

## Cases

### Eudoro Armando Olguín v. Republic of Paraguay (ICSID Case No. ARB/98/5)

#### Introductory Note

On October 27, 1997, Mr. Eudoro Armando Olguín, a Peruvian national, filed with the Centre a request for arbitration against the Republic of Paraguay.

The dispute arose out of the bankruptcy of a Paraguayan financial institution in which Mr. Olguín had made deposits of over one million dollars, for the purpose of setting up a food production and distribution enterprise in Paraguay. Mr. Olguín invoked in his request, as the source of Paraguay's consent to ICSID arbitration, the dispute-settlement provisions of the 1994 bilateral investment treaty between Paraguay and Peru (the BIT).

In the absence on an agreement between the parties, the Tribunal was to be constituted in accordance with Article 37(2)(b) of the ICSID Convention (i.e. one arbitrator appointed by each party, and a third presiding arbitrator appointed by agreement of the parties). Mr. Olguín appointed Professor Dale Beck Furnish, a U.S. national and Professor of Law at Arizona State University as an arbitrator. Paraguay in turn appointed Judge Francisco Rezek, the Brazilian member of the International Court of Justice. The President of the Tribunal was Mr. Rodrigo Oreamuno Blanco, a former Vice-President of Costa Rica and one of Costa Rica's designees to the ICSID Panel of Arbitrators, appointed, in accordance with Article 38 of the ICSID Convention, by the Chairman of ICSID Administrative Council.<sup>1</sup>

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<sup>1</sup> Under Article 38 of the ICSID Convention and Rule 4 of the Arbitration Rules of the Centre, if the Tribunal is not constituted within 90 days after notice of registration of the request has been dispatched, "the Chairman of ICSID's 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," and designate an arbitrator to be the President of the Tribunal.

The Tribunal was constituted on February 12, 1999 and reconstituted on March 29, 1999, following the claimant's appointment of Dr. Eduardo Mayora Alvarado, a Guatemalan private legal practitioner. Mr. Mayora Alvarado replaced Professor Furnish, who resigned from the Tribunal after Paraguay challenged his appointment on grounds of nationality, in light of Mr. Olgúin's dual Peruvian and U.S. citizenship at the time of this proceeding.

Paraguay raised objections to jurisdiction, arguing, *inter alia*, that it had not consented to arbitration, that Mr. Olgúin's investment was not covered by the BIT and that he had in any event forfeited his right to arbitration by having resorted to local courts. In a decision of August 8, 2000, which forms part of the Award, the Tribunal held that Paraguay's consent was contained in the BIT, that the investment was in principle among those foreseen by the BIT, and that there was no evidence that Mr. Olgúin had precluded his right to arbitration under the BIT. Paraguay later argued that Mr. Olgúin's U.S. nationality prevailed over his Peruvian nationality for the purposes of the BIT. The Tribunal held this allegation to have no basis under international law.

On the merits, Mr. Olgúin claimed Paraguay's Central Bank's endorsement of the credit instruments received in exchange for his deposits; Paraguay's negligence in supervising the activities of the financial institution recipient of Mr. Olgúin's deposits; Paraguay's discriminatory conduct on the subject of Mr. Olgúin after the bankruptcy of that financial institution; and finally, that all these actions on the side of the Republic of Paraguay amounted to an expropriation.

In its award, rendered on July 26, 2001, the Tribunal dismissed in its entirety Mr. Olgúin's claims, holding that: (a) there was no basis on the evidence or under Paraguayan law to find that the Central Bank of Paraguay had guaranteed Mr. Olgúin's deposits; (b) despite general shortcomings in the Paraguayan legal system and in its supervision of the financial sector, Paraguay's actions did not in the circumstances fall below the standards required by the BIT; (c) there was no evidence supporting discrimination against Mr. Olgúin; and (d) Paraguay's actions did not, as alleged by Mr. Olgúin, amount to expropriation of his investment. The Tribunal held that each party was to bear its own costs and half of the advance payments made to ICSID for financing the proceeding.

The Decision on Jurisdiction and the Award were rendered in Spanish, which was the procedural language chosen by the parties. The Spanish text of the Decision on Jurisdiction and the Award and its unofficial translation into English have been posted, with the parties' consent, on ICSID's website at *www.worldbank.org/icsid*. They are also reproduced below, with the parties' consent.

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