

ICSID Tribunal orders Albania to stay criminal and extradition proceedings

On 3 March 2016, the ICSID Tribunal in *Hydro S.r.l. and others v Republic of Albania* ordered provisional measures recommending the Republic of Albania suspend criminal and extradition proceedings against two of the claimants in the case, Mr Francesco Becchetti and Mr Mauro De Renzis.

The Tribunal, consisting of Dr Michael Pyles (Australian), Dr Charles Poncet (Swiss) and Mr Ian Glick QC (British) made the orders on the basis that:

- the criminal and extradition proceedings were "not divorced" from the pair's investments in Albania which are the subject matter of the dispute at ICSID.
- incarceration would deprive Messrs Becchetti and De Renzis of their ability to effectively participate as claimants in the ICSID proceedings.

The dispute arising under the Albania-Italy bilateral investment treaty concerns investments in a television station, a waste management facility and a hydroelectric power plant in Albania. Messrs Becchetti and De Renzis and the other four claimants alleged that Albania sought to undermine their investments by subjecting them to "meritless and abusive" tax investigations and forcible attempts to collect disputed tax amounts.

Around the time the claimants commenced ICSID arbitration, Albania accused the claimants of committing criminal offences and issued warrants for the arrest of Mr Becchetti and Mr De Renzis on charges of falsification of documents,

tax evasion and money laundering. Mr Becchetti and Mr De Renzis face extradition from the United Kingdom to Albania as a result.

Given the pending extradition and criminal proceedings, the Tribunal considered it "necessary, urgent, and proportionate" to grant provisional measures recommending that Albania suspend the extradition of Mr Becchetti and Mr De Renzis and the relevant criminal proceedings in relation to each.

The Tribunal was satisfied of the first two criteria (necessity and urgency) on the basis that Mr Becchetti and Mr De Renzis faced possible incarceration, and would subsequently be unable to effectively participate in the ICSID proceedings. In respect of proportionality, while the Tribunal was "reluctant to interfere with the sovereignty of [Albania]" (ie its ability to prosecute alleged crimes), the Tribunal considered that a temporary stay of the criminal proceedings was warranted when balanced with the harm that would otherwise be caused – ie effective destruction of the claimants' investments in Albania and the ability of Mr Becchetti and Mr De Renzis to adequately manage their business.

Key points

- ICSID Tribunal recommends Albania suspend criminal and extradition proceedings against claimants foreign investors
- Suspension was deemed "urgent, necessary, and proportionate" as the criminal and extradition proceedings were sufficiently connected to the ICSID proceedings, and incarceration would deprive the claimants of their ability to effectively participate in the ICSID proceedings
- The Tribunal cautioned that similar incursions on a State's sovereign prerogatives are not appropriate in every case where a claimant faced imprisonment.

However, the Tribunal emphasised that this rationale would not apply in every case where a claimant faced possible imprisonment, especially where the criminal proceedings were unrelated to the investment dispute. The need to maintain the procedural

integrity of the proceedings was critical to the orders being made in the present case.

The Tribunal also recommended Albania confer with Mr Becchetti and Mr De Renzis over appropriate measures to preserve seized assets

and the contents of frozen bank accounts. The Tribunal, however, declined to make orders requested by the claimants preventing Albania from bringing "*any actions against the claimants or their investments*" until the issuance of a final award.

While the request seemed to be directed at preventing the collection of the claimants' tax liabilities, the Tribunal held the request was too broad and prematurely directed at actions not yet initiated.

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