

**ARBITRATION UNDER
THE RULES OF THE INTERNATIONAL CENTRE
FOR SETTLEMENT OF INVESTMENT DISPUTES**

EUROGAS INC.

and

BELMONT RESOURCES INC.

(CLAIMANTS)

v.

SLOVAK REPUBLIC

(RESPONDENT)

ICSID Case No. ARB/14/14

**Full Briefing on Claimants'
Application for Provisional Measures Dated July 8, 2014**

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INTRODUCTION

1. Claimants hereby submit their full briefing on the Application for Provisional Measures of July 8, 2014, as per the calendar set, on July 10, 2014, by Ms. Polasek, Acting Secretary-General of ICSID, for the exchange of pleadings on provisional measures, pursuant to Article 47 of the ICSID Convention and Rule 39 of the ICSID Arbitration Rules.
2. This is a textbook case of an abuse of power by a sovereign State, through the taking of retaliatory measures against foreign investors, in direct and exclusive reaction to the exercise, by the latter, of their legitimate right to initiate international arbitration proceedings.
3. Indeed, two days before the filing of Claimants' Request for Arbitration, the date of which had been communicated to Respondent both orally and in writing in the course of negotiations, criminal proceedings were launched in the Slovak Republic,¹ leading to the seizure and confiscation of all the original paper records (including privileged documents) and computer software of Rozmin sro ("Rozmin"), Claimants' Slovak Republic-incorporated investment vehicle. No copies were made or provided to the investors. Nor was any proper inventory of the documents and items seized prepared or handed to them.
4. These retaliatory and self-serving measures were taken by the Slovak Republic in reaction to Claimants' legitimate exercise of their right to initiate ICSID arbitration proceedings against the Slovak Republic. They were intended, and have in any event had the effect, to deprive Claimants of records necessary to put their case, to place the State in a privileged position with a full access to all of Claimants' files including legally privileged materials, and to intimidate Claimants and their potential witnesses.
5. This moreover aggravates the dispute between the Parties and impairs Claimants' ability to substantiate their claims while also jeopardizing the integrity of the arbitration process, including the principle of equality of arms and the right to the protection of legally privileged materials and information.

¹ The Request for Arbitration was filed on June 25, 2014. Two days before, on June 23, 2014, JUDr. Spirko Vasil, Prosecutor from the Office of the Special Prosecution in Bratislava, Slovak Republic, launched criminal proceedings by issuing an "Order for Preservation and Handing over of Computer Data" (**Exhibit C-50**). This Order was followed by an "Order for a House Search" issued on June 25, 2014 (**Exhibit C-49**).

6. A halt must be put to these measures and the Parties must be placed in the situation in which they were prior to the initiation of the arbitration. A recommendation for provisional measures is therefore both necessary and urgent for the preservation of Claimants' rights and to avoid an aggravation of the dispute.
7. The Tribunal to be constituted will have jurisdiction to order provisional measures further to this Application, so as to preserve Claimants' rights. Indeed, Article 47 of the ICSID Convention grants any ICSID tribunal the authority to "*recommend any provisional measures that should be taken to preserve the respective rights of either party,*" if it considers that the circumstances so require. Rule 39(1) of the ICSID Arbitration Rules further allows any party to request that provisional measures for the preservation of its rights be recommended by the Tribunal, and provides that when seeking such measures, a party shall specify the rights to be preserved, the measures the recommendation of which is requested, and the circumstances that require such measures. Provisional measures have in fact been recommended by ICSID tribunals as early as in the first ICSID case.²
8. It is well established that a "recommendation" of the kind that may be issued under Article 47 of the ICSID Convention and Rule 39(1) of the ICSID Arbitration Rules, is binding in nature and deemed of equivalent value as an "order."³ Both terms shall accordingly be used interchangeably in the present submissions.
9. This submission is divided into three parts. The first part presents the factual circumstances that gave rise to the application for provisional measures (**I**). The second part demonstrates that the conditions that justify the order of such measures are met (**II**). The third part

² **Exhibit CL-1**, *Holiday Inns et al. v. Morocco*, ICSID Case No. ARB/72/1, Decision of July 2, 1972, excerpts published in Pierre Lalive, *The First 'World Bank' Arbitration – Some Legal Problems*, *British Yearbook of International Law*, 1980, pp. 123 *et seq.*, at pp. 136-137.

³ **Exhibit CL-2**, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, dated August 17, 2007, ¶ 58 (available at <http://italaw.com/sites/default/files/case-documents/ita0576.pdf>; hereafter "*Occidental v. Ecuador*"); **Exhibit CL-3**, *City Oriente Limited v. La República del Ecuador y Empresa Estatal de Petroleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, dated November 19, 2007, ¶ 52 (available at <http://italaw.com/documents/CityOrient-ProvisionalMeasures-EN.pdf>; hereafter "*City Oriente v. Ecuador*, Decision on Provisional Measures"); **Exhibit CL-4**, *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Order No. 1, dated July 1, 2003, ¶ 4 (available at <http://italaw.com/sites/default/files/case-documents/ita0862.pdf>); **Exhibit CL-5**, *Victor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Decision on Provisional Measures, dated September 25, 2001, ¶ 24 (available at <http://www.italaw.com/sites/default/files/case-documents/ita0630.pdf>; hereafter "*Pey Casado v. Chile*"); **Exhibit CL-6**, *Emilio Agustín Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Procedural Order No. 2, dated October 28, 1999, ¶ 9 (available at <http://www.italaw.com/sites/default/files/case-documents/ita0477.pdf>; hereafter "*Maffezini v. Spain*").

identifies the provisional measures that are necessary and urgent to preserve Claimants' rights, and sets out the relief sought (III).

I. FACTUAL CIRCUMSTANCES THAT GAVE RISE TO CLAIMANTS' APPLICATION FOR PROVISIONAL MEASURES

10. By way of reminder, EuroGas Inc. ("EuroGas") and Belmont Resources Inc. ("Belmont") filed a Request for Arbitration against the Slovak Republic on June 25, 2014, under the ICSID Convention and Rules.
11. On the very date of the filing of the Request – which had been communicated to Respondent in the course of negotiations⁴ – JUDr. Roman Púchovský, Judge on Preliminary Proceedings of the Special Criminal Court in Banská Bystrica, Slovak Republic, issued an "Order for a House Search"⁵ at the domicile of Ms. Jana Czmoriková, the external accountant of Rozmin. As explained in the Request for Arbitration, Rozmin is a Slovak Republic-incorporated company in which EuroGas and Belmont hold a 90% shareholding interest and which held exclusive rights for mining activities at the Gemerská Poloma deposit until these were unlawfully revoked in 2005.
12. The Order for a House Search entitled the police to secure, *inter alia*, all accounting and tax documents, all documents issued in the name of, or addressed to, Rozmin or its shareholders since the creation of Rozmin without any limitation of scope on the subject-matter of these documents, as well as any documents in relation to the Gemerska Poloma Mining Area, whether such documents were available on hard copies or on data storage mediums. The scope of the search order was wide enough to encompass any and all correspondence and any document even remotely related to Rozmin, EuroGas or Belmont.
13. Specifically, the Order encompassed the following:

⁴ In an Order for a House Search dated June 25, 2014, discussed below, Respondent itself acknowledged that it was aware that "*the companies EuroGas Inc. and Belmont Resources Inc. are currently threatening to submit, on 25 June 2014, the dispute to the International Center for the Settlement of Investment Disputes (ICSID), pursuant to the notice of dispute dated 23 December 2013, which will initiate the arbitration procedure*" (**Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 3).

⁵ **Exhibit C-49**, Order for a House Search, dated June 25, 2014.

- *all accounting documents, all tax documents of the company Rozmin, s.r.o., with its current seat at Karadžičova 8/A, Company ID no. 36 174 033, in any form since the date of the creation of this company in 1997 until now, together with the e-mail correspondence,*
- *documents issued in the name of the company Rozmin, s.r.o., Company ID no. 36 174 033 since the year 1997 until now,*
- *documents issued in the name of the shareholders of the company Rozmin, s.r.o. in any form since the creation of this company until now,*
- *documents issued in the name of other entities since the year 1997 until now, addressed to the company Rozmin, s.r.o. and its shareholders EuroGas, with its seat in Vienna (Austrian Republic) and Belmont Resources, with its seat in Canada,*
- *documents and other materials of various kinds issued during the period from 1997 until now in the name of the business entities registered abroad, or addressed to the business entities abroad,*
- *all powers of attorney to represent and act in the name of the company Rozmin, s.r.o. and its shareholders,*
- *documents and other materials connected to the Mining area Gemerská Poloma,*
- *stamps, agendas, calendars and other materials of various kinds issued since the creation of this company in 1997 until now in the name of company Rozmin, s.r.o., and in the name of its shareholders,*
- *data storage mediums of various kinds, on which there could be records of the mentioned documents, computer equipment and accessories, which could have been used to issue the mentioned documents.*⁶

14. As absurd and inconceivable as this may seem, this Order was issued purely and simply in reaction to Claimants' legitimate right to pursue their claims via arbitration, by the filing of a Request for Arbitration.
15. This is obvious from the timing of the Order for a House Search, issued on the very day of the filling of the Request for Arbitration, the date of which had explicitly been disclosed to Respondent in the course of pre-arbitration correspondence exchanges between the Parties.

⁶ **Exhibit C-49**, Order for a House Search, dated June 25, 2014, pp. 1-2.

16. The fact that the Order for a House Search was issued purely and simply in reaction to Claimants' initiation of arbitration proceedings is also confirmed by the very content and terms of this Order. By its own terms, the Order was indeed issued considering "*an especially serious crime of fraud [...] in the stage of attempt [...], assumed to have been committed by currently unidentified individuals, who acted in the name of the shareholders of the company Rozmin, s.r.o., with registered seat in Bratislava, and EuroGas, with registered seat in Vienna, and Belmont Resources, with registered seat in Canada, with the intent to elicit financial resources, make significant financial profits and mislead the relevant state authorities by claiming the amount of 3,2 billion Euros from the Slovak Republic in an unspecified arbitration procedure in connection with a revocation of mining rights of the company Rozmin s.r.o. by the relevant administrative authorities of the SR related to the mining area Gemerská Poloma.*"⁷
17. In other words, the criminal investigation launched by an organ of the Slovak Republic, an EU Member State, is on its face nothing but a good old Soviet-era style retaliatory measure directed against Claimants for having filed an ICSID arbitration and, by the same token, a way for Respondent to seize and retain Claimants' full files, including privileged documents, in violation of fundamental principles such as the integrity of the arbitral process and the principle of equality of arms.
18. As to the explanations offered by Respondent to justify its reaction to the filing of the Request for Arbitration – namely the existence of "*an especially serious crime of fraud [...] in the stage of attempt [...] by claiming the amount of 3,2 billion Euros from the Slovak Republic in an unspecified arbitration procedure in connection with a revocation of mining rights of the company Rozmin s.r.o. [...]*"⁸ – they do not stand. A measure taken in retaliation against the launch of an arbitration is by essence unjustified irrespective of the reason ultimately advanced. Moreover and in any event, the reasons advanced by the Slovak Republic are simply nonsensical, even preposterous, for the reasons set out below.
19. First, the farcical nature of the charges is blatant considering that at the very request of Respondent during the cooling off period, Claimants prepared, with the assistance of prominent financial experts, and submitted to Respondent a detailed preliminary quantification of their damages claim, which was in no way, as the Order portrays, a claim

⁷ **Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 2; emphasis added.

⁸ **Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 2.

for EUR 3.2 billion, but rather well below EUR 1 billion. This preliminary quantification was, moreover, discussed without giving rise to any allegation of fraud or the like. In fact, Claimants' preliminary quantification of damages was expected to lead to a counter-proposal by the Ministry of Finance, which Respondent had promised but thereafter never provided.⁹

20. Second, the arbitration procedure was not, contrary to what the Order portrays, "unspecified" but rather clearly identified as an ICSID procedure.¹⁰
21. Finally, as to the substantive merits of the claims, they could hardly be portrayed as abusive considering that the Slovak Supreme Court itself has found the taking of the investments even to be in violation of Slovak law.¹¹ In fact, during the cooling off period, Respondent participated in exchanges regarding a possible amicable settlement of Claimant's claims and requested, as mentioned above, a quantification of Claimants' losses and a meeting to discuss the latter for purposes of settlement.
22. On June 23, 2014, two days prior to the issuance of the Order for a House Search (that is, when Respondent knew that the initiation of the arbitration procedure was imminent, given correspondence between the Parties in which Claimants had indicated, following extensive efforts to amicably settle their dispute, that the Request for Arbitration would be filed on June 25, 2014), JUDr. Spirko Vasil, Prosecutor from the Office of the Special Prosecution in Bratislava, Slovak Republic, had already issued an "Order for Preservation and Handing over of Computer Data," on the same grounds as those laid down in the Order for a House Search. The Order for Preservation and Handing over of Computer Data instructed both Ms. Czmoriková and Rozmin to:
 - *preserve and keep the data complete*
 - *allow the making of and keeping of copies of the computer data and*
 - *hand over the computer data for the purposes of criminal procedure*

⁹ Claimants' preliminary assessment of the losses they sustained is not produced herewith as it is privileged and confidential.

¹⁰ **Exhibit C-42**, Letter from EuroGas Inc. and Belmont Resources Inc. to the Government of the Slovak Republic, dated December 23, 2013, ¶ 37.

¹¹ **Exhibit C-33**, Decision of the Supreme Court of the Slovak Republic, dated February 27, 2008 (Ref. 6Sžo/61/2007-121); **Exhibit C-36**, Decision of the Supreme Court of the Slovak Republic, dated May 18, 2011 (Ref. 2Sžo/132/2010); **Exhibit C-38**, Decision of the Supreme Court of the Slovak Republic, dated January 31, 2013 (Ref. 5Sžp/10/2012).

which are

1. *complete accounting evidence, tax evidence, commercial evidence and correspondence of the company Rozmin, s.r.o., with current seat at Karadžičova 8/A, Bratislava, Company ID no.: 36 174 033 for the whole company*
2. *including all supplementary evidence such as for example:*
 - *evidence of received invoices*
 - *evidence of sent invoices*
 - *evidence of property*
3. *accounting syllabus*
4. *all tally books, which relate to the accounting evidence and to the organizational scheme of the company, i.e. tally book of certificates which could be saved via computer system of the company Rozmin, s.r.o. Company ID no.: 36 174 033.*¹²

23. Further to the Order for Preservation and Handing over of Computer Data, dated June 23, 2014 and the Order for a House Search, dated June 25, 2014, and after Respondent had been notified by ICSID of Claimants' Request for Arbitration on June 27, 2014, all of Rozmin's property and records were seized, even documents only remotely related to the company or its shareholders, as explained below.¹³
24. Indeed, on July 2, 2014, a search was carried out at the home of Ms. Czmoriková, without prior warning.¹⁴ The search took place between approximately 6 am and 3 pm, that is, it lasted over 8 hours despite Ms. Czmoriková being cooperative, as reflected in the "Minutes on Performance of House Search" carried out on July 2, 2014.¹⁵ The search was conducted by no less than eight members of the Slovak police force, the National Criminal Agency, the National Troop of the Financial Police, the National Anti-corruption Troup, and the Public Order Police, and in the presence of an "uninterested individual" and an "expert."¹⁶
25. Ms. Czmoriková was requested to hand over all materials and documents referred to in the Order for a House Search of June 25, 2014 and to make available all electronic data, in accordance with the Order for Preservation and Handing over of Computer Data dated June

¹² **Exhibit C-50**, Order for Preservation and Handing over of Computer Data, dated June 23, 2014, pp. 1-2.

¹³ **Exhibit C-51**, Minutes on Performance of House Search, dated July 2, 2014.

¹⁴ Nothing indicates that the Order for Preservation and Handing over of Computer Data, dated June 23, 2014 or the Order for a House Search, dated June 25, 2014, had been notified to Ms. Czmoriková prior to this search.

¹⁵ **Exhibit C-51**, Minutes on Performance of House Search, dated July 2, 2014.

¹⁶ **Exhibit C-51**, Minutes on Performance of House Search, dated July 2, 2014.

23, 2014, including a computer belonging to Rozmin, several CDs and diskettes containing data on Rozmin's accounts and various correspondence, all existing soft copies of Rozmin's accounting data, as well as over 15,700 pages of documents and records, including hard copies of accounting records and notes, audit documentation and reports, Rozmin's and Ms. Czmoriková's correspondence (including correspondence with mining offices), bank statements, tax documentation, technical and geological documentation, contracts, invoices, internal directives, and personal agendas.¹⁷ Indeed, the "Minutes on Performance of House Search dated July 2, 2014" record the following materials and original documents as having been confiscated:

- Rozmin's computer;
- installation CDs and diskettes;
- the only existing CD containing a copy of Rozmin's accounting documents;
- 4634 pages of accounting and tax-related documents as well as notes for the years 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2012;
- 66 pages of documents referred to as "Rozmin – Mining Office;"
- 3690 pages of bank and account statements and related documents for the years 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006;
- 34 pages of documents referred to as "Geotechnology 2000;"
- 1224 pages of documents related to salaries, working contracts, and insurance-related matters for the years 1998, 1999, 2000, 2001, 2002, 2003;
- 298 pages of documents referred to as "internal documents" for the years 2000 and 2001;
- 103 pages of documents related to business trips for the years 1998 and 1999;
- 403 pages of tax-related documents for the years 1999, 2005, 2006, 2008;

¹⁷ **Exhibit C-51**, Minutes on Performance of House Search, dated July 2, 2014.

- 789 pages of correspondence, including correspondence with mining offices and privileged and confidential correspondence with attorneys, as well as records of received and sent emails and paper correspondence;
- 945 pages of invoices for the years 1999, 2000, 2002, 2003, 2004;
- 199 pages of contractual documents for the years 1998-2008;
- 176 pages of documents referred to as “document from the DU control, inventories 2000-2003, treasury 2001-2002, internal directives, number of pages;”
- 1642 pages of documents referred to as “treasury” as well as bank-related documents, invoices, and internal documents for the years 1998, 2001, 2002, 2003, 2004, 2005, 2006;
- the personal agendas of Ing. Czmoriková, RNDr. Rozložník, Kristína Liptáková, Roman Rozložník, and Ing. Hajdeker;
- 749 pages labelled “documents;”
- over 166 pages of audit reports for the years 1998, 1999, 2000, 2001, 2002, 2003 (for most years, the number of pages is simply not specified in the Minutes of July 2, 2014);
- 88 pages of “Statements from the Employment Agency 2003;”
- 8 pages of “Announcements of DzPFO 1999-2000;”
- 103 pages of contracts and tax-related documents;
- 14 pages of “Financial result 2004;”
- 75 pages of “Analytical evidence 1991;”
- 107 pages of “donation contracts, tax returns 2003, yearly financial settlement 2006, financial result 1997, partners deposits 1997, agreed budget 1999;”
- 197 pages of “summary of financial flow, tax documents;” and
- telephone records.

26. A copy was also made of Rozmin's accounting program for the years 2007 to 2013, which was on the computer of the company ASCON, sro. Furthermore, the stamp of Rozmin was confiscated. According to the Minutes on Performance of House Search dated July 2, 2014, it appears that the only item that was not confiscated was the said computer belonging to the third-party company ASCON sro.
27. Finally, during the house search, Ms. Jana Czmoriková was requested to provide, and did provide, information regarding documents that had been handed over to Mr. Straka, Rozmin's former Slovak legal counsel, and to Mr. Vojtech Agyagos in 2008.
28. All documents and records confiscated were original documents, the bulk of which is necessary for Claimants to present their case in the arbitration proceedings, including merits and quantum. No copies were made, in blatant violation of Rozmin's right to put its case. A list of the materials and of broad categories of documents seized – on the basis of which the above list is based – was included in the Minutes on Performance of House Search dated July 2, 2014, which Ms. Czmoriková was invited to sign. No further particulars were provided with respect to the documents seized: again, the Minutes only provide general categories of documents and materials confiscated, as opposed to a detailed itemized inventory thereof. Amongst the documents confiscated were privileged attorney-client memoranda and correspondence.
29. Following the search of her house, Ms. Czmoriková was summoned to appear for examination before the Police Corps in Roznava, at 4:15 pm on July 2, 2014.¹⁸
30. At the examination, Ms. Czmoriková was asked a series of questions exclusively related to the issues in dispute and which will be raised in the arbitration, pertaining to her work as Rozmin's accountant, her contacts with Dr Ondrej Rozloznik (a director and general manager of Rozmin between 1997 and 2011 and potential key witness in the arbitration proceedings), Rozmin's assets and accounting, as well as studies and works carried out by Rozmin in relation to and at the Gemerská Poloma deposit (which is at the centre of the arbitration proceedings given that, as mentioned above and explained in the Request for Arbitration, it was in relation to the development of this deposit that Rozmin held exclusive mining rights until these were unlawfully revoked in 2005, following which Claimants filed their Request for Arbitration). Even questions related directly to Ms. Czmoriková's knowledge of the

¹⁸ **Exhibit C-52**, Witness Summons, dated July 2, 2014.

arbitration proceedings were asked. Ms. Czmoriková was handed no copy of the minutes of her interrogation by the police.

31. Ms. Czmoriková is now concerned that Slovak authorities may cause her trouble given her position as an employee of Rozmin. As a result, she has become reluctant to being involved in any way in the arbitration proceedings against the Slovak Republic, let alone testify on behalf of Claimants. This is understandable as she is a Slovak national, and lives in the Slovak Republic with her husband and son. In fact, she exercises her profession as an accountant for Rozmin in the very house where Rozmin's records were kept and where the house search was carried out on July 2, 2014. Everyone fears that at any time, she may be the object of an unannounced search and/or interrogation, at her own private home, by Slovak officials or police force members, and that herself or her whole family may even be targeted.
32. Other individuals have expressed similar concerns and reluctance with respect to having to cooperate with Claimants in relation to the arbitration proceedings. Notably, Dr Rozlozkin, an 87-year-old Slovak national who was a director and general manager of Rozmin between 1997 and 2011, and was involved in all stages of Claimants' investments in the Slovak Republic, hence a key witness of Claimants', refuses to cooperate with Claimants since he was contacted by Ms. Czmoriková following the house search of July 2, 2014 and informed of the retaliatory measures taken by Respondent against Rozmin's employees.
33. In these circumstances, the conditions for the issuance of provisional measures are clearly met.

III. CONDITIONS FOR AN ORDER ON PROVISIONAL MEASURES

34. Two requirements must be met for an order for provisional measures to be granted under Article 47 of the ICSID Convention, namely that they be necessary to preserve the petitioner's rights (1) and urgent (2).¹⁹ Each of these two conditions is addressed in turn and met in the present case, as set out below.

¹⁹ See, for instance, **Exhibit CL-7**, *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, Decision on Claimant's Request for Provisional Measures, dated December 13, 2012, ¶ 118 (available at <http://www.italaw.com/sites/default/files/case-documents/italaw1182.pdf>; hereafter "*Tethyan v. Pakistan*"); **Exhibit CL-8**, *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplun v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures, February 26, 2010, ¶ 113 (available at <http://www.italaw.com/sites/default/files/case-documents/ita0698.pdf>; hereafter "*Quiborax v.*

1. Necessity of Provisional Measures to Protect Claimants' Rights

35. The requested provisional measures must be necessary to preserve the petitioner's rights. This requirement implies an assessment of the risk of harm that the requested measures are intended to eliminate or attenuate.²⁰
36. Provisional measures may be ordered to preserve either substantive rights²¹ or procedural rights, "including the general right to the preservation of the status quo and to the non-aggravation of the dispute."²² Procedural rights "are thus self-standing rights."²³ As explained by the Tribunal in *City Oriente v. Ecuador*, "Article 47 of the Convention provides authorization for the passing of provisional measures prohibiting any action that affects the disputed rights, aggravates the dispute, frustrates the effectiveness of the award or entails having either party take justice into their own hands."²⁴
37. Thus, provisional measures may in particular be granted if the actions of a party "threaten to aggravate the dispute or prejudice the rendering or implementation of an eventual decision or award."²⁵ The *travaux préparatoires* of the ICSID Convention referred to the need "to

Bolivia"); **Exhibit CL-9**, *Perenco Ecuador v. The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/08/6, Decision on Provisional Measures, dated May 8, 2009, ¶ 43 (available at <http://italaw.com/sites/default/files/case-documents/ita0623.pdf>); **Exhibit CL-3**, *City Oriente v. Ecuador*, Decision on Provisional Measures, ¶ 54; **Exhibit CL-2**, *Occidental v. Ecuador*, ¶ 61; **Exhibit CL-10**, *Saipem SpA v. The People's Republic of Bangladesh*, ICSID Case No. ARB/05/07, Decision on Jurisdiction and Recommendation on Provisional Measures, March 21, 2007, ¶ 174 (available at <http://www.italaw.com/sites/default/files/case-documents/ita0733.pdf>); **Exhibit CL-11**, *Tokios Tokelès v. Ukraine*, ICSID Case No. ARB/02/18, Order No. 3, dated January 18, 2005, ¶ 8 (available at <http://www.italaw.com/sites/default/files/case-documents/ita0865.pdf>; hereafter "*Tokios Tokelès v. Ukraine*, Order No. 3").

²⁰ **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 113.

²¹ See, for instance, **Exhibit CL-6**, *Maffezini v. Spain*, ¶ 13; **Exhibit CL-12**, *Amco Asia Corporation et al. v. Indonesia*, ICSID Case No. ARB/81/1, Decision on Request of the Republic of Indonesia for Recommendation of Provisional Measures, dated December 9, 1983, 24 ILM 365 (1985), ¶ 3 (hereafter "*Amco v. Indonesia*").

²² **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 117; **Exhibit CL-13**, *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5 (formerly *Burlington Resources Inc. and others v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)*), Procedural Order No. 1 on Burlington Oriente's Request for Provisional Measures, dated June 29, 2009, ¶ 60 (available at <http://www.italaw.com/sites/default/files/case-documents/ita0104.pdf>; hereafter "*Burlington v. Ecuador*"). See also **Exhibit CL-14**, *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 1, March 31, 2006, ¶ 71 (available at <http://www.italaw.com/sites/default/files/case-documents/ita0087.pdf>; hereafter "*Biwater v. Tanzania*").

²³ **Exhibit CL-15**, *Lao Holdings NV v. The Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, Ruling on the Motion to Amend the Provisional Measures Order, dated May 30, 2014, ¶ 12 (available at <http://www.italaw.com/sites/default/files/case-documents/italaw3208.pdf>; hereafter "*Lao Holdings v. Lao*"); **Exhibit CL-13**, *Burlington v. Ecuador*, ¶ 60.

²⁴ **Exhibit CL-3**, *City Oriente v. Ecuador*, Decision on Provisional Measures, ¶ 55.

²⁵ **Exhibit CL-11**, *Tokios Tokelès v. Ukraine*, Order No. 3, ¶ 7. See also, *inter alia*, **Exhibit CL-13**, *Burlington v. Ecuador*, ¶¶ 61-68; **Exhibit CL-2**, *Occidental v. Ecuador*, ¶ 96; **Exhibit CL-5**, *Pey*

*preserve the status quo between the parties pending [the] final decision on the merits” and the commentary to the 1968 edition of the ICSID Arbitration Rules explained that Rule 39 “is based on the principle that once a dispute is submitted to arbitration the parties should not take steps that might aggravate or extend their dispute or prejudice the execution of the award.”*²⁶

38. Accordingly, in *Plama v Bulgaria*, the tribunal acknowledged that provisional measures could be appropriate to “prevent parties from taking measures capable of having a prejudicial effect on the rendering or implementation of an eventual award or which might aggravate or extend the dispute or render its resolution more difficult.”²⁷ The tribunal further explained that since, under Article 47 and Rule 39, provisional measures must relate to the preservation of the requesting party’s rights, “the rights to be preserved must relate to the requesting party’s ability to have its claims and requests for relief in the arbitration fairly considered and decided by the Arbitral Tribunal and for any arbitral decision which grants the Claimant the relief it seeks to be effective and able to be carried out.”²⁸ In relation to the right to non-aggravation of the dispute, the tribunal added that this right “refers to actions which would make resolution of the dispute by the Tribunal more difficult. It is a right to maintenance of the status quo, when a change of circumstance threatens the ability of the Arbitral Tribunal to grant the relief which a party seeks and the capability of giving effect to the relief.”²⁹
39. Provisional measures are justified to preserve the right to the integrity of ICSID proceedings, including the right to access evidence through potential witnesses.³⁰ A State’s acts and omissions which would, in particular, have the effect of depriving a party of documentary evidence or the effect of reducing the willingness of potential witnesses to cooperate in the ICSID proceedings may therefore justify the granting of provisional measures.
40. In *Quiborax v. Bolivia*, the tribunal held that it had “no doubt that it ha[d] the power to grant provisional measures to preserve the procedural integrity of the ICSID proceedings, in

Casado v. Chile, ¶¶ 69-72; **Exhibit CL-16**, *LaGrand case (Germany v. United States of America)*, Judgment of June 27, 2001, ICJ Reports 2001, pp. 466 *et seq.*, ¶ 103 (available at <http://www.icj-cij.org/docket/files/104/7736.pdf>). See also **Exhibit CL-12**, *Amco v. Indonesia*, ¶ 5.

²⁶

Exhibit CL-17, ICSID Reports, Vol. 1, p. 99.

²⁷

Exhibit CL-18, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Order, dated September 6, 2005, ¶ 38 (available at <http://www.italaw.com/sites/default/files/case-documents/ita0670.pdf>; hereafter “*Plama v. Bulgaria*”).

²⁸

Exhibit CL-18, *Plama v. Bulgaria*, ¶ 40.

²⁹

Exhibit CL-18, *Plama v. Bulgaria*, ¶ 45.

³⁰

See **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 148.

particular the access to and integrity of the evidence.”³¹ The tribunal found that criminal proceedings launched against a number of individuals directly or indirectly related to the arbitration impaired the claimants’ right to present their case, in particular via access to documentary evidence and witnesses. With respect to documentary evidence, the tribunal indeed noted that “*Claimants ha[d] been deprived of their corporate records and, although it appear[ed] from the record that Claimants ha[d] had access to copies of certain documents, it [was] unclear whether they [were] still missing relevant documentation that [could] assist them in presenting their case on jurisdiction or the merits.*”³² As to the effect that criminal proceedings may have on potential witnesses, the tribunal concluded, *inter alia*, that “[e]ven if no undue pressure is exercised on potential witnesses, the very nature of these criminal proceedings is bound to reduce their willingness to cooperate in the ICSID proceeding. Given that the existence of this ICSID arbitration has been characterized within the criminal proceedings as a harm to Bolivia, it is unlikely that the persons charged will feel free to participate as witnesses in this arbitration.”³³

41. Claimants’ procedural rights have already been affected by the launching of criminal proceedings by the Slovak Republic and the ensuing coercive measures, namely the search of Ms. Czmoriková’s house and her subsequent interrogation, as well as the seizure and confiscation of Rozmin’s originals records and software, including legally privileged documents, without any copy thereof nor any detailed inventory being provided to Claimants. By depriving the latter of their records, computer, and computer software needed to substantiate their claims in the present arbitration, Respondent has – at least temporarily – annihilated Claimants’ “*ability to have [their] claims and requests for relief in the arbitration fairly considered and decided by the Arbitral Tribunal.*”³⁴
42. Furthermore, the search at Ms. Czmoriková’s house, which was carried out by no less than eight members of the Slovak police force for over eight hours, had the expected effect of intimidating her as well as other key witnesses of Claimants, who are Slovak nationals and have now expressed reluctance with respect to being involved in the arbitration proceedings.
43. Based on the foregoing, Claimants seek an order for provisional measures notably to protect the integrity of the arbitration process, in particular their right to pursue and substantiate their

³¹ **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 141.

³² **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 142.

³³ **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 146.

³⁴ **Exhibit CL-18, Plama v. Bulgaria**, ¶ 40.

claims via documentary evidence and witness testimony, and to preserve confidential and legally privileged materials.

44. The criminal proceedings and corresponding seizure have also created an imbalance between the Parties, as they have provided Respondent with an access to Claimants' full files and records, while Claimants do not have any similar access to Respondent's files and records. As such, measures taken by the Slovak Republic jeopardize the integrity of the process. This is further aggravated by Respondent's seizure, hence its access to, Claimants' legally privileged documents.
45. In these circumstances, it is unnecessary to address whether Article 47 of the ICSID Convention and Rule 39 of the ICSID Arbitration Rules require the harm that Claimants would sustain in the absence of provisional measures to be irreparable³⁵ (i.e., harm that cannot be repaired by an award of damages³⁶), or whether the harm must be significant and exceed greatly the damage caused to the party affected by measures to be recommended by the tribunal, without necessarily being irreparable.³⁷
46. Indeed, in the present instance, if the provisional measures applied for by Claimants were to be denied, the ensuing prejudice would be irreparable, and the higher threshold would thus in any event be satisfied. As explained by the tribunal in the *Quiborax* Decision on Provisional Measures, "any harm caused to the integrity of the ICSID proceedings, particularly with

³⁵ In support of the understanding that provisional measures must be necessary to prevent irreparable harm (or to prevent harm not adequately reparable by an award of damages), see, for instance: **Exhibit CL-7**, *Tethyan v. Pakistan*, ¶ 146; **Exhibit CL-19**, *CEMEX Caracas Investments B.V. and CEMEX Caracas II Investments B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/08/15, Decision on the Claimants' Request for Provisional Measures, dated March 3, 2010, ¶ 56 (available at <http://www.italaw.com/sites/default/files/case-documents/ita0141.pdf>); **Exhibit CL-2**, *Occidental v. Ecuador*, ¶¶ 59-61; **Exhibit CL-13**, *Burlington v. Ecuador*, ¶ 82; **Exhibit CL-18**, *Plama v. Bulgaria*, ¶ 38; **Exhibit CL-11**, *Tokios Tokelés v. Ukraine*, Order No. 3, ¶ 8.

³⁶ **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 156.

³⁷ In support of the understanding that provisional measures may be ordered to prevent harm that need not necessarily be irreparable, see, for instance, **Exhibit CL-20**, *City Oriente Limited v. The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/06/21, Decision on Revocation of Provisional Measures and Other Procedural Matters, dated May 13, 2008, ¶ 72 (available at <http://italaw.com/documents/CityOrienteProvisional-En.pdf>). See also **Exhibit CL-21**, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Mongolia*, UNCITRAL, Order on Interim Measures, dated September 2, 2008 (available at <http://www.italaw.com/sites/default/files/case-documents/ita0621.pdf>), in which the tribunal held that "in international law, the concept of 'irreparable prejudice' does not necessarily require that the injury complained of be not remediable by an award of damages. To quote K.P. Berger [...]: 'To preserve the legitimate rights of the requesting party, the measures must be 'necessary'. This requirement is satisfied if the delay in the adjudication of the main claim caused by the arbitral proceedings would lead to a 'substantial' (but not necessarily 'irreparable' as known in common law doctrine) prejudice for the requesting party'. The Tribunal shares that view and considers that the 'irreparable harm' in international law has a flexible meaning." (¶¶ 68-69).

respect to a party's access to evidence or the integrity of the evidence produced could not be remedied by an award of damages."³⁸

47. Based on the foregoing, the requirement of necessity to preserve Claimants' right is met. So is the requirement of urgency, as set out below.

2. Urgency of the Requested Provisional Measures

48. The degree of urgency depends on each factual situation "*and may be satisfied where a party can prove that there is a need to obtain the requested measure at a certain point in the procedure before the issuance of an award.*"³⁹ In particular, measures are urgent where "*action prejudicial to the rights of either party is likely to be taken before such final decision is taken*"⁴⁰ or simply when "*a question cannot await the outcome of the award on the merits.*"⁴¹ There must be "*a need to obtain the requested measures at a certain point in the procedure before the issuance of an award.*"⁴²
49. Measures intended to protect the right of defense and/or the procedural integrity of the arbitration, including in particular access to, or the integrity of, evidence, are urgent by definition, as they cannot await the rendering of an award on the merits. "*Indeed, the question of whether a Party has the opportunity to present its case or rely on the integrity of specific evidence is essential to (and therefore cannot await) the rendering of an award on the merits.*"⁴³ Thus, with respect to the preservation of evidence, including documents, the tribunal held, in *Biwater v. Tanzania*, that not only the requirement of necessity but also the requirement of urgency were met, "*the former because of the potential need for the evidence in question, and the latter because there is a need for such evidence to be preserved before*

³⁸ **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 157.

³⁹ **Exhibit CL-14, Biwater v. Tanzania**, ¶ 76.

⁴⁰ **Exhibit CL-2, Occidental v. Ecuador**, ¶ 59; **Exhibit CL-11, Tokios Tokelés v. Ukraine**, Order No. 3, ¶ 8. These Decision on Provisional Measure and Order both followed the decision of the International Court in the *Case Concerning Passage Through the Great Belt (Finland v. Denmark)*, Order on the Request for Indication of Provisional Measures, dated July 29, 1991, ICJ Reports 1991, pp. 12 *et seq.*, ¶ 23 (**Exhibit CL-22**). See also **Exhibit CL-13, Burlington v. Ecuador**, ¶ 72.

⁴¹ **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 150; **Exhibit CL-23** Christoph Schreuer, *The ICSID Convention: A Commentary* (Cambridge University Press, 2009), p. 775, ¶ 63.

⁴² **Exhibit CL-14, Biwater v. Tanzania**, ¶ 76. See also **Exhibit CL-24, Millicom International Operations BV and Sentel GSM SA v. The Republic of Senegal**, ICSID Case No. ARB/08/20, Decision on the Application for Provisional Measures Submitted by the Claimants on August 24, 2009, dated December 9, 2009 (available at <http://www.italaw.com/sites/default/files/case-documents/italaw1244.pdf>), in which the tribunal explained that provisional measures are urgent when, unless they are "*ordered rapidly, there are serious risks that the rights of the applicants will be jeopardized*" (¶ 48).

⁴³ **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 153.

the proceedings progress any further (e.g. to enable each party properly to plead their respective cases).’’⁴⁴

50. Furthermore, “*minimizing the scope of any external pressure on any party, witness, expert or any other person involved in the arbitral process is certainly within the Tribunal’s mission. No current or imminent harm is necessary for this mission to be carried out forward.*”⁴⁵ Finally, the urgency criterion is met when a State has taken or is threatening to take measures which aggravate the dispute.⁴⁶
51. In conclusion, the measures requested below, which are intended to preserve the integrity of the arbitration proceedings, including Claimants’ access to documentary evidence and witness testimony, and to prevent an imbalance (including through use of legally privileged documents) and further aggravation of the dispute, are not only necessary for the preservation of Claimants’ rights but also urgent.

III. MEASURES URGENTLY NECESSARY FOR THE PRESERVATION OF CLAIMANTS’ RIGHTS

52. Article 47 of the ICSID Convention and Rule 39 of the ICSID Arbitration Rules are generally considered to grant wide discretion to the arbitral tribunal on the issue of provisional measures.⁴⁷ As Schreuer puts it, “[t]he purpose of provisional measures is to induce behaviour by the parties that is conducive to a successful outcome of the proceedings such as securing discovery of evidence, preserving the parties’ rights, preventing self-help, safeguarding the awards’ eventual implementation and generally keeping the peace.”⁴⁸
53. In the present instance, Claimants seek first and foremost the restitution of all documents and property seized on July 2, 2014 pursuant to the Order for Preservation and Handing over of Computer Data dated June 23, 2014 and the Order for a House Search dated June 25, 2014, and an order that Respondent refrain from using, in the arbitration proceedings, any

⁴⁴ **Exhibit CL-14**, *Biwater v. Tanzania*, ¶ 86.

⁴⁵ **Exhibit CL-25**, *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Procedural Order No. 2, dated May 30, 2008, ¶ 48 (available at <http://italaw.com/documents/EDFPO2.pdf>).

⁴⁶ **Exhibit CL-13**, *Burlington v. Ecuador*, ¶ 74; **Exhibit CL-3**, *City Oriente v. Ecuador*, Decision on Provisional Measures, ¶ 69.

⁴⁷ **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 105.

⁴⁸ **Exhibit CL-23**, Christoph Schreuer, *The ICSID Convention: A Commentary* (Cambridge University Press, 2009), p. 759, ¶ 2.

document, material or information gathered in the context of these criminal proceedings. As explained above, such measures are necessary and urgent for the preservation of Claimant's right to the integrity of the arbitration proceedings, including Claimants' right to present and substantiate their case and the principle of equality of arms.

54. Second, Claimants seek an order for the suspension of the criminal proceedings launched in June 2014 in the Slovak Republic and ask that Respondent be prohibited from initiating other such proceedings directly related to the arbitration.
55. In this respect, Claimants acknowledge that, as recently confirmed in *Abaclat v. The Argentine Republic*, an "Arbitral Tribunal can in principle not prohibit a Party from conducting criminal court proceedings before competent state authorities."⁴⁹ Yet, as further substantiated below, a series of arbitral tribunals have held that a State's prosecutorial powers must be exercised in good faith and with due respect for the claimant's rights,⁵⁰ and that exceptional circumstances may lead the tribunal to depart from the general rule entitling a State to enforce at the national level its criminal laws. Several ICSID tribunals have accordingly ordered a stay or deferral of criminal investigations in appropriate circumstances, for instance, in *City Oriente v. Ecuador*,⁵¹ *Quiborax v. Bolivia*,⁵² and *Lao Holdings v. Lao*.⁵³
56. In the *Quiborax* Decision on Provisional Measures, which were requested by the claimants following, *inter alia*, the initiation of criminal proceedings against several persons related directly or indirectly to the arbitration, the Tribunal ordered that the respondent take all appropriate measures to suspend these criminal proceedings and any other criminal proceedings directly related to the arbitration, and that the respondent also refrain from initiating any other criminal proceedings directly related to the resent arbitration, or engaging in any other course of action which could jeopardize the procedural integrity of the arbitration.
57. The tribunal came to the conclusion that the criminal proceedings were related to the ICSID arbitration ("because both the conduct alleged and the harm allegedly caused relate[d]

⁴⁹ **Exhibit CL-26**, *Abaclat and Others v. The Argentine Republic*, ICSID Case No. ARB/07/5, Procedural Order No. 13, dated September 27, 2012, ¶¶ 39 and 45 (available at http://www.italaw.com/sites/default/files/case-documents/italaw1304_0.pdf).

⁵⁰ **Exhibit CL-15**, *Lao Holdings v. Lao*, ¶ 25; **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 123.

⁵¹ **Exhibit CL-3**, *City Oriente v. Ecuador*, Decision on Provisional Measures.

⁵² **Exhibit CL-8**, *Quiborax v. Bolivia*.

⁵³ **Exhibit CL-15**, *Lao Holdings v. Lao*.

*closely to Claimants’ standing as investors in the ICSID proceeding*⁵⁴), and could even have been motivated thereby (considering that “*the evidence in the record suggest[ed] that the criminal proceedings were initiated as a result of a corporate audit that targeted Claimants because they had initiated this arbitration*”⁵⁵). While acknowledging the respondent-State’s sovereign authority to prosecute conduct that may constitute a crime on its territory and that “[i]f there are legitimate grounds for the criminal proceedings, Claimants must bear the burden of their conduct in Bolivia,”⁵⁶ and despite having reached the conclusion that the criminal proceedings did not *per se* threaten the exclusivity of the arbitration proceedings under Article 26 of the ICSID Convention⁵⁷ nor placed “intolerable pressure” on the claimants to drop their claims,⁵⁸ the tribunal nonetheless held that the suspension of the proceedings was necessary and urgent, hence justified. In the words of the tribunal:

Bolivia has the sovereign power to prosecute conduct that may constitute a crime on its own territory, if it has sufficient elements justifying prosecution. Bolivia also has the power to investigate whether Claimants have made their investments in Bolivia in accordance with Bolivian law and to present evidence in that respect. But such powers must be exercised in good faith and respecting Claimants’ rights, including their prima facie right to pursue this arbitration.

*What is clear to the Tribunal is that there is a direct relationship between the criminal proceedings and this ICSID arbitration that may merit the preservation of Claimants’ rights in the ICSID proceeding.*⁵⁹

58. The tribunal further explained:

The Tribunal has given serious consideration to Respondent’s argument that an order granting the provisional measures requested by Claimants would affect its sovereignty. In this respect, the Tribunal insists that it does not question the sovereign right of a State to conduct criminal cases. [...] [T]he international protection granted to investors does not exempt suspected criminals from prosecution by virtue of their being investors. However, the situation encountered in this case is exceptional. The Tribunal has been convinced that there is a very close link between the initiation of this arbitration and the launching of the criminal cases in Bolivia. It has become clear to the Tribunal that one of the Claimants is being

⁵⁴ **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 120.
⁵⁵ **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 121.
⁵⁶ **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 138.
⁵⁷ **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 128.
⁵⁸ **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 138.
⁵⁹ **Exhibit CL-8, Quiborax v. Bolivia**, ¶¶ 123-124.

subjected to criminal proceedings precisely because he presented himself as an investor with a claim against Bolivia under the ICSID/BIT mechanism. Likewise, the Tribunal has been convinced that the other persons named in the criminal proceedings are being prosecuted because of their connection with this arbitration (be it as Claimants' business partners or counsel, or as authors of a report ordered by a state agency). Although Bolivia may have reasons to suspect that the persons being prosecuted could have engaged in criminal conduct, the facts presented to the Tribunal suggest that the underlying motivation to initiate the criminal proceedings was their connection to this arbitration, which has been expressly deemed to constitute the harm caused to Bolivia that is required as one of the constituent elements of the crimes prosecuted.

In addition, the Tribunal is of the opinion that a mere stay of the criminal proceedings would not affect Respondent's sovereignty nor require conduct in violation of national law. [...] [T]he harm that such a stay would cause to Bolivia is proportionately less than the harm caused to Claimants if the criminal proceedings were to continue their course. Once this arbitration is finalized, Respondent will be free to continue the criminal proceedings, subject to the Tribunal terminating or amending this Decision prior to the completion of this arbitration.⁶⁰

59. Specifically, although it appeared from the record that claimants had had access to copies of certain documents and it was unclear whether they were still missing relevant documentation that could assist them in presenting their case on jurisdiction or the merits, the tribunal concluded that “*the criminal proceedings [could] be impairing Claimants' right to present their case, in particular with respect to their access to documentary evidence and witnesses. [...]*”⁶¹
60. With respect to the effect that the criminal proceedings may have on potential witnesses, the tribunal also explained:

Even if no undue pressure is exercised on potential witnesses, the very nature of these criminal proceedings is bound to reduce their willingness to cooperate in the ICSID proceeding. Given that the existence of this ICSID arbitration has been characterized within the criminal proceedings as a harm to Bolivia, it is unlikely that the persons charged will feel free to participate as witnesses in this arbitration.⁶²

⁶⁰ **Exhibit CL-8, Quiborax v. Bolivia**, ¶¶ 164-165.

⁶¹ **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 142.

⁶² **Exhibit CL-8, Quiborax v. Bolivia**, ¶ 146.

Thus:

*Regardless of whether the criminal proceedings have a legitimate basis or not (an issue which the Tribunal is not in a position to determine), the direct relationship between the criminal proceedings and this ICSID arbitration is preventing Claimants from accessing witnesses that could be essential to their case.*⁶³

61. The tribunal concluded that the claimants had shown the existence of a threat to the procedural integrity of the ICSID proceedings, in particular with respect to their right to access to evidence through potential witnesses, given that the rights invoked related to the claimants' "ability to have [their] claims and requests for relief in the arbitration fairly considered and decided by the arbitral tribunal."⁶⁴ The tribunal accordingly ordered the Respondent to take all appropriate measures to suspend these criminal proceedings and any other criminal proceedings directly related to the arbitration, and to refrain from initiating any other criminal proceedings directly related to the arbitration.
62. In *Lao Holdings NV v. The Lao People's Democratic Republic*, the tribunal also held as follows:

[T]here are [...] a number of exceptional circumstances in this case which lead the Tribunal to depart from the general rule entitling a State to enforce on the national level its criminal laws. In particular, the Tribunal is satisfied on the evidence that the primary purpose for which the Respondent intends to use the powers of criminal investigation, at least in the first instance, is to collect evidence for use at the arbitration, which, in the result, will undermine the integrity of the arbitral process. [...]

[A]llowing [...] the Laotian police and prosecutors to pursue criminal proceedings, depose witnesses and collect documentation would aggravate the dispute in the prohibited sense of harming the integrity of the arbitral process.

In order for this Tribunal to enjoin a sovereign State from pursuing a criminal case in its own legal order, it must be convinced that there is a strong linkage between the criminal proceedings and the legal dispute arising out of the investment which is before it, and that such a situation threatens the integrity of the arbitral process. [...]

As to criminal investigations, the question is one of timing. In the Tribunal's view, the integrity of the arbitral process would be

⁶³ **Exhibit CL-8, *Quiborax v. Bolivia*, ¶ 163.**

⁶⁴ **Exhibit CL-8, *Quiborax v. Bolivia*, ¶ 148.**

*compromised by permitting the Respondent to run a criminal investigation concurrently with the arbitration directed to the same people and the same facts at the same time.*⁶⁵

63. The “strong linkage” is as strong as it gets in the present case. It is undisputable that the criminal proceedings launched in the Slovak Republic on June 23, 2014 are not only closely but in fact directly and exclusively related to the arbitration proceedings and that they constitute retaliatory measures. In fact, this is a textbook case of an abuse by the State of its Sovereign powers in retaliation against Claimants’ legitimate exercise of their right to arbitration under bilateral investment treaties.
64. This is undisputable, as shown above, considering both the timing of, and the reasons provided to justify, the criminal proceedings and search. As mentioned above, by its own terms, the Order for a House Search issued on June 25, 2014, that is, on the very same day as the filing of the Request for Arbitration, is justified by “*an especially serious crime of fraud [...] in the stage of attempt [...], assumed to have been committed by currently unidentified individuals, who acted in the name of the shareholders of the company Rozmin, s.r.o., with registered seat in Bratislava, and EuroGas, with registered seat in Vienna, and Belmont Resources, with registered seat in Canada, with the intent to elicit financial resources, make significant financial profits and mislead the relevant state authorities by claiming the amount of 3,2 billion Euros from the Slovak Republic in an unspecified arbitration procedure in connection with a revocation of mining rights of the company Rozmin s.r.o. by the relevant administrative authorities of the SR related to the mining area Gemerská Poloma.*”⁶⁶
65. Moreover and in any event, assuming that there could be any possible justification to such retaliatory measures taken in reaction to Claimants’ decision to turn to arbitration, those advanced by Respondent are frivolous on their face. Indeed, first, while the reality is that there was never any claim for EUR 3.2 billion, Claimants are in fact free to claim any amount that they consider themselves entitled to. Second, no alleged failure to specify the arbitration institution or type of arbitration could be cause for retaliation by the State. And even if it could, in the present case, the arbitration was not “unspecified” but rather consistently referred to by Claimants, in the course of amicable negotiations, as proceedings in which Claimants would assert their rights under the bilateral investment treaties, more specifically

⁶⁵ **Exhibit CL-15**, *Lao Holdings v. Lao*, ¶¶ 26, 31, 37 and 39.

⁶⁶ **Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 2; emphasis added.

ICSID proceedings.⁶⁷ As to the assessment of the merits of Claimants' claims, it is not a matter for Respondent to take into its own hands. In any event, Respondent's own Supreme Court has ruled that the taking by Respondent of Claimant's rights was illegal under Slovak Law.⁶⁸

66. Instead of presenting its defences in the arbitration, the Slovak Republic has simply decided to take justice in its own hands and attempted to annihilate Claimants' ability to put its case in the arbitration, by seizing all of Rozmin's records and property, putting its hands on legally privileged materials, and taking measures to intimidate Claimants' potential witnesses.
67. A decision on provisional measures ordering the restitution of the seized documents and enjoining the Slovak Republic to suspend the criminal proceedings and all associated measures is therefore material to avoid irreparable harm. Furthermore, such measures will not cause any harm, let alone substantial or irreparable harm, to Respondent. Rather, it will prevent further abuse and restore the equilibrium.
68. Based on the foregoing, Claimants respectfully request that the Tribunal, once constituted, take the following measures:
 - a. Order the Slovak Republic to maintain the *status quo* as of the date of the filing of the Request of Arbitration, namely as of June 25, 2014, and put the Parties in the position they should have remained in as of the said date.
 - b. Order the Slovak Republic to return to Rozmin and Ms. Czmoriková all originals of documents and all property seized pursuant to the Order for Preservation and Handing over of Computer Data dated June 23, 2014 and the Order for a House Search dated June 25, 2014, including records, documents, hardware and software collected in the course of the search carried out on July 2, 2014, without making and/or preserving any copy thereof.

⁶⁷ **Exhibit C-42**, Letter from EuroGas Inc. and Belmont Resources Inc. to the Government of the Slovak Republic, dated December 23, 2013, ¶ 37.

⁶⁸ **Exhibit C-33**, Decision of the Supreme Court of the Slovak Republic, dated February 27, 2008 (Ref. 6Sžo/61/2007-121); **Exhibit C-36**, Decision of the Supreme Court of the Slovak Republic, dated May 18, 2011 (Ref. 2Sžo/132/2010); **Exhibit C-38**, Decision of the Supreme Court of the Slovak Republic, dated January 31, 2013 (Ref. 5Sžp/10/2012).

- c. Order the Slovak Republic to undertake, in writing, that the documents and property returned constitute the full set of documents and materials that were seized,⁶⁹ and that no copies thereof were made and/or kept.
 - d. Order the Slovak Republic to refrain from using, in the arbitration proceedings, any material or documents seized pursuant to the Order for Preservation and Handing over of Computer Data dated June 23, 2014 and the Order for a House Search dated June 25, 2014, including records, documents, hardware and software collected in the course of the search carried out on July 2.
 - e. Order the Slovak Republic to take all appropriate measures to end or, alternatively, suspend until the end of this arbitration the criminal proceedings.
 - f. Order the Slovak Republic to refrain from initiating any other criminal proceedings directly related to the present arbitration, or engaging in any other course of action which may jeopardize the procedural integrity of this arbitration.
 - g. Order the Slovak Republic to refrain from taking any further measure of intimidation against Rozmin, EuroGas, Belmont or any director, employee or personnel of any of these companies and to refrain from engaging in any conduct that may aggravate the dispute between the Parties and/or alter the *status quo* that existed prior to the initiation of the criminal investigation launched on June 23, 2014 or any local proceedings related, directly or indirectly, to the subject-matter of this arbitration, including any further steps which might undermine Claimants' ability to substantiate their claims, threaten the procedural integrity of the arbitral process, or aggravate or exacerbate the dispute between the Parties.
69. The "Slovak Republic" should be understood, pursuant to Article 4(1) of the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts, as any "*State organ* [of the Slovak Republic] *whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the*

⁶⁹ Given that no detailed inventory of the seized documents was prepared by the Slovak Republic, Claimants will have difficulty identifying, at least rapidly and/or fully, whether all documents and materials seized have been returned.

*State, and whatever its character as an organ of the central Government or of a territorial unit of the State.”*⁷⁰

70. Claimants reserve the right to supplement and/or amend the above list of provisional measures applied for, which are both necessary and urgent to the preservation of their rights. This application is without prejudice to Claimants’ right to seek, in due course, moral damages for the acts and omissions of Respondent.

[Signed]
Hamid G. Gharavi

⁷⁰ **Exhibit CL-27**, International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted in 2001 (available at http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf).