

CESKOSLOVENSKA OBCHODNI BANKA, A.S.

v.

SLOVAK REPUBLIC
(ICSID CASE No. ARB/97/4)

Procedural Order No. 4

Whereas on January 7, 1999 the Tribunal heard the arguments of the parties on Claimant's request for provisional measures pursuant to Article 47 of the ICSID Convention and ICSID Arbitration Rule 39, seeking a recommendation for the suspension of the bankruptcy proceedings relating to Slovenska inkasni spol. s.r.o. pending before the courts of the Slovak Republic;

Whereas in Procedural Orders Nos. 2 and 3 dated September 9, 1998 and November 5, 1998, respectively, the Tribunal considered Claimant's request for provisional measures relating to the bankruptcy proceedings pending before the Bratislava Regional Court and set forth the legal norms applicable thereto under the ICSID Convention, including Article 26 of the Convention, which reads as follows in the here relevant part: "Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy";

Whereas in Procedural Order No. 3, the Tribunal deferred "the further consideration and decision [of] Claimant's request for provisional measures with respect to the bankruptcy proceedings before the Bratislava Regional Court pending the outcome of Claimant's application to that Court for suspension of these proceedings and its consideration of the issues pending before this Tribunal";

Whereas by Resolution No. 8K 66/98-235, dated November 5, 1998 the Bratislava Regional Court denied Claimant's request for suspension of the bankruptcy proceedings;

Whereas Claimant appealed this ruling to the Supreme Court of the Slovak Republic, which ordered the hearing before the Bratislava Regional Court to be suspended pending the Court's consideration of the appeal and whereas that appeal has not as yet been heard;

Whereas the Tribunal considers that the aforementioned bankruptcy proceedings might include determinations relating to the claims the Slovenska inkasni spol. s.r.o. may have against the Slovak Republic under the Consolidation Agreement concluded between the Claimant and the Slovak Republic and thus deal with matters under consideration by the Tribunal in the instant arbitration;

Now, therefore, the Tribunal

- 1) Recommends that the above-mentioned bankruptcy proceedings be suspended to the extent that such proceedings might include determinations as to whether the Slovenska inkasni spol. s.r.o. has a valid claim in the form of a right to receive funds from the Slovak Republic to cover its losses as contemplated in the Consolidation Agreement at issue in this arbitration.
- 2) Calls on the parties to this arbitration to bring this Order to the attention of the appropriate judicial authorities of the Slovak Republic so that they may act accordingly.
- 3) Invites the parties to keep the Tribunal informed of the implementation of this Order.

Washington, D.C.
January 11, 1999

Thomas Buergenthal
President of the Tribunal