

VIAC CAN Newsletter for the CEE region

CASE LAW FROM THE REGION

Authors: VIAC Ambassador for Slovenia Ms. Jasna Zwitter-Tehovnik, DLA Piper Slovenia, VIAC Ambassador for Slovenia Dr. Minu Anamaria Gvardjančič, LL.M and Gregor Lipovec, both – Kranovic & Partners, Slovenia.

Below are two recent and relevant court decisions in the field of ADR in Slovenia:

- By the Decision of the Celje Higher Court (VSC Decision I Cp 203/2022 of 28.06.2022) the court specified how the rule of Article 11(2) of the Slovenian Arbitration Act (*Zakon o arbitraži*) which provides that a defendant must raise the challenge to the jurisdiction of the arbitral tribunal at the latest with the defence (*odgovor na tožbo*), applies in the enforcement proceedings. Considering that an application for enforcement based on an authentic document (*predlog za izvršbo na podlagi verodostojne listine*), as per Article 62(2) of the Slovenian Enforcement and Security Act (*Zakon o izvršbi in zavarovanju*) – in the case of a reasoned objection – is considered as a claim in civil proceedings, an objection to the enforcement order based on an authentic document is treated as a defence. Therefore, it is necessary to raise the challenge to the jurisdiction of the arbitral tribunal already with the objection to the enforcement order based on an authentic document.
- By the Decision of the Higher Labour and Social Court (VDSS Decision Pdp 82/2020 dated 05.03.2020) the court decided that the cost of representation in mediation is not considered part of the litigation costs and cannot be awarded to the party winning the dispute.
- On 19 October 2023 Belgrade-based Arbitral Tribunal issued its final decision in the Ugljevik Case and awarded the Claimant i.e., Elektrogospodarstvo Slovenije, with over EUR 58 million in interest and costs, supplementing the earlier partial decision of July, where tribunal awarded the Claimant EUR 67 million in damages. The total award amount of over EUR 130 million finally brings some closure to the 30-year-old saga.

Factual background: Claimant entered a contract for the construction and operation of Block I and II of the Ugljevik Mine and Thermal plant and in return the Claimant was to be supplied with electricity. Performance of said contract was later interrupted due to the war in Bosnia in 1991 and later some attempts were made to regulate the contractual relationship. As no agreement was reached, Claimant was unsuccessful in seeking remedies before the local court as the courts did not have jurisdiction to adjudicate on the matter due to the agreement of the parties to arbitrate any dispute arising under the agreement. Thus in 2014 the Claimant initiated two arbitration proceedings, namely:

- arbitration before ICSID tribunal against BiH, details of which are scarce, with the exception of invoked instruments, which are breaches under BIT and Energy Charter treaty, in addition to the amount of damages (approx. EUR 700 million) which is currently suspended, and

- arbitration dated June 2014, when Claimant filed a request for ad hoc arbitration against Ugljevik Thermal plant (company) with the seat in Belgrade seeking compensation for non-delivered electricity with accrued interest.

- As of now what remains open is the issue of non-delivery of the electricity from 1 January 2022 onwards and the arbitration proceedings before ICSID.
 - o <https://www.hse.si/en/final-arbitration-decision-in-the-ugljevik-case-due-to-the-successful-performance-of-the-company-hse-in-addition-to-67-million-euros-of-principal-more-than-58-million-euros-of-interest-were-awarded/>
 - o <https://www.hse.si/sl/druzba-hse-uspesno-nastopala-v-arbitraznem-postopku-zoper-rudnik-in-termoelektrarno-ugljevik-prisojenih-kar-67-milijonov-evrov-glavnice/>
 - o <https://arbitrationblog.kluwerarbitration.com/2019/09/28/an-ex-yugoslav-odyssey-a-metamorphosed-arbitration-agreement-and-an-arbitral-institution-that-ceased-to-exist/>