

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Pawlowski AG and Project Sever s.r.o.
Applicants

v.

Czech Republic
Respondent

(ICSID Case No. ARB/17/11)
Annulment Proceeding

PROCEDURAL ORDER NO. 1

Members of the ad hoc Committee

Prof. Dr. Jacomijn J. van Haersolte-van Hof, President of the *ad hoc* Committee
Ms. Yoshimi Ohara, Member of the *ad hoc* Committee
Mr. David A. Pawlak, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Mr. Alex B. Kaplan

August 1, 2022

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Introduction

The first session of the *ad hoc* Committee (the “Committee”) was held on July 19, 2022, at 7 a.m. Washington, DC time, using the Zoom platform. The session was adjourned at 8 a.m. Washington, DC time.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Committee and the parties.

Participating in the session were:

Members of the Committee:

Prof. Dr. Jacomijn J. van Haersolte-van Hof, President of the Committee

Ms. Yoshimi Ohara, Member of the Committee

Mr. David A. Pawlak, Member of the Committee

ICSID Secretariat:

Mr. Alex B. Kaplan, Secretary of the Committee

Participating on behalf of Pawlowski AG and Project Sever s.r.o. (Applicants on Annulment):

JUDr. Vojtěch Haman, Havlicek Law Offices

JUDr. Tomáš Mach, MACH LEGAL

JUDr. Filip Černý, advokát

Participating on behalf of the Czech Republic (Respondent on Annulment):

Mr. Jaroslav Kudrna, Ministry of Finance of the Czech Republic

Mr. Martin Nováček, Ministry of Finance of the Czech Republic

Mr. Eduardo Silva Romero, Dechert

Ms. Erica Stein, Dechert

Ms. Audrey Caminades, Dechert

The Committee and the parties considered the following:

- The Draft Procedural Order circulated by the Secretary of the Committee on June 19, 2022; and
- The parties’ comments on the Draft Procedural Order received on July 15, 2022, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Having considered the above documents and the parties' views, the Committee now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19, 20 and 53, this Procedural Order sets out the Procedural Rules that govern this annulment proceeding. A timetable is attached as **Annex C**.

1. Applicable Arbitration Rules

Convention Article 44 and Arbitration Rule 53

1.1. This proceeding is conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006. In accordance with Arbitration Rule 53, the Arbitration Rules apply, *mutatis mutandis*, to annulment proceedings.

2. Constitution of the Committee and Committee Members' Declarations

Convention Article 52(3); Arbitration Rules 6 and 52

2.1. The Committee was constituted on May 23, 2022 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Committee was properly constituted and that no party has any objection to the appointment of any Member of the Committee.

2.2. The Members of the Committee timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on May 23, 2022. On June 3, 2022, Prof. Dr. Jacomijn J. van Haersolte-van Hof, President of the Committee, signed, for the sake of good order, a corrected declaration, as the prior one mistakenly referred to the "Tribunal" instead of the "Committee". It was distributed to the parties on June 6, 2022.

2.3. The Members of the Committee confirmed that they have sufficient availability to dedicate to this case.

3. Fees and Expenses of Committee Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

3.1. The fees and expenses of each Committee Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and

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Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

- 3.2. Under the current Schedule of Fees, each Member of the Committee receives:
 - 3.2.1. US\$500 per hour of work performed in connection with the proceedings; and
 - 3.2.2. US\$900 as a *per diem* for each day spent away from their city of residence while traveling in connection with a proceeding when overnight lodging is required. This covers all personal expenses, including lodging, tax on lodging, service charges, meals, gratuities, in-city transportation, laundry, personal communications and internet;
 - 3.2.3. US\$250 for each hour of travel and a *per diem* allowance of US\$200 for travel to and from a hearing on a day when lodging is not required. For work performed during travel, Members may charge the hourly rate for work (US\$500) in lieu of the hourly rate for travel. For day trips not requiring overnight lodging, Members are also entitled to a *per diem* of US\$200; and
 - 3.2.4. reimbursement for the costs of air and ground transportation to and from the city where the hearing, session or meeting is held.
- 3.3. Each Committee Member shall submit his/her detailed claims for fees and expenses to the ICSID Secretariat on a quarterly basis or more frequently. Claims for work performed must be declared in a detailed, itemized format and appended to the Claim for Fees and Expenses form.
- 3.4. Non-refundable expenses incurred due to postponement or cancellation of a hearing shall be reimbursed, *e.g.*, the lesser of (a) actual non-refundable cost or (b) \$900 *per diem*.

4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)

- 4.1. The presence of all Members of the Committee constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Rulings of the Committee
Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Committee shall be taken by a majority of the Members of the Committee.

- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Committee.
- 5.3. The Committee will draft and issue all rulings, including its final decision, within a reasonable time. If a ruling has not been issued within three months after the final submission on a particular matter, the Committee will provide the parties with status updates every three months.
- 5.4. The President is authorized to sign Procedural Orders on behalf of the Committee.
- 5.5. The Committee's rulings on procedural matters may be communicated to the parties by the Committee Secretary electronically by letter or email.
- 5.6. Any ruling of the Committee, including the certified copy of the decision on annulment, will be dispatched electronically to the parties.

6. Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Committee. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Committee.

7. Secretary of the Committee

Administrative and Financial Regulation 28

- 7.1. The Secretary of the Committee is Mr. Alex B. Kaplan, Legal Counsel, ICSID, or such other person as ICSID may notify the Committee and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mr. Alex B. Kaplan
ICSID

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MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 522-5142
Email: akaplan@worldbank.org
Paralegal name: Ms. Phoebe Ngan
Paralegal email: sngan@worldbank.org

7.3. For local messenger deliveries, the contact details are:

Mr. Alex B. Kaplan
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor - MSN C300
Washington, D.C. 20036
U.S.A.
Tel.: +1 (202) 458-1534

8. Representation of the Parties
Arbitration Rule 18

8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Committee and the Committee Secretary promptly of such designation.

For Pawlowski AG and Project Sever

s.r.o.

JUDr. Jan Havlíček, Ph.D.
Mgr. Vojtěch Haman
Mgr. Michal Musil
Mgr. Kateřina Remsová, Ph.D.
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8.2. Pawlowski AG and Project Sever s.r.o. will be designated as the Applicants and the Czech Republic will be designated as the Respondent, as in the original arbitration proceeding.

9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 28

- 9.1. In accordance with Administrative and Financial Regulation 15(5), now applicable to this proceeding since July 1, 2022, the Applicants, in this case Pawlowski AG and Project Sever s.r.o., shall be solely responsible for making the advance payments requested by the ICSID Secretariat to cover the direct costs of the proceeding, without prejudice to the final decision of the Committee as to the allocation of costs.
- 9.2. By letter of May 24, 2022, ICSID requested the Applicants to make an advance payment of US\$200,000 to cover the initial costs of the proceeding. ICSID received the Applicants' payment on July 11, 2022.
- 9.3. ICSID shall request further advances from the Applicants as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding

Convention Articles 62 and 63; Arbitration Rule 13(3)

- 10.1. Paris (France) shall be the place of the proceeding at a venue to be confirmed.
- 10.2. The Committee may hold in-person hearings at any other place that it considers appropriate if the parties so agree. In the event an in-person hearing is not practical, for example due to developments with the COVID-19 pandemic, the parties and Committee shall discuss the possibility of holding the hearing virtually. Following those discussions, the Committee may order that the hearing take place virtually.
- 10.3. The Committee Members may deliberate at any place and by any appropriate means they consider convenient.

11. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 11.1. English is the procedural language of this annulment proceeding.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.
- 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Committee may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.4. Translations need not be certified unless there is a dispute as to the content of the translation provided and the party disputing the translation specifically requests a certified version.

12. Routing of Communications

- 12.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Committee Secretary, and the Committee.
- 12.2. Electronic versions of communications ordered by the Committee to be filed simultaneously shall be transmitted to the Committee Secretary only, who shall send them to the opposing party and the Committee.
- 12.3. The Committee Secretary shall not be copied on communications between the parties when such communications are not intended to be transmitted to the Committee.

12.4. The email addresses of the Members of the Committee are:

Prof. Dr. Jacomijn J.
van Haersolte-van Hof
Email:

[REDACTED]

Ms. Yoshimi Ohara
Email:

[REDACTED]

Mr. David A. Pawlak
Email:

[REDACTED]

13. Number of Copies and Method of Filing of Parties' Pleadings
Arbitration Rules 20(1)(d) and 23

13.1. By the relevant filing date, the parties shall:

13.1.1. submit an electronic version of the pleading, and an updated index of all supporting documentation by email to the Committee Secretary and the opposing party.¹

13.2. Within 5 business days of the electronic filing, the parties shall:

13.2.1. upload the pleading with all supporting documentation and updated hyperlinked² index to the file sharing platform created by ICSID for purposes of this case.

13.3. Electronic versions of pleadings, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).

13.4. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the party has submitted up to the date of the pleading in this proceeding. The index shall be text searchable (i.e., OCR PDF or Word) and shall indicate the date of the document, the document number and identify the pleading with which it was submitted. The index should also set out the numbering of the document assigned for purposes of the annulment proceeding and the original numbering assigned in the original underlying arbitration proceeding following the numbering and naming conventions contained in **Annexes A and B**.

13.5. At the conclusion of the written phase of the proceeding, on a date to be determined by the Committee or at any other time determined by the Committee or the ICSID Secretariat, the parties shall upload to BOX and courier to the ICSID Secretariat at the address indicated at §§7.2 and 7.3 above and to each Member of the Committee at the addresses indicated at §13.6 below a USB drive (for Prof. Dr. van Haersolte-

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² The parties may consider uploading a hyperlinked index in .zip file format to the platform to preserve the hyperlinks.

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van Hof and Mr. David Pawlak Mac compatible) containing an electronic copy of the entire case file (including pleadings, exhibits, legal authorities and Committee decisions and orders to date) with a consolidated hyperlinked index of all documents.

13.6. The addresses of the Committee Members are as follows:

Dr. Jacomijn J. van
Haersolte-van Hof

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

Ms. Yoshimi Ohara
Nagashima Ohno &
Tsunematsu

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. David A. Pawlak

[REDACTED]
[REDACTED]

(Prior to any mailings, please confirm with the Centre the best address to be used.)

13.7. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Secretary of the Committee by email.

13.8. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

14.1. The procedural calendar is attached hereto as Annex C and forms part of this Order.

15. Submission of Documents

Convention Article 44; Arbitration Rule 24

15.1. The Memorial and Counter-Memorial shall be accompanied by the supporting documents relied upon by the parties, including exhibits and legal authorities. Further supporting documents relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.

15.2. Neither party shall be permitted to submit additional or responsive documents after the filing of its last written submission, unless the Committee determines that special circumstances exist based on a reasoned written request followed by observations from the other party.

15.3. Given the nature of an annulment proceeding, the Committee expects that the parties will refer primarily to the evidentiary record from the arbitration proceeding and it does not expect to receive new evidence.

- 15.4. Therefore, without prejudice to each party's right to submit new legal authorities pertaining to the scope of the annulment, no new evidence or legal authority shall be admitted in this proceeding, unless the Committee determines that special circumstances exist based on a reasoned written request followed by observations from the other party.
- 15.5. All documents shall be submitted in the manner and form set forth in §13.
- 15.6. Any documents introduced as exhibits or legal authorities in the annulment proceeding shall be labelled with new numbers for this annulment proceeding, and organized in a clear order:
- 15.6.1. Exhibits and legal authorities already included in the evidentiary record of the underlying arbitration proceeding, as well as any new exhibits and legal authorities admitted in accordance with the procedure set out at §15.4, shall be numbered consecutively throughout the entire annulment proceeding.
- 15.6.2. Accordingly, the Applicants' exhibits shall be submitted in PDF format using the following numbering "A-0001" and the Applicants' legal authorities shall be submitted in PDF format using the following numbering "ALA-0001". The Respondent's exhibits shall be submitted in PDF format using the following numbering "RA-0001" and legal authorities shall be submitted in PDF format using the following numbering "RLA-0001". They also shall clearly indicate on the first page of the document the number which it bore in the original arbitration proceeding (if any).
- 15.6.3. Any witness statements or expert reports from the underlying arbitration proceeding which are submitted in the annulment proceeding shall be labelled according to the naming convention contained in **Annex A**.
- 15.6.4. Each exhibit shall indicate its exhibit identification number.
- 15.6.5. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 15.7. The parties shall number the paragraphs of their written pleadings consecutively.
- 15.8. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Committee will determine whether authentication is necessary.
- 15.9. The parties shall file all documents only once by submitting them with their pleadings.

15.10. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they do not contain new evidence. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and, if requested, hard copy format to the other party, the Committee Members, the Secretary, the court reporter(s) and interpreter(s) prior to their use at the hearing at a time to be decided at the pre-hearing organizational meeting.

16. Pre-Hearing Organizational Meetings

Arbitration Rule 13

16.1. A pre-hearing organizational meeting shall be held at a date determined by the Committee after consultation with the parties. It should take place no later than three weeks prior to the hearing. It shall comprise a videoconference between the Committee, or its President, and the parties and should address any outstanding procedural, administrative or logistical matter (including modality of transcription) in preparation for the hearing.

16.2. At a date to be determined by the Committee, and in any event no later than the date of the pre-hearing conference, the parties shall submit to the Committee jointly — or, where they are unable to agree, separately—a proposal regarding a daily schedule for the hearing.

17. Hearings

Arbitration Rules 20(1)(e) and 32

17.1. The oral procedure shall consist of oral arguments.

17.2. The hearing may be held in-person or by any other means of communication as determined by the Committee after consultation with the parties. An in-person hearing shall be held at a place to be determined in accordance with §10 above.

17.3. The date of the hearing, which was set following consultation with the parties and the Committee, is January 18-19, 2024, as stated in the procedural calendar at Annex C.

17.4. The Members of the Committee shall endeavor to reserve adequate time after the hearing to determine the next steps and to hold deliberations.

17.5. The Committee will issue additional rules and directions concerning the conduct of the hearing, in due course, after consultation with the Parties during a pre-hearing organizational meeting.

17.6. The hearing shall be closed to the public.

18. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g) and 53

18.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Committee Members.

18.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Committee, the verbatim transcripts shall, if possible, be available in real-time and electronic transcripts shall be provided to the parties and the Committee on a same-day basis.

18.3. The Committee will consult with the parties at the end of the hearing, and issue directions in relation to whether, and if so by which date, the parties shall agree on any corrections to the transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Committee shall decide upon any disagreement between the parties and any correction adopted by the Committee shall be entered by the court reporter in the revised transcripts.

19. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

19.1. The Committee will determine the need for and modalities of any post-hearing memorials at the hearing, taking into account the views of the parties and issues presented.

19.2. The Committee will also determine at the hearing the sequence of and modalities of the statements of costs in consultation with the parties.

20. Publication

Convention Article 48(5), Administrative and Financial Regulation 25, Arbitration Rule 48(4)

20.1. The parties consent to publication by ICSID of the decision on annulment and any order or decision issued in this proceeding.

21. Data Privacy

- 21.1. The Members of the Committee, the parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this annulment proceeding.
- 21.2. The Members of the Committee, the parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the annulment proceeding, where necessary. Should compliance with applicable law require action from another participant in the annulment proceeding, the parties are invited to bring that to the attention of that other participant and/or to apply to the Committee for specific data protection measures to be put in place.

22. Other Matters

- 22.1. A party shall disclose to the Committee and the other Party, without delay, the existence of any agreement relating to the financing of the annulment proceedings, which it may have executed with a third party.

On behalf of the Committee,

[signed]

Prof. ~~Dr.~~ Jacomijn J. van Haersolte-van Hof
President of the Committee
Date: August 1, 2022

Annex A – Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Annulment-FR</i>
	<i>Counter-Memorial on Annulment-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Annulment-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	A-####–LANGUAGE
	RA-####–LANGUAGE
	To be produced sequentially throughout the case.
	APPLICANTS’ FACTUAL EXHIBITS
	<i>A-0001-ENG</i>
	<i>A-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>RA-0001-FR</i>
	<i>RA-0002-SPA</i>
	Legal Authorities
RAL-####–LANGUAGE	
To be produced sequentially throughout the case.	
APPLICANTS’ LEGAL AUTHORITIES	
<i>AL-0001-ENG</i>	
<i>AL-0002-FR</i>	
RESPONDENT’S LEGAL AUTHORITIES	
<i>RAL-0001-SPA</i>	
<i>RAL-0002-ENG</i>	
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-A-#### to A-####
	<i>Index of Exhibits-A-0001 to A-0023</i>
	Index of Legal Authorities-RALA-### to RALA-###
	<i>Index of Legal Authorities-RALA-0001 to RALA-0023</i>
OTHER APPLICATIONS	Name of Application–[Party]-LANGUAGE
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Applicants]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Applicants]-ENG</i>

	<i>Post-Hearing Brief-[Applicants]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
	<i>Observations to Request for [XX]-[Applicants]-SPA</i>

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Annex B – List of Exhibits / Legal Authorities ³

List of Exhibits Description	Exhibit Number Annulment Proceeding	Exhibit Number Original Proceeding (as reference only)
Exhibit ABC	A-001	C-034
Exhibit XYZ	RA-002	R-101

C- = Claimant’s Exhibit (Original Arbitration Proceeding)

R- = Respondent’s Exhibit (Original Arbitration Proceeding)

A- = Applicants’ Exhibit (Annulment Proceeding)

RA- = Respondent on Annulment’s Exhibit (Annulment Proceeding)

³ Please follow §13.4 to create a cumulative hyperlinked index that should accompany each submission, including the dates of all documents included.

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Annex C – Procedural Calendar

Procedural Step	By	Date
First Session	All	July 19, 2022
Memorial on Annulment	Applicants	December 1, 2022
Counter-Memorial on Annulment	Respondent	April 3, 2023
Reply on Annulment	Applicants	July 3, 2023
Rejoinder on Annulment	Respondent	October 3, 2023
Pre-Hearing Organizational Meeting	All	Date to be determined (no later than three weeks prior to the hearing)
Hearing on Annulment	All	January 18-19, 2024
Post-Hearing Submissions	Both Parties	To be determined
Costs Submissions	Both Parties	To be determined