

### ***Pantechniki v Albania (Greece-Albania BIT)***

AREAS OF POLICY AFFECTED: public order (looting of construction project), administration of justice (court decisions), financial regulation (Ponzi scheme).

CASE SUMMARY: A Greek construction company sued Albania after two road construction projects were looted. The looting took place during severe civil disturbance in March 1997, triggered by the collapse of a Ponzi scheme in which government officials were said to be complicit. The collapse of the Ponzi scheme led to about 2/3 of Albania's adult population losing its savings. Hundreds died in civil disturbances and the government fell.

A special commission was appointed by Albania's General Road Directorate, which had contracted out the construction projects, in order to value the claimant's losses. The valuation was significantly lower than a World Bank Engineer's estimate. The claimant accepted the special commission's valuation, but indicated that this was because the claimant was involved in another project in Albania and wanted to maintain good relations with government. Albania's Minister of Finance then refused payment to the claimant. The claimant sought relief against the Minister of Public Works in domestic courts, allegedly on the advice of the Minister of Finance that doing so would be a formality. The claimant was unsuccessful in domestic courts.

The essence of the investment treaty claim was an alleged failure by Albania to protect the investor or, alternatively, a denial of justice in domestic courts. The sole arbitrator on the tribunal concluded that the claim was barred because the treaty had a fork-in-the-road clause that precluded the claimant from bringing a treaty claim after having resorted to domestic courts. The arbitration costs were split between the claimant and Albania.

COMMENT: The case is an example of an arbitrator giving effect to a fork-in-the-road clause. Other tribunals have avoided such clauses by characterizing the treaty claim as different in nature from the relevant domestic claim. Notably, the arbitrator adopted an expansive approach to the concept of investment by reading down requirements that an investment, to qualify as such under the *ICSID Convention*, must be shown to involve factors such as an undertaking of risk by the investor, a commitment of capital over a sustained period, and a contribution to the development of the host economy. Despite earlier awards to the contrary, the arbitrator concluded that these factors were not required characteristics of an investment.

Source: [www.iiapp.org](http://www.iiapp.org) (February 2011), based on information in publicly-available awards and materials in known investment arbitrations (for texts of awards, see [www.italaw.com](http://www.italaw.com)). This report was produced by a research team coordinated by professor Gus Van Harten ([gvanharten@osgoode.yorku.ca](mailto:gvanharten@osgoode.yorku.ca)) of Osgoode Hall Law School of York University in Toronto, Canada. Please see the disclaimer and statement on terms of use available at [www.iiapp.org](http://www.iiapp.org). © Gus Van Harten 2011. You may forward or re-publish the information in this report with attribution to [www.iiapp.org](http://www.iiapp.org).