

CESKOSLOVENSKA OBCHODNI BANKA, A.S.

v.

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

Procedural Order No. 5

Whereas in Procedural Order 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 by Resolution No. 8K66/98-235, dated November 5, 1998 the Bratislava Regional Court denied Claimant's request for suspension of the bankruptcy proceedings;

Whereas the Supreme Court of the Slovak Republic, when considering Claimant's appeal, affirmed the decision of the Bratislava Regional Court by its ruling dated September 23, 1999;

Whereas the Supreme Court of the Slovak Republic stated in its ruling that "[T]he court of first instance correctly stated [that] the Slovak Republic is bound by international agreements to which it acceded and recognizes their priority over the domestic legal order. In the case at hand, there is no conflict of legal relations to which international agreements apply with the legislation of the Slovak Republic. The proceedings before ICSID concern another legal entity, the Slovak Republic, and the decision of this supranational arbitration body would be valid and binding notwithstanding the results of the bankruptcy proceedings." [translation];

Whereas in Procedural Order No. 4 dated January 11, 1999, the Tribunal recommended that the abovementioned 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;

Whereas review hearings have been held before the Bratislava Regional Court on December 9 and 13, 1999;

Whereas Claimant may file an incidental action in respect of the denied part of the receivables it had registered against Slovenska inkasni spol. s.r.o. in the bankruptcy proceedings, at a date not later than March 13, 2000;

Whereas on the basis of a petition for commencing such incidental proceeding it will be decided to which extent the receivables registered by Claimant are legitimate;

Whereas according to the ruling of September 23, 1999 of the Supreme Court of the Slovak Republic, “[a]t this stage of the proceedings before the court, the incidental proceedings may be suspended for the reasons presented by the creditor CSOB, a.s. in its petition for the suspension of bankruptcy proceedings.” [translation];

Whereas the Tribunal considers that the aforementioned bankruptcy proceedings might include determinations relating to the claims Slovenska inkasni spol. s.r.o. may have against the Slovak Republic under the Conolidation Agreement and relating to the losses resulting from the assignment of non-performing receivables by Claimant to Slovenska inkasni spol. s.r.o., which are the basis for such claims, and that therefore these proceedings might deal with matters under consideration by the Tribunal in the instant arbitration;

Now, therefore, the Tribunal

1) Recommends that the abovementioned bankruptcy proceedings be suspended to the extent that such proceedings might include determinations as to whether the Slovenska inkasni spol. s.r.o. has made a loss resulting from the operating costs and the schedule of payments for the receivables assigned to it by Ceskoslovenska Obchodni Banka, A.S.,

including payment of interest, as contemplated in the Consolidation Agreement at issue in this arbitration.

- 2) Reaffirms the contents of Procedural Order No. 4 of January 11, 1999.
- 3) 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.
- 4) Invites the parties to keep the Tribunal informed of the implementation of this Order.

Zurich, Switzerland
March 1, 2000

Thomas Buergenthal
President of the Tribunal