

Tribunal rejects Croatia's allegation of corruption by former PM

Tom Jones 03 January 2017

Buy now



Ivo Sanader (wikicommons/Roberta F)

An UNCITRAL tribunal has reportedly rejected Croatia's claims against Hungarian oil and gas company MOL in a high cost case centring on allegations of corruption involving former prime minister Ivo Sanader – who was cleared by the tribunal after giving evidence.

In an award handed down on 23 December, a Geneva-seated tribunal composed of **Neil Kaplan**, **Jan Paulsson** and Croatian law professor **Jakša Barbić** rejected Croatia's attempts to nullify amendments to a 2003 shareholders' agreement – which allowed MOL to acquire controlling management rights in a Croatian oil company in which both parties held interests.

According to a regulatory filing by MOL quoted in UK investment publication *Morning Star*, the panel "finds, declares, rules, orders and awards that Croatia's claims based on bribery, corporate governance and MOL's alleged breaches of the shareholders agreement are all dismissed."

The case, administered by the Permanent Court of Arbitration in The Hague, centred on Croatia-registered oil company INA Idustrija Nafta. MOL, which is partially owned by the Hungarian government, co-owns INA with the government of Croatia under a 2003 shareholders' agreement and is understood to have invested over US\$2 billion in the company since that year.

Croatia filed its claim in January 2014, as it sought to nullify the agreement which gave MOL management control over INA and obliged the government to take over INA's loss-making gas distribution arm.

The UNCITRAL case appears to have been filed partly in retaliation for an ICSID claim filed by MOL under the Energy Charter Treaty a month previously, which also centres on the shareholders agreement. In that case, MOL is seeking compensation for Croatia's failure to take over the gas distribution arm or apply market prices for gas.

According to news reports, Croatia's claims before both tribunals have rested partly on allegations that the Hungarian company secured its controlling interest in INA through the payment of US\$13 million in bribes to former prime minister Sanader in 2008.

As a result of the allegations Sanader was found guilty of corruption by a Zagreb court in 2012 and received a 10-year jail sentence, which was upheld on appeal. After four years in solitary confinement, he was released in November 2015 after his sentence was vacated by Croatia's constitutional court. He is understood to have given evidence in the arbitration.

MOL chairman and CEO Zsolt Hernádi, the alleged mastermind of the bribery, was also added to Interpol's "Red List" following the allegations, after an international arrest warrant was issued against him by the Croatian authorities. He has since been removed from the list.

In a finding quoted in the MOL regulatory filing, the panel said: "Having considered most carefully all of Croatia's evidence and submissions on the bribery issue, which has been presented in a most painstaking and comprehensive way, the tribunal has come to the confident conclusion that Croatia has failed to establish that MOL did in fact bribe Sanader."

In a statement, Croatian prime minister Andrej Plenkovic said his government is "strongly opposed to the decision" by the UNCITRAL tribunal, and said it would "consider all available legal options to contest the decision".

Meanwhile, MOL's ICSID claim against Croatia – which is being heard by a tribunal composed of the UK's **Franklin Berman QC**, Swiss-US arbitrator **William W Park** and France's **Brigitte Stern** – is still pending. Plenkovic said a decision is expected in 2017.

As a result of the award, Plenkovic said his government had made the "strategic political decision" to initiate the process of buying MOL's entire 49% stake in INA – saying it had informed Hungary "at the highest level".

In a mailed statement to the *Wall Street Journal*, MOL said it remained "open to discussions" about the possibility of its stake in INA being bought out.

MOL was represented by a team from Dechert, while Croatia retained counsel from Squire Patton Boggs. Hearings took place in London, Paris and Geneva, with 15 witnesses testifying including Sanader and Hernádi, along with 14 experts. The costs of the three-year case are understood to have exceeded US\$30 million.

Co-chair of Dechert's international arbitration group and lead counsel in the arbitration **Arif Ali** says the allegations of bribery at the heart of the case were based on concocted testimony of a single witness "who had every reason to assist the Croatian authorities in their quest to wrestle back control over INA, the crown jewel of the Croatian economy."

"We were always confident that no bribe had ever been paid by MOL, but are extremely satisfied that our assessment has been resoundingly confirmed by the tribunal and our client's reputation cleared," he says. "Every one of Croatia's allegations and claims was rejected."

Ali says that there are many “groundbreaking aspects” to the award, including how it deals with the interaction of corruption allegations and international arbitration “as a forum for addressing such allegations in a very comprehensive way”.

He also paid tribute to the “remarkable and commendable” efficiency of the tribunal, and the speed with which they delivered a “clear and well-reasoned unanimous award of almost 200 pages within six months of the final hearings.”

"If the government had succeeded in proving its bribery allegations, not only would MOL's control over and investment in INA been put in jeopardy but its reputation would have suffered immeasurable harm and its CEO could have faced the gravest personal consequences," he says.

In response to *GAR's* request for comments, Croatia's counsel **Stephen Anway** said that the state “strongly disagrees with the award and is confident that it will be annulled.”

“On a matter of critical importance, which raises fundamental questions regarding the fight against corruption, we are disappointed to note that the tribunal excluded key evidence and ignored other crucial evidence that was not excluded,” he says.

Croatia v MOL

In the UNCITRAL arbitration

Tribunal

- **Neil Kaplan QC** (UK) (Chair)
- **Jan Paulsson** (Sweden/France/Bahrain) (appointed by MOL)
- **Jakša Barbić** (Croatia) (appointed by Croatia)

Counsel to Croatia

From January to August 2014

- Patton Boggs

Partners **Stephen Díaz Gavin** and **Read McCaffrey** in Washington, DC

- **Luka Misić** in New York

After August 2014

- Squire Patton Boggs

Partners **Luka Misić** and **Stephen Anway** in New York, **Rostislav Pekař** in Prague, **Stephan Adell** in Paris, and **David Alexander** in Columbus

Counsel to MOL

- In house general counsel **Pál Kara** and associate **Sándor Rézman** in Budapest

- Dechert

Partners **Arif Hyder Ali** and **Alexandre de Gramont**, with counsel **Erica Franzetti** in Washington, DC senior associate **Dániel Dózsa** in London, and associates **Erin Yates**, **David Attanasio**, **Michael Losco**, and **Harsh Sancheti** in Washington, DC.

- Weil Gotshal & Manges

Partner **Theodore Posner** in Washington, DC and **Konrád Siegler** in Budapest

- **William Boyce QC** of QEB Hollis Whiteman Chambers in London
- **Maya Lester QC** of Brick Court Chambers in London
- Peters & Peters Solicitors LLP

Senior partner **Michael O'Kane** and associate **Peter FitzGerald** in London

- Schellenberg Wittmer

Partners **Nathalie Voser** and **Peter Burckhardt** in Zürich

- Wolf Theiss

Partner **Dalibor Valinčić** and senior associate **Ana Grubešić** in Zagreb

Expert witnesses to MOL

- **Arend B Vast**, **Sir David Calvert-Smith**, **Robert Quick QPM** and professor **Stefan Trechsel** on criminal law
- Judge **Stephen M Schwebel** and professor **Michael Reisman** on international law
- Economic experts **David Aron** and professor **Pablo Spiller**
- Professor **Zvonimir Slakoper** and Judge **Ivica Crnić** on Croatian law

MOL Hungarian Oil and Gas Company Plc v Republic of Croatia (ICSID Case No. ARB/13/32)

Tribunal

- **Franklin Berman QC** (UK) (Chair)
- **William W Park** (Switzerland/US) (appointed by MOL)
- **Brigitte Stern** (France) (appointed by Croatia)

Counsel to MOL

- In house general counsel **Pál Kara** and associate **Sándor Rézman** in Budapest
- Dechert

Partners **Arif Hyder Ali** and **Alexandre de Gramont**, with counsel **Erica Franzetti** in Washington, DC associate **Dániel Dózsa** in London, and associates **Erin Yates**, **Rajat Rana**, **David Attanasio**, **Tatiana Sainati**, **Michael Losco**, and **Harsh Sancheti** in Washington, DC.

- Weil Gotshal & Manges

Partner **Theodore Posner** in Washington, DC and **Konrád Siegler** in Budapest

- Peters & Peters Solicitors LLP

Senior partner **Michael O'Kane** and associate **Peter FitzGerald** in London

- Wolf Theiss

Partner **Dalibor Valinčić** and senior associate **Ana Grubešić** in Zagreb

Expert witnesses:

- Criminal law experts **Arend B Vast**, **Sir David Calvert-Smith**, **Robert Quick QPM**
- EU law expert **Sir Alan Dashwood QC**
- Forensic audit – **David Dearman FCA**
- Industry – **Laura Hardin**
- Economic – **David Aron**, professor **Pablo T Spiller** and **Miguel A Nakhle**
- Croatian law – Professor **Zvonimir Slakoper**, **Ante Gašparović** and professor **Marko Šikić**

Counsel to Croatia

From January to August 2014

- Patton Boggs

Partners **Stephen Díaz Gavin** and **Read McCaffrey** in Washington, DC

- **Luka Misić** in New York

After August 2014

- Squire Patton Boggs

Partners **Luka Misić** and **Stephen Anway** in New York, **Rostislav Pekař** in Prague, **Stephan Adell** in Paris, and **David Alexander** in Columbus

News, Investment Arbitration

Comments Add your comment

Add Your Comment

Anonymous

Your Name

Your e-mail address

Your Comment title

Please place comments here

Your Comment

I'm not a robot reCAPTCHA
Privacy - Terms

By submitting a comment you agree to abide by our terms & conditions



Submit your Comment