The Rompetrol Group N.V. v. Romania
ICSID Case No. ARB/06/3, Award, 6 May 2013 (Franklin Berman, Donald Francis Donovan, Marc Lalonde)

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Keywords

Rometropol Group N.V. had claimed before an ICSID tribunal that criminal investigations against individual company officers had triggered a violation of the Netherlands-Romania BIT standards on fair and equitable treatment, physical protection and security and non-impairment. The Tribunal found that only a limited breach of Rompetrol’s right to fair and equitable treatment had occurred. It denied the investor’s claim for damages for lack of proof of economic loss. It also declined to grant declaratory relief as well as moral damages. The case illustrates investment protection against State conduct directed at officers of the corporate investor, rather than the investor itself.

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Facts of the Case

Rompetrol S.A. is an oil refining, marketing and trading company. It was state owned until 1993 when a management and employee buy-out took place. In 1998, an investor group led by Mr. Patriciu purchased a controlling stake in Rompetrol S.A.; Mr. Patriciu is of Romanian nationality. Ownership then passed over in 2000 by a series of steps to the Dutch company The Rompetrol

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Group B.V. In 2002 Rompetrol changed its legal form into The Rompetrol Group N.V. (TRG). TRG is the Claimant in the investment arbitration. Mr. Patriciu was the CEO of TRG in the period relevant for the present arbitration. Mr. Stephenson was a TRG officer at the relevant time. In 2000, TRG purchased a controlling stake in Petromidia during the privatization process of Petromidia. Petromidia was the owner of a large oil refinery – later named Rompetrol Rafinare S.A. (RRC).

In the 1980s the still state-owned Rompetrol S.A. had concluded an exploration and production sharing agreement with the Libyan National Oil Company. Rompetrol's rights were later assigned to a Spanish oil company against a cash down and further instalment payments. It was agreed that the instalment payments would accrue to the Romanian State (Libyan receivable). Initial payments by the Spanish oil company were transferred to the State. After the privatization, TRG made one such payment but then stopped transferring the receivables since it believed that it was not under an obligation to remit further payments. TRG informed Romania of this position but no action was taken. It was disputed whether this occurred because of the complicity of a senior official in the administration who did not transfer TRG's letter of information to the persons in charge of following up. Furthermore, it was disputed whether the funds stemming from these Libyan receivables were critical and only made it possible for TRG to make the successful bid for Petromidia.

Much attention in the case focused on the so-called Talpes report. This report had the letterhead and official stamp of the National Security Department of the Presidential Administration of Romania. Its subject was the privatization of Petromidia and it contained accusations of serious irregularities by TRG in the context of the privatization process. The report was leaked to the press. Mr. Talpes was the head of the Presidential Administration. The Claimant alleged that the Talpes report triggered the criminal investigation and was itself illegal. The Respondent denied both assertions.

In 2004, the National Anti-Corruption Office of Romania (PNA) started investigations relating to the Petromidia privatization and purchase by TRG. Later in 2004, the investigation file was transferred from the PNA to the General Prosecutor’s Office (GPO), which in turn opened an investigation. As part of this investigation, Mr. Patriciu was detained in May 2005, his telephone calls were wire-tapped and a travel ban was imposed upon him. Furthermore, there was a second request for preventive detention of Mr. Patriciu and a request for preventive detention of Mr. Stephenson and another foreign defendant. In addition, the prosecutors ordered an attachment of RRC's shares. The attachment lasted for seven months until it was discharged by way of a decision of the Bucharest Court of Appeals. The Romanian authorities made a request for