

**Tradex Hellas S.A. v. Republic of Albania**  
**(ICSID Case No. ARB/94/2)**

**Introductory Note**

On November 2, 1994 Tradex Hellas S.A., a company incorporated in Greece, instituted ICSID arbitration proceedings against the Republic of Albania in respect of a dispute related to an alleged expropriation of an agricultural joint venture in Albania. The request was registered by the Secretary-General on December 8, 1994.

In the absence of agreement between the parties on the number of arbitrators and the method of their appointment, Tradex chose the formula provided in Article 37(2)(b) of the ICSID Convention i.e., a tribunal consisting of three arbitrators, one appointed by Tradex, one appointed by Albania, and the third, who would be the President of the Tribunal, appointed by agreement of the Parties. Mr. Fred F. Fielding, a U.S. national, was appointed by Tradex.

In the absence of an appointment of the second arbitrator by Albania, Tradex invoked Article 38 of the ICSID Convention which provides that, if the Tribunal has not been constituted within 90 days after the notice of registration of the arbitration request, the Chairman of the ICSID Administrative Council shall, at the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. The Chairman of the Administrative Council appointed Professor Andrea Giardina, an Italian national, as the second arbitrator and Professor Karl-Heinz Böckstiegel, a German national, as the third arbitrator and President of the Tribunal.

Article 25(1) of the ICSID Convention provides that the Centre's jurisdiction extends to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. The Convention does not require that the consent of both parties be expressed in a single instrument. The present case was brought by Tradex on the basis of a consent to arbitration under the ICSID Convention contained in the 1993 Foreign Investment Law of Albania, which provided guarantees against direct and indirect expropriation of foreign investments.

Upon the constitution of the Tribunal the Republic of Albania raised, as a preliminary matter, certain jurisdictional objections. In its Decision on Jurisdiction of December 24, 1996 the Tribunal upheld its jurisdiction except in regard to the question of whether an expropriation had taken place. That matter was joined to the merits of the dispute. Following the written and oral pleadings on the merits the Tribunal, having considered that Tradex had not been able to prove that an expropriation had taken place, rendered on April 29, 1999 an award denying the claim by Tradex. The text of the jurisdictional decision and the award is reproduced below, with the parties' consent.

*Margrete Stevens*  
*Counsel, ICSID*