

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd.

v.

Romania

(ICSID Case No. ARB/15/31)

PROCEDURAL ORDER No. 31

Members of the Tribunal

Prof. Pierre Tercier, President of the Tribunal
Prof. Horacio A. Grigera Naón, Arbitrator
Prof. Zachary Douglas QC, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal Yetano

Assistant to the Tribunal

Ms. Maria Athanasiou

4 May 2020

I. PROCEDURE

1. Between 2 and 13 December 2019, a *Hearing* was held at the premises of the ICSID in Washington DC. During the Hearing, the Tribunal and the Parties discussed the question of post-hearing briefs and closing arguments (Tr. 13.12.19, 3417:3-3429:22).
2. Following correspondence between the Parties and the Tribunal, on 10 March 2020, the Tribunal issued *Procedural Order No. 27*, deciding on the list of questions that it invites the Parties to reply (hereinafter “PO 27”).

The Tribunal also decided on the format and sequence of the answers to such questions. Specifically, it decided that Claimants and Respondent shall file their answers by 10 April 2020 and 11 May 2020, respectively. The Tribunal also reserved the possibility of having an additional round of answers to the relevant questions (PO 27, paras 13-14).

3. On 18 March 2020 and, following two requests from Claimants (dated 11 March and 15 March 2020), the Tribunal, after considering both Parties’ positions on such requests, issued *Procedural Order No. 28*. With PO 28, the Tribunal decided to extend the dates for answering the Tribunal’s questions set out in PO 7 to 5 May 2020 for Claimants and 30 June 2020 for Respondent.
4. On 28 April 2020, Claimants requested a further two-week extension, i.e., until 19 May 2020, to submit their responses to the Tribunal’s questions set forth in PO 27. Claimants referred to Ms. Smutny’s injuries that have impeded her ability to work since her accident on 12 March 2020, as well as to the material disruptions caused to Claimants’ legal team by the emergency shutdowns due to the Covid-19 pandemic.
5. On 30 April 2020, Respondent sent a letter by which it objected to Claimants’ request for a further extension.

II. THE TRIBUNAL’S CONSIDERATIONS

6. The Tribunal recalls the following:
 - The questions were asked to the Parties on 10 March 2020 in PO 27. The Parties were invited to file their answers consecutively (by 10 April 2020 for Claimants and by 11 May 2020 for Respondent). The Tribunal also reserved the possibility of having an additional round of answers to the relevant questions (PO 27, paras 13 and 14).
 - These deadlines have already been extended once with the Tribunal’s PO 28. Taking into consideration the difficulties faced by Claimants at the time, as well as Respondent’s scheduling concerns, the Tribunal afforded the Parties the opportunity to file their answers by 5 May 2020 for Claimants and 30 June 2020 for Respondent. The new deadlines again envisaged the possibility for an additional round if the need arose (PO 28, paras 14 and 15).

7. The Tribunal has thoroughly considered Claimants' request for a further extension of time.
8. *First*, while it sympathizes with Ms. Smutny and the difficulties she is facing, the Tribunal considers that Claimants, who are represented by a large team comprising several lawyers in addition to Ms. Smutny, have had ample time since 10 March 2020 to prepare the answers to the Tribunal's questions. The same is true in relation to any disruptions caused by the Covid-19 pandemic, as well as by the fact that the Parties need to resubmit their rebuttal documents in parallel.
9. *Second*, as evident in both PO 27 and PO 28, the Tribunal envisaged a further round of submissions if it became necessary. This possibility was and is important, as the relevant submissions are due to take place consecutively. Granting a further extension would exclude the possibility of such second round.
10. *Third*, granting a further extension would instead interfere with the time needed for adequate preparation for the September hearing.
11. Accordingly, the Tribunal rejects Claimants' request for a further two-week extension to answer the Tribunal's questions.
12. Due to the fact that this Procedural Order is issued one day before the deadline for Claimants to file their answers, the Tribunal considers that it is nonetheless appropriate to grant Claimants **until 6 May 2020** to do so.

III. ORDER

1. *For the reasons set out above, Claimants' request for a further two-week extension to answer the Tribunal's questions is rejected.*
2. *Claimants have one additional day to submit their answers, i.e., **by 6 May 2020**.*

On behalf of the Tribunal,

[signed]

Prof. Pierre Tercier
President of the Tribunal