

# Latvia to pay after five-year-long ICSID case

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Rezekne, Latvia, [istock.com/imantsu](https://www.istock.com/imantsu)

A case that was touted at its outset as a test case for ICSID's effectiveness at resolving cases at the lower end of the quantum spectrum has ended after five years, with a tribunal issuing a 351-page award ordering Latvia to pay €3.7 million to a Lithuanian energy company in a dispute over the nationalisation of a heating and hot water supply system.

In the award dated 22 December, a tribunal composed of Swiss arbitrator Paolo Michele Patocchi, English arbitrator Sam Wordsworth QC and Austria's August Reinisch ruled that Latvia had violated the Latvia-Lithuania bilateral investment treaty in its conduct toward Vilnius-based energy company E-Energija.

It awarded the energy company €1.5 million in compensation, plus compound interest calculated at a tapered rate.

The majority of the panel also awarded the company €1.4 million towards the costs of the arbitration and its legal fees.

Reinisch, who was appointed by the chairman of ICSID's administrative council Jim Yong Kim on Latvia's behalf, issued a [dissenting opinion](#) on costs – concluding that as E-energija had only partially succeeded on the

merits, a split costs order with parties bearing their own legal fees would be more appropriate.

E-energija filed the claim in 2012, demanding €7.25 million in damages for the nationalisation of a heating and hot water supply system that it was modernising on behalf of the local authority of Rezekne, in eastern Latvia.

The energy company had entered a 30-year lease agreement with the Rezekne local authority in 2005 to review, upgrade and operate a communal heating system for the city. However, following local elections, the newly elected politicians apparently objected to the privatisation of the service and terminated the lease in 2008, seizing all of the company's assets and investments in the heating network without compensation.

E-energija threatened to file for arbitration against Latvia in a notice of dispute in September 2008. After four years of unsuccessful negotiations, it went on to initiate the ICSID claim, the first Latvia had faced.

Latvia argued that the tribunal lacked jurisdiction over the case as the filing of the claim had not been properly authorised by E-energija board meetings. Minutes of a board meeting suggested they wanted the dispute first to be submitted to mediation.

The tribunal rejected this argument, pointing out that the registration of an ICSID claim is a decision for the secretary general. In any case, it said the request for mediation was contingent on Latvia accepting E-energija's proposal that it release funds invested in the project, which it did not.

The panel rejected suggestions by Latvia that E-energija had waived its right to bring the claim by initiating arbitration four years after it filed the notice of dispute. There is no prescribed time limit in the BIT, it said.

On the merits, the tribunal found that Latvia had breached the BIT including through the seizure of assets but also through the city council's failure to establish a heat supply development plan for the city and provide E-energija with all the information needed for the project.

It ruled that an attachment placed on an E-energija bank account by two companies owned by the city council and the imposition of an ultimatum requiring the company to provide heating for the city within 24 hours during an energy crisis, were "inconsistent with good faith".

The local government's decision to appoint its wholly owned subsidiary Rēzeknes Enerģija as an alternative provider of heating services in the midst

of the crisis was founded on prejudice or preference rather than on reason or fact, it ruled.

A team from Salans originally represented the energy group but partner George Burn and senior associate Alexander Slade took it with them when they moved to Vinson & Elkins in 2013.

Burn has since moved again, [joining](#) Berwin Leighton Paisner as head of international arbitration last September. This time, he left the case behind. He tells GAR that although it took a long time for the award to be rendered, it is a good one for E-energija.

"The tribunal confirmed that this small, entrepreneurial company was badly treated by the relevant municipal authorities in Latvia. The figure of compensation is lower than perhaps it should be, some of the tribunal's determinations being a little uncommercial, but overall this is a positive result," he said.

Burn says it is "very satisfying" to have achieved the successful presentation of an investor-state case with a relatively small damages target on terms that worked for the client and the lawyers alike.

"Without the pragmatism of E-energija and their lawyers, the claim would have been unlitigated. I would not say this would work in all investment cases, many of which will remain expensive to litigate, but for this type of case and this type of client, this decision shows that smaller claims can be litigated without compromising on quality."

Slade, who remains at Vinson & Elkins, says: "The tribunal's decision vindicates E-energija's complaint that the local municipal authorities interfered with its investment in Latvia and deliberately sought to replace the investor with a local entity under the municipality's control."

Latvia still faces three pending claims at ICSID – the most recent of which was [filed](#) by AS Norvik Bank and five of its UK shareholders in December over the government's alleged "unfair, arbitrary, improperly motivated and unreasonable regulatory treatment" of a Riga bank in which Norvik held a majority share.

Ukrainian national Eugene Kazmin, co-owner of Kiev-based KVV Group, continues to [pursue](#) the state over allegations it bankrupted a metallurgical plant, while Norwegian investment company Staur Holding [filed](#) an ICSID claim accusing it of 10 years of inaction in relation to plans to develop Riga airport.

*UAB E energija (Lithuania) v Republic of Latvia* (ICSID Case No. ARB/12/33)

- Paolo Michelle Patocchi (Switzerland) (President)
- Samuel Wordsworth QC (UK) (appointed by E-Energija)

- August Reinisch (Austria) (appointed by the chairman of the administrative council)

Counsel to E-Energija

- Vinson & Elkins

Partners Jim Loftis and George Burn\*with senior associate Alex Slade in London and associate Ciara Ros in Dubai

\*Brought the case with him to Vinson & Elkins, but left for Berwin Leighton Paisner in September 2017

- Sorainen Law Offices

Partner Agris Repss and of counsel Martins Papparinskis in Riga

Counsel to Latvia

- Legal Department, State Chancellery

**Nērika Lizinska, Ilze Dubava and Ivars Mēkons** in Riga