

**TWO RECENT DECISIONS FROM THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES**

*The Rompetrol Group N.V. v Romania* (ICSID Case No. ARB/06/3) (6<sup>th</sup> May, 2013) , and *Inmaris Perestroika Sailing Maritime Services GmbH and Others v. Ukraine* (ICSID Case No. ARB/08/8) (1<sup>st</sup> May, 2013)

**Introduction**

In two recent cases, *Rompetrol v Romania* (ICSID Case No. ARB/06/3) (6<sup>th</sup> May, 2013) , and *Inmaris Perestroika Sailing Maritime Services GmbH and Others v. Ukraine* (ICSID Case No. ARB/08/8) (1<sup>st</sup> May, 2013), the International Centre for the Settlement of Disputes (ICSID), finally handed down final awards in two long-standing disputes. In each case, it was held that there had been a breach of the relevant BIT requirement for fair and equitable treatment. In the first case, this was insufficient to secure damages for the Claimant; in the second, it was made out alongside a number of other breaches.

***Rompetrol v Romania* (ICSID Case No. ARB/06/3).**

**Background**

The dispute arose from investigations conducted by the National Anti-Corruption Office of Romania (“PNA”) into the privatization of Rompetrol Rafinare S.A. (“RRC”) shortly after controlling shares in it were sold to the Claimant (“Rompetrol”). The Claimant asserted that these investigations were oppressive and, as such, breached the BIT between Romania and the Netherlands under which it was guaranteed ‘fair and equitable’ treatment. Specifically, the Claimant alleged that investigations ordered by the Romanian government into RRC and its management were extraordinary and unreasonable so as to amount to discriminatory and arbitrary treatment by the standards of the treaty. Romania denied this, asserting that the relevant investigations were simply part of its National Corruption Strategy: a strategy that had been introduced in 2001, and that had been conducted with incremental vigour in preparation for its membership of the European Union.

**Award**

The Tribunal dismissed all the claims apart from a claim for breach of the “fair and equitable treatment” requirement laid down in Article 3(1) of the BIT. In this matter, the Tribunal cited with approval the *Rosinvest Co UK Ltd v The Russian Federation*, SCC Case No. V079/2005 Award’s determination that the ‘cumulative effect’ of a series of wrongful acts were capable of amounting to a treaty breach even if, taken individually, they did not. In the present circumstances, the Tribunal determined that a breach pursuant to such a ‘cumulative effect’ had

taken place. The Claimant had not met the onus of proving that it had suffered economic loss or damage as a result of this breach, however, and so its claim for damages, including moral damages, was dismissed.

***Inmaris Perestroika Sailing Maritime Services GmbH and Others v. Ukraine (ICSID Case No. ARB/08/8)***

**Background**

The Claimants (Inmaris et.al.) and a state-owned education institution of Ukraine had entered into a series of contracts between 1991 and 2006 concerning the use of a windjammer sail training ship, owned by the institution, and called the *Khersones*. Under these various contracts, the institution used the *Khersones* to train cadets for Ukraine's national fishery fleet, whilst the Claimants used it to market sailing tours and to conduct other onboard events. In this way, an arrangement was made which lowered the ship's overall operating expenses. The Claimants brought their claim under the Germany/Ukraine BIT. They alleged that after Ukraine's change of government in 2005, relations between the parties broke down, which led a Ukrainian government ministry in April 2006 to prohibit the *Khersones* from leaving Ukrainian waters. This prohibition prevented the Claimants from departing on a planned summer sailing schedule, which resulted in considerable economic loss.

**Award**

The Tribunal found in favour of the Claimants on all matters. Ukraine had breached its obligations of fair and equitable treatment under Article 2(1) of the BIT. It had similarly breached its obligations under Article 2(3) of the BIT by impeding the management, maintenance, use and enjoyment of the Claimants' investment through the imposition of arbitrary or discriminatory measures. Finally, it had breached its obligations under Article 4(2) the BIT by expropriating the Claimant's investment without payment of compensation. In short, the travel ban was wrongful and should never have been imposed. The Claimants tried their best to mitigate its effects, but by the time it was lifted a year after its imposition, the damage to the Claimants had become irreversible. The award was partially censored, and the level of damages were not disclosed

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