

INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES
(ICSID)

In the Matter of the Arbitration between

ALEX GENIN,
EASTERN CREDIT LIMITED, INC. AND
A.S. BALTOIL
Claimants

and

THE REPUBLIC OF ESTONIA
Respondent

Case No. ARB/99/2

DECISION ON CLAIMANTS' REQUEST FOR
SUPPLEMENTARY DECISIONS AND RECTIFICATION

Date of dispatch to the Parties: April 4, 2002

President: Mr. L. Yves FORTIER, C.C., Q.C.

Members of the Tribunal: Professor Meir HETH
Professor Albert Jan VAN DEN BERG

Secretary of the Tribunal: Mr. Alejandro A. Escobar

In Case No. ARB/99/2

BETWEEN: **Alex Genin,**
Eastern Credit Limited, Inc. and
A.S. Baltoil (*“Claimants”*)

Represented by:

Mr. Kurt Arbuckle
of the law firm *Kurt Arbuckle, P.C.*, as counsel

And

The Republic of Estonia (*“Respondent”*)

Represented by:

Mr. Martin D. Beirne, Mr. Michael J. Stanley
and Mr. Christopher Bell

of the law firm *Beirne, Maynard & Parsons, LLP*

and

Mr. Allen B. Green
of the law firm *Howrey & Simon*, as counsel

THE TRIBUNAL

Composed as above,

After deliberation,

Makes the following Decision:

A. PROCEDURAL HISTORY

1. On 25 June 2001, the ICSID Secretary-General dispatched to the parties certified copies of the Award rendered by the Tribunal in this arbitration (the "Award").
2. On 7 August 2001, in accordance with Article 49 of the ICSID Convention and Rule 49 of the ICSID Arbitration Rules, Claimants submitted a Request for Supplementary Decisions and Rectification of the Award (the "Request").
3. By letter dated 24 September 2001, after consultation among the members of the Tribunal, the President advised the parties that the Tribunal granted Respondent until 12 October 2001 to submit a response to Claimants' Request, and ordered the parties to confer among themselves with a view to setting a timetable for the written phase of the procedure associated with the Request.
4. By letter dated 27 September 2001, the parties jointly advised the Tribunal of their agreed procedural timetable, which was confirmed and accepted by the Tribunal on 4 October 2001.
5. In accordance with the procedural timetable, Claimants duly filed a Memorial in Support of their Request dated 9 November 2001 ("Claimants' Memorial"), and Respondent filed a Memorial in Response dated 13 December 2001 ("Respondent's Memorial").
6. By letter dated 19 December 2001, the Secretary of the Tribunal advised the parties that, as proposed in their agreed procedural timetable of 27 September 2001, the Tribunal did not envisage the need for a hearing in order to consider issues associated with the Request, and requested that the

parties confirm that they did not object to the Tribunal deciding the Request on the basis solely of the parties' written submissions. By letters dated 7 January 2002 and 10 January 2002, respectively, Claimants and Respondent confirmed that they had no objection to the Tribunal proceeding to consider and decide the Request in the manner set out in the Secretary's 19 December 2001 letter.

B. THE ICSID CONVENTION AND ARBITRATION RULES

7. Article 49(2) of the ICSID Convention, in accordance with which the Request is made, reads, in pertinent part:

The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. (. . .)

8. Similarly, Arbitration Rule 49, entitled "Supplementary Decisions and Rectification", reads, in part:

(1) Within 45 days after the date on which the award was rendered, either party may request, pursuant to Article 49(2) of the Convention, a supplementary decision on, or the Rectification of, the award. (. . .)

C. DECISION

9. Having considered the parties' arguments as set out in their written submissions, and after deliberation among the members of the Tribunal, the Tribunal unanimously decides that Claimants' Request for Supplementary Decisions and Rectification must be denied, for the reasons explained below.

1) **Supplementary Decisions**

10. With respect to the supplementary decisions requested by Claimants, the Tribunal considers it necessary to state that these do not concern ques-

tions which it omitted to decide. Rather, they relate to issues that Claimants themselves failed virtually altogether to address in either their written or oral submissions in the arbitration.

11. In their Memorial, Claimants state that the Tribunal, in its Award, failed to discuss three provisions of the BIT in respect of which Claimants had alleged violations by the Republic of Estonia, to wit: Article III, para. 1 (expropriation); Article IV (free transfer of investments and capital); and Article IX, para. 2 (prohibiting the imposition of formalities that impair substantive rights under the BIT).¹ In fact, however, the extent to which these provisions were ever raised by Claimants is limited to their mere invocation in the concluding paragraphs of certain sections of Claimants' pre-hearing submissions.² Claimants neither adduced evidence nor made arguments concerning the BIT provisions that they now suggest were "omitted" from the Tribunal's Award. Indeed, the provisions of the BIT in question were not even mentioned by Claimants either during the hearing or in their post-hearing submissions.³

12. Throughout the arbitration, from the first to the last of Claimants' extensive and exceptionally detailed submissions, the Claimants structured and presented a case "the core issue" of which they themselves described as the alleged lack of fairness and due process involved in the Bank of Estonia's decision to revoke EIB's license.⁴ As the Tribunal noted in its Award, the Claimants explicitly declared, in their Post-Hearing Memorial:

Boil[ing] this case down to its essence . . . what makes the Bank of Estonia's actions so unjust, so unfair, and so totally without due process is the complete lack of any legitimate reason to take the extreme measures of destroying [EIB].⁵

¹ These and other provisions of the BIT are described at paragraphs 9 to 18 of the Award.

² This is well and amply demonstrated by Respondent in its Memorial in Response to Claimants' Request.

³ By way of example, a word search of the transcript of the 2 – 6 October 2000 hearing reveals that the word "expropriate" or "expropriation" was mentioned only 4 times during those 5 days—all by counsel for *Respondent* and all during opening submissions on the first day of the hearing.

⁴ See para. 242 of the Award, quoting from Claimants' Post-Hearing Memorial.

⁵ See para. 243 of the Award.

13. In its Award, the Tribunal addressed all of the questions raised by Claimants with at least as much seriousness and care as did Claimants themselves in their written and oral submissions. Each of the so-called “eight transgressions” or “eight violations” of the BIT alleged by Claimants and around which their written and oral submissions were presented are discussed in detail in the Award. Simply put, there was no omission on the part of the Tribunal that now requires it to render any supplementary decision.

14. The foregoing explains why the Tribunal did not consider it necessary to address in its Award, specifically and in detail, the three provisions of the BIT identified in Claimants’ Request. However, it is important to state that the Award itself reveals that the issues now raised by Claimants are in fact dealt with, implicitly if not explicitly, in both the reasoning and the conclusions set out in the Award. Based on its consideration of all of the evidence before it, and in view of all the parties’ submissions, the Tribunal found that none of the impugned conduct of the Republic of Estonia amounted to a violation of any provision of the BIT or Estonian law, and it accordingly dismissed all of Claimants’ claims.

15. No more need be said in respect of this aspect of Claimants’ Request.

2) Rectification

16. As regards Claimants’ request for rectification of paragraph 356 of the Award, the Tribunal states, to the extent that any such statement is necessary, that the findings contained in that paragraph concerning, *inter alia*, what it refers to as the “highly questionable” prudence of the transactions in question, are based on its consideration and evaluation of the positions and evidence adduced by both Claimants and Respondent.

17. In sum, the Tribunal considers that paragraph 356 of the Award speaks for itself. The paragraph is both clear and comprehensive, and requires no rectification.

3) Conclusion

18. For all of these reasons, and as stated above, Claimants’ Request for Supplemental Decisions and Rectification is denied.

D. COSTS

19. The Claimants had their "day in court". In fact, they had their week before the Tribunal. Not content with the result, they initiated further proceedings, as was their right, making the Request which the Tribunal hereby denies.

20. In the present instance, the Tribunal has no hesitation in ordering that the costs associated with Claimants' Request shall follow the result. Specifically, and in accordance with Article 61 of the ICSID Convention and Arbitration Rule 47(1)(g), the Tribunal orders that the costs of the present proceeding - that is, the expenses incurred by the parties as well as the fees and expenses of the members of the Tribunal associated with the Request - shall be paid in full by Claimants.

21. In this regard, the Tribunal assesses the expenses incurred by the Respondent in connection with the present proceeding in the amount of US\$26,485.43, in accordance with the Respondent's Statement on Costs submitted on March 11, 2002, and assesses the fees and expenses of the members of the Tribunal associated with the Request in the amount of US\$14,769.15, in accordance with the Secretariat's communication of March 14, 2002. Accordingly, the Tribunal orders Claimants to reimburse Respondent the total amount of US\$41,254.58 within 15 days of the date on which the present decision is dispatched to the parties.

L. YVES FORTIER, C.C., Q.C.

President

Date: 02 April, 2002

PROFESSOR MEIR HETH
Arbitrator

Date: 25 March, 2002

PROFESSOR ALBERT JAN van den BERG
Arbitrator

Date: 29 March, 2002