

Excerpts from Recordings of Conversations
between Dr. Jernej Sekolec, Member of the Arbitral Tribunal,
and Ms. Simona Drenik, Agent of the Republic of Slovenia¹

Recording 1 Excerpt (1:20-3:05)

- Jernej Sekolec:** About the division of the Bay, a bigger part, a smaller part, we do not yet have a solution there. At one point, it was mentioned 1/4 to 3/4, but then the President² on more occasions mentioned 2/3, 1/3.
- Simona Drenik:** Yes.
- Jernej Sekolec:** Then, the line which would delimit the territorial sea would run from that point on the base line...
- Simona Drenik:** Yes.
- Jernej Sekolec:** ...of the Bay, where that line... In the worst example, it should not go below 1/3.
- Simona Drenik:** Yes.
- Jernej Sekolec:** From there, the line would run towards the Italian boundary.
- Simona Drenik:** In which direction? In a straight line?
- Jernej Sekolec:** Ahh, that is still, we do not yet have..., it is still open. There are a few, we have a hyperbole, which is not good, because, you know, like a round line.
- Simona Drenik:** No, it is not... It is not pra...
- Jernej Sekolec:** That is not practical, no, we all agreed, it has to be a straight line.
- Simona Drenik:** Yes.
- Jernej Sekolec:** The more to the south it would go, the shorter the corridor would be. The further to the north it would go, the longer it would be.
- Simona Drenik:** Yes, of course, that was also our concept.

¹ Recordings were published by [Newsweek](#) and [Večernji list](#) on 22 July 2015. Excerpts from recordings of conversations were transcribed and translated from Slovenian into English by the Ministry of Foreign and European Affairs of the Republic of Croatia. The language of the recordings is Slovenian with sporadic usage of English, marked accordingly in *italics* in the text.

² Judge Gilbert Guillaume, President of the Arbitral Tribunal.

Recording 1 Excerpt (16:30-26:02)

Simona Drenik: Like Pellet³, Pellet said ‘*Knowing Guillaume*⁴, we will get most of the Piran Bay, we will get the junction, *we will loose on Dragonja, we will lose on Dragonja.*’

Jernej Sekolec: Yes, that is from, he looks at it...

Simona Drenik: He told that to the Minister⁵, too, he told that to the Minister, he told that to everyone, you know, so I prepared our politicians that we are very pessimistic about Dragonja, so they know, but it would a positive *outreach* if we got something.

Jernej Sekolec: Yes, and now, of course, those two also, possibly, are not saying, who, we don’t have a clear majority yet, those two are quiet, but those two are, I mean, I don’t know, we will still discuss it, but when he was saying that, those two were quiet, it was almost...

Simona Drenik: According to me, they already agreed amongst themselves. If you ask me.

Jernej Sekolec: I also think that. And...

Simona Drenik: Because it is about (*inaudible*), as if... (*inaudible*) The three of them, and the two of you. Now the three of them have, according to me, already talked about it, have already agreed to a certain point, now they want to know what you two have to say. Actually, he is presenting you what they have agreed on, and what they still have questions about...

Jernej Sekolec: Yes.

Simona Drenik: That is my opinion, I think.

Jernej Sekolec: When we had *coffee break*, Guillaume came to me and said, between us, in four eyes, ‘*you are pushing very hard, but you know, Croatia...*’ He said, ‘*you got what you needed in the sea.*’

Simona Drenik: That’s true.

Jernej Sekolec: *You should not be pushing so hard.* And now, I mean.

Simona Drenik: Yes.

³ Professor Alain Pellet, Counsel to Slovenia.

⁴ Judge Gilbert Guillaume, President of the Arbitral Tribunal.

⁵ Mr. Karl Erjavec, Minister of Foreign Affairs of the Republic of Slovenia.

- Jernej Sekolec:** He said that. And I, I mean, I will still *push very hard on important issues*.
- Simona Drenik:** You know, just say.
- Jernej Sekolec:** But even here, I will, I have to say. I believe that Lowe⁶ and Simma⁷ can still... I don't have a feeling that they have already reached an agreement. I think, they developed a regime, I mean, I think, with respect to *junction*... With respect to *land*, they still... They still respect the possibility that they do not know all of it yet. For example, I started to explain which weird results the cadastral boundary would cause.
- Simona Drenik:** Yes.
- Jernej Sekolec:** That example of...
- Simona Drenik:** Yes. The problem is that the demarcation later on will be so complicated.
- Jernej Sekolec:** Yes, yes, for example, the train station on the other side of the Sutla. I mean, they were not aware of that, and now this is for them a little, you understand. He said, we have to be careful not to... I said you cannot, that is the Schengen boundary, it will criss-cross, a little bit to one side, a little bit to the other side.
- Simona Drenik:** The infrastructure, the roads, it is impossible.
- Jernej Sekolec:** The roads, the *power lines* and all. That they have to be careful. That is why I would now, I would say, because you and me have to meet anyway, to go through those questions of the cadaster along the Dragonja again, I still think that is an open question.
- Simona Drenik:** The best is if you come and see me once.
- Jernej Sekolec:** So that we have a *workable* and comprehensive overview of *effectivités* along the entire 500-600 kilometres...
- Simona Drenik:** 670.
- Jernej Sekolec:** ...so that I can easily present it to them.
- Simona Drenik:** Do you know what is important, according to me? Perhaps, tell to Guillaume on one occasion, one-on-one, that in a nutshell you are *pushing*, as he said, on the land because it is not unimportant to us because it is *populated*, that in a nutshell, the really important are the four things. Those are the dykes on the Mura, which we built and which

⁶ Professor Vaughan Lowe QC, Member of the Arbitral Tribunal.

⁷ Judge Bruno Simma, Member of the Arbitral Tribunal.

are important for the flooding protection of our area, that Brezovec-del settlement, Drage and the saltpans. Those four and say, conditionally, also the Tomšič plot. That one we could get just according to the law. They were placed in Istria, which means that the right was given to us. If it's in the central part, they would be given to Croatia.

Jernej Sekolec: Yes, yes.

Simona Drenik: Say that Trdinov vrh, you will not complicate.

Jernej Sekolec: Yes, but, OK, I think...

Simona Drenik: Say those things are important, that those four things are important. To minimize, maybe he is afraid that this will complicate things, those four things are important to us, to you, and it seems to me that they are not important to Croatia. We will lose those inhabitants, which will be a catastrophe for the people, and also, let him know that this is it.

Jernej Sekolec: Yes.

Simona Drenik: He understands it. He was a diplomat, and he is subtle to that '*you get what you need*', right?

Jernej Sekolec: Yes, yes. But, in addition...

Simona Drenik: He is right, no?

Jernej Sekolec: Yes, I think, to me it seemed, purely politically in Slovenia, I mean, you have to tell me this...

Simona Drenik: Yes.

Jernej Sekolec: The question that, for example, that on the Kupa and the Sutla, it would not be on the water, in the middle of the river.

Simona Drenik: On the Kupa it is, Croatia retreated there.

Jernej Sekolec: Alright.

Simona Drenik: It runs in the middle.

Jernej Sekolec: Yes, on the Sutla, too.

Simona Drenik: On the Sutla, too, yes.

Jernej Sekolec: There it is still a little zig-zag, right?

Simona Drenik: It is still a little zig-zag. That is complicated.

Jernej Sekolec: That is complicated, and people would not understand that. They, I mean, the inhabitants.

Simona Drenik: For sure.

Jernej Sekolec: Right? We have to find...

Simona Drenik: You know, also...

Jernej Sekolec: I did not get that them to, in principle, conclude, to say '*rivers are the borders*', and then we can go, possibly, left or right, depending on the *effectivités*, or I don't know what else.

Simona Drenik: But, the cadaster. How do you treat the cadaster - as title or as *effectivités*?

Jernej Sekolec: Well, now, I first had the feeling that they, somehow, said the cadaster was the title. I said 'for God sakes, it is not the title, it is historically not the title', I mean, it was not the purpose, it was done in different periods...

Simona Drenik: It is not aligned.

Jernej Sekolec: Different people did it.

Simona Drenik: It is not aligned. Tell them, you can't see how the demarcation will proceed if each comes with their cadaster, and won't be able to agree whose cadaster is valid. It will not be the *definitive solution*.

Jernej Sekolec: Yes, but, for example.

Simona Drenik: You have *gaps*, right? Croatia claims *gaps*, you know.

Jernej Sekolec: *Gaps*, for example. They say – '*gaps*, there we have to find something'. But, there what can you...

Simona Drenik: *Gaps* are where... We did not know how to identify them.

Jernej Sekolec: Yes.

Simona Drenik: You don't know, even we don't know where all the *gaps* are, because all of it was never examined.

Jernej Sekolec: Yes.

Simona Drenik: Croatia nowhere defines where the *gaps* are. It is clear. There may be even more. The entire cadaster was never compared, it were merely the major differences in the cadaster which were compared. Which means that in reality, where the *gaps* are the boundary needs to be determined anew if you take cadaster as an excluded criterion, right? It is a problem.

Jernej Sekolec: Now we are at a point that the cadaster is a sort of *effectivités*.

Simona Drenik: Alright. An important one.

Jernej Sekolec: And, and, we will (*inaudible*) *effectivités* (*inaudible*).

Simona Drenik: Everything together. An important one.

Jernej Sekolec: We will have to go precisely, from sector to sector, but...

Recording 1 Excerpt (31:55-34:27)

- Jernej Sekolec:** OK, you said you could easily prepare those...
- Simona Drenik:** Yes, *effectivités*. I want to know, which way?
- Jernej Sekolec:** Hmm, OK, well, one possibility is... You could do it in two ways. One way is just a list of *effectivités*, if you have some... and that list I would then give to Dirk⁸ so he can include it...
- Simona Drenik:** Yes, I can give you that easily.
- Jernej Sekolec:** But, if you have something textual, for me, that would also be...
- Simona Drenik:** Yes. You know what I meant. If you could come to me. When did you plan to be in Ljubljana?
- Jernej Sekolec:** You know, next week is that conference so I will be in Slovenia. But... So we could easily get together.
- Simona Drenik:** Great.
- Jernej Sekolec:** Already on Tuesday I will be at the conference, and on Wednesday I go back to Vienna. But...
- Simona Drenik:** In the afternoon. In the afternoon.
- Jernej Sekolec:** Yes.
- Simona Drenik:** What about Wednesday morning?
- Jernej Sekolec:** On Wednesday, yes, I will see if I can, perhaps, possibly in the morning I can come to you.
- Simona Drenik:** You know, I could prepare that for you. But, one thing is that it would be good for all those documents that they are sent so that you brought along your computer.
- Jernej Sekolec:** Yes. I have a *file*.
- Simona Drenik:** And then we. And then on your computer we save a *file*, and just transfer the documents, you know, the text. That is just so that afterwards you are recorded as the author of the *file*.
- Jernej Sekolec:** I understand, I understand, yes, yes.
- Simona Drenik:** If not, then it is nobody, or afterwards, someone there could find out that I am the author of the *file*. If I just opened the *file* with the key like

⁸ Dirk Pulkowski, Senior Legal Counsel at the Permanent Court of Arbitration, serving also as the Registrar of the Arbitral Tribunal established between the Republic of Croatia and the Republic of Slovenia.

on my computer, and transfer it to you into a new *file*, for each *effectivité*, we open a new one on your computer and save it, that is the best way, it would be good to do it that way.

Jernej Sekolec: Yes, alright. (...)

Recording 1 Excerpt (37:50-39:45)

- Jernej Sekolec:** It seems to me, if we go into details, according to the cadaster, you can determine the entire boundary, not minding the...
- Simona Drenik:** The cadaster, but neither of the sides... Even Croats did not. You know, we did not provide our part of the cadaster. (*inaudible*) If we are later on asked to provide our cadaster...
- Jernej Sekolec:** I also said that, in fact...
- Simona Drenik:** We, you know, it is not only the cadastral line, but also the entire description.
- Jernej Sekolec:** Would it be, I am interested, is there anything useful in that descriptive part, if I looked at it?
- Simona Drenik:** For the cadaster?
- Jernej Sekolec:** Yes.
- Simona Drenik:** Yes, it is.
- Jernej Sekolec:** If part of the textual part would give me something useful.
- Simona Drenik:** The descriptive part, yes.
- Jernej Sekolec:** You know, so I would say – ‘Dear arbitrators, we have quite incomplete records here, we have this God forsaken Expert Group, you know, from year 1996, but this is incomplete and also problematic...’
- Simona Drenik:** But the Expert Group already at Kot, at Novi Kot, did not take the cadaster into account, they admitted it was not the cadaster, but that it was the demarcation. Even they did not...
- Jernej Sekolec:** But, I would say... ‘You know what’... I don’t think they will be too dogmatic. I will say ‘I went to look at the Slovenian description of the cadaster, I give you the following examples, here, here, here, here.’
- Simona Drenik:** Yes.
- Jernej Sekolec:** If there will be something useful for me therein, I would give that as my own record.
- Simona Drenik:** Yes, I understand. Yes. The hamlets, those four things, the dykes. The dykes, the hamlets.
- Jernej Sekolec:** On the Mura, Brezovec-del, Drage, and saltpans.
- Simona Drenik:** Saltpans, yes.

Recording 1 Excerpt (44:13-47:18)

- Jernej Sekolec:** Now, if you can give me just that list of documents of *effectivités*, whenever you can, so I can then give it to Dirk⁹, to send it to him...
- Simona Drenik:** I would like us to transfer it, to your computer.
- Jernej Sekolec:** Let's do it next week then.
- Simona Drenik:** OK, great.
- Jernej Sekolec:** If it will be needed, if it won't work other way, I cannot tell you now, but perhaps on Wednesday morning, perhaps...
- Simona Drenik:** OK.
- Jernej Sekolec:** Around eight. We can do it, because then I have to go.
- Simona Drenik:** OK.
- Jernej Sekolec:** So we can do it.
- Simona Drenik:** OK, great, fine with me.
- Jernej Sekolec:** Alright. Then we will work on the textual part, which will be in the form of my notes.
- Simona Drenik:** Yes. Yes. Great.
- Jernej Sekolec:** That they are also suitably, neutrally phrased, so to say, diplomatically.
- Simona Drenik:** What about (*inaudible*) ...*summary*.
- Jernej Sekolec:** With respect to the *summary* that Dirk prepared.
- Simona Drenik:** Yes.
- Jernej Sekolec:** Yes, that is to us, that is, they were content, there was duplication, for example, from the transcripts it was repeated what was in the *submissions*, so that needs to be corrected so that it reads more easily, so that there is no duplication.
- Simona Drenik:** Yes.
- Jernej Sekolec:** But in principle...
- Simona Drenik:** Yes, in principle it was alright.
- Jernej Sekolec:** It was useful. That will be, that will be, in part, it was not said...

⁹ Dirk Pulkowski, Registrar of the Permanent Court of Arbitration, serving also as the Registrar of the Arbitral Tribunal.

- Simona Drenik:** Yes. Yes.
- Jernej Sekolec:** That will be part of the future award.
- Simona Drenik:** Yes, I understand. Of the *award*. I think (*inaudible*) really limit to the most important matters. Possibly, I would not give it as a text, but rather as commentary which you could give them *to consider*.
- Jernej Sekolec:** Yes, yes, correct.
- Simona Drenik:** You know, so that it would not look like you want to give them some text, but merely as commentary *to consider this and this*. Just a few things. That with respect to the vital interest seems to me to be the main, the main commentary, others are less important, are OK. You know, but those few things, those are not that important, those seem to be actually, that he did not find the right balance.
- Jernej Sekolec:** Yes, yes, alright.
- Simona Drenik:** That is all. (*inaudible*) At the sea, it was meant that it would be patched, *the language*.

Recording 2 Excerpt (4:10-6:16)

- Jernej Sekolec:** (...) Slovenia in the *Memorial*, in that first *submission*, went for all of it. Cadastral district Sečovlje, including Mlini.
- Simona Drenik:** Yes, yes. All.
- Jernej Sekolec:** Škrile, Škudelin, all.
- Simona Drenik:** Yes.
- Jernej Sekolec:** In that, really, you did not say that it was somewhat doubtful, Škudelin and...
- Simona Drenik:** No, no, not at the beginning, we did that later.
- Jernej Sekolec:** You did that later. And I will press for it really forcefully.
- Simona Drenik:** How about, I am thinking, what if one day you got together with Bruno¹⁰? With Simma.
- Jernej Sekolec:** Listen, I agreed to meet with Bruno for dinner at his home, in any case.
- Simona Drenik:** Aha, great! And, you know, you give him one or two (*murmur*), say, OK, you know 'I looked at this, so you know, I think...' Not that you would give him 500 arguments. But you say 'I think, look at this...' He is not just anybody. Maybe he will then present it, but if you present it, he will look at it, Guillaume I mean. But if Simma says 'Oh, it seems to me, we could look at this again'.
- Jernej Sekolec:** Yes.
- Simona Drenik:** You know (*inaudible*), so for sure, Simma knows best, best understands this.
- Jernej Sekolec:** Yes. I will work on Simma, we have already agreed to have dinner. But, I said, this is about *title*, and if we say let us leave that question, this *typographical error*, Škudelin and all... but the old Austrian cadastral survey.
- Simona Drenik:** Cadastral district of Sečovlje.. Cadastral district of Piran.
- Jernej Sekolec:** Cadastral district of Piran, yes.

¹⁰ Judge Bruno Simma, Member of the Arbitral Tribunal.

Recording 3 Excerpt (0:59-2:00)

Jernej Sekolec: I think that the chances are good that the status, that the status will remain internal waters up to the base line. And that, of course, the division 25:75, or 33...

Simona Drenik: 33:66, yes. I wanted to say that, if it will be so, Vukas¹¹ will very much jump because of that.

Jernej Sekolec: He, he was, he was going crazy. He was...

Simona Drenik: He will even more. I think you have to be very careful, as soon as he speaks (*inaudible*), they are on our side anyway. But, if Vukas will flip out a lot, you can easily say that 'If that would be easier for the Croatian colleague, it would probably also be OK if Slovenia gets 3/4 of the Bay and that they are not internal waters.'

Jernej Sekolec: Aha.

¹¹ Judge Budislav Vukas, Member of the Arbitral Tribunal.