

**INFORMACIJA O PREDLOGU ZA IZBOR ARBITRA U ARBITRAŽNOM
POSTUPKU
PROTIV CRNE GORE**

Osnovne činjenice u vezi sa arbitražnim postupkom koji je pokrenulo privredno društvo CEAC Holdings Limited protiv Crne Gore su:

Dana 17.3.2014. godine Ministarstvo vanjskih poslova i evropskih integracija primilo je zahtjev za arbitražu koji su Međunarodnom centru za rješavanje investicionih sporova (ICSID) u ime CEAC Holdings Limited sa Kipra (u daljem tekstu "**Tužilac**") podnijeli King & Spalding International LLP iz Velike Britanije.

Tužilac tvrdi da su osnov za pokretanje investicione arbitraže protiv Države Crne Gore navodne povreda odgovarajućeg bilateralnog investicionog sporazuma, odnosno Sporazuma između Srbije i Crne Gore i Republike Kipar o uzajamnom podsticanju i zaštiti ulaganja ("**BIT**"), a u vezi sa ulaganjem Tužioca u Kombinat aluminijuma Podgorica AD. Predmetni zahtjev za arbitražu je registrovan pri ICSID-u 20.3.2014. godine, nakon čega su otpočeli pregovori između stranaka u vezi sa metodom konstituisanja arbitražnog tribunala, sjedištem i jezikom arbitraže.

U skladu sa dogovorom stranaka, arbitražni tribunal će činiti tri arbitra, pri čemu će po jednog arbitra imenovati svaka stranka, a predsjedavajućeg arbitra će imenovati dva imenovana arbitra zajedno. Sjedište arbitraže će biti Pariz, Francuska, a jezik postupka biće engleski jezik. Postupak će se voditi u skladu sa Konvencijom o rješavanju investicionih sporova između država i državljana drugih država, kao i ICSID-ovim Pravilima procedure za arbitražne postupke.

Tužilac je već u zahtjevu za arbitražu imenovao g. Vilijama Parka kao jednog arbitra. Ipak, stranke su postigle konačni dogovor o daljem načinu konstituisanja arbitražnog tribunala 28.4.2014. godine.

U skladu sa time, Država Crna Gora treba da imenuje arbitra najkasnije do 15.5.2014. godine. Predlog je da Crna Gora u ovom arbitražnom postupku za arbitra imenuje g-đu Brigitte Stern, budući da poseduje izuzetno iskustvo i veliki autoritet u investicionim arbitražama.

Budući da je postupak trenutno u fazi imenovanja arbitara i konstituisanja arbitražnog tribunala, a rok za imenovanje arbitra ističe 15. maja 2014. godine, potrebna je saglasnost za imenovanjem g-đe Brigitte Stern kao arbitra imenovanog od strane Države Crne Gore.

U prilogu dostavljamo njene podatke, kao i listu njenih angažovanja u arbitražnim postupcima. U prilogu prilažemo i podatke za drugog predloženog kandidat g-dina Hans van Houtte koji ima veliko iskustvo u komercijalnim arbitražama, ali i određeno iskustvo u investicionim sporovima.

U prilogu smo sumirali osnovne biografske podatke i iskustvo u investicionim arbitražama za svakog od kandidata.

Nakon toga, dva imenovana arbitra će strankama dostaviti listu od sedam potencijalnih kandidata za predsjedavajućeg arbitra sa koje će svaka stranka moći da izbriše po dva imena kandidata koje smatra neprihvatljivim. U odnosu na preostale kandidate, svaka stranka će sačiniti svoju listu u okviru koje će rangirati kandidate za predsjedavajućeg arbitra. Sa tako pripremljenih lista, koje obje stranke treba da dostave imenovanim arbitrima najkasnije 30 dana nakon prijema inicijalne liste kandidata, dva imenovana arbitra će imenovati predsjedavajućeg arbitra, pri čemu za predsjedavajućeg ne smije biti imenovan kandidat kojeg je bilo koja stranka isključila sa liste.

Nakon što arbitražni tribunal bude konstituisan na ovaj način, očekuje se da će stranke i arbitražni tribunal pregovarati o daljim procesnim koracima i rokovima u kojima isti treba da budu preduzeti.

KANDIDATI ZA ARBITRA

| Kandidat za arbitra | Osnovni biografski podaci | Iskustvo u investicionim arbitražama |
|---------------------------|--|---|
| Brigitte (Francuska) | <p>Stern</p> <ul style="list-style-type: none">➤ G-đa Stern je visoko specijalizovana za investicionu arbitražu. U poređenju sa svim drugim arbitrima koji arbitriraju investicione sporove, ona se po broju slučajeva u kojima je angažovana svrstava u top 10 arbitara. Samim tim, g-đa Stern predstavlja i veliki autoritet u ovoj oblasti, a njene odluke i stavovi imaju posebnu težinu.➤ Posедуje posebno znanje i iskustvo u radu sa međunarodnim organizacijama i državama (nacionalnim vladama). U sklopu svoje karijere je bila i član pravnog tima Bosne i Hercegovine u sporu protiv SCG pred Međunarodnim sudom pravde.➤ Profesor je Međunarodnog prava na Univerzitetu u Parizu – Sorboni, a takođe je radila i kao profesor na Institutu za međunarodne studije u Ženevi i kao direktor Centra za istraživanje međunarodnog prava u Parizu. | <p>Prema javno dostupnim podacima, g-đa Stern je arbitrirala u 63 investiciona spora. Od ukupnog broja postupaka u kojima je učestvovala, 49 sporova je vođeno pred ICSID-om.</p> <p>U najmanje 41 sporu, g-đu Stern je za arbitra imenovala tužena država.</p> |
| Hans van Houtte (Belgija) | <ul style="list-style-type: none">➤ Osim kao arbitar, trenutno radi kao profesor prava | <p>G. van Houtte je učestvovao u sedam investicionih sporova,</p> |

na Univerzitetu u Luvenu, Belgija. Takođe je potpredsednik CEPANI-a, belgijske arbitražne institucije, kao i predsednik Tribunala za sporove između Irana i SAD.

- Do 2000. godine je bio partner u advokatskoj kancelariji Stibbe u Briselu, u okviru koje je razvijao arbitražnu praksu.
- Arbitrirao je u velikom broju komercijalnih arbitraža (preko 200), ali i u određenom broju investicionih arbitraža (vidite pored i u prilogu). Takođe je učestvovao u radu Komisije za raseljena lica i izbeglice koja je oformljena u okviru tzv. Dejtonskog mirovnog sporazuma.

Jernej
(Slovenija)

Sekolec

- G. Sekolec radi kao nezavisan arbitar sa velikim iskustvom u komercijalnim arbitražama, pred svim većim arbitražnim institucijama, kao i u *ad hoc* postupcima.
- Prethodno je bio Sekretar u UNCITRAL-u, član sekretarijata UNCITRAL-a, profesor trgovinskog prava Univerziteta u Mariboru, kao i član i potpredsednik LCIA, londonske arbitražne institucije.

G. Sekolec je učestvovao u jednom investicionom sporu, pred ICSID-om, u kome je bio imenovan od strane tužene države.

| Summarised biography | Cases and articles | |
|----------------------|---|--|
| | 33. ARB/07/13, S&T Oil Equipment & Machinery Ltd. v. Romania | Unknown/concluded |
| | 34. ARB/07/02, RSM Production Corp. v. République Centrafricaine | Respondent/concluded |
| | 35. ARB/06/16, Barmek Holding A.S. v. Republic of Azerbaijan | Unknown/settled |
| | 36. ARB/06/11, Occidental Petroleum Corporation Occidental Exploration and Production Company v. The Republic of Ecuador | Administrative Council/annulment pending |
| | 37. ARB/06/5, Phoenix Action Ltd v. Czech Republic | President/concluded |
| | 38. ARB/06/2, Quiborax S.A., Non Metallic Minerals S.A.and Allan Fosk Kaplún v. Plurinational State of Bolivia | Respondent/pending |
| | 39. ARB(AF)/04/6, Vannessa Ventures Ltd. v. The Bolivarian Republic of Venezuela | Respondent/concluded |
| | 40. ARB/04/13, Jan de Nul NV and Dredging Int'l NV v. Arab Republic of Egypt | Unknown/concluded |
| | 41. ARB/04/12, ABCI Investments Limited v. Republic of Tunisia | Respondent/pending |
| | 42. ARB/04/8, BP America Production Company and others v. Argentine Republic | Unknown/settled |
| | 43. ARB/04/3, Cemex Asia Holdings Ltd v. Republic of Indonesia | Unknown/settled |
| | 44. ARB/03/15, El Paso Energy International Company v. Argentine Republic | Respondent/annul. pending |
| | 45. ARB/03/13, Pan American Energy LLC, and BP Argentina Exploration Co v. The Argentine Republic | Unknown/settled |
| | 46. ARB/03/12, Pioneer Natural Resources Company, Pioneer Natural Resources (Argentina) S.A. and Pioneer Natural Resources (Tierra del Fuego) S.A. v. Argentine Republic | Unknown/settled |
| | 47. ARB/02/7, Hussein Nuaman Soufraki v. United Arab Emirates | Annul. committee/concluded |
| | 48. ARB/01/9, Booker plc v. Co-operative Republic of Guyana | Sole/concluded |
| | 49. ARB/00/8, Ridgepointe Overseas Developments, Ltd. v. Democratic Republic of the Congo and Générale des Carrières et des Mines | Unknown/concluded |
| | UNCITRAL (total 11, state-appointed min. 7) | |
| | 1. Ulysseas, Inc. v. The Republic of Ecuador http://www.italaw.com/sites/default/files/case-documents/ita1019.pdf | Respondent/concluded |
| | 2. Sergei Paushok and others v. the Government of Mongolia http://italaw.com/sites/default/files/case-documents/ita0622.pdf | Respondent/concluded |
| | 3. Trinh Vinh Binh v. Vietnam | Unknown/concluded |
| | 4. Oxus Gold plc v. Republic of Uzbekistan, the State Committee of Uzbekistan for Geology & Mineral Resources, and Navoi Mining & Metallurgical Kombinat http://italaw.com/cases/documents/1584 | Respondent/concluded |
| | 5. Intertrade Holding GmbH v. Czech Republic http://italaw.com/cases/documents/1459 | Respondent/concluded |
| | 6. European American Investment Bank AG (EURAM) v. Slovak Republic http://italaw.com/cases/documents/1707 | Respondent/unknown |
| | 7. InterTrade Holding GmbH v. The Czech Republic http://italaw.com/cases/documents/1899 | Unknown/concluded |
| | 8. Mikhail Nadel and Ithaca Holdings Inc. v. The Kyrgyz Republic http://italaw.com/cases/documents/1922 | Respondent/unknown |
| | 9. Luigiterzo Bosca v. Lithuania http://italaw.com/cases/documents/2077 | Unknown/concluded |
| | 10. TRACO Deutsche Travertinwerke GmbH v. The Republic of Poland http://italaw.com/cases/documents/2409 | Respondent/concluded |
| | 11. ST-AD GmbH v. Republic of Bulgaria | Chairperson/unknown |

| Summarised biography | Cases and articles | |
|----------------------|---|----------------------|
| | http://italaw.com/cases/documents/2448 | |
| | NAFTA | |
| | 1. Saint Marys VCNA, LLC v. Government of Canada http://italaw.com/cases/documents/1867 | Respondent/concluded |
| | Applicable arbitration rules unknown | |
| | 1. Bycell (Maxim Naumchenko, Andrey Polouektov and Tenoch Holdings Ltd) v. India http://italaw.com/cases/documents/1934 | Respondent/unknown |
| | 2. Sanum Investments Ltd. v. Laos http://italaw.com/cases/documents/2051 | Unknown |
| | Writings: | |
| | <ul style="list-style-type: none"> ➤ Le préjudice dans la théorie de la responsabilité internationale, Paris, Pedone, 1973 ➤ 20 ans de jurisprudence de la Cour internationale de Justice. 1975-1995, La Haye, Nijhoff, 1998, ➤ La succession d'Etats, Lecture at The Hague Academy of international law, RCADI, tome 262, La Haye, Kluwer, 2000, ➤ (with Hélène Ruiz Fabri) La jurisprudence de l'OMC/The Case Law of the WTO, Leiden/Boston, Martinus Nijhoff Pub ➤ La réparation et la théorie de la responsabilité internationale (1973) ➤ Un petit pas de plus: l'installation de la société civile dans l'arbitrage CIRDI entre Etat et investisseur," 2007(1) Rev. arb. 3 ➤ L'entrée de la société civile dans l'arbitrage entre Etat et investisseur," 2002 Rev. arb. 329 ➤ Some New Trends in the Protection of Foreign Investments: the Example of the international Centre for the Settlement of Investment Disputes (ICSID), 4 Int'l Ctr. Comp. L. & Pol. Rev. 23 (Mar. 2001) ➤ Le consentement à l'arbitrage CIRDI en matière d'investissement international : que disent les travaux préparatoires?, in Souveraineté étatique et marchés internationaux à la fin du 20ème siècle à Mélanges en l'honneur de Philippe Kahn 223 (Litec, 2000) ➤ Relações Internacionais Econômicas e o Mecanismo de Solução de Controvérsias do Acordo Multilateral sobre Investimentos (AMI), 2000 Revista de Pos-Graduação da Faculdade de Direito da USP 63 ➤ Un coup d'arrêt à la marginalisation du consentement dans l'arbitrage international (A propos de l'arrêt de la Cour d'appel de Paris du 1er Juin 1999), 2000 Rev. arb. 403 ➤ La mondialisation du droit, Projet, No. 262, at 99 (Été 2000) ➤ How to Regulate Globalization?, in The Role of Law in International Politics 275 (M. Byers ed., Oxford University Press, 1999) ➤ International Economic Relations and the MAI Dispute Settlement System, 16 J. Int'l Arb. 118 (June 1999) ➤ Lex mercatoria et arbitrage international. A propos des Mélanges Goldman, 1983 Rev. arb. 447 ➤ Trois arbitrages, un même problème, trois solutions: les nationalisations pétrolières libyennes devant l'arbitrage international, 1981 Rev. arb. 1 | |

Arbitrator Sheet

HAND VAN HOUTTE (BELGIUM)

<http://www.iaiparis.com/profile/hans.van-houtte>

| Summarised biography | Cases and articles | |
|---|---|--|
| <ul style="list-style-type: none"> ➤ Professor of Law - University of Leuven, Belgium, Vice-President of CEPANI and President of Iran-US Claims Tribunal; ➤ Arbitrated over 200 commercial arbitrations under the auspices of major institutions and 7 ICSID arbitrations. The arbitrations involved private companies, states, state entities and international organizations. They cover a wide range of disputes, such as sale of goods, agency and distribution, turnkey and BOT contracts, engineering and construction, banking and financing, European competition law, transfer of receivables, securities, mergers and acquisitions, corporate disputes, patent infringements and licences, telecommunications, satellite launching, insurance, and export credits. ➤ Until 2000, partner at Stibbe, Brussels; ➤ Also participated in several collective settlement processes, e.g. Bosnian Commission for Real Property Claims. | <p>INVESTMENT CASES</p> <p>ICSID</p> <ol style="list-style-type: none"> 1. ARB/12/25, Marco Gavazzi and Stefano Gavazzi v. Romania 2. ARB(AF)/11/1, Nova Scotia Power Incorporated v. Bolivarian Republic of Venezuela 3. ARB(AF)/07/4, Mobil Investments Canada and Murphy Oil Corporation v. Canada 4. ARB/07/20, Saba Fakes v. Republic of Turkey 5. ARB/07/13, S&T Oil Equipment & Machinery Ltd. v. Romania 6. ARB/07/12, Toto Costruzioni Generali S.p.A. v. Republic of Lebanon 7. ARB/97/4, Československa obchodní banka, a.s. v. Slovak Republic <p>(Selected) Writings: http://www.iaiparis.com/profile/hans.van-houtte</p> <ul style="list-style-type: none"> ➤ The Law of International Trade (Sweet & Maxwell, 2d ed. 2001) ➤ "The Document Production Master and the Experts' Facilitator: Two Possible Aides for an Efficient Arbitration," in <i>Liber Amicorum Bernardo Cremades</i> 1147 (M.A. Fernandez-Ballesteros and D. Arias eds., La Ley, 2010) ➤ "Why Not Include Arbitration in the Brussels Jurisdiction Regulation?," 21(4) <i>Arb. Int'l</i> 509 (2005) ➤ "Distribution Arbitration and European Competition Law," in <i>L'arbitrage et la Distribution Commerciale</i> 91 (2005) ➤ "Arbitration and Arts. 81 and 82 EC Treaty - A State of Affairs," 23(3) <i>ASA Bull.</i> 431 (2005) ➤ "The Brussels I Regulation and the arbitral procedure: jurisdiction and enforcement," in <i>Arbitral Procedure at the Dawn of the New Millennium, Reports of the CEPANI Colloquium 2004</i>, at 201 (Bruylant, 2005) ➤ "Die Übermittlung des Schiedsspruchs an die Parteien," in <i>Grenzüberschreitungen Festschrift P. Schlosser</i> 997 (Siebeck, 2005) ➤ "The relevance of European competition law in arbitration," in <i>DIS-Materialien, The relevance of public international law in international commercial arbitration</i> 97 (DIS-MAT XI, 2005) ➤ "The Delivery of Awards to the Parties," 21(2) <i>Arb. Int'l</i> 177 (2005) ➤ "Counsel-witness relations and professional misconduct in civil law systems," in <i>Arbitration and Oral Evidence</i> 105 (ICC Pub. No. 689, 2005) ➤ "Article 52 of the Washington Convention - A Brief Introduction," in <i>Annulment of ICSID Awards, IAI Series on International Arbitration No. 1</i>, at 11 (E. Gaillard and Y. Banifatemi eds., 2004) ➤ "Ten Reasons Against a Proposal for Ex Parte Interim Measures of Protection in Arbitration," 20(1) <i>Arb. Int'l</i> 85 (2004) ➤ "Counsel-Witness Relations and Professional Misconduct in Civil Law Systems," 19(4) <i>Arb. Int'l</i> 457 (2003) ➤ "La Commission belge d'Arbitrage pour le Sport: Perspectives," in <i>L'arbitrage dans le domaine sportif (Comité olympique belge, 2002)</i> ➤ "ICC Model Contracts / Les modèles de contrats de la CCI," 2003(3) <i>Rev. dr. aff. int. / Int'l Bus. L.J.</i> 253 ➤ "Parallel Proceedings before State Courts and Arbitration Tribunals. Is there a transnational lis pendens - exception in arbitration or jurisdiction conventions?," in <i>Arbitral Tribunals or State Courts - Who must defer to whom?</i>, ASA Special Series No. 15, at 35 (2001) ➤ "Arbitrage van geschillen met een fiscale dimensie - L'Arbitrage des litiges avec des aspects fiscaux," in <i>Arbitrage en fiscaliteit - Arbitrage et fiscalité</i> 11 (Bruylant, 2001) | <p>Appointment/Status</p> <p>President / Pending President / Concluded President / Pending Claimant / Concluded President / Concluded President / Concluded President / Concluded</p> |
| <p>http://www.iusct.net/General%20Documents/z1-Hans%20van%20Houtte.pdf</p> <p>http://www.expertquides.com/default.asp?page=2&egaBOBID=&CountryID=31&ExpertOfficeID=10817&GuideID=150&fcIndex=4385&findex=3180</p> | | |

Arbitrator Sheet

JERNEJ SEKOLEC (SLOVENIA)

<http://whoswholegal.com/profiles/52638/0/sekolec/jernej-sekolec/>

| Summarised biography | Cases and articles |
|---|---|
| <p>➤ Works full time as an independent arbitrator. Between 2001 and 2008 he was the secretary of UNCITRAL and director of the international trade law division of the UN Office of Legal Affairs. Prior to that he was a member of the UNCITRAL secretariat and professor of commercial law at Maribor University, Slovenia. Between 2008 and 2013 he served as a court member of the London Court of International Arbitration (LCIA) and from 2010 to 2013 as its vice president;</p> <p>➤ He has acted as chairman or a tribunal member in numerous arbitration cases, which were either ad hoc or administered by institutions such as the LCIA, ICC, VIAC, Stockholm AI, ICSID, Helsinki AI, PCA - The Hague, and Foreign Trade Arbitration, Belgrade. His cases have been in areas such as governmental concessions, privatisations, industrial cooperation, gas and energy, banking, investment and partnerships, transport, construction and intergovernmental disputes.</p> <p>http://whoswholegal.com/profiles/52638/0/sekolec/jernej-sekolec/</p> | <p><u>INVESTMENT CASES</u> <u>Appointment/Status</u></p> <p>ICSID</p> <p>1. ARB/11/4, Club Hotel Loutraki, Casinos Austria International Holding v. R. Serbia Respondent / concluded</p> <p>(Selected) Writings:</p> <ul style="list-style-type: none">➤ Sekolec, J. and J.A. Estrella Faria. The work of the United Nations Commission on International Trade Law (UNCITRAL) concerning privately-financed infrastructure projects = La labor de la Comisión de las Naciones Unidas para el Derecho Mercantil Internacional (CNUDMI) sobre proyectos de infraestructura con financiación privada. News = Noticias (Buenos Aires) 67:2:6-8, 1997. A brief account both in English and Spanish.➤ Digest of case law on the UN Sales Convention: The combined wisdom of judges and arbitrators promoting uniform interpretation of the convention; 2003➤ Odgovornost proizvajalca stvari z napako➤ Arbitrazna pravila UNCITRAL (1976): s komentarjem: arbitrazna pravila Komisije Združenih narodov za mednarodno gospodarsko pravo➤ Splosno gospodarsko pravo, Janez Nemec 1979 i 1984➤ Splosno gospodarsko pravo, Del 2, (Organizacije združenega dela). Janez Nemec 1977 i 1982➤ Placaj takoj, ugovorjaj kasneje!: neodvisna bancna garancija in stand-by akreditiv, 1997➤ O družabni igri kranjskega plemica in njegovega učitelja iz 17. stoletja in o geografiji, brez katere so velika dejanja nema in zgodovina slepa by Jernej Sekolec, 2007➤ Haag ali Hamburg? ob predlogu pomorskega zakonika RS, 1994➤ The Rule of Law and the Transition to a Market-Based Economy, 2005 |