

Ceskoslovenska Obchodni Banka, A.S. v. The Slovak Republic
(ICSID Case No. ARB/97/4)

Introductory Note

On April 18, 1997 Ceskoslovenska Obchodni Banka, A.S. (CSOB), a bank organized under Czech Law, instituted ICSID arbitration proceedings against the Slovak Republic in respect of a dispute related to the financial consolidation of CSOB. The request was registered by the Secretary-General on April 25, 1997.

In the absence of agreement between the parties on the number of arbitrators and the method of their appointment, CSOB chose the formula provided in Article 37(2)(b) of the ICSID Convention i.e., a tribunal consisting of three arbitrators, one appointed by CSOB, one appointed by the Slovak Republic, and the third, who would be the President of the Tribunal, appointed by agreement of the Parties. Professor Andreas Bucher, a Swiss national, was appointed by CSOB and Professor Piero Bernardini, an Italian national, was appointed by the Slovak Republic.

In the absence of agreement between the parties on the appointment of the third arbitrator and President of the Tribunal, CSOB 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 Thomas Buergenthal, a U.S. 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 CSOB on the basis of a consent to arbitration under the ICSID Convention contained in the 1992 bilateral investment treaty between the Czech Republic and the Slovak Republic.

As a preliminary matter the Slovak Republic raised a number of jurisdictional objections. The Tribunal, having considered these matters, issued on May 24, 1999, its decision on objections to jurisdiction, upholding jurisdiction over the dispute. The text of the decision is reproduced below with the parties' consent.

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