



Georgian businessman gets emergency relief in Stockholm

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Zaza Okuashvili

A businessman who accused senior figures in Georgia’s ruling party of corruption has obtained an SCC emergency arbitrator order requiring the state to refrain from selling attached assets belonging to his tobacco business.

In a decision on 2 April, emergency arbitrator Fredrik Andersson of Mannheimer Swartling partly granted a request for relief by Zaza Okuashvili, who is a dual Georgian-UK national and the founder and owner of Georgia’s Omega Group.

Okuashvili was represented by a team led by Joshua Fellenbaum of Fieldfisher and Lucas Bastin of Essex Court Chambers in London. Georgia used Shearman & Sterling in Paris.

The businessman applied for the relief on 22 March to prevent Georgian authorities from taking steps to seize his or the group’s assets to satisfy a US\$19 million tax debt incurred by his cigarette production company Omega Group Tobacco (OGT).

In a press release today, the London-based businessman contends that Georgian government officials have engaged in extortion, attempted bribery, unfair application of laws and intimidation of employees in a bid to take over his assets.

Omega Group’s holdings include Georgian opposition-leaning television station Iberia, which ceased broadcasting last October following what Okuashvili calls a state-sponsored campaign to drive the group out of business. The group also has investments in the automotive and printing sectors.

Okuashvili made headlines in the country ahead of its presidential election last October when he publicly accused the leadership of the ruling party Georgian Dream – including former prime minister Bidzina Ivanishvili – of extortion, racketeering and money laundering.

He made the allegations following the leak of purported audio recordings of his conversations with a former sports minister and others about payments to government officials. Georgian authorities have said the recordings are fake, while the former sports minister has alleged they were staged by Okuashvili to deceive Omega's foreign investors.

Okuashvili – who is also a member of the right-wing Alliance of Patriots party and until recently sat on the Supreme Council of Adjara, an autonomous republic within Georgia – later said state authorities had pressured him to retract his allegations before the election.

The Georgian Ministry of Finance attached several assets of OGT in 2017 as part of an effort to collect on the tax debt. The ministry has denied the measures are politically motivated, saying OGT and Okuashvili have never contested that the taxes were lawfully levied.

Okuashvili's press release says that, despite the group's efforts to settle debt disputes through the Georgian courts, the government has continued with its campaign to seize assets "without just cause". He says he was notified in February that the National Enforcement Bureau intended to seize Omega Group property and was threatening a "fire sale" of the assets at auction.

In his emergency arbitrator application, Okuashvili sought an order to prohibit Georgia from transferring to itself title to property owned by Okuashvili or the Omega Group; or alternatively to temporarily prohibit the government from compulsorily selling off the attached assets belonging to him and OGT until the dispute can be heard in international arbitration.

In his decision, Andersson is understood to have rejected Okuashvili's primary request and only partially granted the secondary request. He prohibited Georgia from taking steps to enforce a writ of execution issued by the Tbilisi City Court on 4 October last year in so far as it authorises the sale of attached assets of OGT.

However, the arbitrator did not prohibit the state from enforcing against assets of Okuashvili covered by the same writ, reasoning that he would not suffer irreparable harm that could not be remedied by an award of damages if his own property was sold. By contrast, a total liquidation of OGT's assets would mean its end as a going concern.

The emergency arbitrator also ordered the Georgian government to pay half of Okuashvili's legal expenses and all the costs of the proceedings.

Okuashvili said in a press release today: "It saddens me that as a citizen I am forced to resort to international law to stop the government from stealing my assets. Regrettably, these illegal practices against legitimate and independent businesses have become commonplace. The cronyism and corruption that has crept into Georgian politics under the oversight of the Georgian Dream party has to be stopped, for the benefit of all Georgian citizens and for the future of the country."

"This international ruling is just the first step towards ensuring that the rule of law, media freedom and judicial independence are respected by the Georgian government. Without this, we will never see a civilised, prosperous, free Georgia."

Georgia maintains that OGT has never contested the outstanding taxes and that, by interfering in the government's ability to collect those taxes, the emergency arbitrator inappropriately assisted a tax defaulter in circumstances where similar relief could have been obtained from the Georgian courts but was not even sought in that forum.

Yas Banifatemi, co-head of Shearman & Sterling's international arbitration group and lead counsel to Georgia, says: "International arbitration is not a shield for Georgian taxpayers against Georgia's legitimate right to collect taxes that are lawful, owed and uncontested, as is the case for Mr Okuashvili."

She adds that "this is a wholly abusive process and that Georgia will vigorously defend any continued attempt to instrumentalise international arbitration in order to avoid paying legitimate taxes and evade seeking effective and available interim relief before the Georgian courts."

The businessman intends to file a request for SCC arbitration soon under Georgia's bilateral investment treaties with the UK and the Belgium-Luxembourg Economic Union.

Georgia says that Okuashvili cannot resort to SCC arbitration, which is sought through the most-favoured nation clause in the Georgia-UK BIT. That treaty only provides for arbitration at ICSID, where claims by a national of a host state are prohibited.

Zaza Okuashvili v Georgia

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