

GIOVANNA A BECCARA AND OTHERS

Claimants

v.

THE ARGENTINE REPUBLIC

Respondent

ICSID Case No. ARB/07/05

Procedural Order No. 2

Rendered by an Arbitral Tribunal composed of:

Professor Pierre Tercier, President

Professor Albert Jan van den Berg, Arbitrator

Professor Georges Abi-Saab, Arbitrator

Secretary of the Arbitral Tribunal

Mr. Gonzalo Flores

Date: December 1, 2009

The Tribunal and counsel for the parties held a procedural telephone conference on 14 October 2009. During the telephone conference, the parties presented their respective positions on the items included in the provisional agenda circulated by the Secretary of the Tribunal on 13 October 2009.

At the conclusion of the telephone conference, three procedural matters were left open for decision by the Tribunal:

- (A) *Whether or not to allow direct and cross-examination of the handwriting experts during the hearing;*
- (B) *Whether or not to allow direct examination of Professors Richard A. Nagareda and Antonio Briguglio;*
- (C) *Dates for the hearing on jurisdiction and admissibility.*

(A) Whether or not to allow direct and cross-examination of the handwriting experts during the hearing.

a. By letters from the Secretary of the Tribunal of 2 and 3 June 2009, the parties were informed that: “The Tribunal [by majority of its members] decide[d] that at the forthcoming Hearing the handwriting experts Inspector Susana Eugenia Toscano, Subinspector Lucio Hernán Lionel Pereyra, Hector J. Petersen and Hector J. Petersen (h), Prof. Mario Franco, Mrs. Cristiana Franco and Prof. Alberto Bravo will not be heard as witnesses as their testimony deals with the individual position of specific Claimants and is therefore not relevant for the 11 issues to be addressed during the jurisdictional first phase”;

b. By letter dated 8 June 2009, the Respondent requested the Tribunal to reconsider its decision on the examination of the handwriting experts. The Respondent further elaborated on its position by letters of 24 June, 16 September and 23 October 2009;

c. By letters of 9 June, 16 and 23 September and 2 November 2009, counsel for the Claimants objected to the Respondent's request for reconsideration, arguing that the testimony of the handwriting experts focuses on individual Claimants issues, thus falling outside the scope of the current jurisdictional phase as defined in the Tribunal's letter of 9 May 2008, together with the "List of issues to be addressed during the jurisdictional first phase of the proceedings" of the same date.

Having carefully examined the parties' arguments on this matter and after due deliberation, the Tribunal hereby decides:

- a. **To admit** the direct examination of the Respondent's handwriting experts Messrs. Petersen and Petersen and police officers Toscano and Pereyra, **with the following restriction:** the Respondent shall limit its cross-examination to one of the expert report's co-authors of its choice;
- b. **To admit** the cross-examination by the Respondent of the Claimants' handwriting experts Professor Mario Franco and Mrs. Cristiana Franco or Professor Alberto Bravo, **with the following restriction:** the Respondent shall limit its cross-examination to one of these three experts of its choice;
- c. **To admit** the direct examination by the Claimants of their data expert Mr. Brent Kaczmarek, **with the following restriction:** the Claimants shall limit their examination to specific issues raised during the cross-examination by the Respondent of the Claimants' experts, and not yet contained in Mr. Kaczmarek's expert report.

In reaching this decision, the Tribunal has given great consideration to ensuring that both parties will have a full opportunity to present their respective cases. The Tribunal wishes to emphasize, nonetheless, the exceptional nature of its reconsideration of the Tribunal's previous decision.

(B) Whether or not to allow direct examination of Professors Richard A. Nagareda and Antonio Briguglio.

a. The Tribunal, by order of 21 May 2009, decided as follows: “4.1 [...] there will be no direct examination of witnesses or experts. The Respondent may, however, designate witnesses or experts whose statements have already been filed, and examine such persons limited, however, to any new factual or legal issue raised in the Claimants’ Rejoinder. If the Respondent wants to use this possibility, it shall by 3 June 2009 identify the specific issues to be addressed during such direct examination and summarize the substance of the testimony;”

b. By letter of 3 June 2009, the Respondent informed the Tribunal of its desire to conduct direct examination of Professors Richard A. Nagareda and Antonio Briguglio during the hearing, indicating the issues to be addressed during such examination. The Respondent further elaborated on this point by letters of 16 September and 23 October 2009;

c. By letters of 7 June, 16, 17 and 23 September, and 2 November, counsel for the Claimants objected to the Respondent’s request, indicating that the proposed direct examination exceeded the narrow bounds set forth by the Tribunal on 21 May 2009. Counsel for the Claimants requested, in the event the Tribunal decided to admit the direct examination of Professors Nagareda and Briguglio, leave to call Professor Nicola Picardi, Claimants’ expert in Italian law, for rebuttal testimony (Claimants’ letters of 16 and 23 September and 2 November 2009).

Having carefully examined the parties’ arguments on this matter and after due deliberation, the Tribunal hereby decides:

a. **To admit** the direct examination of the Respondent’s legal experts, Professors Nagareda and Briguglio, **with the following restriction:** the Respondent shall limit its direct examination to new factual or legal issues raised in the Claimants’ Rejoinder (as decided by the Tribunal on 21 May 2009);

b. To admit the direct examination by the Claimants of their legal expert, Professor Nicola Picardi, for rebuttal testimony, **with the following restriction:** the Claimants shall limit their examination to new factual or legal issues raised in the examination of Professors Nagareda and Briguglio.

(C) Dates for the hearing on jurisdiction and admissibility.

The Tribunal has considered the parties' respective positions and availability for a hearing on jurisdiction and admissibility. After due deliberation, the Tribunal has decided to fix the following dates for the hearing on jurisdiction and admissibility: Wednesday, 7 April through Tuesday 13 April 2010 (excluding Sunday 11 April 2010 and leaving Wednesday 14 April 2010 as a day of reserve). The parties are instructed to prepare accordingly.

Finally, the Tribunal wishes to stress that unless specifically and expressly otherwise provided in this Order, all decisions previously taken by the Tribunal in its former constitution remain in force.

On behalf of the Arbitral Tribunal

[signed]

Pierre Tercier,
President