

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd.

v.

Romania

(ICSID Case No. ARB/15/31)

PROCEDURAL ORDER No. 28

Members of the Tribunal

Prof. Pierre Tercier, President of the Tribunal
Prof. Horacio A. Grigera Naón, Arbitrator
Prof. Zachary Douglas QC, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal Yetano

Assistant to the Tribunal

Ms. Maria Athanasiou

18 March 2020

I. PROCEDURE

1. Between 2 and 13 December 2019, a *Hearing* was held at the premises of the ICSID in Washington DC. During the Hearing, the Tribunal and the Parties discussed the question of post-hearing briefs and closing arguments (Tr. 13.12.19, 3417:3-3429:22).
2. Following correspondence between the Parties and the Tribunal, on 10 March 2020, the Tribunal issued *Procedural Order No. 27*, deciding on the list of questions that it invites the Parties to reply (hereinafter “PO 27”).

The Tribunal also decided on the format and sequence of the answers to such questions. Specifically, it decided that Claimants and Respondent shall file their answers by 10 April 2020 and 11 May 2020, respectively. The Tribunal also reserved the possibility of having an additional round of answers to the relevant questions (PO 27, paras 13-14)

3. On 11 March 2020, Claimants sent a letter requesting the Tribunal to move the date for the submission of Claimants’ responses to its questions to one month after the submission of the Parties’ comments on the European Commission’s submission and the supplemental rebuttal document submissions, *i.e.*, to 27 April 2020, and the date for the submission of Respondent’s responses to one month thereafter, *i.e.*, to 27 May 2020.
4. On the same date, Respondent sought leave from the Tribunal to respond to the Claimants’ letter also of the same date.
5. Also on the same date, the Tribunal invited Respondent to submit any comments it may have on Claimants’ letter.
6. On 13 March 2020, Respondent sent a letter objecting to Claimants’ request for an extension of time from 10 April to 27 April 2020 to file their answers to the Tribunal’s questions and to the proposal for a sixteen-day extension of Respondent’s deadline.

Respondent specifically stated that Claimants’ proposal was also unacceptable because “*it creates a fundamental imbalance between the Parties*”. This is because Claimants would have 47 days to prepare their answers, whereas Respondent would only have 30 days. An equal extension of time to Respondent of 47 days, *i.e.*, up to 15 June 2020, would not be appropriate given Respondent’s counsel’s other commitments. Respondent would thus not be in a position to file its answers prior to 22 June 2020.

7. On 15 March 2020, Claimants sent a letter noting that Claimants’ lead counsel, Ms. Smutny, was involved in an accident and, therefore, requesting that: (i) Claimants’ deadline to respond to the Tribunal’s questions in PO 27 be extended to 15 May 2020; (ii) the deadline for the Parties’ comments on the submission by the European Commission be postponed by two weeks from 27 March 2020 to 10 April 2020; and (iii) the Parties’ supplemental rebuttal document submissions also be postponed by two weeks to 10 April 2020.

Because the timeline for Ms. Smutny’s recovery remains uncertain, Claimants reserved the right to seek further accommodation to the procedural schedule as may be needed.

8. Following an invitation from the Tribunal, Respondent sent its comments to Claimants' letter on 17 March 2020. Respondent agreed to Claimants' request to extend the deadlines for the Parties' comments on the submission by the European Commission and the Parties' supplemental rebuttal document submissions, currently set for 27 March 2020, to 10 April 2020.

Respondent maintained its objection to the extension of Claimants' deadline to file their answers to the Tribunal's questions in PO 27. It noted that, if the Tribunal would grant Claimants' requested extension until 15 May 2020, this would require an extension of the Respondent's deadline until 23 July 2020 (thereby granting each of the Parties 66 days to prepare their answers). This extension would interfere with summer holidays and the Respondent's preparation for the September 2020 hearing, and hinder a possible further round of submissions on the questions in advance of that hearing.

Respondent submitted that if the Tribunal is inclined to grant Claimants' request, the extension should be at most until 27 April 2020 (as Claimants previous request) in order to mitigate the disruption to these proceedings. In that case, Respondent's deadline would need to be extended, as previously indicated, until 22 June 2020.

9. Also on 17 March 2020, Claimants sent a message, urging "*the Tribunal to grant the modest extensions as requested in full on the basis of the correspondence already presented by the Parties or to grant leave to Claimants to respond to Respondent's most recent letter*".
10. On the same date, Respondent sent a message noting that it takes issue with Claimants' qualification of their extension as "modest" and that such extension would disrupt the proceedings.
11. Also on the same date, the Tribunal informed the Parties that it considered that it had received all necessary information in relation to Claimants' request and that it would render its decision shortly.

II. THE TRIBUNAL'S CONSIDERATIONS

12. The Tribunal has thoroughly considered the Parties' positions set out in their correspondence described above.
13. *Concerning the dates for filing (i) the Parties' comments on the submission by the European Commission and (ii) the Parties' supplemental rebuttal document submissions*: The Tribunal takes note and accepts the Parties' agreement to extend the deadlines to **10 April 2020** (see above paras 7 and 8).
14. *Concerning the dates for answering to the Tribunal's questions set out in PO 27*:
- The Tribunal appreciates the difficulties that Claimants are facing, in light of the unfortunate event concerning Ms. Smutny and the overlap of the dates for filing their submissions concerning the European Commission Submission and the rebuttal documents set out in PO 27.

- At the same time, it appreciates that Respondent has pre-existing commitments (*i.e.*, two-week hearing on the first half of June 2020) and must not be unnecessarily interrupted in its preparation for the hearing of September 2020.
 - Further, the Tribunal must ensure that both Parties are allocated an equal amount of time to reply to the Tribunal’s questions set out in PO 27.
 - Moreover, in light of its reservation in PO 27 to have an additional round of answers to the relevant questions (PO 27, para. 14), it must ensure that there is sufficient time for such round if the need arises.
15. Accordingly, the Tribunal decides that the dates for answering to the Tribunal’s questions set out in PO 27 are extended as follows:
- (a) Claimants shall file their answers **by 5 May 2020**, *i.e.*, 55 days following the issuance of PO 27.
 - (b) Respondent shall file its answers **by 30 June 2020**, *i.e.*, 55 days following Claimants’ answers.

III. ORDER

1. *Claimants and Respondent shall file their (i) comments on the submission by the European Commission and (ii) supplemental rebuttal documents **by 10 April 2020**.*
2. *Claimants and Respondent shall file their answers to the Tribunal’s questions set out in PO 27 **by 5 May 2020** and **30 June 2020**, respectively.*

On behalf of the Tribunal,

Prof. Pierre Tercier
President of the Tribunal