

## Albania fails to reopen ICSID award after criminal convictions

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Francesco Becchetti

An ICSID tribunal has refused to revise a €110 million award against Albania over the expropriation of a television station despite the subsequent criminal convictions of several of the Italian claimants by the Balkan state's courts.

In a [decision](#) on 29 March, a tribunal consisting of US national **Grant Hanessian** as chair, the UK's **Robert Anderson KC** and Switzerland's **Charles Poncet** ordered the expedited dismissal of Albania's revision request as manifestly without legal merit. It found the state had not established that it had become aware of any new facts since the award's issuance in 2019.

Debevoise & Plimpton represented Italian businessman Francesco Becchetti and his co-claimants in the revision proceeding, having appeared alongside other firms in earlier stages of the dispute.

For the revision request, Albania used Omnia Strategy and barristers from Essex Court Chambers and 3VB. It relied on Gowling WLG in the arbitration and Foley Hoag in an unsuccessful annulment bid.

The investors [filed their ICSID claim](#) in 2015, complaining they were victims of a politically motivated campaign targeting their investments in the country's media, hydropower and waste management sectors.

The alleged campaign included Albanian criminal proceedings brought against Becchetti and other executives. According to the claimants, the measures were prompted by criticisms of the government by their television station Agonset, which went out of business and had its equipment seized.

The ICSID case originally went before a tribunal chaired by Australia's **Michael Pryles** and including Poncet and the UK's **Ian Glick KC**, which granted [provisional measures](#) in 2016 inviting Albania to suspend efforts to extradite Becchetti and others from the UK.

In its 2019 award, the tribunal [found](#) that Albania had expropriated Agonset in breach of the Italy-Albania bilateral investment treaty. It ordered the state to pay €110 million. The award was [upheld](#) by an ad hoc committee in 2021.

Albania applied last year for the award to be revised on the basis of a criminal judgment issued by the Tirana Judicial Court in February 2022, convicting Becchetti and two other ICSID claimants as well as Agonset itself of fraud, forgery, money laundering, tax evasion and smuggling. The individuals were each sentenced to between eight and 17 years in prison in their absence. They deny wrongdoing and are pursuing an appeal.

Albania argued that the Tirana judgment showed the claimants' investments were obtained through criminal conduct and so they should not have been afforded the protections of the BIT. The state alleged it had discovered new facts – being the alleged fraud, bribery and money laundering for which the claimants were convicted – that would have affected the outcome of the arbitration.

Revision requests are typically heard by the same arbitrators that issued the award but Pryles and Glick were unavailable. This led Albania to apply to disqualify Poncet on the basis that he would have a “greater influence” on the outcome of the revision request because he was the only tribunal member to have sat in the arbitration. Hanessian and Anderson [rejected](#) the challenge in December, finding there was nothing in the ICSID rules to prevent the partial reconstitution of the original tribunal.

The claimants asked to have the revision request dismissed on a fast-track basis under ICSID rule 41(5), on the basis that Albania had not identified any facts that had not been presented to the original tribunal, and that the Tirana judgment could not constitute a “fact” that existed prior to the award.

They also argued that Albania had not demonstrated that the discovery of facts would decisively affect the outcome of the award. They pointed out that Albania had never asserted an illegality defence in the arbitration, despite knowing of the criminal allegations.

In its decision, the revision tribunal said Albania had specifically brought the criminal allegations to the original tribunal's attention, and it found that there was no difference between knowledge of the “fact” of illegal activities and the knowledge of allegations.

It therefore did not need to consider whether the criminal judgment would have had a decisive effect on the award, or whether the revision application was timely. Albania was ordered to pay costs.

Becchetti tells GAR the decision “unanimously has carved in stone that [Albanian prime minister] Edi Rama and his government executed one of the worst political persecutions of European contemporary history against me and that the criminal accusations are totally unfounded”.

He says that he expects Italian prime minister Giorgia Meloni to intervene on his behalf to ensure Albania honours the award.

Counsel to the claimants, Debevoise & Plimpton partner **Catherine Amirfar** tells GAR, “The long road of Albania's unsuccessful attempts to challenge the tribunal's reasoned award now has come to an end”.

“It is time for Albania to abide by the rule of law and comply. Mr Becchetti and the other claimants have endured great hardships spanning almost a decade and deserve justice.”

Amirfar used a [speech in Vienna last year](#) to highlight the ICSID award as a “powerful example” of how the investment treaty system can deter countries from engaging in “politically motivated attacks on media enterprises.”

In May last year, the investors [secured](#) attachments from the Belgian Court of First Instance over Albanian air traffic control revenues. Albania has appealed the ruling.

In 2021, the District Court of The Hague also [lifted](#) attachments over oil revenues that the investors had secured, finding it had not been proven that they were not for public use.

*Hydro Srl and others v Republic of Albania (ICSID Case No. ARB/15/28)*

*In the revision proceedings*

#### Panel

- **Grant Hanessian** (President)(US)
- **Robert Anderson KC** (British)
- **Charles Poncet** (Swiss)

#### Counsel to Hydro and others

- Debevoise & Plimpton

Partners **Catherine Amirfar** and associates **Romain Zamour**, **Moeun Cha**, **Janine Godbehere** and **Perpetua Chery** in New York, and partner **Samantha Rowe** in London.

#### Counsel to Albania

- Omnia Strategy

Partners **Cherie Blair KC**, **James Palmer** and **James Dingley**, associate **Emily Pica** and analyst **Ben Wheadon** in London.

- **Lucan Bastin KC** and **Chester Brown** of Essex Court Chambers
- **Cameron Miles** of 3 Verulam Buildings
- State Advocate's office, Republic of Albania

**Elira Kokona**, **Odise Mocka** and **Manuela Imeraj** in Tirana

*In the Belgian courts*

Counsel to the investors

- Loyens & Loeff

Partners **Hakim Boularbah** and **Olivier van der Haegen** and associate **Alice Boulvain** in Brussels

Counsel to Albania

- CMS

Partner **Jean-François Goffin** and senior associate **Jean-Luc Hagon** in Brussels

*In the Dutch proceedings*

Counsel to the investors

- Dorda

Partner **Florian Kreamlehner**, attorneys **Philip Exenberger** and **Alexander Karl** and associate **Robert Keimelmayer**

Counsel to Albania

- Counsel not disclosed

In the annulment and rectification proceedings

Ad hoc committee

- **Lucinda Low** (US) (chair)
- **Colm Ó Hoisín** (Ireland)
- **Jacomijn van Haersolte-van Hof** (The Netherlands)

Counsel to Hydro et al

- Debevoise & Plimpton

Partners **David W Rivkin** and **Catherine Amirfar** in New York, with associates **Romain Zamour** in Paris and **Moeun Cha** and **Azeezah Goodwin** in New York

- Quinn Emanuel Urquhart & Sullivan

Partners **Philippe Pinsolle** and **Alexander Leventhal** in Paris

Counsel to Albania

- **Foley Hoag** in Boston and Washington, DC
- State Advocate's office in Tirana

*In the arbitration*

## Tribunal

- **Michael Pryles** (Australia) (Chair)
- **Charles Poncet** (Switzerland) (appointed by the claimants)
- **Ian Glick** (UK) (appointed by Albania)

## Counsel to claimants

- Quinn Emanuel Urquhart & Sullivan LLP

Partners **Philippe Pinsolle** and associates **Alexander Leventhal** and **Marco Garofalo\*** in Paris; partner **Tai-Heng Cheng\*\*** in New York

\*left firm in 2018

\*\*[joined](#) Sidley Austin

- Debevoise & Plimpton

Partners **David W Rivkin**, **Catherine Amirfar**, **Christopher Tahbaz** and **Ina Popova** in New York

- Scemla Loizon Veverka & De Fontmichel (SLVF) AARPI

Partner **Alexandre de Fontmichel** in Paris

- Saccucci Fares & Partners Studio Legale Internazionale

Partner **Andrea Saccucci** in Rome

- Mishcon de Reya

Partner **Karel Daele\*** in London

\*no longer with the firm

## Counsel to Albania

- Gowling WLG

Partners **David Breslin\*** and **Michael Darowski**, director **Karen O'Connell** and principal associate **Anna Packwood** in London

\*no longer with the firm

- State Advocate's office in Tirana

## Documents

Decision



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## Susannah Moody

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