

# ARBITRATION ENFORCEMENT: TORN BETWEEN TWO TREATIES

*Micula v. Romania* [2020] UKSC 5; [2020] 1 WLR 1033

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# KEY CHRONOLOGY

- 1966: UK ratified ICSID Convention.
- 1975: Romania ratified ICSID Convention.
- 1993 onwards: Romania engaged in talks/agreements with EC with a view to membership. Important issues included aligning Romanian systems with EC free market principles.
- April 1999: Romania adopted an investment incentive scheme called EGO 24 to encourage investment in disfavoured regions through state subsidies.
- June 1999: Romania incorporated State aid rules into domestic law.
- 2000-2004: Formal accession negotiations between Romania and EU. State aid was a focus.
- Early 2000s: Miculas invested in a food production operation in Romania under EGO 24. Ten-year business plan.
- 2003: Sweden-Romania Bilateral Investment Treaty came into force.
- 2004: Romania announced repeal of EGO 24 schemes.
- 2007: Romania acceded to EU.

# KEY POINTS IN APPEAL

- Meaning of ICSID Convention and 1966 Act: scope for refusing enforcement of awards?
- Effect of Art 351 TFEU?
  - Nature of obligations imposed by ICSID Convention
  - Was the Supreme Court precluded from determining this issue?
- The effect of the General Court judgment/ appeal to CJEU
  - Application of the principle of sincere cooperation

# ARBITRATION (INTERNATIONAL INVESTMENT DISPUTES) ACT 1966, S. 2(1)

Subject to the provisions of this Act, an award registered under section 1 above shall, as respects the pecuniary obligations which it imposes, be of the same force and effect for the purposes of execution as if it had been a judgment of the High Court given when the award was rendered pursuant to the Convention and entered on the date of registration under this Act, and, so far as relates to such pecuniary obligations—

- (a) proceedings may be taken on the award,
- (b) the sum for which the award is registered shall carry interest,
- (c) the High Court shall have the same control over the execution of the award, as if the award had been such a judgment of the High Court.

# ICSID CONVENTION, ARTICLES 53 & 54

## **Article 53**

(1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.

(2) For the purposes of this Section, "award" shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

## **Article 54**

(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.

(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.

# ARTICLE 351 TFEU

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties.

To the extent that such agreements are not compatible with the Treaties, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under the Treaties by each Member State form an integral part of the establishment of the Union and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.

# Thank you

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