

Alex Genin, Eastern Credit Limited, Inc.,
and A.S. Baltoil
v. The Republic of Estonia
(ICSID Case No.ARB/99/2)

Introductory Note

The award rendered on June 25, 2001 in the case of Alex Genin, Eastern Credit Limited, Inc., and A.S. Baltoil against the Republic of Estonia dismissed a claim brought by Mr. Genin, a national of the United States, and two companies owned by him. The case was brought under the 1994 bilateral investment treaty between the United States and the Republic of Estonia (the BIT). The dispute concerned the cancellation by the Central Bank of Estonia of an operating license held by Innovation Bank, a financial institution incorporated under the laws of Estonia in which the Claimants were shareholders.

On August 13, 1994, Innovation Bank concluded a sales agreement with Social Bank Limited (Social Bank), an insolvent financial institution, for the purchase of its local branch in Koidu, Estonia. The Agreement was signed by the Central Bank of Estonia on behalf of Social Bank. Later on, a series of disagreements between Innovation Bank and the Central Bank of Estonia occurred regarding Innovation Bank's capital requirements. As a result, the Central Bank of Estonia cancelled the Innovation Bank operating license, arguing that Innovation Bank failed to provide information concerning its ultimate owners.

On March 11, 1999, the Claimants instituted ICSID arbitration proceedings on the basis of consent to arbitration under the ICSID Convention contained in the BIT. The Secretary-General registered the request on May 12, 1999. The Tribunal in this case consisted of three arbitrators: Professor Meir Heth, an Israeli national, Professor Albert Jan van den Berg, a Dutch national, and Mr. L. Yves Fortier, C.C. Q.C., a Canadian national, who served as the President of the Tribunal.

At the first session of the Tribunal, the Republic of Estonia raised objections to jurisdiction, arguing in particular that Innovation Bank had challenged the cancellation of its license before the Estonian courts and that the facts of the present case did not evidence an investment dispute under the BIT. The Tribunal decided to suspend the proceedings on the merits and established a written and oral phase for the hearing of the Republic of Estonia's objections to jurisdiction. After the oral hearing took place, the Tribunal decided to join the objections to jurisdiction to the merits of the dispute.

On the merits, the Claimants argued that the Republic of Estonia, through its Central Bank, had breached its obligations under the BIT. The Claimants argued, among other things, that the Republic of Estonia had failed to afford a fair and equitable treatment, a non-discriminatory and non-arbitrary treatment and an adequate means of redress.

After examining the parties' written submissions and oral arguments, the Tribunal upheld jurisdiction on the ground that, before the Estonian courts, Innovation Bank was acting in the interest of all of its shareholders and not only on behalf of those of U.S. nationality. In addition, the Tribunal indicated that the revocation of Innovation Bank's license fell within the definition of investment dispute under the BIT.

Regarding the merits of the dispute, the Tribunal found that the measures undertaken by the Central Bank of Estonia did not amount to a breach by the Republic of Estonia of the BIT. The Tribunal found that, under the applicable standards of international law, the Republic of Estonia was acting, through its Central Bank, as a prudent and concerned supervisor in the banking sector.

On August 7, 2001, in accordance with Article 49 (2) of the ICSID Convention, the Claimants submitted a request for supplementary decisions and rectification of the award. After considering the request and the parties' further submissions, the Tribunal denied the request on April 4, 2002. The text of the award and of the rectification decision are posted on ICSID's website at www.worldbank.org/icsid. The text of the award and the rectification decision are reproduced below with the parties' consent.

Claudia Frutos-Peterson
Counsel, ICSID