

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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

PROCEDURAL ORDER NO 11

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

April 12, 2016

1. The Tribunal has considered the Parties' correspondence concerning document inconsistencies and transcript revisions, submitted further to the ICSID Secretariat's letter of February 18, 2016.

Document Inconsistencies Raised by the Claimants

2. Further to the Claimants' comments made during the first day of the hearing on quantum (see Draft Transcript, February 1, 2016, p. 128), the Claimants have raised two concerns regarding documents filed by the Respondent.

Authenticity of Exhibits R-158 and R-177

3. In their correspondence of February 24, 2016, the Claimants challenged the authenticity of Respondent's exhibits R-158 and R-177. The Claimants argued that the two documents, which purport to be letters sent by the Claimants in 2002, were not written by the Gavazzi brothers.
4. The Respondent responded to the Claimants' letter on February 29, 2016, and argued *inter alia* that: (i) the Claimants' comments challenging the authenticity of the documents were not within the scope of the comments invited by the Tribunal; (ii) the documents were submitted on October 14, 2015 by the Respondent, and should have been challenged by the Claimants at an earlier point in time; and (iii) the exclusion of this evidence at this point in the proceedings would be a violation of the Respondent's due process rights.
5. By email of March 8, 2016, the Claimants stated that "the two documents are irrelevant to quantum" and noted that the oral testimony previously given by the Messrs. Gavazzi contradicts the contents of exhibits R-158 and R-177 and further supports the position that the documents are not authentic.
6. By letter of March 9, 2016, the Respondent challenged the suggestion that the documents were not relevant to *quantum* and stated that the documents could not have been submitted during the liability phase because the documents have "no probative value as to whether or not" the BIT was breached.
7. The Tribunal notes the parties' respective positions regarding exhibits R-158 and R-177. Given the Claimants' late objection to the documents, the Tribunal does not exclude the evidence, but it will consider the disputed authenticity of the evidence when evaluating its probative value.

The Translation of Exhibit R-178

8. On February 24, 2016, the Claimants stated that the translation of exhibit R-178 is incorrect. This concern was also raised during the first day of the hearing. The Respondent has not made any comments as to the accuracy of the translation.
9. The Tribunal notes that it appears from the face of the document that the English translation is not an accurate reflection of the original document. The Respondent is invited to file a corrected translation by April 19, 2016, and the Claimants may comment on the translation by April 26,

2016. If there is any further issue concerning this exhibit following the Claimants' comments, the Parties may revert to the Tribunal.

Document Inconsistencies Raised by the Respondent

10. As initially raised during the first day of the hearing on quantum, the Respondent has indicated in its correspondence of February 29, 2016 and March 4, 2016 that certain of the electronic versions of documents that it received (C-46 – C-58) were misnumbered.
11. The Tribunal understands that, as the Respondent is now in possession of the correctly numbered electronic version of these exhibits, no further decision is required from the Tribunal. The Tribunal further understands that the hard copy of the exhibits that the Respondent received when the exhibits were initially filed was correctly numbered.

Revisions to the Hearing Transcript

12. During the hearing on *quantum*, the Tribunal ruled that certain information contained in the presentations of the *quantum* experts would not be admitted in accordance with paragraph 12 of Procedural Order No. 10, which states that “the parties and experts will not rely on new damages figures or new evidence in presentations” made during the hearing.
13. As discussed during the hearing, the Parties were invited to agree on revisions to the Transcript in order to remove references to the information which had been declared inadmissible by the Tribunal.
14. On February 29, 2016 the Respondent submitted proposed revisions to the Transcript.
15. On March 3, 2016, the Claimants objected to certain of these revisions (proposed deletions) at the following portions of the Transcript:
 - i. Monday, February 1, 2016, p. 151, line 13, and line 16
 - ii. Monday, February 1, 2016, p. 154, line 12
 - iii. Monday, February 1, 2016, p. 155, line 25, and p. 156, line 1
 - iv. Tuesday, February 2, 2016, p. 79, lines 19-22, and p. 80, lines 2, and 5-6
 - v. Tuesday, February 2, 2016, p. 82, lines 1-2, lines 10, 12, and 22
 - vi. Tuesday, February 2, 2016, p. 96, line 16

The Claimants provided references to the portion of their submissions which indicated that the relevant information had been included in the Deloitte reports and therefore were not new figures.

16. The Parties provided further comments on the challenged revisions on March 7 and March 8, 2016.
17. The Tribunal has considered the Parties' comments and decides that the Respondent's proposed revisions to the Transcript shall be accepted with the exception of the deletions to the portions

in the Transcript listed at paragraph 15 above, on the basis that the information was included in the Claimants' expert reports and does not involve "new figures."

Order

Having regard to the above, the Tribunal decides as follows:

18. Exhibits R-158 and R-177 shall remain in the evidential record, but the Tribunal will consider the disputed authenticity of the evidence when evaluating its probative value.
19. The Respondent is invited to file a corrected translation of exhibit R-178 by April 19, 2016, and the Claimants may comment on the translation by April 26, 2016. If there is any further issue concerning this exhibit following the Claimants' comments, the Parties may revert to the Tribunal.
20. The Tribunal adopts all of the Respondent's proposed revisions to the Transcript of the hearing with the exception of the proposed deletions in the Transcript:
 - i. Monday, February 1, 2016, p. 151, line 13, and line 16
 - ii. Monday, February 1, 2016, p. 154, line 12
 - iii. Monday, February 1, 2016, p. 155, line 25, and p. 156, line 1
 - iv. Tuesday, February 2, 2016, p. 79, lines 19-22, and p. 80, lines 2, and 5-6
 - v. Tuesday, February 2, 2016, p. 82, lines 1-2, lines 10, 12, and 22
 - vi. Tuesday, February 2, 2016, p. 96, line 16

On behalf of the Tribunal

[signed]

Prof. Hans van Houtte,
President of the Tribunal