

**GABCÍKOVO-NAGYMAROS PROJECT
(Hungary/Slovakia)
SLOVAKIA REQUESTS AN ADDITIONAL JUDGMENT**

This case is still pending. Meanwhile, the Parties have resumed negotiations in this dispute.

HISTORY OF THE PROCEEDINGS

On 3 September 1998, Slovakia filed in the Court a request for an additional Judgment in this dispute. Slovakia contended that this was necessary because Hungary was unwilling to implement the Judgment delivered by the Court in this dispute on 25 September 1997.

In its request, Slovakia stated that the Parties had conducted a series of negotiations on the modalities for executing the Court's Judgment and had initialled a draft Framework Agreement that had been approved by Slovakia on 10 March 1998. Slovakia contended that on 5 March 1998 Hungary had postponed its approval and, upon the accession of its new Government following the May elections, had proceeded to disavow the draft Framework Agreement, further delaying the implementation of the Judgment. Slovakia maintained that the Court should determine the modalities for executing the Judgment.

SLOVAKIA'S REQUEST

As the basis for its present request, Slovakia invoked Article 5(3) of the Special Agreement for the joint submission of their dispute to the Court signed by the Parties at Brussels on 7 April 1993. Article 5 reads as follows:

- (1) The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
- (2) Immediately after the transmission of the Judgment the Parties shall enter into negotiations on the modalities for its execution.
- (3) If they are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

Slovakia asked the Court to adjudge and declare the following:

1. That Hungary bears responsibility for the failure of the Parties so far to agree on the modalities for executing the Judgment of 25 September 1997;
2. That in accordance with the Court's Judgment of 25 September 1997, the obligation of the Parties to take all necessary measures to ensure that achievement of the objectives of the Treaty of 16 September 1977 (by which they agreed to build the Gabčíkovo-Nagymaros Dam Project) applies to the whole geographical area and the whole range of relationships covered by that Treaty;
3. That, in order to ensure compliance with the Court's Judgment of 25 September 1997, and given that the 1977 Treaty remains in force and that the Parties must take all necessary measures to ensure the achievement of the objectives of that Treaty:
 - (a) With immediate effect, the two Parties shall resume their negotiations in good faith so as to expedite their agreement on the modalities for achieving the objectives of the Treaty of 16 September 1977;
 - (b) In particular, Hungary is bound to appoint forthwith its Plenipotentiary under Article 3 of the Treaty, and to utilise all mechanisms for joint studies and co-operation established by the Treaty, and generally to conduct its relations with Slovakia on the basis of the Treaty;
 - (c) The Parties shall proceed by way of a Framework Agreement leading to a Treaty providing for any necessary amendments to the 1977 Treaty;
 - (d) In order to achieve this result, the Parties shall conclude a binding Framework Agreement not later than 1 January 1999;
 - (e) The Parties shall reach a final agreement on the necessary measures to ensure the achievement of the objectives of the 1977 Treaty in a treaty to enter into force by 30 June 2000;
4. That, if the Parties fail to conclude a Framework Agreement or a final agreement by the dates specified at subparagraphs 3 (d) and (e) above:
 - (a) The 1977 Treaty must be complied with in accordance with its spirit and terms; and

- (b) Either party may request the Court to proceed with the allocation of responsibility for any breaches of the Treaty and reparation for such breaches.

At a meeting that the President of the Court held with the Parties on 7 October 1998, it was decided that Hungary was to file by 7 December 1998 a written statement of its position on Slovakia's request for an additional Judgment, which was done within the time-limit fixed.

Subsequently, the Parties have informed the Court of the resumption of negotiations between them.

HISTORY OF THE PROCEEDINGS

On 23 October 1992, Hungary instituted proceedings against the Czech and Slovak Federal Republic (the Federal Republic)¹ in a dispute concerning the projected diversion of the Danube River. Before detailing its case in its Application, Hungary invited the Federal Republic to accept the Court's jurisdiction. A copy of the Application was transmitted to the Federal Republic in accordance with Article 38 (5) of the Rules of Court, which reads as follows:

When the Applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made, the application shall be transmitted to that State. It shall not however be entered in the General List, nor any action be taken in the proceedings, unless and until the State against which such application is made consents to the Court's jurisdiction for the purposes of the case.

Negotiations began under the aegis of the European Communities between the Parties. Meanwhile, the Federal Republic dissolved into two separate States on 1 January 1993. On 2 July 1993, the Parties jointly notified the Court of a Special Agreement signed at Brussels on 7 April 1993 to submit to the Court certain issues arising out of their differences. The issues concerned the implementation and termination of the Budapest Treaty of 16 September 1977 on the Construction and

¹ The Federal Republic separated into two States, Czechoslovakia and Slovakia, on 1 January 1993.

Operation of the Gabčíkovo-Nagymaros Barrage System and on the construction and operation of the “provisional solution”. The Special Agreement records that in this respect Slovakia is the sole successor State of the Federal Republic.

Article 2 of the Special Agreement provides:

- (1) The Court is requested to decide on the basis of the Treaty and rules and principles of general international law, as well as such other treaties as the Court may find applicable,
 - (a) whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary;
 - (b) whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the ‘provisional solution’ and to put into operation from October 1992 this system, described in the Report of the Working Group of Independent Experts of the Commission of the European Communities, the Republic of Hungary and the Czech and Slovak Federal Republic dated 23 November 1992 (damming up of the Danube River at 1.7 kilometre on Czechoslovak territory and resulting consequences on water and navigation course);
 - (c) what are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary.
- (2) The Court is further requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the questions in paragraph (1) of this Article.

By an Order of 14 July 1993,² the Court decided that under Article 3(2) of the Special Agreement and Article 46(1) of the Rules of Court, each Party should file a Memorial and a Counter-Memorial within the same time-limit. They were to be filed on 2 May 1994 and 5 December 1994 respectively according to the prescribed periods. By an Order of 20

² [1993] International Court of Justice Reports 319.

December 1994,³ the President of the Court, taking into account the Parties' views, fixed 20 June 1995 as the time-limit for the filing of a Reply by each Party, which were done within the prescribed period.

In June 1995, Slovakia invited the Court to visit the Gabčíkovo-Nagymaros Hydroelectric Dam Project on the Danube River to obtain evidence. Hungary thereupon informed the Court that it would cooperate in the visit's organisation. In November 1995, in Budapest and New York, both Parties signed a Protocol of Agreement on the proposed visit after the Court approved the dates. Agreed Minutes later supplemented the Protocol on 3 February 1997. By an Order of 5 February 1997,⁴ the Court decided to "exercise its functions with regard to the obtaining of evidence by visiting a place or locality to which the case relates"⁵ and to "adopt to that end the arrangements proposed by the Parties". The visit, which was the first in the Court's 50-year history, took place from 1-4 April 1997, between the first and second round of oral hearings.

On 25 September 1997,⁶ the Court delivered the following Judgment:

- (1) Having regard to Article 2(1) of the Special Agreement:
 - A. that Hungary had not been entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty of 16 September 1977 and related instruments attributed responsibility to it;
 - B. that Czechoslovakia had been entitled to proceed, in November 1991, to the "provisional solution" as described in the terms of the Special Agreement;
 - C. that Czechoslovakia had not been entitled to put into operation, from October 1992, this "provisional solution";
 - D. that the notification, on 19 May 1992, of the termination of the Treaty of 16 September 1977 and related instruments by Hungary had not had the legal effect of terminating them; and

³ [1994] International Court of Justice Reports 151.

⁴ [1997] International Court of Justice Reports 3.

⁵ Compare Article 66 of the Rules of Court.

⁶ [1997] International Court of Justice Reports 7.

- (2) Having regard to Article 2(2) and Article 5 of the Special Agreement:
- A. that Slovakia, as successor to Czechoslovakia, had become a party to the Treaty of 16 September 1977 as from 1 January 1993;
 - B. that Hungary and Slovakia should negotiate in good faith in the light of the prevailing situation, and should take all necessary measures to ensure the achievement of the objectives of the Treaty of 16 September 1977, in accordance with such modalities as they might agree upon;
 - C. that, unless the Parties otherwise agreed, a joint operational régime should be established in accordance with the Treaty of 16 September 1977;
 - D. that, unless the Parties otherwise agreed, Hungary should compensate Slovakia for the damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible; and Slovakia should compensate Hungary for the damage it has sustained on account of the putting into operation of the “provisional solution” by Czechoslovakia and its maintenance in service by Slovakia; and
 - E. that the settlement of accounts for the construction and operation of the works should be effected in accordance with the relevant provisions of the Treaty of 16 September 1977 and related instruments, taking due account of such measures as would have been taken by the Parties in application of points 2 B and C of the operative paragraph.

Schwebel P and Rezek J appended declarations to the Judgment. Weeramantry V-P and Bedjaoui and Koroma JJ appended separate opinions. Oda, Ranjeva, Herczegh, Fleischhauer, Vereshchetin and Parra-Aranguren JJ and Skubiszewski J *ad hoc* appended dissenting opinions.