

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Marco Gavazzi and Stefano Gavazzi v. Romania
(ICSID Case No. ARB/12/25)

PROCEDURAL ORDER NO 10

Prof. Hans van Houtte, President of the Tribunal
Mr. V. V. Veeder, Arbitrator
Mr. Mauro Rubino-Sammartano, Arbitrator

Secretary of the Tribunal
Ms. Martina Polasek

January 17, 2016

I. INTRODUCTION

A pre-hearing organizational meeting was held by telephone conference on Thursday, January 14, 2016, from 11:15 am to 12:05 pm EST. An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties. Participating in the conference were:

On behalf of the Tribunal

Professor Hans van Houtte, President of the Tribunal

ICSID Secretariat:

Ms. Martina Polasek, Secretary of the Tribunal

Ms. Celeste Mowatt, Legal Associate

Participating on behalf of the Claimants:

Professor Giorgio Sacerdoti, Sacerdoti Law

Dr. Anna De Luca, Sacerdoti Law

Participating on behalf of the Respondent:

Dr. Alina Cobuz, Cobuz si Asociatii – Law Firm

Mr. Dan Visoiu, Cobuz si Asociatii – Law Firm

The President of the Tribunal and the parties considered in turn the items listed in the Draft Agenda circulated by the Tribunal Secretary on January 7, 2016, and confirmed in the parties' communications of January 12, 2016.

Item 1: Hearing Schedule and Allocation of Time

1. The parties discussed the order of the hearing, including the amount of time that would be available for opening statements, witness testimony, expert testimony and the joint examination of the experts.
2. Following the parties' comments regarding the allocation of time and the sequence of the hearing, the President of the Tribunal proposed the following order, which was agreed by the parties:
 - i. The hearing will commence on February 1, 2016 at 2:00 pm. Each party will make opening statements of approximately 40 minutes, followed by a ten minute break.

Following the parties' opening statements, the Respondent's witness, Ms. Tataru, will be examined. The scope of the examination of Ms. Tataru is discussed below.

- ii. On February 2, 2016, each party's expert(s) will provide a summary presentation, describing the general approach adopted in their reports.
 - iii. On February 3 and 4, 2016, the experts will be examined jointly. During the conferencing of the experts, the parties and the Members of the Tribunal will have the opportunity to ask questions. The sequence of the questions during the joint examination will follow a list of issues to be prepared in advance of the hearing.
3. The tentative hearing agenda is set out in Annex A.

Item 2: Witness and Expert Examination

a) Examination of the Respondent's Witness

4. The President of the Tribunal noted the issue of the admissibility of the Second Witness Statement of Ms. Tataru, which was addressed in the Claimants' Reply on Quantum of November 23, 2015 (paragraphs 142-150) and letter of January 12, 2016, and in the Respondent's response of January 14, 2016.
5. The President explained the Tribunal's view that the Respondent may present Ms. Tataru as a witness to the extent that her testimony covers matters to be discussed in the second phase of the arbitration, as specified in its Decision on Jurisdiction, Admissibility and Liability of April 21, 2015. Moreover, the Tribunal will attach the weight to that evidence which it deems appropriate.
6. Accordingly, those paragraphs of Ms. Tataru's Second Witness Statement which are relevant to the second phase of the proceeding, as set out in the Decision on Jurisdiction, Admissibility and Liability, will be admitted. The Claimants will submit their position as to which paragraphs are not relevant by Monday, January 18, 2016, and the Respondent will provide its response by Wednesday, January 20, 2016.
7. Ms. Tataru's oral testimony will be limited to those issues that are relevant to the quantum phase and she will be sequestered during the parties' opening statements.

b) Examination of the Parties' Experts

8. With regard to the expert witnesses, the Claimants noted that both Mr. Giovanni Gaspardo and Ms. Alessia Marrocchesi of Deloitte will testify on behalf of the Claimants. Mr. Michael Peer of KPMG will testify on behalf of the Respondent. Two other representatives of KPMG will be in attendance at the hearing, but will not provide oral testimony.
9. The expert witnesses will not be sequestered during the presentation of the other party's expert(s).
10. The order of the expert examination will follow the schedule described above.

Item 3: Hearing Materials

11. The parties did not confirm whether they or their experts will make use of electronic presentations during the hearing. ICSID is making arrangements so that such presentations will be possible.
12. It was agreed that the parties and experts will not rely on new damages figures or new evidence in presentations.
13. The parties will not prepare a joint bundle in advance of the hearing. The Claimants indicated that the core bundle prepared for the merits hearing would include many of the relevant documents for the hearing, and both parties confirmed that they would provide hard copies of any documents not already included in the core bundle as needed.
14. In advance of the hearing, ICSID will provide the Members of the Tribunal with a USB key containing the parties' submissions, including supporting documents.

Item 4: Post-Hearing Briefs and Statements of Costs/Submissions on Costs

15. It was agreed that the question of post-hearing briefs and statements of costs/submissions on costs would be addressed at the end of the hearing on quantum.

Item 5: Main Logistics Items

16. The hearing will be held at the World Bank's offices in Paris. ICSID will communicate directly with the parties regarding hearing set-up and other logistical arrangements.
17. ICSID has made arrangements for real-time transcription of the hearing in English.
18. No interpretation will be required for the parties' experts.
19. Romanian interpretation will be required for the testimony of Ms. Tataru and the Respondent provided comments in that regard. ICSID will be in communication with the parties regarding the interpretation arrangements.

Item 7: Other Items

20. At the end of the organizational meeting, it was confirmed that the parties had no other items to raise and that ICSID would circulate summary minutes of the meeting.

II. DECISION

21. As described above, it has been decided that the testimony of Ms. Tataru is admissible to the extent that her testimony covers matters to be discussed in the second phase of the arbitration,

as specified in the Tribunal's Decision on Jurisdiction, Admissibility and Liability of April 21, 2015.

22. As confirmed by the parties during the meeting:
 - i. The Claimants will submit a document which provides their position regarding the relevancy of the paragraphs of the Second Witness Statement of Ms. Tataru by Monday, January 18, 2016; and
 - ii. The Respondent will provide its response by Wednesday, January 20, 2016.
23. In the event the parties do not reach an agreement on the paragraphs of the Second Witness Statement of Ms. Tataru which may be admitted, the Tribunal will decide the issue in advance of the hearing.
24. For the purpose of the joint examination of the quantum experts, the parties will jointly prepare a preliminary list of issues on which the quantum experts do not agree by Monday, January 25, 2016.

On behalf of the Tribunal

[signed]

Prof. Hans van Houtte,
President of the Tribunal

ANNEX A – Tentative Hearing Agenda

MONDAY, FEBRUARY 1, 2016

AFTERNOON	
2:00 pm – 2:10 pm	Housekeeping
2:10 pm – 2:50 pm	Claimants' Opening Statement
2:50 pm – 3:00 pm	<i>BREAK</i>
3:00 pm – 3:40 pm	Respondent's Opening Statement
3:40 pm – 3:50 pm	<i>BREAK</i>
3:50 pm – 6:00 pm	Testimony of Ms. Tataru (Interpretation Required)

TUESDAY, FEBRUARY 2, 2016*

MORNING	
9:00 am – 9:15 am	Housekeeping
9:15 am – 12:15 pm	Reserved for the Presentation of the Claimants' Expert(s)
AFTERNOON	
12:15 pm – 1:30 pm	LUNCH
1:30 pm – 4:30 pm	Reserved for the Presentation of Respondent's Expert

WEDNESDAY, FEBRUARY 3, 2016 & THURSDAY, FEBRUARY 4, 2016*

MORNING	
9:00 am – 9:15 am	Housekeeping
9:15 am – 12:30 pm	Joint Examination of the Experts
AFTERNOON	
12:30 pm – 1:45 pm	LUNCH
1:45 pm – 5:00 pm	Joint Examination of the Experts

* The Tribunal will fit in coffee breaks when it finds convenient.