

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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

PROCEDURAL ORDER NO 12

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 22, 2016

1. On April 12, 2016, the Tribunal issued Procedural Order No. 11, which contained the Tribunal's decisions on document inconsistencies raised by the Parties further to the letter of February 18, 2016 from the ICSID Secretariat, as well as the Tribunal's decisions on disputed revisions to the Transcripts of the February 2016 hearing on *quantum*.
2. With regard to exhibits R-158 and R-177, the authenticity of which the Claimants had challenged on February 24, 2016, the Tribunal ordered that the exhibits would remain in the evidential record, given the Claimants' late objection to the documents, but that the Tribunal would consider the disputed authenticity of the documents when evaluating their probative value.
3. On April 15, 2016, the Respondent requested that the Tribunal make arrangements for a graphological examination of exhibits R-158 and R-177 in order to address the disputed authenticity of the two documents. The Respondent maintained its position expressed in its previous correspondence of February 29, 2016 and March 9, 2016 regarding exhibits R-158 and R-177 and reserved the right to address its position in its post-hearing brief, which is scheduled to be filed by May 9, 2016.
4. On April 18, 2016, the Claimants commented on the Respondent's request and expressed the view that the decision of the Tribunal regarding exhibits R-158 and R-177 in Procedural Order No. 11 "does not need amendment." The Claimants stated their position that the documents are irrelevant to the *quantum* phase and that a forensic examination of the documents by a graphological expert may not produce any conclusive results and would result in an unjustified delay of the proceedings.
5. On April 18, 2016, the Respondent commented on the Claimants' correspondence of the same date. The Respondent stated that it maintains its position with regard to exhibits R-158 and R-177, noting that the exhibits were submitted in a timely manner and are relevant for purposes of the *quantum* phase. The Respondent also stated that the forensic examination of the documents could be carried out simultaneously with the Parties' post-hearing briefs.
6. On April 21, 2016, the Claimants reiterated their view that an examination of the documents would likely not result in any conclusive findings given that the documents available for review are not original copies. The Claimants noted, *inter alia*, that they raised their concern regarding the authenticity of the documents during the first day of the February 2016 hearing on *quantum*, that they had previously objected to the admission of the documents in 2014 when the Respondent attempted to submit the documents in the evidential record, and that the Claimants objected to the admissibility of the second witness statement of Ms. Tataru which referenced the two documents in question.

7. On April 22, 2016, the Respondent replied to the Claimants' correspondence of April 21, 2016. The Respondent stated that the Claimants' concern with regard to the authenticity of the two documents was not specifically raised during the February 2016 hearing on *quantum*, and reiterated its view that the documents are relevant to the *quantum* phase, noting in particular that Exhibit R-158 indicates that it sent from Erba, Italy. The Respondent maintained its view that the requested examination would not result in a delay to the proceedings and noted that the Claimants had already requested an extension of the deadline for the filing of the post-hearing briefs.
8. As noted in Procedural Order No. 11, the Claimants have challenged the authenticity of these particular documents at a late stage in the proceedings. The Parties' recent submission have not raised any new issues which would require the Tribunal to revisit its decision in Procedural Order No. 11.
9. Given the time and cost associated with a graphological expert, and the prospect that an examination of the photocopied documents may not provide any dispositive results, the Tribunal decides by a majority that an examination of the documents will not be ordered at this time. The Tribunal reserves the right to examine the authenticity of the documents at an appropriate time.
10. Arbitrator Mauro Rubino-Sammartano does not join the majority in this decision and his reasons will be provided to the Parties by separate document.
11. The Tribunal notes the Parties' disagreement concerning the relevance of the two documents and has not yet taken a position as to the relevance of the documents.

Order

12. By a majority, the Tribunal confirms its decision set out in Procedural Order No. 11 with regard to exhibits R-158 and R-177.

On behalf of the Tribunal

[signed]

Prof. Hans van Houtte,
President of the Tribunal