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**FRENCH REPUBLIC ON BEHALF
OF THE FRENCH PEOPLE**

PARIS COURT OF APPEAL

**International Commercial Chamber
SECTION 5 CHAMBRE 16**

JUDGMENT OF 1 JULY 2025

(no. 47 /2025, 26 pages)

Case number : N° RG 24/05336 - N° Portalis 35L7-V-B7I-CJDW2

Remand to the Court of Appeal, following judgment no. 877 FP handed down on 17 December 2022 by the Court of Cassation (1st Civil Division), which partially quashed the judgment handed down on 30 March 2021 (RG 19/04161) by the Paris Court of Appeal (Section 5 - Chamber 16), ruling on the set aside action against an arbitral award (No. PCA2016-14) handed down on 26 November 2018, by an arbitral tribunal constituted under the Permanent Court of Arbitration, and composed of Sir David A.R. Williams (Presiding arbitrator) and Messrs. Charles N. Bower and Hugo Perezeano Diaz (co-arbitrators).

CLAIMANT:

RUSSIAN FEDERATION

represented by the General Public Prosecutor's Office of the Russian Federation, itself represented by the acting General Public Prosecutor of the Russian Federation, with full powers to act on behalf of the Russian Federation, located at: Bolshaya Dmitrovka Street, 15a, GSP-3, MOSCOW (RUSSIAN FEDERATION)

*Represented by (procedural attorney) Matthieu BOCCON GIBOD of SELARL LX PARIS-VERSAILLES-REIMS, member of the PARIS Bar, attorney mail box: C2477
represented by (counsel) Andrea PINNA, Raphaëlle HAÏK and Aleksandra FEDOSOVA, members of the PARIS Bar.*

RESPONDENT:

JOINT STOCK COMPANY "STATE SAVINGS BANK OF UKRAINE" also known as JSC OSCHADBANK
formerly PUBLIC JOINT STOCK COMPANY "STATE SAVINGS BANK OF UKRAINE"
having its registered office : 12G, Hospitalna KIEV 01001 (UKRAINE)
represented by its legal representatives,

*Represented by (procedural attorney) : Luca DE MARIA of SELARL PELLERIN - DE MARIA - GUERRE, member of the PARIS Bar, attorney mailbox: L0018
Represented by (counsel): Philippe PINSOLLE, Isabelle MICHOU, Thomas VOISIN, Anne-Marie LACOSTE and Laura DÉSAN, of QUINN EMANUEL URQUHART & SULLIVAN LLP, members of the PARIS Bar, attorney mailbox: L0055*

IN THE PRESENCE OF :

THE GENERAL PROSECUTOR – FINANCIAL AND COMMERCIAL SERVICE
34 quai des Orfèvres 75055 PARIS

The case was communicated to the public prosecutor, represented during the oral hearing by Mr François VAISSETTE, General Public Prosecutor (*Avocat Général*), who submitted his opinion in the course of the proceedings.

COMPOSITION OF THE COURT :

The case was heard in a public hearing on 25 March 2025, before the Court sitting in solemn formation composed of:

Mr Jacques BOULARD, First President of the Court of Appeal
Ms Brigitte BRUN-LALLEMAND, First Chamber President
Mr Daniel BARLOW, Chamber President
Mr Jacques LE VAILLANT, Judge
Ms Joanna GHORAYEB, Judge

who deliberated.

A report was presented at the hearing by Mr. Daniel BARLOW, under the conditions set out in article 804 of the French Code of Civil Procedure.

Registrar during the proceedings: Ms Najma EL FARISSI

JUDGMENT :

- Adversarial

- pronounced publicly and made available at the court registry, the parties having been notified in advance in accordance with the conditions laid down in the second paragraph of article 450 of the French Code of Civil Procedure.

- Signed by Mr Jacques BOULARD, First President of the Paris Court of Appeal, and by Najma EL FARISSI, Registrar, to whom the written decision was handed over by the signatory judge.

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I/ FACTS AND PROCEDURE

1. An application for the annulment of an international arbitral award handed down in Paris on 26 November 2018, under the auspices of the Permanent Court of Arbitration, in a case (PCA Case No. 2016-14) between Joint Stock Company "State Savings Bank of Ukraine", also known as JSC Oschadbank (hereinafter "Oschadbank" or "the bank"), and the Russian Federation, has been brought before the Court after remand from the Court of Cassation.

2. Invoking the expropriation by the Russian Federation of the assets it owned in Crimea, Oschadbank, on 20 January 2016, initiated arbitration proceedings on the ground of the bilateral Treaty concluded on 27 November 1998 between the Russian Federation and Ukraine on the encouragement and reciprocal protection of investments (hereinafter, "the Treaty").

3. The Russian Federation opposed the jurisdiction of the arbitral tribunal and did not participate in the proceedings.

4. In its final award of 26 November 2018, the arbitral tribunal declared itself competent and ruled that the Russian Federation had violated the Treaty by unlawfully expropriating Oschadbank's investments on the Crimean peninsula. It consequently ordered Russia to pay the bank US\$1,111,300,729 in compensation, in addition to the costs of the arbitration proceedings, interest and expenses.

5. The Russian Federation lodged a set aside action against this award with the Paris Court of Appeal on 19 February 2019.

6. It also lodged an application for revision on 19 August 2019, which was rejected by an award dated 11 December 2023. This award is the subject of a set aside action before the same Paris Court of appeal (proceedings registered under RG number 24/05331), before which another set aside action has been initiated against the award on costs and the respondent's application for disclosure, made by the same arbitral tribunal on 19 June 2024 (proceedings registered under RG number 24/16339).

7. By a judgment handed down on 30 March 2021, the court set aside the award of 26 November 2018, considering that the temporal condition of article 12 of the Treaty had not been met, so that the arbitral tribunal had wrongly declared it had jurisdiction to hear the dispute.

8. Following an appeal before the Court of Cassation by the bank, the Court of Cassation, in a ruling dated 7 December 2022, overturned this decision for breach of article 1520, 1°, of the French Code of Civil Procedure, holding that neither the offer of arbitration provided for in article 9 of the Treaty nor the definition of investments set out in article 1 contained any restriction as to the arbitral tribunal's jurisdiction *ratione temporis*, and that article 12 did not set out a condition of consent to arbitration upon which the jurisdiction of the arbitral tribunal depended, but a substantive rule, so that the Court of Appeal had only to verify, with regard to jurisdiction *ratione temporis*, that the dispute had arisen after the entry into force of the treaty. The Court of Cassation therefore referred the parties back to the Paris Court of Appeal, with a different panel of judges.

9. On 8 March 2024, the Russian Federation applied to the Court of Appeal.

10. The procedural phase of the proceedings was declared closed on 18 February 2025 and the hearing took place on 25 March 2025.

11. In view of the nature of the case, the referral to a solemn hearing was ordered by decision of the First President of the Court on 13 March 2025.

12. At the formal hearing on 25 March 2025, the parties' counsel made oral submissions. The representative of the public prosecutor's office also presented oral observations. He was given the floor last, in accordance with article 443 of the French Code of Civil Procedure. The court authorized the parties to file post-hearing submissions in order to respond to the oral opinion of the public prosecutor, in application of article 445 of the same code.

13. By letter dated 27 March 2025, the Russian Federation asked the representative of the Public Prosecutor's Office to provide a written copy of his observations, which the latter refused by letter dated 2 April 2025. It filed a post-hearing submission on 15 April 2025.

II/ SUBMISSIONS AND CLAIMS OF THE PARTIES

14. In its final submissions, notified electronically on 11 February 2025, the Russian Federation asks the Court, pursuant to article 1520 of the French Code of Civil Procedure, to:

- Set aside the arbitral award rendered in Paris on 26 November 2018 in PCA Case No. 2016-14;
- Order JSC Oschadbank to pay the Russian Federation the sum of 300,000 euros under the provisions of article 700 of the French Code of Civil Procedure;
- Order JSC Oschadbank to pay all the costs of the proceedings, which will be awarded to SELARL LX Paris-Versailles-Reims.

15. In its final submissions, served electronically on 10 February 2025, Oschadbank asks the court, under articles 122, 700 and 1520 of the French Code of Civil Procedure, to:

On the Russian Federation's plea of lack of jurisdiction *ratione loci*,

- Declare inadmissible the Russian Federation's plea of lack of jurisdiction *ratione loci* of the Arbitral Tribunal;
- In the alternative,
- Reject as unfounded the plea to set aside the award raised by the Russian Federation alleging lack of jurisdiction *ratione loci* of the Arbitral Tribunal;

On the other grounds to set aside the award put forward by the Russian Federation,

- Reject as unfounded the pleas to set aside the award raised by the Russian Federation regarding the lack of jurisdiction (*ratione temporis* and *ratione materiae*) of the Arbitral Tribunal;
- Reject as unfounded the plea to set aside the award raised by the Russian Federation alleging non-compliance by the Arbitral Tribunal with its mandate;
- Reject as unfounded the Russian Federation's plea to set aside the award alleging that procedural fraud was committed by Oschadbank;
- Reject as unfounded the plea to set aside the award raised by the Russian Federation based on an alleged lack of impartiality and independence of the Arbitral Tribunal;

Consequently:

- Dismiss in its entirety the Russian Federation's application to set aside the arbitral award rendered on 26 November 2018 in PCA Case No. 2016-14 ;

In any event :

- Reject the other claims submitted to the Court of Appeal by the Russian Federation;
- State that the dismissal of the set aside action grants exequatur to the arbitral award rendered on 26 November 2018 in case PCA no. 2016-14;

- Order the Russian Federation to pay Joint Stock Company "State Savings Bank of Ukraine" known as JSC Oschadbank the sum of 400,000 euros under Article 700 of the French Code of Civil Procedure;
- Order the Russian Federation to pay the costs of the proceedings.

16. At the hearing on 25 March 2025, the public prosecutor asked the court to reject the Russian Federation's application to set aside the award.

17. The Court refers to the aforementioned submissions and post-hearing submission for a full presentation of the parties' arguments, in accordance with article 455 of the French Code of Civil Procedure.

III/ GROUNDS FOR THE DECISION

A. On the first ground to set aside the award alleging lack of jurisdiction of the arbitral tribunal

III.A.1 The parties' positions

18. The Russian Federation maintains that the Arbitral Tribunal wrongly declared it had jurisdiction *ratione temporis*, *ratione loci* and *ratione materiae*.
19. With regard to jurisdiction *ratione temporis*, it argues that :
- a distinction must be drawn between the applicability of the Treaty and the conditions of the jurisdictional protection that it institutes, since the court must verify, when examining the issue of jurisdiction, that the Treaty is indeed applicable and that the conditions for the application of the protection regime, both material and jurisdictional, have been met;
 - the Treaty is inapplicable in this case, since the investment claimed by Oschadbank was made before 1st January 1992;
 - Oschadbank and its Crimean branch, presented as the object of the expropriation claimed by the respondent, were created before that date;
 - under Article 12 of the Treaty, it applies only to investments made on or after 1st January 1992;
 - this clause is clear and unambiguous, and reflects the willingness of the contracting parties to protect only investments made after the dissolution of the Soviet Union;
 - Oschadbank's position that its investment became a protected investment in March 2014, when Russia annexed Crimea, is factually and legally incorrect;
 - the question of the date on which the investment was made cannot be considered as a substantive issue, as the condition set out in Article 12 is a condition for the application of the Treaty, which is a prerequisite for the jurisdiction of the arbitral tribunal;
 - the distinction between substantive protection and jurisdictional protection is artificial and does not result from the Treaty;
 - the solution adopted on this point by the Court of Cassation is contrary to foreign case law;
 - it has been criticized by legal scholars as unfounded in law;

- it was resisted by the Paris Court of Appeal and overturned by the Court of Cassation, which now accepts that the jurisdiction of the arbitral tribunal must be assessed in the light of all the provisions of the Treaty.

20. With regard to jurisdiction *ratione loci*, it states that :

- the Treaty is not territorially applicable to Crimea, since this territory is not subject to mutual recognition ;

- this inapplicability results from the interpretation of the very terms of the Treaty, which refer to a territorial condition, by nature recognized and uncontested by the States Parties;

- the Treaty mechanism cannot operate in the event that the alleged investment has been made in a territorial area over which both contracting States claim to have valid title, as such an approach would lead to absurd results;

- the requirement of an uncontested and mutually recognized territory is not a general rule of public international law, but is specific to the wording of the disputed Treaty and its nature ;

- the Treaty cannot be applied in the absence of reciprocity with regard to Crimea;

- like all bilateral investment treaties, the purpose of the Treaty is to create reciprocal rights and obligations for the protection of investment, and this requirement of reciprocity is not met in the event of a dispute over the territory concerned;

- following the example of France, States that have concluded bilateral investment treaties with Russia have considered that these treaties do not apply to Crimea, because of the territorial dispute and because they do not recognize Crimea as part of the territory of the Russian Federation;

- the national legislation of Ukraine, which denies any effect to the laws and regulations of the Russian Federation with regard to Crimea, is proof that Ukraine also recognizes the inapplicability of the Treaty to Crimea;

- the reciprocal application of international treaties is a fundamental rule of their operation in international law, and is a legal condition which the courts must verify;

- the objection raised by the respondent has no legal basis, was not raised concomitantly with the first claim, and is *res judicata* as determined by the Paris Court of Appeal in its 2022 judgment;

- the territorial dispute is a preliminary issue, which must be resolved before any other questions relating to the application of the Treaty can be decided, whether they concern jurisdiction, admissibility or the merits of Oschadbank's claim;

- the Arbitral Tribunal has no jurisdiction to resolve the territorial dispute over Crimea under the Treaty, even though Ukraine was not a party to the arbitration proceedings;

- Oschadbank cannot refer to other cases decided on the ground of the Treaty or other international treaties, since in those cases the question was answered that the *de facto* control of the Crimean peninsula by the Russian Federation was sufficient to satisfy the territorial condition, which is different from the inapplicability of the Treaty on account of the dispute;

- the references to the case law of the European Court of Human Rights and the International Court of Justice are inapplicable, absent any possible analogy with the Treaty.

21. On the question of jurisdiction *ratione materiae*, it notes that :

- in any event, the alleged investment was made in Ukraine by a legal entity governed by Ukrainian law;

- however, the Treaty can only be applied in the case of a foreign investment at the date of its realization, as only foreign investments from the outset are covered;

- it is therefore necessary to consider the date on which the investment was made;

- these requirements derive from the very terms of the Treaty, as confirmed by the linguists consulted by the Russian Federation;

- any interpretation to the contrary would lead to absurd results;

- an analysis of the object, purpose and context of the Treaty leads to the same conclusion;

- the arbitral tribunal wrongly considered that the Treaty was applicable by modifying the meaning of its terms;

- case law distinguishes between bilateral investment treaties protecting investments made, as in this case, and those protecting investments held.

22. Oschadbank claims that the plea alleging that the arbitral tribunal lacked jurisdiction should be rejected.

23. With regard to jurisdiction *ratione temporis*, it argues that :

- in its 2022 ruling, the Court of Cassation overturned the Court of Appeal's ruling, specifying that Article 12 of the Treaty does not set out a condition for consent to arbitration, on which the jurisdiction of the arbitral tribunal depends, but rather a substantive rule which the annulment judge cannot review;

- the Court of Cassation has specified that the jurisdiction *ratione temporis* of the arbitral tribunal is conditional only upon the dispute arising after the entry into force of the treaty;

- the temporal application of substantive and procedural guarantees does not coincide, as article 9 is autonomous from article 12;

- the Court of Cassation has emphasized the importance of the solution provided by this judgment, handed down by the full court, by publishing it in the Bulletin and commenting on it in its Annual Report;

- the majority of legal commentators were in favor of this solution;

- the subsequent case law of the Paris Court of Appeal is in line with this solution;

- the Court of Cassation did not overturn its caselaw with the *Etrak* ruling of 9 April 2024, referred to by the Russian Federation;

- the date of completion of the investment by Oschadbank is therefore irrelevant in determining the jurisdiction of the arbitral tribunal;

- the date alleged by Russia is in fact false, as the investment was made over several years from the creation of the Crimean branch and only became a protected investment within the meaning of the Treaty in March 2014, when Crimea was annexed by Russia.

24. With regard to jurisdiction *ratione loci*, Oschadbank argues that :

- this second part of the plea is inadmissible, since reciprocity does not constitute an objection to jurisdiction but a substantive condition, which is not one of the grounds for bringing a set aside action ;

- the res judicata effect of the court's first ruling, resulting from the partial overturn of the decision, applies only to the admissibility of the objection based on lack of jurisdiction *ratione temporis* ;

- on the merits, Russia cannot raise a territoriality objection in good faith, without contradicting itself;

- it is at the origin of the territorial dispute and cannot therefore invoke it in an attempt to escape its international responsibility;

- its objection is contrary to the principle pursuant to which treaties must be interpreted in good faith, in accordance with article 31 of the Vienna Convention on the Law of Treaties;

- it is also contrary to the principle of execution in good faith of the Treaty, within the meaning of article 26 of the Vienna Convention;

- the arbitral tribunal has jurisdiction despite differences of opinion on territorial sovereignty;

- the existence of a parallel dispute relating to sovereignty over a given territory does not deprive the arbitral tribunal of its jurisdiction to settle the dispute on the basis of an investment treaty;

- there is no risk of incursion by the arbitral tribunal into the territorial dispute, since the geographical scope of application is determined solely for the purposes of the treaty;

- Russia admitted before the Swiss Federal Court, in the Ukrnafta case, that it was not necessary to rule on the territorial dispute in order to apply Article 9 of the Treaty, which establishes the jurisdiction of the arbitral tribunal;

- the alleged condition of territoriality "by nature undisputed and mutually recognized" is not set out in the Treaty, as Russia has not demonstrated how the contracting states intended to modify the definition of territory within the meaning of the Treaty;

- the alleged malfunctioning of the investment conformity condition is a false problem, since Ukraine recognizes that, from a practical point of view, Russia is the only State exercising total control over the territory of Crimea;

- the lack of reciprocity invoked is speculative and legally erroneous, since reciprocity is neither a condition of jurisdiction nor a condition of the substantial protection granted by the treaty;

- the Ukrainian law stating that a Russian company established in Crimea would not be recognized by Ukraine does not refer to Ukraine's international obligations and therefore cannot be the basis for Russia's reasoning on the absence of reciprocity;

- a State cannot hide behind its national law to evade its international obligations;
- the notes verbales invoked by Russia are irrelevant since they do not concern the disputed Treaty and emanate from countries other than Ukraine;
- in any event, the French courts apply a presumption of reciprocity to treaties, as the Court of Cassation considers that absent any denunciation of a convention, it is not for the courts to verify whether the condition of reciprocity referred to in article 55 of the 1958 Constitution has been met;
- Russia's objection is contrary to arbitral and judicial case law, which has unanimously concluded that Crimea is a Russian territory within the meaning of the same treaty.

25. With regard to jurisdiction *ratione materiae*, Oschadbank argues that :

- the investment in question is that of a Ukrainian party in Russia ;
- the question of the date of the investment is a question of substance, under Article 12 of the Treaty, so that the Russian Federation's arguments that the investment was not foreign because at the date of the investment Crimea was part of Ukraine are bound to fail;
- in any event, Russia is misinterpreting the notion of investment within the meaning of the treaty, since article 1.1 of the treaty contains no temporal condition;
- other courts dealing with this issue have unanimously rejected Russia's claim as to the jurisdiction *ratione materiae* of arbitral tribunals;
- French case law also supports this position.

26. The Public Prosecutor's Office asks the Court to reject the plea that the Arbitral Tribunal lacks jurisdiction, considering that the solution adopted by the Court of Cassation in its judgment of 7 December 2022 must be applied with regard to jurisdiction *ratione temporis* and that, following the same reasoning, the pleas raised by the Russian Federation concerning jurisdiction *ratione loci* and *ratione materiae* concern the merits of the dispute and fall outside the jurisdiction of the annulment judge by virtue of the principle of non-review of arbitral awards.

III.A.2 The Court's response

27. Article 1520, 1°, of the French Code of Civil Procedure provides for an application to set aside an award where the arbitral tribunal has wrongly declared it had jurisdiction or not.

28. For the application of this text, it is up to the annulment judge to review the arbitral tribunal's decision on its jurisdiction, whether it has declared it has jurisdiction or not, by reviewing all the elements of law or fact that enable the scope of the arbitration agreement to be assessed.

29. With regard to the protection of transnational investments, a State's consent to arbitration is based on the standing offer of arbitration formulated in a treaty, addressed to a category of investors delimited by the treaty, for the settlement of investment disputes defined therein.

30. The review of the arbitral tribunal's decision as to its jurisdiction is exclusive of any review of the merits of the award, as the annulment judge is required to rule neither on the admissibility of the claims, nor on their merits.

31. In this case, Oschadbank's request for arbitration was based on the bilateral treaty concluded on 27 November 1998 between the Russian Federation and Ukraine on the encouragement and reciprocal protection of investments.

32. Article 9 of this Treaty, entitled "Settlement of disputes between Contracting Party and an investor of the other Contracting Party", states:

1. Any dispute between either Contracting Party and an investor of the other Contracting Party that arises in connection with the investments, including disputes, which concern the amount, terms of or procedure for payment of compensation, provided for in Article 5 hereof, or the procedure for effecting a transfer of payments, provided for in Article 7 hereof, shall be subject to a written notification, accompanied by detailed comments, which the investor shall forward to the Contracting Party involved in the dispute. The parties to the dispute shall strive to settle such a dispute to the extent possible by way of negotiations.

2. If the dispute is not resolved in that way within six months as of the date of the written notification, as mentioned in para 1 of this Article, it shall be referred for consideration to :

a) a competent court or an arbitration court of the Contracting Party, in whose territory the investments were made ;

b) the Arbitration Institute of the Stockholm Chamber of Commerce;

c) an ad hoc arbitral tribunal in conformity with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The arbitral award shall be final and binding upon both parties to the dispute. Each Contracting Party shall undertake to enforce such an award in conformity with its laws.

33. Article 1, on "Definitions", states:

1. The term "investments" means all kinds of assets and intellectual values, which are invested by an investor of one Contracting Party in the territory of the other Contracting Party in conformity with its laws, and in particular :

a) movable and immovable property, as well as associated proprietary rights ;

b) money, as well as securities, liabilities, deposits, and other forms of participation ;

c) intellectual property rights, including copyright and related rights, trademarks, the rights to inventions, industrial designs, models, as well as technological processes and know-how;

d) rights to perform business activity, including rights to search for, cultivate and exploit natural resources.

Alteration of the type of investments, in which the funds will be invested, shall not affect their nature as investments, unless such alteration is contrary to the laws of a Contracting Party, in whose territory the investments were made.

2. The term "investor of a Contracting Party" means :

a) any natural person, who is a national of the state of a Contracting Party and who is competent in accordance with its laws to make investments in the territory of the other Contracting Party ;

b) any legal entity, constituted under the law in force in the territory of that Contracting Party, provided, that the legal entity is competent under the laws of its Contracting Party to make investments in the territory of the other Contracting Party.

[...]

4. The term "territory" means the territory of Ukraine or the territory of the Russian Federation, as well as their respective exclusive economic zone and continental shelf, as determined in conformity with international law.

34. Under Article 12 on "Application of the Agreement":

This Agreement shall apply to all investments, made by the investors of one Contracting Party in the territory of the other Contracting Party as of 1 January 1992.

35. Within the framework thus defined, the parties are in dispute as to the arbitral tribunal's temporal, territorial and material jurisdiction.

Jurisdiction ratione temporis

36. The offer of arbitration invoked by Oschadbank is set out in article 9 of the Treaty, which deals with the settlement of disputes between a contracting party and an investor of the other contracting party. This text, the terms of which have been laid out above, does not provide for any condition relating to the date of realization of the investments concerned by the jurisdictional protection it creates.

37. Similarly, Article 1 of the Treaty, which defines the concepts of "investment" and "investor of a Contracting Party" referred to in Article 9, contains no temporal restriction.

38. If Article 12 sets out such a limitation, referring to investments made on or after 1st January 1992, the offer of arbitration formulated in Article 9, against which the jurisdiction of the arbitral tribunal is to be assessed, does not refer to this provision, in respect of which it is autonomous.

39. It follows that the examination of the temporality condition invoked by the Russian Federation on the basis of this article, in order to conclude that the arbitral tribunal lacked jurisdiction, falls outside of the scope of the annulment judge's review, as the jurisdiction *ratione temporis* of the arbitrators must be assessed solely on the basis of the date on which the dispute arose.

40. In this respect, it is undisputed that the dispute between the parties arose after the Treaty came into force on 27 January 2000.

41. As such, it benefits from the jurisdictional protection established by Article 9 of the Treaty, so that the criterion of jurisdiction *ratione temporis* of the arbitral tribunal must be considered satisfied.

42. The first part of the plea is therefore unfounded. It will be rejected.

Jurisdiction ratione loci

43. The Court notes, first of all, that although Oschadbank disputes the admissibility of the plea raised by the Russian Federation on the grounds of territorial jurisdiction, arguing that the objection on which it is based, the absence of reciprocity, does not relate to the jurisdiction of the arbitral tribunal but to a question of application of the Treaty, so that it does not fall within the grounds for annulment provided for in article 1520 of the Code of Civil Procedure, the respondent in the set aside action does not, in so doing, call into question the claimant's standing, but rather criticizes the merits of its argument, this criticism relating not to the admissibility, but to the merits of the plea. The latter must therefore be considered admissible.

44. In substance, the concepts of "investments" and "investors" referred to in the standing offer to arbitrate mentioned in Article 9 of the Treaty must be assessed in the light of the definitions given in Article 1, to which they necessarily refer and which thus specify the scope of the arbitral tribunal's jurisdiction.

45. Article 1 defines protected investments as all kinds of assets or intellectual property "invested by an investor of one Contracting Party in the territory of the other Contracting Party".

46. According to paragraph 4 of the same article, the term "territory", used for the purposes of this definition, "means the territory of Ukraine or the territory of the Russian Federation, as well as their respective exclusive economic zone and continental shelf, as determined in conformity with international law".

47. In the present case, it was established that the assets claimed by the bank as constituting its investment within the meaning of the Treaty were located on the Crimean Peninsula.

48. This territory was attached to the Russian Federation under the terms of a treaty signed on 18 March 2014 accepting the Republic of Crimea into the Russian Federation.

49. In order to oppose the jurisdiction *ratione loci* of the arbitral tribunal, the claimant argues that the Investment Protection Treaty is not applicable in Crimea, due to the lack of mutual recognition of this territory by the contracting parties and the lack of reciprocal application of the Treaty by Ukraine.

50. However, these objections do not relate to arbitral jurisdiction, as set out in article 9 above, but to the substantive protection attached to the Treaty, the control of which does not fall to the Court, by virtue of the legal principles set out above. They are therefore irrelevant in the context of the present action and cannot form the basis for setting aside the award.

51. The annulment judge's review of the arbitral jurisdiction *ratione loci* must therefore focus exclusively on the existence of an investment located on the territory of Ukraine or the Russian Federation within the meaning of Article 1 of the Treaty.

52. In the award in dispute, the arbitral tribunal considered that "the Crimean Peninsula falls within the territory [of the Russian Federation] for the purposes of the Treaty" (award, § 218), noting in substance that :

- according to the ordinary meaning, the term "territory" refers to a geographical area in which a State exercises its jurisdiction or has the power to exercise its authority (*ibid.*, § 204);

- the context of this term, with regard to both the clause itself and the Treaty as a whole, leads to the same definition (*ibid.*, §§ 205 to 212);

- under the rules of international law applicable to the parties, the Treaty is binding on the Russian Federation in respect of its entire territory, in accordance with article 29 of the Vienna Convention (*ibid.*, § 214);

- although opposed by Ukraine and the international community, Russia cannot deny its claim to sovereignty without contradicting its own Constitution and the position it has itself adopted before the United Nations (*ibid.*, § 216).

53. Although the claimant emphasized that the arbitral tribunal was not competent to rule on the territorial dispute between the Russian Federation and Ukraine, this argument is not such as to justify setting aside the award, since the tribunal did not rule on this issue, which was not before it. Called upon to rule on the claimed loss of an investment by a party claiming to be an investor within the meaning of the Treaty, it confined itself to noting "for the purposes of the Treaty" that the Russian Federation exercised its jurisdiction and authority over the Crimean Peninsula, while taking care to specify that it did not intend to rule on "the present status of the Crimean Peninsula under international law and that it therefore refrains from commenting on this question" (Award, § 190).

54. Like the arbitral tribunal, the Court does not intend to comment on this point, which does not fall within its jurisdiction.

55. This being the case, the Court notes that the definition of territory set out in Article 1(4) of the Treaty is particularly broad and does not include any condition of reciprocity or mutual or international recognition.

56. The reference made at the end of this article to "international law", assuming that it refers to the notion of territory rather than to that of "exclusive economic zone" and "exclusive economic zone", is also very broad.

In the absence of a general rule of international law to the effect that the notion of territory within the meaning of a treaty necessarily implies its international recognition or mutual recognition by the contracting parties, such a restriction cannot be deduced from article 29 of the Vienna Convention on the Law of Treaties.

57. Interpretation of Article 1(4), in accordance with the principles set out in Article 31 of the same Convention, in good faith, following the ordinary meaning to be attributed to the terms of the Treaty in their context and in the light of its object and purpose, leads to the same conclusion:

- apart from the fact that the ordinary meaning of the terms used in the definition does not imply the conditions of reciprocity and mutual recognition invoked by the claimant, their context does not refer to them either: the condition of conformity of the investment with the law of the host State referred to in Article 1(1), put forward by the Russian Federation, can be assessed independently of these requirements ;

- the same applies to the object and purpose of the Treaty, which, in addition to promoting investments, aims to protect them, leading to a broad interpretation of the notion of territory, irrespective of the international or diplomatic context.

58. In these circumstances, as the disputed assets are located in a territory over which the Russian Federation claims sovereignty and exercises its authority, following the attachment that took place in 2014, the arbitral tribunal was right to accept jurisdiction *ratione loci*, the condition of territorial jurisdiction attached to the notion of investment being satisfied.

59. The second part of the plea will therefore be rejected.

Jurisdiction ratione materiae

60. It is not disputed that the branch claimed by the bank as constituting its investment falls, by its nature, within the scope of the assets listed in the first paragraph of Article 1 of the Treaty.

61. The Russian Federation contests the material jurisdiction of the arbitral tribunal, arguing that, contrary to the requirements of this article, the disputed investment was not foreign at the time it was made, having been made by a Ukrainian party in Ukraine. Oschadbank objects that, according to the definition in the text, this date is irrelevant.

62. For the purposes of their respective arguments, the parties adopt differing interpretations of the concept of investment set out in Article 1(1) of the Treaty.

63. In the English version adopted by the arbitral tribunal, this text qualifies as investments: "all kinds of assets and intellectual values, which are invested by an investor of one Contracting Party in the territory of the other Contracting Party", which can be translated as: [French translation].

64. The official Russian and Ukrainian versions of this text are the subject of debate, with the parties producing opinions from linguists in support of their respective positions (exhibits FR-50 and FR-51 and RJ-82). These opinions focus in particular on the meaning of the terms "вкладываются" (Russian) and "vkladyvayutsia" (Ukrainian), translated in the aforementioned English version as "are invested". The consultants commissioned by the Russian Federation consider that the use of these terms implies active behavior on the part of the investor, the claimant to the set aside action considering that such an act, which occurs at a given moment, excludes the mere holding of an investment from the protection regime. According to Oschadbank's consultant, these same terms refer to a "state of affairs" and do not provide any explicit linguistic grounds for excluding assets linked to investments made in the past, or even for determining when the investment was made.

65. The Court holds that, given the ordinary meaning of the terms, taken in context, the definition of investment set out in Article 1(1) of the Treaty, whatever its version, does not include any temporal condition that would limit the jurisdictional protection set out in Article 9. Contrary to the claimant's contention, the reference to assets that "are invested" cannot in fact be read as describing only a past action, since the requirement of "active behaviour" on the part of the investor does not exclude, in view of this wording, the consideration of a state of affairs relating to the existence of the investment at the date of the dispute.

66. Nor does the requirement that investments must have been made in accordance with the law of the host State imply any temporal condition, or allow any conclusion to be drawn as to the effects of a border shift, since the conformity assessment can be carried out at the date on which the investment falls within the scope of protection - which, incidentally, is what the arbitral tribunal did (Award, §§ 227 to 229).

67. The Russian Federation's argument based on Article 12 of the Treaty is irrelevant, as this text, which concerns the conditions of application of the Treaty and the substantial protection it creates, cannot be taken into consideration in assessing the scope of the offer to arbitrate provided for in Article 9, which is of an autonomous nature, as stated above.

68. It cannot therefore be considered that the jurisdictional protection instituted by the Treaty would only apply to foreign investments "from the outset", as the offer of arbitration does not include such a restriction.

69. An interpretation of articles 9 and 1(1) of the Treaty in the light of its object and purpose does not call this assessment into question. While it is clear from the recitals that the Treaty aims to "create and maintain favorable conditions for reciprocal investments" and "favorable conditions for the promotion of economic cooperation between the Contracting Parties", these objectives in no way overshadow the primary purpose of the Treaty, which is to protect investments, as its title recalls. In this respect, the extension of this protection, by virtue of Article 12, to investments made prior to the signing and entry into force of the agreement underlines the primacy of the protection objective over the incentive dimension put forward by the Russian Federation for the purposes of its argument.

70. The third part of the plea must therefore be rejected.

Overall assessment

71. It follows from all the foregoing considerations that the criteria for the jurisdictional protection instituted by the offer of arbitration set out in article 9 are met, the Court noting that there is no reason to consider that the Bank cannot be qualified as an investor within the meaning of article 1(2), this qualification not being in fact in dispute.

72. The plea alleging that the Arbitral Tribunal lacked jurisdiction will therefore be rejected.

B. Second plea to set aside the award alleging breach of international public policy

III.B.1 Position of the parties

73. The Russian Federation alleges that Oschadbank committed procedural fraud by withholding from the arbitral tribunal documents establishing that the investment had been made prior to 1st January 1992, and by failing to inform the arbitrators of the date of its alleged investment.

74. It argues that :

- Oschadbank voluntarily kept silent about the date of its investment, which characterizes the material and intentional element of fraud;
- documents discovered by the Russian Federation during the first set aside proceedings show that the bank had acquired and operated its branch in Crimea before 1st January 1992;
- these documents were known neither to the Russian Federation nor to the arbitral tribunal;
- during the arbitration proceedings, the bank deliberately concealed the provisions of its branch's internal regulations, which were not translated into the language of the arbitration, even though they would have enabled the arbitral tribunal to assess the date on which the investment was made;
- this information was decisive for the outcome of the dispute;
- the arbitral tribunal did not rule on the date of the investment, which was confirmed by the first ruling of the Court of Appeal;

- the fact that the documents were accessible to the public is not sufficient to exclude the intention of concealment;
- In its pleadings, Oschadbank confuses the date of its creation, which it did not conceal, with the date of the branch's creation, which is the date of the investment, which alone is relevant and was not known to the arbitral tribunal;
- the date of administrative registration of the branch, put forward by the bank, is irrelevant, since the branch existed and had an activity beforehand.

75. Oschadbank replies that :

- the allegation of procedural fraud is lacking in law, since the arbitral tribunal could not have been surprised by the date on which the investment was made, since this date, which was debated in adversarial proceedings, was not relevant to the resolution of the dispute;
- the allegation of fraud is lacking in fact, as Oschadbank did not conceal documents relevant to the resolution of the dispute;
- the three documents produced by Russia merely confirm what had already been stated during the arbitration proceedings;
- the branch is not a separate legal entity from Oschadbank, whose investment resulted from the acquisition of a multitude of assets since 2 January 1992, as the arbitral tribunal was informed during the proceedings;
- silence on the part of a party does not constitute fraud, in the absence of maneuvers designed to corroborate or conceal circumstances;
- the information allegedly concealed was publicly available in the Kiev archives;
- in any event, the documents relied on were not decisive in the arbitral tribunal's reasoning.

76. The Public Prosecutor's Office concluded that there had been no procedural fraud, in the absence of forgery or fraudulent concealment, and that the arbitral tribunal was not misled in its decision, since the date of the investment had no bearing on the decision on jurisdiction.

III.B.2 Response of the Court

77. Under article 1520, 5°, of the French Code of Civil Procedure, the setting aside of an award may be sought where its recognition or enforcement is contrary to international public policy.

78. The international public policy against which the judge's review is carried out refers to the French legal system's conception of public policy, i.e. the values and principles which cannot be disregarded, even in an international context.

79. This review is concerned solely with examining whether the implementation of the measures taken by the arbitral tribunal obviously violates the principles and values included in this international public policy.

80. Procedural fraud in arbitration is punishable under international public policy. It presupposes that false documents have been produced, misleading testimonies have been given or documents relevant to the resolution of the dispute have been fraudulently concealed from the arbitrators, so that their decision has been misled.

81. In this case, the Russian Federation alleges that Oschadbank committed procedural fraud during the arbitration, by concealing the date of its investment from the arbitral tribunal and failing to produce documents crucial to the resolution of the dispute.

82. In support of this assertion, the Russian Federation submits to the proceedings the statement of a witness (Exhibit FR-55), General Director of the International Center for Legal Protection, who acts as an agent of the Ministry of Justice of the Russian Federation for the supervision of legal defense before foreign courts. In this statement, the witness indicates that he was informed by a lawyer, during the preparation of the to set aside action against the award, that the analysis of the arbitral proceedings files alone had not enabled him to identify the date of the bank's investment through the acquisition of its branch in Crimea, so that further research was necessary. The witness added that, after unsuccessful investigations by a Russian law firm, a Ukrainian law firm was called in, whose research in the national archives in Kiev uncovered documents relating to the transformation of the "Soviet Ukrainian Oschadbank" into a Ukrainian bank.

83. The Russian Federation stresses that extensive investigations were thus necessary to find documents establishing that the Oschadbank branch in Crimea had been acquired and operated prior to 1 January 1992, which Oschadbank concealed from the arbitrators, thereby excluding it from the protection of the Treaty. It added that Oschadbank produced an untranslated version of its branch's by-laws during the arbitration, which stated that the branch had been "registered" with the Ukrainian authorities on 2 January 1992. The absence of a translation of this text into English, the language of the arbitration, prevented the arbitrators from realizing that the branch had been established prior to 1992, and that the temporal condition of Article 12 of the Treaty had not been met.

84. Oschadbank does not dispute that the documents presented by the Russian Federation as the result of the aforementioned research (exhibits FR-22, FR-25, FR-26 and FR-30) were not submitted to the arbitration proceedings.

85. Their examination shows that in September 1991 the manager of the bank's Crimean branch was a member of the Oschadbank Board, whose articles of association, dated 3 September 1991 and registered on 31 December 1991, refer to this branch.

86. In its Award, the Arbitral Tribunal considered, in order to assess the existence of an investment within the meaning of the Treaty, that "Under normal circumstances, the establishment of a branch of a Ukrainian bank in the Respondent's territory would constitute an investment under this definition [given in Article 1(1)]" (Award, § 223). In the light of the Russian Federation's objections to the effect that the disputed investments could not have been made on its territory, as they had taken place prior to Crimea's attachment to the Russian Federation, it then held that this question was "immaterial", as the definition of investment did not include any "temporal requirement [...] that would limit investments to those made after the Russian Federation's obligations under the Treaty became effective in the Crimean Peninsula" (Award, § 226).

87. This reasoning reveals that the original date on which the investment was made by Oschadbank was not considered by the arbitral tribunal to be decisive in its reasoning as to the characterization of the existence of a protected investment within the meaning of the Treaty, so that it cannot be considered that its decision would have been misled by the concealment invoked by the claimant as constituting the material element of fraud.

88. The assertion that the arbitrators would have reasoned differently if they had had access to these documents or to an English translation of the branch's internal regulations, which would have led them to request them, is purely hypothetical, even though it is clear from the documents submitted to the proceedings that the conditions under which the bank and its network were set up were discussed before the arbitral tribunal.

89. Indeed, these exhibits establish that Oschadbank produced, as an annex to its statement of claim, a witness statement from the Chairman of its Board of Directors dated 22 August 2016 (Exhibit FR-2, Statement of Claim, Witness statements) in which he states that: "Upon the USSR's dissolution and the proclamation of independence by Ukraine, Oschadbank, with all its network within the territory of modern Ukraine (including the Crimean peninsula), was separated from the USSR Savings Bank, and registered as an independent banking institution called the State Specialized Commercial Savings Bank with the National Bank of Ukraine ("NBU") on 31 December 1991." Oschadbank's counsel reminded the Arbitral Tribunal of the existence of this declaration at the oral hearing on 27 March 2017, referring to the bank's history, transformation and registration in 1991 (Exhibit R-2, p. 7, p. 25 of the transcript).

90. The existence of an Oschadbank network with assets on the Crimean peninsula on 31 December 1991, the date of its "registration", was therefore known to the arbitral tribunal, so that the claimant in the set aside action cannot validly complain that the respondent used fraudulent maneuvers to mislead its decision.

91. It follows that the procedural fraud invoked has not been established and no clear breach of international public policy has been demonstrated.

92. The Russian Federation's second ground for annulment must therefore be rejected.

C. On the third ground to set aside the award, alleging that the arbitral tribunal failed to comply with its mandate

III.C.1 Positions of the parties

93. The Russian Federation claims that the arbitral tribunal breached its mandate, arguing - first part of the plea - that it did not devote the necessary time to examining the case. It states that :

- in view of the number of hours declared by each of the arbitrators, it is materially impossible for the tribunal to have been able to examine all the elements submitted to the proceedings, even though the work invoiced included tasks other than simply examining the documents;

- the arbitrators were materially unable, in the particularly short time they spent on the case, to carry out the careful, precise and rigorous analysis that the case required;

- an e-mail from the President of the Tribunal asking the Russian Federation about the status of the application for review confirms the lack of diligent handling of the case;

- one of the essential tasks and duties of arbitrators is to study the arbitration file; this obligation, which arises from the arbitrator's contract, is recognized by French substantive arbitration law;

- article 5 of the UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Settlement Proceedings sets out the arbitrator's duty of diligence.

94. The Russian Federation adds - second part of the plea - that the tribunal failed to carry out the verifications incumbent on it, in that:

- firstly, the arbitral tribunal failed to verify all aspects of its jurisdiction, by not checking whether the Russian Federation had given its consent to the arbitration with regard to all the conditions for application of the Treaty;

- consent to arbitration is a derogation by a State from its sovereignty and immunity from jurisdiction, which cannot be presumed and must be positively characterized by the tribunal ;

- the arbitral tribunal therefore failed to meet its obligations by retaining its own jurisdiction and, in particular, without examining all the conditions required to characterize consent to arbitration, including the fundamental one of the date of realization of the alleged investment;

- it limited itself to examining what it itself understood, too restrictively, of the challenges to jurisdiction mentioned in the Russian Federation's letter of 13 May 2016;

- to rule on objections to jurisdiction is not to rule on one's own jurisdiction, which is a duty of the arbitrator;

- the arbitrator's obligation to verify his own jurisdiction is reinforced when the respondent in the arbitration proceedings does not appear, as was the case here;

- the mandate of the arbitral tribunal requires it to examine all the conditions required to characterize consent to arbitration, and this review must be even more active when one of the parties is absent;

- secondly, the arbitral tribunal did not comply with its mandate when examining the merits of the case, by following Oschadbank's assertions on several points without carrying out the slightest verification or assessment;

- it failed to verify Oschadbank's assertions as to the imputability to the Russian Federation of the actions of the Depositors' Protection Fund (DPF) presented by the bank as the cause of the loss of its investment;

- the repetition, in identical terms, of Oschadbank's argument, without any critical assessment, led the tribunal to adopt an erroneous solution, since the conditions for imputing the acts of the DPF to the Russian Federation were not met in this case;

- it demonstrates the absence of control and verification by the latter, whereas the arbitration file shows that the conditions for imputability of the DPF's acts to the Russian Federation were not met in this case.

95. Oschadbank responds, on the first argument, that the tribunal does not fail to fulfil its obligations in respect of the time spent examining the file, since :

- the time spent by the arbitral tribunal in examining the case file is beyond the control of the annulment judge ;

- the obligation of diligence invoked by Russia, which is irrelevant before the annulment judge, has nothing to do with the time spent on the case;

- the arbitrators spent more than 800 hours examining the case, and the Russian Federation has not provided any evidence to show that the arbitral tribunal was not available and did not spend enough time on the case.

96. On the second part of the plea, it considers that the Arbitral Tribunal was not required to substitute Russia in conducting its defense, stating that :

- the arbitral tribunal must only, without substituting the defaulting party, critically analyze the claimant's allegations so as to be convinced of their merits, in order to render a reasoned award;

- this is exactly what the arbitral tribunal did in the present case;

- it also examined its jurisdiction in the light of all the criteria laid down by the Treaty, before declaring it had jurisdiction to hear the dispute;

- it also examined Oschadbank's claims in detail and carried out its own critical analysis of the arguments submitted to it;

- the claimant is seeking a review of the merits of the award, which the annulment judge is not entitled to do, as the tribunal had carried out a full review of its jurisdiction and had complied with its mission in examining the merits of the case, analyzing in detail the acts of the DPF and their imputability to the Russian Federation.

97. The Public Prosecutor's Office asks the Court to dismiss the complaint, considering that its assessment would lead the annulment judge to rule on the merits, as the time spent by the arbitrators in handling the case does not fall within the scope of the review provided for under article 1520 of the French Code of Civil Procedure.

III.C.2 The Court's response

98. According to article 1520, 3°, of the French Code of Civil Procedure, an application to set aside an award may be brought if the tribunal has ruled without complying with the terms of its mandate.

99. Defined by the arbitration agreement, this mandate is primarily delimited by the subject matter of the dispute, which is determined by the claims of the parties, without there being any need to focus solely on the statement of issues contained in the terms of reference.

100. The review of the arbitral tribunal's compliance with its mandate is exclusive of any review of the merits of the award, as the annulment judge is not required to verify whether the award is well-founded or ill-founded, or to ascertain the relevance of the arbitrators' reasoning.

101. This control cannot, moreover, be understood as aiming to ensure that the arbitral tribunal complies with the other circumstances in which an application to set aside an award may be brought, as referred to in the aforementioned article 1520, which are distinct from one another and must be assessed independently.

The first part of the plea

102. The Russian Federation seeks to establish the arbitral tribunal's failure to perform its duties by pointing out that the 824.25 hours of work declared by the arbitrators did not materially enable them to acquaint themselves with all the documents in the file, which amounted to more than 9,500 pages, thus showing a lack of diligence.

103. However, by virtue of the above-mentioned provisions and principles, it is not the role of the annulment judge to review the time devoted by the arbitrators to examining the documents in the case file submitted to them, in order to ensure that the arbitral tribunal is fulfilling its mandate.

104. The claimant has not demonstrated that the arbitration agreement, in this case set out in article 9 of the Treaty, or the UNCITRAL arbitration rules to which it refers, contain specific provisions on this point which were not complied with by the arbitral tribunal.

105. The reference made to Article 5 of the UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Settlement Proceedings cannot be considered relevant in this respect, as this text, adopted after the award in dispute was rendered, does not define the mandate of the arbitral tribunal but constitutes a set of guidelines for arbitrators whose use is merely recommended, as is clear from the resolution adopted by the United Nations General Assembly on 7 December 2023.

106. Article 1464, paragraph 3, of the French Code of Civil Procedure, made applicable to international arbitration by article 1506 of the same code, provides for a duty of expedition and loyalty for arbitrators. It says nothing about the arbitrators' obligation to devote a specific amount of time to handling the case, and cannot therefore be used as a basis for the claim that the arbitral tribunal failed to fulfil its mandate in this respect.

107. The first argument of the plea cannot therefore be considered well-founded.

Second argument of the plea

108. In the present case, the arbitral tribunal was seized by Oschadbank of a claim for compensation for breach of the bilateral treaty concluded on 27 November 1998 between the Russian Federation and Ukraine on the encouragement and reciprocal protection of investments (Notice of Arbitration dated 18 January 2016, Exhibit FR-2).

109. The claims submitted to the Arbitral Tribunal by the Bank in its memorandum of 26 August 2016 (Statement of claim, Exhibit FR-2) were formulated in the following terms:

- (i) confirming that it has jurisdiction to determine the present dispute ;
- (ii) declaring that the Russian Federation has breached the Treaty and international law, and in particular Articles 2(2) (Unconditional Legal Protection); 3(1) (Most Favoured Nation treatment); 4 (Transparency of Legislation); 5(1) (Expropriation) and 7 (Transfer of Funds) of the Treaty;
- (iii) ordering the Russian Federation to pay monetary compensation or damages [...]
- (vii) ordering the Russian Federation to pay all costs incurred in connection with the arbitration proceedings [...];
- (viii) granting any other relief as the Tribunal may deem just and proper in the circumstances.
- (vii) Meaning (free translation): [French translation]

110. The Russian Federation, which did not appear before the arbitral tribunal, nevertheless sent the latter, during the proceedings, a letter from its ambassador to the Kingdom of the Netherlands, dated 21 June 2016, transmitting a letter from the Deputy Director of the Department of International Law and Cooperation of the Ministry of Justice of the Russian Federation challenging the jurisdiction of an international tribunal of the Permanent Court of Arbitration to settle the dispute (Award, §§ 18 to 20).

111. After analyzing the questions submitted to it in fact and in law, and successively examining its jurisdiction from the angle of the concept of territory, the existence of an investment and the bank's status as an investor within the meaning of the Treaty, the "attribution" of liability, the existence of an unlawful expropriation and the consequences to be drawn in terms of reparation, the arbitral tribunal, in the operative part of its award :

- declared itself competent to rule on the dispute;
- found that the Respondent had violated the Treaty of 27 November 1998, and in particular Article 5(1) (Expropriation) of the Treaty, by unlawfully expropriating the Claimant's investments in the Crimean Peninsula;

- ruled on the claims for compensation and the costs of the arbitration proceedings.

112. In so doing, it responded to the parties' claims and requests submitted to it, and complied with the requirements of its mandate.

113. The Russian Federation's claim that the Arbitral Tribunal failed to fulfil its obligations by not verifying all aspects of its jurisdiction, and in particular by not examining the date on which the disputed investment was made, cannot succeed in this respect, given that :

- the claimant invites the annulment judge to rule on the merits of the arbitrators' reasoning, which he cannot do under the guise of reviewing the tribunal's compliance with its mandate;

- In so doing, it challenges the arbitral tribunal's failure to comply with its jurisdiction, the review of which does not fall within the scope of article 1520, 3°, of the French Code of Civil Procedure, as the two distinct grounds must be assessed independently.

114. The pleas and arguments relating to the arbitrators' assessment of the imputability of the DPF's acts to the Russian Federation must likewise be dismissed as unfounded, as they also arise from an application for a review of the merits of the award, it being observed that the arbitral tribunal cannot be said to have confined itself to reiterating the claimant's submissions on this point.

115. The argument that the arbitral tribunal failed to comply with its mandate must therefore be rejected.

D. Fourth plea to set aside the award alleging irregularity in the constitution of the arbitral tribunal

III.D.1 The parties' positions

116. The Russian Federation maintains that there are reasonable doubts as to the independence of one of the co-arbitrators, given that :

- this arbitrator acted *as amicus curiae*, in 2024, in separate proceedings between the shareholders of the Yukos oil company and the Russian Federation, in support of Yukos, while the review proceedings had been initiated by Russia;
- even if the submission of the *amicus curiae* brief by the arbitrator is subsequent to the contested award, it is indicative of pre-existing doubts which justify its consideration in assessing the validity of the award;
- case law accepts that the annulment judge may take into consideration facts subsequent to the rendering of the award in order to assess the arbitrator's independence and impartiality;
- the arbitrator's intervention as *amicus curiae* in third-party proceedings involving the Russian Federation is prohibited by the UNCITRAL Code of Conduct;
- in a book, the arbitrator in question stated that he had used the *amicus curiae* procedure on several occasions to "run the show from the sidelines";
- doubts about his independence are all the more legitimate in this case, as his intervention in support of Russia's opponent was voluntary.

117. The Russian Federation adds that there are reasonable doubts about the impartiality of the same co-arbitrator, given that :

- his response to Russia's request to challenge him was terse ;
- the words chosen in his *amicus curiae* brief were offensive to the Russian Federation.

118. Oschadbank concludes that the plea should be rejected, arguing that :

- the arbitrator's intervention as *amicus curiae* took place five years after the award was made;
- it does not reveal any link, direct or indirect, with the parties in dispute in the present case;
- the UNCITRAL code of conduct is inapplicable and constitutes a non-binding recommendation;
- assuming it were applicable, its provisions would apply to the U.S. proceedings in which the arbitrator filed as *amicus curiae*;
- the article cited by Russia does not exclude the role of *amicus curiae*, which it does not contemplate;
- the extracts from the book published by the arbitrator are irrelevant to the situation before the court;
- the chronology is incompatible with Russia's claim, as the position taken by the arbitrator as *amicus curiae* cannot call into question an award made five years earlier;
- the arbitrator's refusal to withdraw from the review proceedings without reaffirming his independence and impartiality is irrelevant, as a challenge does not create any such obligation.

119. In the view of the Public Prosecutor's Office, the plea should be rejected, considering that an arbitrator's participation as *amicus curiae* in proceedings several years after the disputed arbitration and unrelated to it is not such as to create reasonable doubt as to his independence and impartiality.

III.D.2 The Court's response

120. Article 1520, 2°, of the French Code of Civil Procedure provides for an action for annulment where the tribunal has been improperly constituted.

121. It is up to the annulment judge to assess the arbitrator's independence and impartiality, noting any circumstances likely to affect his or her judgment and to raise reasonable doubt in the minds of the parties as to these qualities, which are the very essence of the arbitral function.

122. The assessment of independence is based on an objective approach that consists in identifying precise and verifiable facts, external to the arbitrator and likely to affect his freedom of judgment, such as personal, professional or economic ties with one of the parties.

123. An arbitrator's impartiality presupposes the absence of prejudices or biases likely to affect his or her judgment, which may result from a number of factors such as the arbitrator's nationality, or his or her social, cultural or legal environment.

124. In the present case, it is clear from the documents submitted to the court that Mr. Charles N. Brower, co-arbitrator in the disputed arbitration, together with two professors of public international law, submitted an application for leave to file an *amicus curiae* brief in support of the claimants in a case before the Court of Appeals for the District of Columbia between Hulley Enterprises Ltd, Yukos Universal Limited and Veteran Petroleum, as claimants, and the Russian Federation (Exhibit FR-16). This application dated 8 May 2024 was accompanied by an *amicus curiae* brief, dealing primarily with the application of *res judicata* to judicial decisions upholding foreign arbitral awards (*ibid.*).

125. Eight days after the submission of this memorandum, the Russian Federation filed a challenge against Mr. Brower in the context of the proceedings for revision of the Award that is the subject of the present set aside action, then pending before the Permanent Court of Arbitration (Exhibit FR-61).

126. By e-mail dated 23 May 2024, Mr. Brower responded to this request in the following terms (exhibit FR-62):

"Dear addressees,

I hereby notify all addressees that I do NOT - repeat, NOT - accept the challenge made against me by the Russian Federation therefore do not withdraw as arbitrator from the "Subject": PCA Case No. 2016-14 arbitration."

Meaning (free translation): [French translation]

127. The Court notes that the initiative taken by Mr. Brower to participate as *amicus curiae* in the proceedings before the Court of Appeals for the District of Columbia does not reveal any link whatsoever between him and any of the parties to the proceedings which led to the challenged award, nor with their counsel, parties related to them, experts or witnesses in connection with these proceedings. It cannot therefore be considered as such as to create reasonable doubt as to the co-arbitrator's independence.

128. Nor can it be regarded as likely to establish such a doubt as to his impartiality. In addition to the fact that the *amici curiae* brief does not relate to the subject matter of the dispute which gave rise to the award, nor is it connected to it in any way, the initiative thus taken, even if for the benefit of parties opposed to the Russian Federation, came more than five years after the disputed award was made. Since it says nothing about the state of mind of the person concerned between 2016 and 2018, it does not demonstrate any prejudice or bias on his part in the judgment of the case giving rise to this award. The argument that this memorandum contains expressions offensive to the Russian Federation, assuming it is well-founded, is in this respect irrelevant.

129. The same applies to Mr. Brower's account in his book *Judging Iran*, published in 2023. This text, which describes his practice as *amicus curiae* in cases unrelated to the dispute between Oschadbank and the Russian Federation, says nothing about the latter, so that nothing can be inferred from it as to the handling of this dispute.

130. The claimant's reference to article 4(3) of the UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution Proceedings is also irrelevant. This text, which is entitled "Limit on multiple roles", provides that, "For a period of three years, a former Arbitrator shall not act as a legal representative or an expert witness in any other IID or related proceeding involving the same or related party (parties) unless the disputing parties agree otherwise." It therefore does not apply to the case in point.

131. Lastly, the arbitrator's simple refusal to accept a challenge, even if expressed in terse terms, does not suffice to establish reasonable doubt as to his impartiality, the Court observing that there was no requirement for the arbitrator to reaffirm his independence and impartiality.

132. The fourth ground for annulment, which is lacking in fact, will therefore be rejected.

E. On the application to set aside the award

133. It follows from all the foregoing considerations and developments that none of the grounds for annulment put forward by the Russian Federation is such as to justify the setting aside of the award which is the subject of the present action.

134. In these circumstances, the challenge should be dismissed in its entirety, and this dismissal grants the exequatur to the disputed arbitral award, pursuant to the provisions of the second paragraph of article 1527 of the French Code of Civil Procedure.

F. Costs of the proceedings

135. The Russian Federation will be ordered to pay the costs in accordance with article 696 of the Code of Civil Procedure, its claim for irreducible costs being rejected.

136. It will also be ordered to pay the respondent the sum of 300,000 euros pursuant to article 700 of the same code, this amount taking into account the length and complexity of the proceedings.

IV/ RELIEF

For these reasons, the Court :

- 1) Declares admissible the plea to set aside the award raised by the Russian Federation alleging that the Arbitral Tribunal lacks jurisdiction *ratione loci*;
- 2) Dismisses the Russian Federation's set aside action against the arbitral award rendered on 26 November 2018 in PCA case no. 2016-14;
- 3) Recalls that, pursuant to article 1527 of the French Code of Civil Procedure, the dismissal of the challenge grants the exequatur to the arbitral award;
- 4) Orders the Russian Federation to pay the costs;
- 5) Dismisses the Russian Federation's claim for an award under article 700 of the French Code of Civil Procedure;
- 6) Orders it to pay Joint Stock Company "State Savings Bank of Ukraine" known as "JSC Oschadbank" the sum of three hundred thousand euros (€300,000.00) pursuant to the same article.

THE REGISTRAR,

THE FIRST PRESIDENT,