

The First Investor-State Dispute Against Iran

October 11, 2014

The first investment arbitration against the Islamic Republic of Iran was put to rest on 15 October 2014 by an arbitral tribunal operating under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules (Turkcell İletişim Hizmetleri A.Ş. v. The Islamic Republic of Iran).

The tribunal held that the activities of the claimant (Turkcell İletişim Hizmetleri A.Ş., a Turkish telecommunications company) in Iran, were not an “investment” qualifying for protection under the applicable Turkey-Iran Bilateral Investment Treaty (BIT).

The claimant was the majority shareholder in a consortium that bid successfully in a tender process for a GSM licence in 2004. When the claimant resisted a new legislation in Iran requiring it to surrender the majority of its shareholding in its activities to Iranian entities, the GSM license was eventually awarded to a South African telecommunications company. This led the claimant to initiate arbitration proceedings against Iran in 2008, alleging that its contractual rights on account of its successful bid in the tender process and a related license agreement, were a protected investment under the Turkey-Iran BIT which had been unlawfully expropriated by Iran.

The claimant also invoked the fair and equitable treatment, full protection and security and most favoured nation clauses of the BIT. The tribunal dismissed the claimant’s claims holding that it had no jurisdiction because there was no “investment” within the meaning of the BIT. Further, the Tribunal ordered the claimant to reimburse Iran at an amount of approximately USD 1 million which constituted Iran’s arbitration costs. The Tribunal’s award found disagreement by the arbitrator who was appointed by the claimant.

Despite having signed the award, said arbitrator issued a dissent finding that the claimant was the holder of an investment subject to protection by the Turkey-Iran BIT.

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