



Weekly Briefing

Slovenia external relations briefing:
Hearing on Slovenia's legal action against Croatia at the European
Court of Justice
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Hearing on Slovenia's legal action against Croatia at the European Court of Justice

Summary

On July 8, European Union Court of justice held an oral hearing in Slovenia's attempted legal action against Croatia for its failure to implement the decision of the Arbitration court on the determination of border between the two countries. Latest developments are part of a longer disagreement of the two neighbouring countries on the issue of the demarcation of the border in the Bay of Piran, which was legally resolved with the Arbitration Court decision in June 2017. The decision of the Advocate General on the admissibility of Slovenia's legal action will be made in the beginning of November.

History and background

After several failed attempts of Slovenia and Croatia to reach an agreement on the border, the joint decision to start an international arbitration process was made in November 2009. The arbitration court, constituted upon this agreement, started its procedure in 2010. In 2015 an unauthorized leak of classified information between Slovenian representatives, an arbitration court judge and Slovenian agent, caused a standstill in the procedure. Croatia announced their withdrawal and refusal to recognize the validity of the arbitration court procedure, while the courts eventually decided that the breach of confidentiality on the Slovenian side does not implicate invalidity of the process and it continued with it. Arbitration court decision on the demarcation of disputed Slovenian-Croatian border territories was made on June 29th 2017. Arbitration court determined the entire land border between the two countries by the principle *uti possidetis*, effectively transforming former administrative borders between federative republics of Slovenia and Croatia (in Yugoslavia) into state borders. It also demarcated the sea border, which has not been previously demarcated. The Bay of Piran retained the status of internal seawaters, the border in the Bay also being determined by *uti possidetis* principle. The border of territorial seas follows a modified equidistance line. It also determined the junction connecting Slovenia's territorial sea with the high seas, where principles of freedom of communication are to be followed for the purpose of access to and from Slovenia. According to the court decision, the implementation was to be realized within 6 months.

Legal action against Croatia

After Slovenia implemented the agreement and Croatia refused to do so, conflicts and incidents started especially related to fishermen in the Bay of Piran. On the 16th of March Prime Minister Cerar's government sent an letter to the European Commission, referring to the Article 259 of the Lisbon Treaty. According to this article, a Member State can bring an allegation against another Member State if the latter fails to fulfil an obligation under the Treaties of European Union. After the letter was received by the European Commission, hearings of the two sides followed on the 2nd of May, where the two countries explained their opinions. Despite this, eventually European Commission did not provide a reasoned opinion within three months and Slovenia then filed a legal action against Croatia for the infringement of obligation at the European Court of Justice on 13th of July 2018. Six months later Slovenia received the Croatian response and replied to it.

The basis of Slovenian claims is that by refusing to implement arbitration court decision, Croatia is violating the Articles 2 and 4 of the Treaty of European Union. Article 2 determines that one of the key values that European Union Member States adhere to is the respect for the rule of law. Article 4 determines respectful cooperation between Member States. In addition, Slovenia claims in the legal action that Croatia is violating the Common Fisheries Policy, the Schengen Borders Code and the directive on maritime spatial planning.

Hearing at the European Court of Justice

On the 8th of July, the first hearing was scheduled at the European Court of Justice. This first oral hearing was to determine, whether Slovenia's legal action against Croatia for violations against European Union law was admissible. The hearing at the Court of Justice of the European Union took place before the Grand Chamber of 15 judges. Slovenian arguments were presented by agent Maja Menard and Counsel Jean-Marc Thouvenin. The agent for the Croatian side was Gordana Vidović Mesarek and the counsel was Jemima Stratford. The European Union Advocate General in the case was Priit Pikamäe, a former president of the Estonian Supreme Court.

Hearing started with a presentation of their positions by both sides. Croatia repeated their position that the European Court of Justice does not have jurisdiction in this case, since the borders between the two countries are a matter of international law and not of European Union law. The position was presented by Counsel Jemima Stratford, who first stressed the pride of Croatia to be part of European Union and its adherence to the common values, determined by the Treaty of European Union. She also expressed that the European Court of Justice should not interfere in bilateral conflicts. She stressed that Croatia left the arbitration

process before the court decision was announced and that Croatia does not accept the validity of the final arbitration decision. She also remarked that Croatia could have started a mediation procedure within this process but so far decided not to do so. According to Stratford, the essence of the conflict between the two countries is the demarcation of the border and not the violation of European Union law. According to the position of Croatia, bilateral territorial conflicts are outside the jurisdiction of the European Court of Justice, even if they interfere with the implementation of the European Union law. She referred to the Article 273 of the Treaty of European Union as the only potential European Union legal framework for solving this issue.

Slovenian position, presented by Maja Menard, stressed that Slovenian legal action is not about the demarcation of the border, since this has already been determined with the arbitration court decision, which is final, binding and self-executing. She stressed that by its rejection of the arbitration procedure Croatia violates the rules and policies of the European Union. In the legal action relying on the Article 259 of the Lisbon Treaty, Slovenian side proposed to the Court to assess, whether Croatia violated the Articles 2 and 4 of the Treaty of European Union and other above-mentioned laws. IN relation to the issue, whether the European Court of Justice has jurisdiction in matters of international law, Slovenia's position was that it has such jurisdiction, if the determination is necessary for the explication of the European Union law, to which it refers.

The presentations of the positions of the two sides were followed by questions by the judges. Several judges were interested in the commentary in Croatian accession agreement, which includes a reference to the arbitration agreement. This reference is included in the Annex 3 and Chapter 5 about Fisheries, stating that the specified regulation of fisheries is used from the full implementation of the arbitration agreement onwards. Judge-Rapporteur, Christopher Vajda posed a related question, upon which the Croatian Counsel Stratford declined a comment on the proper interpretation of this Article, stating that it only determines a time framework if the implementation. Slovenia's Counsel Jean-Marc Thouvenin later stressed that this comment effectively imported the arbitration agreement and the following court decision into the European Union legal system. Italian judge Lucia Serena Rossi stressed that although it is only a comment, it still is part of the primary European legislation, therefore being in the jurisdiction of the European Court of Justice.

Conclusion

In the recent oral hearing at the European Court of Justice about the jurisdiction of the said court in the legal action by Slovenia against Croatia for the violations of European Union law, the two sides presented their opinions and were subsequently questioned by the judges. The positions of the two sides were unchanged and the arguments followed their previous argumentations. With the decision of the Advocate General about the applicability of Slovenia's legal action, scheduled for November, the solution of the issue is still far. In case of a positive decision for Slovenia, the legal procedure will only begin. In case applicability is denied, the future of the conflict is even less clear.