

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
WASHINGTON, D.C.

In the arbitration proceeding between

MARCO GAVAZZI AND STEFANO GAVAZZI

Claimants

and

ROMANIA

Respondent

ICSID Case No. ARB/12/25

DISSENTING OPINION ON PROCEDURAL ORDER NO. 12

Members of the Tribunal

Hans van Houtte, President

V.V. Veeder, Arbitrator

Mauro Rubino-Sammartano, Arbitrator

Secretary of the Tribunal

Ms. Martina Polasek

DISSENTING OPINION

of

Arbitrator Mauro Rubino-Sammartano

Summary of the proceedings

1. These proceedings were introduced by a Request for Arbitration filed by the Claimants with ICSID on 23 July 2012.
2. The above Arbitral Tribunal was constituted.
3. The parties have exchanged pleadings.
4. The Claimants have recently challenged the authenticity of two documents filed by the Respondent as Exhibits R-158 and R-177.
5. The Respondent has requested that the Tribunal make arrangements for a graphological examination of such exhibits in order to establish their authenticity.
6. The Claimants have opposed such a request, arguing that the documents are irrelevant.
7. On April 12, 2016, the Tribunal issued Procedural Order no. 11, which has ruled that the exhibits remain in the evidential record and that the Tribunal would consider the disputed authenticity of the documents when evaluating their probative value.
8. On April 15, 2016, the Respondent insisted that the documents are relevant for the purposes of the *quantum* phase and requested that the Tribunal make arrangements for a graphological examination in order to establish whether the disputed documents are authentic.
9. The Tribunal has discussed this matter and on April 22, 2016 issued, by majority, Procedural Order no. 12.
10. I confirm herewith the reasons which I have expressed during such discussion and confirm my dissent on such Order.

Reasons of the dissent

11. The two documents in issue are, in my view, relevant since they may help to identify the value given by the Claimants to their investment through their proposal to AVAS to settle all their disputes by terminating the investment agreement.
12. In my opinion, the request by a party to establish the authenticity of a relevant challenged document is a right of that party which may not be refused.

13. Furthermore, to me it is important that the Tribunal establishes whether forged documents have been produced or whether they have wrongly been described as forged.
14. In my opinion, the Tribunal should appoint now its graphological expert, establish the documents to be produced by the parties, including the originals of the two exhibits in issue and a new specimen of the challenged signature - to be signed in front of that expert - while the parties may appoint their own experts. Proceeding to this after the filing of the last pleadings of the parties would take time and cause costs which in this way may be avoided.

Milan Chambers, 27 April 2016

[signed]

Mauro Rubino-Sammartano