Returning to the Issue of Nationality

Venoklim Holding B.V. v Bolivarian Republic of Venezuela, ICSID Case No. ARB/12/22, Final Award and Concurring and Dissenting Opinion, 3 April 2015 (Yves Derains, Enrique Gómez-Pinzón, Rodrigo Oreamuno)

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In its Final Award dated 3 April 2015, a Tribunal in the case of Venoklim Holding v Venezuela held, inter alia, that it had no jurisdiction over claims based on Art 22 of Venezuela's Investment Law.1 The importance of the Award resides in the fact that the Tribunal: (i) considered that the applicable standard to decide whether Venoklim Holding B.V. (the Claimant) had standing to sue was Venezuela's Investment Law and not the bilateral investment treaty (BIT) between the Netherlands and Venezuela;2 and (ii) found that, according to the ICSID Convention,3 claims brought via foreign incorporated companies that were owned by nationals against their own States were not admissible.

2 Agreement between the Kingdom of the Netherlands and the Republic of Venezuela on the Reciprocal Promotion and Protection of Investments (22 October 1991) (the Netherlands-Venezuela BIT).
3 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (signed 18 March 1965).
The Claimant, a company incorporated in the Netherlands, filed its Request for Arbitration with the Secretary-General of ICSID on 23 July 2012 claiming the alleged expropriation of the Claimant’s assets in Venezuela (consisting in motor lubricant companies) through a 2010 Decree. The purpose of the Decree was to seize the assets of the companies belonging to the Claimant. The Decree fell under the Venezuelan plan to nationalize the industry for the manufacturing and supply of oil lubricants and related products.

The corporate structure of the Claimant was a key issue for the Tribunal in deciding that it lacked jurisdiction over the case. In fact, during the hearing on jurisdiction the Tribunal asked for additional information from the parties in order to know the actual corporate structure of the Claimant (para 144). The Claimant was a company validly incorporated and existing in accordance with the laws of the Netherlands and was the parent company and the majority shareholder of five Venezuelan companies. The majority shareholder of the Claimant was International Petrokemiklim, a Swedish company, whose sole shareholder, in turn, was Industrias Venoco, a Venezuelan company. In addition, the majority shareholder (69.96%) of Industrias Venoco was Inversora Petroklim, also a Venezuelan company. Finally, the owners of Inversora Petroklim were two Venezuelan individuals. For the sake of clarity, the corporate structure in the case at hand looked as follows:

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4 Decree No 7712 by the President of the Republic of Venezuela (issued 10 October 2010) (the Decree).

5 ‘Chavez announced in 2008 he would nationalize Venoklim’s Venezuelan holdings, saying that ultimate owner Franklin Duran was conspiring against the country.’ Alexandra Ulmer and Brian Ellsworth, ‘Tribunal dismisses Venoklim lubricants case against Venezuela,’ (Reuters, 6 April 2015) <http://www.reuters.com/article/2015/04/06/us-venezuela-arbitration-idUSKBNoMX17G20150406> accessed 23 June 2016.