

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Mabco Constructions SA

v.

Republic of Kosovo

(ICSID Case No. ARB/17/25)

PROCEDURAL ORDER NO. 10

Members of the Tribunal

Professor George A. Bermann, President of the Tribunal

Mr. Gianrocco Ferraro, Arbitrator

Professor Dr. August Reinisch, Arbitrator

Secretary of the Tribunal

Jara Mínguez Almeida

June 19, 2022

1. The Tribunal recognizes that it is faced, in connection with the Second Qerimi Report submitted by Respondent along with its Rejoinder of May 27, 2022, with an unusual situation. Claimant, having not filed a reply report by Mr. Hodaj, was not expecting to receive a second Qerimi Report, to which it then presumptively had no right of reply. On the other hand, as noted in Procedural Order No. 8, dated June 15, 2022, Respondent violated no rule in submitting the Second Qerimi Report.
2. In Procedural Order No. 8, the Tribunal, among other things, invited Claimant to identify elements of the Second Qerimi Report that it considered to be “new” and as to which it sought to make a further submission. The Tribunal further invited Respondent to comment on any such assertion.
3. The Tribunal has reviewed with care both Claimant’s Submission on the Second Qerimi Report dated June 16, 2022 and Respondent’s Comments on that Submission dated June 17, 2022. Having done so, the Tribunal ultimately has difficulty characterizing the matters enumerated in paragraph 7 of Claimant’s submission as “new” rather than as amplification or elaboration of matters addressed in the First Qerimi Report. Therefore, were the Tribunal, under these circumstances, to characterize those matters as “new,” it would effectively, and unjustifiably, give Claimant an opportunity to “say the last word” on the matters in dispute when that is in principle Respondent’s prerogative.
4. The Tribunal believes that Claimant will, in any event, be adequately equipped to effectively probe Mr. Qerimi on cross-examination on the matters it considers to be new. Also, though it is far too early to tell what will be the scope of Respondent’s cross-examination of Mr. Hodaj, Claimant may be able to address aspects of these matters in re-direct examination of Mr. Hodaj.
5. That said, the Tribunal will allow Claimant to identify any specific document or documents that are not in the record, but that it would have introduced as an exhibit to its Reply if the allegedly new material in the Second Qerimi Report had been included in the First Qerimi Report – and will entertain the possibility, if asked to do so, of allowing any such document or documents to be used in the hearings. Claimant must identify in some detail any such document or documents **by no later than Tuesday, June 21, 2022**, to which Respondent

may reply **by no later than Thursday, June 23, 2002**. The Tribunal will make a determination of the admissibility of any such document or documents as soon thereafter as practicable.

6. The Tribunal wishes to underscore that, should it wish to avail itself of this opportunity, Claimant will bear a very heavy burden of proof that it has substantial need to make use of the document or documents in question and that it neither could nor should have reasonably already introduced them into the record.

On behalf of the Tribunal,

[Signed]

George A Bermann
President of the Tribunal
June 19, 2022