Title:
Decision on Jurisdiction of 24 December 1996 and Award of 29 April 1999 in case no ARB/94/2, YCA 2000, 221 et seq.

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INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Decision on Jurisdiction of 24 December 1996 and Award of 29 April 1999 in case no ARB/94/2

Arbitrators:
Karl-Heinz Böckstiegel (Germany) (President); Fred F. Fielding (US); Andrea Giardina (Italy)

Parties:
Claimant: Tradex Hellas S.A. (Greece)

Respondent: Republic of Albania

Place of arbitration:
Not indicated

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Subject matters:

Decision on jurisdiction

- 1993 Foreign Investment Law of Albania

- "foreign investment"

- jurisdiction of ICSID tribunal
II. REASONS FOR THE DECISIONS

1. Burden of Proof

(...)

[63] "As seen above, the conditions for the compensation claimed by Tradex are mentioned in Arts. 4 and 5 of the 1993 Law. The wording of these provisions confirms what can be considered as a general principle of international procedure - and probably also of virtually all national civil procedural laws - namely that it is the claimant who has the burden of proof for the conditions required in the applicable substantive rules of law to establish the claim. In the ICSID Case Arb/87/3 Asian Agricultural Products Ltd. v. Republic of Sri Lanka (published in 6 ICSID Review - Foreign Investment Law Journal (1991) p. 527 seq.) the Tribunal considered this to be one of the 'established international law rules' (at p. 549), relying on Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals (Cambridge 1987) p. 327, and further sources. Relying also on Bin Cheng (pp. 329-331, with quotations from further supporting authorities), the Tribunal also considered as an established international law rule that 'A Party having the burden of proof must not only bring evidence in support of his allegations, but must also convince the Tribunal of their truth, lest they be disregarded for want, or insufficiency, of proof (at p. 549).

[64] "Thus, taking these considerations into account, this Tribunal concludes that Tradex has the burden of proof, in the above sense, for the conditions required in the 1993 Law to establish its claim for compensation"

[...]

129 April 1999 is the date of dispatch to Parties.

Referring Principles:

XII.1 - Distribution of burden of proof