

Investment Arbitration in Eastern Europe

IN SEARCH OF A DEFINITION OF
EXPROPRIATION

by

Kaj Hobér



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Uppsala, November 2006

Kaj Hobér

INTRODUCTION

The appointment of Michail Gorbachev as General Secretary of the communist party of Soviet Union on 11 March 1985 was the starting point for the reform process which became known as perestroika. This was the time when Europe was divided into two. Like Germany, the European continent consisted of two parts which were called East and West, the origin being the Yalta Conference of 1945 and its monument the Berlin Wall. Gorbachev's reforms were soon to influence not only developments in his own country, but also in the rest of Eastern Europe, leading to the opening of the Berlin wall on 9 November 1989. This remarkable event catapulted the transformation process in Eastern Europe into thitherto unknown directions. Continuing at a breathtaking pace the reform process led up to the failed *coup d'état* in Moscow in August 1991, to be followed by the formal dissolution of the Soviet Union towards the end of that year. These mind-boggling historical changes ended not only in the collapse of the Leninist experiment, but also in the disintegration of Europe's last great empire, putting an end to Soviet power in Eastern Europe.

The political, economic and legal transformation of Eastern Europe to a large extent coincides chronologically with the dramatic increase of investment arbitrations that has taken place during the last 5-8 years. A fair number of these investment arbitrations involve parties from Eastern Europe, including the former Soviet Union. The growing number of investment arbitrations has brought about a

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situation which must be characterized as a new era of international arbitration.

The focus of the present study is on investment arbitrations in Eastern Europe, and in particular on the concept of expropriation which is the core of the law of protection of foreign investment.

When asked to evaluate the French Revolution, the former Chinese Prime Minister Zhou Enlai said: "It is too early to tell". Without necessarily sharing this view, it is in my opinion too early for a rigorous scholarly analysis of recent arbitral awards in the field of investment arbitration. The ambition in the present publication is much more limited, *viz.*, to bring together in one publication awards rendered dealing with one geographical area where investment disputes have arisen relatively frequently - Eastern Europe - primarily for purposes of stocktaking of, and reflection on, recent developments. The only realistic method of doing this is to single out one specific aspect of investment arbitration, hence the focus on expropriation.

I have attempted to cover all arbitral awards rendered prior to 31 December 2005 where the tribunal in question has ruled on the issue of expropriation.