

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

RICARDO FILOMENO DUARTE VENTURA LEITÃO MACHADO

v.

REPUBLIC OF ANGOLA

(ICSID Case No. ARB/24/8)

DECISION ON THE RESPONDENT'S RULE 41 OBJECTION

Members of the Tribunal

Ms. Valeria Galíndez, President of the Tribunal

Mr. Alfonso Iglesia, Arbitrator

Prof. Diego P. Fernández Arroyo, Arbitrator

Secretary of the Tribunal

Ms. Anna Toubiana

Assistant to the Tribunal

Ms. Talitha Caldeira

Date: 29 May 2025

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TABLE OF DEFINED TERMS

Aenergy	Aenergy, S.A.
BIT or the Treaty	Agreement between the Portuguese Republic and the Republic of Angola on the Promotion and Reciprocal Protection of Investments dated 22 February 2008 and entered into force on 24 April 2020 and its revised version, which entered into force on 22 December 2021
C-[#]	Claimant's Exhibit
Claimant or Mr. Machado	Ricardo Filomeno Duarte Ventura Leitão Machado
Contracts	Thirteen contracts awarded by MINEA to Aenergy covering services and supply of electric generating equipment, turbines, generators, transformers, rotors, other accessory equipment, consumables, and spare parts
FET	Fair and equitable treatment
Four Turbines	Four GE TM2500 GEN8 turbines with the serial number 7266027, 7267025, 7267575 and 7267577
ICSID Convention	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States dated 18 March 1965
ICSID or the Centre	International Centre for Settlement of Investment Disputes
ICSID Rules	ICSID Rules of Procedure for Arbitration Proceedings 2022
IGAPE	Angola's Institute for the Management of the State's Assets and Shares
Parties	Claimant and Respondent together

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PO1	Procedural Order No. 1 dated 27 November 2024
PO2	Procedural Order No. 2 dated 27 November 2024
Procedural Calendar	Procedural calendar as contained in Annex B of Procedural Order No. 1
Provincial Court of Luanda	Provincial Court of Luanda, Civil and Administrative Chamber, Second Division
R-[#]	Respondent's Exhibit
Rejoinder on Rule 41 Objection	Claimant's Rejoinder on the Rule 41 Objection dated 27 March 2025
Reply on Rule 41 Objection	Respondent's Reply on the Rule 41 Objection dated 27 February 2025
Request for Arbitration	Claimant's Request for Arbitration dated 20 February 2024
Respondent or Angola	Republic of Angola
Response to Rule 41 Objection	Claimant's Response to the Rule 41 Objection dated 30 January 2025
Rule 41 Objection	Respondent's Submission on Manifest Lack of Legal Merit under Rule 41 dated 15 November 2024
Statement of Costs	Parties' Statement of Costs dated 10 April 2025
Tribunal or Arbitral Tribunal	Arbitral Tribunal constituted on 1 October 2024
U.S. Proceedings	Legal proceedings brought by Aenergy against the Respondent before the courts of New York and Columbia, as well as the Supreme Court

I. INTRODUCTION AND PARTIES

1. This case concerns a dispute submitted to the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”) on the basis of the Agreement between the Portuguese Republic and the Republic of Angola on the Promotion and Reciprocal Protection of Investments which entered into force on 24 April 2020 and its revised version which entered into force on 22 December 2021 (the “**BIT**” or “**Treaty**”) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14 October 1966 (the “**ICSID Convention**”).
2. The Claimant is Ricardo Filomeno Duarte Ventura Leitão Machado (“**Mr. Machado**” or the “**Claimant**”), a natural person having the nationality of Portugal.
3. The Respondent is the Republic of Angola (“**Angola**” or the “**Respondent**”).
4. The Claimant and the Respondent are collectively referred to as the “**Parties**.”
5. This decision concerns the Respondent's preliminary objection under Rule 41 of the 2022 ICSID Arbitration Rules (the “**ICSID Rules**”) requesting the Tribunal to dismiss the Claimant's claims for manifest lack of legal merit.

II. PROCEDURAL HISTORY

6. On 20 February 2024, ICSID received a Request for Arbitration dated 20 February 2024 from Mr. Machado against Angola (the “**Request for Arbitration**”).
7. On 28 March 2024, ICSID's Secretary-General (the “**Secretary-General**”) registered the Request for Arbitration in accordance with Article 36(3) of the ICSID Convention and notified the Parties of its registration. The Secretary-General also invited the Parties to proceed to constitute an arbitral tribunal in accordance with Rule 7(c) of the ICSID Rules.

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8. On 8 May 2024, in light of the approaching deadline for establishing the method of constitution of the tribunal, the Respondent filed a request for a 45-day extension "*to ensure the possibility of meaningful discussion between the Parties as to the method to be applied on the constitution of the arbitral tribunal.*"
9. On 11 May 2024, the Claimant informed his agreement to extend the deadline for the constitution of the tribunal "*on the understanding that the time limit of Article 38 of the ICSID Convention for the constitution of the Tribunal is also extended by 45 days.*"¹
10. On 25 June 2024, the Claimant informed the Centre that the Parties had not reached an agreement (i) on the number of arbitrators and the method of their appointment and (ii) on the language of the proceedings. Additionally, in accordance with Rule 7(1) of the ICSID Rules, the Claimant informed his will that the proceedings be conducted in Spanish.
11. On the same date, the Claimant appointed Mr. Alfonso Iglesia, a national of Spain, as arbitrator.
12. On 26 June 2024, the Respondent requested a 15-day extension to appoint a co-arbitrator. Additionally, pursuant to Rule 7(1) of the ICSID Rules, the Respondent informed his intention that the proceedings be conducted in English.
13. On the same date, in the absence of an agreement between the Parties on the method of the constitution of the tribunal, the Centre notified the Parties that the tribunal was to be constituted in accordance with Article 37(2)(b) of the ICSID Convention.
14. On 11 July 2024, the Respondent appointed Mr. Diego P. Fernández Arroyo, a national of Argentina and Spain, as arbitrator.
15. On 26 July 2024, the Parties notified the Centre that they had agreed (i) on a procedure to jointly designate the presiding arbitrator and (ii) to extend the deadline of Article 38 of the ICSID Convention for the constitution of the tribunal until 30 September 2024.

¹ Tribunal's translation.

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16. On 27 September 2024, the Centre acknowledged receipt of a communication dated 26 September 2024 from the party-appointed arbitrators, informing ICSID that, pursuant to the method of constitution of the Tribunal agreed by the Parties, they appointed Ms. Valeria Galíndez, a national of Argentina and Brazil, as presiding arbitrator.
17. On 1 October 2024, the Secretary-General, in accordance with Rule 21(1) of the ICSID Rules, notified the Parties that all three arbitrators had accepted their appointments, and that the arbitral tribunal (the “**Arbitral Tribunal**” or “**Tribunal**”) was formally constituted on that date.
18. On the same date, Ms. Anna Toubiana, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.
19. On 2 October 2024, the Respondent filed a request for the Tribunal to decide on the language of the proceedings and to suspend the deadline for filing an objection under Rule 41 of the ICSID Rules until the Tribunal had reached a decision on the procedural language.
20. On 4 October 2024, the Claimant filed his observations to the Respondent's request regarding the language of the proceedings.
21. On 9 October 2024, pursuant to Rule 7(1) of the ICSID Rules, the Tribunal confirmed that the languages of the proceedings were to be Spanish and English, and that the Parties would be able to discuss issues related to the procedural language in their proposals to a draft Procedural Order No. 1 that would be soon presented by the Tribunal. Regarding the Respondent's request to suspend the deadline for filing an objection under Rule 41 of the ICSID Rules, the Tribunal informed the Parties that it was not in a position to grant such an extension pursuant to its Rule 11(2).
22. On 18 October 2024, the Tribunal circulated a draft Procedural Order No. 1 addressing procedural issues, and a draft Procedural Order No. 2 concerning transparency. The Tribunal invited the Parties to confer and inform the Tribunal of (i) the Parties' agreements on procedural matters, (ii) the Parties' respective positions regarding any items on which

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- they did not agree, and (iii) any additional matters that the Parties would like to discuss during the first session.
23. On 6 November 2024, the Parties submitted a draft Procedural Order No. 1 consolidating the Parties' agreements and points of disagreement. The Parties also informed the Tribunal of their agreement that English be the sole language of the proceedings.
 24. On 15 November 2024, the Respondent filed its Submission on Manifest Lack of Legal Merit under Rule 41, together with exhibits R-001 through R-031 and legal authorities RL-001 through RL-017 (the "**Rule 41 Objection**").
 25. In accordance with Rule 29(3) of the ICSID Rules, the Tribunal held a first session with the Parties on 20 November 2024 by videoconference.
 26. Following the first session, on 27 November 2024, the Tribunal issued Procedural Order No. 1 ("**PO1**") recording the agreement of the Parties on procedural matters and the decision of the Tribunal on the disputed issues. PO1 also contained the procedural calendar to be followed in the proceedings (the "**Procedural Calendar**").
 27. On the same date, the Tribunal issued Procedural Order No. 2 ("**PO2**") concerning the confidentiality and transparency of the proceedings.
 28. On 4 January 2025, the Tribunal inquired the Parties whether they had any objections to the appointment of Ms. Talitha Caldeira as Assistant to the Tribunal. On 10 and 11 January 2025, the Claimant and Respondent, respectively, confirmed their agreement to her appointment.
 29. On 30 January 2025, the Claimant filed his Response to the Rule 41 Objection, together with exhibits C-028 through C-034 and legal authorities CLA-007 through CLA-057 (the "**Response to Rule 41 Objection**").

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30. On 27 February 2025, the Respondent filed its Reply on the Rule 41 Objection, together with exhibits R-032 through R-036 and legal authorities RL-0018 through RL-0032 (the **“Reply on Rule 41 Objection”**).
31. On 27 March 2025, the Claimant filed his Rejoinder on the Rule 41 Objection, together with legal authorities CLA-058 through CLA-062 (the **“Rejoinder on Rule 41 Objection”**).
32. On 10 April 2025, the Parties filed their Statement of Costs regarding the Rule 41 Objection (the **“Statement of Costs”**).
33. On 22 April 2025, the Claimant requested leave to submit requests for clarification and comments on the Respondent's Statement of Costs. In view of the request, the Tribunal invited the Parties to submit any comments they might have on the counterparty's Statement of Costs.
34. On 2 May 2025, ICSID circulated the Parties' respective comments on the counterparty's Statement of Costs.
35. On 21 May 2025, the Claimant disputed the amount of “Legal Fees and Expenses” indicated by the Respondent in its Statement of Costs and requested the Tribunal to *“deem those costs disputed and insufficiently substantiated.”*
36. On 22 May 2025, at the invitation of the Tribunal, the Respondent filed a response to the Claimant's request of 21 May 2025, maintaining that its Statement of Costs was appropriately substantiated and consistent with the applicable rules and practices.

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III. THE PARTIES' REQUESTS FOR RELIEF

A. RELIEF REQUESTED BY THE RESPONDENT

37. The Respondent requests the Tribunal to:²

- a) DECLARE that the Claimant's claims are manifestly without legal merit;
- b) DISMISS the Claimant's claims in their entirety;
- c) ORDER the Claimant to pay all costs and expenses of these arbitration proceedings, including fees and expenses of the Arbitral Tribunal and the cost of the Respondent's legal representation, plus pre-award and post-award interest thereon; and
- d) GRANT any further relief against the Claimant as the Tribunal deems appropriate.

B. RELIEF REQUESTED BY THE CLAIMANT

38. The Claimant requests the Tribunal to issue a decision:³

- (i) rejecting the Respondent's objection that the Claimant's claims are manifestly without legal merit;
- (ii) ordering the continuation of the proceedings as per Procedural Order No. 1; and issue an interim decision on costs,
- (iii) ordering the Respondent to pay all costs of the special procedure under Rule 41, including the legal fees and expenses of the Claimant's legal representation, the fees and expenses of the Tribunal, Tribunal assistants and Tribunal-appointed experts, and the administrative charges and direct costs of the Centre, plus pre-award and post-award interest thereon.

IV. SUMMARY OF THE PARTIES' POSITIONS

39. The Tribunal has fully considered the arguments presented by the Parties in their submissions regarding the Rule 41 Objection. The Tribunal will present below a summary of their positions, only reproducing the arguments it deems material for the purposes of this decision. Therefore, the fact that certain arguments, documents or legal authorities are

² Rule 41 Objection, ¶ 175; Reply on Rule 41 Objection, ¶ 166.

³ Response to Rule 41 Objection, ¶ 238; Rejoinder on Rule 41 Objection, ¶ 138.

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not mentioned or detailed in this chapter does not mean that the Tribunal has not taken them into account.

40. In brief terms, Angola requests the dismissal of all claims brought by the Claimant, as provided by Rule 41 of the ICSID Rules (“**Rule 41**”), on the basis that they are manifestly without legal merit as they fall outside the temporal scope of the applicable BIT⁴. The Claimant, on the other hand, argues that, since Angola has only put forward an objection saying that the Tribunal manifestly lacks jurisdiction *ratione temporis*, for the purposes of Rule 41 all that matters is that the Claimant has substantiated his case on facts that according to him happened after the entry into force of the BIT⁵.

A. THE APPLICABLE LEGAL STANDARD UNDER RULE 41

(1) The Respondent's Position

41. According to Angola, Rule 41 serves to enhance procedural efficiency and prevent the abusive use of the ICSID system by allowing a tribunal to early dismiss patently unmeritorious claims.⁶
42. Angola alleges that, to be dismissed under Rule 41, a claim must be (i) manifestly (ii) without legal merit.⁷ Regarding the first criterion, Angola argues that, as established by the tribunal in *Trans-Global v. Jordan* and followed by other ICSID tribunals, “manifestly” means that a party should be able to establish its objection in a clear and obvious way, with relative ease and dispatch⁸ – which does not mean that “manifest” should be mistaken as

⁴ Rule 41 Objection, ¶¶ 1-3.

⁵ Response to Rule 41 Objection, ¶ 7.

⁶ Rule 41 Objection, ¶ 106.

⁷ Rule 41 Objection, ¶ 107.

⁸ Rule 41 Objection, ¶ 109. RL-0003, *Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, ¶¶ 83-88.

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simple.⁹ In other words, the party raising the objection must be able to show the Tribunal that the claim it objects “*was lost before it left the start line.*”¹⁰

43. Regarding the second criterion, Angola states that the assessment of “legal merit” is distinct from a ruling on the legal merits of the underlying dispute.¹¹ Also, Angola claims that, as noted by the tribunal in *Trans-Global v. Jordan*, the term “legal” should be differentiated from “factual,” meaning that tribunals should focus on the legal bearing of the claims rather than on their factual basis. Since tribunals at this stage do not have enough information to decide on the facts, to make a legal assessment under Rule 41 they tend to “*accept the factual premises as alleged by claimants, unless they are ‘incredible, frivolous, vexatious or inaccurate or made in bad faith.*’”¹²

(2) The Claimant's Position

44. The Claimant agrees with Angola that the aim of Rule 41 is to enhance procedural efficiency and allow the early dismissal of “*patently unmeritorious*” claims.¹³ Nonetheless, the Claimant argues that, since Angola is the one objecting the Tribunal's jurisdiction under Rule 41, it is the Respondent who bears the burden of proving the Claimant's case is “*patently unmeritorious.*”¹⁴

⁹ Rule 41 Objection, ¶ 110. RL-0003, *Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, ¶ 88.

¹⁰ Rule 41 Objection, ¶ 111. RL-0006, *Mainstream Renewable Power Ltd and others v. Federal Republic of Germany*, ICSID Case No. ARB/21/26, Decision on Respondent's Application under ICSID Arbitration Rule 41(5), 18 January 2022, ¶ 96.

¹¹ Rule 41 Objection, ¶ 112.

¹² Rule 41 Objection, ¶¶ 113-114. RL-0007, *Brandes Investment Partners, LP v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/08/3, Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 2 February 2009, ¶ 61; RL-0003, *Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, ¶ 97; RL-0003, *Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, ¶ 105; RL-0008, *Bank of Nova Scotia v. Republic of Peru*, ICSID Case No. ARB/22/30, Decision on Respondent's Rule 41 Application, 31 May 2024, ¶ 102.

¹³ Response to Rule 41 Objection, ¶ 9.

¹⁴ Response to Rule 41 Objection, ¶ 9.

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45. The Claimant states that Rule 41 imposes a two-pronged test, which requires (i) that the claims are without legal merit and (ii) that they are manifestly so.¹⁵ Noting that the Respondent relies on the decisions of the tribunals in *Trans Global v. Jordan*, *Mainstream Renewable and others v. Germany*, *AHG Industry v. Iraq* and *Brandes Investment Partners v. Venezuela* to support its position, the Claimant affirms that according to these tribunals the standard to dismiss a claim under Rule 41 is high.¹⁶ He also signals that other tribunals have similarly recognized that the threshold to be met under Rule 41 is “*very demanding and rigorous*”¹⁷ since a tribunal’s decision to accept an application under said rule has *res judicata* effect.¹⁸
46. Regarding the first criterion, the Claimant defends that tribunals are to accept the factual premises as alleged by claimants unless they are plainly without any foundation. Thus, the Claimant alleges that Angola should be able to demonstrate that the Tribunal lacks jurisdiction based on Mr. Machado’s factual allegations, unless they are “*incredible, frivolous, vexatious or inaccurate or made in bad faith.*”¹⁹
47. Regarding the second criterion, the Claimant argues that, to prove that his claims are “manifestly” without legal merit, Angola must be able to establish its objection “*clearly and obviously*” – an exercise that, although not necessarily simple, must not be difficult.²⁰

¹⁵ Response to Rule 41 Objection, ¶ 13.

¹⁶ Response to Rule 41 Objection, ¶ 10.

¹⁷ Response to Rule 41 Objection, ¶¶ 10-11. CLA-8, *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea*, ICSID Case No. ARB/13/33, Tribunal’s Decision on the Respondent’s Objections under Rule 41(5) of the ICSID Arbitration Rules, 28 October 2014, ¶¶ 88-90, 94. See also CLA-9, *Watkins Holdings S.à.r.l. and others v. Kingdom of Spain*, ICSID Case No. ARB/15/44, Decision on Claimants’ Rule 41(5) Application for Dismissal of Respondent’s Request for Revision of the Award, 22 January 2024, ¶ 65; RL-0007, *Brandes Investment Partners v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/08/3, Decision on the Respondent’s Objection Under Rule 41(5) of the ICSID Arbitration Rules, 2 February 2009, ¶ 62,.

¹⁸ Response to Rule 41 Objection, ¶ 11.

¹⁹ Response to Rule 41 Objection, ¶¶ 14-15.

²⁰ Response to Rule 41 Objection, ¶ 19.

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B. THE RESPONDENT'S RULE 41 OBJECTION

(1) The Respondent's Position

48. Angola says that the Claimant's claims meet the "manifestly without legal merit" standard as the Tribunal lacks *ratione temporis* jurisdiction over them.²¹
49. As noted by Angola, the Claimant brings two claims against it: the first relates to the alleged expropriation of four turbines that, according to the Claimant, are his property and were unlawfully taken by the State (the "**Four Turbines**"); the second concerns a breach of fair and equitable treatment ("**FET**"). Angola argues that, for these claims to stand, the events leading up to the expropriation and FET violation would necessarily have occurred after the BIT's entry into force – which, according to it, they did not.²²
50. *First*, Angola alleges that the BIT does not apply to disputes or claims arising from facts that occurred before its entry into force.²³ In that sense, Angola argues that the Claimant's alleged investments are not protected by the original version of the BIT dated from 2008. The Claimant's investments regarding the Four Turbines were made between June 2016 and June 2017 and Article 2 of this version of the BIT limits the application of the treaty to investments that were made after its entry into force, which only happened on 24 April 2020.²⁴
51. Angola further argues that the Claimant's alleged investments are also not protected by the revised version of the BIT – which entered into force on 22 December 2021 – as its Article 2(1) provides that the treaty shall not apply to "*disputes and/or claims arising from facts that occurred before its entry into force.*"²⁵ In Angola's view, this provision prescribes a double exclusion clause as it precludes the Tribunal's jurisdiction over both previous and

²¹ Rule 41 Objection, ¶ 116.

²² Rule 41 Objection, ¶¶ 5-7.

²³ Rule 41 Objection, ¶ 116.

²⁴ Rule 41 Objection, ¶¶ 118-121.

²⁵ Rule 41 Objection, ¶ 122. RL-0010, Article 2(1) of the consolidated version of the Angola-Portugal BIT, p. 1 (original version and English translation).

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post-BIT dispute/claims based on pre-BIT facts.²⁶ Relying on the tribunal's decision in *Benita Carrizosa v. Colombia*, Angola affirms that "*a treaty does not bind the Contracting States in respect of their pre-treaty actions or omissions, unless it provides otherwise.*"²⁷ Angola therefore understands that it is only bound by acts, facts and/or events that happened after 22 December 2021.²⁸

52. According to Angola, although the revised version of the BIT does not distinct investments made before its entry into force from investments made after its entry into force, Angola and Portugal committed to protecting only untainted investments made by each other's investors, which means that any investments already entangled in disputes or pre-BIT acts are excluded from the Treaty's protection.²⁹
53. *Second*, Angola claims that the alleged expropriation of the Four Turbines occurred before the BIT's entry into force.³⁰ In fact, Angola argues that the Claimant has consistently recognized that the events leading up to the alleged expropriation occurred before 22 December 2021.³¹ The Claimant has previously alleged before the Courts of the United States (the "**U.S. Proceedings**") that the conduct constituting the alleged expropriation in violation of the BIT occurred in: (i) August 2019, with the issue of a presidential order enabling the termination of the 13 contracts that give rise to this dispute (the "**Contracts**"); (ii) December 2019, with the seizure of the turbines; (iii) May/June 2021, with the deployment of the turbines by State-owned companies; and (iv) June 2021, with the installation of the turbines into Angola's power-grid.³²

²⁶ Rule 41 Objection, ¶ 123, Reply on Rule 41 Objection, ¶ 28.

²⁷ Rule 41 Objection, ¶ 126. RL-0013, *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No ARB/18/5, Award, 19 April 2021, ¶ 124.

²⁸ Rule 41 Objection, ¶¶ 124, 126.

²⁹ Reply on Rule 41 Objection, ¶¶ 24-26.

³⁰ Rule 41 Objection, ¶ 129.

³¹ Rule 41 Objection, ¶ 8.

³² Rule 41 Objection, ¶¶ 8, 136.

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54. In light of that, Angola claims that “*this ICSID proceeding represents the Claimant’s latest attempt to conjure a non-existent international jurisdiction,*”³³ as the Claimant now accuses Angola of breaching Article 7 of the BIT through the seizing, installation, and use of the Four Turbines in the State’s power plants. Nonetheless, Angola argues that the relevant actions mentioned by the Claimant in these proceedings (i.e. the seizing, installation, and deployment of the equipment) took place between 2019 and 2021, and are prior to 22 December 2021.³⁴
55. Additionally, Angola mentions that, as recognized by the tribunal in *Mabco Constructions SA v. Kosovo*, the relevant moment to examine an expropriation is when the State makes the decision to expropriate.³⁵ Therefore, even if the Claimant could prove that the execution of the alleged expropriation took place after the BIT’s entry into force (*quod non*), it would still have to prove that Angola’s decision to expropriate was made before the BIT’s entry into force.³⁶
56. Angola also claims that “[f]ully aware that the seizure, installation, and deployment of the Four Unsolicited Turbines predates the BIT’s entry into force, [...] the Claimant broadly frames the facts leading up to the dispute as having taken place ‘during the course of 2022’”³⁷ and “puts forward two dates to argue the fulfilment of the *ratione temporis* criterion to uphold the Tribunal’s jurisdiction to hear the expropriation claim.”³⁸ (i) the publication of Presidential Order No. 60/22 on 16 March 2022 and (ii) a press release dated 18 March 2022.³⁹
57. According to Angola, these post-BIT acts invoked by the Claimant are rooted in pre-BIT acts and do not constitute a decision nor an order to expropriate, which is why they do not

³³ Rule 41 Objection, ¶ 137.

³⁴ Rule 41 Objection, ¶¶ 15, 137, 141.

³⁵ Rule 41 Objection, ¶¶ 144-145. RL-0014, *Mabco Constructions SA v. Republic of Kosovo*, ICSID Case No. ARB/17/25, Decision on Jurisdiction, 30 October 2020, ¶ 467.

³⁶ Rule 41 Objection, ¶ 146.

³⁷ Rule 41 Objection, ¶ 151.

³⁸ Rule 41 Objection, ¶ 152.

³⁹ Rule 41 Objection, ¶ 152.

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have the legal effect intended by the Claimant.⁴⁰ Angola states that, as decided by several investment tribunals, for a claim arising out of a post-treaty conduct to fall within a tribunal's jurisdiction, it must constitute a stand-alone breach of the BIT.⁴¹ In the present case, the alleged post-BIT conducts did not remove the Claimant's investment nor changed its *status quo*, meaning that they cannot be considered a stand-alone breach of the Treaty.⁴²

58. *Third*, Angola argues that the Claimant's FET claims are also manifestly without legal merit.⁴³ As noted by Angola, the Claimant makes two separate allegations regarding the FET standard: first, the Claimant asserts that Angola's Institute for the Management of the State's Assets and Shares ("**IGAPE**") and the Provincial Court of Luanda, Civil and Administrative Chamber, Second Division (the "**Provincial Court of Luanda**") breached their duties to guard and preserve the Four Turbines,⁴⁴ and second, the Claimant asserts that neither IGAPE nor the Provincial Court of Luanda have responded to its requests of 22 April 2022 and 24 May 2022 regarding the whereabouts of the seized turbines.⁴⁵
59. According to Angola, the Claimant's first FET claim is a "*non-starter*" as IGAPE's and the Provincial Court of Luanda's alleged failure to guard and preserve the Four Turbines cannot be considered a stand-alone breach of the BIT or unrelated to the alleged expropriation.⁴⁶ It further claims that the "*latest point in time*" when the alleged obligation to guard and preserve the Four Turbines could have been breached is the date of the expropriation itself, meaning that the Tribunal also lacks *ratione temporis* jurisdiction to decide this claim.⁴⁷

⁴⁰ Rule 41 Objection, ¶¶ 153-154.

⁴¹ Rule 41 Objection, ¶ 157. RL-0013, *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No ARB/18/5, Award, 19 April 2021, ¶ 153.

⁴² Rule 41 Objection, ¶ 160.

⁴³ Rule 41 Objection, ¶ 163.

⁴⁴ Rule 41 Objection, ¶¶ 162, 165.

⁴⁵ Rule 41 Objection, ¶¶ 162, 170.

⁴⁶ Rule 41 Objection, ¶¶ 163, 166.

⁴⁷ Rule 41 Objection, ¶¶ 167-169.

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60. Regarding the second FET claim, Angola states that the Claimant is clearly trying to fabricate a claim, as “*only 34 business days elapsed between AEnergy's information requests and the Claimant's sending of his Notice of Dispute.*”⁴⁸
61. In its Reply on Rule 41 Objection, Angola additionally claims that Mr. Machado's FET and full protection and security (“FPS”) claims manifestly lack legal standing. The Respondent argues that, as it appears from the Claimant's allegations during the discussion over the Rule 41 Objection, the alleged breach of FET and FPS standards arises from ongoing legal proceedings involving Aenergy, and not the Claimant itself. Considering that, according to the BIT, shareholders can only pursue FET and FPS claims if the cause of action is the impairment of their shareholders' rights and losses of value of their shares, the Claimant lacks standing to claim for compensation related to any damages suffered by Aenergy in these proceedings.⁴⁹

(2) The Claimant's Position

62. In the Claimant's view, Angola has failed to prove in a clear and obvious way that the Tribunal lacks *ratione temporis* jurisdiction since it was not able to dispute the Claimant's factual allegations.⁵⁰
63. *First*, the Claimant argues that Mr. Machado's investment is protected by the Treaty since (i) his investments were lawfully made between June 2016 and June 2017, and (ii) the Treaty applies to all investments, making no distinction between investments made before or after its entry into force.⁵¹ Although pursuant to Article 2 of the BIT, claims that arise from facts that predate the BIT's entry into force are generally excluded from the Treaty's protection, the facts giving rise to Mr. Machado's claims in these proceedings only occurred after 22 December 2021, meaning that they are not excluded by Article 2 of the BIT.⁵² Moreover, the Claimant alleges that Angola's attempt to expand the effects of the

⁴⁸ Rule 41 Objection, ¶¶ 163, 172.

⁴⁹ Reply on Rule 41 Objection, ¶¶ 140, 143-144, 150.

⁵⁰ Response to Rule 41 Objection, ¶ 5.

⁵¹ Response to Rule 41 Objection, ¶ 80.

⁵² Response to Rule 41 Objection, ¶ 82.

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principle of non-retroactivity goes against the “ordinary meaning” of Article 2(1) of the BIT.⁵³

64. *Second*, the Claimant mentions that Angola has not provided any reasons to justify the departure from the facts as alleged by him.⁵⁴ In that sense, the Claimant notes that, as recognized by previous ICSID tribunals and Angola itself, under Rule 41 the Tribunal ought to ascertain the legal merit of the Claimant's claims relying on the facts as alleged by him unless they are “*plainly without any foundation.*”⁵⁵
65. The Claimant argues that, despite quoting out-of-context allegations made by Aenergy in distinct legal proceedings under the U.S. Courts, Angola has not provided any evidence that the Four Turbines were installed between 2019 and 2021, as it claims.⁵⁶ Instead, Angola seems to defend that the Tribunal should disregard the Claimant's factual allegations and replace them with different ones, on the grounds that Angola's version of the facts is allegedly more consistent with allegations previously made by Aenergy in the U.S. Proceedings.⁵⁷
66. According to the Claimant, as set forth in his Request for Arbitration, his claims are based on events that occurred in 2022, after the entry into force of the BIT.⁵⁸ More precisely, the Claimant accuses (i) Angola of removing the Four Turbines, and related equipment, from judicial custody and installing them in state-owned power plants and (ii) IGAPE and the Provincial Court of Luanda of enabling such misappropriation and failing to take any action or even respond to Aenergy's requests for information.⁵⁹
67. The Claimant admits that he is unaware of the exact moment when the Four Turbines were installed in Angola's state-owned power plants, or which turbines were installed in which

⁵³ Rejoinder on Rule 41 Objection, Section II.A., ¶ 16.

⁵⁴ Rejoinder on Rule 41 Objection, ¶ 11.

⁵⁵ Response to Rule 41 Objection, ¶ 22; Rejoinder on Rule 41 Objection, ¶ 2.

⁵⁶ Response to Rule 41 Objection, ¶ 5.

⁵⁷ Response to Rule 41 Objection, ¶ 23; Rejoinder on Rule 41 Objection, ¶ 3.

⁵⁸ Response to Rule 41 Objection, ¶ 1; Rejoinder on Rule 41 Objection, ¶ 1.

⁵⁹ Response to Rule 41 Objection, ¶ 3.

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power plant since the Claimant has had no physical access to them since the preventive orders and had no means of accurately ascertaining their whereabouts.⁶⁰ However, the Claimant says that it is undisputed that the Four Turbines were installed in Angola's power plants⁶¹ as well as that he has obtained information suggesting that the Four Turbines were installed and connected to the power grid during the spring and summer of 2022.⁶² The Claimant argues that, for the purposes of Rule 41, what really matters is that he has submitted all the evidence and information at his disposal to substantiate his claims that the relevant events to this dispute took place after the BIT entered into force.⁶³

68. As noted by the Claimant, the installation and deployment of the Four Turbines mark “*an inflection point*,” as until that moment it could be argued that the turbines had not been appropriated but were still kept in custody on behalf of the Provincial Court of Luanda.⁶⁴ Differently from what the Respondent suggests, the fact that the post-BIT taking “*of the Four Turbines by Angola has a pre-BIT backstory –namely the Four Turbines being held in custody by the Provincial Court of Luanda– does not negate the post-BIT taking*.”⁶⁵
69. Moreover, the Claimant states that the allegations made by Aenergy in previous U.S. Proceedings are irrelevant to this case.⁶⁶ The Claimant emphasizes that he “*cannot be bound by, or estopped from making factual allegations different from the factual allegations made by Aenergy in different proceedings, in different fora, with a different cause of action, under a different applicable law, involving different parties and based on different facts*.”⁶⁷ He also mentions that, unlike Aenergy's case before the U.S. Courts, Mr. Machado does not invoke any illegality of the order of preventive seizure in this arbitration,

⁶⁰ Response to Rule 41 Objection, ¶¶ 4, 60.

⁶¹ Response to Rule 41 Objection, ¶ 71.

⁶² Response to Rule 41 Objection, ¶ 180.

⁶³ Response to Rule 41 Objection, ¶ 64.

⁶⁴ Response to Rule 41 Objection, ¶ 187.

⁶⁵ Response to Rule 41 Objection, ¶ 188.

⁶⁶ Response to Rule 41 Objection, ¶ 207.

⁶⁷ Response to Rule 41 Objection, ¶ 6.

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rather, his claims are based on an expropriation carried out by Angola from 2022 onwards.⁶⁸

70. *Third*, the facts on which the Claimant's claims are premised are not incredible, frivolous, vexatious, inaccurate or made in bad faith.⁶⁹ On the contrary, his expropriation claim is based on a self-standing breach of the BIT resulting from post-Treaty acts and facts,⁷⁰ which is not "*tainted*," "*entangled*" or "*rooted*" in any pre-BIT acts.⁷¹
71. In any event, the Claimant says that whether post-BIT facts constitute breaches of the Treaty is irrelevant for the purpose of evaluating Angola's Rule 41 Objection, which is grounded exclusively on the Tribunal's supposed lack of jurisdiction *ratione temporis*.⁷² The Claimant stresses that if the facts alleged by Angola were to lead to "*disprove the facts actually alleged by Mr Machado or otherwise lead to the conclusion that there was no breach of treaty standards*," this would lead to a dismissal of the Claimant's claims on the merits and not result in the Tribunal lacking jurisdiction *ratione temporis*.⁷³
72. *Fourth*, the Claimant argues that his FET and FPS claims are also within the Tribunal's jurisdiction. He states that Angola breached its obligations of due process and transparency when it installed the Four Turbines in local power plants and connected them to the national grid, especially since Aenergy was never notified, nor was this measure the subject of any request, procedure or hearing before the Provincial Court of Luanda.⁷⁴ He also claims that Angola's actions "*were –and remain– completely opaque and in clear breach of the duty to provide a transparent and predictable legal environment contemplated under the FPS standard*."⁷⁵

⁶⁸ Response to Rule 41 Objection, ¶ 38.

⁶⁹ Response to Rule 41 Objection, Section IV.

⁷⁰ Rejoinder on Rule 41 Objection, ¶ 56.

⁷¹ Rejoinder on Rule 41 Objection, ¶ 56.

⁷² Response to Rule 41 Objection, ¶ 86; Rejoinder on Rule 41 Objection, ¶ 72.

⁷³ Response to Rule 41 Objection, ¶ 25.

⁷⁴ Response to Rule 41 Objection, ¶ 117.

⁷⁵ Response to Rule 41 Objection, ¶ 140.

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73. Lastly, the Claimant states that Angola's argument that Mr. Machado's FET and FPS claims manifestly lacks legal standing is untimely.⁷⁶ According to the Claimant, Angola was able to raise an objection of manifest lack of legal standing since his Request for Arbitration but chose to limit its preliminary objection to the lack of *ratione temporis* jurisdiction. In view of that, he claims that Angola may not use its Reply on Rule 41 Objection to add a new objection as, under the ICSID Rules, the Respondent was required to set out all the factual and legal arguments supporting its Rule 41 objection at start.⁷⁷

V. THE TRIBUNAL'S ANALYSIS

74. The Tribunal will first address the applicable legal standard for an objection to be accepted as manifestly without legal merit under Rule 41 of the ICSID Rules. The Tribunal will then proceed to analyze whether Angola's Rule 41 Objection meets the applicable standard.

A. THE APPLICABLE LEGAL STANDARD UNDER RULE 41

75. As seen above, Angola submitted an objection to the Tribunal's *ratione temporis* jurisdiction in accordance with Rule 41(1) of the ICSID Rules, pursuant to which a party may object that a claim is manifestly without legal merit regarding its substance, the jurisdiction of the Centre, or the competence of the Tribunal.

76. Rule 41 of the ICSID Rules reads as follows:

(1) A party may object that a claim is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction of the Centre, or the competence of the Tribunal.

(2) The following procedure shall apply:

(a) a party shall file a written submission no later than 45 days after the constitution of the Tribunal;

⁷⁶ Rejoinder on Rule 41 Objection, Section IV.

⁷⁷ Rejoinder on Rule 41 Objection, ¶ 116.

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(b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;

(c) the Tribunal shall fix time limits for submissions on the objection;

(d) if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and

(e) the Tribunal shall render its decision or Award on the objection within 60 days after the later of the constitution of the Tribunal or the last submission on the objection.

(3) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.

(4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 43 or to argue subsequently in the proceeding that a claim is without legal merit.

77. First, it is noteworthy that, since the Tribunal was formally constituted on 1 October 2024 and Angola submitted its Rule 41 Objection on 15 November 2024, Angola's objection was submitted within the timeline established in Rule 41(2) above.
78. Second, although Rule 41(3) allows a tribunal to dismiss claims at an early stage when convinced that they manifestly lack legal merit, the ICSID Rules do not provide a precise definition of what "manifestly without legal merit" means. Nonetheless, the Parties do not dispute the applicable legal standard to be considered by the Tribunal. Both Parties rely on the tribunal's decision in *Trans-Global v. Jordan* to assert that (i) the term "manifestly" requires Angola to establish its objection "*clearly and obviously, with relative ease and dispatch*,"⁷⁸ and (ii) the lack of legal merit should be assessed on a legal bearing, rather than on a factual basis, as the information provided to the Tribunal at this stage is still limited.⁷⁹ The Parties also agree that, to make a legal assessment under Rule 41, tribunals

⁷⁸ Rule 41 Objection, ¶¶ 108-109; Response to Rule 41 Objection, ¶ 19; RL-0003, *Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, ¶ 88.

⁷⁹ Rule 41 Objection, ¶¶ 112-113; Response to Rule 41 Objection, ¶ 14; RL-0003, *Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, ¶ 97.

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are to accept the factual premises as alleged by the claimants, unless they are “*incredible, frivolous, vexatious or inaccurate or made in bad faith.*”⁸⁰

79. Considering the cases cited by the Parties in their submissions, it is undisputed that the threshold to be met under Rule 41 is high. In Angola's own words, for an objection to be accepted at such an early stage, it must be clear that the claim “*was lost before it left the start line.*”⁸¹
80. Given that the Parties agree on the applicable legal standard, the Tribunal will rely on the test established in *Trans-Global v. Jordan* (and followed by other tribunals) to guide its analysis. Consequently, the Tribunal will only accept Angola's objection if it is clear and obvious that the Tribunal lacks *ratione temporis* jurisdiction. Otherwise, the Tribunal will dismiss Angola's Rule 41 Objection.

B. THE RESPONDENT'S RULE 41 OBJECTION

81. Angola argues that, despite the Claimant's attempt to spin different narratives to make his case comply with the temporal requirements of the BIT, the events that lead to what the Claimant understands as expropriation and unfair and unequal treatment occurred before 2021.⁸² Thus, in Angola's view, this arbitration constitutes an “*improper attempt*” from the Claimant to exploit the protections of the BIT,⁸³ as the Treaty shall not apply to disputes and/or claims arising from facts that predates its entry into force on 22 December 2021.⁸⁴
82. In view of this submission, as explained above, for the Tribunal to accept Angola's *ratione temporis* objection and dismiss the Claimant's claims under Rule 41, it must be clear and obvious that Mr. Machado's claims fall outside the temporal scope of the BIT.

⁸⁰ Rule 41 Objection, ¶ 114; Response to Rule 41 Objection, ¶ 14; RL-0003, *Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, ¶ 105.

⁸¹ Rule 41 Objection, ¶ 111.

⁸² Rule 41 Objection, ¶¶ 130, 168; Reply on Rule 41 Objection, ¶ 4.

⁸³ Rule 41 Objection, ¶ 2.

⁸⁴ Rule 41 Objection, ¶ 122; Reply on Rule 41 Objection, ¶ 2.

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83. As recognized by Angola, the Claimant has so far presented two claims against Angola in these proceedings: (i) an expropriation claim, related to the Four Turbines and its related equipment, and (ii) a claim related to the violation of FET and FPS standards.⁸⁵ In his Request for Arbitration, when introducing the dispute, the Claimant expressly states that: it had suffered an illegal expropriation of the Four Turbines and its related equipment; the Four Turbines had been preventively seized by order of the Provincial Court of Luanda in 2019 and should have been under IGAPE's custody; and the Four Turbines had been deployed and installed in State-owned power plants during 2022, as if they were Angola's property.⁸⁶
84. The Claimant has not changed his version of the facts nor the basis of his claims during these proceedings. On the contrary, since the moment he submitted his Request for Arbitration, he substantiated his claims on certain events (i.e. the deployment and installation of the Four Turbines) that, according to him, occurred in 2022. Moreover, in his submissions regarding Angola's Rule 41 Objection, the Claimant stated that, despite being unsure of the precise dates of the installation of the turbines (he claims that Angola is the entity that has that information and has not shared it),⁸⁷ he has reasons to believe that they were installed in state-owned power plants and connected to Angola's power grid during 2022.⁸⁸
85. Angola, on the other hand, does not seem to dispute the timeline of the facts as presented by the Claimant. Rather, it alleges that the Parties have been in a dispute over the "*title, possession, and/or access*"⁸⁹ of the Four Turbines way before the Treaty's entry into force and that the events now indicated by the Claimant as the relevant moments to constitute the BIT breaches do not actually constitute Treaty-violations.

⁸⁵ Rule 41 Objection, ¶ 5; Reply on Rule 41 Objection, ¶ 14.

⁸⁶ Request for Arbitration, ¶¶ 3-5.

⁸⁷ Response to Rule 41 Objection, ¶¶ 60-61.

⁸⁸ Response to Rule 41 Objection, ¶ 64.

⁸⁹ Reply on Rule 41 Objection, ¶ 4.

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86. Given the fact the Parties agree that the Tribunal should rely on the Claimant's factual premises to make a legal assessment under Rule 41 and that, according to the Claimant, the events that he frames as breaches to the BIT presumably occurred in 2022, it is not clear nor obvious to the Tribunal that the Claimant's claims fall outside the temporal protection of BIT.
87. As previously established, the standard to dismiss a claim under Rule 41 is high and tribunals have only dismissed claims that are clearly unmeritorious from a legal perspective. Angola has not claimed that the facts presented by the Claimant are incredible, frivolous or vexatious. It, however, argues that the Claimant is acting in bad faith by attempting to portray the present dispute as distinct from Aenergy's case in front of the U.S. Courts.⁹⁰
88. Nonetheless, even if the timeline of the events portrayed in the U.S. Proceedings could be useful for the Tribunal when assessing its jurisdiction over the dispute, Aenergy's prior statements before the U.S. Courts do not constrain the Claimant's right to present his case as he deems appropriate in this arbitration. This conclusion is especially relevant considering that the Parties to this dispute are not the same parties to the U.S. Proceedings.
89. Moreover, the Claimant is correct in asserting that, even if the facts alleged by Angola were to disprove the facts alleged by Mr. Machado or otherwise support the conclusion that no breach of the Treaty occurred, this would result in a dismissal of the Claimant's claims on the merits – not an early dismissal of the claims under Rule 41.
90. Angola refers to the tribunal's decision in *AHG Industry v. Iraq* to argue that the "manifest" threshold is met "*if it appears that the Claimant has no tenable arguable case and that the absence of legal merit in each of the Claimant's claims to jurisdiction is clear and obvious.*"⁹¹ However, in *AHG Industry v. Iraq* it was uncontested between the Parties that the Iraq-Germany BIT never came into force and "*therefore, it is not internationally*

⁹⁰ Reply on Rule 41 Objection, ¶ 77.

⁹¹ Rule 41 Objection, ¶ 109. RL-0005, *AHG Industry GmbH & Co. KG v. Republic of Iraq*, ICSID Case No. ARB/20/21, Award on the Respondent's Application Under ICSID Rule 41(5), 30 September 2022, ¶ 225.

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*binding on either of the two Contracting States,”*⁹² The tribunal in *AHG Industry v. Iraq* did not have to analyse whether the facts giving rise to the dispute occurred before or after the BIT entered into force, as claimed in this case. Instead, it was required to analyse under a strictly legal perspective if its jurisdiction could derive from legal instruments other than the BIT. This precedent is therefore irrelevant to this case.

91. Angola also relies on the tribunal's decision in *Astrida Benita Carrizosa v. Colombia* to argue that Angola cannot be bound by acts or facts that took place before the BIT entered into force.⁹³ The Tribunal in *Astrida Benita Carrizosa v. Colombia* did not dismiss the claimant's claims under Rule 41 of the ICSID Rules for manifest lack of legal merit. Rather, only after analyzing all the relevant facts and necessary evidence (including conducting a hearing) on the jurisdictional debate, the tribunal issued an award declining its jurisdiction over the dispute. Therefore, this precedent is also irrelevant to this decision.
92. The Tribunal recalls that, at this stage, it is only required to make a legal assessment of the legal merit of the Claimant's claims. The Tribunal is not required (or even expected) to decide whether it has jurisdiction over the dispute, but to decide whether Angola's *ratione temporis* objection satisfies the threshold of Rule 41 of the ICSID Rules. Precisely due to that, nothing in this decision may be construed as prejudging the merits of any of the Parties' claims, especially considering that, pursuant to Article 41(4) of the ICSID Rules, a decision that a claim is not manifestly without legal merit shall not prevent a party from filing a preliminary objection pursuant to Rule 43 of the ICSID Rules or from arguing subsequently in the proceeding that a claim is without legal merit.
93. Finally, the Tribunal takes note of Angola's argument in its Reply on Rule 41 Objection that the Claimant's FET and FPS claims “*in addition to falling outside of the ratione temporis jurisdiction of this Arbitral Tribunal, also manifestly lack legal standing.*”⁹⁴

⁹² RL-0005, *AHG Industry GmbH & Co. KG v. Republic of Iraq*, ICSID Case No. ARB/20/21, Award on the Respondent's Application Under ICSID Rule 41(5), 30 September 2022, ¶ 64.

⁹³ Rule 41 Objection, ¶ 126. RL-0013, *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No ARB/18/5, Award, 19 April 2021, ¶ 124.

⁹⁴ Reply on Rule 41 Objection, ¶ 140.

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When submitting its Rule 41 Objection, the Respondent formulated its preliminary objection under Rule 41 on the sole argument that the Tribunal lacks *ratione temporis* jurisdiction.⁹⁵ The Tribunal is thus bound to analyze Angola's request under Rule 41 on the exact same grounds that it has been initially framed and, as a consequence, the Tribunal will not consider at this stage Angola's argument that Mr. Machado's claims manifestly lack legal standing.

94. For the reasons above, the Tribunal rejects Angola's Rule 41 Objection.

VI. THE COSTS RELATED TO THE RULE 41 OBJECTION

(1) The Respondent's Position

95. Angola argues that pursuant to Article 61(2) of the ICSID Convention the Tribunal "*shall decide how and by whom [the Parties'] expenses, the fees and expenses of the members of the Tribunal and the charges for the use of facilities of the Centre shall be paid.*"⁹⁶
96. Specifically concerning the allocation of costs arising from the Rule 41 Objection, Angola states that ICSID tribunals have often applied the "costs follow the event" principle in cases where respondents have prevailed in their objection, ordering claimants to bear the costs of the arbitration and the legal costs to the successful party. Conversely, when tribunals have dismissed objections under Rule 41, they have predominantly deferred the decision on the costs to the end of the proceedings, since respondents could still succeed at the conclusion of the arbitration – a relevant fact to consider when allocating costs.⁹⁷
97. Angola claims to have incurred the following costs when addressing the manifest lack of legal merit of the Claimant's claim:⁹⁸

⁹⁵ Rule 41 Objection, ¶ 3. ("*In fact, even if the Claimant's claims had merit – which they do not – they fall outside the temporal scope of the BIT. Therefore, the *ratione temporis* requirement is not met. This is the basis for this request, as it is so manifest that it should be summarily dismissed by the Tribunal at the earliest opportunity.*")

⁹⁶ Respondent's Statement of Costs, ¶ 14.

⁹⁷ Respondent's Statement of Costs, ¶¶ 16-18.

⁹⁸ Respondent's Statement of Costs, ¶ 5.

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Description	USD
ICSID/Tribunal Fees	250,000.00
Legal Fees and Expenses	999,793.40
Total	1,249,793.40

98. Therefore, Angola requests the Tribunal to “[o]rder the Claimant to pay all costs and expenses of these arbitration proceedings, including fees and expenses of the Arbitral Tribunal and the cost of the Respondent’s legal representation, plus pre-award and post-award interest thereon, in an amount no less than USD 1,249,793.40.”⁹⁹

(2) The Claimant’s Position

99. According to the Claimant, the costs incurred by him during the present phase consist of his counsel’s legal fees, as well as the Tribunal and ICSID fees. The costs are detailed as follows:¹⁰⁰

⁹⁹ Respondent’s Statement of Costs, ¶ 28(a).

¹⁰⁰ Claimant’s Statement of Costs, ¶ 2.

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Costs incurred	
Counsel's legal fees	
Arias (15 November 2024 to 31 March 2025)	EUR 313,331.25
Pact-Orey Da Cunha (18 November 2024 to 27 March 2025)	EUR 150,000.00
Total legal fees	EUR 463,331.25
Tribunal and ICSID costs	
Advance payment on costs to ICSID, to be apportioned by the Tribunal to reflect the costs incurred in the Rule 41 procedure	USD 250,000.00

100. The Claimant thus requests the Tribunal to issue a decision “*ordering the Respondent to pay all costs of the special procedure under Rule 41, including the legal fees of the Claimant's legal representation, the fees and expenses of the Tribunal and Tribunal assistants, and the administrative charges and direct costs of the Centre, plus post-decision interest thereon at a commercial rate.*”¹⁰¹
101. In addition, the Claimant argues that, since the BIT is silent on the interest rate applicable to costs, the Tribunal should award a post-decision interest at “*the EURIBOR rate plus three per cent per year, compounded monthly, from the date of the decision, or any other rate that the Tribunal considers commercially reasonable.*”¹⁰²

(3) The Tribunal's Analysis

102. The Tribunal will decide on the allocation of costs regarding Rule 41 later in the proceedings.

¹⁰¹ Claimant's Statement of Costs, ¶ 3.

¹⁰² Claimant's Statement of Costs, ¶ 5.

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VII. THE TRIBUNAL'S DECISION

103. For the reasons set forth above, the Tribunal unanimously decides as follows:

- (1) **REJECTS** the Respondent's Rule 41 *ratione temporis* objection;
- (2) **DEFERS** the Tribunal's decision on costs related to the Respondent's Rule 41 objection to a later stage; and
- (3) **DETERMINES** the proceedings to continue in accordance with the Procedural Calendar set forth in Annex B of Procedural Order No. 1.

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[*Signed*]

Mr. Alfonso Iglesia
Arbitrator

Date: 29 May 2025

[*Signed*]

Prof. Diego P. Fernández Arroyo
Arbitrator

Date: 29 May 2025

[*Signed*]

Ms. Valeria Galíndez
President of the Tribunal

Date: 29 May 2025