it. There are again press reports -- we are not saying we have documents showing that a certain misdemeanour or a crime has been committed and that is not our purpose. There are abundant press reports of tax avoidance, illicit distribution of Claimant's excise stamps for counterfeit alcohol, cross-border money laundering investigations involving Claimant itself and its former beneficial owner.

And when these points were raised by us in the Statement of Defence, again, for contextual purposes and in light of those two overarching propositions that I just mentioned, that the Claimant case is based on, we received a flurry of document requests. Give us direct proof of those criminal offences; that's what was demanded from us. And then followed this lengthy rebuttal in the Statement of Reply which essentially focused on two points. The first is that the sources we relied on, those press reports, were untrustworthy tabloids and the relevant publications were actually somehow taken down after court actions that were

initiated by Claimant, and indeed we have seen some rudimentary evidence of Claimant initiating court proceedings for instance in Lithuania against some of those media, what we haven't seen is any of those articles being really taken down or even apologies to Claimant and related parties being published.

Second, in the Reply, we heard in relation to some of those troublesome instances from Claimant a very commendable job going through its paper archives to explain, for instance, that the tax avoidance wasn't that bad or it was a misunderstanding and it was settled out of court, or that those excise stamps that ended up in criminals' hands were really actions of third parties.

Understandably, Claimant has done a good job -- it may not be pleased with the tone of the press reports -- it has done a good job for us, for the Tribunal, to prove that all of those reports are untrue. But the reports are out there, and this is really our point: it is easy to find them, those reports about Claimant's dubious practices, and with that, Claimant can hardly say that its reputation has been spotless.

A good example is the reported association of Claimant's former beneficial owner, Mr Vainikonis, with a Lithuanian organised crime group, and that comes from

contemporaneous records.

When we presented that, we got a reply saying: that is nonsense, those are some books, those are some fiction books that you got them from.

But then why contemporaneously back in the day Mr Mieliauskas, then CEO of Claimant and their witness, admitted in an interview to a leading Lithuanian business newspaper, that Mr Vainikonis, the former beneficial owner, when he sold the company to Semlex that we will talk about in a minute, that brought "peace of mind and psychological relief as no one will hang anything on us, it will not be necessary to explain that when the Vilnius brigade, that organised crime group, was crushed, I was still studying at school", etc. The CEO of Claimant recognised that there was this uncomfortable situation with their former beneficial owner. Again, these are the press reports, but that's specifically our point: it's a reputational point. Now we move to the Semlex period. The acquisition of Claimant in 2014/2015 by Semlex, the Belgian group, run by a certain Mr Albert Karaziwan, still run by him, did not really mend Claimant's reputational hurdles. Semlex is known to have been involved reportedly in over 10 corruption scandals around the world, including after it had been acquired by Claimant. And those were uncovered

and widely reported on by Reuters, by OCCRP, which Claimant in their written pleadings refer to as fragments of sketchy articles. But even if one were to disregard Reuters, OCCRP, etc, one could hardly say that Semlex's reputation was solid. In fact the Kyrgyz national bureau of Interpol made an official request to Brussels, where Semlex is incorporated -- exhibit R-34 on the record -- the Belgian authorities confirmed in May 2019 that there are three criminal cases registered in Belgium for tax fraud, money laundering, against Semlex.

I could talk about several of those widely reported cases of dubious business practices. I guess the most representative one in fact where Semlex was jointly operating in a consortium with Claimant from the press reports we have seen is this project in Congo that was secured without any competitive bidding in exchange for $1 million of facilitation payments and with a staggering $180 fee for a passport delivery in a country where that is a half-year salary of a regular person, from what we understand.

And you have on the screen this neat summary by the OCCRP of Semlex and its operations. We will leave it on the slide. Slide 6, for the record.

In light of this, Members of the Tribunal, it is

understandable that Claimant attempts to distance itself from Semlex.

Really that is an (inaudible), for three reasons. It goes against documentary record, and that is actually confirmed by those three reasons.

So first, the two companies often jointly work on secure printing projects. The Congo is one example. Mozambique is another example, Zimbabwe; that's only from what we know. And what we've heard today from Claimant's counsel that Semlex's arrangements with Garsu Pasaulis is that it participates in tenders and projects separately is either not entirely true, or all of those reports we have seen about the consortium of Semlex/Claimant doing those deals are not true.

Then in July 2019 -- that's my second point -- Semlex issued a standalone notice of dispute in relation to this arbitration to the Kyrgyz Republic, asserting that Claimant "is part of Semlex". I think Claimant is not denying that it's part of Semlex. But Semlex then claimed reputational damages arising out of the exact same Kyrgyz scandal as it's called of which we're here today.

And even in the Notice of Arbitration, Members of the Tribunal, Claimant anticipated claiming both for its own and for Semlex's damages. That is on the screen.

It's paragraphs 214 and 215 of the Notice of Arbitration, where Claimant is anticipating claiming damages for both itself and Semlex.

So really those attempts to distance itself from Semlex are highly artificial, we submit.

Briefly, now, about the Kyrgyz Republic, and I do not want to burden you with the Post-Soviet history of this landlocked country of 5 million people and its good people and so on. I want to focus on one specific point here.

The Republic inherited a Soviet population register system, or one could call it a register system, and the passport infrastructure. Before 2006 passports were filled out by hand by the state clerks. Evidently that was prone to forgery. Since 2012 the Republic explored ways actively to mitigate, to migrate to a modern electronic population register and a biometric e-passport system.

Obviously a project of that scale calls for public procurement. Now, the version of the Kyrgyz law on public procurement relevant to this dispute dates from April 2015 as amended from time to time. It was developed with World Bank's guidance, and introduced a single electronic public procurement platform. There are a number of elements therein, and actors and cycles

which are very well spelled out in this law on public procurement. The bottom of the slide depicts those key actors. I will not go through them in great detail in the interests of time, but whenever we refer to a specific actor in this public procurement cycle, if its role is unclear, I would be glad to explain that.

That being said, we move to the eight factual points that we wish this tribunal to focus on.

Now, when I say focus on, most of those topics are actually somewhat peripheral to the case at hand. For instance, Claimant is not really alleging any breach, any international law breach by the Kyrgyz Republic with respect to its other unrelated activities in the Kyrgyz Republic. Those historic activities, the 2013 excise stamps, the 2012 other tender that did not progress anywhere, we have seen some half-baked theory in this first round of pleadings about the Republic somehow interfering in those unrelated projects and we've also heard, I think, something about this today, but it seems really be substantially abandoned. There's no claim saying that we have breached a public international norm in relation to the 2012 tender that never happened or the excise stamp tender that really -- that they have done well for two separate periods of time.

So certain of those points we address really briefly for abundance of caution. What we should be really focused on is the 2018 tender, what came out of it, and perhaps the consequences of that.

So just to quickly go to those historical activities of Claimant, there are two groups of course, the 2012 tender for manufacturing of e-passports and the excise stamps project, there are two rounds of tenders that Claimant won and successfully operated. And to reiterate, no specific claims are advanced in relation to those.

Why do we even need to talk about them? Because we've heard from Claimant, and again it's not a claim that is made, but a context that has been raised which we deem is incorrect. Three points.

First, Claimant drew some misplaced parallels between the 2012 tender and the 2018 tender. Allegedly both were terminated with prejudice to Claimant and a parallel could be drawn which was really not explored much in evidence or in pleadings.

Second, there's this portrayal of Claimant's participation in that old 2012 tender and this excise stamp project as this groundwork for the 2018 tender. We say that's without basis.

Third, the conclusion that Claimant draws in

relation to those two groups of activities are characteristic, if I may say, of its case for the issue at stake for the 2018 tender: come up with an improbable excuse or an extraneous motive or concoct some conspiracy theory for one's own lack of success in a public procurement process, to then shift the blame on the host state as Minister Baetov has alluded to in his opening remarks.

So the 2012 tender was cancelled and why it was cancelled is a matter of public record. Before I go to that, I might add that Claimant's depiction of its bid in this tender is rather peculiar because in a -- 11 million higher than the proposal of another tender, Claimant does not mind that difference and says that it "was potentially the best in terms of price" and even that the tender was "technically won by Claimant". That's their Statement of Claim. So I'm not sure how an 11 million difference in a failed tender could be called as a win and a potentially best proposal.

But I digress. The reasons for the cancellation of that tender is a matter of public knowledge. Kyrgyz authorities decided that they are better off with an in-country secure printing facilities at that moment of time. And again, those suggestions that there was some local and powerful private interest behind that

cancellation are speculation, unsupported by any events whatsoever, and for abundance -- sorry.

THE PRESIDENT: Could you move a bit closer to the microphone still? Because of the window -- noise from the windows.

MR ALEKHIN: I apologise. I hope it's better.

So now this excise stamp project. Again, no concerns are raised to its operation. So I leave the Tribunal with our opening remarks in slide 12 that are on the screen. There is this peripheral grievance about the second renewal of the contract in September 2020 and that Claimant was somehow expelled from the country and from the tender process in retaliation for starting the arbitration, but again we have explored the reasons in detail, supported by documents in our written pleadings. The tender was postponed several times because there were a lot of queries from the potential bidders. This is a normal procedure, and then the policy changed again in favour of an in-country production, so effectively the tender was cancelled. There is no conspiracy here to unravel, unless you wish to go into speculations.

Next topic. We are moving closer to the 2018 tender. Here we call it behind the scenes advance preparations of Claimant for the 2018 tender. Those

facts were uncovered during the work of Respondent's investigative authorities in the aftermath of the 2018 tender and they are quite striking.

First episode is this June 2016 meeting off the books on a weekend in Almaty, Kazakhstan, between Claimant's Mr Mieliauskas, who we will have the pleasure of cross-examining tomorrow, and the director of a state owned IT integrator, so effectively a specialised state owned company that does IT services for the State, Mr Abdullayev. He was involved in the e-passports project. That meeting was facilitated by Mr Abdullayev's acquaintance, Mr Bekenov, a private person, IT specialist. We have heard a lot of allegedly damning things about him, his reputation, why he did what he did by disclosing several damning elements of a corruption scheme. We will get into that.

But what is important is that Claimant, we submit, is peculiarly evasive about this episode in at least the written pleadings. They have even called this Almaty meeting "imaginary" and "alleged". That is in their Reply. But the fact is a fact. They have admitted, Claimant has admitted to reimbursing Mr Bekenov -- true a private party -- but for the travel expenses of him and Mr Abdullayev, a state official, to attend that meeting.

And of course the fact that the meeting took place has confirmed by further testimonies and documentary evidence, they are all on the record, I will not burden the Tribunal with them.

But there was this also a suggestion by Claimant that it's normal business practice to pay for state officials' travel expenses. Dubious as that statement is, we submit, there surely is a difference between inviting state officials to say a conference or an exhibition and taking them abroad, flying them abroad to a dinner meeting over a weekend.

What happened in Almaty in June 2016 is recounted in those minutes of subsequent questioning of Bekenov and Abdullayev, two people, not just one. It's not just Mr Bekenov who spilled the beans, two people testified about what happened at the meeting.

So Claimant's Mr Mieliauskas asked Bekenov to reply to the state official Abdullayev that he should not be afraid to speak freely. Evidently Mr Mieliauskas, Claimant's, Mr Mieliauskas himself was definitely not afraid to speak freely, because he openly proposed opening bank accounts in Dubai for Mr Abdullayev and other state officials if they assist Claimant in winning a tender. And this is echoed with less detail, but still damning, Mr Abdullayev's testimony, the State

official himself.

Mr Mieliauskas "attempted to lure us with money" and asked to "find people who would lobby the interests of his company", that is Claimant.

So a very frank and open discussion over dinner in Almaty where a high-ranking state official travelled at Claimant's expense.

And faced with these testimonies, Claimant picked up on Mr Bekenov and the credibility of his witness questioning. So Claimant has highlighted that Bekenov, for instance, was unable to remember in the course of his witness examination the licence plate of the car that drove him three years ago to Almaty. With respect, unless one's hobby is remembering licensed car plates, I'm certain that that does not suffice to impeach a witness testimony. Moreover, given in a context of criminal proceedings, of course, where the witness was warned about the consequences of such false testimony.

There is also this parallel that Claimant draws between Bekenov being associated with Mühlbauer. They even went as far as saying is that Bekenov prepared the February 2019 complaint by Mühlbauer -- we will get into that. He did not. That's not supported by documents.

But really a fact is a fact. He travelled to Almaty, he travelled there with Abdullayev, the State

official, they met the Claimant's Mieliauskas and two separate parties, two persons, tell what you the meeting was about, and it was about a good thing.

So that June 2016 meeting was evidently a start of a fruitful relationship, if you wish, involving Claimant. So those highlights would include the May 2018 exchange via WhatsApp, the messaging app, so those were imagined or taken from Mr Bekenov's phone by the Kyrgyz investigators during the GKNB investigation that I will get to in a minute. So Mr Bekenov enquires with Claimant's another top officer, Mr Lukoševicius, about he received the draft specification for the forthcoming tender.

The tone of those exchanges, and they are on the screen, is unequivocal. Mr Lukoševicius asks: can we correct anything in the technical specifications? Mr Bekenov assures him that they need to correct anything, that will be an issue for us. So essentially to adjust the tender parameters in order to maximise one's chances of winning.

We heard today that it would seem normal for Kyrgyz state agencies to seek comments on draft technical specifications. The problem is that Claimant did not provide any documentary rebuttal that it was officially sought comments from in relation to that specific

period, May 2018, and still the tone of that message remains pretty damning, we submit.

So there was also this October 2018 exchange between the same two gentlemen. Mr Lukoševicius was, if I may, outsourcing "all our issues, even the most confidential financial ones, to their local representative, Mr Sagyndykov, the third witness from Claimant, that we will see the day after tomorrow.

Shortly thereafter, Mr Sagyndykov was already using his old powers to resolve all issues, even the most confidential financial ones, via another Kyrgyz -- via another channel to Kyrgyz State officials, a certain Nurbek Abaskanov, and I apologise for a plethora of Kyrgyz names. I hope they are well transcribed, but I will use shorthand for some of them. So this one is going to be "Nurbek", and we will come back to him several times.

So Mr Nurbek is the former chairman of the state committee for IT and he was close to both Mr Sagyndykov, Claimant's witness and local representative, and, importantly, the head of the state registration service, the SRS, Ms Shaikova.

That's what Bekenov testified to the Kyrgyz authorities.

Now, this Nurbek and another gentleman, Meder, his

former deputy, features in testimonies of Mr Abdullayev. So again, if you want to dismiss for some reason the testimony of Mr Bekenov, you have Mr Abdullayev who says the same thing. He recounts about his meeting with Ms Shaikova which happened in 2019, where she told him about Meder and Nurbek -- the names are in the witness testimony -- meeting her in December 2019, and proposing to lobby Claimant's interests in the forthcoming e-passports tender.

Again, those names Meder and Nurbek are to be remembered. We will get back to them several times.

So as evident from those elements, we submit Claimant felt comfortable and more than ready when the 2018 tender was officially announced.

And now we go to the tender.

So that's a where we prepared a convenient timeline, we hope, for your review.

Claimant has done a good job taking through the key elements. I will save the Tribunal's time and not go over the same elements again. The tender was announced. Claimant was selected winner. There were complaints. The tender was suspended. Claimant wanted to travel to Kyrgyzstan. It did not. A criminal investigation started. The bid expired. The sentencing decision from late 2019 was issued and so on.

What we think is useful is to just really start with -- yes.

Again those first elements of the chronology have been dealt with, so I do not want to spend too much time there. I would just highlight again the difference between -- we are on slide 19, Mr Chairman.

I apologise, is this in your hard copy? Sorry.

I thought you were -- thank you.

The material difference, 36.9% difference between Mühlbauer's bid and Claimant's bid that was announced as the winning bid. So that's just a matter of factual record.

But there were two material irregularities in the conduct of the tender, those early months of the tender.

One of them is that the tender commission must have rejected all the bids early on because they did not comply with the formal yet material requirement of the tender documentation: all five bidders did not sign or confirm that they're willing to be bound by general and specific contractual terms. It might seem formal, but the law is the law and the tender commission was about to decide to recognise all the five bidders, Claimant included, as non-compliant and therefore annul or declare the tender failed.

That did not happen because the SRS leadership

conspired and managed to persuade the tender commission, which is within the SRS but supposed to be independent under the law from the leadership of the SRS, to change their minds. And they did this in a very conniving way. They have asked this department for state procurement, it's an agency within the Ministry of Finance who oversees all public procurement in the country but that has no right or power to interfere with an ongoing tender, they've asked this department called the DGZ, or "the Department", to issue an opinion or a confirmation saying that that shortcoming, the lack of signature or agreement with general and specific terms of contract from the five bidders, is not material. That in itself was improper. That was later on recognised and confirmed by the Department itself when the investigation unravelled, and there were also numerous testimonies of how improper, how collusive, how evidencing of a lobby that was.

But not even that, there were two drafts of this response from the Department. I'm getting into details, but it's just really to show how extensive the issue is. There were two drafts of this response from the Department. One saying actually, "You're the tender commission, you figure out yourself", to put it in simple terms, and then Ms Shaikova, the head of SRS, who

is now somewhere in Qatar, as we know, she reaches out to the Department, without any powers to do so, unofficially via an audio message on WhatsApps -- it's on the record -- and dictates to the Department's personnel what she wants to be in that letter that she wants to receive from the department.

Again, that is all on the record.

And so that was the first problematic element in the conduct of the tender. The second is even more detailed and I will not spend much time on that. There was an ad hoc commission, a technical commission, established again by the leadership of the SRS, to consider the technical compliance of the bids. The two bids that have managed to pass the first filter, that's Claimant's and IDEMIA's, the French company.

There is overwhelming evidence from the subsequent investigation that the ad hoc committee had no competence, had no knowledge about what they were doing. So essentially they were just checking boxes between the two. That's not how a tender should run. And there are certain indications within those witness testimonies given to the Kyrgyz investigators that Claimant's bid was not actually better than that of IDEMIA, or it had suffered from certain shortcomings. It's a minor point, but again this is just to show that the tender was

marred with material irregularities from the start.

Now we move to what we call a kind of thank you from one of the bidders, Garsu. This was addressed by our esteemed opponents at some length. So this concerns this $20,000 episode, the "handsome bribe" as Claimant itself called it, I believe, in the written pleadings.

The story is rather simple. Mr Abdullayev, as head of the state-owned IT integrator, admitted to the investigative authorities following questioning and then in an agreement to cooperate and that was embodied in the sentencing act as well that he met with Ms Shaikova several times. Mr Abdullayev was of course closely involved in this tender. During the first meeting -- that was in late 2018 -- she mentioned by name Meder and Nurbek, those persons that I asked you Members of the Tribunal to keep in your minds, and in the second meeting, in January 2019, Ms Shaikova referred to that first meeting and bluntly and dryly just gave Mr Abdullayev $20,000 which Mr Abdullayev, if you read the witness testimony -- and again you can interpret as much as you want, but Mr Abdullayev contemporaneously thought that this was a kind of a thank you from one of the bidders, Garsu, who by that time successfully passed the technical evaluation and was about to be officially named as a winner of the tender.

For comparison, $20,000, that's a significant amount of money, of course, everywhere, but especially in Kyrgyz, where the official salary of a civil servant is several hundred dollars, and the fact that Mr Abdullayev received that money and spent that money is confirmed by other witness testimonies, his wife, to whom he bought something nice, I believe that's in the sentencing act, that's documented, and then he forfeited the remainder of that sum to the investigators.

So while here perhaps Claimant would say this is nothing, this is just some guy testifying to the notorious, if you wish, GKNB about the bribe he received and he thought it was from Garsu; if the standard of proof is not just he thought it was a kind of thank you note from one of the bidders, but if Claimant wishes that we have a thank you note from Claimant, from Garsu, with the $20,000, we don't have that. What we do have is testimony of a person who, by the way, during that testimony, was accompanied by two local counsel. So it cannot be said that it was improper in any way. That testimony was attended by two criminal attorneys of Mr Abdullayev.

He agreed to cooperate. He admitted that he received the bribe. He explained why he thought it was from Garsu. He was sentenced, he was fined. So that's

the story.

Now, we move to February 2019. Here we talk about Claimant's interactions with the procuring entity, the SRS.

So on 1 February 2019, Claimant received this automatic email, a very short one,
saying: congratulations, you have won the tender. That was to know by this e-procurement system, it was automatic.

Claimant then downloaded this draft of the contract from the platform and began its internal review in comparison with what it had seen the contractual terms were when it proposed its bid.

Now, Claimant says, well, we haven't seen anything materially different in those two drafts. So we thought that's the end of the road. We're ready to sign. We are ready to buy tickets, go to Bishkek and sign.

The problem is that even if you look at what Claimant shows you, their internal in-house counsel says there are references to two sections here in the table of contents of this new contract they downloaded that are missing in the original one. So where are those sections, they're not in the body of the text, but they're referenced in the table of contents.

Those were the technical requirements for the

passport blanks, a very important part of any contract, and a supply schedule.

So with that in mind, Claimant downloaded something from the internet from the e-procurement system. I would grant them that. That was from an automated platform. With that in mind, days later, the SRS, for now a human being, finally tells Claimant by email: the notice in the draft contract sent to you are generated automatically by the public procurement system. The supply contract will be concluded according to the form attached to the tender documentation, considering agreement, comments and attachments of the parties.

The bottom line here is that the parties were not expected to renegotiate the whole thing. No. Our point here is that at that moment of time, this was a draft contract that still needed input from the parties. Even if you look at Claimant's exhibits and their timeline, they've submitted that input, that additional information specifically with respect to the technical requirements to a body within the State. So even they were still supplying some information.

So saying that they were ready to come and sign is maybe true for them, but definitely not accurate. It doesn't correspond to the reality.

And again, there was a second email again from the

SRS saying: as regards the draft contract, please note that at a stage of internal approval, we will send it now in the coming days. It was not sent by the SRS in the coming days because of the events that we will go over shortly.

Which brings us to the complaints. There were two complaints by Mühlbauer and IDEMIA. So a German company and a French company, reputable, with a turnover in excess of multiple hundreds of millions. They filed complaints on the outcome of the tender with the independent commission.

Now, independent commission, that's one of those elements of the public procurement system in the Kyrgyz Republic, but again it's modeled against World Bank standards, so it's pretty standard, is this body comprised of state officials and private persons, named by another commission or by the State, that effectively examines complaints of the bidders at any moment of time for any public procurement procedure that's ongoing.

So it is independent by its name from the buyer or from the procurement entity, of course from the bidders, or it's supposed to be, and from the Government.

Now, whenever there is a complaint, that suspends the tender pretty much automatically. There is this

dispute between the parties of whether a specific document or an order should have been issued by a specific entity suspending the tender formally, and the Kyrgyz law experts will of course address that. But it is a fact that the tender was suspended. Claimant was informed about that suspension. In the early phases of the arbitration, Claimant was adamant: "we were never informed about any suspension". So in the Statement of Defence, we found a letter from them responding to the authority saying: yes, we acknowledge the suspension and we extend our validity of our bid for 45 days.

So you would expect Claimant to, you know, back off from its assertion that it never received any notice of a suspension.

The complaints were examined and dismissed by the independent commission by around 21 February 2019. And what happened -- and this is what Minister Baetov alluded to in his opening remarks -- is that the independent commission, seeing all those complaints by IDEMIA and Mühlbauer, and those complaints were not only against Claimant's capacities or the way the tender was conducted or the way that Mühlbauer's bid was dismissed, but there were elements in those complaints about Claimant's track record, background, and public image. Corruption, Africa, Congo, Semlex; all the keywords.

But then the independent commission has a duty -- typical AML regulations, it has a duty, if it sees that something looks wrong -- of course it cannot investigate itself, it's an independent commission comprised of a journalists, some state officials, etc -- to at least relay those grievances to someone who could look at them, which they did.

And then Mühlbauer and IDEMIA didn't stop there. They also used all other available avenues. They wrote to the President. They wrote to the Prime Minister. They wrote to the ministers, saying something is wrong, Claimant is a company that may have not won this tender properly.

And all those, all those complaints, get to, as Minister Baetov said, to the Prosecutor General's Office, who then instructs the State Committee of National Security, the GKNB, to do their job and investigate this matter.

So this allusion we have heard that GKNB autonomously or by some personal motive started this vendetta against the Claimant is with respect nonsensical. This chain of ownership with respect to those claims, with respect to those grievances, if I may put it like this, is very clear. There were complaints by bidders dissatisfied with the outcome. The

independent commission heard about them and referred them to the proper entity. The other state bodies within the Kyrgyz system received them and said: okay, well, at least we have to inform the Prosecutor General's Office and let them look at them. The Prosecutor General's Office, seeing a potential criminal conduct in a contract worth over $10 million, naturally referred the matter for further investigation to the GKNB.

A quick remark here. Claimant by 21 February 2019 still did not receive this draft contract from the SRS even upon the dismissal of the two complaints.

Now, I would briefly speak here about the shortcomings or the issues that were uncovered by the investigation in the work of the independent commission when they considered those complaints. And they are pretty damning again.

So Ms Shaikova, the famous or infamous Ms Shaikova, who is now in Qatar, as we understand, she co-ordinated SRS's efforts to have those complaints dismissed. The complaints were against the outcome of the tender, so against Claimant.

So in addition to addressing to the independent commission something that is not entirely proper, I would suggest, detailed rebuttal points on how the

independent commission, which is supposed to be independent, deal with those complaints, so SRS effectively drafted the response or the decision of the independent commission, and in addition to Ms Shaikova's colleagues attending the independent commission's meetings, she openly enquired who within the commission could be influenced and that is supported by extensive witness evidence. She suppressed internal dissent, where her subordinates said some of the grievances in the complaints might actually be true. That was suppressed and again that's confirmed by witness testimony given to the investigators. And then that all resulted in essentially -- sorry, even with that, even with that, initially the independent commission was minded to actually uphold one of those complaints and cancel the tender.

Ms Shaikova managed to overturn that initial decision-making vector of the independent commission and effectively thanks to Ms Shaikova, the independent commission, if you wish, backed off from Claimant. So that was the culmination of that.

Now, importantly, and we have those three or four exhibits on the record, we haven't heard anything about them after they were filed or in the opening statement. Those are messages between certain people, Claimant's

witnesses, Claimant's local representatives, people that attended the investigation, those were collected during the course of the GKNB investigation. So we looked at them carefully. We've produced them. They were on the record for half a year, some, others even more.

So Claimant, and this is crucial, was kept informed about what the commission, the independent commission was doing, in pretty much realtime, before the decision of the independent commission came out. That is a public document. Before that, Claimant internally was already discussing, and you have Mr Marat Sagyndykov, whom we'll hear from in a couple of days, and Andrius Lukoševicius, who we'll hear from tomorrow, they were discussing what the independent commission will actually decide.

So I leave it to you to draw the necessary inferences from that, but workings of an independent underlying commission that is normally internal to them -- not their public hearings, but their decision-making -- finding their way to Claimant's representatives is, we say, damning.

There are those other messages. So the complaints were dismissed. And Claimant's -- exchanged celebratory, if I may say, messages. Discussed expressing gratitude to advisers.

Now, we've explained in our written submissions why we deemed this reference to advisors to be references to those Meder and Nurbek. I will not burden you with that, but there is this chain of logic we have. I will also not burden or offend the Tribunal by quoting certain excerpts of those transcripts. I mean, there are two persons discussing how happy they are that everything is going well and that their win in the tender has been confirmed. Obviously they are happy and they want to party. I will just quote that.

But they are discussing gratitude. To express gratitude to the advisers after the outcome of those decision-making process of the independent commission.

So we move now to 22 February 2019. The Prosecutor General's Office starts a corruption investigation, and again there is a document on the record that clearly shows that it was the Prosecutor General's Office -- not the GKNB on its own the Prosecutor General's Office commences an investigation directed to the GKNB faced with all this evidence of potential dealings.

That dissuaded Claimant from finalising the e-passport manufacturing contract with the SRS.

Three points here.

First, Claimant's Mr Mieliauskas', a witness we'll hear from tomorrow, cancelled his trip to Bishkek to

enter into the contract. He was supposed to be there on 25 February, on the evening of 22 February he cancelled his tickets. We've seen a lot of tickets on Claimant's slides, that they were constantly postponing their trip to Bishkek. And in the Reply the reason for that is Claimant having received information from the media about the politically motivated campaign against Claimant and fearing for its safety cancelled the pre-booked hotel room and cancelled the trip.

But then you look at the questioning of Mr Tynaev. Tynaev is another one of Claimant's local people, local guys. He is the director of a Garsu Pasaulis LLC, the local Kyrgyz entity, and he testified to the investigators:

"In February 2019 Mr Mieliauskas told me that he was about to come on Monday [that's 25 February] to discuss the contract and the subsequent signing with the SRS. Later he called me and said that he would not come because the SRS were undergoing legal proceedings regarding the tender. In this regard the conclusion of the deal was postponed."

That was the vision Mr Tynaev relayed to the investigators.

What is crucial here is that there is no further visible action from Claimant after 21 February 2019,

Members of the Tribunal, be it reaching out to the SRS by email, phone, fax, local guys, whatever it is. There's nothing. There is zero. By posting the required contractual performance guarantee, or using a more formal option, initiating court proceedings to compel the SRS to sign the contract. They had the right to do so. Our legal expert explains that in her expert reports, and that's not contested. They have gone to local courts in other instances in relation to the same tender and the same administrative courts of the country ruled in their favour. So why didn't they -- if they really wanted to sign the tender, why didn't they reach out to the SRS after 1 February 2019, saying: what's happening? Are we doing this? Why haven't they gone to local courts to force or to compel the SRS to sign that tender if they really wanted to? That really remains a mystery.

So Claimant ensured the Tribunal and ourselves in document production that there were no communications aside from this 21 February 2019 letter from the SRS to Claimant -- it was on the previous slide -- saying: please come on Monday.

And really that, we submit, should be viewed, that last letter, in light of the criminal investigation that was started.

Why? It's pretty understandable, because if there was something improper in the conduct of the 2018 tender on the SRS' side, sanctioned or instigated by its top officials, which they were ultimately, as the investigation letter established, taking any further steps to execute the contract would go against one's self-preservation, we submit, instinct from those top officials, unless of course the SRS leadership had nothing to fear, in which case it might have been expected to follow up with Claimant. But it didn't.

And then on Claimant's side, this is most interesting. On Claimant's local level, in Bishkek, the news that a criminal investigation is about to be commenced, so very strong emotions -- if not a meltdown -- between Mr Tynaev and Sagyndykov, so the two local representatives, and their exchange over Signal, the secure messaging app. So Friday, 22 February 2019, in the afternoon, moments before the criminal investigation was officially even recorded in the suitable database of the State, that's on the record, and the time is on the record as well, "you should let Medek know immediately". Medek is short for Meder. That's Mr Meder from the Meder and Nurbek duo, the former deputy head of the state committee, or the adviser as it was also referred to in an earlier

submissions. "You should let Medek know immediately".

"I already have and not bringing him anything".

We infer this reference here is to this gratitude that we mentioned just now, discussing between the same two gentlemen about how they should express their gratitude to someone.

I have a feeling like it's the GKNB who stopped everything."

This exchange concludes with an emotional phrase that is on the screen and I do not need to put on the record, but basically that tells you the level of emotion on the ground when they realised that the GKNB started the investigation and that the tender is unlikely to -- the contract is unlikely to be signed in the current circumstances. On the Claimant's side.

So what happened meanwhile? Well, we have addressed that at length in our submissions. The Claimant's bid, we submit, expired in April 2019. So again, this is a rather technical point, a Kyrgyz law point even, but your tender bid must have a certain validity. Otherwise it basically cannot remain valid indefinitely. Also because it is tied to certain bank guarantees, that also cost money.

So the SRS, when the procedure was suspended during the complaint procedure, informed all the five bidders:

can you please extend your bid validity term? Claimant of course did that. They did that up to 2 April 2019. On 2 April 2019, the bid expired. By that time the contract was not concluded. So both parties remained silent really and Claimant did not use any remedies whatsoever under Kyrgyz law -- again, we underline this -- to compel the SRS to conclude the contract or to do anything of that sort.

Now, as explained by our legal expert, Judge Davletbayeva, the Kyrgyz public procurement law works in such a way whereby the expiration of the bids automatically results in the failure of that tender, and with the failure, Claimant loses its right to conclude a public procurement contract with the SRS.

Just to conclude here on this expiration of the bids, of course, what happened is that on 17 April 2019, so days after the bid did in fact expire, the SRS published an official clarification saying that the tender held is deemed to not have taken place. Claimant admits in this arbitration that it became aware of this clarification at the time when it was published, back so back in April 2019.

I have spent one hour and we are at 1.30 overall of allotted, so half. I have about ten slides for facts and then we move to jurisdiction. Ten slides for facts

will take 15 to 20 minutes. I am under your control if you want us to take a break now, Members of the Tribunal, or later.

THE PRESIDENT: I think we are in your hands. You decide if you want to go on for a while or not.

MR ALEKHIN: We can go on.

THE PRESIDENT: We need to take a break at some point.

MR ALEKHIN: Absolutely. We are in your hands, and also your hands as well.

So we go to the alleged media campaign, and we heard a lot about this flurry of press reports about Claimant and how it was prompted and instigated by no one else by the GKNB. So not the press themselves being curious about what happens to a 10 plus million tender in a country that is rather modest in terms of revenue, but just the GKNB having a personal agenda against a company.

Well, it's true that the tender did gather significant attention from the Kyrgyz media due to its -- again -- size and importance, and also just to be clear, we're talking about passports nationwide. So it's not supply of, you know, some random product. It as national security issue also. So naturally that did gather some media interest.

And reports on the outcome and aftermath of the

tender were widespread, originated from major Kyrgyz outlets. Claimant criticised some of those outlets as "state controlled media" without really any evidence, and then later on in their submission they changed gears and they used the same media to confirm a point that they want. Really I do not see how in a span of I think two months a state controlled media that reported on the tender in the way that Claimant didn't like could change into a media that they do like and they rely on to support their point.

Mühlbauer and IDEMIA, those complaints were likely leaked by the two companies to the press, or at least they, the two companies, spoke with the press. There's evidence of that, there are interviews with Mühlbauer and IDEMIA. So of course they voiced their concerns via the press as well. Again, there are reports on that.

Plus, the hearings of the independent commission, not the internal thinking process but the hearings on the complaints are public as well. They're open to the public. And it's documented in one of the minutes of those hearings that a reporter from a newspaper was there. Evidently all this was reported in press.

But saying that it was instigated by the GKNB is nonsensical. In fact, if you look at the evidence, those early reports from mid-February 2020 or so, if it

reaches the headlines, you say, oh, the GKNB will investigate Claimant. You start looking in the text. You realise they are talking about either the fact that the independent commission -- again public knowledge -- referred those grievances of the other bidders to the State authorities, or some other conclusion that was publicly available, but it did not originate from the GKNB in the sense that in mid 2019 GKNB was not officially -- unofficially of course also as well -- mandated in any way to look into this matter.

So misquoting and misrepresenting the headlines of certain flash articles and saying that GKNB must have orchestrated this campaign is, we submit, with respect, nonsensical.

What the GKNB did is it succinctly updated the public with the progress of its corruption investigation. Then Chairman Kadyrkulov of the GKNB went to the Kyrgyz Parliament, Jogorku Kenesh, and spoke for more than 10 minutes about the rationale -- he was grilled and he spoke about the rationale of that corruption investigation. He cited concerns about how the tender was conducted, about Claimant's reputation, and so on. He did, referring to a Reuters report, called Claimant not a good company. If that's the best that the Claimant could give you, they were called not

a good company by the GKNB officer in the course of a public debate at the Parliament, leave it with Claimant.

What exists only in Claimant's imagination, and that's crucial, is a smear campaign or a witch hunt that was somehow initiated, orchestrated or executed by the Kyrgyz Republic.

The press of the Kyrgyz Republic, and Minister Baetov alluded to this, is vibrant, is outspoken, and is not afraid to report on a serious, potentially serious issue that's happening within their country.

So that's the media campaign.

Now, the corruption investigation.

For reference, Members of the Tribunal, the entire investigative file in this case spans 30 volumes of material, about 30 volumes of material, including witness interviews, document examination, and correspondence with state organs.

I will address this point head on. We were criticised by Respondent for filing a bunch of witness statements and testimonies on the record with our rejoinder, allegedly in contravention with the document production order. We strongly disagree with that. The document production order was worded in such a way that

they were looking for direct proof of Claimant's involvement. We can show it to you on the screen if you wish, but I propose we deal with it in the post-hearing briefs to save time in this investigation.

We've objected overwhelmingly because the investigation is still ongoing, and I'll go to that in a second, but the request, we submit, was worded in such a way to avoid us showing 30 volumes of data that we have showing the progress of the corruption investigation.

I will get to that phase in a moment, but the sentencing act and the sentencing decision that we'll get to in a second referred to all of those witness statements and documentary evidence. It is simply improper to even allude that the GKNB and the courts would have somehow colluded and just pulled a sentencing act out of thin air without any serious investigation. That is not what happened.

So that investigation concerned three persons, three suspects Talant Abdullayev, the person who went to Almaty to have dinner with Mr Mieliauskas, Daniyar Bakchiev, state secretary to the SRS, and Ruslanbek Sarybaev, the deputy chairman of the SRS and he was the chairman of the tender commission also. They were found guilty of corruption, and here again the GKNB

of course obtained a lot of evidence.

What's missing -- two elements were missing. First, Ms Shaikova, not an element, a person. She fled the country. We have evidence of this, it's on the record. She fled the country. By that time he was in hot water because she was dismissed as chairman of the SRS. Investigation was in full steam. She fled the country overnight, leaving here family in country. Her track ends in Qatar. We don't know where she is. We wish her well because we really want to pose some questions to her and get to the bottom of this investigation.

But that's Ms Shaikova. The other entity that's missing from this investigation is Claimant. Claimant's Mr Mieliauskas, Mr Lukoševicius and so on and so forth.

Why is this important? Well, because we've heard in numerous times: you have nothing against us. We're not suspects. We were not condemned, nothing. But the way this works, Members of the Tribunal, is that we have exhausted local investigative remedies or tools, if you wish. We need either Ms Shaikova or Claimant -- we are here now today, if they want to do this by video, we can arrange this by video with the GKNB; if they are afraid to go out of the comfort of the Baltics to Bishkek, fine, we can do this by video. We have no Shaikova, no Claimant, and essentially the investigation is

suspended. It's not terminated, it's suspended.

But telling us that "you have nothing on us", implicitly "because we don't want to cooperate", is, we submit, bad faith.

There are two more reasons here that I really need to highlight. One is the lack of effective cross-border cooperation. So Kyrgyzstan does not have a lot of mutual legal assistance treaties with other countries. It does not have one with Lithuania, so there's really no procedural way for the prosecutor to solicit his counterparty in Lithuania and say: can you make sure that those two guys come and testify.

The second reason is that this arbitration was started very quickly. The Notice of Dispute or the Notice of Intent is from April 2019. The Notice of Arbitration was filed in early 2020. Taking any steps -- any serious steps in the sense of proactively going against those two people and others involved in Lithuania, making sure that they testify, would have been seen, we submit, as affecting, if you wish, the status quo of this arbitration, which is the last thing that we want to do.

So that is with respect to how, you know, this investigation -- or the status rather of this investigation and where we are.

Briefly, if I may on this, we have this on the record, the whole timeline of the investigation, and again, there's not much of controversial elements here. It did terminate with a sentencing decision setting out in detail the evidence and then the sentencing act of course, and the GKNB then publicly announcing the interim -- and I highlight, the interim results of the investigation to the public.

But again, we've heard many times from Claimant that they never really were aware of how much the GKNB wants to meet with them and examine them. And that's despite the local representatives of Claimant having been examined in March 2018 by the GKNB. Despite of the letters that we've sent to them, despite their lawyer responding to that letter, saying: my clients are in Lithuania, can you please pose your questions in writing and they will respond. Despite the GKNB sending a follow-up letter saying: this will not work, please make sure they come, and that letter did not seek any response.

So Claimant's position now, after we have produced those letters is: we never received them. Again, you see this now would they want to testify for the GKNB. It's an open question.

But more importantly, and more absurdly, if I may

add, is the proposition that their local counsel, with full powers -- we have powers of attorney on the record, he was empowered to represent them in this criminal investigation. He responded on behalf of the two Claimant's top officers: they are in Lithuania, can you ask your questions in writing? We now hear from Claimant that he was not authorised to do this. So really the proposition is that their lawyer that meanwhile represented them in admin proceedings was somehow not empowered -- not only not empowered, did not even tell them that he responded on their behalf and say: they are in Lithuania, please ask me. And then, by the way, make a public statement out of this, and saying: my clients are in Lithuania, the GKNB wants them, but they are in Lithuania, can you please ask their questions by email or in writing.

So that's that. That's the status of the investigation, the Claimant's full awareness of the investigation, the Claimant's refusal to cooperate with the investigation.

That really brings us to the conclusion of that, which is the December 2019 sentencing decision.

Key findings. The key findings of that sentencing decision against the three individuals that I mention are largely what wave been discussing and what we've

been highlighting in this opening statement. The Almaty off the books meeting, the collusion between Shaikova and other state officials in the tender, the improper influence on the tender commission and the independent committee, the $20,000 thank you without the thank you note from Claimant, the influence that Shaikova, Bakchiev and Abdullayev exercised on the independent commission to have the complaints dismissed. So all of that is in the sentencing decision, not appealed, and conformed to.

I'm just looking at my -- I'm almost done with the facts. If I may finish with the facts? Thank you very much.

We now go to the pronouncement of the tender as failed. Again this is really an administrative point. We are in February 2020. The SRS issues an order to recognise this tender as failed due to expiration of bids. It did take some time for them to issue that order. Claimant didn't really take any steps to challenge that order. It's propriety, its validity, its timelessness, nothing. That really is a Kyrgyz law point, and if the Tribunal allows, I would rather allow the Kyrgyz experts to battle over this. I understand there's not much battle by the way.

We move now to something more interesting, which is

the multiverse, as we call it, of Claimant's conspiracy theories.

Now, with all due respect to Claimant, its counsel, this story is ever shifting about who is to blame, what is the motive, why the story ended as it ended.

We've selected five conspiracy theories; that's not it. There are many more. We don't want to burden the Tribunal with them. They were abandoned. They were forgotten about in the course of these proceedings. Really this is just to show the level of creativity, trying to find the party at fault whereas there is no such party attributable at least to the Kyrgyz Republic.

The first theory. It was Mr Kadyrkulov, the chairman of the GKNB, that orchestrated the demise of the 2018 tender. We went over this.

The news about Mr Kadyrkulov being present or organising a meeting with some other company back in December 2018, that news, out of nowhere, came from Ms Shaikova, who was about to flee the country, who was dismissed from her post and was in hot water with her complicits for several months about the tender. So she spilled the beans about a meeting she had with Kadyrkulov, a representative of another company, in December 2018.

The company wanted to supply passport printing

equipment to the country, not manufacture the passports. Nothing happened out of this meeting.

This theory, and we heard it dozens of times in the submissions, and several times in the opening statement, that Kadyrkulov was "offended" by the refusal of Shaikova to agree with him and to let the company, the other company do something; he was offended. That stems from a press article which in turn refers to a social media post which says Kadyrkulov was offended.

I leave it for the Tribunal to say how this could be credible of any sort if someone writes something on Facebook -- and a note here, we weren't able to find that Facebook statement were Mr Kadyrkulov was allegedly offended by this -- I'll leave it to the Tribunal to determine the evidentiary weight of this.

More importantly, this became public, this Kadyrkulov story, quickly, because Mr Shaikova spilled the beans. There were a lot of press articles about that.

Mr Kadyrkulov stepped down on the next day. He stepped down from his position as the chairman of the GKNB, and there was an explanation from him. It's on the record. He says precisely to rule out any speculation about his interest in the investigation of the tender. Which investigation continued, terminating

in an interim fashion by the December 2019 sentencing decision.

Second theory, there were foreign governments that were secretly negotiating the outcome of the 2018 tender. This is a novel theory. It is based on a document that we produced whereby the Kyrgyz Minister of Foreign Affairs transmits internally a note from the French Embassy in Bishkek attaching the complaints of IDEMIA. That's it. And Claimant comes up with a story that, well, that evidences that foreign governments from implicated and carried out secret negotiations on the outcome or the results of the tender.

Again, we will leave it to the Tribunal to determine the evidentiary weight and the probability of this scenario of governments, you know, colluding somehow to contest the outcome of the tender, but just to -- kind of put this into perspective -- Claimant deployed those diplomatic card, if I may call it so, both in relation to this tender by inviting Lithuania's honorary consul in the Kyrgyz Republic to advocate openly for Claimant's interests during a press conference Claimant had in Bishkek. And moreover, if you look at Mr Mieliauskas' Claimant's interviews, back in 2015, that was when Semlex came in the picture.

He deemed diplomatic assistance and accepted

practice -- he was openly rejoicing in an interview about Claimant's acquisition by Semlex, a Belgian company, because they have more connections in the diplomatic field, being a Belgian company, so now Claimant could benefit from that diplomatic network and have its interests better promoted or better protected.

So I think it's quite dual of Claimants to insinuate some inference of foreign governments where there was just an embassy transferring a complaint letter by a French company that lost and then Claimant completely ignoring itself openly using this tactic and being happy about being acquired by a company that is from a country that has more embassies than Lithuania.

The third theory is about the corruption investigation being somehow influenced by IDEMIA and other political officers backing IDEMIA, and the GKNB having strong ties with IDEMIA. That's based on, again, a Facebook post, the spelling and the -- spelling and formatting of which in original is on the screen and again we will leave the Tribunal to determine the credibility of this.

There's a theory about the Kyrgyz Republic not even intending to enter into this contract and having interests of some other foreign company. It's De La Rue, by the way, a very respected British company,

with whom the Kyrgyz Republic had an interim arrangement to cover for the period before the new tender were to be announced. So there's nothing secret or hidden there.

Claimant refers to Goznak, the Russian state-owned printing house, saying that they had this intention to do something in the country, and in reality, actually, if you look at the documents, Russia wanted to donate the printing capacities to the Kyrgyz Republic, or to grant them. So no improper influence really.

Probably finishing with Mr Bekenov again. We've even seen this in the opening statement, and I was quite surprised, Members of the Tribunal, because I thought after us explaining what this piece of evidence actually was, that would have been kind have backed down, but it wasn't.

So Mr Bekenov was allegedly appointed as an independent expert who somehow oversaw the 2020 tender, the same Mr Bekenov who represented Mühlbauer and whose witness testimony features in the criminal investigation. If you look at the article that supports this wild theory, it says that -- we have a Russian quote below, but basically, expert, without being said who appointed him or not, expert being he is an expert in whatever he does, who -- "nablyudavshi" -- sorry for using Russian -- more accurately obviously translates as

observing, not supervising or somehow controlling or whatever he did with the tender.

So this wild insinuation that Bekenov then somehow oversaw or controlled this 2020 tender is again with respect, but apologies, a farce.

Briefly now, about the impact of the scandal, alleged scandal, on Claimant.

So we are focusing on this, Members of the Tribunal, because the bulk of Claimant's claim is not damages, direct damages, because there are none, pretty much, or loss of profit under this contract, but some other reputational damages, some loss of other deals, loss of potential profit, whatever it was; because they allegedly lost their business reputation.

Now, if you look at what they said, Notice of Arbitration. The Kyrgyz scandal -- I'm not saying I agree with this denomination, but to use it as a shorthand -- severely crippled Claimant's business activity in all of its markets in more than 55 countries where Garsu operates. This caused massive damage to Garsu.

Now we move to a witness statement, a recent witness statement, from Mr Mieliauskas:

"I confirm that Claimant's most valuable and important contracts with Carlsberg, Mozambique, Swiss

government, Baltic Tobacco Factory and others ..."

There are certain others, but we have seen no evidence by the way of them even working with Claimant or terminating a contract with them, or Claimant claiming damages for those. So just the four: Carlsberg, Mozambique, Swiss and the Baltic:

"... were cancelled exclusively and for the sole reason [I quote Mr Mieliauskas' witness statement] of the Kyrgyz scandal and because of the false allegations put forward by the Kyrgyz Republic."

So we have asked them, is there anything to back this loud statement? Is there any evidence of those four companies terminating contracts with you because of the Kyrgyz Republic? To which Claimant replied:

"Surely you must not expect Baltic Tobacco Factory to explain in detail to us in writing the reasons for terminating the contractual relationship on such a sensitive matter. That is not how business is done."

We had to do this job for them. So we wrote to Baltic Tobacco. I wrote to Baltic Tobacco. It's a company operating in Kaliningrad. And I asked them, I summarised in a neutral way, what the claim is, what the insinuation is against Baltic, and I asked them: very grateful if you could please confirm or deny Garsu's allegation, so the fact that there was

a contract that was terminated because of the Kyrgyz scandal. And Baltic replied:

"Concerning the allegation of Garsu [Claimant] Baltic tells you the following. 2020, Baltic switched to a Russian printing house given the break-out of COVID closure of borders and the cross-border logistical difficulties."

That's it. There's no mention of the Kyrgyz scandal. There's nothing. We wrote to Baltic, they replied. It should have been their job to do this. If they are submitting to you a hundreds or thousands or millions of claims because of the contract that was somehow caused or cancelled by us, they didn't. We did the job for them.

Then we go to Carlsberg. Now, I emailed Carlsberg, Members of the Tribunal. I found the person who was actually in the emails that Claimant submitted somehow cancelling those contract because of the Kyrgyz scandal. I emailed him. His name is Dirk. And he said: yes, we had a historic relationship with Garsu and decided not to renew it or extend it because we are entitled to do, so we have obligation to renew.

Now, surely, he said, the reasons are commercially sensitive, but if you look at the timeline, and that is in our written submission and I will not burden much

the Tribunal with that, if you look at the timeline, Carlsberg, as a matter of fact, makes enquiries in an ordinary compliance screening matter about Claimant. They learned about the Reuters investigation, the OCCRP in investigation, those reputable institutions that Claimant refers to as pieces of paper, and they asked questions about those investigations in June 2019 to Claimant.

Claimant responded. We don't know what they responded, that's not on the record. And then a follow-up came from Carlsberg, saying:

"Can you provide us more details with this, this and that, and also an investigation into you by Lithuanian Prosecutor General's Office."

That was in Carlsberg's email. So I hope Claimant would not deny there is an ongoing investigation at least as of May 2019 by the Lithuanian Prosecutor General, so or they lied, or Carlsberg misunderstood, or they didn't say something correctly to Carlsberg, but most likely there is an investigation.

And then a year later -- we were in mid 2019 -- a year later, Carlsberg informs Claimant that it will not be extending their contract. No reasons are given at all.

So how can you arrive to this impressive lapse of

causation, not really -- causation, sorry, to call this a termination caused by the Kyrgyz Republic is really beyond us. But this is what Claimant is doing. It's claiming damages, a lot of damages, based on a wild theory that has no basis. I apologise for being emotional here.

That concludes the facts. We are at 1 hour 55 minutes of allotted time. If the Tribunal is minded, we would be glad of taking a break now.

MR ALEKHIN: Thank you very much.

THE PRESIDENT: 15 minutes.

(3.43 pm)

(The short adjournment)

(4.00 pm)

THE PRESIDENT: So Respondent, please.

MR BAYANDIN: Thank you. As introduced by my colleagues earlier today, my name is Dmitry Bayandin, counsel for the Kyrgyz Republic, and I will walk you through Respondent's legal arguments in this arbitration, so jurisdiction, admissibility and merits.

In the interest of time, I'll try to be brief. We will start with the admissibility and jurisdiction, and in line with our written pleadings, I'll be making two submissions. One, that your Tribunal has no jurisdiction ratione materiae over claims of

Garsu Pasaulis, as such claims do not concern an investment made by Claimant in the Kyrgyz Republic, and the second submission that Claimant's claims are inadmissible and the Tribunal lacks jurisdiction over them as Claimant's so-called investment which is the subject matter of this dispute had been procured through bribing of the Kyrgyz State officials. I will address these two submissions in turn.

But before going there, I would like to make a short preliminary remark about something that was said earlier today by our colleagues across the table with regards to the expert report, or as we call it so-called expert report of professor Crina Baltag on public international law.

We said a lot of things about this report in the Statement of Defence. It was brought up again this morning. And apparently now the Kyrgyz Republic is being accused of taking bad legal advice, of not calling Dr Baltag for cross-examination, whereas we would destroy so to say her conclusions in cross-examination, and the answer to that critique is actually very simple. Members of the Tribunal, I think we will all agree that the value of expert testimony is based on the expert applying his or her experience, expertise, to the facts of the case at hand.

Claimant seems to agree with that as in paragraph 2 of its Statement of Claim it introduced the expert report of Dr Crina Baltag, saying this she would have thoroughly investigated the events concerning the 2018 public tender for the production of e-passports.

The problem is that if we look at the expert report of Dr Crina Baltag, paragraphs 3 and 4, we will actually see that she herself admits that she has "no independent knowledge of the facts of the case", and, moreover, if one were to look at the list of documents that was provided to Dr Baltag by Claimant, we have five documents, of which one is the witness statements of Claimant's witnesses in this arbitration, the BIT, Notice of Arbitration, so the very first pleadings and submissions that were made in these pleadings have changed dramatically throughout this arbitration, and only two factual exhibits. Two exhibits related to the 2018 tender for the procurement of passports.

Members of the Tribunal, a 53 pages expert report which purports to give an opinion on violation of public international law by the Kyrgyz Republic in this particular case, which is based on two factual exhibits, that is not a thorough investigation. It is expert validation. And it has zero evidentiary value, we submit.

And cross-examining an expert which has not even seen the factual record of this arbitration is, with respect, a waste of everyone's time. Even more so when compared to the other expert report that Claimant submitted on the matters of Kyrgyz law of Professor Alenkina, we have no issue with that report. We of course disagree with the conclusions that Ms Alenkina makes in her expert report, but at least she had done a proper job of studying the factual record of this dispute and giving a qualified opinion on that.

Last point on this maybe, we're criticised for not calling Dr Baltag for cross-examination, but we actually addressed all of her findings in the Statement of Defence, including the manner in which that report was prepared, but we have not seen a second expert report from Dr Baltag in the Reply which would respond to those critiques. So I think the matter should be put at rest at this stage.

I'm moving to jurisdiction ratione materiae.

I will first introduce briefly the criteria which must be met for your tribunal to have jurisdiction ratione materiae over this dispute, before explaining why Claimant actually fails to meet such criteria in the present case.

There are four criteria. One, that Claimant must

prove that it has invested an asset in a complete form in the territory of the Kyrgyz Republic. That comes from the BIT.

Second, from the same BIT, such asset must be invested in accordance with the national legislation of the Kyrgyz Republic.

Third, the investment must conform to the inherent characteristics of an investment under international law.

And fourth, the dispute before your tribunal must be directly relating to the said investment. And that also comes from the BIT.

I'll just briefly address each of these criteria in turn.

First, Article 1 of the BIT defines an investment as assets which are invested in a complete form, which was actually conceded by Claimant in its own Statement of Claim, which said that it requires an action to invest usually in a completed form.

They of course since changed their positions and now are pointing to other parts of the BIT where a different word was used, investments being made. However, those words are used in the context of the explaining the dispute settlement provision. They are nowhere to be found in the definition of an investment and they are

also nowhere to be found in the definition of the investment dispute at Article 8.1 which says that the investment dispute it's relating to investments, which are in turn defined in Article 1.1 of the BIT.

This conclusion is even more so, we would say, convincing when compared to other investment protection instruments which contain different definition of investments such as including, for example, when investor seeks to make or is making an investment, that's from NAFTA, attempts to make, that is from the US Model BIT, or BITs which include in addition to investments made associated activities, such as making of contracts, access to licences, permits and so on, and that is a quote from the Ukraine-US BIT as quoted by the Tribunal in Lemire.

This logic that the definition of investment shall govern the analysis of what constitutes an investment and what is not has been confirmed by case law. We have reference to Saipem v Bangladesh which said that the Tribunal jurisdiction is conditioned upon Saipem having made an investment, Nordzucker v Poland which has been referred to by our colleagues which has been made a distinction between investments in the making and investments that had been made, and holding that only investments that have been admitted shall benefit from

the protection of the BIT and that the intended investments do not enjoy the treaty protection. That's a quote from Nordzucker.

Second criteria relates to the investment being made in accordance with the national legislations of the host state, so the Kyrgyz Republic, and here we are not yet talking about legality or illegality, because this qualification has also a different meaning, as admitted by Claimant itself, which says that the Tribunal must assess the assets which constitute the investment against the laws of the host state to determine whether they are legally protected under the law of the host state. Which has been very well explained by the Tribunal in Nagel v Czech Republic, which says that such kind of a definition creates a link with the domestic law. The link that determines whether or not there is a financial value to the alleged investment.

And the value, as the Tribunal said, is not a quality deriving from natural causes, but the effect of legal rules which create rights and give protection to them. In other words, Claimant's alleged investment must exist and be protected and have value under the national law of the Kyrgyz Republic, and that is only one of the criteria that they have to meet.

Third criterion says that the investment must also

satisfy what we call the inherent meaning of the term "investment" which concerns economic features such as certain duration, contribution, and risk. And contrary to what Claimant is suggesting in its reading pleadings, and have been suggesting earlier this morning, it's not a matter exclusive to ICSID, and the seminal Salini test, as attested by abundant, we say, case law, and you have the references on the screen, I will not be quoting all of them, but as you can see, Members of the Tribunal, here you have ad hoc UNCITRAL awards, PCA awards, you have ICSID additional facility awards and you have ICSID awards which themselves confirm that the criteria of contribution, duration and risk apply outside of ICSID arbitration. So there was a very long and entertaining attempt this morning to ridicule our position on this, but this attempt is obviously unconvincing.

And the fourth and final criteria states that the Tribunal's jurisdiction ratione materiae would be satisfied only if the dispute is relating to a protected investment, and as a result, the dispute does not relate to an investment where the measures of the state that investor complains about do not affect such an investment. That has been confirmed, for example, by the tribunals in National Grid v Argentina and

Cairn v India.

In turn, existence of such investment, even if the investor has these investments in the country, they are irrelevant for the establishment of the Tribunal's jurisdiction ratione materiae.

Claimant relies in this arbitration on the concept of entire operation to say that there are various unrelated investment would constitute a single economic operation and that would be, you know, covered, and by extension covered elements that by themselves do not constitute an investment. We say that unlike the concept of inherent characteristics, it has not been applied, meaning the entire operation concept, it has not been applied outside the ICSID arbitration context. But in any event, even if we were to apply this test, Claimant fails to meet it as we will see in just a few minutes.

Now, with the criteria set out, we will turn to the so-called investments that the Claimant, Garsu Pasaulis, would have made in the Kyrgyz Republic. And we start with this alleged winning, short-lived winning of the 2018 tender. We say it is not an investment and does not establish jurisdiction of this tribunal ratione materiae because it does not satisfy any of the criteria that we just looked at.

First, it is not an asset invested in the territory of the Kyrgyz Republic. At best, it's an investment in the making. At worst it's a pre-investment activity. Neither of which are protected under the Kyrgyz-Lithuania BIT. And actually the authorities that the Claimant itself relied upon confirm this conclusion.

When looking at Nordzucker, with reference to public tenders, the tribunal noted that states do not agree to arbitration of disputes related to pre-investment relations with persons merely intending to invest, and that obviously concerns participants of tenders and even the winners who tenders who have not yet signed a public procurement contract.

Lemire and Bosca, which accepted jurisdiction over participation in public tenders, except they did so with a specific reference to so-called associated activities that were expressly covered by the applicable treaties. And our colleagues this morning, they quoted from the Bosca award, but the quote was incomplete because what the tribunal said actually is that becoming the tender winner and negotiating the SPA can be likened to making a contract which falls within the express terms and intending meaning of the associated activity.

We also have Mihaly, which says that potential remedies concerning improper negotiation of the contract

under tender do not arise because an investment had been made, and that claims concerning such remedies are not arbitrable.

Claimant in fact itself admits in its written submissions that its contractual rights as a party to the public procurement contract have never been perfected. They would have had a right if they concluded the public procurement contract, but between the moment they won the tender and conclusion of the public procurement contract, that right has not been perfected because the contract was never concluded.

Second, by winning the -- by merely winning the 2018 tender, Claimant did not get any substantive economic rights under Kyrgyz law, contrary to what they're alleging, and that has been very eloquently relayed earlier today by His Excellency Baetov.

In Claimant's mind, and here I quote extensively from the Statement of Claim, once it was announced the winner, it would have acquired an economic, unconditional automatic substantive right which moreover had a value of 12 million euros -- that's the price of the contract that they would have concluded -- and that such right could not be withdrawn or cancelled.

It is telling that none of the above qualifications by Claimant of its rights are repeated in its own Kyrgyz

law expert reports, and that's because none are correct.

First of all, there was no economic right. There's no such term under Kyrgyz law as an economic right. And as confirmed by our Kyrgyz law expert, Judge Davletbayeva, from whom you will hear on Wednesday, Claimant's rights as the winner of the 2018 tender did not contain any monetary claims or any right to engage in economic activity contrary to what is alleged.

Furthermore, there was no substantive but rather a procedural right, and Judge Davletbayeva makes a very clear distinction, with reference to the Kyrgyz Civil Code, between a right to conclude a contract which was tendered in the present case and the contract itself, the difference being that is the contract itself was tendered in the present case, at the moment of the declaration of Claimant, as winner, minutes of procurement would have been signed and contract would have been concluded. This is not what happened in the present case.

Furthermore, there was obviously no unconditional right that could not have been withdrawn or cancelled. In fact, Kyrgyz law on public procurement clearly states that procurement could be cancelled at any time by the procuring entity before the conclusion of the contract

if the procurement entity decided it no longer needed the tendered contract, and, moreover in the event of cancellation of the tender, its declaration as failed, the procurement entity, the SRS would not bear any liability vis-a-vis the bidders and would not be bound to justify the validity of the grounds on which the tender was cancelled or declared as failed. And this comes from the actual tender documentation instructions to bidders from the 2018 tender that Claimant agreed to participate under in the tender.

Finally, Claimant's remedies were limited to filing a claim to compel the procurement entity to enter into the contract and seek compensation of corresponding losses, and that is while its bid was still valid. So before it expired.

So you can see how inherently fragile this right was. And of course there is no automatic right, contrary to what is alleged, as attested by the sheer volume of correspondences and documents exchanged and commented upon by Claimant and the SRS after the announcement of tender results. And we have heard a very valid question by Mr Laird earlier this morning that, you know, why would you need to vet the contract and exchange documents if everything was already settled. It was not.

Finally, there is no evidence of any discernible value of Claimant's rights as the winner. Claimant in the Statement of Claim puts the price tag at 12 million euros, while its own quantum expert only claims a bit over 2 million on the account of lost profits. No justification for the 12 million euros figure is given. And the lost profits would only be relevant in the case that a contract was concluded. That's the profit that Claimant allegedly would have received from performing a contract that would have been concluded. But it was not even at that stage at the moment where its rights expired.

Third, and moreover, Claimant's rights as the winner of the 2018 tender do not meet any of the inherent characteristics of the investment under international law. Of course, by submitting its bid under the 2018 tender, Claimant has made strictly no contribution of funds or other valuable assets towards its investment project in the Kyrgyz Republic. Without the public procurement contract, the investment project has not even begun and therefore there was no duration and finally, by submitting its bid, Claimant took no economic risk whatsoever, safe for expending a few thousands of euros for which the procurement entity would moreover not be liable in any event as per the

express terms of the tender documentation that Claimant agreed to.

Now, we talk about the Claimant's winning of the 2018 tender. Claimant is of course aware of the facts. This is why throughout this arbitration they have constructed this artificial and highly incredible theory that their participation in 2018 tender would somehow be linked to their previous and unrelated projects in the Kyrgyz Republic, to present them as one coherent investment operation.

We have already spoken about the applicability of the entire operation concept, but even if we were to apply this notion in the present case, the authorities submitted by Claimant itself put a standard, the legal standard which Claimant cannot satisfy. We have CSOB v Slovakia where it's stated that to make part of the entire operation, the investment must be an integral part of an overall operation. In Sehil it was recognised because there was a big company in the country handling construction contracts of similar nature over the period of nine years. In Saipem there was again a construction project with related warranty documents, retention funds, arbitration award, arising out of this project. And Nordzucker v Poland, the tribunal decided that do not constitute a single

investment project successive acquisitions of several sugar companies, specifically because each acquisition was "subject to a separate public sales procedure with its own timetable and sometimes its own rules", and it is not contested, Members of the Tribunal, that all the previous projects of Claimant in Kyrgyzstan concerned projects of different nature, supply of excise stamps, they were concluded with a different authority, a state tax service, as opposed to state registration service. They were subject to separate public procurement proceedings, subject to different rules. So of course there is nothing in common with the 2018 tender.

Now, to the elements of the so-called entire operation.

Claimant names their local Kyrgyz company, Garsu Pasaulis LLC, that they formed in 2016, winning and executing two excise stamp production contracts in 2013 and 2016, the training and know-how that they provided in the context of those contracts and business reputation.

We will start from the end business reputation.

Claimant has provided no specifics whatsoever, just exactly what kind of reputation it would have invested within the framework of the 2018 tender which has never materialised in a functioning business venture.

As to the other three elements, company, previous contracts, training and know-how, we have already explained in our written submissions that Claimant's own case is that these ventures were for a different kind of contract with a different authority. The 2018 tender documentation does not refer to and does not require any prior experience, let alone in the field of manufacturing excise stamps. Claimant does not refer to its experience in a standard bid submitted in the 2018 tender, even just to brag that: we are present in the Kyrgyz Republic, we have done things here. They didn't do that. Nevertheless, Claimant doubles down on its argument in the Reply, saying that those -- the contract, the company, the know-how played a crucial role in the 2018 tender, and the Claimant would not have had any chance of successful participation in the 2018 tender without those previous experiences. And we have seen earlier today in the opening statement of Claimant reference to witness statement of Mr Lukoševicius who says essentially the same thing, and even our learned colleagues across the table, transcript reference 12/24, speaking about the local company, was it related to the 2018 tender, again, yes.

I could of course start arguing with our colleagues with, Mr Lukoševicius, with Claimant's Reply, but what

I suggest we do, Members of the Tribunal, is that we give the floor to Mr Vytautas Mieliauskas, Claimant's CEO until 2018, and witness in this arbitration.

What you will see on the screen right now is excerpt of an interview that Mr Mieliauskas gave to a Kyrgyz journalist from Radio Azattyk on 4 April 2019, so in the middle of the GKNB investigation.

The transcript of this video is on the record as exhibit R-53, and we have notified the Tribunal last week that we would rely on the video and would make it available to the tribunal in full. It's 20 minutes long video and we of course are not going to be watching it in its entirety, but we just wanted to show you what Mr Mieliauskas himself has to say about Claimant's previous business ventures.

The interview is in Russian. Some Members of the Tribunal do speak Russian language, but we have arranged for closed caption in English language which of course corresponds to the transcript submitted on the record as exhibit R-53.

Video played:

"The phone is turned off, there was no connection and so on.

"Then, during the day, the information appears on the internet about some searches, there are papers with

a big list of people who are subject to seizure. We read this list and do not understand anything. I can tell you, a journalist, that we know the name 'Garsu Pasaulis LLC'. This company has absolutely nothing to do with Kyrgyzstan's e-passports project. It works solely on the SRS project and deals with logistics because under the terms of our contract with the SRS, as we said at the press conference, we have to deliver goods to the Kyrgyz Republic on DDP terms, i.e. we have to bring them into the country, pay taxes, customs duties, and so on. This is all done by Garsu Pasaulis LLC. Tell me, what does it have to do with e-passports? It is not clear. This list includes the director of this company ... I mean Uran Tynaev, the director of our Garsu Pasaulis LLC. He deals exclusively with the SRS contract. The rest of the people on this list we have never seen, never known, never met and do not know who they are."

Respondent submits that the Tribunal lacks jurisdiction ratione materiae and for this reason alone, Claimant's claims must be rejected.

I will now move to corruption.

So our second submission objection is that in any case the Tribunal would lack jurisdiction over Claimant's claims and such claims would be inadmissible

because Claimant's so-called investment in the Kyrgyz Republic and that is winning of the 2018 tender was secured through the bribery of the Kyrgyz State officials. Here, Members of the Tribunal, just for the record, I would like to qualify a statement that was made earlier today by His Excellency Baetov who was saying that this case is not about corruption. Of: course we're not waiving any corruption objection. What His Excellency Baetov meant it that this is by far not the only flaw in Claimant's case in this arbitration and you have many more reasons other than corruption to decide against them in the present case.

But since there's bribery, we have to talk with this.

I will start with the legal standard. So as I said, Article 1 of the BIT says that only investments made in accordance with national legislation are protected, but, you know, even irrespective of the wording of the applicable treaty, it is by now a well established principle of international law, which is sometimes dubbed as good faith, clean hands doctrine, international public policy, that an investment procured in violation of host state laws, through fraud, bribery, is not worthy of any protection and independently of the specific language of the treaty.

Accordingly, an investor who made an investment in breach of host state's domestic law, must see his claims dismissed either as inadmissible, or for lack of jurisdiction. Of course, international arbitrators have moral and ethical duty not to further and not to facilitate these criminal activities, not to aid fraud or corruption, a position that is voiced, unanimously, we would say in academic commentary.

This much is not contested by our colleagues, what is contested is the standard of proof. We have heard again today that the standard of proof is clear and compelling evidence. We obviously disagree. In light of the hidden nature, inherently hidden nature of corruption, and the fact that international tribunals obviously lack the investigative powers of state courts, the criminal standard of clear and convincing evidence should not be applied. We submit it is by now again an established principle that allegations of corruption are to be established by circumstantial evidence or the so-called red flags. This is a conclusion supported by academics, guidelines and investor state arbitral awards. And we have set out a lot of them in our written submissions.

I would just like to stop more in detail at one of them, which is Penwell v Kyrgyz Republic, an award

rendered in fall 2020, and I choose Penwell not because, or rather not only because it is a recent and major victory for the Kyrgyz Republic, but because it bears similarities with the present dispute, and due to its authoritative power.

In Penwell, like in the present case, there was a foreign investor that resorted to bribes in order to acquire and maintain its investment in the Kyrgyz Republic. Just like in the present case, there was criminal investigation which only convicted local fixers of the said investors and those fixers confessed giving bribes to judges on the investors' behalf, and the investor itself escaped liability by escaping the country and then decided to sue the Kyrgyz Republic before an investment tribunal.

The eminent tribunal, composed of Professor Pierre Mayer, Dr Klaus Sachs, Professor Brigitte Stern, applied the red flags method, and not just applied it, but it analysed an extensive body of investor state case law that did the same before them. They applied the red flags method to find in favour of the Kyrgyz Republic.

We invite the Tribunal to adopt the same approach as the arbitrators in Penwell.

The final point on the standard of proof is the

absence of prosecution of the alleged illegality, let alone conviction, is not a relevant criterion, as explained, for example, by the tribunals in World Duty Free and Metal-Tech. For this reason we ask the Tribunal to leave without attention Claimant's arguments that because the Kyrgyz Republic allegedly did not find enough proof to prosecute Claimants directly, that your tribunal would have to apply a heightened standard of proof. It's frankly just illogical to suggest that.

As to the typology of the so-called red flags, as you might imagine Members of the Tribunal, it's expansive. There are other well-known general list of this so-called red flags. Most of them relate to situations where an intermediary is involved, a middleman, and which have, for example, been suggested by the Metal-Tech tribunal or the Basel working group toolkit.

It is only logical that, depending on the specific industry where a transaction is carried out, the types of the red flags would also change. And in the specific context of the public procurement -- we have a list on the screen -- the following red flags indicative of impropriety have been suggested based in particular on the wealth of experience of the World Bank procurement officers, and this is a new legal authority that

Claimant kindly allowed us to -- agreed to, rather, to be added to the record. And such examples of red flags are in particular existence of complaints from competitors about the procurement process, non-selection of the lowest bidder for procurement, intervention of public officials in the bidding process to favour a particular company, an unqualified or inexperienced supplier winning the contract, involvement of companies or individuals with a history of anticompetitive behaviour, etc.

Members of the Tribunal, having heard from Mr Alekhin earlier who walked you through the troubled procedure of the 2018 tender, as well as the historical trail of reputational scandals accompanying Claimant and its main shareholder wherever they go, you will notice that many of these red flags are actually present in our case.

In our submission, this alone is sufficient for the Tribunal to draw the necessary inferences and find that the 2018 tender was rigged in Claimant's favour.

Luckily, we have more than that. What we have is a 26 December 2019 sentencing decision, which was never appealed, against three Kyrgyz public officials, all of whom have confessed to have rigged the 2018 tender in Claimant's favour, and as already explained by

Mr Alekhin, the criminal file behind this sentencing decision is massive and reveals the off-the-book meetings, improper sharing of the tender documentation, superficial technical evaluation of bids, payments of $20,000 which would have been called as gifts, but rather a kind of thank you from one of the bidders, Garsu, as testified by a person who received this hefty sum of money.

And of course we have the executive conspiring to dismiss the complaints of the competitors of Claimant. We have the exchanges in the messaging apps keeping the Claimant apprised of the procedure of consideration of the -- of these complaints from the competitors. The list goes on.

In our submission, Members of the Tribunal, all of these facts taken together establish corruption comfortably above the required circumstantial evidence threshold.

We have heard earlier this morning from our colleagues that corruption is a "almost never successfully proven". We tend to disagree. Only from the cases on the record, we have World Duty Free, we have Fraport, we have Metal-Tech, we have Penwell, and that is only corruption, and there are other kind of improprieties that have been found by investment

tribunals, and we submit that it should be not difficult for your tribunal to find corruption in this case and dismiss Claimant's claims either for lack of jurisdiction or as inadmissible.

I will now move to the merits.

I will try to be brief. We will demonstrate that there was no breach of the Kyrgyz law by how the Kyrgyz Republic handled the 2018 tender in the sense that when Claimant's bid expired and the tender was proclaimed as failed, and there was no breach of any applicable investment protection standard.

So starting from the Kyrgyz law, very briefly, the main complaint that Claimant advances in this arbitration against the Republic essentially boils down to this notion of the validity of their tender bid.

What Claimant and their expert, Ms Alenkina, argue is that once Claimant was declared the winner of the 2018 tender, the validity period of its bid, which was limited by their tender bid, it would become irrelevant, and accordingly it could not expire. Claimant's bid would essentially be forever valid and its right to conclude the public procurement contract would also be forever valid.

On the basis of this assumption, they advanced the argument that the declaration of the 2018 tender as

failed was contrary to Kyrgyz law. There are also complaints about the suspension of the tender for the consideration of complaints of its competitors. None of this is true, and we submit that Ms Alenkina is defending an untenable position under the Kyrgyz law.

First let's look at this suspension of the tender. So in February 2019, upon the receipt of complaints of IDEMIA and Mühlbauer, the tender proceedings were suspended, of which Claimant as other tender participants were informed in a letter from the SRS. There was nothing improper about that. Claimant was informed and did not contest this notification. It rather accepted it and agreed to extend the validity of its bid like other bidders with specific references to provisions of the law of public procurement in their letter. Here's reference to exhibit R-37 on the record.

There was a complaint that the decision of suspension was allegedly rendered by a non-competent authority. This is also wrong, as explained by our expert, Judge Davletbayeva. The Department for Public Procurement was empowered to order such a suspension. But in any event the suspension of the tender is prescribed by the law on the public procurement, upon the receipt of complaints from the competitors. So if we would assume that Claimant was right and actually the

suspension was invalid, if your Tribunal were to accept the argument, that would mean that rights of other participants other tender participants such as IDEMIA, such as Mühlbauer, who submitted those complaints, they would have been violated, because the compulsory suspension of the tender would not occur. This of course is not the correct interpretation of the Kyrgyz law.

As to the declaration of the 2019 tender as failed due to the expiration of Claimant's bid, we submit that Claimant's bid expired in accordance with the Kyrgyz law as has been set out in detail by our expert, Judge Davletbayeva. Claimant has in fact always been aware of this, as it for example again agreed to extend the validity of its bid on 12 February 2019, in response to a request by the SRS.

But the purely artificial and post-factual nature of Claimant's theory is confirmed in fact by its own arguments advanced in the Notice of Arbitration, where contrary to its Statement of Claim or Reply, it was complaining about the outcome of the 2018 tender, saying that instead of declaring the tender as failed, the SRS either should have signed the contract or should have asked for extension of the term of Garsu Pasaulis' bid. That is quote from the Notice of Arbitration.

So it's quite difficult to reconcile this argument, which was repeated multiple times in the Notice of Arbitration, with the position that they hold today that their bid could not allegedly expire.

And just for the sake of completeness, to address this argument in the Notice of Arbitration, the SRS had no obligation. It had only a right under the law of public procurement to request extension of the participant's bid, it was not obliged to request the extension of Claimant's bid for the second time in April 2019.

So that's for the Kyrgyz law.

When it comes to the alleged violations of the investment protection standards, Claimant's case is, with respect, all over the place. Across its voluminous written submission, Claimant struggles to identify which alleged act or omission by the Kyrgyz Republic qualifies violation of the various standards of investment protection. As a result their case is confused, self-contradictory and must be dismissed for this reason alone, because Claimant and Claimant alone bears the burden of proof to establish the violation of international law in the present case.

In any event, Claimant fails obviously to establish any violation as we will now demonstrate and we start

with fair and equitable treatment.

From what we could understand from Claimant's submission in these proceedings it appears to be alleging breach of the two elements of the FET: legitimate expectations and non-discrimination standards. I will start with legitimate expectations.

The legal standard is well established and we would say uncontroversial. As set out, for example, by Newcombe and Paradell in their treatise on the practice of investment treaties, it contains two fundamental requirements to be protected. There must be unambiguous definitive and repeated assurances by the host state made to a specific person or identifiable group. Furthermore, as established by abundant case law which we do not cite here in extenso because it's set out in our written submissions, to be protected, the alleged expectations must be reasonable and what reasonable means is that there would be no legitimate expectation where Claimant does not do a thorough due diligence of the applicable laws in the country they invest in, or where they do not diligently pursue available remedies to them, and that is a quote from MCI v Ecuador, exhibit RLA-112.

And as stated by the Tribunal in Stadtwerke, such due diligence must be "rigorous".

To conclude on this standard, obviously there is no legitimate expectation that the state's regulatory framework will never change. This is relevant in the context of the change of the versions of the public procurement law that occurred during the examination of the bids in the present case.

As to the non-discrimination -- excuse me, apologies. Just to again conclude on legitimate expectations, as stated by the academics and the case law, contractual obligations by themselves are not protected legitimate expectations because the investor must be in the presence of a sovereign act as a host state as opposed to the act as a contracting partner, and let alone a winner of the tender that does not yet have contractual rights, does not hold any legitimate expectations.

As to discrimination, to establish one, there must be an appropriate comparator placed in a similar situation so as to require identical treatment, there must be treatment that is materially different from that comparator, and there should be no rational justification of the difference in treatment. And in the present case, of course, none of this standard is met.

There was no breach of a legitimate expectation.

Claimant says that its expectations were derived from its winning of the tender and the subsequent obtaining of, again, a valuable right to execute the passport contracts that stemmed from representations made in the bidding documents and common level of legal comfort which any protected foreign investor could expect.

And the breach would have occurred when Claimant simply announced, as Claimant would have it, that their bid had expired and later on cancelled the 2018 tender without any legal basis whatsoever. All of this is wrong, Claimant fails to point to any specific representation by the Republic that would guarantee it to enter into public procurement contract no matter what. The contractual rights cannot form the basis of legitimate expectations. We have just seen that. And, finally, the 2018 tender failed as a matter of applicable Kyrgyz law in conformity with the applicable law and our expert Judge Davletbayeva will be of course be ready to answer the Tribunal's questions on this on Wednesday.

There was also no discrimination. Claimant in its submission only puts forward some vague and unfounded insinuations that Mühlbauer was somehow privileged and had something to do with kicking Claimant out of the country to win the 2020 tender. Claimant by the way was

free to participate in the tender in 2020 tender, but decided not to. So there goes their case on discrimination.

Now turning to the full protection and security. For the legal standard this should be distinguished from the FET. There's no consensus with regards to the FPS standard, whether it encompasses an obligation of legal security. We say that it only extends to physical protection, and as stated in the recent decision of IMFA v Indonesia, the standard requires the host state to exercise due diligence in the provision of physical protection, and unless the relevant treaty clause explicitly provides otherwise, the standard of FPS does not extend beyond physical security.

There is no breach of the FPS where the state acted within the limits of national legislation, and of course any breach of the FPS standard is associated with a high burden of proof. In the present case there was no breach.

Claimant's grievances are unclear in this respect. Here are quotes from the various parts of the Statement of Claim, which were, by the way, repeated verbatim this morning, that the Respondent would have applied all measures available, harm and threaten Claimant, etc, that the GKNB would have attacked Claimant, that the

Republic would not have ensured protection from interference, etc, etc, etc. It is noteworthy that at no point Claimant suggests that its physical security was somehow endangered. Claimant was obviously not attacked by the Kyrgyz Republic in the mass media. Mr Alenkina had already earlier debunked this theory of Claimant. And as also explained, the corruption investigation by the GKNB was conducted in accordance with the applicable laws and the due process. Claimant was repeatedly invited to interview with GKNB but failed to attend. Its two local representatives were interviewed as witnesses in full compliance with the Kyrgyz law, and the searches that were carried out and that they complain about in this arbitration were also conducted in compliance with the applicable laws.

Expropriation. We will try to be very brief here.

As per Claimant, its expropriation case is as follows.

The Republic would have expropriated the right to execute a public procurement contract that Claimant obtained by winning the tender, and alternatively, the Republic would have expropriated a freestanding right to execute an e-passport contract for a certain amount for a specific period of time through illegal cancellation of the already concluded 2018 tender.

Nevertheless, Claimant fails to prove any of the requirements of an expropriation claim. Article 4.1 of the BIT requires that for there to be a taking, an active act to either expropriate, nationalise or adopt similar measures, to find expropriation the state must have acted in its sovereign capacity and not as a contracting partner. The rights of the investor must be capable of being expropriated, ie it should be property rights, which we submit the Claimant did not hold in the present case. Legitimate expectations cannot be expropriated. The public law right to feed-in tariffs cannot be expropriated, as established by case law. And we submit that their rights as winner of the 2018 tender could not have been expropriated either.

Contrary to what the Claimant suggests, the right to execute a public procurement contract subject to prerogatives of the public authority is not capable of being expropriated because it was inherently procedural and non-contractual. Claimant paid all costs of participation, for which the procurement entity bore no liability, and, as we already seen earlier the entity had the right to cancel, declare the tender as failed, and even just change its mind and decide that it no longer needed this public procurement without any justification.

In the present case no taking occurred by the Republic as there was simply no right to take because Claimant's right expired, as a matter of Kyrgyz law, on 2 April 2019. The Republic did not, as Claimant would have it, refuse to execute a contract while its bid was still valid, while Claimant itself did not pursue the available remedies under the Kyrgyz law to compel the SRS to conclude the public procurement contract. It didn't do any of that.

The Claimant's own Kyrgyz law expert, Professor Alenkina, in her second expert report, could not even confirm that Claimant's right to execute the contract were ever terminated. So there's sheer confusion in Claimant's case on this count.

There is no denial of justice. Claimant suggests that it would have suffered denial of justice in this regard of due process at the hands of tender commission and GKNB which would have breached the Kyrgyz law. This is not the standard. The standard implicates the state judiciary and judiciary only. It is extremely high standard of proof equal to a fundamental or outrageous failing of the system as a whole. A mere error of domestic courts, even at first instance, does not amount to a denial of justice. The claim of denial of justice presupposes an exhaustion of local remedies and Claimant

did not even attempt to pursue local remedies in the present case.

Of course, Claimant's claim has nothing to do with denial of justice as it doesn't concern any of the above criteria.

I will just skip to the final claim, the so-called destruction of Claimant's international reputation.

There is no such standard under the BIT. It's not a separate breach of international law, but Claimant argues it anyways.

We understand this claim as being a claim for moral damages which would be better suited in the quantum section, but we will address it here anyways.

For the legal standard, it requires an exceptionally high standard of proof of moral damages. There are a handful of cases in investment arbitration which have granted moral damages which are awarded in exceptional circumstances which would involve physical duress, violence, etc. The Claimant does not even attempt to explain how the Kyrgyz Republic's actions would satisfy this legal test, and, as Mr Alekhin will also explain to you, there is no entitlement for the so-called destruction of the business reputation of Claimant as Claimant did not even invest its business reputation in the Kyrgyz Republic. There was no evidence that

Claimant's reputation was in any way affected by the so-called Kyrgyz scandal. Claimant's reputation was already tarnished when it came to the Kyrgyz Republic, and of course there's no causal link between any impact on Claimant's reputation. They allege today and the Kyrgyz Republic's allegedly unlawful actions.

With this, Members of the Tribunal, we conclude merits and I will give the floor to Mr Alekhin. We will have a 30 second technical pause to change seats.

Submissions by MR ALEKHIN

MR ALEKHIN: Members of the Tribunal, thank you for your indulgence.

I am uncharacteristically excited about quantum in this case, because there are certain interesting things to talk about.

Just an overview of the Claimant's quantum case. Three groups of losses claimed. We've dubbed them the 2018 tender contract losses, the ensuing other contract losses, and the business reputation losses. In the first group you have 7,600 euros -- I might not be correct to the specific euro there -- of direct costs. So expenses, trips, hotels, cancelled flights and things like that. 2.2 million of lost profits under the 2018 tender contract. And then the two remaining categories are 5 million for loss from cancellation, alleged

cancellation of other contracts allegedly caused by the Kyrgyz scandal, and the 9.5 roughly million of euros based on under-receipt of profits.

Again, the purpose of this section is not to take you through the technicalities of the quantum. We have experts for that and they are ready to go into tell you in our case why the quantum case bears no criticism. I would like to focus, if I may, on the burden of proof and the legal standard, because the burden of proof is largely uncontested here. What there is a dispute about is whether there is any legal basis for actually claiming loss of reputation in a context of an investment arbitration.

So Claimant tells, sure, loss of reputation is compensable, it qualifies as non-pecuniary loss, and then they rely on AAPL and Metal-Clad, but the problem is that those two cases do not set out as a principle this loss of reputation as compensable.

Nor does in fact Born's concurring and dissenting opinion in Biwater. There's nothing said about there about the nature of compensation granted in cases of loss of reputation.

So as established by the Tecmed tribunal, really the loss of reputation is a category of moral damages and therefore a pecuniary loss.

We understand why Claimant is eager to qualify this as a non-pecuniary loss, because obviously if you're under a moral damages, the standard is even higher, which we will talk about in the next slide. So this is just the logic behind this slide and, as we see it, the logic behind Claimant's quantum case.

So I would move now to causation, because really -- perhaps one word -- I apologise -- on the legal standard. Obviously whenever you go to moral damages, the legal standard is well established, physical duress, etc. The cases are all there. It is extremely difficult to prove moral damages with respect to in an investment arbitration setting. This has been done in a handful of cases. They are very well known. In DLP it was an instance of physical strife and attacks on Claimant's personnel. Nothing of that sort happened here.

So really it is a high, high, high barrier that the Claimant must jump over to prove or to demonstrate that it is entitled to moral damages. We might refer to it if we have time, but otherwise our submissions are exhaustive on that.

What we believe is crucial to focus on is the causation element here because what Claimant is saying is "Our right to the e-passports contract was

expropriated", and they put the date or the event of that expropriation as February 2020, this decision that recognised the tender as failed.

So the cancellation of tender was of course illegal and then the refusal to execute that contract, that tender, was also illegal. So there was expropriation, and it crystallised, as we understand Claimant's pleadings, in February 2020.

But there is a fundamental issue of causation here, Members of the Tribunal. Claimant's bid expired in April 2019, way before the date of the cancellation order.

But, moreover, even if you put aside the expiration of the contractual bid, there is an element of inaction by Claimant. We submit that -- and we have demonstrated that, hopefully, in the factual section -- Claimant had no interest in signing that contract from February onwards when it realised that it is also in hot water, not only the SRS being effectively looked at, examined by the GKNB.

There is this other point that really breaks the causation link here, Members of the Tribunal. We haven't talked about the Administrative Court proceedings in detail in the facts. The reason behind this is that largely no claim is brought on those admin

court proceedings. So they were initiated by Mühlbauer. Mühlbauer contested in the Kyrgyz courts the outcome of the tender. As I mentioned, they have done this via the independent commission, via letters sent to the Kyrgyz authorities and also via courts. That's what Claimant might have wanted to do if it really had a grievance.

But then Mühlbauer's court proceedings led at the Supreme Court level to effectively the annulment of the 1 February 2019 decision of the SRS awarding the tender to Claimant.

So if you look at this from a causation in a "but for" perspective, even if there was no expropriation, we have to look at the admin court proceedings, and they have ended in the admin court -- supreme admin court recognising that the SRS decision to award the tender to Claimant was improper and it was annulled.

By way of a side remark, of course, there's also provisions within the tender documentation that tell that you the bidder shall bear all expenses associated with preparing and submitting the bid and the buyer is not responsible for sunk costs, which probably explains why Claimant is presenting the bulk of its quantum case as not a sink costs element, and there is none, but as lost profits and loss of business opportunity claim.

Now, also on causation, I have spent the last minutes of my factual section taking you, Members of the Tribunal, through certain contracts, certain contracts that allegedly expired or were terminated, caused by the so-called Kyrgyz scandal, and I have shown you, Members of the Tribunal, the Baltic Tobacco correspondence. We had with that company and the fact that Baltic Tobacco confirmed that COVID or border closures are to blame on this contract expiry, but not the Kyrgyz Republic.

That aside, if you look further in the numbers, there is actually a historical volatility within that contract. So if you look at this from a purely quantum perspective, all the projections that Claimant has done, and again our experts would be eager to battle this out if needed, all those projections are quite opportunistic, if not to say baseless.

The Carlsberg contract, again, it expired and there is no evidence that it was caused again by the Kyrgyz contract. It expired and was not renewed because Carlsberg were entitled to do so.

I haven't spoken, Members of the Tribunal, in the fact section about the so-called Dalo contract, even though it does constitute a bulk of this head of loss. The Dalo contract is this contract for production of passports in Mozambique. And claimant presents this as

this long-term contractual relationship they had with Mozambique, and allegedly the Kyrgyz scandal somehow caused the termination of this Dalo contract.

We looked deeply and carefully into the Dalo contract. We weren't really able to contact anyone within Mozambique or Dalo because the whole scheme, if I may qualify it as such, is rather obscure.

What happened -- and again, it is explained in detail in our submissions -- Semlex was in fact a long-term contractor in Mozambique, manufacturing the passports. Semlex was kicked out, and then while Mozambique was doing what needs to be done to organise a new tender, Claimant somehow sneaked in for a short-term interim stopgap contract for several hundred thousand passports, it manufactured those passports, and that is the end of the story. There was no evidence that there were any prospects of this contract being extended. There's no evidence that they couldn't participate in the Mozambique contract. There is no evidence that Mozambique kicked out Claimant specifically, and moreover specifically because of the so-called Kyrgyz scandal.

And there's the BBL contract. Now, this is with the Swiss. That's for printing of Schengen visa vignettes that you stick -- that you glue to your passport.

Again, the causation is really problematic here, because the Swiss authorities, based on the documents on the record, terminated that contract following information about corruption issues in certain African countries, police searches in Belgium, there was an implication of a bribery scandal in Switzerland. Yes, the Kyrgyz issues are mentioned in the factual record there, but to attribute the events that happened in the Kyrgyz Republic as the sole and unique reason, which Claimant and their witnesses have done in numerous times in their witness statements and pleadings, to link by way of causation the alleged termination of the BBL contract to solely the Kyrgyz scandal is incorrect. And in any event, if I might add, there is no evidence that the contract was profitable. If you look at the numbers for the BBL contract, I think it is a matter of several thousand that they are claiming. So there is no really evidence that the contract could have been profitable but for certain events.

Then we move to the causation for the third group, the business reputation losses.

Here there are many reasons why the causation that Claimant pleads is incorrect. So, again, our expert deals with that in detail in her report, but Claimant's actual revenue structure is opaque. It's not

sufficiently clear, and reliable benchmarking is near impossible in this setting. So it's difficult to establish what would have happened but for the so-called Kyrgyz scandal.

The revenue performance had a wide range and, moreover, if you look closely at the numbers, actually Claimant's revenue trend falls within that range of its comparators, competitors, etc. So saying that Claimant suffered somehow on an overall basis, on its overall revenue because of solely the Kyrgyz scandal, while the rest of the industry was blooming, is again really opportunistic.

Now, there is of course the issue of the valuation date that has been corrected in the later submissions -- rather I apologise, sorry, there is an issue with the valuation date.

If you do put a valuation date, it must be 4 February 2020, which, you know, is closest that you could get if you follow their case on expropriation.

They say it should be 31 December 2020. That's arbitrary and our expert has explained why this leads to a huge increase in loss at the rate of 20% if you use their compounding interest. But that's a technical matter.

Now, we move now to the quantum itself, and to the

numbers. Again, I am uncharacteristically excited about this part because we tried to put on this pie chart the proportion of the direct costs actually incurred by Claimant in this project, 7,000, something thousand euros, and we were unable to do so in a visual way to show it in a proportion of the overall loss claim. So this is just to tell you again the structure that we deem is problematic with respect to quantum.

But we have this breakdown here. So there are three categories, and what I propose to do now briefly is a meltdown, not a breakdown, but a meltdown of those three categories, just to demonstrate how inherently unreliable those numbers are.

If you take the first category, the 2.2 million for the 2018 tender contract losses, there are a lot of issues with the numbers and the calculations. They are on the screen. Our expert will be happy to delve into this. I will focus on one, which is the extreme -- and I think this is an objective qualification -- extreme 20% plus interest rate for compounding and wrong compounding calculations that lead to this 2.2 million number, which of course is entirely improper.

The direct costs -- I will not stop -- it's 7,500 euros and I mean, obviously they are pre-project expenses, if you like, they are tickets that they took

to Bishkek to do a press conference. It's not really worth time for the opening.

Ensuing other contract losses, so these are the BBL, the Carlsberg, the Dalo, the Baltic Tobacco projects, numbers are irreconcilable and unverifiable. Our expert will talk about this at length if asked to, which makes the whole calculation really substandard. And the economic assumptions that their expert takes, Members of the Tribunal, is completely detached from reality, whereby there's a projection of massive revenue, for instance, for Dalo, which was always supposed to be a short-term gap-filling project, not a long-term passport manufacturing project for the Government of Mozambique. So that's out of the picture.

Then we end up with business reputation losses. So there is a long quote from our expert which essentially says that the way this reputational loss is calculated is creative, but goes against the fundamental principles of any quantum calculation that you might have.

So basically, it's reverse-engineered, mathematical, and the way they do is they say: we under-received profit of 1.4 million in 2020 because of the Kyrgyz scandal, and then we would have to project that loss of profit in perpetuity, of course with a certain discount, year on year, because we would still keep establishing

this loss of profit in the future.

If you look at their financial statements, that's not the case. So that is really a counterfactual which is unacceptable from a quantum perspective.

Interest, I don't want to spend time on this, but just to put two points.

There is no default right or, we submit, entitlement to compound interest. There are instances where simple interest is best placed, and Claimant's case here is really kind of without argument in the sense that they submit that by default they are entitled to compound interest, whereas there are good reasons that this should not be the case.

The interest start date is also problematic, and we begin to discuss that at length in the quantum report.

That concludes the quantum, and if I may conclude overall -- we are good on time -- the conclusion, Members of the Tribunal, is very short. I will not rehash whatever we have said in the course of the previous three hours -- and we thank you for your attention. We will not rehash whatever we have written.

In fact, there are of course additional points to be ventilated. We think those are best addressed with the witnesses which we very much look forward to cross-examining tomorrow and after tomorrow, and the

experts.

But if I may conclude, no matter how you look at this case -- actually if I may quote from Chinghiz Aitmatov, who is a famed Kyrgyz writer, and he said -- first in Russian, then I'll translate into English -- "nedarom govoryat: chtoby skryt svoj pozor, nado opozorit drugogo". To hide one's disgrace, it is necessary to defame another.

We're not trying to demonise Claimant here. What we are trying to show is that the project didn't work. They were caught red-handed. They had no intention of continuing with the project. The only way that they saw out was to start this arbitration against a country that at times was not actively defending itself in an arbitration setting. They are trying to do so now opportunistically, we say, but the case is very, very, very failing, and has no basis on be it admissibility, be it jurisdiction, be it merits, let alone quantum.

So with that, we thank you for your attention, Members of the Tribunal. We are of course open to any questions you might have. Thank you very much.

THE PRESIDENT: Thank you very much.

Questions from my colleagues? Nina, do you have any questions?

Questions from THE TRIBUNAL

PROFESSOR VILKOVA: I would like to put my questions to both parties.

Generally, it concerns BIT on the two countries and some details. I would like to clarify and to receive your answers.

So, first of all, Article 1.1 of the BIT, there is a difference between English text translation from Lithuanian and from Russian, and Russian text itself.

Please take into account to this problem because -- just a moment. The last line of the point 1 said that "including but not limited to in particular". For investments means any type of assets invested by an investor. That's one point. And so one contracting party in the territory of the other contracting party in accordance with the national legislation. The latter contracting party. Or the host country, "including but not limited to in particular".

And then the text -- so as to Russian text, text in Russian, here is also in bundle:

"In particular but not exclusively includes ..."

I would like to draw your attention to this difference because exclusively includes, it's not limited. It's not the same.

So which is your opinion? Is it the same or not? Because you have an agreement in three languages,

Lithuanian, Russian and Kyrgyz language. So ...

MR DAUJOTAS: Yes, Madam Arbitrator. One second. We will just open the text of the BIT.

(Pause)

One second.

(Pause)

MR PARCHAJEV: Professor Vilkova, what we believe when the BIT says "v chastnosti", which means including, "no bez isklyuchenij", but without exceptions, we think that that still reflects what we had been referring to. The intention to have the broadest possible enumeration -- I apologise for the pause because we tried one computer but it died, and I was trying to find the text.

But yes, the phrase as it is used in the Russian text "v chastnosti, no bez isklyuchenij" it does mean.

PROFESSOR VILKOVA: Again. "In particular, but not without exceptions".

MR PARCHAJEV: Exactly. So it says -- it includes but it doesn't exclude anything. So it is still -- yes, it is a difference, but in the grand scheme, in the Claimant's opinion, it does not change from the way we've presented the enumeration. It is not meant to lock in the investments to the enumeration that you have amongst these letters.

And that of course is the most important -- in our understanding, is the "v chastnosti" because if it wasn't, then it would be "investiciya oznachaet sleduyushchee". That is our reading, yes. Thank you.

PROFESSOR VILKOVA: Thank you.

MR ALEKHIN: I will try to have Mr Bayandin stick out his neck to this microphone.

MR BAYANDIN: Thank you.

Professor Vilkova, on the list of different possible investments, we do not disagree with the opposing side that the list provided in the BIT is not exhaustive. However, we qualify this by saying once again that there is a qualification of being made in accordance with the national legislation and in a completed form so invested.

PROFESSOR VILKOVA: Thank you. Thank you very much for your answers.

Then I would like to draw your attention to point~(e) of this Article 1.1. So there's no difference in the text, but only to precise your opinions.

Any right to engage in the economic activities under contract.

So how do you think, it's necessary always to have a contract in this situation, after contract is made, it would be investment or not? And where the contract

under tender 1918 was concluded.

MR PARCHAJEV: Thank you for your question, Professor Vilkova.

Now, obviously the huge let's say issue here, and the Respondent, I believe they agree that if there was a signature on the contract, this would have been an investment. The question for the Tribunal to decide is whether in the situation where they have invited the Claimant to put the signature but did not sign the contract has the investment matured as per Article 1 of the BIT.

So if you look at Article 1(e), there should be no question that if there was a signature, that would have been an investment. But if you look into the same article but just Article 1.1(c), and this is how we qualify a right. Now, under the 1.1(c) -- and I will look into first of all the Russian language, because we are now talking about -- just to make sure that we don't have any misinterpretations. "Trebovaniya k denezhnym sredstvam ili k lyubym drugim ispolneniyam, imeyushchim ekonomicheskuyu cennost - lyubym drugim ispolneniyam, imeyushchim ekonomicheskuyu cennost", which was translated as: any action having an economic value.

Now, the Claimant's expert, Professor Crina Baltag, she qualified the investment under this leg of the

article, and it seems to us that both experts from both sides on the Kyrgyz law, they agree that the Claimant had the rights under the Kyrgyz legislation, and that right had economic content.

The difference between the qualification of that right is that they say that this was a procedural right and that it was susceptible to certain let's say termination opportunities, and that that right was then terminated.

On our side, the expert says the right was there and it was taken away illegally. But it was an economic right, an economic right which falls within that 1.1(c) "lyuboe ispolnenie, imeyushchee ekonomicheskuyu cennost".

And so both experts are actually talking about whether there is this right of economic content, and so we believe the correct one is 1.1(c).

PROFESSOR VILKOVA: Thank you.

THE PRESIDENT: Mr Bayandin?

MR BAYANDIN: Several points here. First of all, we do not agree about the point (e). It says in Russian "lyuboe pravo vesti ekonomicheskuyu deyatelnost soglasno kontraktu" and in English that would say "any right to engage in an economic activity under a contract". And our position is that -- and we have covered that in the

legal standard section -- is that not any contract would qualify as an investment. One of sale purchase agreement or supply agreement for which Claimant was bidding is not an investment and is not a right to conduct economic activity.

So our position is that this provision of the BIT is quite explicit as to what type of contracts would be covered.

As to point (c), which refers to claims to money and other performance having an economic value, here again our colleagues just said that it's to any action. It's not action. It's performance or we would put it consideration which has here again a contractual nature.

Of course, under a contract you could owe money, but you could also owe something else, a consideration that would have economic value. But here again the contract that Claimant was bidding under does not fall -- rather, the right that Claimant had by winning the tender does not fall in either of those categories.

Final point, there was a mention again of Dr Crina Baltag who concluded something about the text of the BIT in English language. Just to be clear, English is not an official language of this BIT. It's either Kyrgyz, Russian or Lithuanian.

PROFESSOR VILKOVA: Maybe you would like to comment Kyrgyz

text. There is a difference with the Russian text, or there is a difference with English text?

MR BAYANDIN: Unfortunately we don't have, I believe, the Kyrgyz text on the record. But if this is of interest, we will of course take instructions.

PROFESSOR VILKOVA: It's up to you.

THE PRESIDENT: I think on that point, I think we, the Tribunal, need some clarity on that point, because I don't think any of us are competent in the Kyrgyz language. We do collectively master English and Russian.

So if the parties could agree that those are the two versions that we're working with here, because otherwise we will need to have a translation, I think, on the Kyrgyz version.

MINISTER BAETOV: Dear Professor Vilkova, thank you for your question, let me comment first the question and then your request.

Let me start with the language issue. I think Russian language is an official language of the Kyrgyz Republic. It's also has a status. So we will look through the Kyrgyz text, and if we have something, we will let you know this, but I think we are working with the text we have, we're okay with that for now. We don't have any comments about the --

THE PRESIDENT: You mean the Russian version -- the English version?

MINISTER BAETOV: Yes. So we don't have any positions about differences, but -- differences with Kyrgyz text for now, nothing about this.

Saying about the question, it was especially about~(e), (e) point. It's very clear. It's about contract. Any other licences, they are confirmed. That confirm agreement and rights for something, concessions, subsoil use. Unfortunately most of big investors come to Kyrgyzstan only to use subsoil, to implement subsoil rights. So this is about concrete document, and confirmed rights, contracts.

If we go with the more complex formulas that the colleagues from Claimant's side propose, like (e) plus (c), that constitutes something. So it's a very tricky way, because I will say that according to our national legislation, as we said in our remarks, according to practice, until the tender is over and the contract is signed, we don't have confirmed rights. Confirmed rights in the sense, as it's mentioned here that they could be equal to contract or something like that this.

That's the main difference in our positions, as I understand.

THE PRESIDENT: Thank you.

Nina, do you have more questions?

PROFESSOR VILKOVA: No.

MR LAIRD: Yes, I have a few questions, if you'll indulge me.

So going back to some earlier discussion at slide 12, at the bottom, this was a discussion of the excise stamps, tender, I believe, in 2018. And it says at the bottom, the Kyrgyz policy for excise stamps simply changed in favour of an in-country production which Claimant could not carry out.

I just wanted to enquire whether there's any evidence on the record of the justification for that change in policy?

MR ALEKHIN: Thank you, Mr Laird. So this was discussed -- this was addressed in our Statement of Defence, paragraphs 25 to 27. Back in the day, the stamps were reclassified as a type of security printed document that could only be produced in-house. So essentially there was a decree saying that, you know, you may not produce certain security printed documents outside of the country for national security reasons.

I can give you with some time a reference. So exhibits R-9, which is the ruling of the Cabinet of Ministers, which essentially explains that special state blanks, which is a category of printed material, if you

would, that you can only produce in country, must include those excise stamps. I believe it was for national security reasons. We will confirm internally and if it's not the case we will of course get back to you via the PHBs or something. But as far as we recall now, that was the history of that change. If that answers your question. Unless you would prefer, of course, us to go in deeper and try to figure out why specifically -- whether there's a justification for the stamps to be included, but as far as we understand, it was just a measure to further protect those types of documents that could have been somehow negatively affected by being printed out of the country.

MR LAIRD: No, I think that's a fine for now. If the Tribunal wants to follow up on that point, we will.

MR ALEKHIN: I'm directed to actually the opening paragraph of exhibit R-9. So that's the decree that codifies the legal regime, and it says: in order to support domestic producers and to protect national interests -- so that is the official justification -- our people have learned how to print those stamps, and we want to protect national security, so, you know, we would rather that be printed in-house or rather domestically.

MR LAIRD: Thanks very much. I appreciate that.

Moving to slide 23, this was the discussion about

a questioning of Mr Abdullayev, and the extensive list of question and answers by him.

I believe this is R-78, just for the record.

One of the quotes, and I don't know if we can put up the actual R-78 on page 3. Is that possible? Do you have access?

MR ALEKHIN: Just one second.

(Pause)

MR LAIRD: So it's page 3. There's a three paragraphs from the bottom it, says:

"Answer. During the money transfer ..."

So if we could focus in on that.

We see the question there, it says:

"What exactly did Ms Alina Shaikova tell you when they handed over this money? Did Ms Shaikova tell you and Mr Dogoev the source of the money?" And this was after a question about that exact same issue. And the witness said:

"During the money transfer there were no details mentioned at all, or clarifications, explanations from where, why, who etc, it was a very dry statement: here you go, 20, and there was a reference to the first meeting, but at the same time there were no details about where from, why, no such details were said by her."

How do you reconcile that with all of the details that he apparently said as well -- and you've put this on slide 23 in some amount of detail, the reference to "Garsu", "Garsu", "Garsu", "Garsu", is pretty replete -- how do you reconcile the contradiction here?

MR ALEKHIN: There is no contradiction in our view for the simple reason that this is a verbatim -- so contrary to certain other minutes, and it's not easily distinguishable on the record of what's what, but in our experience, having reviewed quite a lot of those minutes, those by way they're typed in Russian are verbatim statements of what the person said and what -- sorry, what the question was and what he or she answered.

This is also confirmed by the fact that this was recorded by video and likely there was a transcript made, if you wish a verbatim transcript, as opposed to other questionings that we understand notes were taken effectively and the witness would sign, confirming that what he said is accurate.

Here, because of the importance of the issue, they decided to film it, and there's this discussion about part of the video leaking online, and again, as we've confirmed in our written pleadings by the way, this is the excerpt of the actual video.

So we haven't reviewed word by word, but from what we understand, this is a word by word transcript.

What happens is that there is a witness interrogation in the sense of, you know, it's not necessarily as cordial as being sat here in a cross-examination setting. But it is an interrogation, of course with all the safeguards in place, by the investigative authorities.

So he gave this answer: here I was given 20k. He was repeatedly asked: can you provide more details? He said: well, okay, here are the details. So we don't necessarily see here a -- sorry. Basically, so this if that answers the question.

MR LAIRD: I just observed that and wanted to see your reply.

MR ALEKHIN: Yes.

MR LAIRD: So moving on, with regard to slide 24, and this is the same question I asked the Claimant earlier, we're talking about the contract that was I guess not -- it ended up not being provided, as you set out here. But what specific parts of that contract remained to be negotiated? I heard the answer from Claimant. What's the answer to that from Respondent?

MR ALEKHIN: Yes. So you have to look at several documents here. First is the sample contract or the model

contract that was provided with the tender documentation back in 2018. The second document to compare this with, as Claimant with their in-house counsel did back at the time, is that draft contract that they downloaded from the e-procurement system and already had filled out Garsu Pasaulis', Claimant's, name, for instance, and the volume of goods to be delivered.

What that draft contract also included, as we have mentioned on the same slide, are references to technical requirements and supply schedules. Two last sections of the article -- of the table of contents in the contract.

And if you look at their exhibit where they discuss this draft contract and the compared version to the red-line version to what they have seen in the tender docs and the document they've downloaded, their in-house counsel says it's strange there are those two references to two new articles or two new sections but they are not in the actual contract.

So those two sections were the ones that will have to be fleshed out between the parties. And they are very important. Technical requirements actually were started to be fleshed out, because if you look then at their evidence, there are certain exchanges between Claimant's representatives and Infocom, I believe, so the state-owned integrator that deals with essentially

technical aspects or IT aspects of procurement. And Infocom sends them a questionnaire about technical specifications or requirements which they fill out and send back.

So in our understanding this would then have to be merged into the actual contract, making sure everyone is on the same page with the technical requirements for the passports that they are ready to manufacture for the Kyrgyz Republic are. The same goes with the supply schedule, you know, specific terms, how often, etc.

So that is our understanding of the at least two points that really have to be fleshed out.

There's a third aspect which our Kyrgyz law expert discusses. That is a hypothetical. We don't deny it. But there is a debate between the two experts as in: could the volume of goods to be supplied be changed? Our Kyrgyz law expert -- so Claimant's legal expert is rather adamant that this hypothetical is not applicable in this case at hand. We disagree. So we can flesh out in the cross-examination with her. But again, this as hypothetical, but just to put to you that this was not set in stone, and of course we're not talking about renegotiating the whole contract, that would go against the principles of public procurement, as Claimant rightfully mentioned. But details had to be fleshed out

and it takes time for that to be fleshed out.

MR LAIRD: Okay, thank you.

With regard to slides 26 to 28, you went into some detail about the influence of Ms Shaikova on the independent commission. I want to understand a bit more about the independent commission.

One question is how many members the commission had. I seem to remember there was a number, and in this process, and you're particularly describing the circumstances around the complaints in February, were there any objections by the members? Was the final vote dismissing the complaints unanimous? I seem to recall some of the answers to these questions, but I don't have them at my fingertips. I was wondering if you did?

MR ALEKHIN: Can we get back to you, I think would be the best answer, because I really -- those are the minutes. I mean the finer minutes I can tell you now are obviously signed. I'm not sure a dissent is possible by the regulations, but I have to cross-check this with the regulations and the evidential record and come back to you ideally tomorrow morning if feasible at all with the short explanation.

MR LAIRD: Sure. That would be helpful. Thank you.

I'm moving to slide 37. There was a reference here, and I'm going back to what you entitle the slide "the

alleged media campaign against Claimant", and say in the second bullet point:

"In turn, the GKNB succinctly updated the public about the progress of its corruption investigation."

And we've heard more from Claimant on this, but there's no reference here to R-75, which I understand is the April '19 press release.

Now, I'm not going to go through all of that press release. It's pretty lengthy and I think you've discussed it as well.

Is this a typical update of the public -- of the progress of an investigation? There would seem to be -- you know, I'm just summarising it -- a lot of detail about interviews that had occurred, about conclusions being made, about a -- a lot about the winning tender, the winner of the tender, which I think was generally known by the media to be Claimant.

Is this typical? I'm just very curious, because this is a very detailed report, and I believe a similar report was -- and you have referenced it -- made by the then chairman as well to the Kyrgyz Parliament, and I guess similar to that question, is it very typical in these types of investigations for the chair of the GKNB to be going to Parliament to give full detailed advance notice of an ongoing investigation?

MINISTER BAETOV: In my view, unfortunately, it's very typical. Not only this case, but many others. As I said in my remarks, the procurement procedures were the same before this dispute and after the dispute. The same with criminal investigations. They are doing their work before the dispute like this and after like this. Just our current head of GKNB also goes to Parliament, provides press conferences, explains press releases. This is how criminal investigation goes in the country that tries to fight criminal investigation[sic] and has very aggressive free press. They -- as soon as we have a case that not just about corruption, but a bigger case, many questions comes from the Parliament, from press, and each institution must go to press and explain its decisions, including myself as a Minister of Justice, I must go, provide press releases, explain they do it. It's quite typical. Not just because of this case, but many others.

That's why I said it's normal practice how the governance works -- government system operates, including GKNB.

MR LAIRD: Okay, that's fine. It was more a curiosity and trying to put it in context. So that's very helpful. Thank you, Mr Minister. And thank you as well for coming to the hearing. We very much appreciate your

attendance and your participation.

Just one last question. I hope the Chair will indulge me.

We actually had an interesting discussion earlier talking about Article 1 and the nature of an investment. And this idea of value has come up, and we've seen it in the wording of the definition.

When we were talking -- and I believe it was around slide 66. At the last bullet counsel was talking and made the statement that there was no evidence of any discernible value of Claimant's right as the winner, and before that, just to put it in legal context, at slide 61 you had referenced the Nagel case, I believe. This is a case you've relied on, and this is at the third bullet on slide 61. You say:

"This creates a link with domestic law, since it is to a large extent the rules of domestic law that determine whether or not there is a financial value. In other words, value is not a quality deriving from natural causes by the effect of legal rules which create rights and give protection to them."

So that's your quote. And just bear with me as I go through the logic behind my question.

In Judge Davletbayeva's second report, and I refer to paragraph 23 in particular, she talks as well about

propriety rights. Let me just find that. Paragraph 23.

Now, we see here she wanted to make a clarification, and this was to the idea of this right being a procedural right:

"I would like to clarify that I do not deny that the Claimant's rights as the winner of the tender for procurement of passports were inherently proprietary rights ..."

Comma and then:

"... 'that exist in civil law have a value and are subject to legal remedies'."

And the reference is to footnote 32, which I think you can see at the bottom of the page is Ms Alenkina's second expert report.

So I'm just curious as to how you reconcile the statement of your expert with the statement at the bottom of slide 66 that there is no evidence of discernible value. Do you see that -- those issues? Is there any conflict there?

MR BAYANDIN: I understand this gets a bit technical.

When we are talking about no discernible value at slide 66, what is meant is that Claimant cannot put any evidence that this particular right of them as the winner of the tender had financial value. Financial in the sense that it's not a contractual right. They

cannot sell it. It's an exclusive right. It's limited in time and to put any price tag at it whatsoever would be speculation.

So in terms of financial value, there is either none or it is negligible. When it comes to value as a right, this is more legalistic term, I would say, as our expert Judge Davletbayeva says quite correctly. This right exists in civil law. It's subject to legal remedies and has a value, a value in the sense that Claimant had a limited right in time to conclude a public procurement contract and the associated legal remedies such as: go and sue the public procuring entity to compel the conclusion of the contract.

So in a sense, of course there is a value because there is a right, but if we go and say as Claimant does that it had a very specific value as they say throughout their submissions and put a price tag of 12 million euros, we think that's irreconcilable with the very nature of that right, if that answers your question.

MR LAIRD: That was very helpful, thank you.

THE PRESIDENT: Thank you.

I have a couple of questions too. If we start with Respondent, if you go back to page 23 of your presentation, on the left-hand side you see the following text:

"In late January 2019 ... cash to Mr Abdullayev 'for the work done in carrying out the tender'."

The quote there is not, if I understand correctly, coming from Ms Shaikova, but rather Mr Abdullayev's own conclusion. Correct?

MR ALEKHIN: That's correct, yes.

THE PRESIDENT: Because in the text across on the right-hand side of the page, Abdullayev says "It was a very dry: here is your 20,000". That's his, Abdullayev's conclusion. Okay.

MR ALEKHIN: Correct, yes.

THE PRESIDENT: If we go to page 29, if I understand there, and some other slides you have -- if I understand exchanges from WhatsApp messages. Is that it?

MR ALEKHIN: There are two. There's Signal and WhatsApp. They sometimes use --

THE PRESIDENT: How have these excerpts been obtained?

MR ALEKHIN: They formed part of the investigative file. So whenever a witness or a person of interest was questioned by the GKNB, they have a procedure to take images, not -- sometimes photos and professionally normally it's done by taking the image of a phone, sometimes it's done with either a cellphone or a camera, because, for instance, it's a technical matter, Signal messages are not easily transferable anywhere at site

from a person's phone. That's why they're used if you want some privacy.

So during the questioning of Mr Sagyndykov, for instance, in this case, and that comes from his phone, those were taken and added into the investigative file, and in fact Mr Sagyndykov was asked some questions not on this specific exchange, but on other excerpts of exchanges, for instance on the 10,000 thank you to the advisers, he was asked "what does this exchange mean", and he said "I'm not able to recall". That's it.

THE PRESIDENT: But was he questioned as a witness or as a suspect?

MR ALEKHIN: I would check his procedural status, but I believe it was a witness at that time.

THE PRESIDENT: Okay. Yes.

Going back then to Article 1 of the BIT again, and the definition of investment, and I noted that you mentioned several times reading -- purportedly reading from the first line of the text, referring to assets invested in completed form by the investor, and this "in completed form" is your add-on, is it not, because it's not in the text, not in the English, not in the Russian.

MR BAYANDIN: Absolutely, that is my add-on, because during my opening I made an emphasis at invested, in Russian it

is "investirovannyh" and I made a clarification, that means in a completed form, in our submission.

THE PRESIDENT: Thank you.

That completes my questions, which means that we are done for today, I think. So we will meet again then tomorrow at 9.30 with two witnesses. They don't require a translation, we will do this in English?

MR DAUJOTAS: Yes, the first witness, Mr Lukoševicius, he will require translation into -- from Lithuanian into English. He's sort of understands English, but he was not comfortable to give answers in English because he's not so confident in his language skills. So that's why --

THE PRESIDENT: And Mieliauskas?

MR DAUJOTAS: Mieliauskas, he will be there tomorrow and he will give answers in English.

THE PRESIDENT: And you have provided for a Lithuanian interpreter?

MR DAUJOTAS: Yes. They are all set up.

THE PRESIDENT: Is it simultaneous?

MR DAUJOTAS: Yes, it will be simultaneous.

THE PRESIDENT: Very good.

Okay, thank you very much. See you tomorrow morning.

(5.54 pm)

(The hearing adjourned until

Tuesday, 13 June 2023 at 9.30 am)