

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

EuroGas Inc. and Belmont Resources Inc.

v.

Slovak Republic

(ICSID Case No. ARB/14/14)

PROCEDURAL ORDER NO. 7

Members of the Tribunal

Professor Pierre Mayer, President of the Tribunal
Professor Emmanuel Gaillard, Arbitrator
Professor Brigitte Stern, Arbitrator

Secretary of the Tribunal

Ms. Lindsay Gastrell

Assistant to the Tribunal

Ms. Céline Lachman

5 September 2016

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A. INTRODUCTION

1. In accordance with paragraph 20.1 of Procedural Order No. 1 (“PO1”), the Tribunal scheduled a prehearing telephone conference to be held on 5 September 2016 at 5:00 pm CET in order for the Parties and the Tribunal to discuss the organization of the Hearing.
2. The Tribunal provided the Parties with a draft Agenda for the teleconference and invited the Parties to confer on the procedural items listed therein. The Parties subsequently informed the Tribunal of the agreements they had reached on these items, and they set forth their respective positions on points of disagreement.
3. On 3 September 2016, the Claimants submitted a joint letter requesting the Tribunal to order the production at the Hearing of Mr. Peter Kažimír, acting Minister of Finance for the Slovak Republic. The Claimants argue that the Tribunal has the authority to do so under ICSID Arbitration Rule 34(2)(a) and paragraph 19.2 of PO1, and that Mr. Kažimír’s testimony is material to this arbitration.
4. By letter of 5 September 2016, the Respondent submitted observations on the Claimants’ request regarding Mr. Kažimír. The Respondent argues that the request, made less than 10 days before the Hearing, is baseless and made only to harass and intimidate the Respondent.
5. Also on 5 September 2016, the Claimants submitted a joint request for a provisional measure pursuant to Article 47 of the ICSID Convention and Rule 39 of the ICSID Arbitration Rules (“Request for a Provisional Measure”). The Claimants seek an order from the Tribunal requiring the Respondent to:
 - (i) *to cease any and all interferences in the U.S. bankruptcy proceedings, in a continuing attempt to obstruct or delay the resolution of issues that it raised in this arbitration proceedings as a defense; or at the very least (ii)*
 - ... *to withdraw its request to continue/postpone the U.S. Bankruptcy Court hearing set for September 8 ...*
6. The prehearing teleconference was held as scheduled on 5 September 2016. During the conference call, the Tribunal and the Parties discussed the organization of the Hearing, the Claimants’ request for the production of Mr. Kažimír, the Request for a Provisional Measure, and related matters.
7. Following the teleconference, on 5 September 2016, the Respondent submitted a letter memorializing its position on the Request for a Provisional Measure.

8. Having deliberation on these matters, the Tribunal issues this Order.

B. HEARING SCHEDULE AND ALLOCATION OF TIME

9. The Hearing will be held for 5 days from 12 to 16 September 2016.

10. On Monday, 12 September 2016, the Hearing will be begin at 2:00 pm.

11. On all other hearing days, the following schedule will apply:

a. Start time: 9:00 am

b. Breaks: one in the morning and one in the afternoon, 15 mins each

c. Lunch: 1 hour

d. End time: 6:30 pm

12. The Tribunal may extend hearing hours if necessary.

13. The Parties shall be allocated an equal amount of hearing time. The Tribunal shall be allotted 5 hours of hearing time.

14. The Secretary will maintain hearing time using the chess clock method. Time incurred by the Tribunal's questions shall be counted to the Tribunal and not to any Party.

15. The Hearing shall proceed as follows:

a. Opening statements (Monday)

b. Claimants' fact witnesses:

- Mr. Vojtech Agyagos

- Mr. Wolfgang Rauball

- Dr. Ondrej Rozloznic

c. Respondent's fact witnesses:

- Mr. Stephan Dorfner

- Mr. Peter Kúkelcík

- Mr. Peter Corej

- Mr. Ernst Haidecker

d. Legal experts (Claimants' then Respondent's)

e. Mining experts (Claimants' then Respondent's)

f. Investment experts (Claimants' then Respondent's)

C. OPENING AND CLOSING STATEMENTS

16. On the first day of the Hearing, each side shall have no more than 2 hours and 45 minutes in which to make an Opening Statement.
17. On the last day of the Hearing, each side shall have no more than 1.5 hours in which to make a Closing Statement.

D. WITNESS/EXPERT EXAMINATION

18. The examination of witnesses and experts shall accord with paragraph 19.6 of PO1, which provides:

The witnesses and experts shall be examined in the order agreed by the Parties or set by the Tribunal. The fact witnesses are not allowed to attend any part of the hearings before they are heard by the Tribunal. If the witness or expert appears for testimony, his/her witness statement shall serve as that witness' direct testimony, subject to each Party's right to conduct a 15-minute examination-in-chief. The witness or expert may then be cross-examined by the other side. The scope of the cross-examination is not limited to the scope of the written witness statement or expert report of the witness or expert in question, but may pertain to any relevant information in his/her possession. Cross-examination may be followed by a re-direct limited to issues arising out of the cross-examination, and a re-cross examination limited to issues arising out of re-direct. During his/her examination, the witness or expert is only allowed to have regard to a clean copy of his/her statement, and clean copies of any document filed in the arbitration must be made available to the witness or expert to the extent useful for his/her examination.

19. Experts will not be sequestered. Mr. Rauball and Mr. Agyagos may be present in the hearing room during Opening Statements. However, during the first of their testimonies (according to the Claimants' proposed order, this would be the testimony of Mr. Agyagos), the other may not be present. After testifying, Mr. Rauball and Mr. Agyagos may be present in the hearing room for the remainder of the Hearing.
20. Each party will present hard copies of documents they intend to use for cross-examination, one copy to opposing counsel, one copy for each member of the Tribunal, one copy to the secretary of the Tribunal, one copy to the Assistant to the Tribunal, one copy to the court

reporter, and one copy to the interpreter. To reduce the number of copies, there will be an “open” bundle, where the Parties add documents to a single binder (or set of binders) with each new witness/expert. This is without prejudice to either Party’s right to use any document in the record with any witness/expert.

E. HEARING MATERIALS

21. PowerPoints are permitted for Opening Statements. Any other demonstrative aids (which must be based on evidence already in the record) must be exchanged by midnight the Friday before the commencement of the Hearing.
22. A copy of any such materials (including slides) shall be provided to each member of the Tribunal, the secretary of the Tribunal, the Assistant to the Tribunal, the court reporter, and the interpreter.
23. The rules regarding the submission of any new documents and new evidence/exhibits are provided by paragraph 17.3 of PO 1, which states:

17.3. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other Party.

17.3.1. Should a Party request leave to file additional or responsive documents, that Party may not annex the documents that it seeks to file to its request.

17.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such a document.

24. The Parties and the Tribunal agree that additional bundles are not needed.

F. POST-HEARING BRIEFS AND STATEMENTS OF COSTS/SUBMISSIONS ON COSTS

25. At the close of the Hearing, the Tribunal will confer with the Parties to determine (i) whether Post-Hearing submissions shall be submitted and in what form, and (ii) the form of the Parties’ submissions on costs.

G. CLAIMANTS' REQUEST FOR THE APPEARANCE OF MR. KAŽIMÍR

26. The Tribunal denies the Claimants' request for an order requiring Mr. Peter Kažimír to appear for examination at the Hearing. The Tribunal has taken into account the short notice of this request and determined that such an order would not be practicable at this stage, just one week before the Hearing.

H. CLAIMANTS' REQUEST FOR A PROVISIONAL MEASURE

27. The Tribunal refers to Article 47 of the ICSID Convention, which provides:

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.

28. It is common understanding that provisional measures should only be granted in situations of necessity and urgency, in order to protect rights that could, absent these measures, be definitely lost. It has to be emphasised that the purpose of provisional measures is to guarantee the *protection of rights*, whose existence might be jeopardized in the absence of such measures.
29. Claimants argue that they have a right to be protected within the meaning of this provision. They invoke “the rights of EuroGas and Belmont in the arbitration, and in particular EuroGas’, but also Belmont’s, right to obtain and come to the arbitration Hearing with an U.S. court decision authoritatively ruling on EuroGas’ interest in Rozmin so as to have this issue resolved.”
30. The Tribunal considers that this alleged “right” cannot be characterized as a right which merits protection within the meaning of Article 47 of the ICSID Convention.
31. In addition, the Tribunal is not inclined to interfere with the administration of the US Bankruptcy Proceedings, be it in respect of the fixing of hearings, or as regards the substance of the issues before the Bankruptcy Court. In particular, the Tribunal is conscious of the fact that, if it were to grant the measure requested in point (ii) of the Request (“ordering the Slovak Republic to withdraw its request to continue/postpone the U.S. Bankruptcy Court hearing set for September 8 to formally approve the conclusions of the Trustee’s independent investigation into the Rozmin interest, and the Agreement with EuroGas”), the Tribunal would effectively pre-empt the Bankruptcy Court’s decision on the request for postponement made before it by the Slovak Republic.
32. Therefore, the Claimants’ Request for a Provisional Measure is denied.

For the Tribunal,

[signed]

Professor Pierre Mayer
President of the Tribunal