IN THE MATTER OF AN ARBITRATION UNDER THE AGREEMENT BETWEEN THE GOVERNMENT OF THE CZECH REPUBLIC AND THE GOVERNMENT OF THE STATE OF ISRAEL FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

AND

THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW 2010

MR. ASAEL HALEVI

CLAIMANT

v.

THE CZECH REPUBLIC

RESPONDENT

FINAL AWARD

Members of the Tribunal

Ms. Lucy Reed, Chair
Mr. Klaus Reichert SC
Mr. Sam Wordsworth KC

Tribunal Secretary

Ms. Lindsay Gastrell

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The Act on Land	Act No. 229/1991 Coll., on the Regulation of Ownership Relations to Land and Other Agricultural Property, dated 21 May 1991
[redacted] Opinion	Legal Opinion of the Israeli law firm [redacted]
BIT	Agreement Between the Government of the Czech Republic and the Government of the State of Israel for the Reciprocal Promotion and Protection of Investments, which entered into force on 16 March 1999
Brief on Impediments	Mr. Halevi's Brief on Potential Impediments to Enforcement and Execution of a Future Adverse Costs Award dated 18 September 2023
CENTRUM CZ	CENTRUM CZ, spol. s.r.o.
CC Decision 50/04	Constitutional Court decision ref. no. III. ÚS 50/04
CMC	Case Management Conference
[redacted] Witness Statement	Witness Statement of [redacted]
The Cooperation Agreement	Framework Cooperation Agreement on the Development Project Ďáblice among the shareholders of the Company, concluded on 24 March 2010
Document Production Application	The Czech Republic's request to compel Mr. Halevi to produce documents as ordered in Procedural Order No. 4, dated 14 June 2023
The EU	The European Union
[redacted]	[redacted]
The Future Exchange Agreement	A 15 January 2009 agreement between the Land Fund Mr. Maixner for a future exchange of plot no. 1590/5 for a plot owned by the Land Fund (plot no. 1596/5)
The Development Agreement	Framework Cooperation Agreement on the Development Project Ďáblické between Mr. Halevi, Mr. Josef Maixner, Mr. Alexandr Jaroševský, and [redacted] dated 24 March 2010,
[redacted] Opinion	Legal opinion of the Israeli law firm [redacted]
The January 2019 Judgment	The 10 January 2019 judgment of the Municipal Court in Prague in Lawsuit Four
The Knights of the Cross	Knights of the Cross of the Red Star

The Land	Plots parc no. 1580/15 and 1590/2 and with Mr. Jaroševský for plots parc no. 1580/16 and 1590/3 in the cadastral area of Ďáblice in the northern part of Prague
The Land Fund	The Land Fund of the Czech Republic
Lawsuit One	Lawsuit lodged on 29 December 2000 by the Knights of the Cross against Mr. Maixner and Mr. Svoboda with the District Court of Prague 8
Lawsuit Four	Lawsuit lodged by the Knights of the Cross on 30 December 2015 in the District Court for Prague 8 against the Company and the Czech Republic as joint defendants
Lawsuit Three	Lawsuit lodged by the Czech Republic on 10 April 2012 – with the Knights of the Cross as an intervenor –against the Company before the District Court for Prague 8
Lawsuit Two	Lawsuit lodged on 30 March 2012 by Knights of the Cross against the Company with the District Court for Prague 8
The Original Land Transfers	Land transfer agreements ID no. 003R-98/01 dated 26 March 1998 and ID No. 004R-98/01 dated 27 March 1998, by which the Land Fund released the Land as Replacement Land to Mr. Maixner and Mr. Fidrmuc, respectively
PCA	Permanent Court of Arbitration
Post-Hearing Application	Mr. Halevi's application for leave to file new legal authorities dated 22 March 2024
The Project	Project to purchase land and develop a residential project in Ďáblické
Reply on Impediments	Mr. Halevi's Reply to Respondent's Brief on Potential Impediments to Enforcement and Execution of a Future Adverse Costs Award dated 13 November 2023
Replacement Land	Land provided under the restitution regime in lieu of the original land when the original land could not be released due to certain impediments
Request for Arbitration	Mr. Halevi's Request for Bifurcation dated 22 July 2022
Response on Impediments	The Czech Republic's Responsive Brief on Potential Impediments to Enforcement and Execution of a Future Adverse Costs Award dated 20 October 2023
Security for Costs Application	The Czech Republic's Application for Security for Costs dated 18 May 2023.
The [redacted] Report	The expert report of [redacted] with Exhibits [redacted]ER-001 to [redacted]ER-061
The [redacted] Report Application	Mr. Halevi's Application for Exclusion of Respondent's Expert Report and for an Unscheduled Submission dated 29 November 2023
UNCITRAL Rules	Arbitration Rules of the United Nations Commission on International Trade Law 2010

I. INTRODUCTION

1. This case concerns a dispute between the Parties arising from the alleged investment of the Claimant, Mr. Asael Halevi, in the form of a 22 percent ownership share in the company Ďáblické rezidence that had acquired certain land in Prague, historically owned by the Knights of the Cross of the Red Star (the ***Knights of the Cross***) and nationalized in 1948 under the communist regime in the former Czechoslovakia, for development of a residential complex. The Claimant alleges that his investment was expropriated and subjected to unfair and inequitable treatment by the Czech Republic in breach of its obligations under the Agreement Between the Government of the Czech Republic and the Government of the State of Israel for the Reciprocal Promotion and Protection of Investments, which entered into force on 16 March 1999 (the ***BIT***). The Respondent, the Czech Republic, denies any expropriation or unfair and inequitable treatment of the Mr. Halevi's investment.

2. For the reasons stated below, the Tribunal has determined to dismiss all of the Claimant's claims.

II. THE PARTIES AND THEIR REPRESENTATIVES

3. The Claimant is Mr. Asael Halevi, a national of Israel residing in the Czech Republic.

4. The Claimant is represented by Mr. Petr Bříza and Mr. Tomáš Hokr of Bříza & Trubač, Klimentská 1216/46, 110 00 Praha, Czech Republic.

5. The Respondent is the Czech Republic.

6. The Respondent is represented by the Ministry of Finance of the Czech Republic and Mr. Alfred Siwy and Mr Ondřej Cech of Zeiler Floyd Zadkovich.

III. THE TRIBUNAL

7. The Tribunal members are: Mr. Klaus Reichert SC, appointed by the Claimant; Mr. Sam Wordsworth KC, appointed by the Respondent; and Ms. Lucy Reed, the Chair agreed by the co-arbitrators and the Parties pursuant to an agreed list selection procedure.

IV. THE ARBITRATION AGREEMENT

8. The Claimant commenced this *ad hoc* arbitration with his Request for Arbitration dated 3 February 2022, on the basis of Article 7 of the BIT.

9. Article 7 of the BIT provides:

> *1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment made in the territory of the latter shall be subject to negotiations between the parties to the dispute.*
>
> *2. If any dispute between an investor of one Contracting Party and the other Contracting Party not be thus settled within a period of six months, the investor shall be entitled to submit the dispute to:*
>
> *(a) A court of competent jurisdiction of the Contracting Party in whose territory the investment was made; or*
>
> *(b) The International Center for the Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington D.C. on March 18, 1965; or*
>
> *(c) An arbitrator or international ad hoc arbitral tribunal as agreed by the parties to the dispute. The arbitral tribunal shall be established according to the principles contained in Article 8.*

10. In his Statement of Claim, Mr. Halevi describes his status as a protected investor with a qualifying indirect investment in the Czech company Ďáblické rezidence under Article 1 of the BIT.

11. The Czech Republic has not challenged this Tribunal's jurisdiction of the dispute.

V. PROCEDURAL HISTORY

A. Initial Procedural Phase

12. On 3 February 2022, the Claimant commenced this arbitration by submitting copies of his Request for Arbitration to the Respondent and its nominated arbitrator, Mr. Reichert. The Request for Arbitration includes Exhibits C-001 to C-045 and Legal Authorities CL-1 to CL-28.

13. In his Request for Arbitration, Mr. Halevi proposed the following:

> *As the Czech Republic is a member of the European Union (the **EU**) and Mr. Halevi is not a national of an EU Member State, the place of arbitration should be Zurich, Switzerland, or other neutral forum outside the EU;*
>
> *The governing arbitration rules should be the Arbitration Rules of the United Nations Commission on International Trade Law (the **UNCITRAL Rules**);*
>
> *If the Tribunal considers it appropriate, the Vienna International Arbitration Centre should assist the Tribunal by holding the Parties' deposits on costs; and*
>
> *The language of the arbitration should be English.*

14. Mr. Halevi disclosed in his Request for Arbitration that, in this arbitration, he is being funded by [redacted] with its registered office at [redacted] and registered at the Prague Municipal Court, File no. [redacted].

15. On 4 April 2022, the Respondent appointed Mr. Sam Wordsworth KC as an arbitrator.

16. On 20 May 2022, in accordance with the agreed list selection procedure established in communications with the Parties and in accordance with Articles 7(2)(c) and 8(3) of the BIT, Mr. Reichert and Mr. Wordsworth informed the Parties that they had selected Ms. Reed as Chair of the Tribunal and noted that her selection has been approved in advance by the Parties through the agreed procedure.

17. By emails dated 21 and 23 May 2022, respectively, the Claimant and the Respondent confirmed the appointment of Ms. Reed as Chair of the Tribunal.

18. On 30 May 2022, the Tribunal wrote to the Parties confirming that the Tribunal had been constituted and requesting the Respondent to submit, by 6 June 2022, its position on application of the 2010 UNCITRAL Rules (the ***UNCITRAL Rules***) in this case.

19. Also on 30 May 2022, the Tribunal invited the Parties to agree to the appointment of Ms. Lindsay Gastrell as Tribunal Secretary.

20. On 6 June 2022, both the Claimant and the Respondent informed the Tribunal that they had no objections to the appointment of Ms. Gastrell as the Tribunal Secretary.

21. By letter of the same date, 6 June 2022, the Czech Republic agreed to the application of the UNCITRAL Rules as the governing arbitration rules. The Czech Republic also stated, for the avoidance of doubt, that it did not agree to application of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

22. On 8 June 2022, Ms. Gastrell circulated her Statement of Independence and Impartiality. Neither Party raised any objection to Ms. Gastrell's appointment.

23. On 15 June 2022, the Tribunal provided the Parties with drafts of the Terms of Appointment and Procedural Order No. 1 and sought comments by 27 June 2022.

24. On 27 June 2022, the Parties provided the Tribunal with their comments on the draft Terms of Appointment and the draft Procedural Order No. 1, both as to points agreed and not agreed.

25. On 1 July 2022, the Tribunal conducted the initial Case Management Conference (the ***CMC***) with the Parties, on the Zoom platform. During the CMC, Mr. Halevi's representatives stated that they would submit a request for bifurcation of quantum issues and it was agreed that all subsequent dates on the Procedural Timetable would be set following the Tribunal's decision on the bifurcation request.

26. By email on 1 July 2022, the Tribunal: (a) invited the Parties to set out their positions on the seat of arbitration by 8 July 2022; and (b) in relation to Section 19 of the draft Terms of Appointment, invited the Czech Republic to submit, by 8 July 2022, its answers to the following two questions posed during the CMC:

> *Is there any regulation or provision of Czech law that prevents the Respondent from agreeing to the limited exclusion of liability contemplated in Section 19?*
>
> *Please confirm the position taken by the Czech Republic on this issue in other cases to which it has been a party; does the Czech Republic have a consistent practice in all cases of refusing to accord any immunity to the Members of the Tribunal?*

27. On 8 July 2022, the Parties provided their positions on the seat of arbitration. Mr. Halevi, as in his Request for Arbitration, proposed a seat outside the EU in an arbitration-friendly country with no apparent bias against either Israel or the EU. The Czech Republic proposed a seat in an EU Member State.

28. Also on 8 July 2022, the representatives of the Czech Republic explained that they had fiduciary duties to the State and hence wished to avoid terms of Tribunal appointment including a waiver of potential claims against future liability. As for previous practice, the Czech Republic reported "a strong tendency … to avoid a waiver of immunity," but with exceptions.[1]

B. Procedural Order No. 1 and Terms of Appointment

29. On 22 July 2022, the Tribunal issued Procedural Order No. 1. Among other things, Procedural Order No. 1: (a) in paragraph 1.1, confirms the Parties' agreement that the arbitration is to be conducted in accordance with the UNCITRAL Rules; (b) in paragraph 2.1, records the Tribunal's determination that, in accordance with Article 18(1) of the UNCITRAL Rules and having regard to the circumstances of this case, the place of arbitration is London, England; and (c) annexes the Procedural Timetable, containing deadlines for submissions on the Claimant's Request for Bifurcation.

30. On 29 July 2022, the Tribunal finalized the Terms of Appointment, signed by the Tribunal members and the Parties' representatives. Pursuant to paragraph 6.1 of the Terms of Appointment, the language of the arbitration is English. Paragraph 19.1, entitled Exclusion of Liability, provides as follows:

> *In accordance with Article 16 of the UNCITRAL Rules, the Parties waive, save for intentional wrongdoing and to the fullest extent permitted under the applicable law, any claim against the Tribunal members, the Fundholder and the Tribunal Secretary based on any act or omission in connection with this arbitration.*

C. The Fundholder Role of the PCA

31. In paragraph 13.1 of the Terms of Appointment, the Parties agreed to the Permanent Court of Arbitration (the ***PCA***) acting as the Fundholder in this arbitration and, in paragraph 14.2, to make a total initial deposit of USD 300,000 (USD 150,000 from each Party).

32. On 10 August 2022, the Parties informed the Tribunal that the PCA had confirmed its willingness to act as the Fundholder and had registered the matter as PCA Case No 2022-33. The PCA provided its Terms for PCA Administration to the Parties on 10

[1] Letter from Czech Republic counsel to the Tribunal dated 8 July 2022, p. 5.

August 2022 and to the Tribunal on 11 August 2022. The main representative of the PCA is Ms. Jinyoung Seok, Legal Counsel.

33. On 12 August 2022, in Procedural Order No. 2, the Tribunal adopted the Terms for PCA Administration and directed the Parties, upon receipt of a request of the PCA, to establish the initial deposit of USD 300,000 within 30 days of the PCA's request.

34. On 2 and 9 September 2022, respectively, the PCA acknowledged receipt from the Respondent and the Claimant of their initial respective deposits of USD 150,000.

D. The Claimant's Request for Bifurcation

35. On 22 July 2022, Mr. Halevi submitted his Request for Bifurcation, together with Legal Authorities CLA-001 to CLA-005 (the ***Request for Bifurcation***). Mr. Halevi requested the Tribunal to bifurcate quantum issues from issues of jurisdiction and liability.

36. On 5 August 2022, the Czech Republic submitted its Objections to the Claimant's Request for Bifurcation.

37. On 15 August 2022, the Tribunal issued its Decision on Bifurcation. The Tribunal ordered as follows:

> *a. The Claimant's Request for Bifurcation is granted in part;*
>
> *b. The initial phase of this arbitration will include the Parties' claims and defenses on jurisdiction and liability, with full documentary, witness and expert evidence, and legal authorities, as well as brief initial submissions on the Parties' anticipated quantum cases, not to exceed 20 double-spaced pages and not to include evidence;*
>
> *c. The Parties are to consult on the future deadlines to be set in the Procedural Timetable and report jointly to the Tribunal on the same by 26 August 2022; and*
>
> *d. All issues of costs are reserved for a later stage of the proceedings.*

E. Initial Submissions and Document Production

38. On 14 September 2022, the Tribunal issued Procedural Order No. 3 annexing the Parties' agreed Procedural Timetable for the remaining proceedings other than quantum. The hearing was scheduled for the week of 5 February 2024, with the length of the hearing to be determined at a later time. The Parties later agreed to

postpone the hearing to the week of 19 February 2024, and the Tribunal revised the Procedural Timetable to reflect the later hearing date.

39. On 18 November 2022, Mr. Halevi filed his Statement of Claim, together with Exhibits C-001 to C-052 and Legal Authorities CLA-006 to CLA-078.

40. On 10 March 2023, the Czech Republic filed its Statement of Defence, together with Exhibits R-001 to R-012 and Legal Authorities RLA-001 to RLA-041.

41. On 2 May 2023, the Tribunal issued Procedural Order No. 4 setting out its decisions on the Parties' document production requests.

42. On 14 June 2023, the Czech Republic requested the Tribunal to compel Mr. Halevi to produce documents in response to seven document production requests as ordered in Procedural Order No. 4 (the ***Document Production Application***). In brief, the Czech Republic sought copies of correspondence between Mr. Halevi and others related to the Property, rejecting Mr. Halevi's claim that no such documents existed because the relevant communications generally took place in person or by telephone.

43. On 23 June 2023, Mr. Halevi submitted objections to the Respondent's Document Production Application, together with Exhibits C-055 to C-057. On 3 July 2023, the Czech Republic submitted its reply to Mr. Halevi's objections.

44. On 6 July 2023, in Procedural Order No. 5, the Tribunal denied the Respondent's Document Production Application. The Tribunal noted, among other things, that there was "no practical purpose in ordering the Claimant to produce documents that he insists do not exist" and the Parties would be free make appropriate and reasoned requests for specific adverse inferences later in the proceedings.

F. Security for Costs Application

45. The Parties and the Tribunal devoted substantial time and attention to the issue of whether Mr. Halevi should be required to post security for the Czech Republic's potential future costs of the arbitration.

46. On 18 May 2023, the Czech Republic filed its Application for Security for Costs (the ***Security for Costs Application***), together with Exhibits R-024 to R-029 and Legal Authorities RLA-042 to RLA-052. The Czech Republic sought security for its estimated legal costs in the amount of CZK 9,600,000 (approximately EUR 400,000)

and its estimated arbitration costs in the amount of EUR 150,000, in the form of an irrevocable first-demand bank guarantee issued by a first-rated international bank with a branch in the Czech Republic or such other form of security of costs considered appropriate by the Tribunal.

47. On 2 June 2023, Mr. Halevi submitted his Response to Application for Security for Costs, together with Legal Authorities CLA-079 to CLA-087. Mr. Halevi urged the Tribunal to reject the Application.

48. On 19 June 2023, the Czech Republic submitted its Reply to Claimant's Response to Application for Security for Costs.

49. On 4 July 2023, with permission from the Tribunal, Mr. Halevi submitted his Rejoinder to the Respondent's Reply to Claimant's Response to Application for Security for Costs, together with Legal Authorities CLA-088 to CLA-094.

50. In support of its Security for Costs Application, the Czech Republic alleged that Mr. Halevi is "materially insolvent and lacks funds to finance the present proceedings let alone an adverse cost award,"[2] because: (a) he is facing enforcement proceedings in the Czech Republic due to his failure to pay for [redacted]; (b) he requires third-party funding to finance this arbitration; and (c) his past behavior shows an unwillingness to comply with an adverse cost award. The Czech Republic noted that it was "not reassured by Mr. Halevi's argument that he owns a house in Israel against which a potential cost award could be enforced," because "there are several indications that the value of Mr. Halevi's ownership in the house is insufficient to satisfy a costs award and would not allow for effective enforcement."[3]

51. In opposing the Application for Security for Costs, Mr. Halevi denied that he is in a poor financial position or unable to pay his debts. With regard to his [redacted] he explained that he had a legitimate dispute with [redacted] that resulted in domestic enforcement proceedings and, in any event, he had agreed with [redacted], thereby demonstrating that he is solvent and willing to honor his obligations. As for his reliance on third-party funding, Mr. Halevi drew a distinction between the liquidity required to fund a pending arbitration and having sufficient assets to satisfy a costs award. As to the

[2] Reply to Security for Costs Application, para 17.
[3] Reply to Security for Costs Application, paras 18-24.

latter, Mr. Halevi stated that he has sufficient assets in Israel to satisfy an adverse costs award, in the form of the house he owns with [redacted]. Mr. Halevi estimated the value of his house, based on a January 2023 valuation report prepared by a real estate expert for the bank issuing a mortgage, at approximately CZK [redacted] Mr. Halevi stated that, taking the mortgage into account, "it is clear that the residual net value of the property from which any award on costs could be satisfied is at least CZK [redacted] (EUR [redacted])."[4] With regard to the import of his financial behavior, Mr. Halevi asserted that his arrangement with the [redacted] demonstrated his solvency and willingness to pay his debts, as did his payment of USD 150,000 as his share of the advance on costs in this arbitration. Mr. Halevi also contended that the amount of security for costs requested was "egregiously excessive" at eight percent of the amount in dispute.[5]

52. On 24 July 2023, the Tribunal issued Procedural Order No. 6 – Decision on the Respondent's Application for Security for Costs. Among other points, the Tribunal found as follows:[6]

> *52. The Parties agree that the Tribunal has authority to order security for costs as an interim measure under Article 26(2)(c) of the UNCITRAL Arbitration Rules and Section 38(3) of the English Arbitration Act 1996.*
>
> *53. The Parties also essentially agree that the applicable legal test is whether an order for security for costs is necessary to protect the Czech Republic's right to reimbursement of costs in the event of an award of costs in its favor. Although the Parties disagree as to whether or to what extent an order for security for costs may be made only in exceptional circumstances, the Tribunal offers no decision on this issue at this stage, when it does not have the benefit of a complete picture of the relevant facts.*
>
> ....
>
> *56. The critical question is whether* [the Czech Republic's] *conditional right to reimbursement of costs merits protection by an interim measure in the form of security for costs.*
>
> *57. The answer in this case turns in significant part on whether, as articulated in* RSM v. St. Lucia*, the Czech Republic has*

[4] Rejoinder to Security for Costs Application, para 28.
[5] Rejoinder to Security for Costs Application, para 43.
[6] Procedural Order No. 6 (footnotes omitted).

demonstrated the existence of "a material risk" that Mr. Halevi would not, or could not, satisfy an adverse costs award.

58. *Based on the submissions made to date, the Tribunal is not yet able to make a final determination as to whether there is a material risk that Mr. Halevi would not comply with an ultimate costs award covering its anticipated costs.*

59. *The Tribunal finds certain points to be clear.*

60. *First, the Tribunal does not find an element of material risk in the fact that Mr. Halevi has faced domestic enforcement proceedings for failing to* [redacted]. *Mr. Halevi explains in his Rejoinder that the reason for his failure to pay* [redacted] *was* [redacted] *but, nonetheless, he agreed in June 2023 to satisfy the debt with* [redacted]

61. *Second, the Tribunal is satisfied that Mr. Halevi's reliance on a third-party funder for these proceedings is not, in and of itself, a basis to order security for costs in favor of the Czech Republic. As noted by Mr. Halevi, there is a reasonable distinction to be made between the liquidity necessary to fund an international arbitration and the availability of assets to satisfy an ultimately adverse costs award. The Tribunal does recognize that Mr. Halevi's effective admission that his funder will not cover an adverse costs award increases the risk that he would not be able to pay such an award. However, the Tribunal does not find it unreasonable in the current context for Mr. Halevi not to disclose the terms of his third-party funding arrangements, given that the terms could reveal litigation strategy.*

62. *Third, the Tribunal does not find that Mr. Halevi's behavior demonstrates that he would not voluntarily satisfy a costs award in the Czech Republic's favor. For one thing, Mr. Halevi has arranged with* [redacted] *to pay his* [redacted] *For another, he has deposited EUR 150,000 with the Permanent Court of Arbitration for costs in this arbitration, albeit likely through his third-party funder. Further, as reflected in Procedural Order No 5, the Tribunal does not consider that Mr. Halevi has failed to meet his document production obligations.*

63. *This brings the Tribunal to the issue of Mr. Halevi's available assets to satisfy a possible award of costs in favor of the Czech Republic, which Mr. Halevi has put forward as decisive on the absence of material risk. The Tribunal appreciates the further details provided in his Rejoinder, but does not find them sufficient.*

64. *In the round, in resisting the Application for security for costs, Mr. Halevi makes the following representations: (a) he has* [redacted] *interest in a house in Israel, held as* [redacted]

[redacted]*; (b) disregarding the one existing mortgage on his interest in the house, the unencumbered portion of his* [redacted] *interest is currently valued at CZK* [redacted] *(approximately EUR* [redacted] *; (c) this interest is sufficient to meet an adverse costs award in a reasonable amount; and (d) if he did not comply with a costs award voluntarily, the Czech Republic could reliably enforce the award against him in Israel under the New York Convention.*

65. The Tribunal accepts that these representations provide substantial reassurance that Mr. Halevi is not only willing to satisfy any future adverse costs award, but also able to do so. However, what is missing are representations – and support therefore – that he or the Czech Republic would not face overwhelming legal or other impediments to enforcement, and especially execution, of a costs award against his interest in the house. These might include municipal law restrictions on execution against [redacted]*, the rights of* [redacted] *to* [redacted] *or the rights of the mortgage holder to block a necessary sale of Mr. Halevi's interest in the house. Other open questions are the viability of additional representations by Mr. Halevi that he would maintain his interest in the house pending a final award in this arbitration and that his interest is likely to remain at the level estimated today.*

66. Accordingly, before ruling on the Application, the Tribunal invites an additional submission from Mr. Halevi, supported by an independent legal opinion, concerning the potential impediments to enforcement and execution of a future adverse costs award and how any such impediments could be meaningfully waived. The Czech Republic will be allowed to respond.

53. The Tribunal ordered the Parties to consult and agree on a timetable for the further submissions and to revert to the Tribunal regarding the same by 4 August 2023.

54. On 18 September 2023, in accordance with the briefing schedule agreed with the Parties, Mr. Halevi filed his Brief on Potential Impediments to Enforcement and Execution of a Future Adverse Costs Award (the ***Brief on Impediments***), together with the Legal Opinion of the Israeli law firm [redacted] ***Opinion***), Exhibits C-081 to C-085 and Legal Authority CLA-151.

55. On 20 October 2023, the Czech Republic filed its Responsive Brief on Potential Impediments to Enforcement and Execution of a Future Adverse Costs Award (the ***Response on Impediments***), together with a legal opinion prepared by the Israeli law firm [redacted] (the [redacted] ***Opinion***).

56. On 24 October 2023, the Tribunal directed Mr. Halevi to file a focused reply to the Respondent's Response on Impediments, not to exceed five pages, by 3 November 2023. The Tribunal further directed that the reply could be accompanied by a short further legal opinion and need not address every point raised by the Respondent, but should address Sections D(c) and D(d) of the [redacted] Opinion.

57. On 13 November 2023, after an agreed extension, Mr. Halevi filed his Reply to Respondent's Brief on Potential Impediments to Enforcement and Execution of a Future Adverse Costs Award (the ***Reply on Impediments***), together with the Second Legal Opinion of [redacted] (the ***Second*** [redacted] ***Opinion***) and Legal Authority CLA-152.

58. On 21 November 2023, the Tribunal issued Procedural Order No. 7 – Decision on the Respondent's Application for Security for Costs, to be read together with Procedural Order No. 6, in which the Tribunal had reserved its decision on the Application for Security for Costs pending a further submission from Mr. Halevi and further response from the Czech Republic.

59. In Procedural Order No. 7, the Tribunal denied the Respondent's Application for Security for Costs. After repeating the relevant provisions of Procedural Order No. 6, the Tribunal found as follows:[7]

> *43. The Tribunal has been greatly assisted in understanding the "open questions" by the Parties' subsequent submissions and the legal opinions prepared by* [redacted] *and* [redacted]
>
> *44. With the benefit of those submissions and legal opinions, the Tribunal turns back to the Application and the critical question of whether the Czech Republic's conditional right to reimbursement of costs merits protection by an interim measure of security for costs. Using the words of the tribunal in* RSM v. St. Lucia*, the question is whether the Czech Republic has demonstrated the existence of "a material risk" that Mr. Halevi would not or could not satisfy an adverse costs award. As with any request for interim measures under the UNCITRAL Rules, the Tribunal considers it appropriate also to examine whether the specific measures requested are proportionate, such that they do not impose an undue burden on one party that outweighs the justification for the measure in favor of the other party (as follows from Article 26(3) UNCITRAL Arbitration Rules). In the case of security for costs, a key factor in assessing*

[7] Procedural Order No. 7, paras 43-59 (footnotes omitted).

proportionality is the effect an order for security for costs would have on the claimant's right to access justice.

45. *As recorded in Procedural Order No 6, the Tribunal is satisfied that Mr. Halevi would voluntarily satisfy a costs award within the means available to him at the relevant time in the future. There is no evidence on the record that Mr. Halevi shirks his financial responsibilities and, indeed, the evidence reflects the opposite, including through his deposit of EUR 150,000 towards the costs in this arbitration. In this regard, and in light of the representations made by Mr. Halevi (on which the Tribunal relies) and the undertakings he has offered, the Tribunal considers that, in order to satisfy an adverse costs award, Mr. Halevi would be willing to sell his house, which apparently is his only relevant asset, or obtain an additional mortgage on the Property.*

46. *This leaves the question of whether Mr. Halevi could satisfy a future costs award. In specific, if Mr. Halevi were unable to obtain liquid assets to satisfy the award (for example, through the sale or re-mortgage of the Property) and the Czech Republic were forced to pursue enforcement proceedings in Israel to obtain payment through realization of the value of the Property, would there be overwhelming obstacles?"*

47. *The Tribunal does not doubt, based on the submissions and legal opinions from both Parties, that the Czech Republic would face possible impediments to enforcement: among others, it is possible that (a) Mrs. Halevi would become a "protected tenant" under Section 33(d) of the Israeli Tenants' Protection Law with rights to reside in the Property as a renter indefinitely, and her waiver of such rights would apply only to Effective [Effective Stream Trust, which holds a mortgage on the house] and not to the Czech Republic as an unsecured creditor; (b) Effective would employ its secured creditor status to object to enforcement proceedings or otherwise delay the realization of the value of the Property to the prejudice of the Czech Republic; or (c) Effective or the Czech Republic would become obliged to fund alternative housing for Mr. Halevi for 18 months.*

48. *As stressed by the Czech Republic, it is also possible that, if and when the Tribunal were to award costs against Mr. Halevi and the Czech Republic had to commence enforcement proceedings, the value of the Property – as available to the Czech Republic – would be below the amount of the costs awarded.*

49. *However, the question must be: what is the overall effect of these obstacles on the Czech Republic's ability to enforce a hypothetical costs award against the Property? The Czech Republic's main argument is that each of these impediments has the dual effect of reducing the value of the Property and increasing the cost of enforcement. As a consequence, says the Czech Republic,*

enforcement against the Property likely would yield less than the maximum estimated value of EUR [redacted] making it insufficient to cover a costs award. What the Czech Republic and its legal expert have not established is that these impediments would be sufficiently likely to prevent or seriously impede enforcement under Israeli law.

50. As reflected in PO6, the Tribunal is more concerned with the Czech Republic's ability to enforce against the Property, rather than the potential future value of the Property for the Czech Republic's purposes, for two main reasons.

51. First, although the amount potentially realizable through potential future enforcement proceedings obviously is relevant, the Parties' current estimations are not significantly far apart. Neither side considers the Property to be of negligible value now or to become so in the future.

52. Second, the legal impediments to enforcement can be assessed in the present, while the amount of a possible future costs award and the value of the Property – if and when such an award is issued – are subject to considerable uncertainty. This is the situation in all contentious proceedings, to a greater or lesser degree.

53. Regardless of whether an interim measure for security for costs requires exceptional circumstances or not, the Tribunal does not find exceptional circumstances here. On balance, having considered the Parties' submissions (including the representations of Mr. Halevi) and the [redacted] and [redacted] Opinions carefully, the Tribunal does not find the potential legal obstacles to potential enforcement proceedings to be overwhelming.

54. Given that Mr. Halevi does hold a substantial asset in the form of the Property and that he is willing to put that asset at risk in the future to be able to pursue this arbitration, including through the provision of certain undertakings, the Tribunal finds that the Respondent has not demonstrated a material risk that Mr. Halevi either would not or could not satisfy a costs award in a reasonable amount.

55. The effect of the potential impediments to enforcement is also relevant to the proportionality test. It is one thing to suggest that the Czech Republic would have no meaningful legal recourse against the Property to satisfy a costs award in a reasonable amount. It is quite another to say that the Czech Republic may not be able to recover some portion of its costs as currently estimated. Clearly, in the balance of equities, the former proposition would weigh more heavily in favor of an order for security for costs.

56. On the other side of the scale, the Tribunal must consider the likely effect that granting the Application would have on Mr. Halevi's rights, particularly his right to access justice. The Tribunal finds

that, based on Mr. Halevi's submissions, he is not able to finance and post security for costs via a first-demand bank guarantee or an ATE insurance policy in the total amount of EUR [redacted] *at least without selling or re-mortgaging his home now. The Tribunal recalls and accepts Mr. Halevi's representations that "he does not currently have cash collateral available" to provide security for costs "and it would be problematic for him to secure a bank guarantee or insurance policy" and, most compelling, "he should not be forced to sell his house to be able to satisfy a hypothetical claim of the Respondent down the road." Similar to the course taken by the tribunal in* Hamester v. Ghana*, the Tribunal finds that, in such circumstances, an order for security for costs could deprive Mr. Halevi of access to justice.*

57. *In this context, the Tribunal will not address Mr. Halevi's allegation that "it was primar*[ily] *the Respondent's wrongful conduct that led to the Claimant's lack of available funds in the Czech Republic in the first place." In the Tribunal's view, this issue goes to the merits of the Parties' dispute.*

58. *To conclude, the Tribunal has determined to deny the Respondent's Application for an interim measure in the form of security for costs.*

59. *The Tribunal further has determined to direct Mr. Halevi to submit: (a) an irrevocable undertaking in the form attached to the* [redacted] *Opinion, covenanting to the Czech Republic to pay and settle any costs imposed by the Tribunal in the amount determined thereby and represent and warrant that, if he should fail to do so, his rights in the Property may be realized, including by appointing a receiver, as well as waiving his personal rights pursuant to Israeli law to tenant protection and alternative housing; and (b) an irrevocable undertaking to maintain his interest in the Property pending the final award in this arbitration and preserve the value of the Property over the course of this arbitration by investing in it and keeping it in good condition.*

60. Procedural Order No. 7 contains the following Order:

a. The Respondent's Application for Security for Costs is denied;

b. The Claimant is directed to submit, by Monday 4 December 2023: (a) an irrevocable undertaking in the form attached to the [redacted] *Opinion, covenanting to the Czech Republic to pay and settle any costs imposed by the Tribunal in the amount determined thereby and representing and warranting that, if he should fail to do so, his rights in the Property may be realized, including by appointing a receiver, as well as waiving his personal rights pursuant to Israeli law to tenant protection and alternative housing; and (b) an irrevocable undertaking to maintain his interest in the Property pending the final award in this arbitration and*

preserve the value of the Property over the course of this arbitration by investing in it and keeping it in good condition; and

c. The issue of costs is reserved until a later stage of these proceedings.

61. On 30 November 2023, Mr. Halevi filed the irrevocable undertakings required by Procedural Order No. 7.

G. Further Submissions and Challenge to the [redacted] Report

62. On 25 August 2023, Mr. Halevi filed his Reply to Statement of Defence, together with Exhibits C-062 to C-080, Legal Authorities CLA-095 to CLA-150, and the Witness Statement of [redacted] ***Witness Statement***). [redacted]

63. On 28 September 2023, following the Parties' consultations, the Tribunal confirmed that the Hearing would take place at the PCA hearing facilities in The Hague on 20-21 February 2024, with 22 February 2024 held in reserve.

64. On 20 November 2023, the Respondent filed its Rejoinder together with Exhibits R-013 to R-036, Legal Authorities RLA-053 to RLA-090, and the expert report of [redacted] with Exhibits [redacted]ER-001 to [redacted]ER-061 (the [redacted] ***Report***).

65. On 22 November 2023, the Claimant notified the Tribunal of its view that "the Respondent's submission/evidence may be considered inadmissible due to i.a. the violation of Procedural Order no. 1. The proposed relief as well as the details of the violation will be explained in a submission after thorough reading of the documents to be sent no later than in 5 working days."

66. Further to that notification, on 29 November 2023, the Claimant filed its Application for Exclusion of Respondent's Expert Report and for an Unscheduled Submission, together with Exhibits C-086 to C-091 and Legal Authorities CLA-153 to CLA-164 (the [redacted] ***Report Application***). Mr. Halevi requested the Tribunal to exclude the [redacted] Report on the grounds that [redacted] is not independent of the Czech Republic and the Report should have been filed with the Czech Republic's Statement of Defence or, in the alternative, to permit him to file a new expert report addressing the [redacted] Report.

67. At the Tribunal's invitation, Mr. Halevi filed a response to the [redacted] Report Application on 8 December 2023.

68. On 13 December 2023, in Procedural Order No. 8, the Tribunal denied the [redacted] Report Application, but granted Mr. Halevi permission to file a brief outline, not to exceed 10 pages, addressing [redacted]'s opinion on Czech law by 15 January 2024.

69. On 29 December 2023, after considering an exchange of emails between the Parties concerning the scope of Mr. Halevi's permitted outline of arguments in response to the [redacted] Report, the Tribunal ruled as follows:

> *Anticipating that the Claimant will cite legal materials in his outline, the Tribunal would be assisted by being provided with copies of the legal authorities cited (with relevant sections in English translation). For the avoidance of doubt, the Claimant may not submit new witness statements, expert reports, or factual exhibits.*

70. On 15 January 2024, Mr. Halevi filed his Outline of Arguments in Response to Respondent's Expert Report, together with Legal Authorities CLA-165 to CLA-176.

71. On 23 January 2024, the Tribunal approved the Czech Republic's request to submit by 2 February 2024 a brief reply to the Claimant's Outline of Arguments, not to exceed five pages, plus limited exhibits of Czech law legal authorities and supplementary translations of certain of the Claimant's exhibits.

72. On 2 February 2024, the Czech Republic filed its Response to the Claimant's Outline of Arguments.

H. The Hearing

73. On 22 January 2024, the Chair of the Tribunal conducted the pre-hearing conference with the Parties, on the Zoom platform.

74. On 23 January 2024, the Tribunal issued Procedural Order No. 9, addressing protocol issues for the upcoming Hearing.

75. The Hearing was held as scheduled on 20-21 February 2024. The reserve day proved not to be necessary.

76. The attendees at the Hearing were as follows:

- For the Tribunal: Ms. Lucy Reed, Mr. Klaus Reichert SC and Mr. Sam Wordsworth KC, plus Tribunal Secretary Ms. Lindsay Gastrell

- For the Claimant: Mr. Asael Halevi, the Claimant; JUDr. Petr Bříza, LL.M., Ph.D. and Mgr. Tomáš Hokr, LL.M., counsel; Mgr. Markéta Polendová, legal assistant

- For the Respondent: Ms. Martina Matejová, Dr. Jaroslav Kudrna, Ms. Lenka Kubická and Ms. Tereza Ševcíková, representatives of the Ministry of Finance of the Czech Republic; Dr. Alfred Siwy and Mr. Ondřej Cech, counsel; [redacted], expert

- For the PCA: Ms. Jinyoung Seok

77. On the first day of the Hearing, the Parties presented their opening statements.

78. On the second day of the Hearing, the Tribunal heard the testimony of the Claimant's fact witness [redacted] and the Respondent's expert witness [redacted]

79. Mr. Halevi, who had not provided a Witness Statement, did not testify at the Hearing.

80. At the close of the Hearing, the Tribunal and the Parties discussed post-hearing procedural matters including the timing and scope for post-hearing submissions. The Tribunal directed that the post-hearing submissions were not to include any new factual exhibits or legal authorities other than any new Czech court decisions.[8]

81. On 22 February 2024, the PCA made the audio recording of the Hearing available to the Tribunal and the Parties.

I. Post-Hearing Submissions

82. On 22 February 2024, the Tribunal issued Procedural Order No. 10, setting out the post-hearing directions. The Tribunal ordered the Parties to file, by 25 April 2024, simultaneous post-hearing submissions limited to 35-50 pages. The Tribunal specified that the purpose of the submissions was for each Party "to make a final and focused presentation of its case and to answer the questions posed by the Tribunal during the hearing, in particular the following:"[9]

> *a. Whether or not the right to restitution stops with the original restitutees and first assignees (Mr Maixner and Mr Fidrmuc)?*

[8] Transcript, Day 2, 169:15-19.
[9] Procedural Order No. 10, para 2.

> *b. What is the legal basis for the answer to question (a)?*
>
> *c. Need the Tribunal address the 1921 date in Exhibit C-009?*
>
> *d. Do the Parties agree that the relevant standard for good faith is as set out in the Constitutional Court Decision III.ÚS 50/04 of 3 June 2004 ([redacted]ER-25)?*

The Tribunal further directed that, "[i]f after receiving the post-hearing submissions, the Tribunal considers that it would be assisted by reply submissions, it will inform the Parties and set a deadline for simultaneous reply submissions."

83. In Procedural Order No. 10, the Tribunal also ordered the Parties to submit Statements of Costs by 16 May 2024, supported by annexed summaries of hours and expenses charged and paid.

84. On 22 March 2024, Mr. Halevi applied for leave to file new legal authorities limited "to content that directly addresses the issues raised by the Tribunal," not to exceed 25 new legal exhibits, and to file full English translations of certain Czech legal exhibits already in the record with only excerpts translated (the ***Post-Hearing Application***).[10]

85. On the same day, 22 March 2024, the Czech Republic objected to the Post-Hearing Application, on the ground that it did not comply with either Section 9.2 of Procedural Order No. 1, which requires special circumstances for such a late filing of exhibits, or the Tribunal's instructions at the Hearing that the post-hearing submissions were not to include new factual or legal exhibits other than any new Czech court decisions.

86. On 28 March 2024, in Procedural Order No. 11, the Tribunal granted Mr. Halevi's Post-Hearing Application in principle. The Tribunal found as follows:

> *9. As highlighted by the Respondent, the Tribunal previously directed that the post-hearing submissions were to be filed with no new factual or legal exhibits, unless there was new Czech case law. However, the Tribunal noted that it remained open to the Parties to apply for leave to file new exhibits. Such an application is governed by Section 9 of Procedural Order No 1, which provides:*
>
> > *9.1 Unless a Party has requested and obtained prior leave from the Tribunal, it may not file: (a) submissions other than those indicated in the Procedural Timetable; or (b) documentary evidence,*

[10] Email from Tomáš Hokr to the Tribunal dated 22 March 2024.

> *testimonial evidence or legal authorities that do not accompany a submission indicated in the Procedural Timetable.*
>
> *9.2 If a Party applies to the Tribunal for leave to file an unscheduled submission or additional evidence, it shall identify the special circumstances justifying its application. The Party making the application may not include the submission or evidence in its application. The other Party shall have an opportunity to make observations on the application.*

10. The question for the Tribunal is whether the Claimant, in his Application, has established special circumstances justifying the introduction of new legal authorities with his post-hearing submission.

11. The Tribunal appreciates the Respondent's argument that post-hearing submissions are generally to "be limited to final statements on the matters already discussed at the Hearing," so as to avoid a chain of further submissions. However, here the Tribunal has asked the Parties for assistance by posing specific questions to be answered in the post-hearing submissions.

12. The Tribunal agrees with the Claimant that the legal restitution issue posed in Tribunal Questions (a) and (b) has not been previously addressed in any detail in the record, and that there might also be a need for new legal exhibits to address Tribunal Questions (c) and (d) fully. In the Tribunal's view, these are sufficiently "special circumstances" to justify the introduction of new legal authorities. Anticipating that the Respondent may wish to respond to new legal authorities, the Tribunal reminds that PO10 foresees the possibility of reply post-hearing submissions.

13. In respect of the Respondent's complaint that the Claimant has not identified the individual legal exhibits he wishes to introduce, the Tribunal does not interpret Section 9 of Procedural Order No 1 to impose this requirement. To require the Claimant to do so could run counter to the purpose of simultaneous post-hearing submissions. Thus, the Claimant is not required to identify each new legal authority it seeks to file.

14. However, the Tribunal is concerned that the Claimant's proposal to submit up to 25 new legal exhibits is excessive. Therefore, before ruling on this aspect of the Application, the Tribunal has decided to direct the Claimant to indicate the number of new legal exhibits he wishes to file in connection with each Tribunal Question.

15. Turning to the Claimant's request to file a full English translation of CLA-170, the Tribunal considers that providing such a translation does not involve the introduction of new evidence or place any material burden on the Respondent. The Tribunal therefore grants this aspect of the Application.

87. The Tribunal ordered as follows in Procedural Order No. 11:

> *a. The Claimant's request for leave to file with his post-hearing submission new legal exhibits that directly address the Tribunal Questions is granted in principle, subject to a further order upon receipt of information from the Claimant, by 3 April 2024, as to the exact number of new legal exhibits he proposes to file in connection with each Tribunal Question.*
>
> *b. The Claimant's request to provide a full English translation of CLA-170 with his post-hearing submission is granted.*
>
> *c. Costs issues are reserved for a later stage of these proceedings.*

88. On 3 April 2024, Mr. Halevi informed the Tribunal that the following number of exhibits should be adequate to address the Tribunal's questions: (a) questions a. and b., nine exhibits; (b) question c., two exhibits; and (c) question d., 11 exhibits.

89. In Procedural Order No. 12, issued on 4 April 2024, the Tribunal noted that it found Mr. Halevi's proposal regarding the number of new exhibits to be reasonable and granted him leave to file the proposed new exhibits.

90. On 25 April 2024, Mr. Halevi submitted his Post-Hearing Submission, together with Legal Authorities CLA-177 to CLA-193.

91. Also on 25 April 2024, the Czech Republic submitted its Post-Hearing Submission.

92. On 3 May, 2024, the Czech Republic objected that Mr. Halevi had made new arguments and submitted new exhibits going beyond the scope of the leave granted by the Tribunal in Procedural Order No. 12. The Czech Republic requested the Tribunal either to strike Exhibits CLA-180 to CLA-185 from the record or to allow it to submit limited comments on the new exhibits.

93. On 6 May 2024, with permission of the Tribunal, Mr. Halevi filed his response to the Czech Republic's submission of 3 May 2024. Mr. Halevi denied that he had made arguments going beyond the Tribunal's questions in his Post-Hearing Submission, and pointed out that the Czech Republic had referenced 11 new legal sources in its Post-Hearing Brief, albeit without attaching copies of those sources. Rather than striking his new authorities, Mr. Halevi proposed that the Czech Republic be granted leave to file a brief response to those authorities without providing any further new legal authorities.

94. By email dated 8 May 2024, the Tribunal denied both Parties' requests to strike new legal authorities from the other's post-hearing submissions (whether submitted with or without a copy) and, after noting that it would be assisted by reply submissions on the post-hearing submissions, directed the Parties to submit replies to each other's post-hearing submissions, not to exceed 5 pages, by 20 May 2024.

95. By email dated 9 May 2024, the Tribunal confirmed that in their replies to each other's post-hearing submissions the Parties were permitted to respond to any new authorities in each other's post-hearing submissions, but, pursuant to prior procedural directions, not to include further new authorities.

96. On 20 May 2024, the Claimant submitted his Reply to the Respondent's Post-Hearing Submission and the Respondent submitted its Reply to the Claimant's Post-Hearing Submission (mis-titled as "Respondent's Post Hearing Brief").

97. On 27 May 2024, after an agreed extension, the Parties submitted their Costs Statements.

98. By email dated 5 June 2024, based on its observation that Mr. Halevi's claim for counsel fees seemed high given, first, his inability to demonstrate any liquid assets in connection with the Security for Costs Application and, second, the negative 2022 turnover of his third-party funder, the Czech Republic requested the Tribunal to order the Claimant either to disclose any success fee arrangements that were reflected in his Costs Statement or to confirm that the amount of counsel fees was invoiced and paid in full.

99. By email dated 10 June 2024, Mr. Halevi responded that his third-party funder's annual turnover is irrelevant and that tribunals may take success fees into account in allocating costs. He stated that the Tribunal "should look at the Claimant's hourly rates and the number of hours spent on the matter and in any case award at least what the Respondent has submitted as its legal costs."

100. On 11 June 2024, the Tribunal informed the Parties that it required no further submissions on the issue of the Claimant's Cost Statement at this time.

101. By email dated 3 October 2024, pursuant to Article 31 of the UNCITRAL Rules, the Tribunal directed the Parties to confirm by 10 October 2024 that they had no further

proof to offer or witnesses to be heard or submissions to make. By return emails dated 6 and 8 October 2024, respectively, the Claimant and the Respondent so confirmed.

102. On 8 October 2024, the Tribunal closed the proceedings.

VI. FACTUAL BACKGROUND

103. The Tribunal sets out below a summary of the facts that it considers to be most relevant to resolution of the issues on jurisdiction and liability in this arbitration, which facts are undisputed unless indicated otherwise. The Tribunal does not purport to set out in this Award all facts that it has considered, and the absence of references to specific facts, assertions or evidence is not to be taken as an indication that the Tribunal did not consider those matters. The Tribunal has carefully considered all evidence and arguments submitted by the Parties.

104. The Parties have submitted certain factual exhibits and legal authorities in the original Czech language with English translations. All citations in this Award are to the English translations.

105. As a further preliminary point, the Tribunal notes that all references to points made by Mr. Halevi are to submissions made by him (or his counsel on his behalf) as the Claimant. Mr. Halevi did not provide any written or oral factual testimony and, although he was present at the hearing, was not subject to cross-examination. The Tribunal notes further that, insofar as Mr. Halevi made submissions representing the views of Mr. Maixner, there was no written or oral factual testimony from Mr. Maixner.

A. Mr. Halevi's Claimed Investment

106. Mr. Halevi identifies his claimed investment to be his 22 percent share of the company Ďáblické rezidence s.r.o. ID No.: 28387481, with registered office at Janovského 925/32, Holešovice, 170 00 Praha 7 (the ***Company***), which he acquired on 7 April 2010.[11]

[11] Statement of Claim, para 9; **C-002**, Commercial Register Extract, 30 April 2008; **C-003**, Ownership Interest Transfer Agreement. There are two spellings in the record – Ďáblické and Ďáblice – which are used in this Award as used in documents in the record.

107. On 24 March 2010, Mr. Halevi, Mr. Josef Maixner, Mr. Alexandr Jaroševský, and [redacted] executed the Framework Cooperation Agreement on the Development Project Ďáblické (the ***Development Agreement***), in which they agreed to acquire a corporate vehicle to purchase land and develop a residential project in Ďáblické (the ***Project***).[12] Messrs. Maixner and Jaroševský were to provide the land, [redacted] the know-how and initial financing, and Mr. Halevi the business plan for the Project.[13]

108. On 7 April 2010, the parties to the Development Agreement executed the Ownership Interest Transfer Agreement to acquire shares in the Company (initially named Orange Fields s.r.o).[14] Mr. Halevi acquired his 22 percent of the shares for CZK 44,000, which was equal to approximately EUR 1,740 at the time.[15]

109. The shareholders thereafter appointed Messrs. Halevi, Maixner and [redacted] as executive directors of the Company.[16]

110. On 23 April 2010, the Company acquired, through land purchase agreements with Mr. Maixner for plots parc no. 1580/15 and 1590/2 and with Mr. Jaroševský for plots parc no. 1580/16 and 1590/3 (the ***2010 Land Purchase Agreements***), four plots of land with a total surface area of 65,713 square meters in the cadastral area of Ďáblice in the northern part of Prague, registered on the ownership sheet no. 750 kept by the Cadastral Office for the Capital City of Prague (the ***Land***).[17]

111. It is undisputed that Mr. Halevi's shareholding was an indirect investment in the Land for purposes of the BIT. As stated by counsel for Mr. Halevi at the Hearing: "[T]here are no jurisdictional objections" and "it is undisputed between the parties that there was an investment protected by the BIT."[18]

112. [redacted] testified in [redacted] Witness Statement that the Company engaged the Czech law firm [redacted] to provide legal advice and carry out due diligence on the land purchase transactions, which due diligence did not identify

[12] Statement of Defence, para 58; **C-004**, Land Purchase Agreement (Maixner x Orange Fields) (***Maixner Land Agreement***), Annex 1, Art. III.
[13] Statement of Defence, paras 58-59; **C-004**, Maixner Land Agreement, Annex 1, Arts. II and III.
[14] Statement of Defence, para 60; **C-003**, Ownership Interest Transfer Agreement.
[15] The Tribunal ran the currency conversion using OANDA.com.
[16] Statement of Defence, para 61; **C-002**, Commercial Register Extract.
[17] Statement of Claim, para 10; **C-004**, Maixner Land Agreement; **Exhibit C-005**, Land Purchase Agreement (Jaroševský x Orange Fields) (***Jaroševský Land Agreement***).
[18] Transcript, Day 1, 6:18-21.

any impediments, and that "[n]o formal written output of the due diligence was prepared and despatched by the Company's lawyers."[19] [redacted] testified in cross-examination at the Hearing that "Mr Halevi was the main person on the ground in Prague, and what he would have discussed or not with [redacted] I wouldn't be privy to all their discussions."[20] [redacted] further testified that [redacted] could not recall whether the Czech law firm was provided with any documentation related to the dispute with the Knights of the Cross.[21]

113. At the Hearing, [redacted] also testified that [redacted] recalled Mr. Maixner telling [redacted] that "he had a dispute with … the Knights of the Cross" and "it went to court and that it was resolved between him and the church, i.e., the Knights of the Cross, and that was the end of it."[22] [redacted] testified that Mr. Maixner communicated with [redacted] about the dispute with the Knights of the Cross (discussed below) only orally:[23]

> *I'm saying that the answer to your question about Mr Maixner is that he would have communicated with us orally. He didn't give me any documents on the dispute, if that answers the second question.*

114. Mr. Halevi submitted an exhibit entitled "Confirmation on the Provision of Legal Services by [redacted] (the Company) (26.7.2023)," in which the Czech law firm confirmed that they had provided legal services to the Company concerning Ďáblické rezidence, with Mr. Halevi serving as the main point of contact, but "does not maintain legal files concerning the legal services provided to Ďáblické rezidence as the mandatory period of archiving expired and therefore it does not have any details with respect to the provided legal services."[24]

115. In Article V of the 2010 Land Purchase Agreements, Mr. Maixner and Mr. Jaroševský as Sellers each declared as follows:[25]

> *1. The Seller declares that he is not aware of any legal defects of the subject of purchase, i.e. that there are no third party rights on the land, such as liens, easements, lease rights or loan rights or any debts, e.g. for non-payment of taxes, etc. Furthermore, the Seller declares that there*

[19] Reply, para 47; [redacted] Witness Statement, para 17.
[20] Transcript, Day 2, 17:3-7 [redacted]
[21] Transcript, Day 2, 14:23-16:23 [redacted]
[22] Transcript, Day 2, 13:3-10 [redacted]
[23] Transcript, Day 2, 11:4-13 [redacted]
[24] **C-063**, Confirmation on the Provision of Legal Services by [redacted] (the Company), 26 July 2023.
[25] Statement of Defence, para 67; **C-004**, Maixner Land Agreement, Art. V; **C-005**, Jaroševský Land Agreement, Art. V.

> *are no legal perquisites for the creation of such rights on his part, nor are there any court or other proceedings pending that could result in the creation of such rights.*
>
> *2. The Seller further declares that as of the date of signing of this Agreement, it is not aware of any pending restitution or other proceedings for the return of the properties or any part thereof, or of any other legal reason that would suggest that the Purchaser will not be the owner of the Sold Properties. It also declares that no statutory conditions for the filing of a petition for a bankruptcy order against the Seller have been fulfilled, nor have any steps been taken or initiated for a bankruptcy order against the Seller.*

116. Pursuant to the 2010 Land Purchase Agreements, the purchase prices for the property sold to the Company by Mr. Maixner and Mr. Jaroševský, respectively, were CZK [redacted] and CZK [redacted] [26] The total purchase price for the Land, at CZK [redacted] [27] was equal to approximately EUR [redacted] on 23 April 2010.[28] Three percent of the purchase price was payable to cover the applicable real estate transfer tax within two months of the entry of ownership rights into the Land Registry, and the remaining 97 percent of the purchase price was conditional on the planned Project moving forward.[29] The Company paid the three percent (some CZK [redacted] or EUR [redacted]) but did not pay the remaining 97 percent of the purchase price to Messrs. Maixner and Jaroševský, which, according to Mr. Halevi's submission, was because the Project was suspended in the course of Czech litigation (discussed below).[30]

117. As planned, the Project was to involve the construction of 344 apartments, 22 row houses and 800 square meters of commercial area.[31] The Company retained an architectural studio to prepare documentation for the zoning decision.[32] In the fall of 2012, the Company prepared an application for a building placement permit for the Project, which, according to Mr. Halevi, was not submitted at the time because of a

[26] Statement of Defence, para 71; **C-004**, Maixner Land Agreement, Art. II; **C-005**, Jaroševský Land Agreement, Art. II.
[27] *Ibid.*
[28] The Tribunal ran the currency conversion using OANDA.com.
[29] Statement of Defence, para 59; **C-004**, Maixner Land Agreement, Annex 1, Art. III.B.3.a.; **C-005**, Jaroševský Land Agreement, Annex 1, Art. III.B.3.a.
[30] Claimant's Reply to Statement of Defence (the ***Reply***), para 207.
[31] Statement of Claim, para 11; **C-014**, Executive Development Budget; Exhibit C-015, Area Calculations; **C-016**, Area Plan Map.
[32] Statement of Claim, para 11; **C-006**, Documentation for Zoning Decision.

missing administrative decision from the municipality and was not submitted later because the Project was suspended in the course of Czech litigation.[33]

118. According to [redacted] Witness Statement, the shareholders in the Company invested the total amount of approximately CZK [redacted] in the Project, CZK [redacted] of which [redacted] [34] Based on bank statements, Mr. Halevi made four payments to the Company totalling CZK [redacted] between September 2016 and March 2017,[35] equal to approximately EUR [redacted] at the time.[36]

B. Historical Ownership of the Land

119. The Parties agree on the historical ownership of the Land through several stages.

120. The Land was agricultural land originally belonged to the Knights of the Cross, described by the Czech Republic as "an independent ecclesiastical order forming part of the Catholic Church."[37] According to documents produced in Czech court litigation, the Knights of the Cross can trace their ownership of the Land to 1454.[38]

121. After 1948, the communist regime in (then) Czechoslovakia nationalized a large percentage of the private property in Czech territory. Through this process, the State became the owner of the Land by 1951.[39] By a deed of allotment dated 22 September 1958, the Land was allocated to the State farm in Ďáblice.[40]

122. In 1989, the Velvet Revolution overthrew the communist regime in Czechoslovakia. According to the Czech Republic, Czechoslovakia "completely transformed itself in efforts to restore the rule of law, establish Western form of capitalism, and rectify injustices in the communist regime," with the restitution of private property to the original owners being "a key part of the transformation."[41]

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[33] Statement of Claim, para 11 and fn 18; **C-007**, Application for Building Placement Permit.
[34] Reply, para 209; [redacted] Witness Statement, para 15.
[35] Reply, para 211; **C-080**, Bank Statements – Asael Halevi.
[36] The Tribunal ran the currency conversion as of 1 March 2017 using OANDA.com.
[37] Statement of Defence, para 8.
[38] Statement of Defence, para 19; **R-001**, Knights of the Cross Lawsuit of 29 December 2000, paras I-II.
[39] **C-023**, Judgment of the Appellate Court No. 12 Co 456/2004-170.
[40] Statement of Claim, para 13; **C-008**, Judgment of the Appellate Court No. 20 Co 287/2018-292, para 3.
[41] Statement of Defence, para 21.

123. With the division of Czechoslovakia, the Respondent Czech Republic became the owner of the Land on 1 January 1993 as a successor State of Czechoslovakia.

C. The Restitution Regime: The Act on Land and the Church Restitution Act

124. In the early 1990s, Czechoslovakia adopted several restitution statutes addressing different segments of the overall restitution process.

125. The first restitution statute relevant in this arbitration is Act No. 229/1991 Coll., on the Regulation of Ownership Relations to Land and Other Agricultural Property, dated 21 May 1991 (the ***Act on Land***).[42] In brief, based on Section 11 of the Act on Land, a Czech citizen who had been deprived of real estate property by the communist regime could claim either (a) release of the original land from the State or (b) if that land could not be released due to certain impediments (for example, if the land had been developed as a cemetery or public facility), title to a plot of State-owned "replacement land" of similar size and quality and preferably in the same municipality as the original land (a ***Replacement Land***).[43] The citizen entitled to restitution by Replacement Land could assign the title to Replacement Land to third persons, a practice which, according to the Czech Republic, "led to a formation of a market for speculative purchases of the titles."[44]

126. The restitution process took place in several phases. Reflecting that one of the last phases would address church land, Section 29 of the Act on Land contained a "blocking provision" postponing transfers of church land until specific laws could be passed. Section 29 provides:[45]

> *Property originally owned by churches, religious societies, orders and congregations may not be transferred to the ownership of other persons pending the enactment of laws concerning such property.*

127. According to the Czech Republic, the purpose of the blocking provision in Section 29 of the Act on Land was to avoid premature transfers of church property, given that church restitutions "were considered to be particularly complex because they did not

[42] **CLA-007**, Act No. 229/1991 Coll. (the ***Act on Land***).
[43] **CLA-007**, Act on Land, Section 11.
[44] Statement of Defence, para 23.
[45] **CLA-007**, Act on Land, Section 29.

concern only return of property but also establishing full economic independence of the churches from the State."[46]

128. The second restitution statute relevant to this arbitration is Act No. 428/2012 Coll., on Property Settlement with Churches and Religious Societies (the ***Church Restitution Act***), enacted on 8 November 2012, some 20 years after enactment of the Act on Land.[47] According to the Czech Republic, the Church Restitution Act was substantially identical to a draft legislative bill introduced in the Czech Parliament four years earlier in 2008.[48]

129. The Church Restitution Act granted churches the right as of 1 January 2013 to request restitution of church property from Czech state authorities. If the relevant property could not be returned, either because the land had been converted to use for military or other public purposes or because the property was no longer owned by the State, the churches were given the right to receive monetary compensation.

130. In the case of situations where the State had released church land in violation of the blocking provision in Section 29 of the Act on Land, Section 18(a) of the Church Restitution Act also granted churches the right to lodge actions in the civil courts to determine rightful ownership of the relevant land as between the owners registered in the Land Registry and the Czech Republic itself (as the communist era owner). Section 18(c) of the Church Restitution Act exempted churches from paying court or other administrative fees in such actions. The Czech Republic explains that the reason the churches had to be given the statutory right to bring such cases is that Czech law otherwise gives standing only to recognized owners.[49]

131. Section 18(a) of the Church Restitution Act provides:

> *An obligee may bring an action before the court for the determination of the State's ownership right on the grounds that a thing from the original property of registered churches and religious societies was transferred or passed from the State's property to the property of other persons before the date of entry into force of this Act in violation of the provision of Section 3 of Act No. 92/1991 Coll., on the conditions for the transfer of state property to other subjects or in violation of the provision of Section 29 of Act No. 229/1991 Coll., on the regulation of ownership*

[46] Statement of Defence, para 25.
[47] Statement of Claim, para 33; **CLA-009**, Act No. 4282012 Coll., on Property Settlement with Churches and Religious Societies (the ***Church Restitution Act***).
[48] Rejoinder, para 253; Respondent's Post-Hearing Submission, para 71 (***Respondent's PHB***).
[49] Statement of Defence, para 89.

> *relations to land and other agricultural property, as in force until the date of entry into force of this Act; the time limit for the application of the request to hand over the property shall begin to run on the date of entry into force of the decision determining the ownership right of the State.*

132. The authority responsible to administer the restitution process was the Land Fund of the Czech Republic (the ***Land Fund***). According to the Czech Republic, the Land Fund faced "an enormous task" of assessing the restitution status of over 18,000 square kilometers of land plots – more than 15 percent of the total territory of the Czech Republic in respect of arable land – on the basis of 50-year old records.[50] In the circumstances, the Czech Republic considers that "it is understandable that the restitution process was not free of errors and disputes that sometimes had to be resolved in litigation."[51]

D. History of Mr. Halevi's Ownership Claim to the Land

133. Mr. Jaroslav Kudrnovský and Mr. Jiri Stejskal, whose original land proved impossible for the Land Fund to return, were granted the rights to Replacement Land by the Land Fund on 7 July 1997.[52] Messrs. Kudronovský and Stejskal assigned their claims to Mr. Maixner and Mr. Ladislav Fidrmuc on 24 October 1997.[53]

134. On 26 and 27 March 1998, by way of land transfer agreements ID no. 003R-98/01 and ID No. 004R-98/01, respectively, the Land Fund released the Land as Replacement Land to Mr. Maixner and Mr. Fidrmuc (two plots to each, with Mr. Maixner's plots comprising approximately two-thirds of the total,[54] the ***Original Land Transfers***).[55] The Original Land Transfer between the Land Fund and Mr. Maixner (virtually identical to Mr. Fidrmuc's) recites, in relevant part:[56]

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[50] Statement of Defence, paras. 11 and 24; Rejoinder, para 22.
[51] Statement of Defence, para 24.
[52] Statement of Defence, para 35; the date appears in **C-009**, Land Transfer Agreement (Maixner) and **C-010**, Land Transfer Agreement (Fidrmuc).
[53] Statement of Defence, para 35; the date appears in **C-009**, Land Transfer Agreement (Maixner); **C-010**, Land Transfer Agreement (Fidrmuc).
[54] Transcript, Day 1, 13:20-21; **C-009**, Land Transfer Agreement (Maixner); **C-010**, Land Transfer Agreement (Fidrmuc).
[55] Statement of Claim, para 16; Statement of Defence, para 36; **C-009**, Land Transfer Agreement (Maixner); **C-010**, Land Transfer Agreement (Fidrmuc).
[56] **C-009**, Land Transfer Agreement (Maixner).

Article I

The Land Fund of the Czech Republic, as the transferor, transfers the land owned by the Czech Republic, administered by the Land Fund of the Czech Republic, registered with the Cadastral Office in Prague for the cadastral area of Ďáblice.

[plot designations]

The Czech Republic acquired ownership on the basis of the decision of the Land Office in Prague dated 20.12.1921 No. 3590, which noted that the property is seized by the State.

These plots were valued by calculation according to their classification in the BPEJ. The valuation was carried out by Zdenek Lebduska in accordance with the Act on Land.

Article II

The right to the gratuitous transfer of the land from the state ownership arose on the basis of a final decision of the District Office in Prague – District Land Office no. PU 511/91 of 7.7.1997, by which the following land or parts thereof in the cadastral territory of Ďáblice, Prague 8, cannot be handed over to the entitled persons Jaroslav Kudrnovský birth no. [redacted] living in [redacted] and Jiri Stejskal birth no. [redacted], living in [redacted].

These plots were valued by an expert opinion No. 352-74/97 prepared by the forensic expert Ing. Jiri Beranek dated 25.8.1997.

The claim for the transfer of the land or a part thereof in the amount of CZK [redacted] [CZK [redacted] for Mr. Fidrmuc] *was assigned to the purchaser by a contract of assignment of the claim concluded on 24.10.1997 between Mr. Jaroslav Kudrnovský birth no. [redacted], Mr. Jiri Stejskal birth no. [redacted] on the one hand and Ing. Josef Maixner birth no. [redacted].*

Article III

The transferor hereby transfers the land listed in Art. I of this Agreement into the ownership of the transferee in settlement of its claims, referred to in Article II. The transferee expressly declares that the transfer of the land referred to in Article I fully settles his claim to replacement land for his original land not reassigned to him in the cadastral area of Ďáblice – Prague 8. In accordance with the decision no. PU 511/91 of 7.7.1997.

The transferee declares that its claim to be settled by this Agreement has not yet been settled and that it has not assigned or will not assign it to any other transferee. Actions taken by the transferee in contravention of this declaration shall render the transaction (this Agreement) void ab initio. The transferee further declares that it is aware of the condition

> *of the land to be transferred and that it accepts the land into its ownership by virtue of this Agreement.*
>
> *Article IV*
>
> *Both parties declare that they are not aware of any facts that would prevent the conclusion of this Agreement.*
>
> [...]

135. In later litigation related to the 2010 Land Purchase Agreements, a Czech appellate court found as follows:[57]

> *The contracts concluded in 1998 were prepared for signature by the State, which also selected the replacement land. The transferees at that time did not ask for the specific land and could not have had the slightest idea who the original owner of the land was. The only person who could have had that information was the Land Fund of the Czech Republic, which, on the contrary, confirmed in the contracts that the Czech Republic had acquired ownership of the land in 1921.*

136. The import of the reference to the date of "20.12.1921" in the Original Land Transfers – which date self-evidently is before the communist land reform program commenced in 1948 – is the subject of one of the questions posed by the Tribunal to the Parties for discussion in the post-hearing submissions. The year 1921 was repeated in the appellate judgment quoted immediately above. As relevant here to the Factual Background, the Czech Republic suggests that the reference to 20.12.1921 is a typographical error, with the proper year being 1951.[58] Mr. Halevi disagrees, noting that the first Czechoslovakian land reform effort to redistribute large plots of land owned by the nobility and churches after the end of the feudal regime had begun with the Dispossession Act in 1919, leading to seizure of more than 40,000 square kilometres of land by 1939.[59] The Czech Republic adds that, in the first lawsuit brought by the Knights of the Cross (discussed below), the Knights of the Cross reported that the historical records include a note from 1921 suggesting that the Land was subject to this seizure, but that note was formally erased in 1927.[60]

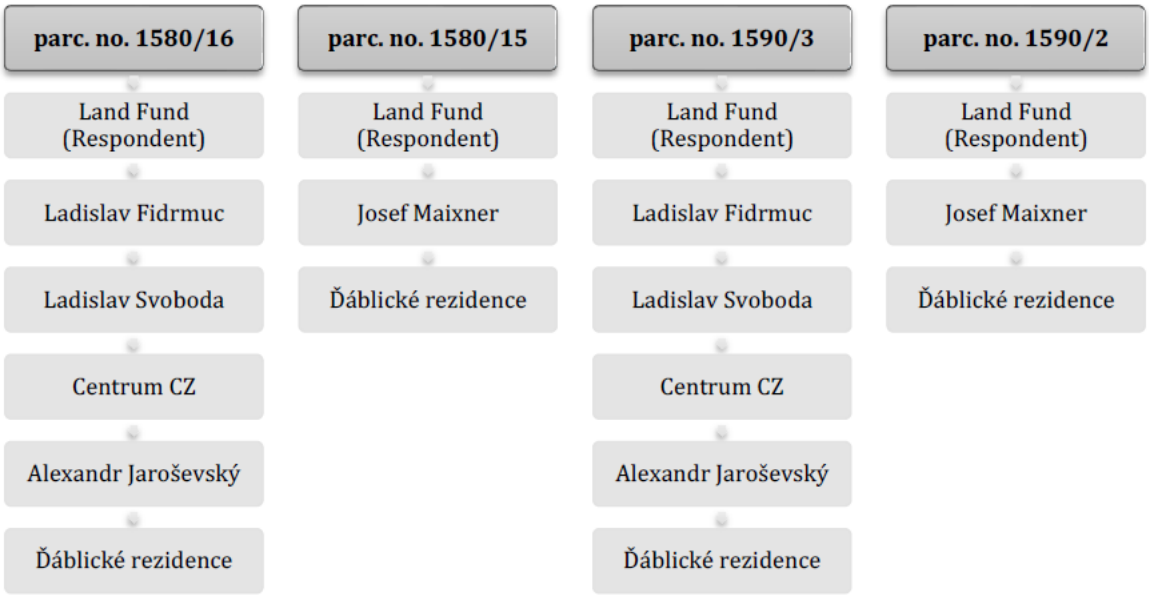
[57] Reply, para 79; **R-016**, Judgment of the Appellate Court No. 35 Co 35/2014-234.
[58] Respondent's PHB, paras. 152 and 157; Transcript, Day 1, 145:15-18; Transcript, Day 2, 144:2-6.
[59] Claimant's Post-Hearing Submission, paras. 57-58; **CLA-186**, Dispossession Act (***Claimant's PHB***).
[60] Respondent's PHB, para 153; **R-001**, Knights of the Cross Lawsuit of 29 December 2000, p. 3.

137. In this connection, the Tribunal notes that, according to the judgments of the Czech courts (discussed below), the historical records do not reference any documentation as to the specific date the Land was seized.

138. In 1999, Mr. Fidrmuc transferred his ownership rights in two plots of the Land to Mr. Ladislav Svoboda, who then in 2001 transferred his rights to CENTRUM CZ, spol. s.r.o. (***CENTRUM CZ***).[61] On 1 July 2008, CENTRUM CZ transferred its rights in the two plots of the Land to Mr. Jaroševský.[62]

139. As noted, it was on 23 April 2010 that the Company purchased the Land from Messrs. Maixner and Jaroševský and executed the 2010 Land Purchase Agreements.

140. The various transfers are illustrated in the table provided in paragraph 18 of the Statement of Claim.[63]



All of the transfers of ownership of the Land, reported by Mr. Halevi to be 14 transfers (corrected at the Hearing to 12 recorded transfers, not including the original claims of

[61] Statement of Claim, para 17; Statement of Defence, para 37; **C-017**, Land Registry Extract, 30 October 2001; **C-018**, Land Registry Extract, 2 July 2008.
[62] Statement of Claim, para 17; **C-020**, Land Registry Extract, LV No. 939, 4 August 2010.
[63] Statement of Claim, para 19; **C-017**, Land Registry Extract, 30 October 2001; **C-018**, Land Registry Extract, 2 July 2008; **C-019**, Land Registry Extract, LV No. 940, 4 August 2010; **C-020**, Land Registry Extract, LV No. 939, 4 August 2010; **C-021**, Land Registry Extract, 5 April 2019; **C-012**, Land Registry Extract, 24 January 2020; **C-013**, Land Registry Extract, 28 May 2021.

Messrs. Kudrnovský and Stejskal), were recorded in the Land Registry maintained by the Czech Republic Cadastral Office.[64]

141. The chain of transfers of the Land led to four lawsuits in the Czech courts and three agreements between the Company, the Knights of the Cross and the Land Fund, described below.

E. Lawsuit One: The Knights of the Cross Versus Mr. Maixner and CENTRUM CZ

142. On 29 December 2000, the Knights of the Cross lodged a lawsuit against Mr. Maixner and Mr. Svoboda with the District Court of Prague 8, a first instance court, seeking a declaratory judgment identifying the Knights of the Cross as the owners of the Land (***Lawsuit One***).[65] By the time the first hearing in Lawsuit One took place in June 2003, Mr. Svoboda had transferred his rights to CENTRUM CZ, which then replaced him as a defendant.

143. In Lawsuit One, Mr. Maixner acknowledged that the Land had been originally owned by the Knights of the Cross, but argued for dismissal of the case on the ground that the Knights of the Cross had lost ownership of the Land with Czechoslovakia's nationalization of the Land in 1949.[66] In a hearing held on 22 October 2003, which Mr. Maixner personally attended, the Knights of the Cross contended that the blocking provision in Section 29 of the Act on Land rendered the 1998 Original Land Transfers void. As set out in the Minutes of the hearing:[67]

> t*he Plaintiff refers to the "blocking provision" enshrined in Section 29 of the Land Act, according to which it is not permissible to transfer any real estate previously owned by churches and church organisations. The Act entered into effect in 1991 and, consequently, if the Land Fund transferred the land in 1998 to the Defendants and their legal predecessors, these transfers are void.*

144. The Czech Republic describes a 6 January 2004 submission by Mr. Maixner in the Lawsuit One proceedings as "recogniz[ing] the likely voidness of the Original Land Transfers but argu[ing] that the Knights of the Cross lack legal interest in having the

[64] Transcript, Day 1, 106:2-6; Reply, para 84.i.
[65] **R-001**, Knights of the Cross Lawsuit of 29 December 2000.
[66] Statement of Defence, para 40; **R-003**, Mr. Maixner's Response to the Lawsuit of 13 October 2003, p. 2.
[67] Statement of Defence, para 41; **R-004**, Minutes from the court hearing of 22 October 2003, p. 1.

voidness declared by a court since they were not a party to the void Original Land Transfers."[68] In specific, Mr. Maixner stated in writing:[69]

> *4) As regards the Plaintiff's claim that the transfer of the ownership title from the State to the Defendant was prevented by the blocking provision of Section 29 of the Land Act, the Defendants refer to a ruling of the Supreme Court of the Czech Republic File No. 20 Cdo 1280/2002, which ruled on the issue in a similar case in that while non-compliance with this provision establishes "likelihood" of invalidity of the contract, no person other than the parties to the contract has an urgent legal interest in declaring a purchase contract invalid and the failure to prove an urgent legal interest is a separate and primary ground for which an action for declaration cannot stand and must be dismissed.*

145. Mr. Halevi disputes that Mr. Maixner recognized the voidness of the Original Land Transfers in this statement. According to Mr. Halevi, in submission:[70]

> *In that statement, Mr. Maixner only referred to a ruling of the Czech Supreme Court to argue that the church does not have procedural standing to bring the claim to the court. Again, he did not admit in any way that the Original Land Transfers are void or that the transfer of the Land was invalid.*

146. In the course of the proceedings, the court requested the Land Fund to intervene and to provide documents concerning the Land. By letter dated 26 November 2003, the Land Fund declined to intervene on the ground that it was no longer owned by the State and no longer administered the Land.[71] The Land Fund did confirm the details of the Original Land Transfers to Messrs. Maixner and Fidrmuc, adding that:[72]

> *The documentary evidence on which the territorial office of the Land Fund of the Czech Republic in Prague relied when concluding the* [Original Land Transfers] *did not show that the land in question was land … which belonged to the real estate complex of the Ďáblice estate, the original owner of which were the Knights of the Cross.*

As an "additional fact that may have a material bearing on this litigation," the Land Fund noted that the Knights of the Cross had filed several lawsuits in the District Court for Prague 8 for determinations of ownership concerning lands originally "in cadastral

[68] Statement of Defence, para 42.
[69] Statement of Defence, para 42; **R-005**, Mr. Maixner's Final Proposal of 6 January 2004.
[70] Reply, para 53 (emphasis omitted).
[71] Reply, para 80; Claimant's PHB, paras. 88 and 105; **C-067**, Letter of the Land Fund dated 26 November 2003, Section III.
[72] **C-067**, Letter of the Land Fund dated 26 November 2003, Section I.

area Ďáblice (i.e., lands that passed into the ownership of the Czechoslovak state in the same way as the land which is the subject of this action)," including one in which the court had dismissed the Knights of the Cross' request for a declaration of ownership.[73]

147. The District Court for Prague 8 rendered its judgment on 13 January 2004. Based on its review of the current and historical evidence, the court declared the Knights of the Cross to be the owner of the Land, on the ground that no evidence had been found of valid title passing ownership of the Land to Czechoslovakia.[74] Among its factual findings, the court noted that there was no specific documentation in the record of the privatization of the Land, and found that such a transfer could not be presumed:[75]

> *Such land was affected by the review of the first land-ownership reform under Act No. 142/1947 Coll.; the last entry in the Land-Registry Book in section B indicates the intended takeover. However, no final administrative decision was issued and thus the prerequisite for the establishment of the State's ownership title to the relevant land is not fulfilled; the land thus did not pass to the State by the review of the first-land ownership reform under Act No. 142/1947 Coll. According to the case-law of the Constitutional Court of the Czech Republic (III.US 114/93, IV.US 295/95, III.US 232/96, III.US 329.97), defects of past acts may justify the conclusion that the passage of the ownership title from the original owner to another entity was not perfectly finalised, even if this was a passage by operation of law, albeit subject to the fulfilment of all the conditions required by law.*

148. The District Court for Prague 8 set out the reasoning for its decision, in relevant part as follows:[76]

> [I]*t is beyond any doubt that the Defendants* [Mr. Maixner and CENTRUM CZ] *are not the owners of the relevant real estate, precisely with regard to the aforementioned Section 29 of Act No. 229/1991 Coll. (the Act on Land). That provision renders absolutely null and void all contracts by virtue of which the Defendants and their legal predecessors were to acquire the relevant real estate, precisely because the original owner of the land in question was the Plaintiff* [the Knights of the Cross] *as a church entity. These contracts (a land transfer agreement between the Land Fund of the Czech Republic and Ing. Josef Maixner of 26 March 1998; a land transfer agreement between the Land Fund of*

[73] Reply, para 80; **C-067**, Letter of the Land Fund dated 26 November 2003, Section II..
[74] Statement of Defence, para 43; **R-006**, Judgment of the Court of First Instance No. 25 C 239/2000-120, p. 8.
[75] **R-006**, Judgment of the Court of First Instance No. 25 C 239/2000-120, p. 2.
[76] Statement of Defence, para 44; **R-006**, Judgment of the Court of First Instance No. 25 C 239/2000-120, pp. 9-11.

> *the Czech Republic and Ladislav Fidrmuc of 27 March 1998; a purchase contract on transfer of ownership title to real estate between Ladislav Fidrmuc and Ladislav Svoboda of 27 May 1999; a contract between Ladislav Svoboda and CENTRUM CV spol. s r. o. of 16 October 2001) have been null and void ex tunc pursuant to Section 39 of the Civil Code on the grounds of being contrary to law and the Defendants could not have acquired the ownership title.*

149. In May 2004, Mr. Maixner filed an appeal against the first instance court's judgment with the Municipal Court in Prague. According to the Czech Republic, while Mr. Maixner contested the assessment of the historical evidence by the District Court for Prague 8, he also explicitly recognized the voidness of the Original Land Transfers in stating as follows:[77]

> *The finding that Defendant 2* [Mr. Maixner] *is not the owner of the relevant real estate on the grounds of violation of Section 29 of Act No. 229/1991 Coll. and Section 39 of the Civil Code does not concern the merits of the dispute, i.e. declaration of whether the Plaintiff* [the Knights of the Cross] *is the owner.*
>
> *The invalidity of the contract between Defendant 2 and the previous acquirers of the relevant land who received it from the Land Fund cannot result in declaration of the Plaintiff's ownership title to the land, but rather only in the fact that the land continues to be owned by the original owner, who released them at variance with Act No. 229/1991 Coll.*

150. On 4 March 2005, having reconsidered the evidence, the appellate court declared that the ownership of the Land had passed from the Knights of the Cross to Czechoslovakia in 1951 and hence dismissed Lawsuit One.[78]

151. The Knights of the Cross submitted an extraordinary appeal, which they withdrew on 12 October 2005. According to Mr. Halevi, the legal impact of the withdrawal was that the Municipal Court's decision on appeal was final.[79] According to the Czech Republic, the Municipal Court, in dismissing Lawsuit One on appeal, did not recognize Mr. Maixner and CENTRUM CZ as the owners of the Land and "the verdict only means that the Knights of the Cross were not recognized as owners of the Land at the time of the appellate judgment."[80]

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[77] Statement of Defence, para 45; **R-007**, Mr. Maixner's Appeal of 11 May 2004, para 1.
[78] Statement of Claim, para 20; Statement of Defence, para 46; **C-023**, Judgment of the Appellate Court No. 12 Co 456/2004-170.
[79] Statement of Claim, para 20.
[80] Statement of Defence, para 47.

F. The Settlement Agreement, Future Purchase Agreement and Future Exchange Agreement

152. The withdrawal of the extraordinary appeal in Lawsuit One by the Knights of the Cross was an element of the Settlement Agreement executed by Mr. Maixner, CENTRUM CZ and the Knights of the Cross in October 2005 (the ***Settlement Agreement***).[81]

153. In the Settlement Agreement, the Knights of the Cross acknowledged the ownership rights of Mr. Maixner and CENTRUM CZ to the Land and agreed to withdraw the extraordinary appeal in Lawsuit One, in exchange for financial compensation.[82] The Settlement Agreement recites as follows:

> *1/ The Parties mutually agree that their disputed rights and obligations related to the ownership of* [the Land] *according to the Land Registry, all in the cadastral territory of Ďáblice, registered with the Cadastral Office for the capital city of Prague shall be settled in the manner set out below.*
>
> *2/ In view of the current case-law of the courts, in particular the Supreme Court Czech Republic and the Constitutional Court of the Czech Republic, and the costs of legal representation, the Order of the Knights of the Cross with the Red Star acknowledges the right of ownership of:*
>
> - *Mr. Josef Maixner, birth no.* [redacted] *to the land no. 1580/15 and no. 1590/2 in the cadastral territory of Ďáblice,*
> - *CENTRUM CV spol s.r.o. ID 60200901, to the land no. 1580/16 and no. 1590/3 in the cadastral territory of Ďáblice.*
>
> *3/ Josef Maixner and CENTRUM CV spol s.r.o. undertake to pay the Knights of the Cross with the Red Star the amount of CZK 675,000 to the account no.* [redacted] *maintained by* [redacted]*, within (five) days after the signing of the contract.*
>
> *4/ The Order Knights of the Cross with the Red Star undertakes to withdraw the extraordinary appeal filed with the Supreme Court of the Czech Republic, through the District Court for Prague 8, against the judgment of the Municipal Court in Prague, Case No. 12 CO 456/2004, dated 4 March 2005, within five working days of the date on which the payment under the preceding paragraph is received.*

[81] **C-024**, Settlement Agreement.
[82] Statement of Claim, para 21; **C-024**, Settlement Agreement.

154. In an agreement dated September 2008 (amended on 1 October 2008 and 11 October 2010), the Knights of the Cross undertook to sell to Mr. Maixner certain plots of land adjacent to the Land to be used in the development of the Project (the ***Future Project Agreement***).[83]

155. On 15 January 2009, the Land Fund entered into an agreement with Mr. Maixner for a future exchange of one of the original plots of the Land (plot no. 1590/5) for a plot owned by the Land Fund (plot no. 1596/5) to allow construction of a road serving the Project (the ***Future Exchange Agreement***).[84] The Future Exchange Agreement recited that Mr. Maixner was the owner of plot no. 1590/5.[85] As for the timing, the Future Exchange Agreement contained a declaration that plot no. 1596/5 "has the character of the property referred to in Section 29 of [the Act on Land], i.e., it is property whose original owner was churches, religious orders and congregations and cannot be transferred until the adoption of legislation on this property."[86]

156. To recall, the Company acquired the Land from Messrs. Jaroševský and Maixner on 23 April 2010.

G. Lawsuit Two: The Knights of the Cross Versus the Company

157. On 30 March 2012, the Knights of the Cross lodged a lawsuit against the Company with the District Court for Prague 8, seeking a declaration that the Czech Republic owned the Land on the basis that the 2010 Land Purchase Agreements were void as violative of Section 29 of the Act on Land (***Lawsuit Two***).[87]

158. The Knights of the Cross referred to the findings in Lawsuit One concerning their historical ownership of the Land and the passing of that ownership to the Czech Republic in 1951, and also relied on Section 39 of the Czech Civil Code.[88] Section 39 of the Civil Code provides as follows:[89]

> *A legal act which, by its content or purpose, contravenes or circumvents the law or is contrary to good morals is void.*

[83] Statement of Claim, para 23; **C-025**, Future Purchase Agreement.
[84] Reply, paras. 82-83; **C-062**, Future Exchange Agreement.
[85] Reply, para 82; **C-062**, Future Exchange Agreement, Article IV.
[86] Reply, para 83; **C-062**, Future Exchange Agreement, Article II.
[87] Statement of Defence, para 79; **R-008**, Knights of the Cross Lawsuit of 30 March 2012.
[88] Statement of Defence, para 79; **R-008**, Knights of the Cross Lawsuit of 30 March 2012, pp. 5-6.
[89] **RLA-002**, Act No. 40/1964, the Civil Code (as amended), Section 39.

159. For its part, the Company argued that the Knights of the Cross had recognized the Company's ownership of the land in the Settlement Agreement and, even if the Original Land Transfers of 1998 were void, the Company's legal predecessors Messrs. Maixner and Fidrmuc had held the land in good faith for 10 years and hence would have acquired ownership of the Land by usucaption in 2008.[90]

160. On 15 May 2015, the District Court for Prague 8, in first instance, declared that the Czech Republic was the owner of the Land. The court held that the Knights of the Cross historically owned the Land until nationalization by Czechoslovakia and that the Original Land Transfers to Messrs. Maixner and Fidrmuc violated Section 29 of the Act on Land and hence were void *ex tunc*.[91] Thus, the Company did not become the owner of the Land by virtue of the 2010 Land Transfer Agreements.[92] Among other points, the court found that the Settlement Agreement had no impact on ownership of the Land, because it was an agreement between parties that did not own the Land and that Messrs. Maixner and Fidrmuc could have believed in good faith that they owned the Land only until they learned of the Knights of the Cross' claim in Lawsuit One. In the court's words:[93]

> *55. There was no doubt in the present case that Ing. Maixner and Mr. Fidrmuc trusted that the governmental authorities had followed the correct procedure when transferring the land from the State and they could legitimately expect to become owners of the land. However, the case can hardly be resolved by a mere statement that protection must be provided to the Defendant's* [the Company's] *legitimate expectations as to the correctness of the course of action taken by governmental authorities, as well as to good faith regarding legal certainty, and that the State is liable for any damage incurred by those to whose detriment the State erred. This would completely disregard the fact that the transfer of the land violated the law, that the Plaintiff* [the Knights of the Cross] *had legitimate expectations as well, that the Plaintiff's good faith also enjoys protection, that the principles of restitution need to be respected, that the Plaintiff did not cause the damage, and that the Plaintiff should not be asked to bear the consequences of the governmental authorities' malpractice and give up its historical property. The court believes that these factors should at least be taken into*

[90] Statement of Defence, para 80; **R-009**, Judgment of the Court of First Instance No. 27 C 67/2012-203, paras 4-12.
[91] **R-009**, Judgment of the Court of First Instance No. 27 C 67/2012-203, para 58.
[92] **R-009**, Judgment of the Court of First Instance No. 27 C 67/2012-203, para 61.
[93] **R-009**, Judgment of the Court of First Instance No. 27 C 67/2012-203, paras 55, 58-59.

account and the dispute resolved after their importance has been considered.

...

58. Pursuant to Section 29 of Act No. 229/1991 Coll., effective at the time of the land transfer agreements, property originally owned by religious orders could not be transferred to other persons until the adoption of legislation on such property. The latter legislation is Act No. 428/2012 Coll., on the property settlement with churches and religious societies, which was adopted with effect as of 1 January 2013. If the Land Fund entered into the land transfer agreements with Ing. Maixner and Mr. Fidrmuc on 26 and 27 March 1998, respectively, this occurred at a time when the transfer of relevant land from the State was still prohibited by law. Both land transfer agreements are therefore invalid pursuant to Section 39 of the Civil Code on the grounds of their variance with the law. They are null and void, i.e. invalid ex tunc, regardless of whether or not the invalidity of the land transfer agreements has been invoked.

59. If the agreements on the transfer of the relevant land from the State are invalid, no ownership title to plots of land Nos 1580/15 and 1590/2 passed from the State to Ing. Maixner thereunder. He thus did not become the owner of those plots of land. He therefore could not have validly sold them to the Defendant, as he could not have transferred more rights to the Defendant than he himself had.

161. With regard to usucaption, the Court found that none of the claiming owners had been in good faith possession of the Land for the 10-year period required by the Czech Civil Code:[94]

62. Ing. Maixner is the Defendant's legal predecessor with respect to plots of land Nos 1580/15 and 1590/2. Ing. Maixner can be considered to have been a legitimate possessor of the said land since 30 March 1998 – the date of the legal effects of registration of the ownership title, as indicated in the clause attached by the Land Registry Office to "Land Transfer Agreement No. 003R-98/01" of 26 March 1998. Since that date, Ing. Maixner could have acted in good faith that he was the owner of the land in question. He had a legal title for its acquisition, which he could reasonably believe to be valid. Since it has not been found out in the proceedings that Ing. Maixner knew or could have known that the land had originally been owned by the church, he cannot be blamed for not having discovered this fact. It was the Land Fund's duty to carefully examine whether or not it was entitled to transfer the land. The Land Fund should have determined that the land

[94] **R-009**, Judgment of the Court of First Instance No. 27 C 67/2012-203, paras 62-64.

> *had originally been owned by the church and should not have transferred the land from the State. Failure to do so was an error on its part.*
>
> *63. Nonetheless, the prescription period* [for usucaption] *stopped running with respect to Ing. Maixner. The prescription period stopped running on 29 December 2000, when proceedings* [Lawsuit One] *were initiated .... On 29 December 2000, the Knights of the Cross filed an action against Ing. Maixner and Mr. Svoboda for a declaration of the ownership title to the relevant land and properly continued with the proceedings until their end. ....*
>
> *64. The prescription period did not resume with respect to Ing. Maixner, because the latter learnt of facts in the course of those proceedings which objectively must have caused him to doubt as to whether he owned the relevant land, and these doubts only grew with time. He must have had severe doubts when, as a party to the aforementioned proceedings, he acquainted himself (either in person or through his counsel) with the documents proving the Plaintiff's historical ownership of the land and its transfer to the State in the relevant period. The existence of good faith is out of the question once the District Court for Prague 8 pronounced its judgment Ref. No. 25C 239/2000-120 on 13 January 2004, declaring the Plaintiff's historical ownership of the land (p. 6) and expressly stating, for example, that "it is beyond any doubt that the Defendants are not the owners of the relevant real estate, precisely with regard to the aforementioned Section 29 of Act No. 229/1991 Coll.", and that "that provision renders absolutely null and void all contracts by virtue of which the Defendants and their legal predecessors were to acquire the relevant real estate, precisely because the original owner of the land in question was the Plaintiff as a church entity" (p. 8).*

162. On 8 April 2014, on appeal by the Company, the Municipal Court in Prague amended the judgment of the first instance court to dismiss that court's declaration on the merits that the Czech Republic was the owner of the Land.[95] In brief, this decision was based on a lack of passive standing, in the absence of the Czech Republic as a party:[96]

> *If the Czech Republic, whose right of ownership is to be established, does not act as the claimant and the claimant has not at the same time named it as the defendant, there is a lack of passive standing, which always leads to the dismissal of the action without the court dealing with the merits of the action.*

[95] Statement of Defence, para 82; Statement of Claim, para 27; **C-026**, Judgment of the Appellate Court No. 35 Co 35/2014-234.
[96] **C-026**, Judgment of the Appellate Court No. 35 Co 35/2014-234, p. 6.

163. The Knights of the Cross lodged an extraordinary appeal, which was dismissed by the Supreme Court on 7 October 2015.[97]

164. According to Mr. Halevi, Lawsuit Two "constituted another favourable final judicial decision confirming the Company's rightful ownership of the Land."[98] The Czech Republic disagrees, noting that "the only substantive review of the case may be found in the first instance judgment, which once again led to a conclusion that the Company cannot be the owner of the Land due to the clear voidness of the Original Land Transfers."[99]

H. Lawsuit Three: The Czech Republic Versus the Company

165. On 10 April 2012, the Czech Republic – with the Knights of the Cross as an intervenor – initiated proceedings against the Company before the District Court for Prague 8, in first instance, seeking a declaratory judgment that it – the Czech Republic – owned the Land and that the Original Land Transfers to Messrs. Maixner and Fidrmuc were made in violation of Section 29 of the Act on Land and hence were null and void (***Lawsuit Three***).[100] The proceedings, while drawn out, were ultimately discontinued when effectively mooted by Lawsuit Four (discussed below).

166. On application of the Czech Republic, the District Court for Prague 8 issued a preliminary injunction ordering the Company not to dispose of or make irreversible changes to the Land, which led to effective suspension of the Project.[101]

167. In its judgment of 30 January 2014, the District Court for Prague 8 dismissed the Czech Republic's action for a declaration that it owned the Land.[102] The court recognized that, in light of Section 29 of the Act on Land, the Land Fund should not have transferred the Land to Messrs. Maixner and Fidrmuc in 1998, but also recognized the need to protect trust in official acts. As to the latter point, the court reasoned as follows:[103]

> [T]*he court refers to the ruling of the Constitutional Court, Case No. 1. US 2166/10, in which the Constitutional Court stated that "the endeavor*

[97] Statement of Claim, para 27; **C-027**, Judgment of the Supreme Court No. 28 Cdo 3468/2014-251.
[98] Statement of Claim, para 27.
[99] Statement of Defence, para 82.
[100] Statement of Claim, para 28; **C-028**, Action to Establish Right of Ownership.
[101] Statement of Claim, para 29; Statement of Defence, para 84; **C-029**, Resolution of the Court of First Instance No. 23 C 72/2012-28.
[102] Statement of Claim, para 30; **C-030**, Judgment of the Court of First Instance No. 23 C 72/2012-226.
[103] **C-030**, Judgment of the Court of First Instance No. 23 C 72/2012-226, pp. 3-4.

to establish a state in which the individual can trust the acts of the State and their factual correctness is a fundamental prerequisite for the functioning of the substantive rule of law. In other words, the essence of the exercise of public authority in a democratic state governed by the rule of law (Art. 1 of the Constitution) is the principle of the individual's good faith in the correctness of acts of public authority, and the protection of good faith in acquired rights constituted by acts of public authority, whether in the individual case they derive directly from a normative legal act or from an act of application of law ... The consequent discovery of the existence of a legal obstacle to transfer cannot be to the detriment of an individual who quite rightly trusted in the correctness of the State's action, since the principle that the State objectively knows its right applies ...." In its ruling I.US 2576/10, the Constitutional Court stated that "it is hardly acceptable from the constitutional law point of view (the principle of legal certainty) if a state authority certifies certain facts, thereby inducing in an individual a good faith in the correctness of these facts and in the act of the state itself, and then another state authority implies that the individual should not have relied on the correctness of the acts of the state authority". The Court considers that, in the present case, the respondent [the Company] *is entitled to legitimate expectations derived from the acts of the State. While it is true that the respondent is not the original beneficiary, that cannot alter the conclusions of the Constitutional Court in the above-quoted judgments.*

The land was transferred on the basis of contracts with the Land Fund of the Czech Republic No. 003 R – 98/01 and 004 R – 98/01 dated 26.3.1998 and 27.3.1998 respectively. The original persons to whom the land was handed over, and subsequently the respondent, could have assumed that the State was the owner of the land in question and that it was entitled to dispose of it, according to the entry in the Land Register. Moreover, the proposal for the registration of the ownership right had to be subsequently carried out by another state authority, namely the cadastral office, whose legal obligation, pursuant to Article 5(1) of Act No 165/1992 Coll., was to verify the entire transfer and only then to register the ownership right to the land. It can therefore be concluded that, in the present case, the respondent's legitimate expectation of the correctness of the procedure of the State authorities and the substantive correctness of the acts of the State, as well as his good faith and confidence in legal certainty, must be protected. Moreover, it should be noted that it was the Land Fund of the Czech Republic, now the State Land Office, which caused the conflict of rights by its own acts and is now seeking to protect the ownership of the land in this action, which is inadmissible.

168. On 8 December 2014, the Municipal Court in Prague upheld the first instance judgment on appeal. The court repeated the reasoning of the District Court for Prague 8 based on the ruling of the Constitutional Court No. I.US 2166/10, adding:[104]

> *The Court of First Instance correctly adhered to those general principles in the present case when, in the light of the particular circumstances of the case, it found that the respondent's* [the Company's] *good faith in the correctness of the contracts concluded, on the basis of which further acts were subsequently carried out, must be protected in the present case, since the land was used for business purposes and other persons were already affected by the disposal. The intervener's* [the Knights of the Cross'] *legitimate expectation of mitigation of the damage to his property must be addressed by other legal means, and it cannot be accepted that the attempt to mitigate one wrong causes damage to the rights of third parties.*

169. On 1 August 2016, the Supreme Court annulled both the first instance and the appellate court judgments.[105] The Supreme Court found that the case did not present the extraordinary circumstances necessary to justify exceptions to the blocking provision in Section 29 of the Act on Land for church restitution claims. The Supreme Court found, in pertinent part:[106]

> *Although the Supreme Court does not completely deny the validity of the reasoning of the lower courts emphasizing the trust of individuals in the compliance of the state's actions with the law (which does indeed enjoy legal protection, including in the level of the constitutional order ...), the Court does not consider the legal assessment of the case by the District Court and the Municipal Court to be appropriate, since the circumstances presented by them (namely, the fact that the contracts by which the land in question was to be transferred from the State to private entities were negotiated with the Land Fund of the Czech Republic as a public entity, and the fact that the Cadastral Office registered the property rights of the purchasers in the land register after the said contracts, which did not comply with the provisions of the Land Act referred to, had been submitted), cannot justify the exceptional suspension of the blocking effects of Section 29 of the Land Act. An agreement with the notion that the involvement of the Land Fund in the unlawful transfer of the land in question justifies the breaking of the blocking of the disposition of the historical property of the churches would be unjustified, given that the beginning of the unlawful disposal of the items falling within the scope of Section 29 of the Land Act was necessarily, for the most part, their alienation by the State, or by another*

[104] Statement of Claim, para 30; **C-031**, Judgment of the Appellate Court No. 53 Co 288/2014-285, p. 6.
[105] Statement of Claim, para 30; **C-032**, Judgment of the Supreme Court No. 28 Cdo 4546/2015-312.
[106] **C-032**, Judgment of the Supreme Court No. 28 Cdo 4546/2015-312, pp. 3-4.

> *entity of public law nature, whose actions should in principle give rise to a legitimate trust of other contractors, would lead to a complete emptying of the blocking effects of the provision in question and a negation of its meaning. Nor, for similar reasons, can the fact that the Cadastral Office, on the basis of contracts which contravene the blocking provisions of the Land Act, registered the title of the purchasers to the land in question in the land register, justify a one-off suspension of the prohibition on transfers of the land in question. It should be recalled, moreover, that decision-making practice in other contexts also does not recognise the entry of a right in rem into the Land Register as capable of remedying the absolute invalidity of a transfer agreement caused by a breach of the prohibition (claimed in the interests of the protection of third parties) on the disposition of the objects in question ....*

170. Thereafter, the proceedings returned to the District Court for Prague 8. The court did not accept the Company's proposal to refer a preliminary question to the Court of Justice of the European Union, based on a possible conflict between EU law and Czech legislation allowing nullification of a property transfer made to a private person acting in good faith.[107]

171. In its judgment on 1 March 2018, the District Court for Prague 8 determined that the Czech Republic owned the Land.[108] On 6 December 2018, the appellate court overruled that judgment, ordering the lower court to examine "whether there are circumstances of a truly exceptional nature which are particularly intensive in favour of granting legal protection to persons to whom properties originally belonging to churches were transferred in breach of the law."[109]

172. The District Court for Prague 8 did not conduct that examination. As noted, Lawsuit Three was discontinued on 23 July 2020 on the ground of *res judicata* in light of the issuance of a binding judgment in Lawsuit Four.[110]

I. Lawsuit Four: The Knights of the Cross Versus the Company and the Czech Republic

173. On 30 December 2015, the Knights of the Cross filed an action in the District Court for Prague 8 against the Company and the Czech Republic as joint defendants, seeking

[107] Statement of Claim, para 31; **C-033**, Proposal to Submit a Preliminary Question; **C-034**, Resolution of the Court of First Instance No. 27 C 483/2015-208.
[108] Statement of Claim, para 32; **C-035**, Judgment of the Court of First Instance No. 23 C 72/2012-483.
[109] **C-036**, Judgment of the Municipal Court in Prague, No. 53 Co257/2018-553, para 16.
[110] Statement of Claim, para 32, **C-037**, Resolution on discontinuance of the proceedings No. 23 C 72/2012-639.

a declaration that the Czech Republic was the owner of the Land and referencing Section 18(1) of the Church Restitution Act (***Lawsuit Four***).[111] The Czech Republic did not oppose the Knights of the Cross' position, stating to the court:[112]

> *Should the Plaintiff's* [the Knights of the Cross'] *assertions that the Plaintiff is an entitled person within the meaning of Section 3 of Act No. 428/2012 Coll., whose original property passed to the State during the decisive period, i.e. in the period from 25 February 1948 to 1 January 1990, as a result of a fact leading to property injustice as defined in Section 5 of the Act, and at the same time, the property was transferred or passed before the effective date of Act No. 428/2012 Coll. from the State to the ownership of Defendant 1* [the Company] *in violation of Section 29 of the Land Act,* ***be proven*** *in the proceedings, i.e. if the conditions set out in Section 18(1) of Act No. 428/2012 Coll. are met, Defendant 2* [the Land Fund] *will consider it appropriate to grant the action. As regards the objections raised by Defendant 1 regarding good faith, the trust of their legal predecessors in the correctness of the procedure of governmental authorities and the trust in legal certainty, Defendant 2 will leave the decision to the court's discretion.*

174. In its judgment on 2 March 2018, the District Court for Prague 8 ruled in favor of the Knights of the Cross and declared that the Czech Republic was the owner of the Land.[113] Echoing its earlier two judgments in Lawsuits One and Two, the court found that: (a) the Original Land Transfers were void *ex tunc* as violative of Section 29 of the Act on Land, and hence ownership of the Land never passed from the Czech Republic to the Company via Messrs. Maixner and Jaroševský; (b) the Company could not have had a good faith belief in its ownership of the Land after Mr. Maixner, as an executive director of the Company, became aware of the status of the Original Land Transfers in Lawsuit One; and (c) as the Company did not have good faith possession of the Land, it could not have acquired ownership by usucaption. In the words of the court:[114]

> *42. The Court therefore finds that the land in question is original church property, as it was owned by the claimant* [the Knights of the Cross]*, who is part of a registered church, before and during part of the decisive period, which lasted from 1.1.1990 to 25.2.1948 (Art 1 of 428/2012 Coll.) owned by the claimant, who is part of the registered church (Art 2(a) of 428/2012 Coll). On 26 March 1998*

[111] Statement of Defence, para 98; **R-011**, Knights of the Cross Lawsuit of 30 December 2015.
[112] Statement of Defence, para 100; **R-012**, Land Fund's Response 5 May 2016, Section II (emphasis in original).
[113] Statement of Claim, para 34; **C-011**, Judgment of the Court of First Instance No. 27 C 483/2015-248.
[114] **C-011**, Judgment of the Court of First Instance No. 27 C 483/2015-248; paras 42-45, 50-51.

and 27 March 1998, i.e. prior to the effective date of Act No. 428/2012 Coll., these lands were transferred from the property of the State to the property of other persons. The land in question was and is agricultural real estate, as it still constitutes the agricultural land fund (Article 2(b) of Act No 428/2012 Coll.). Such land could not then be transferred to the ownership of other persons pursuant to the above-mentioned Section 29 of Act No 229/1991 Coll. If the land in question was nevertheless transferred to the ownership of L. Fidrmuc and Ing. Maixner, this was done in violation of the above-mentioned blocking provision. "The Land Transfer Agreement 113R-98/01" between the Land Fund of the Czech Republic and Ing. Maixner dated 26.3.1998 and the "Land Transfer Contract No. 004R-98/01" between the Land Fund of the Czech Republic and L. Fidrmuc dated 27 March 1998 are therefore pursuant to the then applicable section 39 of the Civil Code invalid for contravention of the law. They are invalid in absolute terms, i.e. from the outset, and regardless of whether or not the invalidity of the land transfer contracts is invoked.

43. *If the contracts for the transfer of the land in question from the State's property are invalid, then on the basis of these contracts the ownership right to the land parc. No. 1580/15 and parc. No 1590/02 did not pass from the State to Ing. Maixner. He thus did not become the owner of the land in question. He could not therefore validly sell them to respondent 1)* [the Company]*, since he could not transfer more rights to respondent 1) than he himself had.*

44. *For the same reason, the ownership of parcels 1580/16 and 1590/3 was not transferred from the State to L. Fidrmuc. The latter, as a non-owner, could not validly transfer them to L. Svoboda, who could not validly transfer them to CENTRUM CZ spol s.r.o., which could not validly transfer them to Mgr. Jaroševský, who could not validly transfer them to respondent 1).*

45. *For these reasons, the respondent 1) did not become the owner of the land in question on the basis of the land transfer contracts and the State did not cease to be the owner of the land (nor did it become the owner of the land by usucapion, as reasoned in the judgment of 3 September 2013, no. 27 C 67/2012-203).*

....

50. *In view of* [the Supreme Court judgment of 1 August 2016 in no. 28 Cdo 4546/2015-312]*, the objections of respondent 1) regarding the good faith of the purchasers of the land cannot stand. In the present proceedings, Case No 27 C 483/2015, the Court concluded that respondent 1) did not have a good faith belief that it was acquiring ownership of land unencumbered by third-party rights, namely the claimant's restitution rights, and that respondent 1)*

> *could not objectively have had a legitimate expectation of protecting the ownership of the land it wished to acquire.*
>
> *51. As regards plots of land parc. No. 1580/15 and parc. No. 1590/2, the respondent 1) concluded with Ing. Maixner on 23 April 2010. Mr Maixner appeared on both sides of that contract – firstly as a seller on his own behalf and secondly as one of the executive directors of respondent 1) as buyer. At the time the contract was negotiated, Ing. Maixner was undoubtedly aware that the land being transferred was claimed by the claimant as his original church property, with the understanding that when the land was transferred from the ownership of the State to the ownership of Ing. Maixner, there was a violation of the blocking provision of Section 29 of Act No. 229/1991 Coll. Maixner had been a party to the proceedings before the local court under Case No. 25 C 239/2000 since 29 December 2000, in which the claimant sought to establish his ownership of plots no. 1580/15 and No 1590/2 and plots no. 1580/16 and no. 1590/3 on that ground. On 5 October 2005, Ing. Maixner, the claimant and CENTRUM CZ spol. s.r.o. concluded a settlement agreement, where they adjusted the disputed rights and obligations relating to the ownership of the land in connection with proceedings under Case No 25 C 239/2000. It is clear from this that respondent 1) could not have been in good faith as to the proper acquisition of ownership of the land at the time when it negotiated the land transfer agreement. Since – as the Supreme Court pointed out* [in its judgment] *– the case-law does not recognise that the registration of a right in rem in the Land Register has the capacity to remedy the absolute nullity of a transfer contract caused by a breach of the prohibition on the disposal of the land in question, respondent 1) could not, even in view of the action taken by the administrative authorities, have had an objective legitimate expectation of protecting the acquired ownership of the land.*

175. On 10 January 2019, the Municipal Court in Prague upheld the judgment of the first instance court on appeal (the ***January 2019 Judgment***).[115] Among its findings, the court stated as follows:[116]

> *From the foregoing, it is clear that the respondent could not acquire the land in question by usucapio and cannot plead good faith in its possession even as a ground for suspending the effect of Section 29 of the Land Act. Lastly, the ruling II.ÚS 2640/17, relied on by the respondent, concludes that mere good faith is not sufficient to suspend the effects of Section 29 of Act No. 229/1991 Coll., but that other specific circumstances of exceptional importance must also be present, justifying the protection of the acquirer's right of ownership. Such exceptional*

[115] Statement of Claim, para 34; **C-008**, Judgment of the Appellate Court No. 20 C 287/2018-292.
[116] **C-008**, Judgment of the Appellate Court No. 20 C 287/2018-292, para 18.

> *circumstances are not present in the present case. As already emphasised by the Court of First Instance, the respondent's predecessors in title were not beneficiaries under the Land Act, they acquired the restitution claim only on the basis of an assignment agreement and they acquired the land contrary to the purpose of the Land Act for the purpose of future construction. In this respect, the Supreme Court of the Czech Republic emphasised the principle of the priority of restitution of land to the beneficiaries in its judgment in Case No. 28 Cdo 4041/2015 in the case of similar land plots (Plots No. 1580/14 and 1590/1 in the Ďáblice district), with the conclusion that the intervener's (the claimant in this case) right to its historical property takes precedence over the respondent's restitution claim. In view of the nature of the land in question as historic ecclesiastical property, which became apparent in 2000, the respondent and its predecessors in title should have been cautious in investing in the land and, if they nevertheless suffered damage in connection with such investments during the period of their bona fide possession, they may claim compensation from the other respondent (or, alternatively, claim compensation from the current owner for any appreciation of the land).*

176. Mr. Halevi refers to the January 2019 Judgment as the "Expropriation Judgment" and the Czech Republic refers to it as the "Final Judgment."

J. Registration of the Land to the Knights of the Cross

177. Following the decision of the Municipal Court, the Land was registered in the Land Registry as the property of the Czech Republic as of 4 April 2019.[117]

178. The Land was then registered in the Land Registry as the property of the Knights of the Cross as of 12 February 2020.[118]

VII. REQUESTS FOR RELIEF

A. The Claimant's Request for Relief

179. In his Statement of Claim, Mr. Halevi seeks the following relief:[119]

> *The Claimant respectfully seeks, without prejudice to its reserved right to supplement and/or amend its claims and/or the quantum of its claims and/or the request for relief provided herein, an Award:*

[117] Statement of Claim, para 35; **C-012**, Land Registry Extract, 24 January 2020.
[118] Statement of Claim, para 35; **C-013**, Land Registry Extract, 28 May 2021.
[119] Statement of Claim, para 182.

i. Declaring that the Respondent has breached Article 5(1) of the Czech-Israeli BIT and international law by expropriating Claimant's investment, alternatively by measures having effect equivalent to expropriation of the Claimant's investment, without due process of law and without prompt, adequate and effective compensation;

ii. Declaring that the Respondent has breached Article 2(1) and Article 2(2) of the Czech-Israeli BIT and international law by failing to accord the Claimant's investment fair and equitable treatment and full protection and security;

iii. Ordering the Respondent to pay the Claimant compensation for its total losses of CZK 165 million;

iv. Ordering the Respondent to pay pre-award and post-award interest at a rate of LIBOR plus 2 % compounded monthly or such other rate fixed by the Tribunal;

v. Ordering the Respondent to indemnify the Claimant for all costs and expenses of the arbitral proceedings, including but not limited to all expenses that the Claimant has incurred, fees and expenses of arbitrators, legal counsel, experts and consultants, as well as their internal costs;

vi. Ordering such further and/or other relief as the Tribunal deems just and appropriate.

180. The Czech Republic's Statement of Defence contains the following Prayer for Relief:[120]

For the foregoing reasons, the Respondent respectfully requests the Tribunal to

(2) DISMISS all of the Claimant's claims on the merits.

(3) ORDER the Claimant to fully reimburse the Respondent for the entire costs of and related to this arbitration, including but not limited to legal fees, administrative fees and arbitrators' fees.

(3) GRANT the Respondent any further or other relief that the Tribunal deems appropriate.

[120] Statement of Defence, para 239.

VIII. MERITS – INTRODUCTION

181. Mr. Halevi raises three main claims in this arbitration, alleging that the Czech Republic: (a) unlawfully expropriated his investment in violation of Article 5 of the BIT; (b) failed to accord his investment fair and equitable treatment as required under Article 2(2) of the BIT; and (c) failed to ensure full protection and security of his investment in violation of Article 2(2) of the BIT.

182. The Tribunal has determined that, before addressing these three claims, it would be helpful to decide a preliminary question that is central to the Parties' dispute and relevant to each of the claims. This is the Czech Republic's argument that the Company never acquired ownership of the Land under Czech law and hence Mr. Halevi has no ownership interest in the Land.

IX. WHETHER THE COMPANY ACQUIRED OWNERSHIP OF THE LAND

A. The Claimant's Position

183. Mr. Halevi strongly rejects the Czech Republic's primary defence in this arbitration, which is that the Original Land Transfers were void *ex tunc* under the blocking provision in Section 29 of the Act on Land and, as a consequence, Messrs. Maixner and Fidrmuc never became the owners of the Land, thereby rendering all subsequent land transfers – including to the Company – void under Czech law.

184. Mr. Halevi's position is that even if the Original Land Transfers were concluded in violation of Section 29, they were not automatically void and the Company could have acquired the Land either by means of good faith acquisition from a non-owner or usucaption.[121]

1. The Original Land Transfers

185. Mr. Halevi argues that the Original Land Transfers, as recorded in the Land Registry, were not rendered automatically void by any violation of the blocking provision in Section 29 of the Act on Land. Although Mr. Halevi accepts that "in theory the voidness (absolute nullity) of a land transfer agreement would indeed mean that it was void *ex tunc*, *i.e.*, already at the moment, when the agreements were signed," he argues that "in practice, these agreements are treated as valid until a court ultimately declares

[121] Claimant's PHB, para 184.

the act null and void."[122] In the case of a land transfer, says Mr. Halevi, a purchaser is entitled to rely upon the record in the Land Registry until such time as a court makes a final determination that the transfer is invalid.[123]

186. Mr. Halevi cites to the Law of 28 April 1992 on the registration of ownership and other rights *in rem* over immovable property, which provides as follows in Sections 5 and 11:[124]

> *Section 5 (Decision)*
>
> *(1) The Cadastral Office, in the procedure for the authorisation of the entry, examines before its decision whether*
>
> *a) the proposed entry is not hindered by the status of the entries in the Land Registry,*
>
> *b) the proposed deposit is justified by the content of the documents submitted,*
>
> *c) the legal act concerning the transfer of ownership or the creation or termination of another right is definite and intelligible,*
>
> *d) the legal act is made in the prescribed form,*
>
> *e) the parties are entitled to dispose of the subject matter of the legal transaction,*
>
> *f) a party to the proceedings is not restricted by law, court decision or decision of a state authority4 in the contractual freedom concerning the matter which is the subject of the legal transaction,*
>
> *g) the legal act of a party has been consented to in accordance with a special regulation.5 The Cadastral Office examines these facts on the date of filing the application for registration.*
>
> (2) *If the conditions for entry are fulfilled, the cadastral office shall decide that the entry is permitted; otherwise, and if the application has lost its legal effects under a specialized law, it shall reject the application.*
>
> *Section 11 (Good Faith)*
>
> *Whoever relies on an entry in the Land Register made after 1 January 1993 is in good faith that the state of the cadastre*

[122] Reply, para 21, *citing* **CLA-095**, Judgment of the Czech Supreme Administrative Court No. 8 As 163/2014-34 of 20 February 2015, para 19.
[123] Reply, para 24.
[124] **CLA-008**, Law of 28 April 1992.

> *corresponds to the actual state of affairs, unless he must have known that the state of the entries in the cadastre did not correspond to the reality.*

187. Mr. Halevi says his position is also supported by two decisions of the Czech Constitutional Court issued in 2014 and 2017. The Constitutional Court in the 2017 decision, which involved a complainant who was "one of the parties to an absolutely invalid illegal act," noted that the relevant contract was "concluded with the Land Fund and the title was registered in the Land Registry, despite the provisions of Section 5(1)(e) 265/1992 Coll., on the Registration of Ownership and Other Real Property Rights" and so "[t]he good faith of the complainant must therefore be taken into account."[125] In the 2014 Judgment, the Constitutional Court stated as follows:[126]

> *It was therefore possible that, even if the acquirer derived his ownership right from a person who should have acquired the ownership right on the basis of a legal act which later turned out to be void (so that that person did not in fact acquire the ownership right), that acquirer became the actual owner of the thing, even otherwise than by means of usucapion.*

188. Mr. Halevi submits that this is precisely what happened in the present case: Messrs. Maixner and Fidrmuc were entitled to rely on the entries in the Land Registry based on the Original Land Transfers and could validly transfer their ownership in the Land in the absence of a court decision declaring the Original Land Transfers void. Thus, Mr. Halevi denies the Czech Republic's position that the alleged voidness of the Original Land Transfers automatically tainted all subsequent transfers.[127]

189. In addition or as alternatives to his argument based on registration in the Land Registry, Mr. Halevi submits that even if the Original Land Transfers violated the blocking provision in Section 29 of the Act on Land, the Company legally acquired the Land either through good faith acquisition and/or usucaption. His position on each of these legal theories is summarized in the following sections.

[125] Reply, para 95, citing **CLA-101**, Judgment of the Czech Constitutional Court No. III. US 1862/16 of 21 June 2017, para 33.
[126] Reply, para 22, *quoting* **CLA-096**, Judgment of the Czech Constitutional Court No. I. ÚS 2219/12 of 17 April 2014, para 28.
[127] Reply, para 18.

2. Good Faith Acquisition

190. According to Mr. Halevi, the case law of the Czech Constitutional Court clearly establishes that a party can rightfully acquire the ownership of immovable property in good faith from a non-owner, even where the previous transfer of legal title was void.[128] In fact, says Mr. Halevi, the Constitutional Court has explained that excluding such a possibility of good faith acquisition would be "incompatible with the maxims of constitutional law, as it does not provide protection for the property rights of other acquirers, contrary to the constitutional principles of legal certainty and protection of acquired rights in good faith."[129]

a. Applicable Standard of Good Faith

191. In response to the Tribunal's question (d), which asked the Parties to identify the good faith standard relevant in this case, Mr. Halevi begins with Constitutional Court decision ref. no. III. ÚS 50/04 (***CC Decision 50/04***).[130] The Constitutional Court in CC Decision 50/04 found that for good faith possession to exist, "the possessor's mistake on which his belief in the existence of the right possessed is based must be excusable … in view of all the circumstances," and such good faith "ceases to exist at the moment when the possessor learns about facts that objectively must have caused doubt whether she was the lawful owner of the thing."[131] Mr. Halevi accepts that this standard applies in the present case, but he asserts that "the good faith analysis does not stop here," because there are additional applicable rules in the 1964 Civil Code and in Czech court decisions:[132]

a. Section 130(1) of the 1964 Civil Code, which is referenced in CC Decision 50/04, provides as follows: "When in doubt, possession is presumed to be legitimate."[133]

b. On Mr. Halevi's reading of the legal literature and case law, "acts of the State assume superior position in justifying good faith insofar as a mistake induced by

[128] Reply, paras 32-33, *citing* **CLA-096**, Judgment of the Czech Constitutional Court No. I. ÚS 2219/12 of 17 April 2014, para 28.
[129] Reply, para 35, *quoting* **CLA-098**, Judgment of the Czech Constitutional Court No. III. ÚS 1670/15 of 17 September 2015, para 12.
[130] Claimant's PHB, paras 68-69, *citing* **ER-025**, Resolution of the Constitutional Court of 3 June 2004, File No. III. ÚS 50/04, p. 3.
[131] Claimant's PHB, paras 68-69, *quoting* **ER-025**, Resolution of the Constitutional Court of 3 June 2004, File No. III. ÚS 50/04, p. 3.
[132] Claimant's PHB, para 71.
[133] Claimant's PHB, para 72, *citing* **RLA-053**, Act No. 40/1964 Coll., Civil Code, Sec. 130(1).

a state authority is excusable."[134] As support, he cites the Supreme Court's observation that "[a] legal mistake may also be excusable because it was induced by a state authority, since the possessor may reasonably assume that the state authorities know the law."[135] Additionally, Mr. Halevi refers to a 2007 Constitutional Court Judgment holding that "[i]t is hardly acceptable for a state authority, in the exercise of its public power, to authoritatively review and certify certain facts, thereby inducing in the individual a good faith belief in the correctness of those facts and in the act of the state itself, and then to sanction the individual for the fact that those facts, approved by the state in a prior act of power, are incorrect."[136]

192. Taking these points together, Mr. Halevi contends that "circumstances that ordinarily might spark doubt in an average possessor as to her rightful ownership will not cause such doubt in cases where the good faith possession stems from acts of State and/or is reinforced by the acts of the State."[137] Put another way, Mr. Halevi asserts that "if good faith possession stems from and/or is reinforced by acts of State, the application of the constructive knowledge standard shifts in favor of the possessor (towards actual knowledge)."[138]

193. Mr. Halevi also points the Tribunal to Czech court judgments assessing how good faith possession is affected by lawsuits challenging ownership during the usucaption period. In particular, he cites a Constitutional Court ruling that if such a lawsuit is filed and then dismissed, it strengthens the good faith of the defendant:[139]

> *the Constitutional Court does not consider the conclusion on the lack of good faith of the restituents, or their legal successors, to be sustainable. … **Neither the action brought in 1992 by the intervening State Enterprise nor the subsequent actions brought by ODKOLEK, a.s. alter this conclusion**. … **The dismissal of those actions reaffirmed the good faith of the restitution holders or their successors in title**.*

[134] Claimant's PHB, para 73.
[135] Claimant's PHB, para 73, *quoting* **CLA-191**, Judgment of the Supreme Court No. 22 Cdo 4484/2007 of 1 July 2009, p. 6 (*Claimant's emphasis*).
[136] Claimant's PHB, para 73, *quoting* **CLA-189**, Judgment of the Constitutional Court No. I. ÚS 544/06 of 3 December 2007, para 18.
[137] Claimant's PHB, para 75.
[138] Claimant's PHB, para 75.
[139] Claimant's PHB, para 77, *quoting* **CLA-170**, Judgment of the Czech Constitutional Court No. IV. ÚS 2856/19 of 22 September 2020, para 78 (*Claimant's emphasis*).

194. Mr. Halevi relies as well on a Supreme Court ruling that a possessor's position cannot be worsened by a lawsuit that was discontinued:[140]

> *A rightful possessor who has defended his possession in a lawsuit for the surrender of a thing (or in a lawsuit for a declaration that the contract of sale by which he acquired possession of the thing is void) by having the lawsuit against him dismissed by a final judgment cannot, by the nature of the case, find himself in a worse position than if such a lawsuit had not been brought against him at all or if the proceedings in such a lawsuit had been discontinued, for example, because the lawsuit had been withdrawn.*

b. Existence of Good Faith

195. Applying this standard to the facts here, Mr. Halevi argues that the Company and its legal predecessors acquired the Land in good faith.

(i) Alleged Sources of Good Faith

196. According to Mr. Halevi, the Company's "good faith has its basis primarily in the actions of the Land Fund as a state authority of the Respondent."[141] Mr. Haveli recalls that the Land Fund not only facilitated the transfer of the Land to Messrs. Maixner and Fidrmuc, but also selected the Land to be released to them as replacement land and subsequently reinforced their good faith reliance in ownership of the Land through the chain of transfers until the Company's purchase.[142] Thus, in Mr. Halevi's view, it was the Land Fund that breached Section 29 of the Act on Land by concluding the Original Land Transfers.[143]

197. Mr. Halevi highlights that the Original Land Transfers contained the following declaration: "Both parties declare that they are not aware of any facts that would prevent the conclusion of this Agreement."[144] He argues that Messrs. Maixner and Fidrmuc relied on the competence and expertise of the Land Fund in believing that the Land was owned by the State and free of any claims – a point that was confirmed by the appellate court in Lawsuit Two:[145]

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[140] Claimant's PHB, para 78, *quoting* **CLA-192**, Judgment of the Supreme Court No. 29 Cdo 3298/2011 of 26 September 2011, p. 7 (Czech version)/8 (English translation).
[141] Reply, para 76.
[142] Reply, para 76.
[143] Statement of Claim, para 15; Reply, para 77.
[144] Reply, para 77, *quoting* **C-009**, Land Transfer Agreement (Maixner); **Exhibit C-010**, Land Transfer Agreement (Fidrmuc).
[145] Reply, para 79, *quoting* **R-016**, Judgment of the Appellate Court No. 35 Co 35/2014-234.

> *The contracts concluded in 1998 were prepared for signature by the State, which also selected the replacement land. The transferees at that time did not ask for the specific land and could not have had the slightest idea who the original owner of the land was. The only person who could have had that information was the Land Fund of the Czech Republic, which, on the contrary, confirmed in the contracts that the Czech Republic had acquired ownership of the land in 1921.*

198. In fact, says Mr. Halevi, the Czech authorities took several actions confirming that the Land was free of any restitution claims and, after the Original Land Transfers, no longer owned by the State.

199. ***2003 Land Fund Letter***: Mr. Halevi places great significance on the 26 November 2003 letter by which the Land Fund declined to intervene in Lawsuit One.[146] He stresses that the Land Fund confirmed that: (a) its documentation did not show that the Land was originally owned by the Knights of the Cross; and (b) the State was no longer the owner of the Land. Additionally, the Land Fund noted that the Knights of the Cross had filed several similar lawsuits for determinations of ownership concerning lands in the same Ďáblice estate, one of which had been decided against the Knights of the Cross.[147] In Mr. Halevi's view, this letter reinforced the good faith belief of the Company's legal predecessors that they owned the Land.

200. Mr. Halevi connects the decision of the Land Fund in 2003 not to intervene in Lawsuit One to knowledge of the Knights' claim to the Land. He rejects the Czech Republic's argument that the Land Fund did not learn about the Knights' claim until 2012, when the Knights wrote to the Land Fund asking it to start proceedings to obtain a declaration that the State owned the Land and attaching the judgments from Lawsuit One. According to Mr. Halevi's counsel at the Hearing, the Land Fund, which declined to intervene in Lawsuit One, "knew already in 2003 …. well, they could have seen the court file … they could have known, and they refused."[148]

201. ***Statement of the Ministry of Agriculture***: Mr. Halevi also relies on the Ministry of Agriculture's letter of 25 June 2007, which confirmed that plots of the Land "do not appear in our database of land for which a restitution claim has been made."[149] He highlights that the Land Fund issued this confirmation after Lawsuit One and the

[146] Reply, para 80, *citing* **C-067**, Letter of the Land Fund dated 26 November 2003.
[147] *Id.*
[148] Transcript, Day 1, 23:6-14.
[149] Reply, para 80, *quoting* **C-068**, Letter of the Ministry of Agriculture dated 25 June 2007.

execution of the Settlement Agreement (discussed below), further strengthening Mr. Maixner's good faith.[150]

202. ***The Future Exchange Agreement***: Mr. Halevi next points out that the Land Fund itself entered into an agreement with Mr. Maixner for the future exchange of one of the original plots of the Land (no. 1590/2) for a plot owned by the Land Fund (no. 1596/5) to allow construction of a road to serve the Project.[151] Mr. Halevi underscores that the Land Fund included an express declaration that plot no. 1596/5 "has the character of the property referred to in Section 29 of AOL," meaning a church land, whereas it made no such declaration in respect of plot no. 1590/2.[152] For Mr. Halevi, "[t]his shows that the Land Fund was in fact aware of the church restitution claims and notified them when there was some," and "that at least some due diligence had to be made on the part of the Land Fund which also did not reveal that Mr. Maixner's plot of land being part of the Land would be a subject to church restitution claims."[153]

203. ***Cadastral Office***: As noted above, citing to decisions of the Constitutional Court dated 2014 and 2017, Mr. Halevi also argues that the Company and its legal predecessors were entitled to rely on the recording of the transfers in the Land Registry as confirmation that the legal title was good and clear of any claims. In this respect, Mr. Halevi's position is that under Czech law:[154]

> *i. the Cadastral Office should have examined whether the parties to the cadastral proceedings were entitled to dispose of the subject of the legal transaction;*
>
> *ii. if the Cadastral Office did not do so, it acted in breach of Cadastral Act and more importantly of constitutional rights of the Claimant;*
>
> *iii. it is the fundamental principle that a person acting in confidence in the accuracy of the registration must be afforded protection of his legitimate interests and legitimate expectations;*
>
> *iv. if the Claimant was required to verify the validity of the titles of acquisition of all previous registered owners of the real estate, such*

[150] Reply, para 80.
[151] Reply, para 81, *citing* **C-062**, Future Exchange Agreement.
[152] Reply, para 83, *quoting* **C-062**, Future Exchange Agreement, Article II.
[153] Reply, para 83.
[154] Reply, paras 88-100, *citing* **CLA-096**, Judgment of the Czech Constitutional Court No. I. ÚS 2219/12 of 17 April 2014, paras 32, 40, 43; **CLA-101**, Judgment of the Czech Constitutional Court No. III. ÚS 1862/16 of 21 June 2017, para 33.

conduct would be inconsistent with the concept of a substantive rule of law.

204. Mr. Halevi stresses that in this case, the Cadastral Office repeatedly – 14 times – registered the transfer of ownership of the Land in the Land Registry.[155]

205. ***Taxation***: Mr. Halevi also relies on the actions of the Czech tax authorities in charging real estate transfer tax on each subsequent transfer of the Land after the Original Land Transfers.[156] He adds that as a result of the applicable statute of limitations, there is no means of seeking return of those real estate transfer tax payments.[157] Moreover, says Mr. Halevi, the Czech Republic also levied real estate tax on the Land each year between 2011 and 2019.[158]

206. For Mr. Halevi, even the Czech Republic's failure to take action reinforced the predecessors' good faith possession. He argues that the State had multiple opportunities to address the claimed invalidity of the Original Land Transfers, but instead: "(i) refused to partake in Lawsuit #1, (ii) failed to register a note of dispute in the Land Registry, and (iii) (until 2012) did not file an action to determine ownership rights to the Land."[159] Ultimately, says Mr. Halevi, "[t]he legal predecessors assumed (as any ordinary person would) that the State knows its law. If the State itself had no doubts, there was no reason for them to harbor them either."[160]

207. Mr. Halevi concludes that the alleged "clear voidness" of the Original Land Transfers "was for many years a total secret for all the Respondent's authorities, which have reinforced the Company's (and its predecessors) good faith in its ownership and were happy to take all the benefits (taxes, levies etc.) which the Company's ownership of the Land brought."[161]

208. In addition to these actions (and inactions) on the part of the Czech authorities, Mr. Haveli argues that the Settlement Agreement and the Future Purchase Agreement also contributed to the good faith belief in ownership held by the Company and its legal predecessors.

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[155] Reply, para 84.
[156] Reply, para 208.
[157] Reply, para 208.
[158] Reply, para 208, *citing* **C-069**, Tax Payment Confirmation.
[159] Claimant's PHB, para 89.
[160] Claimant's PHB, para 90.
[161] Reply, para 86.

209. ***Settlement Agreement***: Mr. Halevi recalls that Mr. Maixner, CENTRUM CZ and the Knights of the Cross entered into the Settlement Agreement on 5 October 2005, pursuant to which the Knights of the Cross withdrew their extraordinary appeal in Lawsuit One on 12 October 2005.[162] According to Mr. Halevi, in the Settlement Agreement, the Knights of the Cross expressly acknowledged the ownership rights of Mr. Maixner and CENTRUM CZ in the Land in exchange for monetary compensation.[163] He points to the express statement in the Settlement Agreement that its purpose was to acknowledge and settle the ownership of the Land:[164]

> *The Parties mutually agree that their disputed rights and obligations related to the ownership of* [the Land] *according to the Land Registry, all in the cadastral territory of Ďáblice, registered with the Cadastral Office for the capital city of Prague shall be settled in the manner set out below.*

210. Mr. Halevi rejects the Czech Republic's position that the Settlement Agreement was void under Czech law. In his view, that interpretation is based on Section 574(2) of the 1964 Civil Code – "an unreasonable and outdated provision of Czech law," which even the Czech Republic's legal expert [redacted] considers "to be unreasonable."[165] Moreover, says Mr. Halevi, the Supreme Court had held that even that unfair law allowed for exceptions whereby a party may conclude a valid contract even without having ownership at the time of contracting.[166] For Mr. Halevi, "[i]t is clear the Settlement Agreement was a plain agreement confirming the ownership of the Land, concluded in good faith and for consideration."[167]

211. ***Future Purchase Agreement***: Mr. Halevi argues that the Knights of the Cross again expressly acknowledged the ownership rights of Mr. Maixner and the Company by concluding the Future Purchase Agreement in September 2008 (as amended in October 2008 and October 2010), in which they undertook to sell to Mr. Maixner and the Company plots of land adjacent to the Land and necessary for development of the Project.[168]

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[162] Statement of Claim, paras 20-21, *citing* **C-024**, Settlement Agreement.
[163] Statement of Claim, para 21.
[164] Claimant's PHB, para 114; **C-024**, Settlement Agreement, Article II.
[165] Claimant's PHB, para 115, *quoting* Transcript, Day 2, 78:19.
[166] Claimant's PHB, para 116, *citing* **RLA-096**, Judgment of the Supreme Court of 11 December 2002, File No. 22 Cdo 981/2001.
[167] Claimant's PHB, para 118.
[168] Statement of Claimant, para 23, *citing* **C-025**, Future Purchase Agreement.

212. Mr. Halevi considers it irrelevant that the Knights of the Cross, as a party to the Settlement Agreement and the Future Purchase Agreement, is not a Czech Republic State entity. In his view, the Czech Republic's focus on this status is overly formalistic and ignores the context.[169] In fact, says Mr. Halevi, it was the Knights of the Cross that instigated the disputes over the Land involving the Czech Republic; even in Lawsuit Three, in which the State was the plaintiff, the State initiated the proceedings only upon the request of the Knights of the Cross and with the ultimate view of transferring the Land to the Knights of the Cross.[170] In sum, says Mr. Halevi, the Knights of the Cross were the only entity interested in having the Land returned, and as such, their express recognition in the Settlement Agreement of the ownership rights of the Company's legal predecessors reinforced the good faith belief of those predecessors in their ownership rights.[171]

(ii) Lawsuit One

213. Mr. Halevi rejects the Czech Republic's position that the Company's legal predecessors lost their good faith belief in ownership of the Land through Lawsuit One. Mr. Haveli argues, to the contrary, that the Supreme Court and the Constitutional Court have already resolved this question – whether the filing of a lawsuit can result in the loss of good faith possession – in favor of the possessor.[172] Here, says Mr. Halevi, Lawsuit One in fact reinforced the good faith of their predecessors, because they successfully defended their possession of the Land and the lawsuit was dismissed.[173] For Mr. Halevi, this fact alone is sufficient to undermine the Czech Republic's position.

214. Mr. Halevi further argues that, in any event, given the circumstances of Lawsuit One and the "confusing court decisions" that were issued, the Company's legal predecessors could not have acquired information creating sufficient doubt about the ownership of the Land based on Section 29 of the Act on Land.[174] In this respect, Mr. Halevi considers that:[175]

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[169] Reply, para 63.
[170] Reply, paras 63-66.
[171] Reply, para 66.
[172] Claimant's PHB, para 83, *citing* **CLA-170**, Judgment of the Czech Constitutional Court No. IV. ÚS 2856/19 of 22 September 2020, para 78; **CLA-192**, Judgment of the Supreme Court No. 29 Cdo 3298/2011 of 26 September 2011, p. 7 (Czech version)/8 (English translation).
[173] Claimant's PHB, para 83; Claimant's Reply Post-Hearing Submission, para 5 (***Claimant's RPHB***).
[174] Claimant's PHB, para 91.
[175] Claimant's PHB, para 94.

> *constructive knowledge about circumstances casting doubt as to the rightful ownership would have to include knowledge about all the conditions that would invoke application of the blocking provision of* [Section 29 of the Act on Land,] *which are the following: (i) the Land was historically owned by the Knights and transferred to the State as a result of a qualified act and that (ii) the transfer occurred during the period of Communist era (from 25 February 1948 until 1 January 1990).*

215. According to Mr. Halevi, the blocking provision in Section 29 of the Land Act was irrelevant in Lawsuit One. The Knights of the Cross did not raise Section 29 and, although the first instance court mentioned the blocking provision in Section 29, that mention was not relevant to the court's ruling, and the appellate court did not address Section 29 at all.[176] Mr. Halevi accepts that the Company's legal predecessors could infer from the case file that the Knights of the Cross historically owned the Land, but he stresses that the remaining conditions for application of Section 29 – a transfer to the State resulting from a qualified act that occurred during the Communist era – were not investigated by the courts. The appellate court merely determined that ownership was transferred on 1 January 1951 at the latest, without identifying the exact date of transfer.[177] For Mr. Halevi, it follows that the Company's legal predecessors could not have acquired sufficient knowledge about whether Section 29 of the Land Act applied to the Land.

216. Mr. Halevi also rejects the opinion of the Czech Republic's legal expert [redacted] that the Company's legal predecessors lost good faith through Lawsuit One because the appellate court stated that the Land was owned by the State at the time the judgment was rendered. According to Mr. Halevi, [redacted] admitted on cross examination that such statement has no basis in the operative part of the judgment.[178]

217. Moreover, Mr. Halevi contends that the limited information gathered by the Company's legal predecessors in Lawsuit One must be weighed against the numerous actions and inactions of the State that confirmed their rightful ownership, discussed above. Again, says Mr. Halevi, "the good faith in the rightful ownership of the Land was rooted in an act of State as the legal predecessors acquired the Land directly from

[176] Claimant's PHB, para 93.
[177] Claimant's RPHB, para 4.
[178] Claimant's PHB, para 97.

the Land Fund."[179] For Mr. Halevi, any mistake on the part of the Company's legal predecessors as to their ownership was therefore clearly excusable.

218. Mr. Halevi disputes the Czech Republic's allegation the Mr. Maixner expressly acknowledged in Lawsuit One that the Original Land Transfers were void. In Mr. Halevi's view, the Czech Republic's submissions regarding Mr. Maixner's statements misrepresent the facts:

a. First, the Czech Republic relies on the following statement in Mr. Maixner's written response to Lawsuit One: "Defendant 2 [Mr. Maixner] renders it undisputed that the land in question was originally owned by the Plaintiff [the Knights of the Cross]."[180] Mr. Halevi asserts that, with this statement, Mr. Maixner merely confirmed that he did not contest that the Land was an original property of the churches, and did not in any way admit that the Original Land Transfers were void.[181]

b. Second, the Czech Republic cites the Minutes from the court hearing of 22 October 2003 recording the following:[182]

> *As regards the Plaintiff's claim that the transfer of the ownership title from the State to the Defendant was prevented by the blocking provision of Section 29 of the Land Act, the Defendants refer to ruling of the Supreme Court of the Czech Republic File No. 20 Cdo 1280/2002, which ruled on the issue in a similar case in that while non-compliance with this provision establishes "likelihood" of invalidity of the contract, no person other than the parties to the contract has an urgent legal interest in declaring a purchase contract invalid and the failure to prove an urgent legal interest is a separate and primary ground for which an action for declaration cannot stand and must be dismissed.*

According to Mr. Halevi, the Minutes do not reflect an admission by Mr. Maixner that the Original Land Transfers were void, as he merely referred to a ruling of the Czech Supreme Court to support his argument that the church lacked procedural standing to bring the claim to the court. Moreover, Mr. Halevi says the Supreme

[179] Claimant's PHB, para 86.
[180] Reply, para 52, *quoting* Statement of Defence, para 40.
[181] Reply, para 52.
[182] Reply, para 53.

Court spoke only of a "likelihood" of voidness, which is far from the Czech Republic's allegation of clear or obvious voidness.[183]

c. Finally, the Czech Republic cites the appeal Mr. Maixner filed against the first instance court judgment:

> *The invalidity of the contract between Defendant 2 and the previous acquirors of the relevant land who received it from the Land Fund cannot result in declaration of the Plaintiff's ownership title to the land, but rather only in the fact that the land continues to be owned by the original owner, who released them at variance with Act No. 229/1991 Coll.*

Mr. Halevi argues that this is an incorrect translation of the document, which should instead read as follows:[184]

> *A determination of the Plaintiff's ownership title to the land cannot be an effect of the invalidity of the contract between Defendant 2 and the previous acquirors of the relevant land who received it from the Land Fund, instead the effect would be that the land continues to be owned by the original owner, who released them at variance with Act No. 229/1991 Coll*

Moreover, Mr. Halevi highlights that this statement followed Mr. Maixner's clear rejection of the first instance court's ruling: "The Defendant considers the findings of fact made by the first-instance court and the legal assessment based thereon to be erroneous for the following reasons…"[185] According to Mr. Halevi, Mr. Maixner's point was not that the Original Land Transfers violated the blocking provision in Section 29 of the Land Act, but that, even if that were the case, it could result only in the determination of ownership by the State and not the Knights of the Cross.[186] Indeed, says Mr. Halevi, it would make no sense for Mr. Maixner to have acknowledged the voidness of the Original Land Transfers, as that would be against his litigation strategy.[187]

219. Looking at the circumstances as a whole, Mr. Halevi takes the position that after Lawsuit One, the "average prudent person would consider these three facts: (i) a

[183] *Id.*
[184] Reply, para 55.
[185] Reply, para 56, *quoting* **R-007**, Mr. Maixner's Appeal of 11 May 2004.
[186] Reply, para 58.
[187] Reply, para 59.

transferor is the state, (ii) a final court decision confirming that the transferor in a transaction was the owner of the land, and (iii) a settlement agreement concluded with a party that is the only party claiming ownership right to the land, after that party loses in a dispute, as by far a sufficient proof for the good faith ownership."[188] Therefore, Mr. Halevi considers it "irrational" to argue that Mr. Maixner gained information in Lawsuit One sufficient to compromise his good faith possession of the Land. Mr. Halevi asserts that "[e]ven if, arguendo, Mr. Maixner's good faith was hampered by the first instance court judgment, it must be seen as fully restored by the appellate court judgment and even reinforced by the Settlement Agreement."[189]

(iii) Domestic Court Judgments

220. Mr. Halevi goes on to argue that, after Lawsuit One, the Company's ownership of the Land was expressly confirmed by two successive court decisions in Lawsuit Three. Notably, says Mr. Halevi, the appellate court in those proceedings "considered beyond a doubt that the violation of the so-called blocking provision … caused the absolute [voidness] of the act by which the property was transferred," and yet found it necessary to "break[] the described principle in view of the particularities of the case at hand."[190] Specifically, the court observed that:[191]

> *It has not been established that the respondent's legal predecessors could have foreseen at the time of the conclusion of the contracts in 1998 that the contracts were invalid for breach of the blocking clause ...* [T]*he respondent's legal predecessors therefore disposed of the land in the belief that they had title to it, which was directly induced by the State by concluding the contracts. Moreover, another authority of the State, on the basis of the contracts, entered the title in the Land Registry, thereby only supporting the respondent's predecessors in title in their belief that the contracts were lawful. It is to the moment of the conclusion of the contracts in 1998 that the respondent's predecessor's confidence in the correctness of the State authorities' actions and the substantive correctness of the State's acts, as well as confidence in legal certainty, is tied.*

[188] Reply, para 60.
[189] Reply, para 60.
[190] Reply, para 26, *quoting* **R-020,** Judgment of the Appellate Court No. 53 Co 288/2014-285, p. 5.
[191] Reply, para 27, *quoting* **R-020,** Judgment of the Appellate Court No. 53 Co 288/2014-285, p. 5.

221. Mr. Halevi highlights that the appellate court decision was rendered in 2014, more than four years after he made his investment in the Land, and remained in full legal force for nearly two more years, until it was set aside by the Supreme Court.[192]

222. Mr. Halevi acknowledges that the Czech courts in other judgments reached the opposite conclusion, finding a lack of good faith possession of the Land. However, Mr. Halevi denies that the Tribunal's assessment should depend on those domestic rulings.[193] As discussed below, his position is that the courts in Lawsuit Four manifestly erred in their assessment of good faith and failed to respect Constitutional Court case law on good faith. He contends that, in light of the inconsistent rulings issued over the years, it would "be completely illogical to unreservedly accept solely the conclusions made in Lawsuit #4 when different courts have assessed the matter differently."[194]

(iv) The Company's Knowledge

223. With regard to the Czech Republic's challenge to the adequacy of his due diligence, Mr. Halevi emphasizes in his submissions that "he had all relevant information obtained *inter alia* from Mr. Maixner, Mr. Jaroševský and the legal advisors of the Company, including the information pertaining to the results of Lawsuit #1, the concluded Settlement Agreement, the Future Purchase Agreement, the Future Exchange Agreement and the confirmations issued by the Ministry of Agriculture and Land Fund."[195] In his Reply, he submits that it is precisely this information that he relied upon in deciding to participate in the Project.[196]

224. Mr. Halevi accepts the Czech Republic's assertion that, "[s]ince Mr. Maixner became the executive director of the Company, his knowledge of the matters concerning the Land was attributed to the Company."[197] However, he does not consider that this hampers the Company's good faith belief in its ownership of the Land. To the contrary, he says, Mr. Maixner was also entitled to rely on the documents mentioned above to establish his own good faith possession.[198]

[192] Reply, para 28.
[193] Claimant's PHB, para 185.
[194] Claimant's PHB, para 185.
[195] Reply, para 46.
[196] Reply, para 46.
[197] Claimant's PHB, para 191, *quoting* Statement of Defence, para 178.
[198] Reply, para 46.

225. Mr. Halevi strongly objects to the Czech Republic's request that the Tribunal make adverse inferences based on allegedly concealed documents regarding the Company's knowledge of risks in relation to the Land.[199] Mr. Halevi denies that he has concealed any evidence, which in his view was confirmed by [redacted] witness testimony.[200] Further, he argues that the Tribunal cannot make the requested adverse inferences because he has already provided evidence on the precise point at issue – his alleged lack of knowledge regarding the voidness of the Original Land Transfers. Specifically, [redacted] confirmed in both written and oral testimony that the Company's legal advisors did not identify any extraordinary risks regarding the title to the Land.[201]

3. Usucaption

226. As a further alternative, Mr. Halevi submits that the Company also could have acquired the Land through usucaption, despite any alleged voidness of the Original Land Transfers. He notes that usucaption is grounded in the Section 134(1) of the Czech Civil Code, which provides that the rightful possessor of immovable property becomes the owner if he holds it continuously in good faith for ten years.[202]

227. Mr. Halevi's position on good faith has been summarized above. As for the temporal requirement, Mr. Halevi considers it undisputed that the period for usucaption began in 1998 with the Original Land Transfers to Messrs. Maixner and Fidrmuc, with the only disagreement between the Parties being the effect of Lawsuit One.[203] As already discussed, Mr. Halevi denies that good faith was lost through Lawsuit One. Thus, Mr. Halevi concludes that the Company and its legal predecessors held the Land in good faith for longer than the ten-year usucaption requirement. Specifically, he notes that they held the Land for 14 years – from 1998 to 2012 – before the State lodged a claim against the Company to contest its ownership of the Land. In fact, Mr. Halevi says, until the 2016 Supreme Court judgment, "there was no sign that the ownership would be overturned and all judicial decisions on the issue were in favour of the Company."[204] Thus, according to Mr. Halevi, the two conditions for are clearly met.

[199] Claimant's PHB, paras 153-161.
[200] Claimant's PHB, para 157.
[201] Claimant's PHB, para 160, *citing* Transcript, Day 2, 43:25-44:1.
[202] Statement of Claim, para 105(iii).
[203] Claimant's PHB, paras 81-82.
[204] Statement of Claim, para 105(iii).

4. Expert Appraisal

228. Mr. Halevi denies the Czech Republic's allegation that the 2010 Land Purchase Agreements were also void due to a lack of expert appraisal as required under Section 196a of the Czech Commercial Code. He offers several reasons why, in his view, the Tribunal should reject this argument.

229. First, Mr. Halevi describes this argument as entirely speculative, because none of the parties with any interest in the 2010 Land Purchase Agreements – not the Company, the shareholders or even the creditors – ever raised such an issue.[205] Nor did the Czech Republic ever present this argument during seven years of litigation with the Company over the validity of the 2010 Land Purchase Agreements.[206] Indeed, says Mr. Halevi, "[e]ven the first instance court in Lawsuit #4, which otherwise was not in favour of any of the Company's arguments, bluntly rejected in one paragraph this argument raised by the Knights of the Cross, as obviously unfounded."[207]

230. Second, Mr. Halevi contends that pursuant to the case law of the Czech Supreme Court, the absence of an expert report as mentioned in Section 196a of the Commercial Code does not automatically render a contract void; rather, if the agreed purchase price was a market rate, the contract remains valid.[208] In the present case, Mr. Halevi considers that the purchase price in the 2010 Land Purchase Agreements "was indeed a market price taking into account the price maps and similar projects at the time."[209]

231. Third, Mr. Halevi argues that even if the 2010 Land Purchase Agreements had been void for lack of an expert appraisal, they could have been replaced by a new agreement. He cites Article IV of the Framework Cooperation Agreement on the Development Project Ďáblice concluded on 24 March 2010 (the ***Cooperation Agreement***) between the shareholders of the Company to define their rights and obligations related to the Project. Article 1 states:[210]

> *The parties further agree and expressly agree that if any matters inconsistent with the provisions of this Agreement appear in any*

[205] Reply, para 176.
[206] Reply, para 177.
[207] Reply, para 177, *citing* **R-014**, Judgment of the Court of First Instance No. 27 C 483/2015-248, para 54.
[208] Reply, para 178, *citing* **CLA-113**, Judgment of the Czech Supreme Court No. 31 Cdo 3986/2009 of 8 February 2012.
[209] Reply, para 179.
[210] Reply, para 184, *quoting* **C-004**, Maixner Land Agreement, para 5; **Exhibit C-005**, Jaroševský Land Agreement, Annex no. 1, Article IV., para 5.

> *document executed in connection with this Agreement, the parties agree to enter into appropriate amendments or otherwise modify such documents in an appropriate manner to conform to the intentions described in this Agreement.*

232. In Mr. Halevi's view, the purpose of this clause was to mitigate issues such as the invalidity of Project contracts. For Mr. Halevi, it follows that "the potential voidness due to Section 196a could not have threatened the Claimant's investment, as there was an easy solution (envisaged in the respective contracts) to work around such a deficiency."[211]

5. Estoppel

233. As a further alternative, Mr. Halevi submits that the Czech Republic should be prevented from arguing that the Company never acquired ownership of the Land based on "the principle of estoppel, or, as sometimes used, the principles of *venire contra factum proprium* (no one can be set against its own conduct) or *nemo auditur propriam turpitudinem allegans* (no one shall profit from its own wrongful conduct)."[212]

234. Citing *Chevron v. Ecuador*, Mr. Halevi argues that under international law, estoppel:[213]

> *operates to prevent a State contesting before the Court a situation contrary to a clear and unequivocal representation previously made by it to another State, either expressly or impliedly, on which representation the other State was, in the circumstances, entitled to rely and in fact did rely, and as a result the other State has been prejudiced or the State making it has secured some benefit or advantage for itself.*

235. Similarly, says Mr. Halevi, Czech law includes the principle that "[n]o one may benefit from acting unfairly or unlawfully. Furthermore, no one may benefit from an unlawful situation which the person caused or over which he has control."[214]

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[211] Reply, para 186.
[212] Reply, para 224.
[213] Reply, para 225, *quoting* **CLA-118**, *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (I)*, PCA Case No. 2007-02/AA277, Partial Award on the Merits of 30 March 2010, para 350.
[214] Reply, paras 70, 227, *quoting* **CLA-099**, Act No. 89/2012 Coll., Czech Civil Code, Section 6(2).

236. In respect of the standard for estoppel under international law, Mr. Halevi observes that the principle will apply where there is:[215]

> *i. an unambiguous statement of fact;*
>
> *ii. which is voluntary, unconditional and authorized; and*
>
> *iii. which is relied on in good faith to the detriment of the other party or to the advantage of the party making the statement.*

237. Mr. Halevi notes that the tribunal in *Karkey v. Pakistan* applied this principle, finding that "Pakistan has consistently maintained that Karkey's investment was established in accordance with Pakistani laws, and it is now estopped from arguing that the investment must be deemed invalid on the basis of a breach of those laws."[216]

238. Applying the standard for estoppel to the facts in this case, Mr. Halevi contends that "[t]here is only one entity to blame for that alleged breach [of Section 29 of the Act on Land]: the Respondent itself."[217] Mr. Halevi again recalls that the Czech authorities selected the Land to be released as replacement land and transferred that land to Messrs. Maixner and Fidrmuc, who had no say regarding the land they would receive. Further, says Mr. Halevi, the Czech Republic repeatedly confirmed that the Company and its legal predecessors were the rightful owners of the Land, including by:

a. Repeatedly registering the transfer of ownership of the Land in the Land Registry;

b. Concluding the Future Exchange Agreement with Mr. Maixner in 2009, which explicitly recognized Mr. Maixner as the owner of the Land;

c. Levying the real estate transfer tax on the Land in 2010; and

d. Levying the real estate tax on the Land each year between 2011 and 2019.

239. In fact, says Mr. Halevi, the Czech Republic never questioned that the Company and its legal predecessors were the rightful owners of the Land at any time between 1998

[215] Reply, para 228 *citing* **CLA-119** *Oded Besserglik v. Republic of Mozambique*, ICSID Case No. ARB(AF)/14/2, Award of28 October 2019, para 423.
[216] Reply, para 226, *quoting* **RLA-022**, *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award of22 August 2017, para 628.
[217] Claimant's PHB, para 183.

and the Czech Republic's initiation of Lawsuit Three on 10 April 2012, and the tax authorities continued to treat the Company as the rightful owner until the ownership changed in the Land Registry following the 2018 first instance court judgment in Lawsuit Four.

240. In light of these circumstances, Mr. Halevi concludes that the Czech Republic must be estopped from relying on an error that it caused itself to escape its liability under the BIT.[218] Nor should the Czech Republic be permitted to rely on its own failure to comply with domestic law to escape liability.[219]

B. The Respondent's Position

241. The heart of the Czech Republic's defense is that Original Land Transfers from the Land Fund were made in breach of the blocking provision in Section 29 of the Act on Land, rendering them void *ex tunc* pursuant to Section 39 of the Czech Civil Code. It is the Czech Republic's case that Messrs. Maixner and Fidrmuc therefore never became the owners of the Land, and all subsequent Land transfers, including the 2010 Land Purchase Agreements with the Company, were also void.[220]

1. The Original Land Transfers

242. The Czech Republic argues that the Original Land Transfers were subject to Section 29 of the Act on Land, the Czech Republic because:[221]

> *(1) the Land was owned by the Knights of the Cross prior to 1948;*
>
> *(2) the Respondent became owner of the Land in the period after 1948;*
>
> *(3) in 1998, the Land was subject to the blocking provision in Sec. 29 of the Act on Land; and*
>
> *(4) in 1998, Messrs. Maixner and Fidrmuc concluded the Original Land Transfers with the Land Fund.*

243. According to the Czech Republic and its legal expert [redacted], the consequence of these facts is that the Original Land Transfers breached the blocking provision in Section 29 of the Act on Land and were void *ex tunc*, meaning that the Original Land

[218] Claimant's PHB, para 183.
[219] Claimant's PHB, para 184, *citing* **CLA-136**, *Ioannis Kardassopoulos v. The Republic of Georgia*, Decision on Jurisdiction of 6 July 2007, para 182.
[220] Rejoinder, paras 33-36; 200-201.
[221] Rejoinder, para 33.

Transfers must be completely disregarded as if they never had any legal effect. As [redacted] explains:[222]

> *The interpretation of the provisions on invalidity was settled in both case-law and theory at the time when the relevant agreements were concluded in that such invalidity arose directly from the law (ex lege) and it was therefore not necessary for anyone to invoke the invalidity (the court took the invalidity into account ex officio). The invalidity had effects from the outset (ex tunc); a contract that was null and void was thus regarded as never concluded and could not give rise to the envisaged (intended) legal consequences.*

244. For the Czech Republic, it follows that the Land was never transferred from the State to Messrs. Maixner and Fidrmuc.

245. The Czech Republic denies that this conclusion is affected by the fact that the Cadastral Office recorded Messrs. Maixner and Fidrmuc as owners of the Land in the Land Registry on the basis of the Original Land Transfers. The Czech Republic therefore rejects Mr. Halevi's view that the Cadastral Office should have examined the validity of transfer contracts and that the transferees of the Land were entitled to rely on the entries in the Land Registry.

246. According to the Czech Republic, the Cadastral Office lacked both the jurisdiction and the means to declare the Original Land Transfers void on the basis of Section 29 of the Act on Land.[223] Specifically, under Section 5(1) of the Cadastral Act, the Cadastral Authority examines certain facts on the date of filing but is not required to examine the overall validity of land transfer agreements or to recheck previous ownership titles entered in the Land Registry.[224] According to [redacted] in [redacted] Expert Report, there was not any high court case law explicitly addressing whether the Cadastral Office was to review the compliance of prospective land transfers with Section 29 of the Act on Land, and:[225]

> [t]*he actual options available to the Cadastral Office in terms of determining that the given owner's disposal of the land was subject to a restriction following from Section 29 of the Act on Land were very*

[222] [redacted] Expert Report, para 12.
[223] Rejoinder, paras 40, 149-158, *citing* **CLA-008**, Act No. 265/1992 Coll., on the registration of ownership and other rights in rem to immovable property, Sec. 5(1).
[224] Statement of Defence, para 179, *citing* **RLA-6**, Act No. 344/1992 Coll., on Cadastral Office.
[225] [redacted] Report, para 63.

> *limited, especially because a blockage pertaining to a specific plot of land was not recorded in the Land Registry.*

247. [redacted] did cite a 2000 decision of the Civil and Commercial Division of the Supreme Court, which [redacted] says was "aimed to unify the courts' hitherto inconsistent decision-making regarding various aspects of the Cadastral Act." The Court stated that, if a land acquisition title consists of a contract:[226]

> *The Cadastral Office merely needs to ascertain its existence if it intends to make a decision in the proceedings on permitting an entry. The Cadastral Office does not examine the validity of the legal act on the basis of which the right vested in the entity involved in the legal act being addressed was registered in the Land Registry, not even to the extent to which it is authorised, pursuant to Section 5(1) of Act No. 265/1992 Coll., to assess the validity of the legal act on the basis of which the right is yet to be registered in the Land Registry.*

248. The Czech Republic also rejects Mr. Halevi's reliance on the 2014 and 2017 Constitutional Court decisions to support his case, because: (a) Czech law does not recognize judicial precedent as a source of law; (b) these decisions could not apply to a land transfer made earlier; and (c) the Constitutional Court specified that the parties may rely on the records in the Land Registry for ownership only if they are acting in good faith, which was not the case here for the Company (as discussed below).[227]

249. The Czech Republic contends that not only were the Original Land Transfers void under Section 29 of the Act on Land, but so – necessarily – were all the subsequent transfers, including the 2010 Land Purchase Agreements. In addition, the Czech Republic argues that the subsequent transfers did not meet the general test for passage of property ownership under Czech law, which includes two cumulative conditions: (a) there must be a valid legal ground for the transfer (a "*causa*"); and (b) the transferor must be the owner of the property in question.[228]

250. The Czech Republic recognizes that "[t]here are two relevant alternative ways for a person to acquire ownership of a property in the event that one or both above requirements are not met": good faith acquisition and usucaption.[229] However, as

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[226] [redacted] Report, para 66, quoting [redacted] **ER-043**, the Opinion of the Civil and Commercial Division of the Supreme Court of the Czech Republic of 28 June 2000, Cpjn 38/98.
[227] Rejoinder, paras 41-42.
[228] Respondent's PHB, para 43; Transcript, Day 2, 51:8-13 [redacted]
[229] Respondent's PHB, para 44.

discussed below, the Czech Republic argues that neither of these legal theories applies in this case, and both theories have already been conclusively rejected by the Czech courts.[230]

2. Good Faith Acquisition

251. As a preliminary point, the Czech Republic notes that the theory of good faith acquisition is not provided for in the Czech Civil Code and instead evolved through the case law of Czech courts.[231] In its view, the theory did not even exist until after the last relevant transfers of the Land in 2010.[232] In fact, says the Czech Republic, the Czech Constitutional Court and the Grand Chamber of the Czech Supreme Court held in 2006 and 2009, respectively, that mere good faith is insufficient to acquire ownership of property from a non-owner.[233] For the Czech Republic, it follows that "the theory presented by the Claimant is simply inapplicable to the relevant transfers of the Land."[234]

252. The Czech Republic argues further that, even if the good faith acquisition theory did exist at the relevant time, it would not assist Mr. Halevi. According to the Czech Republic, for the good faith theory to apply, each of the following conditions must be met: "(i) good faith belief of the transferee that the transferor is the owner of the property; (ii) the contract is not invalid for any other reason than the lack the ownership; (iii) the transferor lacking ownership; and possibly also (iv) the transfer being for consideration."[235]

253. The Czech Republic argues that the second condition was not met, because the voidness of the Original Land Transfers was not caused by a lack of ownership of the transferor, but by the violation of Section 29 of the Act on Land.[236] The Czech Republic and [redacted] consider that, absent a valid contract, the good faith acquisition theory cannot cure the voidness of a land transfer that violates Section 29.[237]

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[230] Rejoinder, para 80.
[231] Respondent's PHB, para 48.
[232] Rejoinder, para 90; Respondent's PHB, para 48.
[233] Rejoinder, paras 94-95, *citing* [redacted] **ER-039**, Judgment of the Constitutional Court of 1 August 2006, File No. II. ÚS 349/03; **RLA-054**, Judgment of the Czech Supreme Court No. 31 Odo 1424/2006 of 9 December 2009, p. 7.
[234] Rejoinder, para 97.
[235] Respondent's PHB, para 48.
[236] Rejoinder, para 30.
[237] Respondent's PHB, para 49; Transcript, Day 2, 162:4-17 [redacted]

254. The Czech Republic and [redacted] accept that there have been a few cases in which the Constitutional Court "built upon the good faith acquisition theory and mentioned that there might be circumstances of a truly exceptional nature that would justify the acquisition of ownership despite breach of Sec. 29 of the Act on Land."[238] [redacted] discusses an example in which a good faith acquirer placed legitimate structures on the land.[239] According to the Czech Republic, "[t]his approach was taken in these extreme cases because it seemed unreasonable to force a person who had acquired a piece of land in good faith and then invested significant amounts in the construction of buildings on the land, believing he was the owner, to return that land."[240]

255. However, the Czech Republic sees no basis for taking that approach here and emphasizes that Mr. Halevi did not even argue the good faith acquisition theory in his written submissions. The Czech Republic adds that the Czech courts found in connection with Lawsuit Three that no such exceptional circumstances warranting application of the theory were present in the case of the Land.[241]

256. Beyond these arguments, the Czech Republic's position is that, in any event, neither the Company nor its legal predecessors acquired the Land in good faith, meaning that the fundamental requirement of the good faith acquisition theory is not met.[242]

a. Applicable Standard of Good Faith

257. In response to the Tribunal's question (d) concerning the relevant standard for good faith, the Czech Republic concurs with Mr. Halevi that the applicable standard is found in the Constitutional Court's CC Decision 50/04. To recall, that Decision provides as follows:[243]

> *Good faith existing 'in view of all the circumstances' ceases to exist at the moment when the possessor learns about facts that* ***objectively must have caused doubt*** *whether he was the lawful owner of the thing or the lawful holder of the right being exercised.*

[238] Respondent's PHB, para 67; Transcript, Day 2, 105:7-25 [redacted]
[239] Transcript, Day 2, 105:7-25 [redacted]
[240] Respondent's PHB, para 68.
[241] Respondent's PHB, para 68.
[242] Rejoinder, para 98.
[243] Respondent's PHB, paras 52, 65, *quoting* [redacted] **ER-25**, Constitutional Court Decision File No. III.ÚS 50/04 of 3 June 2004 (*Respondent's emphasis*).

258. The Czech Republic does not agree with Mr. Halevi's position that there are additional rules or exceptions to this standard that must be considered. First, the Czech Republic dismisses Mr. Halevi's reliance on a 2020 Constitutional Court decision to propose a rule that a possessor's good faith is reinforced if it prevails in a lawsuit challenging its ownership.[244] The Czech Republic considers this argument misleading, as "the Constitutional Court merely found in that particular case that a dismissal of a lawsuit reaffirmed good faith because the court in the dismissing decision specifically found that the relevant transferor was not the owner of the property in question."[245] As discussed below, the Czech Republic points out that no such ruling was ever issued in relation to the Land.

259. Second, the Czech Republic also charges Mr. Halevi with misreading Section 130(1) of the Czech Civil Code, which provides: "If the possessor, having regard to all the circumstances, believes in good faith that the property or thing belongs to him, he is the rightful possessor. In case of doubt, the possession shall be deemed rightful."[246] The Czech Republic denies that this provision concerns a possessor's doubt as to whether its possession is in good faith; instead, it "creates an evidentiary rule that if a lack of good faith cannot be established, then possession shall be deemed rightful."[247] Here, the Czech Republic contends that it has established a lack of good faith acquisition of the Land.

260. Third, the Czech Republic denies Mr. Halevi's suggestion that the good faith acquisition standard shifts in favor of a possessor who relies on acts of the State. In the Czech Republic's view, this argument has no support in Czech case law and is based instead on a misrepresentation of commentary. The Czech Republic points out that the full quote from the commentary relied upon by Mr. Halevi includes the bolded text, which Mr. Halevi omitted:[248]

> ***It can be argued that, unless it can be shown that the Possessor must have been aware of the defect****, a mistake caused by a state authority is*

[244] Respondent's PHB, paras 59-60.
[245] Respondent's PHB, para 60, *citing* **CLA-170**, Judgment of the Czech Constitutional Court No. IV.ÚS 2856/19 of 22 September 2020, paras 77-78.
[246] Respondent's PHB, para 59, *quoting* **RLA-053**, Act No. 40/1964 Coll., Civil Code, Sec. 130(1).
[247] Respondent's PHB, para 64.
[248] Respondent's Reply PHB, para 16, *quoting* **CLA-188**, Švestka et. al., Občanský zákoník, I, II. 2. edition (Civil Code Commentary), § 130, p. 740, marg. no. 4, p. 7 (*Respondent's emphasis*).

> *excusable, as it is based on the citizen's trust in the state and its authorities.*

Thus, says the Czech Republic, this point is "irrelevant at best," given that Mr. Maixner and others knew of the defect in the Land Registry after Lawsuit One, as discussed below.[249]

261. In sum, the Czech Republic concludes that the applicable standard of good faith is simply that found in the Constitutional Court 's CC Decision 50/04, namely that good faith ceases to exist when the possessor "learns about facts that objectively must have caused doubt" about its lawful ownership.[250]

b. Existence of Good Faith

262. Applying this standard to the facts here, the Czech Republic's position is that:[251]

> *Mr. Maixner, the Claimant and other directors of the Company were aware of the breach of Sec. 29 of the Act on Land and the consequent voidness of the Original Land Transfers. It is undisputed between the Parties that their knowledge was attributable to the Company, which, therefore, never had good faith belief that the sellers of the Land could have been its rightful owners.*

263. The Czech Republic accepts that "upon conclusion of the Original Land Transfers in March 1998, Messrs. Maixner and Fidrmuc may have been in good faith that they would become owners of the Land."[252] However, in the Czech Republic's view, Messrs. Maixner and Svoboda (who purchased part of the Land from Mr. Fidrmuc) lost any good faith in their ownership of the Land as a result of Lawsuit One, in which they gained sufficient knowledge to become aware that the Original Land Transfers violated the blocking provision in Section 29 of the Act on Land and were therefore void.[253]

(i) Lawsuit One

264. The Czech Republic recounts that the Knights of the Cross filed Lawsuit One against Messrs. Maixner and Svoboda, arguing that they had owned the Land without

[249] Respondent's Reply PHB, para 16.
[250] [redacted]**ER-25**, Constitutional Court Decision File No. III.ÚS 50/04 of 3 June 2004.
[251] Rejoinder, para 106.
[252] Respondent's PHB, para 104.
[253] Rejoinder, para 58.

interruption since 1454. To establish this claim, the Knights of the Cross submitted historical records showing that they were the owners of the Land prior to the communist regime.[254] According to the Czech Republic:[255]

> *The sole fact that the Land was originally owned by the Knights of the Cross inevitably leads to a conclusion that the blocking provision was breached, and the Original Land Transfers are void. Hence, based on these documents alone, Mr. Maixner must have known and undoubtedly knew that the transfer of ownership had not occurred.*

The Czech Republic also stresses that the Knights of the Cross expressly invoked Section 29 of the Act on Land in Lawsuit One as having blocked the transfer of ownership to Mr. Maixner.

265. In the Czech Republic's view, Mr. Maixner's exposure to the record in Lawsuit One is enough to prove his objective loss of good faith possession of the Land. In fact, says the Czech Republic, "the behaviour of Mr. Maixner throughout the proceedings initiated by Lawsuit #1, goes beyond the objective standard and shows actual knowledge of the voidness of the Original Land Transfers."[256] Specifically, the Czech Republic contends that Mr. Maixner expressly recognized the historical ownership of the Land by the Knights of the Cross when he stated that it was "undisputed that the land in question was originally owned by the Plaintiff [the Knights of the Cross]."[257] Given that Mr. Maixner developed the theory in Lawsuit One that he had acquired the Land through usucaption rather than through the Original Land Transfers, the Czech Republic concludes that he was clearly aware at that time that the Original Land Transfers were void.[258]

266. The Czech Republic asserts further that, after the Knights of the Cross invoked Section 29, Mr. Maixner acknowledged – at least implicitly – that the Original Land Transfers were likely void, arguing only that the Knights of the Cross, as a non-party to the relevant contracts and lacked standing to challenge them:[259]

> *As regards the Plaintiff's claim that the transfer of the ownership title from the State to the Defendant was prevented by the blocking provision of Section 29 of the Land Act, the Defendants refer to ruling of the*

[254] Rejoinder, para 45, *citing* **R-001**, Knights of the Cross' Lawsuit of 29 December 2000, pp. 1-3.
[255] Rejoinder, para 46; see Respondent's PHB, para 104.
[256] Respondent's PHB, para 106.
[257] Rejoinder, para 47.
[258] Rejoinder, para 47, *citing* **R-003**, Mr. Maixner's Response to the Lawsuit of 13 October 2003, p. 3.
[259] Rejoinder, paras 48-50, *quoting* **R-005**, Mr. Maixner's Final Proposal of 6 January 2004, para 4.

> *Supreme Court of the Czech Republic File No. 20 Cdo 1280/2002, which ruled on the issue in a similar case in that while non-compliance with this provision establishes "likelihood" of invalidity of the contract, no person other than the parties to the contract has an urgent legal interest in declaring a purchase contract invalid and the failure to prove an urgent legal interest is a separate and primary ground for which an action for declaration cannot stand and must be dismissed.*

267. In the Czech Republic's view, the loss of Mr. Maixner's good faith is not dependent on the outcome of Lawsuit One. As stated by counsel at the Hearing: "The question of knowledge, or of sufficient knowledge for doubt, is a question of fact" and "not a question of whether the judgment in first instance stands or not."[260] The relevant question is not what the courts decided, but whether Mr. Maixner was exposed to information in the course of Lawsuit One that objectively must have created a doubt as to his ownership – which, in the view of the Czech Republic, he clearly was.[261] The Czech Republic adds that the first instance court judgment further demonstrates the loss of any good faith because the court expressly concluded that Mr. Maixner had never owned the Land due to Section 29 of the Act on Land:[262]

> *[I]t is beyond any doubt that the Defendants are not the owners of the relevant real estate, precisely with regard to the aforementioned Section 29 of Act No. 229/1991 Coll. (the Act on Land). That provision renders absolutely null and void all contracts by virtue of which the Defendants and their legal predecessors were to acquire the relevant real estate, precisely because the original owner of the land in question was the Plaintiff as a church entity.*

268. The Czech Republic highlights that Mr. Maixner did not challenge this finding of the first instance court. Instead, on appeal, he argued that the Knights of the Cross lacked legal standing to challenge the Original Land Transfers because they were not a party to them.[263] He succeeded with this argument, as the appellate court found that ownership of the Land had in fact passed to the Czech State.[264] Although the Czech Republic accepts that the appellate court did not address the voidness of the Original Land Transfers, it argues that the court's conclusion that the Land was expropriated by the communist regime after 1948 made clear that the Original Land Transfers had

[260] Transcript, Day 1, 171:9-12.
[261] Respondent's PHB, 109.
[262] Rejoinder, para 51, *quoting* **R-006**, Judgment of the Court of First Instance No. 25 C 239/2000-120, p. 8
[263] Rejoinder, para 53, *citing* **R-007**, Mr. Maixner's Appeal of 11 May 2004, para I.
[264] Statement of Defence, paras 46-47; Rejoinder, para 55.

breached Section 29 of the Act on Land and were thus void.[265] The Czech Republic adds that the appellate court's ruling had no effect on the first instance court's determination that Mr. Maixner did not own the Land.[266]

269. Thus, for the Czech Republic, Lawsuit One "establishes beyond any doubt that Mr. Maixner was fully aware that he and his associates had not acquired ownership in the Land."[267] Consequently, he could not have possessed the Land in good faith following Lawsuit One.[268]

(ii) Alleged Sources of Good Faith

270. The Czech Republic rejects Mr. Halevi's reliance on statements of the Czech authorities and the Settlement Agreement to support Mr. Maixner's good faith belief in his ownership despite Lawsuit One. In the Czech Republic's view, these sources can neither cure the voidness of the Original Land Transfers nor disprove the knowledge Mr. Maixner gained through Lawsuit One.[269] As the Czech Republic puts it: "[o]nce Mr. Maixner learned that there is a cause for voidness he cannot unlearn this and restore his good faith by relying on circumstantial or simply irrelevant sources."[270] In any event, the Czech Republic denies that any of these sources could support a finding of good faith. The Czech Republic also denies that Czech officials ever recognized the validity of the Original Land Transfers.[271]

271. ***Statements of the Land Fund***: The Czech Republic describes the two statements of the Land Fund referred to by Mr Halevi as irrelevant. Those statements are:

a. Article IV of the 1998 Original Land Transfers, which states: "Both parties declare that they are not aware of any facts that would prevent the conclusion of this Agreement";[272] and

b. The Land Fund's letter in 2003 to the first instance court in Lawsuit One stating that the documents on which the Land Fund relied in concluding the Original

[265] Respondent's PHB, para 11; Transcript, Day 2, 86:19-87:2 [redacted]
[266] Rejoinder, para 55.
[267] Rejoinder, para 57.
[268] Rejoinder, para 58.
[269] Respondent's PHB, para 107.
[270] Rejoinder, para 63.
[271] Rejoinder, Section 2.4.4.
[272] **C-009**, Land Transfer Agreement (Maixner), Art. IV; **C-010**, Land Transfer Agreement (Fidrmuc), Art. IV.

> Land Transfers did not show the Knights of the Cross as the original owners of the Land and that the Land was no longer owned by the State.[273]

272. The Czech Republic contends that both of these statements merely reflect that the Land Fund did not have access to the evidence submitted by the Knights of the Cross in Lawsuit One, and that the Land Fund was unaware of the Knights of the Cross' historical ownership of the Land.[274] For the Czech Republic, it is notable that even after receiving the Land Fund's letter in 2003, the first instance court assessed the overall evidence and determined "beyond any doubt that the Defendants are not the owners of the relevant real estate, precisely with regard to the aforementioned Section 29."[275]

273. According to the Czech Republic, the Land Fund did not become aware of the Knights' claim to the Land until February 2012 when the Knights wrote to the Land Fund to demand that it commence proceedings to obtain a declaration that the Czech Republic owned the Land, on the basis of the attached judgments in Lawsuit One.[276] At the Hearing, counsel for the Czech Republic emphasized that this occurred before the Church Restitution Fund was enacted and the Knights were given standing to commence their own proceedings, showing that the Act was not a trigger to the proceedings that Mr. Halevi describes as expropriatory.[277]

274. ***Statement of the Ministry of Agriculture***: Regarding the Ministry of Agriculture's 2007 letter responding to an inquiry from Mr. Maixner, which stated that plots of the Land did "not appear in our database of land for which a restitution claim has been made," the Czech Republic denies that the Ministry took any position as to whether the Land was subject to the blocking provision in Section 29 of the Act on Land or whether it would be subject to future church restitution claims.[278] Rather, says the Czech Republic, the Ministry merely confirmed that there were no pending claims, which was true at the time. As the first instance court observed when considering this letter in Lawsuit Two, "[a]s a matter of fact, this was the only confirmation that could be issued."[279]

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[273] **C-067**, Letter of the Land Fund of 26 November 2003, paras. I and III.
[274] Rejoinder, paras 127-129.
[275] Rejoinder, para 130, *quoting* **R-006**, Judgment of the Court of First Instance No. 25 C 239/2000-120, p. 8
[276] **C-065**, Letter of the Knights of the Cross to the Land Fund of 13 February 2012.
[277] Transcript, Day 1, 124:19 – 125:12.
[278] Rejoinder, para 135, *quoting* **C-068**, Letter of the Ministry of Agriculture of 25 June 2007.
[279] Rejoinder, para 136, *quoting* **R-009**, Judgment of the Court of First Instance No. 27 C 67/2012-203, para 43.

275. ***The Future Exchange Agreement***: Similarly, the Czech Republic denies that the Future Exchange Agreement can be read as a statement of the Land Fund recognizing Mr. Maixner's ownership of the Land. Although the Czech Republic accepts that a recital in the Future Exchange Agreement states that Mr. Maixner is the owner of one of the land plots comprising the Land, it argues that this statement is a representation by Mr. Maixner only that he owns the property subject to the Future Exchange Agreement terms and cannot be attributed to the Land Fund, particularly in circumstances where the Agreement was concluded at Mr. Maixner's initiative.[280]

276. ***Taxation***: The Czech Republic considers taxation irrelevant to this dispute in general and to the issue of good faith specifically. The Czech Republic points out that both types of taxes to which Mr. Halevi refers – real estate transfer tax and real estate tax – are: (a) declared by the taxpayer and (b) collected based exclusively on information in the Land Registry.[281] For the Czech Republic, "[i]t follows that all information that the taxation may provide is derivative either from the Claimant and his associates or the Land Registry," and therefore cannot be a basis of a good faith belief in ownership.[282]

277. ***The Settlement Agreement***: As for the Settlement Agreement, the Czech Republic denies that it had any impact on the substantive rights to the Land because it was executed by two parties with no ownership interest in the Land – the Company and the Knights of the Cross.[283] In the view of the Czech Republic, when the Settlement Agreement was concluded in October 2005, the State was the only owner of the Land; although the Knights of the Cross stood to benefit from the blocking provision, they "had no proprietary rights towards the Respondent because the relevant regulations for church restitutions had not been enacted yet."[284]

278. In this respect, the Czech Republic cites a principle in the Czech Civil Code that "no one can transfer more rights (to another) than he himself has," meaning that a party cannot dispose of ownership it does not possess. The Czech Republic argues that an agreement concluded in violation of this principle is void under Section 37(2) of the Czech Civil Code, which provides: "A legal act, the subject of which is an impossible

[280] Rejoinder, paras 138-142, *citing* **C-062**, Future Exchange Agreement.
[281] Rejoinder, paras 145-147, *citing* **RLA-057**, Act No. 338/1992 Coll., on Real Estate Tax, Section 13a; **RLA-058**, Act No. 357/1992 Coll., on Inheritance Tax, Gift Tax and Real Estate Transfer Tax, Section 21.
[282] Rejoinder, para 148.
[283] Rejoinder, para 68.
[284] Rejoinder, para 69.

performance, is void."[285] For the Czech Republic, it follows that the provision in the Settlement Agreement acknowledging Mr. Maixner's ownership is void, and the only effective part of the Settlement Agreement was the Knights of the Cross' agreement to withdraw the extraordinary appeal in Lawsuit One in exchange for compensation.[286]

279. The Czech Republic recalls that the first instance court in Lawsuit Two noted that the Company had confirmed that the purpose of the Settlement Agreement was for the Knights of the Cross to withdraw their appeal in Lawsuit One, and that the Knights of the Cross had done so, thereby fulfilling the purpose of the Settlement Agreement.[287] Ultimately, the court found that the Settlement Agreement was concluded between two non-owners of the Land and was therefore void. Moreover, says the Czech Republic, the court expressly found that the Settlement Agreement did not support a finding of good faith acquisition, but rather the opposite:[288]

> *the settlement agreement does not support the Defendant's good faith, but rather negates it. The purpose of the settlement agreement was to settle the disputed ownership title to the relevant land. If Ing. Maixner and CENTRUM CZ spol. s r.o. considered the ownership title disputable and this made them enter into a settlement agreement in this regard, then logically they could not – let alone in view of all the circumstances – have been in good faith that they had the ownership title to the land up until then.*

280. According to the Czech Republic, the appellate court in Lawsuit Two did not find any error in this finding, instead dismissing the case on procedural grounds,.[289]

281. The Czech Republic also relies on Lawsuit Four, in which the first instance court found that the Settlement Agreement could not have restored the good faith that Mr. Maixner and his associates lost upon receipt of Lawsuit One.[290] The Czech Republic highlights that this finding was upheld in the appellate court judgment, which the Company did not appeal.[291] Thus, the Czech Republic sees no basis for Mr. Halevi's attempt to rely once again on the Settlement Agreement in this proceeding.

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[285] Rejoinder, para 70, *quoting* **RLA-053**, Czech Civil Code, Sec. 37(2).
[286] Rejoinder, paras 71-72.
[287] Rejoinder, para 73, *citing* **R-009**, Judgment of the Court of First Instance No. 27 C 67/2012-203, para 76.
[288] Rejoinder, para 231, *quoting* **R-009**, Judgment of the Court of First Instance No. 27 C 67/2012-203, para 74.
[289] Rejoinder, para 233.
[290] Rejoinder, para 290.
[291] Rejoinder, para 290, *citing* **R-013**, Judgment of the Appellate Court No. 20 Co 287/2018-292, para 17.

(iii) The Company's Knowledge

282. The Czech Republic submits that, like Mr. Maixner, Mr. Halevi and other directors of the Company were aware of the breach of Section 29 of the Act on Land and the voidness of the Original Land Transfers. As it is undisputed that their knowledge is attributable to the Company, the Czech Republic contends that the Company could not have been in good faith when entering into the 2010 Land Purchase Agreements.[292]

283. As for the attribution of Mr. Maixner's knowledge to the Company, the Czech Republic points to Mr. Halevi's express acknowledgment in the Reply that: "Mr. Maixner was the executive director of the Company, and his knowledge, legitimate expectation and good faith must, as the Respondent correctly states, extend to the Company."[293]

284. The Czech Republic also highlights Mr. Halevi's submissions in the Reply that he had conducted due diligence and had full knowledge of the legal status of the Land.[294] For example:

a. "the Claimant (and the Company) had full knowledge of the legal status of the Land at the time he acquired the stake in the Company, and the information gathered only reinforced his confidence that the Land was free of any third-party claims, including restitution claims."[295]

b. "the Claimant submits he had all relevant information obtained inter alia from Mr. Maixner, Mr. Jaroševský and the legal advisors of the Company including the information pertaining to the results of Lawsuit #1, the concluded Settlement Agreement, the Future Purchase Agreement, the Future Exchange Agreement and the confirmations issued by the Ministry of Agriculture and Land Fund."[296]

c. "the Claimant was fully aware of the legal status of the Land at the time the Land was acquired by the Company from Mr. Maixner and Mr. Jaroševský."[297]

[292] Rejoinder, para 203.
[293] Rejoinder, para 203; Respondent's PHB, para 138, *citing* Reply, para 406.
[294] Rejoinder, para 164.
[295] Reply, para 43.
[296] Reply, para 46.
[297] Reply, para 49.

285. For the Czech Republic, it follows that Mr. Halevi was aware of the Knights of the Cross' historical ownership of the Land and that the Land was subject to Section 29, which equates to knowledge that the Original Land Transfers were void.[298] The Czech Republic concludes, therefore, that "from the moment that the Claimant learned 'all relevant information', he was in the same legal position as Mr. Maixner as regards knowledge of the voidness of the Original Land Transfers and the lack of good faith."[299]

286. Additionally, the Czech Republic asks the Tribunal to make an adverse inference that documents Mr. Halevi failed to produce in response to the Czech Republic's document requests RDR-001 to RDR-008 would have shown that "within the pre-investment due diligence, the Claimant learned about the voidness of the Original Land Transfers and their impact on the Company's ability to acquire the Land."[300] The Czech Republic summarizes those document requests as follows:[301]

> *(1)* ***RDR-001 and RDR-002****: Any records of communication between the Claimant, the Company and other shareholders of the Company regarding pre-investment due diligence in the period between 24 March 2008 and 24 September 2010, i.e. two years prior to the conclusion of the Development Agreement and six months after.*
>
> *(2)* ***RDR-003 and RDR-004****: Any records of communication between the Claimant and his legal, economic or other advisors regarding pre-investment due diligence in the period between 24 March 2008 and 24 September 2010, i.e. two years prior to the conclusion of the Development Agreement and six months after.*
>
> *(3)* ***RDR-005****: Any records of communication between the Claimant and Mr. Maixner regarding the ownership of the Land, Original Land Transfers or disputes with the Knights of the Cross in the period between 24 March 2007 and 24 March 2010, i.e. three years prior to the conclusion of the Development Agreement.*
>
> *(4)* ***RDR-006, RDR-007 and RDR-008****: Any records of communication between the Claimant, Mr. Maixner and the Company regarding the ownership of the Land, Original Land Transfers or disputes with the Knights of the Cross in the period between 24 March 2010 and 3 February 2022, i.e. between the conclusion of the Development Agreement and the filing of the Request for Arbitration.*

[298] Rejoinder, para 165.
[299] Rejoinder, para 168.
[300] Rejoinder, paras 169-188; Respondent's PHB, para 147.
[301] Rejoinder, para 170.

287. According to the Czech Republic, the only documents Mr. Halevi produced that were actually responsive to these requests were the minutes of three board meetings.[302] Yet, in its view, the circumstances of the case, Mr. Halevi's submissions, [redacted] testimony and the content of the meeting minutes produced all suggest that additional documents exist but were withheld.[303]

(iv) Domestic Court Judgments

288. The Czech Republic argues that the Czech courts have already determined the issue of the Company's alleged good faith acquisition of the Land.

289. The Czech Republic points to Lawsuit Two, in which the first instance court found as follows:[304]

> *It is irrelevant that after* [Lawsuit #1] *had been closed through a final decision, the* [Knights of the Cross] *entered into negotiations with Ing. Maixner …,* ***because in view of all the circumstances, Ing. Maixner could no longer have been in good faith that he owned the land at that time*** *… For the same reasons, it is irrelevant that, after the dispute had ended, the Land Fund entered into negotiations with Ing. Maixner as the owner of the land and concluded with him a lease agreement for plot of land No. 1596/5 on 15 January 2009 and a preliminary exchange agreement on 15 January 2009, and that the Fund joined an agreement on the assignment of rights and obligations on 7 June 2010.* ***It was not necessary in terms of Ing. Maixner losing his good faith in view of all the circumstances that he and CENTRUM CZ spol. s r.o. be informed by the Land Fund during proceedings*** **[initiated by Lawsuit #1]** ***about the invalidity of the 1998 land transfer agreements, because they learnt of the facts disproving their good faith directly in the court proceedings.***

290. As noted, the Czech Republic's view is that, in dismissing Lawsuit Two on procedural grounds, the appellate court in Lawsuit Two did not find any error in these substantive findings of the first instance court. Thus, says the Czech Republic, Lawsuit Two "must have reinforced the Claimant's understanding that the Company cannot and did not become the owner of the Land."[305]

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[302] Rejoinder, paras 171-172.
[303] Rejoinder, paras 173-185.
[304] Rejoinder, para 232, *quoting* **R-009**, Judgment of the Court of First Instance No. 27 C 67/2012-203, para 43 (*Respondent's emphasis*).
[305] Rejoinder, para 234.

291. The Czech Republic acknowledges that, in Lawsuit Three, both the first instance and the appellate courts presumed that the Company had acquired the Land in good faith.[306] However, the Czech Republic contends that the Supreme Court annulled those judgments with *ex tunc* effect, meaning no such rulings were ever rendered. This is in contrast to Lawsuits One and Two in which the higher courts merely amended the lower courts' rulings.[307] Specifically, the Czech Republic says the Supreme Court in Lawsuit Three determined that, even if the Company's legal predecessors were in good faith, this would not be enough to cure a breach of Section 29. Furthermore, the Supreme Court addressed the theory of exceptional circumstances, and found that the lower courts had erred in finding that the relevant circumstances of the case – such as the involvement of the Land Fund in the Original Land Transfers and the Cadastral Office's registration of the title in the Land Registry – justified acquisition of ownership despite the breach of Section 29.[308]

292. The Czech Republic rejects Mr. Halevi's argument that the Supreme Court in Lawsuit Three confirmed the existence of good faith. According to the Czech Republic, the Knights of the Cross' appeal did not call on the Supreme Court to review the good faith of the Company. Instead, the Knights of the Cross argued "that the Court of Appeal departed from the settled decision-making practice of the Supreme Court, which shows that transfers of property made in violation of Section 29 of the Land Act are absolutely void as acts *contra legem*, **irrespective of the alleged good faith of the contracting parties**."[309] Thus, says the Czech Republic, any assessment of whether good faith was present fell outside the scope of the appeal.

293. Turning to Lawsuit Four, the Czech Republic recalls that the first instance court found that the Company lacked good faith possession of the Land because the Company knew of the voidness of the Original Land Transfers through Mr. Maixner, who signed the 2010 Land Purchase Agreements on behalf of the Company and who must have known from Lawsuit One that the Knights of the Cross were the original owners of the Land and that the Original Land Transfers were void.[310] The Czech Republic

[306] Rejoinder, paras 237-238; Respondent's PHB, para 165.
[307] Rejoinder, para 242; [redacted] Expert Report, para 94.
[308] Rejoinder, para 239; Respondent's PHB, para 166, *citing* **R-021**, Judgment of the Supreme Court No. 28 Cdo 4546/2015-312, pp. 3-4.
[309] Respondent's PHB, para 18, *quoting* **C-032**, Judgment of the Supreme Court No. 28 Cdo 4546/2015-312, p. 2 (*Respondent's emphasis*).
[310] Rejoinder, para 290.

emphasizes that this finding was upheld in the appellate court judgment, which the Company did not appeal.[311]

294. Therefore, the Czech Republic concludes that the Czech courts have decided the issue of good faith acquisition, against Mr. Halevi's position in this arbitration. The Czech Republic argues that Mr. Halevi "is essentially requesting the Tribunal to apply Czech law in the present case in a different manner than the Czech courts," which is not the Tribunal's role.[312]

295. For these reasons, the Czech Republic denies that the good faith acquisition theory can support the Company's acquisition of the Land.[313]

3. Usucaption

296. The Czech Republic observes that usucaption is governed by Section 134(1) of the Czech Civil Code, which provides that "[t]he rightful possessor becomes the owner of the property if he has held it continuously for … ten years in the case of immovable property."[314] As to the meaning of "rightful possessor," Section 130(1) of the Czech Civil Code states that "[i]f the possessor, having regard to all the circumstances, believes in good faith that the property or thing belongs to him, he is the rightful possessor. In case of doubt, the possession shall be deemed rightful."[315] Based on these provisions, the Czech Republic concurs with Mr. Halevi that acquisition of ownership through usucaption requires that the purported owner (i) possess the property in good faith (ii) for a consecutive period of ten years period of ten years.[316]

297. Critically, the Czech Republic considers that the requirement of "good faith in case of usucaption functions identically as in case of the good faith acquisition theory."[317] Thus, the Czech Republic's position is that neither the Company nor any of its legal predecessors met the requirements for usucaption.[318] [redacted] agrees.[319] As discussed above, the Czech Republic contends that even if Messrs. Maixner and Fidrmuc (and later Mr. Svoboda) had possessed the Land in good faith in executing

[311] Rejoinder, para 290, *citing* **R-013**, Judgment of the Appellate Court No. 20 Co 287/2018-292, para 17.
[312] Rejoinder, para 291.
[313] Rejoinder, para 203.
[314] Respondent's PHB, para 45, *quoting* **RLA-053**, Act No. 40/1964 Coll., Civil Code, Sec. 134(1).
[315] Respondent's PHB, para 46, *quoting* **RLA-053**, Act No. 40/1964 Coll., Civil Code, Sec. 130.
[316] Respondent's PHB, para 113.
[317] Rejoinder, para 115.
[318] Rejoinder, paras 108-121; Respondent's PHB, paras 113-117.
[319] Transcript, Day 2, 53:25-54:9 [redacted]

the Original Land Transfers in 1998, they still would not meet the temporal requirements because their good faith was lost when the Knights of the Cross filed Lawsuit One in December 2000.[320] As for the Company, the Czech Republic submits that it "never met the requirements of good faith possession due to the involvement of Mr. Maixner as one of the directors and the conceded knowledge of the contents of Lawsuit #1 by the other directors."[321]

298. The Czech Republic concludes that the period of rightful possession of the Land lasted, at most, fewer than three years, meaning that the ten-year statutory requirement for usucaption was not met.

4. Expert Appraisal

299. The Czech Republic adds that the 2010 Land Purchase Agreements were also void because the Company failed to procure an expert appraisal of the Land as required under the conflict of interest rules in Section 196a(3) of the Czech Commercial Code. Section 196a(3) provides:[322]

> *If the company or a person controlled by it acquires assets from a founder, shareholder or from a person acting in concert therewith … for consideration in an amount of at least one tenth of the subscribed registered capital as of the date of acquisition …, the value of these assets must be determined on the basis of a report drawn up by an expert appointed by the court.*

300. The Czech Republic notes that the under the 2010 Land Purchase Agreements, Messrs. Maixner and Jaroševský, respectively, sold the Land to the Company for the purchase prices of CZK 72,443,800 and CZK 39,244,500.[323] Because the sellers were shareholders of the Company, and the purchase prices far exceeded one-tenth of the CZK 20,000 in registered capital of the Company, the Czech Republic argues that the Company was required to obtain an expert appraisal for the Land under Section 196a(3) of the Czech Commercial Code.[324]

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[320] Respondent's PHB, para 114.
[321] Respondent's PHB, para 114.
[322] Rejoinder, para 205, *quoting* **RLA-004**, Act No. 513/1991 Coll., Commercial Code, Sec. 196(3)**.**
[323] Rejoinder, para 207, *citing* **C-004**, Maixner Land Agreement, Art. II(1); **C-005**, JaroševskýLand Agreement, Art. II(1.).
[324] Rejoinder, para 207.

301. According to the Czech Republic, the Company's failure to do so renders the 2010 Land Purchase Agreements void with *ex tunc* effect under Section 39 of the Czech Civil Code.[325]

302. The Czech Republic acknowledges that the Supreme Court in 2012 reinterpreted Section 196a(3) of the Czech Commercial Code to apply only when the purchase price is less favorable for a company than the market price.[326] However, the Czech Republic considers this judgment to be irrelevant in the present case because: (a) this approach by the Supreme Court post-dated the 2010 Land Purchase Agreements and is therefore inapplicable; and (b) Mr. Halevi did not provide any evidence to substantiate his allegation that the purchase price was advantageous for the Company.[327]

5. Estoppel

303. The Czech Republic denies that estoppel (or any other principle of international law) would preclude it from arguing that the Company did not acquire ownership of the Land.[328]

304. The Czech Republic recalls that Mr. Halevi set out the estoppel standard in the Reply with reference to *Besserglik v. Mozambique*, where the tribunal stated that estoppel requires an unambiguous statement of fact that a party relies on in good faith to its detriment.[329] In the Czech Republic's view, Mr. Halevi has failed to explain how this standard could apply to the facts in this case, as he "never elaborated on what the 'unambiguous statement' on which he relied is supposed to be or how the reliance led to a loss."[330] As noted above, the Czech Republic denies that it ever recognized the validity of the Original Land Transfers in any the sources cited by Mr. Halevi. To the contrary, says the Czech Republic, "the Respondent's courts in every single one of the judgments regarding the issue of the ownership of the Land consistently recognized the voidness of any transfer of the Land."[331] Furthermore, the Czech Republic again asserts that Mr. Halevi admitted to having information about Lawsuit

[325] Rejoinder, para 210.
[326] Rejoinder, para 211, *citing* **CLA-113,** Judgment of the Czech Supreme Court No. 31 Cdo 3986/2009 of 8 February 2012.
[327] Rejoinder, paras 211-218.
[328] Transcript, Day 1, 138:6-139:12; Respondent's PHB, para 14.
[329] *See* para 236 above.
[330] Respondent's PHB, para 179.
[331] Rejoinder, para 346.

One when making his investment and therefore could not have had a good faith belief that the Company could acquire the Land.[332]

305. To the extent that Mr. Halevi invokes estoppel to establish that he had a property right capable of being expropriated, the Czech Republic considers that Mr. Halevi's "allegation relies on the application of [an] international law rule that does not exist."[333] The Czech Republic cites *Vestey v. Venezuela*, in which the tribunal observed that "[t]he principle of estoppel cannot create otherwise inexistent property rights. This is so if one grounds the principle of estoppel on international law."[334] Therefore, says the Czech Republic, Mr. Halevi cannot reply upon estoppel to create proprietary rights to the Land for the Company, which rights never existed under Czech law.

306. The Czech Republic considers the cases cited by Mr. Halevi – *Kardassopoulos v. Georgia*, *Mabco v. Kosovo* and *Karkey v. Pakistan* – to be irrelevant, as those cases addressed estoppel only in the context of jurisdiction and concerned very different factual circumstances than those in the present case.[335] Specifically, the issue to be decided in those cases was the host State's jurisdictional objection that the relevant investment was illegal and therefore not protected by the applicable BIT. As the host State in each case had either explicitly confirmed the investment's compliance with law or never challenged the validity of the investment, the tribunals found that the investors were justified in believing their investments were lawful and therefore should not be precluded from protection under the relevant BITs.[336] Thus, in the Czech Republic's view, these cases have nothing to do with ownership rights under domestic law.[337]

307. The Czech Republic concludes that Mr. Halevi's "estoppel allegation has no support in law or the facts of the case."[338]

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[332] Respondent's PHB, para 179.
[333] Respondent's PHB, para 178.
[334] Respondent's PHB, para 15, *quoting* **RLA-021**, *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award of 15 April 2016, para 257.
[335] Rejoinder, paras 347-349, *citing* **CLA-136**, *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction of 6 July 2007; **CLA-137**, *Mabco Constructions SA v. Republic of Kosovo*, ICSID Case No. ARB/17/25, Decision on Jurisdiction of 30 October 2020; **RLA-022**, *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award of 22 August 2017.
[336] *Id.*
[337] Rejoinder, para 349.
[338] Respondent's PHB, para 180.

C. The Tribunal's Analysis

308. Having considered the Parties' submissions, the Tribunal finds that the Company, through which Mr. Halevi made his investment in the Czech Republic, never validly acquired ownership of the Land.

309. It is not disputed, and cannot be disputed, that ownership of real estate property in the Czech Republic is governed by Czech law. The relevant Czech law for the ownership issue is the Act on Land of May 1991.

310. Under Section 11 of the Act on Land, a Czech citizen whose real estate property was nationalized by the communist regime in Czechoslovakia after 1948 could claim either release of the original land from the State or, if release was not practicable, Replacement Land, and could also assign the title to Replacement Land to third persons. However, Section 29 of the Act on Land affirmatively blocked transfers of church land until specific laws could be passed. To recall, Section 29 provides, with emphasis added:[339]

> *Property originally owned by churches, religious societies, orders and congregations* ***may not be transferred*** *to the ownership of other persons pending the enactment of laws concerning such property.*

311. The relevant follow-on law was the Church Restitution Act, enacted some 20 years later. The Church Restitution Act granted churches the right to request restitution of church property from the Czech Republic. If the State had – somehow – transferred church land in violation of the blocking provision in Section 29 of the Act on Land, Section 18(a) of the Church Restitution Act granted churches the right to bring suit in the civil courts to determine rightful ownership of the relevant land as between the transferee owners registered in the Land Registry and the Czech Republic as the communist era owner.

312. Before setting out the chronology relevant to the Czech legal regime on church land, the Tribunal turns to question (c) posed to the Parties in Procedural Order No. 10 for post-hearing consideration: "Need the Tribunal address the 1921 date in Exhibit C-009 [the Original Land Transfer to Mr. Maixner]?" This concerns the reference in the Original Land Transfers to the "decision of the Land Office in Prague dated 20.12.1921 No. 3590, which noted that the property is seized by the State," a reference

[339] **CLA-007**, Act on Land, Section 29.

later repeated by the appellate court in Lawsuit Two.[340] As the Parties have provided the Tribunal with no definitive evidence demonstrating that the Land was nationalized other than in the mass land reform program commenced by the communist regime in 1948, the Tribunal has determined that it can attribute no relevance to the 1921 date in the Original Land Transfers.

313. The Tribunal considers that, having put the 1921 issue aside, the record in this arbitration reflects that the Land at issue falls within the Czech legal regime of Section 29 of the Act on Land and the Church Restitution Act. The key factual chronology is as follows:

a. The Land was originally church property. The Knights of the Cross, an ecclesiastical order within the Catholic Church, trace their ownership of the Land to 1454.[341]

b. After 1948, Czechoslovakia nationalized the Land and, by a deed of allotment dated 22 September 1958, the Land was allocated to the State farm in Ďáblice.[342]

c. On 1 January 1993, the Czech Republic became the owner of the Land as a successor State of Czechoslovakia.

d. In 1997, the Land Fund recognized claims for Replacement Land by Messrs. Kudrnovský and Stejskal, who assigned their claims to Messrs Maixner and Fidrmuc.

e. On 27/28 March 1998, the Land Fund released the Land to Messrs. Maixner and Fidrmuc by way of the Original Land Transfers.

f. In 2001, Mr. Fidrmuc transferred his rights in two plots of the Land to Mr. Ladislav Svoboda, who then transferred his rights to CENTRUM CZ.

g. On 1 July 2008, CENTRUM CZ transferred its rights to Mr. Alexandr Jaroševský.

[340] **C-009**, Land Transfer Agreement (Maixner); **R-016**, Judgment of the Appellate Court No. 35 Co 35/2014-234.
[341] **R-001**, Knights of the Cross Lawsuit of 29 December 2000, paras I-II.
[342] **C-008**, Judgment of the Appellate Court No. 20 Co 287/2018-292, para 3.

h. On 23 April 2010, the Company purchased the Land from Messrs. Maixner and Jaroševský and executed the 2010 Land Purchase Agreements. This followed Mr. Halevi's acquisition of a 22 percent share in the Company on 7 April 2010.

i. On 30 December 2015, following Lawsuits One through Three, the Knights of the Cross filed Lawsuit Four against the Czech Republic (and the Company) under the Church Restitution Act and obtained a declaration that the Czech Republic was the owner of the Land.

314. The Tribunal considers, as did the Municipal Court in Prague in the January 2019 Judgment, that as a matter of statute the Czech Republic remained the rightful owner of the Land in the post-communist restitution program. Section 29 of the Act on Land could not be clearer in providing that previously nationalized church property "**may not be transferred** to the ownership of other persons pending the enactment of laws concerning such property."[343] It is certainly true that the Land Fund nonetheless released the Land, apparently not knowing it was church land, to Messrs. Maixner and Fidrmuc (on the assignment of the original restitution claims from Messrs. Kudrnovský and Stejskal) as Replacement Land in 1997. But, because that release of church land was illegal under Section 29 of the Act on Land, the transfers were void *ex tunc* under Czech law and hence ownership remained with the Czech Republic.

315. The inquiry, however, does not end here. The question remains whether Mr. Maixner (who, unlike Mr. Fidrmuc, stayed in the chain of purported owners) acquired valid ownership of the Land through alternative means in accordance with Czech law.

316. Mr. Halevi's case is that Mr. Maixner did become a rightful owner of the Land, either by reliance on the recording of the transfers in the Land Registry, by good faith acquisition or by usucaption under Czech law; and that the Czech Republic is precluded by international law principles of estoppel from arguing that the Company did not validly own the land.

317. As set out in the Statement of Facts above, the Czech courts, albeit circuitously and not consistently through Lawsuits One through Four, considered the first three of these

[343] **CLA-007**, Act on Land, Section 29.

issues against the interests of Mr. Maixner and, down the chain of possession of the Land, against the Company.

318. First, as to the Land Registry records, the Supreme Court in Lawsuit Three found as follows:[344]

> *Nor … can the fact that the Cadastral Office, on the basis of contracts which contravene the blocking provisions of the Land Act, registered the title of the purchasers to the land in question in the land register, justify a one-off suspension of the prohibition on transfers of the land in question. It should be recalled, moreover, that decision-making practice in other contexts also does not recognise the entry of a right in rem into the Land Register as capable of remedying the absolute invalidity of a transfer agreement caused by a breach of the prohibition (claimed in the interests of the protection of third parties) on the disposition of the objects in question ….*

319. Second, as to good faith acquisition, the District Court for Prague 8 in Lawsuit Four found as follows:[345]

> *As regards plots of land parc. No. 1580/15 and parc. No. 1590/2, the respondent 1) concluded with Ing. Maixner on 23 April 2010. Mr Maixner appeared on both sides of that contract – firstly as a seller on his own behalf and secondly as one of the executive directors of respondent 1) as buyer. At the time the contract was negotiated, Ing. Maixner was undoubtedly aware that the land being transferred was claimed by the claimant as his original church property, with the understanding that when the land was transferred from the ownership of the State to the ownership of Ing. Maixner, there was a violation of the blocking provision of Section 29 of Act No. 229/1991 Coll. Maixner had been a party to the proceedings before the local court under Case No. 25 C 239/2000 since 29 December 2000, in which the claimant sought to establish his ownership of plots no. 1580/15 and No 1590/2 and plots no. 1580/16 and no. 1590/3 on that ground. On 5 October 2005, Ing. Maixner, the claimant and CENTRUM CZ spol. s.r.o. concluded a settlement agreement, where they adjusted the disputed rights and obligations relating to the ownership of the land in connection with proceedings under Case No 25 C 239/2000. It is clear from this that respondent 1) could not have been in good faith as to the proper acquisition of ownership of the land at the time when it negotiated the land transfer agreement.*

[344] **C-032**, Judgment of the Supreme Court No. 28 Cdo 4546/2015-312, pp. 3-4.
[345] **C-011**, Judgment of the Court of First Instance No. 27 C 483/2015-248; para 51.

320. Third, as to usucaption, the District Court for Prague 8 in Lawsuit Two found as follows:[346]

> *65. Nonetheless, the prescription period* [for usucaption] *stopped running with respect to Ing. Maixner. The prescription period stopped running on 29 December 2000, when proceedings* [Lawsuit One] *were initiated .... On 29 December 2000, the Knights of the Cross filed an action against Ing. Maixner and Mr. Svoboda for a declaration of the ownership title to the relevant land and properly continued with the proceedings until their end. ....*
>
> *66. The prescription period did not resume with respect to Ing. Maixner, because the latter learnt of facts in the course of those proceedings which objectively must have caused him to doubt as to whether he owned the relevant land, and these doubts only grew with time. He must have had severe doubts when, as a party to the aforementioned proceedings, he acquainted himself (either in person or through his counsel) with the documents proving the Plaintiff's historical ownership of the land and its transfer to the State in the relevant period. The existence of good faith is out of the question once the District Court for Prague 8 pronounced its judgment Ref. No. 25C 239/2000-120 on 13 January 2004, declaring the Plaintiff's historical ownership of the land (p. 6) and expressly stating, for example, that "it is beyond any doubt that the Defendants are not the owners of the relevant real estate, precisely with regard to the aforementioned Section 29 of Act No. 229/1991 Coll.", and that "that provision renders absolutely null and void all contracts by virtue of which the Defendants and their legal predecessors were to acquire the relevant real estate, precisely because the original owner of the land in question was the Plaintiff as a church entity" (p. 8).*

321. The Tribunal has benefited from the Parties introduction of the detailed history of Lawsuits One through Four, in particular the Czech courts' discussion of Czech law. This is despite the fact that Lawsuits One and Two were dismissed effectively on standing grounds and Lawsuit Three was discontinued, leaving the January 2019 Judgment as the final operative judgment that the Czech Republic – and not the Company – owned the Land. However, because that Judgment itself is a contested measure in Mr. Halevi's expropriation and FET claims under the BIT, as is the Church Restitution Act applied in that Judgment, the Tribunal considers it useful to make its own determination as to the valid ownership of the Land under Czech law, in order to assess Mr. Halevi's international law claims under the BIT.

[346] **R-009**, Judgment of the Court of First Instance No. 27 C 67/2012-203, paras 62-64.

1. Cadastral Office Records

322. The essence of Mr. Halevi's argument on the significance of the Cadastral Office records is that, even if the Land was subject to the blocking provision in Section 29 of the Act on Land, the Company was entitled to rely on the Land Registry entries to support its valid acquisition until – as happened only later – the Czech courts finally declared the Original Land Transfers void. Mr. Halevi refers to a 2015 judgment of the Supreme Administrative Court of the Czech Republic and Constitutional Court decisions issued in 2014 and 2017.

323. To the extent that Mr. Halevi asserts that the Land Register records form a basis of ownership separate from the doctrine of good faith acquisition discussed below, the Tribunal does not find Mr. Halevi's position persuasive. Although the record is not clear as to whether, under Czech law, the Cadastral Office in fact has the jurisdiction and means to confirm legal title to land plots before registration, the Tribunal notes that Section 11 of the Law of 28 April 1992 on the registration of ownership and other rights *in rem* over immovable property, which Mr. Halevi has cited, expressly provides that a person who "relies on an entry in the Land Register made after 1 January 1993 is in good faith that the state of the cadastre corresponds to the actual state of affairs, unless he must have known that the state of the entries in the cadastre did not correspond to the reality."[347] The Tribunal further observes that the Czech Constitutional Court, in the cases cited by Mr. Halevi, has ruled that a party may rely on the Cadastral Office records as proof of land ownership only if that party is acting in good faith.[348] As explained below, the Tribunal finds that Mr. Maixner must have known that the Land transfer entries in the Land Register did not "correspond to the reality" – the reality being that he did not have valid ownership of the Land in light of Section 29 of the Act on Land – and he therefore could not rely in good faith on the Land Registry entries.

2. Good Faith Acquisition

324. The Parties helpfully agree on the standard for examining the good faith acquisition of the Land, based on the Constitutional Court's Decision 50/04 in June 2002 (again, ***CC Decision 50/04***): "the possessor's mistake on which his belief in the existence of

[347] **CLA-008**, Law of 28 April 1992.
[348] **CLA-096**, Judgment of the Czech Constitutional Court No. I. ÚS 2219/12 of 17 April 2014, paras 28 and 47.

the right possessed is based must be excusable … in view of all the circumstances" and such good faith "ceases to exist at the moment when the possessor learns about facts that objectively must have caused doubt whether she was the lawful owner of the thing."[349] This answers the Tribunal's post-hearing question (d) in Procedural Order No. 10.

325. The Tribunal applies this agreed standard in the analysis to follow.

326. Before doing so, the Tribunal notes that it has not been assisted by the two additional rules urged by Mr. Halevi to qualify the standard. First, although Section 130(1) of the 1964 Civil Code (as referenced in CC Decision 50/04) provides that "[w]hen in doubt, possession is presumed to be legitimate," the Tribunal – as set out below – finds no doubt as to Mr. Maixner's lack of good faith possession of the Land. Second, although the Czech courts have recognized that a legal mistake may be excusable if induced by a State authority "since the possessor may reasonably assume that the state authorities know the law,"[350] the commentary cited by the Czech Republic reflects that this need not be the case if "it can be shown that the Possessor must have been aware of the defect."[351] As set forth below, the Tribunal determines that, by attribution from Mr. Maixner, the Company and Mr. Halevi were aware of the voidness of the Original Land Transfers.

327. Based on the record, despite the absence of evidence from Mr. Maixner, the Tribunal is prepared to accept Mr. Halevi's submission that Mr. Maixner was in good faith when he acquired the Land by way of the Original Land Transfers in March 1998. Given that it appears that the Land Fund itself was not aware at that time that the Land was church land subject to the blocking provision in Section 29 of the Act on Land, even the Czech Republic acknowledges that "in March 1998, Messrs. Maixner and Fidrmuc may have been in good faith that they would become owners of the Land."[352]

328. However, in the Tribunal's view, this status changed after the Knights of the Cross initiated Lawsuit One against Mr. Maixner in 2000. In that litigation, the Knights of the Cross submitted historical records showing that they had owned the Land prior to

[349] Claimant's PHB, paras 68-69, *quoting* [redacted] **ER-25**, Resolution of the Constitutional Court of 3 June 2002, File No. III, US 50/04, p. 3; Respondent's PHB, paras 52, 65.
[350] Claimant's PHB, para 73, *quoting* **CLA-191**, Judgment of the Supreme Court No. 22 Cdo 4484/2007 of 1 July 2009, p 6.
[351] **CLA-188**, Švestka et. al., Občanský zákoník, I, II. 2. edition (Civil Code Commentary), § 130, p. 740, marg. no. 4, p. 7.
[352] Respondent's PHB, para 104.

the communist regime and also invoked the legal impact of Section 29 of the Act on Land.[353] In his Final Proposal of 6 January 2004, Mr. Maixner expressly referred to "the Plaintiff's claim that the transfer of the ownership title from the State to the Defendant was prevented by the blocking provision of Section 29 of the Land Act" and cited a Supreme Court ruling in a similar case that "non-compliance with this provision establishes 'likelihood' of invalidity of the contract," before challenging the standing of the Knights of the Cross to bring the case.[354] The District Court for Prague 8 could not have been more clear in pronouncing as follows, with emphasis added:[355]

> ***it is beyond any doubt that the Defendants*** [Mr. Maixner and CENTRUM CX] ***are not the owners of the relevant real estate****, precisely with regard to the aforementioned Section 29 of Act No. 229/1991 Coll. (the Act on Land). That provision renders absolutely null and void all contracts by virtue of which the Defendants and their legal predecessors were to acquire the relevant real estate, precisely because the original owner of the land in question was the Plaintiff as a church entity.*

329. The Tribunal agrees with the Czech Republic that what matters here is not the outcome of Lawsuit One – the first instance judgment that the Original Land Transfers were void *ex tunc* and that the Knights of the Cross were the valid owners of the Land, which Mr. Maixner successfully challenged on appeal. What matters with regard to Mr. Maixner's alleged good faith acquisition of the Land is that, based on the information to which he was exposed in the first instance proceedings in Lawsuit One, Mr. Maixner must have developed objective doubts about the validity of his ownership of the Land in light of the blocking impact of Section 29 of the Act on Land. If nothing else, in light of his express reference to the Supreme Court ruling in a Section 29 case, Mr. Maixner undoubtedly was aware of the "likelihood" of the voidness of the Original Land Transfers. To recall, the District Court for Prague 8 wrote as follows in Lawsuit Two:[356]

> *The prescription period did not resume with respect to Ing. Maixner, because the latter learnt of facts in the course of those proceedings which objectively must have caused him to doubt as to whether he owned the relevant land, and these doubts only grew with time. He must have had*

[353] Rejoinder, para 45, *citing* **R-001**, Knights of the Cross' Lawsuit of 29 December 2000, pp. 1-3; **R-004**, Minutes from the court hearing of 22 October 2003, pp. 1-2.
[354] **R-005**, Mr. Maixner's Final Proposal of 6 January 2004, para 4.
[355] **R-006**, Judgment of the Court of First Instance No. 25 C 239/2000-120, p. 8.
[356] **R-009**, Judgment of the Court of First Instance No. 27 C 67/2012-203, para 64.

> *severe doubts when, as a party to the aforementioned proceedings, he acquainted himself (either in person or through his counsel) with the documents proving the Plaintiff's historical ownership of the land and its transfer to the State in the relevant period. The existence of good faith is out of the question once the District Court for Prague 8 pronounced its judgment Ref. No. 25C 239/2000-120 on 13 January 2004, declaring the Plaintiff's historical ownership of the land (p. 6) and expressly stating, for example, that "it is beyond any doubt that the Defendants are not the owners of the relevant real estate, precisely with regard to the aforementioned Section 29 of Act No. 229/1991 Coll.", and that "that provision renders absolutely null and void all contracts by virtue of which the Defendants and their legal predecessors were to acquire the relevant real estate, precisely because the original owner of the land in question was the Plaintiff as a church entity" (p. 8).*

330. The Tribunal finds that, once Mr. Maixner learned of the legal position of the Knights of the Cross in Lawsuit One and at the very latest with the 13 January 2004 Judgment of the District Court for Prague 8, he could not have reasonably maintained any original good faith belief that he had secure title to the Land.

331. It is undisputed that Mr. Maixner's knowledge as of January 2004 that the Original Land Transfers were void is attributable to the Company. As accepted by Mr. Halevi in submission, "[s]ince Mr. Maixner became the executive director of the Company, his knowledge of the matters concerning the Land was attributed to the Company."[357] Hence, the Company could not have been in good faith in entering into the Land Purchase Agreements in 2010.

332. The Company's knowledge is also attributable to its directors, including Mr. Halevi, who necessarily stands in the same legal position as Mr. Maixner. Accordingly, any contrary view on ownership by Mr. Halevi is not relevant to the good faith ownership issue.

333. In this regard, the Tribunal nonetheless notes Mr. Halevi's submission that his due diligence led him to believe that the Company gained valid ownership of the Land by way of the 2010 Land Purchase Agreements. In support of the adequacy of his due diligence, Mr. Halevi submits that "he had all relevant information obtained inter alia from Mr. Maixner, Mr. Jaroševský and the legal advisors of the Company," presumably to the effect that the Company was validly acquiring the Land from

[357] Claimant's PHB, para 191, *quoting* Statement of Defence, para 178.

Messrs. Maixner and Jaroševský, supported by Land Registry records.[358] However, this is pure submission. Absent testimonial evidence from either Mr. Halevi or Mr. Maixner or both, the Tribunal cannot make any finding as to whether Mr. Halevi was or was not reliably assured that the Company had valid title to the Land before he made his investment in the Company. If nothing else, for Mr. Halevi to submit that "he had all the relevant information obtained inter alia from Mr. Maixner" does not reveal whether Mr. Maixner shared the information he had received over the course of Lawsuit One with Mr. Halevi or not.

334. In this connection, the Tribunal sees no practical reason to grant the Czech Republic's request for adverse inferences that Mr. Halevi knew of the risks in relation to ownership of the Land based on his refusal to produce documents relevant to that issue.

335. However, in the absence of relevant documents (which would be expected to exist in the usual course), the Tribunal cannot give material weight to [redacted] testimony that the Company's Czech lawyers gave oral advice that there were no extraordinary risks in relation to ownership of the Land. Even if that was the case, [redacted] testimony does not negate the Tribunal's conclusion that, because of his role in Lawsuit One, Mr. Maixner had objective doubts about the validity of his acquisition of the Land by January 2004 at the latest, which are attributable to the Company and Mr. Halevi.

336. To summarize, the Company – with Mr. Halevi as a shareholder and director – cannot have acquired the Land in good faith through the 2010 Land Purchase Agreements.

337. This leaves the Tribunal to consider Mr. Halevi's arguments beyond the import of Lawsuit One in support of his claim of good faith acquisition of the Land. The Tribunal does not find these arguments persuasive.

338. First, as regards the 1998 and 2003 statements made by the Land Fund to which Mr. Halevi refers, to the effect that the Land Fund was not aware that the Knights of the Cross originally owned the land or of any other facts undermining the Original Land Transfers,[359] the Tribunal sees no reason to doubt the Czech Republic's explanation

[358] Reply, para 46.
[359] **C-009**, Land Transfer Agreement (Maixner), Art. IV; **C-067**, Letter of the Land Fund dated 26 November 2003, paras I and II.

that the Land Fund was itself unaware of the status of the Land at the time and did not have access to the materials submitted in Lawsuit One demonstrating that it was historic church land. In this connection, the Tribunal recalls the Czech Republic's submission that the Land Fund understandably made errors in fulfilling its "enormous task" of assessing the restitution status of over 18,000 square kilometers of land plots on the basis of 50-year old records.[360]

339. Second, with regard to the Ministry of Agriculture's letter of 25 June 2007 to Mr. Maixner stating that the Land plots did not appear in its database of land subject to restitution claims,[361] the Tribunal accepts, as did the District Court for Prague 8 in Lawsuit Two, that the Ministry was merely confirming that there were no pending claims involving the Land in the database at that time.

340. Third, the entry of the Land Fund into the Future Exchange Agreement with Mr. Maixner, with a recitation that he owned the relevant Land, apparently was based on Mr. Maixner's representation rather than on Land Fund records. Nor is Mr. Halevi assisted by the Land Fund's statement in the Future Exchange Agreement that the land plot to be exchanged in the future with one plot of the Land "has the character of the property referred to in Section 29 of AOL," made without a similar statement concerning the Land.[362] Absent contemporaneous awareness that the Land was church land, the Land Fund could not have made a similar statement concerning the Land.

341. Fourth, the Tribunal considers the Czech Republic's collection of real estate transfer taxes and real estate taxes on the Land to be irrelevant to the issue of good faith acquisition and ownership. As pointed out by the Czech Republic, these taxes are based on declarations by the taxpayer – here, including Mr. Maixner and the Company – and are routinely collected based on Land Registry records.

342. Fifth, as for the 2005 Settlement Agreement between Mr. Maixner, CENTRUM CZ and the Knights of the Cross, this was no more than an agreement between two non-owners of the Land with no legal connection to the State.[363] The Tribunal considers it irrelevant to the issue of good faith acquisition that, at the time, the Knights of the

[360] Statement of Defence, para 24.
[361] **C-068**, Letter of the Ministry of Agriculture dated 25 June 2007.
[362] **C-062**, Future Exchange Agreement, Article 2.
[363] **C-024**, Settlement Agreement.

Cross – erroneously, in light of Section 29 of the Act on Land – acknowledged that Mr. Maixner and CENTRUM CZ owned the land, in exchange for their withdrawal of the appeal in Lawsuit One. For similar reasons, the Tribunal does not find any relevance in the Knights of the Cross' acknowledgement of the – erroneous – ownership rights of Mr. Maixner and the Company in the Future Purchase Agreement in September 2008.[364]

343. The Tribunal notes that, as acknowledged by the Czech Republic, the Czech courts have recognized exceptional circumstances that justify the valid acquisition of land despite a breach of Section 29 of the Act on Land, for example, where the acquiring party has made a significant investment in structures on the relevant church land. However, in the instant case, Mr. Halevi did not make any persuasive argument in support of his ownership interest in the Land based on exceptional circumstances. Nor can the Tribunal ignore the following circumstances: (a) the Company had taken few steps towards implementing the residential real estate Project before being enjoined from continuing; (b) the Company's actual investment was limited to three percent of the purchase price for the Land – some CZK [redacted] or EUR [redacted]; and (c) Mr. Halevi purchased his 22 percent shareholding for CZK 44,000 or EUR 1,740.

344. To conclude, the Tribunal cannot find that the Company gained ownership in the Land through the Czech law doctrine of good faith acquisition. Consequently, the Tribunal finds that Mr. Halevi's 22 percent shareholding in the Company did not carry with it an indirect ownership interest in the Land.

3. Usucaption

345. The Tribunal's negative findings concerning Mr. Halevi's case for valid ownership of the Land based on good faith acquisition also defeat his case based on usucaption under Czech law.

346. To recall the relevant Czech law provision, Section 134(1) of the Civil Code provides that "[t]he rightful possessor becomes the owner of the [relevant immovable] property if he has held it continuously for … ten years."[365] Section 130(1) of the Civil Code

[364] **C-025**, Future Purchase Agreement.
[365] **RLA-053**, Act No 40/1964 Coll., Civil Code, Sec. 134(1).

defines "rightful possessor" as a possessor who, "having regard to all the circumstances, believes in good faith that the property or thing belongs to him."[366]

347. There is no dispute that the statutory ten-year period for usucaption commenced with the Original Land Transfers to Messrs. Maixner and Fidrmuc in March 1998. The Tribunal having determined that, in light of the proceedings in Lawsuit One, Mr. Maixner could not have objectively believed in good faith that he had a valid ownership interest in the Land, the potential usucaption period necessarily ended, at the latest, with the issuance of the Judgment of the District Court for Prague 8 in January 2004. By simple math, this was some four years short of the ten-year usucaption period.

348. Accordingly, the Tribunal cannot find that Mr. Halevi, through the Company, has a valid ownership interest in the Land by operation of usucaption under Czech law.

4. Estoppel

349. Lastly, the Tribunal turns to Mr. Halevi's arguments based on estoppel.

350. The Parties agree that, in the instant case, the standard for estoppel under international law requires an unambiguous statement of fact by the Czech Republic which was relied upon by Mr. Halevi in good faith to his detriment.

351. The Tribunal cannot find that this standard is met.

352. Mr. Halevi did catalogue several statements and actions of the Czech authorities allegedly rising to representations that the Original Land Transfers were valid despite the Land Fund's breach of Section 29 of the Act on Land, including the Land Fund's selection of the Land to be released to Messrs. Maixner and Fidrmuc and the registration of the subsequent transfers in the Land Registry. In the Tribunal's view, the closest to an unequivocal representation was the statement in the Original Land Transfers that "[b]oth parties declare that they are not aware of any facts that would prevent the conclusion of this Agreement."[367] However, even accepting this as an unambiguous representation (despite Mr. Maixner's Lawsuit One-related doubts as to the validity of his ownership of the Land), Mr. Halevi failed to present any concrete evidence of the Company's or his reliance on that representation. And even if he had

[366] **RLA-053**, Act No 40/1964 Coll., Civil Code, Sec. 130.
[367] **R-009**, Land Transfer Agreement (Maixner), Art. IV.

presented such evidence, Mr. Halevi would still face the obstacle described by the tribunal in *Vestey v. Venezuela*, namely that the international law "principle of estoppel cannot create otherwise inexistent property rights"[368] – here property rights in the Land for the Company.

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353. To conclude, the Tribunal finds that the Company never validly acquired the Land and thus Mr. Halevi, as a Company shareholder, has no ownership interest in the Land.

X. EXPROPRIATION

A. The Claimant's Position

354. Mr. Halevi submits that the Czech Republic's conduct in relation to the Land violated Article 5(1) of the BIT, which provides:

> *Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter: "expropriation") in the territory of the other Contracting Party, except for a public purpose related to the internal needs of that Contracting Party on a non-discriminatory basis under due process of law and against prompt, adequate and effective compensation.*

355. Mr. Halevi identifies four actions taken by the Czech Republic that, in his view, amount to an expropriation in breach of Article 5(1):[369]

a. The Czech courts found that the Land belonged to the State, allowing the Czech Republic to take the Land from the Company without providing compensation.

b. The Czech Republic did not initiate the procedure to meet the conditions for a legal expropriation under Czech law set out in Act No. 184/2006 Coll., Act on Expropriation, which are identical to those set forth in the BIT, *i.e.*, that the expropriation must be for a public purpose, in accordance due process of law, and followed by adequate and effective compensation.[370]

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[368] **RLA-021**, *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award of 15 April 2016, para 257.
[369] Statement of Claim, paras 78-90; Reply, para 323.
[370] Reply, para 264, *citing* **CLA-041**, Act No. 184/2006 Coll., Act on Expropriation (excerpt), Sections 3, 4 and 10.

c. The Czech Republic adopted the Church Restitution Act with retroactive effect, thereby allowing religious organizations to challenge the ownership of property years after private persons had been registered as the rightful owners in the Land Registry.

d. The Czech courts revised the burden of proof in the Lawsuits to the detriment of the Company.

356. Mr. Halevi encourages the Tribunal to consider the Czech Republic's actions as a whole, rather than assessing them one by one. As support, he cites *Vivendi v. Argentina*, where the tribunal reasoned that "even if a single act or omission by a government may not constitute a violation of an international obligation, several acts taken together can warrant finding that such obligation has been breached."[371] In this case, says Mr. Halevi, the Czech Republic breached the BIT "through multiple actions and all of them contributed to the fact that the Claimant ended up with a share in the Company with literally no value."[372] In particular, Mr. Halevi alleges that the Czech Republic "laid the ground for expropriation of the Land [by] transferring the Land (of its own volition) in breach of [Section 29 of the Act on Land], continuing with adopting the [Church Restitution Act] in order to rectify its own mistake at the expense of private parties, and finally ending with officially expropriating the Land by virtue of a court decision."[373]

357. According to Mr. Halevi, the Czech Republic's actions constitute both a direct and an indirect expropriation.

358. In respect of direct expropriation, Mr. Haveli adopts the definition offered by the tribunal in *Glamis Gold v. United States*: an "open, deliberate and acknowledged taking[] of property, such as outright seizure or formal or obligatory transfer of title in favour of the host State."[374]

359. Mr. Halevi argues that by passing the Church Restitution Act, the Czech Republic created the tool by which it was able to seize the ownership rights of the Company

[371] Reply, para 242, *quoting* **CLA-066**, *Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A. v Argentine Republic,* ICSID Case No ARB/97/3, Award of 20 August 2007, para 7.5.31.
[372] Reply, para 243.
[373] Claimant's PHB, para 187.
[374] Reply, para 246, *quoting* **CLA-020**, *Glamis Gold Ltd. v. United States of America*, UNCITRAL, Award of 8 June 2009, para 355.

openly and without compensation.[375] Mr. Halevi contends that the Czech courts used this tool in Lawsuit Four, which culminated in the January 2019 Judgment expropriating the Land.[376] As Mr. Halevi's counsel put it at the hearing:[377]

> *it was* [the Church Restitution Act] *that allowed the court litigations to take place. And those courts then decided, on the basis of* [the Church Restitution Act]*, that the Respondent should be the owner. But it was only because of the* [the Church Restitution Act]*. You could see in those judgments that it was mentioned that there is necessity to give the* [the Church Restitution Act] *its purpose, which is for the Respondent to gain the ownership of the land. So we are saying here that the courts here were used as a tool to expropriate the land, but the main moving vehicle was the* [the Church Restitution Act].

360. Mr. Halevi rejects the Czech Republic's attempt to characterize Section 18 of the Church Restitution Act as a mere procedural mechanism granting churches standing to request a declaration of ownership under Czech law. Rather, in Mr. Halevi's view, Section 18 changed the substance of the law to the detriment of private persons. According to Mr. Halevi, this is clear from the January 2019 Judgment in Lawsuit Four, in which the court expressly stated that Section 18 provided for an independent legal claim:[378]

> *The appellant further alleges a defect in the proceedings on the basis of the fact that there are two proceedings pending in respect of the land in question based on the same facts. […]* ***In the present proceedings, the claim is based on Article 18(1) of Act No 428/2012, which entered into force on 1 January 2013, and is thus based on a different legal situation arising after the commencement of proceedings in Case No 23 C 72/2012****. The Court of Appeal, therefore, in agreement with the Court of First Instance, does not find that there is an obstacle of lis pendens resulting in a procedural flaw in the proceedings within the meaning of Article 205(2)(c) of the Civil Procedure Code.*

361. Mr. Halevi emphasizes that the Knights of the Cross would have had no claim without the Church Restitution Act. Under Section 80 of the Civil Procedure Code, only the State as the alleged rightful owner of the land would have had the required "urgent legal interest" to bring a claim.[379] Thus, says Mr. Halevi, without the Church

[375] Reply, para 249; Claimant's PHB, para 186.
[376] Claimant's PHB, para 186.
[377] Transcript, Day 1, 82:14-22.
[378] Reply, para 132, *quoting* **C-008**, Judgment of the Appellate Court No. 20 Co 287/2018-292, para 15 (*Claimant's emphasis*).
[379] Reply, para 134, *citing* **CLA-102**, Act No. 99/1963 Coll., Czech Civil Procedure Code, Section 80.

Restitution Act, "it would have been the Respondent who initiated the expropriation proceedings."[380]

362. Mr. Halevi argues that the Church Restitution Act operated in a way that caused further injustice because it allowed the Knights of the Cross to sidestep the Settlement Agreement. Although churches had standing to request a declaration of ownership under Section 18, they were not the direct beneficiaries of such a request, because ownership of the land had to return to the State if the church succeeded in the litigation. In Mr. Halevi's view, this was an "illogical concept" that "undermined (at least in the eyes of some Czech courts) the Settlement Agreement, as the rightful owner (and the only one who by this twisted logic was able to recognize the ownership) was the Respondent and not the church."[381]

363. In sum, Mr. Halevi asserts that the Company had lawfully held the property rights to the Land before the Czech Republic adopted the Church Restitution Act. Once adopted, the Church Restitution Act allowed the Knights of the Cross to begin the proceedings under Section 18 that resulted in the January 2019 Judgment in Lawsuit Four, which in turn resulted in the Land being registered in the Land Registry as the property of the Czech Republic. In Mr. Halevi's view, this constitutes a direct taking of the Land.

364. Alternatively, Mr. Halevi considers that the Czech Republic's actions may be viewed as an indirect expropriation. Although Mr. Halevi retains his shares in the Company, he submits that the entire economic value of the Company – particularly the prospect of future income from the sale of residential property – was lost due to the Czech Republic's taking of the Land, primarily through the Church Restitution Act.[382]

365. Moreover, Mr. Halevi considers that the Czech Republic's actions taken as a whole reveal a "creeping" or "constructive" expropriation. Citing UNCTAD, Mr. Halevi defines a creeping expropriation as:[383]

> *the incremental encroachment on one or more of the ownership rights of a foreign investor that* ***eventually destroys (or nearly destroys) the value of his or her investment*** *or deprives him or her of control over the*

[380] Reply, para 135.
[381] Reply, para 141.
[382] Reply, paras 252-259.
[383] Reply, para 263(i), *quoting* **CLA-125**, United Nations, Expropriation, UNCTAD Series on Issues in International Investment Agreements II, 2012, p. 11 (*Claimant's emphasis*).

> *investment. A series of separate State acts, usually taken within a limited time span, are then regarded as constituent parts of the unified treatment of the investor or investment.*

366. Mr. Halevi points to the following State actions to establish his claim of a creeping expropriation:

a. The Czech Republic actively took several steps against the Company's property, including by initiating proceedings against the Company in Lawsuit Three, supporting the Knights of the Cross' claim in Lawsuit Four, and submitting an application to the Cadastral Office to register the Land as owned by the State.[384]

b. In Lawsuit Three, the Czech Republic sought and obtained a preliminary injunction preventing the Company from disposing of the Land, which deprived the Company of any ability to proceed with the Project.[385]

c. As noted above, Mr. Halevi alleges that the Czech Republic failed to adopt an expropriation procedure that ensured compliance with its obligations under domestic and international law.[386]

d. The Czech courts assisted in carrying out the expropriation.[387]

367. Thus, although Mr. Halevi considers that the Czech Republic's adoption of the Church Restitution Act "was on its own of sufficient gravity to constitute an expropriatory act [and], even in the absence of a finding thereof, the above-described series of the Respondent's acts taken together legitimize the finding of a creeping expropriation."[388]

368. Irrespective of whether the Czech Republic's actions are viewed as a direct or indirect expropriation, Mr. Halevi submits that the expropriation was clearly unlawful under Article 5(1) of the BIT. First, Mr. Halevi emphasizes that no compensation was provided for the Land.[389] Second, he denies that the expropriation served any public purpose. Rather, he says, the proceedings initiated by the Knights of the Cross pursuant to Section 18 of the Church Restitution Act served only the interests of the

[384] Reply, para 263(ii).
[385] Reply, para 263(iii).
[386] Reply, para 263(i).
[387] Reply, para 263(iv).
[388] Reply, para 264.
[389] Statement of Claim, paras 85-87.

Knights of the Cross, while posing a disproportionate burden on the Company.[390] Mr. Halevi stresses that he "in no way seeks to challenge the legitimacy of the ecclesiastical restitution, as "[t]he churches are of course entitled to have their illegally confiscated property returned or compensated by the State."[391] However, his position is that "this cannot be done at the expense of other private persons who acquired the property in good faith."[392] Finally, Mr. Halevi argues that he was not provided with due process, as discussed in Section XI.A.5 below.

369. In Mr. Haveli's view, all of the Czech Republic's defenses to his claim of unlawful expropriation must be rejected. His responses to the Czech Republic's main arguments are summarized in the following sections.

1. The Existence of a Property Right under Czech Law

370. Mr. Halevi acknowledges that as a prerequisite for an expropriation to occur, an investor must acquire a right under domestic law capable of being expropriated.[393] However, he strongly denies the Czech Republic's arguments that he held no such right. He also urges the Tribunal to "look to whether it *should have been found* that the Company acquired the land under Czech law, and not be dependent on the interpretation of the Respondent's courts in decisions which led to the claimed expropriation."[394]

371. As discussed above, Mr. Halevi rejects the Czech Republic's position that the Company never acquired ownership of the Land because the Original Land Transfers were concluded in violation of Section 29 of the Act on Land and thus void. In his view, even if the Original Land Transfers were void, the Company should have acquired the Land either by means of usucaption or good faith acquisition.[395]

2. Judicial Expropriation

372. Mr. Halevi contends that the Czech Republic's actions also amount to a judicial expropriation. He disagrees with the legal standard for judicial expropriation proposed by the Czech Republic, which is that for a court decision to amount to an

[390] Statement of Claim, paras 88-92.
[391] Statement of Claim, para 91.
[392] *Id.*
[393] Claimant's PHB, para 185.
[394] Claimant's PHB, para 185 (Claimant's emphasis).
[395] Claimant's PHB, para 184.

expropriation, "such decision must not only entail taking of certain rights but there must also be an element of illegality to it."[396] According to Mr. Halevi, that applicable standard "has substantially developed and now includes not only 'illegality element' but also any impropriety that would imply a breach of international law."[397] Mr. Halevi cites, for example, *Standard Chartered Bank v. Tanzania*, where the tribunal held that:[398]

> *judicial decisions that permit the actions or inactions of other branches of the State and which deprive the investor of its property or property rights, can still amount to expropriation. While denial of justice could in some case result in expropriation, it does not follow that judicial expropriation could only occur if there is denial of justice.*

373. Applying that standard here, Mr. Halevi concludes that the January 2019 Judgment in Lawsuit Four constitutes an expropriation because it implemented the Czech Republic's expropriatory legislation in the form of the Church Restitution Act, thereby permitting the wrongful actions of the Land Fund.[399] As stated by his counsel at the Hearing, "the courts here were used as a tool to expropriate the land, but the main moving vehicle was the [Church Restitution Act]."[400]

374. Moreover, Mr. Halevi alleges that the proceedings in Lawsuit Four violated fundamental rules of due process and were discriminatory. Specifically, he argues that the courts violated the Company's due process rights by shifting the burden of proof of ownership to the Company, even though:[401]

> *(i) the Company was a defendant in the case, (ii) there existed a prima facie reason that the Company acquired the Land lawfully from a non-owner, (iii) the Company's title to the Land was derived from the restitution claims, (iv) the Czech law does not provide for burden of proof shifting in favour of the church, and (v) the Czech law provides for the principle of equality of parties in the civil proceedings.*

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[396] Reply, para 266, *quoting* Statement of Defence, para 150.
[397] Reply, paras 270-272, *citing* **CLA-047**, *Saipem S.p.A. v. The People's Republic of Bangladesh*, ICSID Case No. ARB/05/07, Award of 30 June 2009, para 134; **CLA-126**, *Yukos Capital SARL v. The Russian Federation*, PCA Case No. 2013-31, Final Award of 23 July 2021, paras 382-383.
[398] Reply, para 275, *quoting* **CLA-127**, *Standard Chartered Bank (Hong Kong) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/15/41, Award of 11 October 2019, para 279.
[399] Reply, para 282.
[400] Transcript, Day 1, 82:21-23.
[401] Reply, para 284.

375. As for discrimination, Mr. Halevi stresses that the Church Restitution Act waived the court fees that churches are required to pay to initiate proceedings against private persons, thereby creating "an environment unequal and unfair for a party adverse to the churches, such as the Company."[402]

376. Mr. Halevi next asserts that the Czech courts in Lawsuit Four committed a fundamental impropriety by breaching the principles of fairness and estoppel. In particular, he says that although the court was aware that the Knights of the Cross were in violation of the Settlement Agreement, the court failed to enforce the Settlement Agreement.[403] Additionally, the court failed to apply estoppel principles despite the fact that it was the State that had transferred the Land in violation of its own laws and repeatedly confirmed the possessors' ownership.[404]

377. Finally, Mr. Halevi contends that the appellate court in Lawsuit Four manifestly erred in its interpretation of domestic law in finding that the Company never acquired the Land and that the Settlement Agreement was inapplicable.[405] In any event, Mr. Halevi adds that, even if the January 2019 Judgment was somehow consistent with Czech law, it could still constitute a taking because, as stated by the tribunal in *Hydro v. Albania*, a "state cannot escape liability for measures that breach international law solely on the basis that those measures conform with domestic law."[406]

3. The Czech Republic's Regulatory Powers

378. Mr. Halevi does not see the Church Restitution Act and the January 2019 Judgment as a legitimate exercise of the Czech Republic's police powers.[407] Citing *Servier v. Poland*, Mr. Halevi argues that a legitimate regulatory action must must be taken (a) in good faith, (b) for a public purpose, (c) in a way proportional to that purpose, and (d) in a non-discriminatory manner.[408]

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[402] Reply, para 286.
[403] Reply, paras 71-72.
[404] Reply, paras 289-290.
[405] Reply, para 293.
[406] Reply, para 298, *quoting* **CLA-134**, *Hydro S.r.l., Costruzioni S.r.l., Francesco Becchetti, Mauro De Renzis, Stefania Grigolon, Liliana Condomitti v. Republic of Albania*, ICSID Case No. ARB/15/28, Award of 24 April 2019, paras 700-701.
[407] Reply, paras 347-366.
[408] Reply, para 350, *citing* **CLA-139**, *Les Laboratoires Servier, S.A.S., Biofarma, S.A.S., Arts et Techniques du Progres S.A.S. v. Republic of Poland*, PCA, Award of 13 February 2012, para 569.

379. For the reasons discussed in Section XI.A below, Mr. Halevi contends that none of these requirements was met in the present case.

B. The Respondent's Position

380. The Czech Republic denies that any of its conduct in relation to the Land amounted to an expropriation in violation of Article 5(1) of the BIT.

381. The Czech Republic's primary defense is that Mr. Halevi lacked any property right under Czech law capable of being expropriated. According to the Czech Republic, in reviewing the analysis of investment tribunals in various types of expropriation claims:[409]

> [o]*ne fundamental criterion stands out: the investor must have a clear legal ownership recognizable under the host State's domestic law. This is the fundamental prerequisite for any action of the host State to qualify as expropriation; only the existence of such a definitive legal interest paves the way for a thorough examination of the expropriation claim.*

As an example, the Czech Republic cites *Chemtura v. Canada*, where the tribunal held that the first step in considering an expropriation claim is to determine "whether there is an investment capable of being expropriated."[410] The Czech Republic also agrees with the *Vestey v. Venezuela* tribunal that, "[f]or a private person to have a claim under international law arising from the deprivation of its property, it must hold that property in accordance with applicable rules of domestic law."[411]

382. As set out in Section IX above, the Czech Republic's position is that the Company never acquired ownership of the Land. Therefore, the Czech Republic concludes that Mr. Halevi had no right capable of being expropriated, and his claim must fail on that basis.[412]

383. In light of the Tribunal's decision in Section IX.C above that the Company never validly owned the Land and Mr. Halevi had no valid interest in the Land, the Tribunal will only briefly summarize the Czech Republic's remaining arguments.

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[409] Rejoinder, para 328.
[410] Rejoinder, para 324, *quoting* **RLA-026**, *Chemtura Corporation v. Government of Canada (formerly Crompton Corporation v. Government of Canada)*, UNCITRAL, Award, 2 August 2010, para 242.
[411] Rejoinder, para 331, *quoting* **RLA-021**, *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016, para 257.
[412] Rejoinder, paras 333-356.

384. The Czech Republic's second main defense is that the Church Restitution Act could not have been expropriatory because it had no impact on the substantive rights to any property.[413] The Czech Republic recalls that Section 18(1) of the Church Restitution Act, which Mr. Haveli contests, reads as follows:[414]

> ***An entitled person may bring an action before the court for the determination of the State's ownership right*** *on the grounds that a thing from the original property of registered churches and religious societies was transferred or passed from the State's property to the property of other persons before the date of entry into force of this Act in violation of the* [blocking provisions].

385. According to the Czech Republic and [redacted] the purpose of this provision is strictly procedural: it "allow[s] churches to seek judicial relief declaring ownership of a third party, *i.e.* the State."[415] They explain that Section 18 was necessary because Czech civil procedural law generally allows only purported owners to seek a declaration of their ownership. The Czech Republic asserts that this was confirmed in a Constitutional Court decision relied upon by Mr. Halevi, which stated that Section 18:[416]

> *allows a beneficiary to bring an action to establish the State's title in respect of original property that has passed or been transferred to the ownership of other persons in violation of the so-called blocking sections. … The significance of that provision can be seen primarily in the establishment of the active* [standing] *of the beneficiary, since the invalid transfer primarily affects the State's right of ownership and only secondarily the beneficiary's restitution claim.*

386. Thus, says the Czech Republic, "[i]n essence, Sec. 18(1) of the Church Restitution Act allowed churches, including the Knights of the Cross, to stand in the shoes of the Land Fund for the purpose of seeking a declaration of State's ownership of the original church property."[417] For the Czech Republic, it follows that Section 18 had no impact on substantive property rights in the Land, because even if the Church

[413] Rejoinder, paras 264-270; Respondent's PHB, paras 82-95, 182.
[414] Respondent's PHB, para 83, *quoting* **CLA-009**, Church Restitution Act, Section18(1) (*Respondent's emphasis*).
[415] Respondent's PHB, para 84.
[416] Respondent's PHB, para 85, *quoting* **CLA-112**, Judgment of the Czech Constitutional Court No. Pl. ÚS 10/13 of 29 May 2013, paras 292-293.
[417] Respondent's PHB, para 84.

Restitution Act had never been adopted, the State could have sought a declaration of its ownership of the Land, just as it did in Lawsuit Three.[418]

387. For these reasons, the Czech Republic considers that the judgments in Lawsuit Four "merely declare[d] the status quo which has not changed since 1998," *i.e.* that ownership of the Land never passed from the State.[419] The Czech Republic considers that this fact alone is sufficient to undermine Mr. Halevi's expropriation claim.

388. The Czech Republic's position, in any event, is that there are other reasons that the contested measures do not constitute a direct expropriation, an indirect expropriation or a judicial expropriation.

389. Beginning with direct expropriation, the Czech Republic describes various investment arbitration awards and concludes that, for a direct expropriation to be found, "the State must deprive the owner of their property either through the transfer of the title or outright seizure. Additionally, it requires an open, deliberate, and unequivocal intent to do so."[420] According to the Czech Republic, none of these elements is satisfied here. For the reasons set out above, the Czech Republic denies that the Church Restitution Act or Lawsuit Four resulted in the transfer of title or outright seizure of the Land, as the State merely retained its existing ownership.[421] In addition, the Czech Republic argues that the judgments in Lawsuit Four could not have been expropriatory because they were merely declaratory in nature, as Mr. Halevi conceded in the Reply.[422] Finally, the Czech Republic denies having had any intent to expropriate the Land. Rather, the State's intent "was to ensure correct sequence of the restitution phases and to return the property taken by the communist regime to the original owners."[423]

390. Turning to indirect expropriation, the Czech Republic contends that none of the measures identified by Mr. Halevi could amount to an expropriation, whether taken individually or together. For example, in response to Mr. Halevi's allegation that the Czech Republic failed to initiate the Czech statutory expropriation procedure in

[418] Respondent's PHB, para 84.
[419] Respondent's PHB, para 87.
[420] Rejoinder, paras 375-363, *citing*, *e.g.*, **CLA-073**, *Metalclad Corporation v. The United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, para 103; **CLA-020**, *Glamis Gold Ltd. v. United States of America*, UNCITRAL, Award, 8 June 2009, para 355.
[421] Rejoinder, paras 364-368.
[422] Rejoinder, para 369, *citing* Reply, para 11.
[423] Rejoinder, para 370.

relation to the Land, the Czech Republic argues that it never could have initiated that procedure because it already owned the Land.[424] In response to Mr. Halevi's complaints about the Czech Republic seeking an interim injunction against the Company in Lawsuit Three, the Czech Republic contends this action was necessary to protect the Land from further transfers or other actions that could thwart the restitution process.[425]

391. Finally, the Czech Republic sees no basis for Mr. Halevi's claim of judicial expropriation. The Czech Republic emphasizes that to establish judicial expropriation, it is insufficient for an investor to show that domestic courts applied domestic law incorrectly. Rather, says the Czech Republic, there is "an additional element of certain wrongfulness in the conduct of the domestic court," which is crucial to ensuring that an investor's claim does not amount to an appeal before an international tribunal on matters of the interpretation of domestic law.[426] In this respect, the Czech Republic recalls the following observation of the tribunal in *Helnan v. Egypt*:[427]

> *An ICSID Tribunal will not act as an instance to review matters of domestic law in the manner of a court of higher instance. Instead, the Tribunal will accept the findings of local courts as long as no deficiencies, in procedure or substance, are shown in regard to the local proceedings which are of a nature of rendering these deficiencies unacceptable from the viewpoint of international law, such as in the case of a denial of justice.*

392. The Czech Republic also agrees with the *Krederi v. Ukraine* tribunal that it is "necessary to ascertain whether an additional element of procedural illegality or denial of justice was present" before finding a judicial decision to be a measure amounting to expropriation.[428] To the extent that a domestic court's "manifestly incorrect

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[424] Rejoinder, paras 390-391.
[425] Rejoinder, para 393.
[426] Rejoinder, para 401, citing **RLA-067**, *Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Award of 26 June 2003, para 141; **RLA-029**, *Krederi Ltd. v. Ukraine*, ICSID Case No. ARB/14/17, Award, 2 July 2018, para 713; **CLA-126**, *Yukos Capital SARL v. The Russian Federation*, PCA Case No. 2013-31, Final Award of 23 July 2021, para 379; **RLA-022**, *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award of 22 August 2017, para 551; **CLA-129**, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo*), Judgment of 30 November 2010, para 70; **RLA-031**, *Garanti Koza LLP v. Turkmenistan,* ICSID Case No. ARB/11/20, Award of 19 December 2016, para 365; **CLA-126**, *Yukos Capital SARL v. The Russian Federation*, PCA Case No. 2013-31, Final Award of 23 July 2021, para 379.
[427] Rejoinder, para 402, *quoting* **RLA-068**, *Helnan International Hotels A/S v. Arab Republic of Egypt,* ICSID Case No. ARB/05/19, Award of 3 July 2008, para 106.
[428] **RLA-029**, *Krederi Ltd. v. Ukraine*, ICSID Case No. ARB/14/17, Award of 2 July 2018, para 713.

interpretation of domestic law" can rise to the level of a judicial expropriation, the Czech Republic considers that the relevant international law standard is exemplified by the tribunal's statement in *Arif v. Moldova* that this would require a domestic court to "misappl[y] the law in such an egregiously wrong way, that no honest, competent court could have possibly done so."[429]

393. In the Czech Republic's view, none of the cases cited by Mr. Halevi supports the authority of the Tribunal to review the correctness of the domestic court decisions at issue under Czech law. Instead, says the Czech Republic, these cases support the view that a judicial expropriation can be established only if the decisions "are evidently and egregiously wrong in a way which would raise the violation of domestic law to a violation of international law."[430]

394. The Czech Republic submits that Mr. Halevi has failed to show any element of wrongfulness or any procedural irregularities that would come close to meeting this standard. The Czech Republic's responses to each of Mr. Halevi's specific allegations are summarized elsewhere in this Award:

a. Its response to Mr. Halevi's argument that the Czech courts violated due process when they shifted the burden of proof to the Company is summarized in Section XI.B.4 below;

b. Its response to Mr. Halevi's argument that the Czech courts discriminated against the Company by waiving court fees for the Knights of the Cross is summarized in Section XI.B.3 below;

c. Its response to Mr. Halevi's argument that the January 2019 Judgment in Lawsuit Four implemented expropriatory legislation is summarized above in this section; and

d. Its response to Mr. Halevi's argument that the Czech courts manifestly misapplied Czech law in Lawsuit Four in relation to the burden of proof and the Settlement Agreement is summarized in Sections IX.B.2.b above and XI.B.4 below.

[429] Respondent's PHB, para 186, *quoting* **RLA-036**, Mr. *Franck Charles Arif v. Republic of Moldova,* ICSID Case No. ARB/11/23 of Award, 8 April 2013, para 442.
[430] Rejoinder, paras 408-417.

395. The Czech Republic concludes that there is no basis for Mr. Halevi's expropriation claim under the BIT. In any event, argues the Czech Republic, even if the Church Restitution Act had the effect of a taking, it would qualify as a legitimate exercise of the State's police powers.[431] According to the Czech Republic, "[t]he police powers doctrine applies where the host State enforces compliance with its laws and regulations against any entity operating on its territory."[432] Regarding the burden of proof, the Czech Republic's position is that once the State "proposes a *prima facie* justification for the impugned actions, it falls to the claimant to prove that the actions were improper or unlawful."[433] The Czech Republic argues that Mr. Halevi has wholly failed to carry this burden or to show any way in which the Church Restitution Act fell outside the Czech Republic's police powers.[434] As discussed in detail in Section XI.B below, the Czech Republic's position is that the Church Restitution Act was a logical step in the Czech Republic's restitution process based on the legitimate policy objective of correcting past injustices, and that it was a suitable and proportionate measure to meet this objective in a non-discriminatory and non-arbitrary manner.

C. The Tribunal's Analysis

396. Having considered the Parties' submissions, the Tribunal has determined to dismiss Mr. Halevi's expropriation claim under Article 5(1) of the BIT.

397. As observed by the Tribunal in *Azinian v. Mexico*, "[i]t is a fact of life everywhere that individuals may be disappointed in their dealings with public authorities, and disappointed yet again when national courts reject their complaints," but:[435]

> *[t]he possibility of holding a State internationally liable for judicial decisions does not, however, entitle a claimant to seek international review of the national court decisions as thought the international jurisdiction seised has plenary appellate jurisdiction. This is not true generally, and it is not true for NAFTA.* ***What must be shown is that the court decision itself constitutes a violation of the treaty.*** *Even if the Claimants were to convince this Arbitral Tribunal that the Mexican courts were wrong with respect to the invalidity of the Concession*

[431] Rejoinder, para 441.
[432] Rejoinder, para 443.
[433] Rejoinder, para 444, citing **CLA-139**, *Les Laboratoires Servier, S.A.A., Biofarma, S.A.S., Arts et Techniques du Progres S.A.S. v. Republic of Poland*, UNCITRAL, Award of 14 February 2012, paras 582-584.
[434] Rejoinder, paras 446-454.
[435] **RLA-088**, *Robert Azinian, Kenneth Davitian, & Ellen Baca v. The United Mexican States*, ICSID Case No. ARB (AF)/97/2, Award of 1 November 1999, paras 83 and 99 (*emphasis in original*).

> *Contract, this would not per se be conclusive as to a violation of NAFTA. More is required; the Claimants must show either a denial of justice, or a pretence of form to achieve an internationally unlawful end.*

Here, the Czech Republic courts have decided that the Original Land Transfers were void *ex tunc* under the applicable Czech law, namely Section 29 of the Act on Land, and that the Company never validly owned the Land. In the absence of any international law defect in the January 2019 Judgment, the Tribunal cannot review hat decision as if it were a court of appeal.

398. In any event, as detailed above in Section IV.C, the Tribunal itself considers that the Original Land Transfers were void *ex tunc* under Section 29 of the Act on Land. The Tribunal also considers that the Company's legal predecessors did not validly acquire the Land through the doctrines of good faith acquisition or usucaption, and that the Czech Republic is not estopped from challenging the Company's ownership of the Land under Czech law. As a legal consequence, the Company never acquired valid ownership of the Land. As a further legal consequence, Mr. Halevi, as a shareholder in the Company, did not have a relevant right capable of being expropriated by the Czech Republic in violation of Article 5(1) of the BIT.

399. The Tribunal acknowledges Mr. Halevi's position that he did have such a right, encapsulated in his request that the Tribunal "look to whether *it should have been found* that the Company acquired the land under Czech law, and not be dependent on the interpretation of the Respondent's courts in decisions which led to the claimed expropriation."[436] However, the Tribunal has not merely deferred to the Czech court decisions in coming to the conclusion that the Company never validly owned the Land. In examining Mr. Halevi's expropriation claim under the BIT, the Tribunal has necessarily made its independent determination that the Original Land Transfers were void *ex tunc* under the applicable Czech law.

400. In light of the Tribunal's determination to dismiss the expropriation claim on the ground that Mr. Halevi lacked a relevant right under Czech law capable of being expropriated, there is no need for the Tribunal to examine Mr. Halevi's exhaustive arguments based on alleged direct expropriation, indirect expropriation or judicial expropriation, or the Czech Republic's counter-arguments.

[436] Claimant's PHB, para 185 (Claimant's emphasis).

XI. FAIR AND EQUITABLE TREATMENT

A. The Claimant's Position

401. Mr. Halevi's next claim is that the Czech Republic breached its obligation to afford his investment fair and equitable treatment under Article 2(2) of the BIT, which provides that investments:

> *shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.*

402. Mr. Halevi asserts that, as there is no uniform standard for an FET violation, the Tribunal has broad discretion to conduct the FET analysis on a case-by-case basis.[437] As stated by the tribunal in *PSEG v. Turkey*, "[b]ecause the role of fair and equitable treatment changes from case to case, it is sometimes not as precise as would be desirable. Yet, it clearly does allow for justice to be done in the absence of the more traditional breaches of international law standards."[438]

403. In Mr. Halevi's view, the FET standard is composed of certain core components, several of which are relevant to the present case. In particular, he alleges that the Czech Republic: (a) frustrated his legitimate expectations; (b) failed to provide legal stability in its territory; (c) acted disproportionately; (d) acted arbitrarily; and (e) through its courts, failed to provide due process.

1. Legitimate Expectations

404. Mr. Halevi accepts the Czech Republic's position that the standard for legitimate expectations is an objective one. As confirmed by the tribunal in *Saluka v. Czech Republic*:[439]

> *the scope of the Treaty's protection of foreign investment against unfair and inequitable treatment cannot exclusively be determined by foreign investors' subjective motivations and considerations.* ***Their***

[437] Reply, para 378.
[438] Reply, para 378, *quoting* **CLA-145**, *PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award of 19 January 2007, para 239.
[439] Reply, para 381, *quoting* Statement of Defence, para 165 (*Claimant's emphasis*).

expectations, in order for them to be protected, must rise to the level of legitimacy and reasonableness in light of the circumstances.

405. Mr. Halevi argues that he meets this standard.[440] He bases his objective legitimate expectations on several factors, including the following:

a. The Land Fund's transfer of the Land to Messrs. Maixner and Fidrmuc: the Czech Republic selected and transferred the Land pursuant to the Act on Land as Replacement Land for a restitution claim. It was the Land Fund's duty to evaluate the suitability of the Land for a valid transfer of ownership.[441]

b. The Original Land Transfers, which included express representations by the Land Fund that it was not aware of any facts that would prevent the execution of the transfers.

c. The recording of the Original Land Transfers and all subsequent transfers – 14 in total – in the Land Registry: according to Czech Constitutional Court decisions, the Cadastral Office was obliged under Section 5 of the Cadastral Act to examine whether the parties were entitled to dispose of the Land, and Mr. Halevi had a legitimate expectation that the State was maintaining the Land Registry in a lawful manner.[442]

d. The passage of time in connection with possible usucaption of the Land: when the Company acquired the Land on 23 April 2010, more than 12 years had elapsed since the Land was first transferred by the Land Fund, giving rise to legitimate expectations that the ownership of the Land recorded in the Land Registry would be protected by the State.[443]

e. The Settlement Agreement between the Knights of the Cross, Mr. Maixner and CENTRUM CZ.[444]

f. The evolution of the legal proceedings regarding ownership of the Land, in which the Czech courts "for many years confirmed that the legal predecessors of the Company acquired the ownership from a lawful owner," including as late

[440] Reply, para 382.
[441] Statement of Claim, para 105(i).
[442] Reply, para 424.
[443] Statement of Claim, para 105(iii).
[444] Reply, para 403(iv).

as 2014 when the appellate court in Lawsuit Three recognized the Company's good faith ownership.[445]

g. The Land Fund's letter of 26 November 2003, confirming that the State was not the owner of the Land and that its documentation did not identify the Land as historical property of the Knights of the Cross.[446]

h. The Ministry of Agriculture's letter of 25 June 2007, confirming that no restitution claims were pending in connection with the Land.[447]

i. The Future Exchange Agreement between the Land Fund and the Company's legal predecessors.[448]

j. The opinion of the Company's legal advisers, who did not identify any legal obstacle for concluding the 2010 Land Purchase Agreements and pursuing the Project.[449]

k. The Czech tax authorities' collection of real estate transfer taxes and real estate taxes.[450]

l. The discussion of the bill underlying the Church Restitution Act in the Czech Chamber of Deputies, during which officials confirmed that the legislation would not affect the rights of private individuals: for example, the Minister of Culture stated that "only state property is being returned. The property of municipalities, regions and private individuals will not be affected. On the contrary, by adopting the law, they will gain definite certainty that their ownership will not be called into question in the future,"[451] and similar comments were made during the hearing of the bill in the Senate.[452]

[445] Reply, para 403(v).
[446] Reply, para 404(vi).
[447] Reply, para 404(vii).
[448] Reply, para 404(viii).
[449] Reply, para 404(ix).
[450] Reply, para 404(x).
[451] Reply, para 165, *quoting* **C-074**, Czech Chamber of Deputies: Transcript of the 41st session, 11 July 2012.
[452] Reply, para 166, *citing* **C-075**, Czech Senate: Transcript of the 25th session, 12 August 2012.

406. In Mr. Halevi's view, these factors constitute specific assurances from the Czech Republic regarding the Company's ownership of the Land, which formed the basis of Mr. Halevi's legitimate expectations.[453]

407. Mr. Halevi rejects the Czech Republic's defense that, as a shareholder in the Company, he cannot rely on assurances provided to the Company and the Company's predecessors in title. Mr. Halevi underscores that the Czech Republic itself has argued that Mr. Maixner's knowledge is attributable to the Company.[454] In Mr. Halevi's view, it is unacceptable for the Czech Republic to attribute Mr. Maixner's alleged knowledge to the Company for the purpose of challenging good faith while at the same time denying that the assurances made to Mr. Maixner can establish the Company's legitimate expectations.[455] Thus, Mr. Halevi considers it "totally irrelevant for causality who was party to the Original Land Transfers and how much time has passed since their conclusion."[456] The relevant fact, in his view, is that the Company is the direct legal successor to Messrs. Maixner and Fidrmuc and had full knowledge of the Original Land Transfers and the ownership status of the Land.[457]

408. Similarly, Mr. Halevi rejects the Czech Republic's defense that he cannot rely on the Original Land Transfers and the Future Exchange Agreement on the ground that these are private contracts outside of the State's sovereign power. Mr. Halevi contends that, to the contrary, the Original Land Transfers were concluded in the exercise of the Czech Republic's sovereign power and "imposed on the Company's legal predecessors as a tool to execute the restitution process" set forth under the law.[458] Mr. Halevi highlights that, in any event, his legitimate expectations are based not only on the existence of the Original Land Transfers and the Future Exchange Agreement, but also the terms of those agreements, which included express representations regarding the status of the Land that can support Mr. Halevi's legitimate expectations of ownership even in the absence of a sovereign act.[459]

409. Mr. Halevi also rejects the Czech Republic's other arguments regarding the Original Land Transfers. AAs set out in Section IX.B above, Mr. Halevi denies – by

[453] Claimant's PHB, para 189.
[454] Claimant's PHB, para 191, *citing* Statement of Defence, para 178.
[455] Claimant's PHB, para 191.
[456] Reply, para 412.
[457] Reply, para 412.
[458] Claimant's PHB, para 192.
[459] Claimant's PHB, para 193.

submission – that either he or the Company was aware of the alleged voidness of the Original Land Transfers. His position, to the contrary, is that after the Company's legal predecessors prevailed in Lawsuit One and entered into the Settlement Agreement, Czech authorities repeatedly confirmed that the Company's legal predecessors were the rightful owners of the Land, leaving no reason for the Company to question the ownership of the Land.[460] In fact, Mr. Halevi says, the appellate court in Lawsuit Two confirmed the Company's rightful ownership to the Land in 2014, and it was not until the Supreme Court decision in Lawsuit Three that any Czech court concluded in a binding manner that the Original Land Transfers were void.[461] Mr. Halevi thus sees no basis for the Czech Republic's argument that he should have recognized the "clear" voidness of the Original Land Transfers years before any Czech authorities did.[462]

410. Turning to the Settlement Agreement, Mr. Halevi considers it irrelevant that the Czech Republic was not a party to the Agreement, because "his legitimate expectations were based on the fact that he could not reasonably have expected that the Respondent would provide protection for breach of a binding contract."[463] In other words, he contends that he was entitled to expect the Czech courts to enforce the Settlement Agreement.

411. Mr. Halevi concludes that, based on these various assurances, he had a legitimate expectation that his investment would be protected and that he had the right to rely on these assurances irrespective of any due diligence conducted.[464] Mr. Halevi cites *Cube Infrastructure v. Spain*, where the tribunal stated that "the right to rely upon the representations made in this case do not depend on there being evidence of any particular form or scale of legal due diligence by external advisors."[465] Mr. Halevi also points to the holding of the tribunal in *SolEs Badajoz v. Spain* that:[466]

> ***a formal due diligence process is not a precondition to a successful claim of legitimate expectations****. However, an investor cannot benefit*

[460] Reply, para 417.
[461] Reply, para 417.
[462] Reply, para 418.
[463] Reply, para 403(iv).
[464] Reply, para 433.
[465] Reply, para 396, *quoting* **CLA-146***, Cube Infrastructure Fund SICAV and others v. Kingdom of Spain*, ICSID Case No. ARB/15/20, Decision on Jurisdiction, Liability and a Partial Decision on Quantum of 19 February 2019, para 396.
[466] Reply, para 397, *quoting* **CLA-147***, SolEs Badajoz GmbH v. Kingdom of Spain*, ICSID Case No. ARB/15/38, Award of 31 July 2019, para 331 (*Claimant's emphasis*).

> *from gaps in its subjective knowledge of the regulatory environment because, under an objective standard, the investor's legitimate expectations are measured with reference to the knowledge that a hypothetical prudent investor is deemed to have had as of the date of the investment. The extent of inquiry that is incumbent on a prudent investor depends on the particular circumstances of the case.*

412. For Mr. Halevi, "[i]t follows that there is no *prima facie* requirement of due diligence on [the] part of the investor, the less so a formal due diligence (report) by external advisors" and it is "rather a knowledge that a hypothetical prudent investor is deemed to have had as of the date of the investment, which serve[s] as a reference for the reasonableness and legitimacy of the expectations concerned."[467]

413. Mr. Halevi asserts that, in any event, the Company conducted proper due diligence prior to investing in the Land. As [redacted] testified, the Company relied on the legal advice of the law firm [redacted], with which [redacted] and Mr. Halevi had a long business relationship.[468] According to [redacted] the firm orally communicated the findings of its due diligence – namely that there were no extraordinary risks in connection with the 2010 Land Purchase Agreements[469] – when meeting with the shareholders rather than providing a formal written report.[470] In his Post-Hearing Brief, Mr. Halevi notes that the law firm could have attracted liability for providing bad advice and preparing a void contract, which in his view is one reason a written due diligence report was not required.[471]

414. Mr. Halevi next contends that having raised his legitimate expectations, the Czech Republic proceeded to frustrate those expectations through several actions.

a. First, after supporting the ownership status in of the Company and its legal predecessors, the Czech Republic took the exact opposite approach and commenced Lawsuit Three against the Company at the request of the Knights of the Cross. Moreover, the Czech Republic asked the first instance court in Lawsuit Three to issue an interim injunction against the Company to stop the Project.[472]

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[467] Reply, para 398 (emphasis not included).
[468] Claimant's PHB, para 151, *citing* Transcript, Day 2, 15:14-16:4.
[469] Claimant's PHB, para 152.
[470] Transcript, Day 2, 8:18-19 and 38:22-39:5.
[471] Claimant's PHB, para 152.
[472] Reply, para 431(i).

b. Second, by adopting the Church Restitution Act, the Czech Republic introduced a legal framework that: (a) failed to protect private persons that had acquired property released in breach of Section 29 of the Act on Land, while at the same time protecting local administrations and municipalities in similar situations; (b) allowed the Knights of the Cross to sidestep the Settlement Agreement with Mr. Maixner and CENTRUM CZ; and (c) removed the procedural impediments faced by the Knights of the Cross in pursuing a claim for determination of the State's ownership, including procedural standing and exemption from legal fees.[473]

c. Third, the Czech courts permitted the Knights of the Cross to breach the Settlement Agreement after seven years of recognizing that the Company and its predecessors owned the Land, and even allowed the Knights of the Cross to keep the profits emanating from the breach.[474] The courts also disregarded the Future Purchase Agreement, even though the Czech Republic has admitted that "[p]erhaps actions of the Knights of the Cross could be regarded as a breach of their obligations under the Settlement Agreement or Future Purchase Agreement."[475] In doing so, the courts allowed the Knights of the Cross to act contrary to the principles of fairness and *pacta sunt servanda* that are recognized by legal orders throughout the world.[476] The courts also permitted a breach of the principle of fairness enshrined in the Czech Civil Code and ignored Supreme Court decisions holding that courts have an obligation to protect a party that relies on a contract in a good faith, even if that contract is invalid.[477]

d. Fourth, the Czech Republic, as the plaintiff, supported the Knights of the Cross as a defendant in Lawsuit Four, to the detriment of Mr. Halevi.[478]

e. Finally, the Czech courts are responsible for the January 2019 Judgment, by which the Company lost its ownership of the Land without compensation.[479]

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[473] Reply, para 431(iv)
[474] Claimant's PHB, paras 119-122.
[475] Reply, para 69, *quoting* Statement of Defence, para 56.
[476] Reply, para 74.
[477] Reply, para 70, *citing* **CLA-099**, Act No. 89/2012 Coll., Czech Civil Code, Section 6(2); Claimant's PHB, para 120, *citing* **CLA-173**, Judgment of the Supreme Court No. 32 Cdo 617/2010 of 27 April 2011.
[478] Reply, para 431(ii); see Claimant's PHB, paras 194-202.
[479] Reply, para 431(v).

2. Stable Legal Framework

415. Moving beyond legitimate expectations, Mr. Halevi submits that the Czech Republic also breached Article 2(2) of the BIT by failing to provide a stable and predictable legal framework.

416. Mr. Halevi cites *Enron v. Argentina* for the proposition that legal stability is "a key element of fair and equitable treatment."[480] He notes the Czech Republic's acceptance that a stable legal framework is protected under the FET standard and gives investors the right to expect that the host State will not drastically change the legal framework existing at the time of the investment.[481]

417. Mr. Halevi contests the Czech Republic's position that, in order to prove a breach of the stability obligation, the investor must show that the change to the legal framework was unreasonable, constituted a complete alteration of the investment environment, or was based on political hostility. Citing *Saluka v. Czech Republic*, Mr. Halevi argues that "if the legitimate expectations of the investor are based in specific representations and/or commitments of the host state, the change in legal framework does not need to reach such a severity (unreasonableness, alteration of environment or political hostility) to amount to a breach of the FET standard."[482]

418. Mr. Halevi argues that the stability of the legal framework is undermined when the following conditions are met: (a) there is a significant change of legal framework; and (b) the change is unreasonable or contradicts representations or commitments by the host State.[483] In his view, the Czech Republic's adoption of the Church Restitution Act clearly met these conditions, because that legislation "was a major interference with the legal certainty of not only investors but all private owners of land in the Czech Republic," which was both unreasonable and inconsistent with the Czech Republic's prior representations and commitments.[484]

419. Mr. Halevi recalls that the Czech Parliament adopted the Church Restitution Act on 8 November 2012, more than 12 years after the Land Fund transferred the Land to the

[480] Statement of Claim, para 108, *quoting* **CLA-055,** *Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award of 22 May 2007, para 260.
[481] Reply, para 435, *citing* Statement of Defence, para 184(1).
[482] Reply, para 437-439.
[483] Reply, para 440.
[484] Reply, para 441.

Company's legal predecessors and two years after the Company acquired the Land.[485] In his view, this legislation fundamentally changed the legal framework and, in so doing, "substantially worsened the position of *bona fide* owners (as was the Company) and severely undermined the force of the Settlement Agreement."[486] As set out above, Mr. Halevi views the Church Restitution Act as the tool by which the State expropriated his investment.

420. Moreover, Mr. Halevi faults the Church Restitution Act for having retroactive effect, in that it covered claims already existing when it was adopted. These included the Knights of the Cross' claim concerning the Original Land Transfers in 1998, long before the adoption of the Church Restitution Act.[487] Mr. Halevi specifically criticizes Section 18(1) of the Church Restitution Act, which in his view "clearly constituted an effort to retrospectively correct the Respondent's mistakes made in the past which, however, completely disregarded the standing of third persons who acquired the ownership rights to the property with a direct blessing of the Respondent's state organs."[488]

421. Mr. Halevi highlights that Section 18(1) of the Church Restitution Act provided the legal basis on which the Knights of the Cross could initiate Lawsuit Four in parallel with the proceedings the State had initiated in Lawsuit Three, after having already lost in Lawsuits One and Two.[489] The Company was ultimately deprived of the Land only because the Church Restitution Act provided a new basis for the Knights of the Cross' competing claim.[490] In Mr. Halevi's view, this could not have happened under a stable legal framework.[491]

422. Finally, Mr. Halevi refers again to the comments of the Czech Minister of Culture, who represented that the Church Restitution Act would not affect the rights of private individuals. He objects that, in direct contradiction to those representations, attributable to the State, the Church Restitution Act did in fact deprive private citizens of their property rights.[492]

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[485] Statement of Claim, para 109.
[486] Reply, para 448.
[487] Reply, para 448.
[488] Statement of Claim, para 111.
[489] Reply, para 449.
[490] Reply, paras 132, 449.
[491] Reply, para 450.
[492] Reply, paras 443-444.

3. Proportionality

423. Mr. Halevi's next FET claim is that the Czech Republic breached Article 2(2) of the BIT by acting disproportionately to the circumstances. Citing *EDF v. Romania* and *PL Holdings v. Poland*, Mr. Halevi argues that the test for proportionality requires a measure to meet the following three conditions:[493]

> *(i) be suitable for achieving its purpose;*
>
> *(ii) be the least burdensome of all available measures and must not pose individual and excessive burden on the individuals involved; and*
>
> *(iii) not be excessive and must present advantages that outweigh its disadvantages.*

424. According to Mr. Halevi, the Czech Republic's adoption of the Church Restitution Act failed to meet any of these conditions.

425. First, although Mr. Halevi accepts that the Church Restitution Act was aimed at correcting past mistakes concerning restitution of church property, he argues that it was not suitable to achieve that policy objective.[494] He emphasizes that the Czech Republic did not introduce the Church Restitution Act until 23 years after the fall of the communist regime, raising a question as to whether "the main purpose of [the Church Restitution Act] can still be considered the redress of property injustices."[495] Moreover, he says, the Church Restitution Act actually created more property injustices, by depriving private citizens of property rights they had held for many years.[496]

426. Second, Mr. Halevi denies that the Church Restitution Act was the least burdensome measure available to the Czech Republic to meet its policy goal. In his view, the Czech Republic "chose an unusual route," which (a) "implicitly legalized/legitimized the historical injustice caused by the Respondent in the initial act of taking the property (thus confirming the ownership of the Respondent to all taken property);" and (b) granted churches procedural standing to request determination not of their own

[493] Reply, paras 455-457, *citing* **CLA-056**, *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award of 8 October 2009, para 293; **CLA-148***, PL Holdings S.a.r.l. v. Poland*, SCC Case No. V 2014/163, Partial Award of 28 June 2017, para 355.
[494] Reply, paras 460-463.
[495] Reply, para 461.
[496] Reply, para 462.

ownership, but of the State's ownership of the relevant property.[497] He objects that this approach – under which the churches were not direct beneficiaries of property claims – allowed the Czech courts to render the Settlement Agreement ineffective, to the detriment of the Company.[498] In addition, the Act allowed the State to treat different categories of property unequally: whereas the municipalities and regions could maintain their ownership of historic church land with the State providing compensation to churches to remedy past property injustices, private persons were deprived of their property and effectively paid for the State's past mistakes.[499] According to Mr. Halevi, the Czech Republic's approach placed a disproportionate burden on the Company.

427. Mr. Halevi identifies a number of alternative approaches that he considers would have been less burdensome. For example, the Czech Republic could have safeguarded the property of private individuals just as it did the properties of municipalities, or it could have provided a compensation scheme for private persons affected by the law.[500]

428. Third, Mr. Halevi argues that the Church Restitution Act was excessive for the following reasons:[501]

a. The Act favored churches over other restitution claimants that had also suffered severe property injustices at the hands of the communist regime, thereby "mitigate[ing] the damage caused to one group (churches) by causing more harm to other groups (and thus harming them twice)."

b. There was no mechanism in the Act to provide compensation to private persons deprived of ownership of their land based on church claims under Section 18.

c. Under the Act, the exemption from court and administrative fees was applied in a discriminatory manner only to one party in the proceedings, namely the church party.

429. In sum, Mr. Halevi charges that the Church Restitution Act was not a proportionate measure to achieve redress for historical wrongs because it "inflicted further property wrongs, this time on private entities, which included the Company (and by

[497] Reply, para 465.
[498] Reply, para 466(ii).
[499] Reply, para 466(i).
[500] Reply, para 467.
[501] Reply, paras 471-473.

consequence the Claimant)," leaving them without any means of seeking compensation for the loss of their property.[502]

430. In this connection, Mr. Halevi rejects the Czech Republic's argument that the Company and its legal predecessors did have other sufficient remedies under Czech law, in particular that Messrs. Maixner and Fidrmuc had the right to request different Replacement Land or monetary compensation from the Land Fund. Although Mr. Halevi accepts that, theoretically, there was a possibility for Messrs. Maixner and Fidrmuc to seek Replacement Land or compensation for the Land from the Land Fund, he argues that this approach would have been unrealistic for several reasons:[503]

a. First, Mr. Fidrmuc transferred his part of the Land to Mr. Svoboda in 1999, before Lawsuit One was initiated. Thus, even on the Czech Republic's case, Mr. Fidrmuc could not have known of the alleged voidness of the Original Land Transfers in 1999 and would have had no reason to seek Replacement Land.[504]

b. Second, Mr. Maixner had no reason to seek Replacement Land because, as set out above, he believed that he owned his part of the Land in light of the State's repeated assurances and his victory in Lawsuit One.[505] Nor would the Land Fund have had any reason to act on such a request from Mr. Maixner.[506]

c. Third, when Mr. Maixner believed he owned the Land, Czech law provided no procedure or guidance on how to request Replacement Land, and there was no Czech court case law addressing the issue.[507]

d. Fourth, by amendments to the Act on Land, the legal right to seek Replacement Land lapsed at the latest on 31 December 2005. Thus, "the only time period in which Mr. Maixner could theoretically have requested different replacement land from the Land Fund was between 12 October 2005, when Lawsuit #1 was definitively terminated by the withdrawal of the extraordinary appeal by the

[502] Reply, para 474.
[503] Claimant's PHB, para 15.
[504] Claimant's PHB, paras 16-17.
[505] Claimant's PHB, para 18.
[506] Claimant's PHB, para 29.
[507] Claimant's PHB, paras 20-25.

Knights of the Cross following the Settlement Agreement, and 31 December 2005."[508]

e. Fifth, the monetary compensation available under Section 16(1) of the Act on Land would not have been effective restitution for the Land because, at the relevant time, Mr. Maixner would have received compensation only in the amount set by Decree No. 182/1988 Coll.:, which was the 1991 value.[509]

431. In this connection, and in response to the Tribunal's questions (a) and (b) in Procedural Order No. 10 for post-hearing consideration, Mr. Halevi submits that Messrs. Maixner and Fidrmuc were the last holders of restitution claims, which were of no realistic value. He agrees with [redacted] that "it is necessary to distinguish between the assignment of a restitution claim, on the one hand, and the transfer of the land originally acquired on the basis of that restitution claim, on the other" and "no implicit assignment of the restitution right occurs alongside the transfer of that land."[510] In sum, according to Mr. Halevi:[511]

> *First, the right of restitution stops with the original restitutees and/or assignees of that claim (i.e., Mr. Maixner and Mr. Fidrmuc in the present case), as that right must be explicitly assigned as a separate claim and is not transferred implicitly with the land. Second, not only the later owners (e.g., the Company) of the Land could not have requested a different replacement land from the Land Fund, but even Mr. Maixner and Mr. Fidrmuc, could not have, in reality, obtained such land.*

432. In any event, says Mr. Halevi, any assignment of the restitution claim was explicitly prohibited by the Original Land Transfers themselves.[512]

433. In conclusion, although Mr. Halevi accepts that "some mechanism similar to [the Church Restitution Act] had to be adopted" for policy reasons, he considers the Czech Republic's use of that Act to be clearly disproportionate to the circumstances, in terms of providing fair and equitable treatment to private investors such as the Company.[513]

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[508] Claimant's PHB, para 36.
[509] Claimant's PHB, paras 37-50.
[510] Claimant's PHB, para 7.
[511] Claimant's PHB, para 6 (emphasis omitted).
[512] Claimant's PHB, para 14, *citing* **C-009**, Land Transfer Agreement (Maixner); Art. III; **Exhibit C-010**, Land Transfer Agreement (Fidrmuc), Art. III.
[513] Claimant's PHB, para 199.

4. Arbitrariness

434. Mr. Halevi also describes the Czech Republic's adoption and implementation of the Church Restitution Act as arbitrary. Applying the test derived from cases such as *EDF v. Romania*, *Mondev v. United States* and *Cyprus Popular Bank v. Greece*, Mr. Halevi argues that a measure is arbitrary if it either: (a) inflicts damage on the investor without serving any legitimate purpose or; (b) is guided by prejudice, bias, preferences or disregard for the rule of law.[514]

435. Mr. Halevi submits that this test is met here because the Church Restitution Act permitted Czech courts to deprive private persons of their property without compensation and without considering whether such a deprivation was for a legitimate purpose or inflicted undue damage on the owners.[515] Mr. Halevi again stresses that private persons suffered deprivation of their property despite government assurances that the Church Restitution Act would not affect their rights.[516] In addition, he again criticizes the Czech courts for implementing the Church Restitution Act in a way that treated private persons less favorably than municipalities and regions.

436. At the Hearing, counsel for Mr. Halevi argued that the Czech Republic filed for the extraordinary appeal in Lawsuit Three, after the first instance and appellate courts declared the Company to be the owner of the Land, because the Czech Republic "had to know that the company was owned by two foreign investors" and "should have been aware of the fact that there are BITs" and, if the Company's ownership of the Land under the BITs were to be respected, "would have to pay huge monetary compensation to the church."[517]

5. Due Process

437. The final basis for Mr. Halevi's FET claim under Article 2(2) of the BIT is that the Czech courts failed to provide him and the Company due process, particularly in Lawsuit Four.

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[514] Statement of Claim, para 120; Reply, paras 477-484, *citing* **CLA-056,** *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award of 8 October 2009, para 293; **CLA-149**, *Cyprus Popular Bank Public Co. Ltd. v. Hellenic Republic*, ICSID Case No. ARB/14/16, Decision on Jurisdiction and Liability of 8 January 2019, para 1125; **CLA-150***, Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award of 11 October 2002, para 127.
[515] Reply, para 485.
[516] Reply, para 486.
[517] Transcript, Day 1, 66:1-67:18.

438. In respect of the applicable standard, Mr. Halevi refers to *Eco Oro v. Colombia*, in which the tribunal observed that "[u]njust or idiosyncratic actions, a wilful neglect of duty, an insufficiency of action falling far below international standards, or even subjective bad faith have all been found to be in breach of FET."[518] Mr. Halevi considers that "other situations of host state's manifest disregard of the Claimant's rights, such as a discriminatory setting or treatment in/by the Respondents' courts" would also violate the State's obligation to provide FET.[519] Additionally, he cites *CME v. Czech Republic,* in which the tribunal found a breach of due process on the basis that the Czech Republic had supported a third person whose aim was to harm the investor.[520]

439. Mr. Halevi's position here is that the Czech Republic deprived him of due process through discriminatory treatment in the Czech courts and by supporting a third person – the Knights of the Cross – in harming his investment.[521]

440. Mr. Halevi alleges that the Company was subject to unequal treatment through most of the proceedings in Lawsuit Four, which provided an unfair advantage to the Knights of the Cross. In particular, Mr. Halevi again complains that the Knights of the Cross and the State were exempt from court and other administrative fees under Article 18(3) and (5) of the Church Restitution Act, whereas the Company had to incur all such expenses while defending itself.[522]

441. Mr. Halevi also alleges that the Czech court in Lawsuit Four unfairly reversed the burden of proof in favor of the Knights of the Cross as the plaintiff against the Company as the defendant. In this respect, Mr. Halevi considers it "a general principle of both Czech and international law that it is for the plaintiff to prove its ownership rights against a rightful possessor."[523] Mr. Halevi says this principle arises under Czech procedural law from the nature of civil proceedings as an adversarial process.[524] He points out that the Czech Civil Procedure Code recognizes only one situation in which the burden of proof shifts to the defendant: a

[518] Statement of Claim, para 124; Reply, para 496, *quoting* **CLA-060,** *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum of 9 September 2021, para 754.
[519] Reply, para 496.
[520] Reply, para 495; Claimant's PHB, para 195, *citing* **CLA-062**, *CME Czech Republic B.V. v Czech Republic*, UNCITRAL, Final Award of 14 March 2003, para 449.
[521] Reply, para 497.
[522] Statement of Claim, para 125(iii); Reply, paras 142-146.
[523] Reply, para 110.
[524] Reply, para 110, *citing* **CLA-102**, Act No. 99/1963 Coll., Czech Civil Procedure Code, Section 79.

discrimination claim.[525] Turning to international law, Mr. Halevi notes that investment tribunals have widely recognized the maxim *onus probandi actori incumbit* ("he who asserts must prove"), meaning that the burden of proof may shift only when the moving party offers *prima facie* proof of the relevant asserted facts.[526]

442. For Mr. Halevi, it follows that the burden of proof in Lawsuit Four should have rested with the Knights of the Cross as the plaintiff. However, he says, the Czech court inappropriately shifted the burden to the Company as a defendant, based on the priority of church restitution claims, despite the fact that there is no Czech law allowing burden shifting on that basis. Mr. Halevi contends that even once the Knights of the Cross provided *prima facie* evidence that the Land was historic church property transferred in violation of Section 29 of the Act on Land, there was no basis to shift the burden of proof of ownership to the Company, because there was also *prima facie* evidence of the Company's good faith acquisition.[527] In this regard, Mr. Halevi reiterates that the Czech Constitutional Court has found that excluding the possibility of acquiring land through good faith possession would be "incompatible with the maxims of constitutional law."[528]

443. Mr. Halevi emphasizes that, just like the Knights of the Cross, the Company derived its title to the Land through restitution claims in the post-communist era. This means, he says, that by shifting the burden of proof of ownership to the Company, the Czech courts unfairly prioritized church restitution claims over all others.[529]

444. Moreover, argues Mr. Halevi, the Czech court "not only reversed the burden of proof, it even legally disqualified the Company (and thus the Claimant) in the manner that the Company could have never carried the burden."[530] This is because the Czech court held that circumstances demonstrating the Company's good faith acquisition would not satisfy the Company's burden of proving its ownership. For Mr. Halevi,

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[525] Reply, para 112, *citing* **CLA-102**, Act No. 99/1963 Coll., Czech Civil Procedure Code, Section 18(1).
[526] Reply, paras 110-111, *citing* **CLA-103**, *Antonio del Valle Ruiz et al. v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award of 13 March 2023, para 494; **CLA-104**, *Beijing Everyway Traffic & Lighting Tech. Co., Ltd v. The Republic of Ghana (I)*, PCA Case No. 2021-15, Final Award on Jurisdiction (Save as to Costs) of 30 January 2023, para 118; **RLA-019**, *International Thunderbird Gaming Corp. v. the United Mexican States*, UNCITRAL, Award of 26 January 2006, para 95; **RLA-018,** *Marvin Feldman v. Mexico*, ICSID Case No. ARB(AF)/99/1, Award of 16 December 2002, para 177.
[527] Reply, para 113.
[528] Reply, para 114, *quoting* **CLA-098**, Judgment of the Czech Constitutional Court No. III. ÚS 1670/15 of 17 September 2015, para 12.
[529] Reply, para 115.
[530] Reply, para 118.

it is "totally unclear" what other circumstances beyond the Company's good faith and the State's role in the land transfers could have possibly carried the Company's burden of proof.[531] Thus, says Mr. Halevi, the court made it essentially impossible for the Company to prevail, thereby depriving the Company of due process.

445. According to Mr. Halevi, the Czech Republic also deprived him of due process by supporting the Knights of the Cross in harming his investment by several means.

446. First, Mr. Halevi contends that the Czech Republic should not have initiated Lawsuit Three after it had provided the Company and its legal predecessors assurances about their ownership of the Land for the preceding 14 years.[532] Mr. Halevi recalls that the Czech Republic even sought an interim injunction that stopped the Project. In Mr. Halevi's view, not only was the Czech Republic not required to take these actions, but it was also estopped from doing so in light of its earlier assurances.[533]

447. Second, Mr. Halevi asserts that it was the Czech Republic's filing of the extraordinary appeal in Lawsuit Three that allowed the Knights of the Cross to initiate Lawsuit Four, which led to the expropriation of the Land. Absent the extraordinary appeal, the appellate court's judgment in favor of the Company in Lawsuit Three would have remained final with *res judicata* effect, protecting the Company from further challenges to its ownership of the Land.[534]

448. Third, Mr. Halevi reiterates that the Czech Republic adopted the Church Restitution Act in a way that disproportionately supported the Knights of the Cross to the Company's detriment.[535]

449. Finally, Mr. Halevi contends that the Czech Republic actively supported the Knights of the Cross in Lawsuit Four in a way that harmed the Company. Although Mr. Halevi accepts that "no one can know how Lawsuit #4 would have turned out had the Respondent chosen not to intervene to support the Knights," he considers it "common sense that when a State supports one of the two private parties in a proceeding between them in that State's courts, the supported party is usually successful."[536]

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[531] Reply, para 117.
[532] Claimant's PHB, para 196.
[533] *Id.*
[534] Claimant's PHB, para 198.
[535] Claimant's PHB, para 199.
[536] Claimant's PHB, para 201.

B. The Respondent's Position

450. The Czech Republic submits that none of its actions violated the FET obligations contained in Article 2(2) of the BIT. In its view, Mr. Halevi's "allegations of the breach of the FET standard fail both due to lack of evidence and lack of coherency."[537]

1. Legitimate Expectations

451. Beginning with Mr. Halevi's legitimate expectations claim, the Czech Republic stresses that the relevant standard is an objective one and, as stated by the tribunal in *Saluka v. Czech Republic*, any alleged expectations "must rise to the level of legitimacy and reasonableness in light of the circumstances."[538]

452. According to the Czech Republic, the legitimacy of an investor's expectations is closely tied to the requirement that the investor act with due diligence when making an investment.[539] Thus, the Czech Republic agrees with the *Invesmart v. Czech Republic* tribunal that "the due diligence performed when the investor made its investment plays an important role in evaluating its expectation. A putative investor … has the burden of performing its own due diligence in vetting the investment within the context of the operative legal regime."[540] Further, as stated by the tribunal in *Anderson v. Republic of Costa Rica*, "[a]n important element of such due diligence is for investors to assure themselves that their investments comply with the law."[541] The Czech Republic adds that tribunals have confirmed that an investor can have legitimate expectations only after a "thorough legal analysis of the provisions and an identification of regulatory risks," and that an expectation must "be based upon a proper and thorough understanding of the nature and scope of the representation that is relied upon."[542] For the Czech Republic, it follows that an investor has the burden

[537] Statement of Defence, para 162.
[538] Statement of Defence, para 165, *quoting* **RLA-028**, *Saluka Investments BV v. the Czech Republic*, UNCITRAL, Partial Award of 17 March 2006, para 304.
[539] Rejoinder, para 166; Respondent's PHB, para 18, *citing* **RLA-032**, *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award of 11 September 2007, para 333.
[540] Statement of Defence, para 167, *quoting* **RLA-033**, *Invesmart B.V. v. Czech Republic*, UNCITRAL Arbitration Rules 1976, Award of 26 June 2009, para 254.
[541] Statement of Defence, para 168, *quoting* **RLA-034**, *Alasdair Ross Anderson et al v. Republic of Costa Rica,* ICSID Case No. ARB(AF)/07/3, Award of 19 May 2010, para 58.
[542] Rejoinder, para 528, *quoting* **CLA-146**, *Cube Infrastructure Fund SICAV and others v. Kingdom of Spain*, ICSID Case No. ARB/15/20, Decision on Jurisdiction, Liability and Partial Decision on Quantum of 19 February 2019, para 393.

of proving both that its expectations were reasonable and that it conducted careful due diligence.[543]

453. Regarding possible sources of legitimate expectations, the Czech Republic asserts that a majority of investment tribunals have held that legitimate expectations can arise only where the host State has given a specific commitment or assurance to the investor.[544] The Czech Republic acknowledges that there have been cases in which legitimate expectations were found in the absence of a specific commitment or assurance to the investor, but describes these as "extreme cases" where a host State had first created an attractive legal framework for the purpose of attracting foreign investment and then fundamentally changed this legal framework.[545]

454. Further, the Czech Republic argues that a contract between the investor and the host State is not a valid source of legitimate expectations.[546] As stated by the *Hamster v. Ghana* tribunal, "the existence of legitimate expectations and the existence of contractual rights are two separate issues."[547] More specifically, the tribunal in *Parkerings v. Lithuania* observed as follows:[548]

> *It is evident that not every hope amounts to an expectation under international law. The expectation a party to an agreement may have of the regular fulfilment of the obligation by the other party is not necessarily an expectation protected by international law. In other words, contracts involve intrinsic expectations from each party that do*

[543] Rejoinder, para 171.
[544] Rejoinder, paras 466-468; Respondent's PHB, para 20, *citing* **CLA-049**, *Infinito Gold Ltd. v. Republic of Costa Rica,* ICSID Case No. ARB/14/5, Award of 3 June 2021, para 515; **CLA-145**, *PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award of 19 January 2007, paras 241 and 243; **RLA-073**, *Oko Pankki Oyj, VTB Bank (Deutschland) AG and Sampo Bank Plc v. The Republic of Estonia*, ICSID Case No. ARB/04/6 (formerly OKO Osuuspankkien Keskuspankki Oyj and others v. Republic of Estonia), Award of 19 November 2007, para 247.
[545] Reply, paras 470-474, *citing* **RLA-074**, *Infrastructure Services Luxembourg S.à.r.l. and Energia Termosolar B.V.* (formerly Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V.) v. Kingdom of Spain, ICSID Case No. ARB/13/31, Award of 15 June 2018, para 538; **CLA-051**, *CMS Gas Transmission Company v. The Republic of Argentina*, ICSID Case No. ARB/01/8, Award of 12 May 2005, para 275; **CLA-144**, *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability of 3 October 2006, paras 133 and 139.
[546] Rejoinder, paras 475-481; Respondent's PHB, para 21, *citing* **CLA-086**, *Gustav F W Hamester GmbH & Co KG v. Ghana*, ICSID Case No. ARB/07/24, Award of 18 June 2008, para 335; **RLA-032**, *Parkerings-Compagniet AS v. Lithuania*, ICSID Case No. ARB/05/8, Award of 11 September 2007, para 344; **RLA-075**, *Duke Energy Electroquil Partners and Electroquil SA v. Ecuador*, ICSID Case No. ARB/04/19, Award of 12 August 2008, para 358; **RLA-076**, *Impregilo S.p.A. v. Argentina*, ICSID Case No. ARB/07/17, Final Award of 21 June 2011, para 292.
[547] Rejoinder, para 478, *quoting* **CLA-086**, *Gustav F W Hamester GmbH & Co KG v. Ghana*, ICSID Case No. ARB/07/24, Award, of18 June 2008, para 335.
[548] Rejoinder, para 467, *quoting* **RLA-032**, *Parkerings-Compagniet AS v. Lithuania*, ICSID Case No. ARB/05/8, Award of 11 September 2007, para 344.

> *not amount to expectations as understood in international law. Indeed, the party whose contractual expectations are frustrated should, under specific conditions, seek redress before a national tribunal.*

455. According to the Czech Republic, an investor's expectation must exist at the time of making the investment to be legitimate, leaving subsequent developments irrelevant to the analysis.[549]

456. Regarding the type of measures that can rise to violations of an investor's legitimate expectations, the Czech Republic argues that not every violation of domestic law on the part of the State can amount to a violation of international law.[550] To the contrary, the tribunal in *GAMI v. Mexico* stated that only an "outright and unjustified repudiation" of domestic law would breach the FET standard, and the *Teco v. Guatemala* tribunal held that a "willful disregard of the fundamental principles upon which the regulatory framework is based" would be required.[551] Similarly, regarding the misapplication of domestic law by domestic courts and administrative authorities, the Czech Republic cites *ECE v. Czech Republic*, where the tribunal held that the mere erroneous application of the law is not sufficient to constitute a violation of legitimate expectations.[552]

457. The Czech Republic cites several further cases for the proposition that a mere contractual breach is insufficient to amount to a violation of legitimate expectations.[553] In its view, the relevant criterion for deciding whether a breach of contract triggers responsibility under international law is whether the alleged breach

[549] Respondent's PHB, para 22, *citing* **CLA-115**, *Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania [I]*, ICSID Case No. ARB/05/20, Award of 11 December 2013, para 722; **CLA-144**, *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability of 3 October 2006, para 130; **RLA-077**, *BG Group Plc. v. The Republic of Argentina*, UNCITRAL, Award of 24 December 2007, para 298.
[550] Respondent's PHB, para 23.
[551] Rejoinder, paras 495-496, *quoting* **RLA-080**, *Gami Investments Inc. v. Mexico*, UNCITRAL, Award of 15 November 2004, para 103; **RLA-027**, *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award of 19 December 2013, para 458.
[552] Rejoinder, para 498, *citing* **RLA-082**, *ECE Projektmanagement v. The Czech Republic*, UNCITRAL, PCA Case No. 2010-5, Award of 19 September 2013, paras 4.762, 4.764.
[553] Rejoinder, paras 500-508, *citing* **RLA-083**, *Bayindir* v *Pakistan*, ICSID Case No. ARB/03/29, Award of 27 August 2009, para 377; **RLA-084**, *Bureau Veritas, Inspection, Valuation, Assessment and Control, BIVAC B.V. v. Paraguay*, ICSID Case no ARB/07/9, Further Decision on Objections to Jurisdiction of 9 October 2012; **RLA-085**, *Impregilo SpA* v *Pakistan*, ICSID Case No. ARB/03/3, Decision on Jurisdiction of 22 April 2005, para 278.

involves the exercise of sovereign powers, meaning powers "simply not available to the ordinary contracting partner."[554]

458. Turning to the present case, the Czech Republic submits that Mr. Halevi's legitimate expectations claim must fail because: (a) the State never provided him any basis on which to establish his alleged legitimate expectations; (b) Mr. Halevi was aware or should have been aware that the Company could not acquire valid ownership of the Land and therefore could not have had any legitimate expectations to the contrary; and (c) even if Mr. Halevi had legitimate expectations, the Czech Republic did not violate them.[555]

459. In the Czech Republic's view, none of the sources that Mr. Halevi identifies could have given rise to any legitimate expectation regarding the Company's valid ownership of the Land.

460. As a first preliminary point, the Czech Republic denies that any expectations of Mr. Maixner or other former possessors of the Land may have had can be attributed to Mr. Halevi. Although the Czech Republic's position is that Mr. Maixner's knowledge gained through Lawsuit One is attributable to the Company and Mr. Halevi for the purpose of assessing the Company's good faith acquisition of the Land, the Czech Republic strongly denies that this constitutes "a concession of attribution of legitimate expectations from Mr. Maixner to the Claimant," because "'legitimate expectations', as a concept of international law, is distinct from mere knowledge."[556] The Czech Republic stresses again that legitimate expectations must be based on a specific commitment towards the investor existing at the time of the investment.[557] According to the Czech Republic, none of Mr. Halevi's alleged sources of legitimate expectations meets this basic requirement, because the State's "representations contained in those sources are directed towards Czech parties, not foreign investors."[558]

[554] Rejoinder, para 504, *quoting* **RLA-084**, *Bureau Veritas, Inspection, Valuation, Assessment and Control, BIVAC B.V. v. Paraguay*, ICSID Case no ARB/07/9, Further Decision on Objections to Jurisdiction of 9 October 2012, para 241.
[555] Rejoinder, para 509.
[556] Respondent's PHB, paras 190-191.
[557] Respondent's PHB, para 193.
[558] Respondent's PHB, para 194.

461. As a second preliminary point, the Czech Republic argues that Mr. Halevi has failed to identify any specific legitimate expectations he believes these various sources should have raised, rendering his case "inconclusive from the start."[559]

462. The Czech Republic goes on to argue that, even if Mr. Halevi could survive these preliminary obstacles, his case is not supported by the sources he lists as the basis for his legitimate expectations.[560]

463. First, regarding the Original Land Transfers, the Czech Republic denies that these agreements could give rise to a legitimate expectation on the Company's part that it could legally acquire the Land in reliance on the Land Fund's compliance with Section 29 of the Act on Land. The Czech Republic offers the following reasons for this position:

a. Neither Mr. Halevi nor the Company was a party to the Original Land Transfers, which were concluded more than a decade before the 2010 Land Purchase Agreements. Thus, "the Original Land Transfers, which were the only relevant contracts to which the Respondent was a party, contained no commitment towards the Claimant or the Company and constituted no basis on which either of them could base any legitimate expectations."[561]

b. The Original Land Transfers were contracts for acquisition of the Land, which could have been concluded by private parties. Therefore, under the applicable legal standard discussed above, the Original Land Transfers could not have given rise to any legitimate expectations of FET even though a State entity was party to them.[562]

c. The fact that the Original Land Transfers proved to be void due to the blocking provision in Section 29 of the Act on Land is insufficient to establish a violation of Mr. Halevi's legitimate expectations. The voidness resulted from the application of Czech civil law and did not involve the exercise of any sovereign power. Therefore, "even if the Land Fund had not performed under the

[559] Rejoinder, para 510.
[560] Rejoinder, para 510.
[561] Rejoinder, paras 513-516.
[562] Rejoinder, para 517.

contracts because it did not transfer ownership, such breach of contract would not amount to a breach of international law."[563]

d. As set out in connection with the ownership issue, by 2010, Mr. Halevi and the Company were aware that the Original Land Transfers violated the blocking provision in Section 29 of the Act on Land based on the information acquired by Mr. Maixner through Lawsuit One, and it was therefore obvious that the Company could not acquire valid title to the Land. To the extent Mr. Halevi and the Company had any doubt about this fact, reasonable due diligence would have revealed it to them immediately.[564]

464. Second, the Czech Republic rejects Mr. Halevi's argument that he "had the legitimate expectation that the Respondent was maintaining the Land Registry in a lawful manner," for the following reasons:[565]

a. The Land Registry is a public register for use by the general public rather than by any specific person or categories of persons. Thus, the information in the Land Registry cannot constitute any specific commitment to Mr. Halevi or the Company.[566]

b. Contrary to Mr. Halevi's position, the Cadastral Office is not required under Section 5(1) of the Cadastral Act to review all aspects of validity of title in relation to applications for a new record, and "in particular, it is unclear whether a possible violation of Sec. 29 of the Act on Land would trigger such an obligation."[567] Therefore, it would be unreasonable for an investor to expect that each entry in the Land Registry is necessarily correct. This is particularly true in the present case where Mr. Maixner and the Company had already learned by way of Lawsuit One that the Land Registry records were evidently incorrect.[568]

c. Even if the Cadastral Office should have identified that Section 29 of the Act on Land applied to the Land and breached that duty by allowing incorrect registrations, such "violations of domestic law by local authorities, which can

[563] Rejoinder, paras 517-518.
[564] Rejoinder, paras 519-522.
[565] Rejoinder, para 532, *quoting* Statement of Claim, para 105(ii).
[566] Rejoinder, para 524.
[567] Rejoinder, para 525.
[568] Rejoinder, para 525.

occur in any legal system, do not rise to the level necessary to constitute a violation of legitimate expectations."[569]

465. Third, the Czech Republic sees no basis on which the Settlement Agreement and the Future Purchase Agreement could support Mr. Halevi's case, for the following reasons:

a. The Settlement Agreement and the Future Purchase Agreement are contracts between private parties that do not involve the exercise of sovereign power.

b. The Czech Republic is not a party to either the Settlement Agreement or the Future Purchase Agreement, which were concluded only by Mr. Maixner, the Company and the Knights of the Cross. Therefore, they could not have had any impact on Mr. Halevi's legitimate expectations regardless of their terms.[570]

c. Mr. Halevi's suggestion that the Czech Republic somehow condoned the Knights of the Cross' breach of the Settlement Agreement lacks any foundation. Although the Knights of the Cross undertook in the Settlement Agreement to withdraw their extraordinary appeal in Lawsuit One, the Settlement Agreement contains no express promise that the Knights of the Cross would refrain from pursuing claims in the future.[571] In any event, Czech law does not permit parties to waive judicial protection.[572] As [redacted] explains, "even if it was the will of the parties to the Settlement Agreement to exclude the Knights of the Cross' right to enforce their claims against the Company in court (in contentious civil court proceedings), the agreement thus concluded could not have led … to the intended effects," because "such an agreement was not capable of excluding the right of the Knights of the Cross to enforce claims against the Company with regard to the Land."[573] Moreover, because the Company never pursued the Knights of the Cross for breach of the Settlement Agreement, Mr. Halevi's argument that Czech courts afforded protection to this alleged breach "is therefore simply inconclusive [and] Czech courts cannot have 'afforded

[569] Rejoinder, para 526.
[570] Statement of Defence, paras 50-55; Rejoinder, para 529.
[571] Rejoinder, para 306, *citing* **C-024**, Settlement Agreement, Article II.4.
[572] Rejoinder, para 307.
[573] [redacted] Expert Report, para 147, *citing* [redacted] **ER-073**, Macur, J. Kurs občanského práva procesního. Exekuční právo. (A Course in Civil Procedure. Law of Enforcement.) Prague: C. H. Beck, 1998, p. 3.

protection' against any breach of contract which was not even submitted to them."[574]

466. Fourth, the Czech Republic rejects Mr. Halevi's argument that the "evolution of legal proceedings" could have given rise to legitimate expectations. Again, the Czech Republic offers several reasons for its position:

a. The Czech courts never declared the Company or its legal predecessors to be owners of the Land. To the contrary, the court issuing the first judgment in the disputes with the Knights of the Cross in Lawsuit One considered it "beyond any doubt that the Defendants are not the owners of the relevant real estate, precisely with regard to [Section 29 of the Act on Land]."[575] Lawsuit One was later dismissed, without this judgment being annulled, on the basis that the Knights of the Cross lacked standing to bring the case because they had lost ownership of the Land to the State – not because Mr. Maixner owned the Land. These proceedings could not have given rise to any legitimate expectations on behalf of the Company because it was in the course of the first instance stage of Lawsuit One that Mr. Maixner was exposed to information showing that the Original Land Transfers violated Section 29 of the Act on Lanc.[576]

b. In any event, neither Mr. Halevi nor the Company was a party to Lawsuit One, meaning that any findings of the courts were not directed toward them and therefore could not been the source of their legitimate expectations.[577]

c. After Lawsuit One, the other court proceedings concerning the Land occurred after Mr. Halevi made his investment in the Company in 2010. Nothing in Lawsuits Two to Four could have been the basis of legitimate expectations for Mr. Halevi at the time he invested.[578]

d. Even in those subsequent proceedings, all the courts that addressed the Original Land Transfers found that they violated Section 29 of the Act on Land. Although judgments were entered in favor of the Company in Lawsuit Three, these were

[574] Rejoinder, para 531.
[575] Rejoinder, para 534, *quoting* **R-006**, Judgment of the Court of First Instance No. 25 C 239/2000-120, p. 8.
[576] Rejoinder, para 534.
[577] Rejoinder, para 535.
[578] Rejoinder, para 536.

first and second instance judgments that were later annulled and are thus deemed under Czech law never to have existed.[579]

467. Fifth, as for the Land Fund's letter of 26 November 2003 relaying that it would not intervene in Lawsuit One, the Czech Republic argues that it cannot be the basis of Mr. Halevi's legitimate expectations. The Czech Republic offers the following reasons:

a. The Land Fund expressly stated that the information provided was based on information available to the Land Fund at the time. Clearly, the statements were merely a declaration of the Land Fund's then current knowledge, without any commitment regarding their correctness.[580]

b. The letter was not addressed to Mr. Halevi or the Company, and there is no reason the Land Fund would have assumed that any party other than the recipients would have relied on the statements therein. "The allegation that these statements should have raised legitimate expectations seven years later in parties that were at the time in no way involved in the transactions or Lawsuit #1 (and in the case of the Company did not even exist at the time) shows the absurdity of Claimant's argument."[581]

c. Even if the letter could have given rise to any expectations, it was clear from the information submitted in Lawsuit One that the information provided by the Land Fund was incorrect.[582]

468. Sixth, regarding the Ministry of Agriculture's letter of 25 June 2007, the Czech Republic highlights that the Ministry merely confirmed that the land plots "do not appear in our database of land for which a restitution claim has been made."[583] According to the Czech Republic, this statement was correct at the time and thus has no impact on what Mr. Halevi could have expected regarding ownership of the Land in 2010.

469. Seventh, the Czech Republic rejects Mr. Halevi's reliance on the Future Exchange Agreement, arguing as follows:

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[579] Rejoinder, para 536.
[580] Rejoinder, para 540.
[581] Rejoinder, para 541.
[582] Rejoinder, para 542.
[583] Rejoinder, paras 543-544, *quoting* **C-068**, Letter of the Ministry of Agriculture dated 25 June 2007.

a. As the Future Exchange Agreement merely records the status of the Land Registry records, the same arguments set out above apply to the Future Exchange Agreement.

b. Mr. Maixner knew based on the information in Lawsuit One that the Land Registry records were incorrect, and yet he incorrectly represented in the Future Exchange Agreement that he was the owner of Plot No. 1590/2. He therefore cannot have had any legitimate expectations based on this document.[584]

c. Neither Mr. Halevi nor the Company was party to the Future Exchange Agreement, leaving no conceivable way for that document to be the basis of Mr. Halevi's legitimate expectations.[585]

d. In concluding the Future Exchange Agreement, the Land Fund was not exercising sovereign powers but rather entering into a contract as any private party could.[586]

e. Similarly, the mere fact that the Land Fund executed a contract containing a false statement does not involve the exercise of sovereign powers, meaning that such a contract breach could not rise to the level of violating an investor's legitimate expectations under international law.[587]

470. Eighth, the Czech Republic considers that Mr. Halevi's argument that his legitimate expectations are based on the legal opinion of the Company's legal advisor "borders on the absurd," given that Mr. Halevi has not produced any such opinion nor explained how advice from a private advisor rather than the host State could establish legitimate expectations.[588]

471. Ninth, the Czech Republic denies that the tax authorities' collection of real estate taxes can give rise to legitimate expectations because, as discussed above, it was Mr. Maixner who filed the tax returns in which he stated that he was the owner of the Land – not the State. Further, the tax authorities are tasked to collect taxes from the person

[584] Rejoinder, para 547.
[585] Rejoinder, para 550.
[586] Rejoinder, para 549.
[587] Rejoinder, para 551.
[588] Rejoinder, paras 553-556.

recorded as the owner in the Land Registry and not with reviewing the correctness of those records.[589]

472. Tenth, regarding the discussions in Parliament about Section 18 of the Church Restitution Act, the Czech Republic argues that:[590]

a. The statements were part of a parliamentary debate, which did not target Mr. Halevi or the Company.

b. Two of the three statements to which Mr. Halevi refers were made in 2012, after he made his investment.

c. The Czech Republic's actions were consistent with the statement that the Church Restitution Act would not affect the rights of private owners of property originally owned by the churches. However, the Company and its legal predecessors were not the subject of this statement because they never acquired valid ownership of the Land.

473. Finally, in the Czech Republic's view, Mr. Halevi's argument that the passage of time in connection with usucaption somehow strengthened his legitimate expectations must fail for the reasons set out in Section IX.B above. The Czech Republic adds that the passage of time cannot be considered a sovereign act capable of creating legitimate expectations for an investor.[591]

474. Given its repudiation of all of Mr. Halevi's alleged sources for legitimate expectations, the Czech Republic concludes that his legitimate expectations claim must fail.

475. In addition, as discussed above in Section IX.B above, the Czech Republic contends that Mr. Halevi and the Company must have known at the time of the investment in 2010 that the Original Land Transfers were in breach of Section 29 of the Act on Land and hence void, and therefore that it was impossible for the Company to acquire the Land through the Land Purchase Agreements. Beyond negating the claim of good faith acquisition, the Czech Republic considers that this also demonstrates Mr. Halevi's lack of legitimate expectations.

[589] Rejoinder, paras 557-559.
[590] Rejoinder, paras 560-564.
[591] Rejoinder, para 566.

476. Finally, the Czech Republic asserts that Mr. Halevi's lack of pre-investment due diligence undermines his legitimate expectations claim. In respect of his allegation that the Company engaged an experienced law firm, which did not identify any legal obstacles to the Company's valid acquisition of the Land, the Czech Republic emphasizes that this is not supported by any documentary evidence and Mr. Halevi failed to produce documents concerning his pre-investment due diligence despite the Tribunal's order.[592] Moreover, says the Czech Republic, Mr. Halevi failed to present testimonial evidence although he was present at the hearing. Nor has he presented evidence from Mr. Maixner, Mr. Jaroševský or the Company's legal counsel.[593] For the Czech Republic, this is particularly striking given Mr. Halevi's submission that the due diligence and all communication among the Company directors was conducted exclusively orally.[594]

477. As for the testimony of [redacted], the Czech Republic asserts that [redacted] resisted providing the full truth and instead tried to take the implausible position that, while [redacted] was aware of Lawsuit One, the diligence did not reveal any risks in connection with the purchase of the Land.[595] For example, [redacted] testified that Mr. Maixner told [redacted] about the dispute with the Knights of the Cross, but [redacted] did not receive any documents on the matter and could not recall asking [redacted] legal advisors any questions about it.[596] In the Czech Republic's view, "any reasonable investor who was told about legal disputes regarding the title to the property would investigate the point."[597] The Czech Republic further highlights [redacted] testimony that [redacted] did not ask for any written confirmation from the Company's law firm about ownership, and [redacted] repeatedly referred to [redacted] reliance on the Land Registry.[598] According to the Czech Republic, "[i]t would be highly irregular for a self-proclaimed experienced investor to rely only on the record in the Land Registry and not require a detailed (or at least any written) due diligence report."[599]

478. The Czech Republic also argues that [redacted] testimony revealed inaccuracies in Mr. Halevi's prior submissions. For example, [redacted] stated that [redacted]

[592] Respondent's PHB, para 139.
[593] Respondent's PHB, para 139.
[594] Respondent's PHB, para 139, *citing* Respondent's request of 14 June 2023, p. 2; [redacted] Witness Statement, paras 16-17.
[595] Respondent's PHB, para 141.
[596] Respondent's PHB, para 142, *citing* Transcript, Day 2, 12:9-14:19 and 16:15-24.
[597] Respondent's PHB, para 142.
[598] Respondent's PHB, para 143, *citing* Transcript, Day 2, 17:8-19:11.
[599] Respondent's PHB, para 145.

communicated with Mr. Halevi electronically, contradicting Mr. Halevi's submission that he communicated orally only.[600] And, although Mr. Halevi produced minutes of only three Company meetings in 2012 and 2013, [redacted] testified that there had been numerous other meetings with written records concerning the disputes with the Knights of the Cross before and after those meetings.[601]

479. For the Czech Republic, "[j]udging from the Claimant's unwillingness to share the content of due diligence findings and subsequent meetings, it is the only reasonable conclusion that the Company's directors were aware of the risks involved with the lack of Land's ownership and decided to proceed with the Project anyway."[602] As set out in the Procedural History above, the Czech Republic has made a request for an adverse inference that documents Mr. Halevi failed to produce would have shown that Mr. Halevi "learned about the voidness of the Original Land Transfers and their impact on the Company's ability to acquire the Land."[603]

2. Stable Legal Framework

480. The Czech Republic denies that it failed to provide a stable legal framework for Mr. Halevi's investment in breach of the FET standard in Article 2(2) of the BIT.

481. The Czech Republic does not contest that legal stability is a component of the FET standard. However, it disagrees with Mr. Halevi's formulation of the applicable test. According to the Czech Republic, absent a stabilization clause or an express promise by the State not to change its laws, there can be no expectation that changes will not be made in the legal framework.[604] In addition, as stated by the tribunal in *CMS v Argentina*, the measures complained of must "entirely transform and alter the legal and business environment."[605] Thus, the Czech Republic argues that, to prevail on this claim, Mr. Halevi would have to show that the Czech Republic "gave him a specific commitment not to change its legal framework, which the Claimant believed,

[600] Respondent's PHB, para 144, *citing* Transcript, Day 2, 3:11-23.
[601] Respondent's PHB, para 144, *citing* Transcript, Day 2, 19:11-26:8.
[602] Respondent's PHB, para 148.
[603] Rejoinder, paras 169-188; Respondent's PHB, para 147.
[604] Rejoinder, para 588, *citing* **RLA-087**, *Charanne and Construction Investments v. Spain*, SCC Case No. V 062/2012, Award of 21 January 2016 (unofficial translation), para 503.
[605] Rejoinder, para 587, *quoting* **CLA-051**, *CMS Gas Transmission Company v. The Republic of Argentina*, ICSID Case No. ARB/01/8, Award of 12 May 2005, para 275.

only then to fundamentally change the legal framework on which the Claimant had relied to the Claimant's detriment."[606]

482. The Czech Republic submits that Mr. Halevi's claim wholly fails to meet this standard. In particular, the Czech Republic rejects Mr. Halevi's reliance on the statements of the Minister of Culture regarding the Church Restitution Act for the reasons already noted above: the statement was true but did not apply to the Company, which never acquired ownership of the Land, and the statement was made in 2012, two years after Mr. Halevi's investment.[607] The Czech Republic also rejects Mr. Halevi's reference to the Settlement Agreement for the reasons described above, in particular the fact that the Czech Republic was not party to this agreement.[608] In sum, the Czech Republic says it made no promise not to change the relevant legal framework.

483. In any event, the Czech Republic argues that the Church Restitution Act had been expected for decades before Mr. Halevi made his investment in 2010 and therefore could not have come as a surprise. The Czech Republic refers to a 2010 Constitutional Court decision that summarizes the history of church land restitutions, in which the court stated as follows:[609]

> *The essence of* [Section 29 of the Act on Land] *must be primarily seen in the legislature's commitment (promise) to adopt, in a deferred period, a legal regulation settling the historical property of churches and religious societies, which takes into account the objective specifics of the subject matter and is effectively realized by Section 29 of the Act on Land. The dispositional limitation concerning historical church property is intended solely to protect this property until the adoption of a special law.*

484. The Czech Republic also relies on the opinion of its legal expert, [redacted] who notes that this Constitutional Court decision of 2010 "was not the first ruling of the Constitutional Court addressing the rationale behind and objective of Section 29 of the Land Act (even if indirectly)."[610] Thus, says the Czech Republic, the Czech courts have long recognized that the purpose of the blocking provision in Section 29

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[606] Rejoinder, para 589.
[607] Rejoinder, para 591.
[608] Rejoinder, para 592.
[609] Rejoinder, para 250, *quoting* **CLA-111**, Judgment of the Czech Constitutional Court No. Pl. ÚS 9/07 of 1 July 2010, para 25.
[610] [redacted] Report, paras 2-3.

was to protect historical church property until a special law could be adopted to address its restitution.

485. Moreover, the Czech Republic emphasizes that in 2008 – two years before Mr. Halevi made his investment – the Parliament discussed a church restitution bill.[611] Although the bill did not pass at that time, the Czech Republic notes that the wording was almost identical to the Church Restitution Act adopted in 2012. In particular, Section 18(1) of the Church Restitution Act, which Mr. Halevi challenges, was already present in the earlier bill in identical terms as Section 17(1).[612] Indeed, says the Czech Republic, in submission in his Post-Hearing Brief, Mr. Halevi acknowledged that the 2008 bill "was almost identical to [the Church Restitution Act]."[613] For the Czech Republic, it follows that Mr. Halevi must have known in 2010 that church restitution legislation was expected, and he "can hardly describe the insertion of Sec. 18(1) of the Church Restitution Act as surprising since it was present already in the 2008 bill, which was publicly available."[614] Therefore, the Czech Republic concludes that the Church Restitution Act cannot be the basis of a claim for lack of a stable framework.[615]

3. Proportionality and Arbitrariness

486. The Czech Republic also denies that the Church Restitution Act was either disproportionate or arbitrary. With respect to the applicable legal standard, the Czech Republic recalls that Mr. Halevi cites *EDF v. Romania*, where the tribunal held that "there must be 'a reasonable relationship of proportionality between the means employed and the aim sought to be realized'; that proportionality would be lacking if the person involved 'bears an individual and excessive burden.'"[616] For the Czech Republic, it is clear that the Church Restitution Act meets these requirements.

487. The Czech Republic underscores that the main purpose of the Church Restitution Act was to return property taken from churches by the communist regime.[617] To do so, says the Czech Republic, Section 18 of the Church Restitution Act merely ensured

[611] Rejoinder, paras 252-253.
[612] Rejoinder, para 253, *comparing* **RLA-061**, Governmental Bill on Property Settlement with Churches and Religious Societies from 2008, Section 17(1) *with* **RLA-007,** Act No. 428/2012 Coll., on Property Settlement with Churches and Religious Societies, Section 18(1).
[613] Respondent's PHB, para 71, *quoting* Transcript, Day 1, 56:15-17.
[614] Rejoinder, para 253.
[615] Rejoinder, para 594.
[616] Respondent's PHB, para 197, *quoting* **CLA-056**, *EDF (Services) Limited v. Republic of Romania*, ICSID Case No. ARB/05/13, Award of 8 October 2009, para 293.
[617] Rejoinder, para 244; Respondent's PHB, para 72.

that churches would have standing to enforce their existing rights; it did not create any additional substantive rights for churches, and it did not "take away ownership" from any private parties, as Mr. Halevi suggests.[618]

488. According to the Czech Republic, there were two categories of property that were not available for restitution under the Church Restitution Act: (a) property needed for a public purpose and (b) property that was no longer owned by the State because private parties had acquired ownership through usucaption.[619] In fact, says the Czech Republic, Mr. Halevi's counsel acknowledged at the hearing that the Church Restitution Act did not impact the ownership of private persons who acquired church property by way of usucaption when he stated that:[620]

> *in the* [Church Restitution Act]*, despite the assurances from politicians, there was no real protection or sufficient protection of third parties. I'm not saying that there wasn't any. If there was, if I understand it correctly, a usucaption claim, passage of time at least ten years, then those people would also keep the land.*

489. For the Czech Republic, the only reason the Company did not benefit from this protection is its lack of good faith, defeating its usucaption claim.[621]

490. The Czech Republic denies that the Church Restitution Act unfairly favored municipalities, which were merely provided the land they needed to perform their public function. According to the Czech Republic, the Company and the municipalities were in completely different legal situations: the Company did not own the Land due to the breach of Section 29 of the Act on Land, whereas the municipalities and regions were owners of the land in question on a basis of a special statute.[622] The Czech Republic adds that the "transfer of the land to the municipalities was made in line with the Act on Land since municipalities were regarded as part of the State."[623] In any event, says the Czech Republic, Mr. Halevi has failed to show how he could be unduly burdened by the fact that certain plots of

[618] Rejoinder, para 597; Respondent's PHB, paras 76-81.
[619] Respondent's PHB, para 72.
[620] Respondent's PHB, para 73, *quoting* Transcript, Day 1, 116:20-118:13.
[621] Respondent's PHB, para 74.
[622] Rejoinder, para 277, *citing* **CLA-109**, Judgment of the Czech Supreme Court No. 28 Cdo 3200/2016 of 3 January 2017.
[623] Respondent's PHB, para 75.

land which could not be restituted in kind would remain owned by the State with churches receiving monetary compensation.[624]

491. Similarly, the Czech Republic sees nothing discriminatory about the fact that the Knights of the Cross were exempted under Section 18(3) of the Church Restitution Act from paying court fees, whereas the Company was not. This distinction, according to the Czech Republic, was based on the legal standing of the parties, not on any arbitrary characteristic.[625] The Czech Republic emphasizes that the beneficiaries under all other restitution acts are also exempted from court fees, whereas "it would be unheard of if a restitution act exempted a party which is not a beneficiary."[626] Moreover, the Czech Republic considers that Mr. Halevi has failed to show what impact this had on his investment.[627]

492. In the Czech Republic's view, Mr. Halevi has also failed to show that the Church Restitution Act was not suitable for achieving its purpose, or that there was a less burdensome means of carrying out the restitutions. The Czech Republic specifically rejects Mr. Halevi's complaints that the Church Restitution Act did not provide for a direct transfer of ownership to the churches, but instead allowed churches to request ownership on behalf of the State, which would then transfer ownership to the State. The Czech Republic sees this argument as irrelevant because it was "no more burdensome for the Claimant or the Company to litigate with the Knights than with the Respondent."[628] As for Mr. Halevi's argument that this approach undermined the Settlement Agreement, the Czech Republic contends that "the test of proportionality of the Church Restitution Act, which governed the restitution in a large number of cases, is not to be measured against the impact it should have had on the Company's rights under the Settlement Agreement."[629]

493. Nor does the Czech Republic accept Mr. Halevi's suggested "less burdensome measures" that were allegedly available to the State. His proposal that the Church Restitution Act could have exempted land released erroneously by the Land Fund is unworkable in the Czech Republic's view, because it would not have permitted

[624] Rejoinder, para 601.
[625] Rejoinder, para 274.
[626] Rejoinder, para 274.
[627] Rejoinder, para 627.
[628] Rejoinder, para 600.
[629] Rejoinder, para 602.

restitution to the greatest extent possible, *i.e.* restitution in kind.[630] As for Mr. Halevi's suggestion that the Church Restitution Act could have provided compensation to private parties to which land was released in violation of Section 29 of the Act on Land, the Czech Republic argues that other remedies were available to the Company and its legal predecessors under Czech law for the voidness of the Original Land Transfers and the 2010 Land Purchase Agreements, and there is no reason for Mr. Halevi to believe he is entitled to compensation directly from the State.[631]

494. With regard to the Tribunal's questions (a) and (b) in Procedural Order No. 10 for post-hearing consideration, the Czech Republic agrees with Mr. Halevi that the right to restitution stopped with Messrs. Maixner and Fidrmuc as the original restitutees and first assignees in connection with the Land.[632] However, the Czech Republic and [redacted] differ from Mr. Halevi in taking the position that, in light of the voidness of the Original Land Transfers, the restitution claims of Messrs. Maixner and Fidrmuc were never extinguished, and they were entitled to request that the Land Fund conclude a new agreement with them to obtain Replacement Land of equivalent value or provide financial compensation.[633] According to the Czech Republic, under Article VI of Amendment to the Act on Land, Messrs. Maixner and Fidrmuc's right to request Replacement Land did not lapse until 31 December 2005, leaving them ample time to do so after learning of the voidness of the Original Land Transfers in the course of Lawsuit One.[634] Further, says the Czech Republic, Messrs. Maixner and Fidrmuc retained the right to request compensation even after 31 December 2005, but they opted not to pursue these remedies.[635]

495. The Czech Republic recalls that the other defendants in Lawsuit One – Mr. Svoboda and CENTRUM CZ – were not assigned the restitution claims by Mr. Fidrmuc and therefore could not seek remedies from the Land Fund. However, in the Czech Republic's view, they could have asserted claims against their respective sellers for unjust enrichment under Section 457 of the Czech Civil Code or breach of contract.[636] According to the Czech Republic, "[t]his also applies to the Company, which could

[630] Rejoinder, para 604.
[631] Rejoinder, para 605; Respondent's PHB, paras 126-137.
[632] Respondent's PHB, para 5.
[633] Respondent's PHB, para 127; Transcript, Day 2, 144:25-145:7.
[634] Respondent's PHB, para 128.
[635] Respondent's PHB, para 128.
[636] Respondent's PHB, para 129.

have raised exactly the same claims against its own sellers (i.e. Mr. Maixner and Mr. Jaroševský - as the buyer from CENTRUM CZ), who then could have pursued their claims 'down the chain' of sellers back to the Land Fund."[637]

496. Moreover, the Czech Republic considers that the Company had a number of different remedies available under Czech civil law in relation to the voidness of the 2010 Land Purchase Agreements. For example, the Company could: (a) claim return of the purchase price as unjust enrichment under Section 457 of the Czech Civil Code against Messrs. Maixner and Jaroševský; (b) pursue Messrs. Maixner and Jaroševský for making intentionally false representations in the 2010 Land Purchase Contracts; (c) initiate a damages claim under Section 42 of the Czech Civil Code on the basis that Messrs. Maixner and Jaroševský have caused the voidness; (d) claim damages against Mr. Maixner for breaching his fiduciary duty as the Company's director; or (e) pursue contractual claims against Messrs. Maixner and Jaroševský due to the fact that they could not transfer ownership of the Land.[638] The Czech Republic contends that the Company "has chosen not to pursue these claims, most likely because Mr. Maixner is a shareholder and director of the Company and would have to repay monies already collected."[639] In addition, says the Czech Republic, "the Company presumably might have claims against the Knights of the Cross for breaches of the Settlement Agreement and the Future Purchase Agreement," but evidently opted not to pursue them.[640]

497. Finally, the Czech Republic emphasizes that the Company had a full opportunity to challenge the January 2019 Judgment in Lawsuit Four before the Supreme Court and later the Constitutional Court, but made the choice not to do so.[641]

498. In sum, the Czech Republic's position is that the Church Restitution Act was not disproportionate or arbitrary for these reasons:

    a. The purpose of the Act was not to inflict damage on the Company without reason, but to facilitate the restitution of the Land to its original church owners and set historical injustice right.[642]

[637] Respondent's PHB, para 130.
[638] Respondent's PHB, paras 132-135.
[639] Rejoinder, para 605.
[640] Rejoinder, para 605.
[641] Respondent's PHB, para 136.
[642] Rejoinder, para 613.

b. The Act had no direct impact on the ownership rights of any of the parties involved, whether State entities, churches or private parties; any party that was an owner before adoption of the Church Restitution Act remained an owner.[643] In particular, private owners that had gained possession of land despite Section 29 of the Act on Land retained the opportunity to become owners via usucaption if they maintained good faith possession for ten years.[644]

c. The Act did not deprive the Company of its property, as the Company never had ownership of the Land.[645]

d. The Act did not create any additional substantive rights for churches. Rather, it merely provided "a procedural shortcut for the churches to seek a declaratory ruling on already existing rights."[646] All parties were afforded the right to be heard in court.[647]

e. The exclusion in the Act of municipal property and other property used for public purposes was neither discriminatory nor to the detriment of private owners.[648]

f. Czech civil law offered sufficient remedies for parties who were impacted by void transfers of church property.[649]

4. Due Process

499. Finally, the Czech Republic denies that there was any violation of Mr. Halevi's right to due process. Citing *Azinian v. Mexico*, the Czech Republic argues that to make out a claim for violation of the due process standard, an investor must show that the "relevant courts refuse to entertain a suit, if they subject it to undue delay, or if they administer justice in a seriously inadequate way."[650] In the Czech Republic's view, Mr. Halevi's claim does not come close to meeting this standard.

[643] Respondent's PHB, para 75(1).
[644] Respondent's PHB, para 75(4).
[645] Rejoinder, para 612.
[646] Respondent's PHB, para 75(2).
[647] Respondent's PHB, para 75(5).
[648] Respondent's PHB, para 75(3).
[649] Respondent's PHB, paras 75(6), 132.
[650] Rejoinder, para 620, quoting **RLA-088**, *Robert Azinian, Kenneth Davitian, & Ellen Baca v. The United Mexican States*, ICSID Case No. ARB (AF)/97/2, Award of 1 November 1999, para 102.

500. First, the Czech Republic rejects Mr. Halevi's arguments regarding the exemption of court fees for the Knights of the Cross for the reasons discussed above.

501. Second, the Czech Republic sees no basis for Mr. Halevi's submissions regarding the reversal of the burden of proof. The Czech Republic considers that the applicable rules for allocation of burden of proof are agreed between the parties: first, "he who asserts must prove," and second, "[t]he burden of proof may then shift where a party proves prima facie the asserted facts."[651]

502. For the Czech Republic, there can be no question that the Czech courts applied these rules correctly. The Czech Republic summarizes the courts' approach in Lawsuits Three and Four as follows: the initial burden of proof was on the Knights of the Cross as plaintiff to show that the Original Land Transfers were void and the Company could not have validly acquired the Land. To satisfy this burden of proof, it was sufficient for the Knights of the Cross to show that they were the historical owners of the Land, rendering the Original Land Transfers in breach of Section 29 of the Act on Land. At that point, the burden of proof shifted to the Company to establish that some exception applied that could result in it acquiring valid ownership of the Land despite the voidness of the Original Land Transfers. Specifically, the Company could have shown that it acquired ownership through usucaption or though good faith possession with exceptional circumstances. However, because the Company could not establish good faith, it failed to carry this burden.[652] Thus, the Czech Republic denies that the reversal of the burden of proof could have violated Mr. Halevi's due process rights.

503. Third, the Czech Republic does not see how the Land Fund's involvement in Lawsuit Four could support Mr. Halevi's case. The Czech Republic highlights that Mr. Halevi bases this argument on *CME v. Czech Republic*, where the tribunal found that the State's "support of Dr. Zelezny was in breach of the Treaty" because the Media Council, colluded with Dr. Zelezny to take over the claimant's investment.[653] The Czech Republic sees no parallels to this case. It stresses that in Lawsuit Four, the Knights of the Cross designated the Land Fund as a defendant along with the Company because this was required to do so under Czech law, and "[t]he Land Fund stayed generally passive in the proceedings and adopted a neutral position on whether

[651] Rejoinder, para 296, *quoting* Reply, paras 110-111.
[652] Rejoinder, para 301.
[653] Rejoinder, para 623, *citing* Reply, para 495.

the lawsuit should succeed."[654] In any event, says the Czech Republic, Mr. Halevi cannot cite any rule that the Land Fund would have breached by supporting the Knights of the Cross, as parties to legal proceedings are free to conduct themselves as they see fit to serve their interests.[655] Nor can Mr. Halevi show that show that the intervention of the Land Fund had any impact on the outcome of Lawsuit Four.[656]

504. The Czech Republic concludes that Mr. Halevi has failed to show any breach of due process on this basis.

C. The Tribunal's Analysis

505. In analyzing Mr. Halevi's FET claim, the Tribunal starts with the text of Article 2(2) of the BIT:

> *Investments made by investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.*

1. Legitimate Expectations

506. The Tribunal next turns to the aspect or element of FET to which the Parties have devoted most attention, namely Mr. Halevi's claim that the Czech Republic frustrated his legitimate expectations. Here, the Parties again agree on the relevant standard, which is an objective one.[657] As articulated by the tribunal in *Saluka v. Czech Republic*:[658]

> *the scope of the Treaty's protection of foreign investment against unfair and inequitable treatment cannot exclusively be determined by foreign investors' subjective motivations and considerations. Their expectations, in order for them to be protected, must rise to the level of legitimacy and reasonableness* ***in light of the circumstances****.*
>
> *No investor may reasonably expect that the circumstances prevailing at the time of the investment is made remain totally unchanged. In order*

[654] Rejoinder, para 311.
[655] Rejoinder, para 310.
[656] Rejoinder, para 625.
[657] Reply, para 381, *quoting* Statement of Defence, para 165 (*emphasis omitted*).
[658] **RLA-028**, *Saluka Investments BV v. the Czech Republic*, UNCITRAL, Partial Award of 17 March 2006, paras 304-305 (*emphasis in original*).

> *to determine whether frustration of the foreign investor's expectations was justified and reasonable, the host State's legitimate right subsequently to regulate domestic matters in the public interest must be taken into consideration as well.*

507. There is no risk of the Tribunal examining Mr. Halevi's subjective expectations concerning FET, because Mr. Halevi has provided no evidence of what he personally believed or expected when he purchased his 22 percent share in the Company on 7 April 2010. Nor is there any evidence in the record suggesting that Czech Republic authorities made any assurances directly to Mr. Halevi concerning his investment in the Land through his Company shareholding.

508. Therefore, as a shareholder of the Company, Mr. Halevi's objective expectations are necessarily derivative of the Company's expectations. The Tribunal has already found in Section IX.C above that the Original Land Transfers were void *ex tunc* by operation of Section 29 of the Act on Land and, in light of Mr. Maixner's knowledge gained through the proceedings in Lawsuit One, the Company did not obtain valid ownership of the Land through the Land Purchase Agreements on 23 April 2010 by operation of the principles of good faith acquisition or usucaption.

509. The question for purposes of analyzing Mr. Halevi's FET claim is whether any contrary expectations of the Company – namely, that it was acquiring valid ownership of the Land in 2010 – could "rise to the level of legitimacy and reasonableness."[659] Specifically, as set out in connection with the Tribunal's analysis of the ownership issue in Section IX above, could the Company have reasonably interpreted the actions of Czech Republic authorities – the Land Fund's selection of the Land as Replacement Land for transfer to Messrs. Maixner and Fidrmuc via the Original Land Transfers in 1998, the State's collection of real estate transfer taxes with the Original Land Transfers, the Land Registry entries, the Land Fund's statement in Lawsuit One in November 2003, the June 2007 letter from the Ministry of Agriculture, the Future Exchange Agreement between the Land Fund and Mr. Maixner in January 2009 – as State assurances of valid ownership of the Land, despite the Lawsuit One proceedings? (The Tribunal does not here include the 2005 Settlement Agreement

[659] See **RLA-028**, *Saluka Investments BV v. the Czech Republic*, UNCITRAL, Partial Award of 17 March 2006, para 305.

or the 2008 Future Purchase Agreement, as no State actor was party to these agreements.)

510. The Tribunal cannot answer this question in Mr. Halevi's favor. The Tribunal acknowledges – but does not accept – Mr. Halevi's submission that the Czech Republic cannot fairly attribute Mr. Maixner's knowledge stemming from the Lawsuit One proceedings to the Company for the purpose of challenging good faith acquisition of the Land while at the same time denying that official assurances made to Mr. Maixner can establish the Company's legitimate expectations of ownership.[660] Even assuming that the actions of the Czech Republic listed above could be understood as official assurances of ownership, the Tribunal considers that those actions – even taken together – could not reasonably outweigh the doubts Mr. Maixner must have carried away from Lawsuit One no later than January 2004. Although the standards for assessing good faith acquisition of the Land and legitimate expectations under the FET protection in the BIT are not the same, it is undisputed that Mr. Maixner's doubts about the validity of his title in the Land are attributable to the Company and Mr. Halevi. Mr. Maixner's doubts were Mr. Halevi's doubts. And, in the Tribunal's view, especially absent any evidence from Mr. Maixner or Mr. Halevi, those doubts were sufficiently significant to prevent the Company from legitimately and reasonably proceeding with the Land Purchase Agreements some six years later with blinders on, as if there were no legal clouds on the title of the Land.

511. This raises again the issue of the scope of the Company's due diligence before entering into the Land Purchase Agreements, which Mr. Halevi submits led to oral advice from Czech Republic legal advisers that there were no extraordinary risks in connection with purchase of the Land. Regardless of whether a formal due diligence exercise is or is not a precondition to a successful claim of legitimate expectations under the FET protection in the BIT, as noted in Section IX.C above, the evidentiary record is such that the Tribunal cannot make any findings as to precisely what due diligence the Company undertook. However, based on the preponderance of the evidence that does exist in the record, the Tribunal can and does observe that, basic due diligence most likely would have raised red flags about ownership of the Land following the proceedings in Lawsuit One.

[660] Claimant's PHB, para 191.

512. Insofar as Mr. Halevi relies upon the judgment of the District Court for Prague 8 in Lawsuit Three dismissing the Czech Republic's action for a declaration that it owned the Land, on the basis that State action – even mistaken State action – deserves trust, that judgment dates from January 2014, long after Mr. Halevi purchased his shareholding in the Company in April 2010. Indeed, the proceedings in Lawsuits Two, Three and Four – contradictory though they may be – all post-date the 2010 Land Purchase Agreements, as did the State's collection of real estate taxes from the Company, and hence bear no relevance to the legitimate expectations of the Company or Mr. Halevi in support of his FET claim under the BIT. The Tribunal has addressed the other factors listed by Mr. Halevi in connection with his alleged legitimate expectations, including the recording of the Original Land Transfers in the Land Registry, the Settlement Agreement, the Land Fund letter of November 2003, the Ministry of Agriculture letter of June 2007, and the Future Exchange Agreement, in Section IV.C above in connection with the Land ownership issue.

513. To conclude, given the overall circumstances, the legal consequence is inescapable: when Mr. Halevi purchased his 22 percent shareholding in the Company in April 2010, the Company had reason to doubt that Messrs. Maixner and Jaroševský had valid ownership of the Land to pass to the Company in the Land Purchase Agreements. Any contrary belief Mr. Halevi may have held could not have risen to the level of legitimacy and reasonableness necessary for FET protection under the BIT.

514. Even if Mr. Halevi had proven that he held legitimate expectations of valid ownership of the Land, the task of the Tribunal to balance his legitimate expectations against – to quote the *Saluka* tribunal – the Czech Republic's "legitimate right subsequently to regulate domestic matters in the public interest" remains.[661] The Tribunal addresses this below in discussing the proportionality of the Czech Republic's actions.

2. Stable Legal Framework

515. The Tribunal finds no merit in Mr. Halevi's argument that the Czech Republic violated its obligation, under the FET umbrella of Article 2(2) of the BIT, to provide a stable and predictable legal framework.

[661] **RLA-028**, *Saluka Investments BV v. the Czech Republic*, UNCITRAL, Partial Award of 17 March 2006, para 305.

516. Mr. Halevi recognizes the relevant applicable standard, which is that an investor is entitled to expect that the host State will not drastically change the legal framework existing at the time of the investment.[662] The heart of his argument is that the Czech Republic's adoption of the Church Restitution Act "was a major interference with the legal certainly of not only investors but all private owners of land in the Czech Republic," which contradicted its earlier representations that that private interests would not be affected.[663]

517. The Tribunal cannot agree. In Section 29 of the Act on Land in 1991, the Czech Republic expressly stated that church lands "may not be transferred to the ownership of other persons pending the enactment of laws concerning such property." That the relevant law concerning church lands – the Church Restitution Act – was not enacted until 2012 does not reflect instability or unpredictability in the relevant legal regime. To the contrary, based on the text of Section 29 of the Act on Land, it was entirely predictable that legislation on restitution of church lands would come only at some point in the future.

518. To recall, Mr. Halevi specifically complains about the restitution process enacted in Section 18(1) of the Church Restitution Act, namely that churches were given the right to commence litigation on behalf of the State to request ownership of church land transferred in violation of Section 29, after which the State would transfer ownership to the church. However, that restitution process was publicly foreshadowed – with almost identical wording to Section 18(1) as adopted in the Church Restitution Act – in the draft bill introduced in the Czech Parliament in 2008.[664] This undercuts Mr. Halevi's argument that, as an investor in the Company in 2010, the impact of the Church Restitution Act was somehow unpredictable.

519. The Tribunal acknowledges Mr. Halevi's reliance on the comments made by the Minister of Culture that the Church Restitution Act would not affect the rights of private property owners. However, these comments were general public comments, offering no assurances to private individuals such as Mr. Maixner who had – knowingly or otherwise – purchased church land in violation of the blocking provision in Section 29 of the Act on Land. The Tribunal does not consider such general statements to reflect drastic instability in the Czech Republic's statutory restitution

[662] Statement of Defence, para 184(1).
[663] Reply, para 441.
[664] Rejoinder, para 253; Respondent's PHB, para 71.

regime. In any event, as noted by the Czech Republic, representations that the Church Restitution Act would not affect the rights of private property owners were not inconsistent with the Company's status – as it did not, in fact, have valid ownership rights in the Land.

520. Under the relevant circumstances, Mr. Halevi cannot reasonably complain that the passage of the Church Restitution Act served, in the words of the *CMS v. Argentina* tribunal, to "entirely transform and alter the legal and business environment."[665]

3. Proportionality and Arbitrariness

521. Nor can the Tribunal find merit in Mr. Halevi's arguments that the Church Restitution Act was either disproportionate to the circumstances or arbitrary.

522. As for the standard for proportionality and arbitrariness, the Parties look to the statement of the tribunal in *EDF v. Romania* that "there must be a 'reasonable relationship of proportionality between the means employed and the aim to be realized' [and] that proportionality would be lacking if the person involved 'bears an individual and excessive burden.'"[666] The Tribunal considers that the equivalent standard applies to measure the alleged arbitrariness of the Czech Republic treatment challenged by Mr. Halevi.

523. Mr. Halevi has not met that standard here. Nor is he able to meet the well-known test for arbitrariness as stated the *ELSI* Judgment of the International Court of Justice referred to further below.[667] As expressly anticipated in Section 29 of the Act on Land, the Czech Republic's aim in enacting the Church Restitution Act – after the stay on transfer of church property imposed by Section 29 of the Act on Land – was to return to churches the lands that had been seized wrongfully by the communist regime. The Act, on its face, was expressly tailored to this aim.

524. It is true that the Act distinguishes between the Czech Republic's treatment of municipal and private (wrongful) purchasers of historic church land, with the State compensating churches for land that municipalities were allowed to retain. The only

[665] Rejoinder, para 587, *quoting* **CLA-051**, *CMS Gas Transmission Company v The Republic of Argentina*, ICSID Case No. ARB/01/8, Award of 12 May 2005, para 275.
[666] **CLA-056**, *EDF (Services) Limited v Republic of Romania*, ICSID Case No. ARB/05/13, Award of 8 October 2009, para 72.
[667] **RLA-037**, *Elettronica Sicula S.P.A.* (*ELSI*) (*United States of America v Italy*), International Court of Justice, Judgment of 20 July 1989, para 128.

avenue the Act provided to private parties to protect their ownership of church land transferred in violation of Section 29 of the Act on Land was usucaption.

525. It is this context that the Tribunal's inquires into the rights of the Company and its predecessors to seek compensation or other redress from the Czech Republic become important.

526. The Tribunal finds it significant that – as acknowledged in submission by Mr. Halevi – the Company and its predecessors, at least theoretically, did have certain legal remedies potentially available to them.[668] Specifically, the record suggests that Mr. Maixner (and Mr. Fidrmuc, had he not transferred his portion of the Land in 1999): (a) pursuant to the Amendment to the Act on Land, could have requested substitute Replacement Land before 31 December 2005, which was after the final proceedings in Lawsuit One; and (b) could have sought monetary compensation even after 31 December 2005, albeit it only at the 1991 value pursuant to Decree No. 182/1988 Coll. Only if Mr. Maixner had attempted to exercise such rights, which he did not, would the theoretical value of those rights have been tested. To the extent that Mr. Halevi complains that the Original Land Transfers prohibited assignment of restitution claims, that would seem to the Tribunal to have been within the knowledge of the original and subsequent purchasers of the Land, and hence not a legitimate basis for complaint.

527. In the round, Mr Halevi does not come close to establishing arbitrary conduct, and the Tribunal finds it difficult indeed to see the Czech Republic's actions to be disproportionate in circumstances where Mr. Maixner had a right to Replacement Land or monetary compensation to correct the mistaken Original Land Transfers, which he failed to utilize.

4. Due Process

528. Finally, the Tribunal finds no basis for Mr. Halevi's argument that the Czech courts violated his right to fair and equitable treatment under Article 2(2) of the BIT by depriving the Company of due process, particularly in the course of Lawsuit Four.

529. The standard for finding a due process violation rising to unfair and inequitable treatment is high. As relevant to the Czech litigation challenged here, adopting the

[668] Claimant's PHB, para 15.

description of the tribunal in *Azinian v Mexico*, an investor must show that the relevant courts "administer justice in a seriously inadequate way."[669] It is useful also to have regard to the oft-quoted standard set in the *ELSI* Judgment of the International Court of Justice with respect to arbitrariness, pursuant to which it would be for Mr. Halevi to establish a "wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety."[670]

530. In the Tribunal's assessment, none of Mr. Halevi's due process complaints comes near to meeting such standards.

531. First, the Tribunal finds no wrongfully unequal treatment in the exemption of the Knights of the Cross from having to pay court and administration fees in the Czech court litigation. This exemption is a general exemption in Section 18(3) of the Church Restitution Act, presumably based on public policy. Even assuming an element of discrimination, Mr. Halevi has not alleged that the Company was prejudiced by having to bear its litigation costs.

532. Second, the Tribunal cannot fault the Land Fund for supporting the position of the Knights of the Cross, as the plaintiff, against the Company as a defendant, in Lawsuit Four. It is incumbent on any litigant to take positions that support its interests, which for the Czech Republic here were to restore the Knights of the Cross' historic ownership rights in the Land.

533. Third, as for the court's shifting to the Company, as a defendant, the burden of proof of ownership rights to the Land in Lawsuit Four, it is not for the Tribunal to judge how a Czech court should apply the burden of proof under Czech procedural law. Even accepting Mr. Halevi's position, the shifting of the burden of proof would not rise to the level of administration of justice "in a seriously inadequate way" warranting a finding that the Czech Republic violated its FET obligations to Mr. Halevi under the BIT. If the Company had considered this to be the case, it presumably would have pursued an extraordinary appeal against the January 2019 Judgment in Lawsuit Four, which it did not.

[669] **RLA-088**, *Azinian v. Mexico*, *Robert Azinian, Kenneth Davitian, & Ellen Baca v. The United Mexican States*, ICSID Case No. ARB (AF)/97/2, Award of 1 November 1999, para 102.
[670] **RLA-037**, *Elettronica Sicula S.P.A.* (*ELSI*) (*United States of America v Italy*), International Court of Justice, Judgment of 20 July 1989, para 128.

534. Overall, the Czech Republic courts ultimately reached the final answer that the Original Land Transfers were void *ex tunc*. It is true that there was confusion in the series of litigations, but that stemmed in large part from the delayed passage of the Church Restitution Act and the competing interests of the several parties involved, namely Mr. Maixner and the Company, the Land Fund, and the Knights of the Cross. Regardless of that confusion, it cannot be said that the Czech Court procedure "shock[ed], or at least surprise[d], a sense of juridical propriety."

535. In conclusion, the Tribunal finds that the Czech Republic did not violate its obligations under Article 2(2) of the BIT to provide fair and equitable treatment to Mr. Halevi's investment.

XII. FULL PROTECTION AND SECURITY

A. The Claimant's Position

536. Mr. Halevi's remaining claim is that the Czech Republic breached its obligation to provide his investment full protection and security (***FPS***) under Article 2(2) of the BIT. Mr. Halevi asserts that "the FPS standard imposes the duty on States to act with due diligence to take steps to protect and secure investments from damage and must be assessed according to the circumstances of the case."[671] Like the tribunal in tribunal in *Azurix v. Argentina*, Mr. Halevi considers that FPS "is not only a matter of physical security; the stability afforded by a secure investment environment is as important from an investor point of view."[672]

537. Mr. Halevi alleges that the Czech Republic violated this standard by the same actions he discusses in connection with his expropriation and fair and equitable treatment claims.[673]

B. The Respondent's Position

538. The Czech Republic denies that it has failed to provide Mr. Halevi's investment FPS under Article 2(2) of the BIT. In the Czech Republic's view, the FPS standard was

[671] Statement of Claim, para 130, *citing* **CLA-058,** *South American Silver Limited v. Plurinational State of Bolivia*, PCA Case No. 2013-15, Award of 30 August 2018, para 687*;* **CLA-059,** *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, Egi-Series Investments LLC, and BSSEMG Investors LLC v. Arab Republic of Egypt,* ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss of 21 February 2017, para 241.
[672] Statement of Claim, para 131, *quoting* **CLA-061,** *Azurix Corp. v. Argentine Republic,* ICSID Case No. ARB/01/12, Award of 14 July 2006, para 408.
[673] Statement of Claim, para 133; Reply, para 511.

established primarily to protect the physical security of investments, and Mr. Halevi has failed to explain why the standard should be expanded to cover legal security.[674] The Czech Republic agrees with the *Crystallex v. Venezuela* tribunal's observation that "a more extensive reading of the 'full protection and security' standard would result in an overlap with other treaty standards, notably FET, which in the Tribunal's mind would not comport with the 'effet utile' principle of interpretation."[675] Therefore, the Czech Republic urges the Tribunal to follow the approach of the *Crystallex* tribunal, which was "unconvinced that it should depart from an interpretation of the 'full protection and security' standard limited to physical security."[676]

539. In any event, argues the Czech Republic, Mr. Halevi has neither developed his allegation that the Czech Republic breached the FPS standard nor distinguished his FPS claim from his other claims.[677] The Czech Republic concludes that Mr. Halevi has failed to carry his burden of proof.[678]

C. The Tribunal's Analysis

540. In analyzing Mr. Halevi's final claim, the Tribunal does not need to resolve the Parties' disagreement over whether the reference to "full protection and security" in Article 2(2) of the BIT is limited to physical protection, as the Czech Republic argues, or is broad enough to encompass both physical and legal security, as Mr. Halevi argues. This is because, even if the Czech Republic is obligated to provide Mr. Halevi's investment legal security, Mr. Halevi has failed to establish any violation of this obligation.

541. In the Statement of Claim, Mr. Halevi's submissions on the factual basis of his claim were limited to the following two statements:

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[674] Statement of Defence, paras 205-206, *citing* **RLA-028**, *Saluka Investments BV v. the Czech Republic*, UNCITRAL, Partial Award of 17 March 2006, paras 483-484; **CLA-045**, *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award of 29 July 2008, para 668; **RLA-041**, *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Award of 10 March 2015, para 576.
[675] Statement of Defence, para 207, *quoting* **CLA-072**, *Crystallex International Corporation v Bolivarian Republic of Venezuela*, ICSID Case No ARB(AF)/11/2, Award of 4 April 2016, paras 632-634.
[676] *Id.*
[677] Statement of Defence, para 206; Rejoinder, para 634.
[678] Rejoinder, para 635.

a. "The Respondent further breached the FPS standard since the introduction of new laws caused the Claimant's investment to devalue, i.e., become worthless."[679]

b. "By enacting APS and its subsequent interpretation by its courts (see section X. A), the Respondent frustrated the FPS standard pursuant to Article 2 of the Czech-Israeli BIT as it allowed for the effective expropriation of the Claimant's investment."[680]

542. In the Reply, Mr. Halevi merely stated that "[t]he Claimant also insists that the Respondent breached the FPS standard by actions specified above in sections 3.2 [Expropriation] and 3.3 [Fair and Equitable Treatment]."[681]

543. Mr. Halevi did not develop his FPS claim any further at the hearing or in the post-hearing submissions.

544. In sum, Mr. Halevi has provided no detail regarding the specific conduct which he alleges violated the FPS standard. Nor has he explained how any such conduct meets the legal standard. As a consequence, the Tribunal is unable to find a breach of the FPS standard in Article 2(2) of the BIT.

545. In any event, the Tribunal has already dismissed Mr. Halevi's expropriation and FET claims. To the extent he bases his FPS claim on the same factual and legal arguments, that claim would have to be dismissed for the reasons already set out above.

XIII. COSTS

546. As directed in Procedural Order No.10, the Parties submitted their Costs Statements with annexed summaries of hours and expenses charged and paid.

A. The Costs of the Arbitration

547. The Tribunal has endeavored to keep the arbitration costs as low as possible throughout the extended proceedings. The PCA, as Fundholder, has assessed the final arbitration costs as follows:

[679] Statement of Claim, para 130.
[680] Statement of Claim, para 133.
[681] Reply, para 511.

(a) Tribunal fees	USD 185,108.34
(b) Tribunal expenses	USD 10,908.31
(c) Tribunal Secretary fees	USD 33,247.50
(d) Tribunal Secretary expenses	USD 4,871.69
(e) PCA administrative fees	USD 14,323.28
(f) All other Tribunal costs, including court reporting, interpretation, printing, telecommunication, catering, courier charges, bank charges, and all other expenses relating to the arbitration proceedings paid from the deposit established by the Parties	USD 42,943.95
TOTAL	**USD 291,403.07**

562. These costs have been paid from the advances that the Parties made to the PCA in equal shares. Each Party made an advance of USD 150,000, for a total of USD 300,000. The PCA will return the unexpended balance to the Parties in equal shares, in accordance with Article 43(5) of the UNCITRAL Rules. Thus, each Party has borne USD 145,701.54 of the total arbitration costs.

B. The Claimant's Costs Statement

563. Mr. Halevi seeks an award of costs in the total amount of USD 1,016,627, comprised of USD 866,627 in legal costs and other expenses and USD 150,000 in advances to the PCA to cover the costs of the arbitration.

564. The components of Mr. Halevi's claim are as follows:

(i) USD 759,790 – Costs of Legal Representation (including paralegals)

(ii) USD 16,186 – Expert Fees & Expenses

(iii) USD 150,000 – Advances to the PCA

(iv) USD 90,651 – Other Expenses

565. Based on the detail provided in the Costs Statement, Mr. Halevi's legal costs can be broken down as follows:

Fee-Earner	**Hours**	**Rate per hour**	**Fees**	**Average Rate/Actual Hours**
Outside Counsel	[redacted]	USD [redacted]	USD [redacted]	
Outside Paralegals	[redacted]	USD [redacted]	USD [redacted]	
Total	[redacted]		**USD 759,790**	[redacted]

C. The Respondent's Costs Statement

566. The Respondent seeks an award of costs in the total amount of CZK 11,543,461.47 and USD 150,000, comprised of CZK 11,543,461.47 in legal costs and other expenses and USD 150,000 in advances to the PCA to cover the costs of the arbitration.

567. The components of the Czech Republic's claim are as follows:

(i) CZK 8,603,333.33 – Costs of Legal Representation

(ii) CZK 1,140,580.95 – Expert Fees & Expenses

(iii) CZK 1.167.592 – Ministry's Co-Counsel Costs (for research, drafting, hearing preparation and participation, and in-house translations)

(iv) USD 150,000 – Advances to the PCA

(v) CZK 631.955,19 – Other Expenses

568. Based on the detail provided in the Costs Statement, with the Tribunal converting the CZK amounts into USD amounts for purposes of comparison with Mr. Halevi's Costs Statement, the Czech Republic's legal costs can be broken down as follows:

Fee-Earner	**Hours**	**Rate per hour**	**Fees**	**Average Rate/ Hours Claimed**
Outside Counsel	[redacted]	CZK [redacted] (USD [redacted])	CZK [redacted] (USD [redacted])	
Ministry Co-Counsel	[redacted]	CZK [redacted] (USD [redacted])	CZK [redacted] (USD [redacted])	
Total	[redacted]		CZK 9,770,925 **(USD 426,520)**	[redacted]

D. The Tribunal's Allocation of Costs

569. Article 42 of the UNCITRAL Rules provides as follows:

> *1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.*
>
> *2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.*

570. As set forth above, Mr. Halevi has failed on all elements of his claim. Having invested only CZK 44,000 (approximately EUR 1,740) in shares in the Company, Mr. Halevi has effectively cost the taxpayers of the Czech Republic almost CZK 10,000,000 million in defense expenses by pursuing this arbitration. Under the circumstances, the Tribunal has determined that he should bear the full arbitration costs covering the Tribunal's fees and expenses and the administrative fees of the PCA as Fundholder. Therefore, Mr. Haveli is to reimburse the Czech Republic USD 145,701.54 to cover the amount the Czech Republic has paid toward the arbitration costs.

571. Exercising its discretion under UNCITRAL Rule 42, the Tribunal has also determined to allocate 75% of the Czech Republic's reasonable legal and other costs to Mr. Halevi. Similar to the view taken by the tribunal in *Azinian v Mexico*, the Tribunal considers that the mistake of the Czech Republic's Land Fund in making the Original Land Transfers "may be said to some extent to have invited litigation," specifically this arbitration.[682] In addition, the Tribunal considers that the Czech Republic jointly responsible with Mr. Halevi for some percentage of the extremely extensive pre-hearing proceedings, including with regard to the applications for Security for Costs and document production. Under the circumstances, the Tribunal considers the allocation of 75% of the Czech Republic's total legal and other costs, in the amount of CZK 8,657,596 to be reasonable.

[682] **RLA-088**, *Azinian v. Mexico*, *Robert Azinian, Kenneth Davitian, & Ellen Baca v. The United Mexican States*, ICSID Case No. ARB (AF)/97/2, Award of 1 November 1999, para 126.

XIV. AWARD

572. For the reasons stated above, the Tribunal determines and awards as follows:

a. The Claimant has no valid ownership interest in the investment he has alleged in plots parc no. 1580/15, 1590/2 1580/16 or 1590/3 in the cadastral area of Ďáblice, registered on the ownership sheet no. 750 kept by the Cadastral Office for the Capital City of Prague;

b. The Claimant's claim that the Respondent expropriated his investment in violation of Article 5(1) of the BIT is **dismissed**;

c. The Claimant's claim that the Respondent subjected his investment to unfair and inequitable treatment in violation of Article 2(2) of the BIT is **dismissed**;

d. The Claimant is liable for the full arbitration costs and, therefore, **ordered** to pay the Czech Republic USD 145,701.54 to cover the amount the Czech Republic has paid toward the arbitration costs;

e. The Claimant is **ordered** to pay 75% of the total amount of CZK 11,543,461 in legal and other costs incurred by the Czech Republic, in the amount of CZK 8,657,596; and

f. All other claims and requests are **dismissed**.

Place of Arbitration: London, England

Date: 12 December 2024

Klaus Reichert SC
Arbitrator

Sam Wordsworth KC
Arbitrator

Lucy Reed
President of the Tribunal