

Poncet survives challenge in ICSID revision proceeding

Cosmo Sanderson
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Charles Poncet

Albania has failed to disqualify **Charles Poncet** from hearing its bid to revise a €110 million ICSID award based on the Swiss arbitrator being the only original member of the tribunal available to hear the request.

Poncet's co-panellists US arbitrator **Grant Hanessian** and Albania's appointee **Robert Anderson KC** of Blackstone Chambers dismissed Albania's challenge in a decision issued on 1 December.

Albania had argued that as Poncet was the sole member of the original tribunal able to hear the revision request, he was precluded from hearing the latest application by the ICSID rules. It was, according to the state, "the first time" that an ICSID tribunal that issued an award could not be recalled in its entirety to consider a revision request.

In their decision, Hanessian and Anderson held that – contrary to Albania's contention – there was nothing in the ICSID rules preventing the partial reconstitution of the original tribunal.

An ICSID rule which prevents arbitrators who previously heard the dispute from being re-appointed was not applicable, they found, as it only applies to proceedings filed prior to the ICSID arbitration giving rise to the revision request.

Albania is using a new counsel team for the revision proceeding led by Omnia Strategy, the London disputes boutique founded by **Cherie Blair KC**. The state is also using **Lucas Bastin KC** of Essex Court Chambers and **Cameron Miles** of 3 Verulam Buildings. In the annulment proceeding, the state used Foley Hoag, while it instructed Gowling WLG in the arbitration.

The investors are using Debevoise & Plimpton in the revision proceeding. The firm co-counselled with Quinn Emanuel Urquhart & Sullivan in earlier phases of the dispute.

Poncet was appointed by businessman Francesco Becchetti and other Italian investors in the original ICSID arbitration. Along with tribunal chair Australian **Michael Pryles AO** and the UK's **Ian Glick KC**, he held Albania liable for the political expropriation of the investors' Albanian television station Agonset in a 2019 award and awarded €110 million in damages. The award was [upheld](#) last year by an annulment committee.

Following a rectification proceeding concerning the annulment decision, Albania applied to revise the award in May. The substance of the revision request has not been disclosed.

Revision applications at ICSID are typically heard by the arbitrators that issued the award, but in this instance Pryles and Glick were unavailable to hear the request.

Instead, Albania appointed Anderson while the investors reappointed Poncet, prompting Albania to raise its challenge in August – although ICSID only formally allowed the state to file the application [in October](#), after Hanessian was in place as chair.

Albania argued that, where the original tribunal is unavailable to hear the revision request, the ICSID rules require that an entirely new panel of arbitrators be formed.

The state says this is because any procedural efficiency gained by having the original tribunal is lost as new members need to familiarise themselves with the case. It also creates a perception that the only original panel member would have a greater influence on the outcome of the revision request.

In their decision, Hanessian and Anderson agreed with Albania that the ICSID rule which provides no arbitrator may be re-appointed to hear the same dispute applies to both revision and interpretation requests.

However, the arbitrators disagreed with Albania that the rule in question applied to Poncet in this instance.

Hanessian and Anderson concluded that this rule “refers to persons who acted in such proceedings prior to commencement of the ICSID case that gives rise to the revision request.” As such, they held that Poncet did not act in a “previous” proceeding.

The partial reconstitution of the original tribunals to hear interpretation requests in the *Wena* and *Micula* arbitrations had “been noted approvingly by commentators”, the arbitrators said – while they had not been alerted to any commentary that suggested partial reconstitution of revision tribunals was prohibited.

Finally, Hanessian and Anderson noted that ICSID Convention and Arbitration Rules allow tribunal vacancies to be filled “without regard for any ‘asymmetry of information’ that may exist when a new arbitrator joins an existing tribunal.”

In May, Becchetti and the other investors persuaded the Belgian Court of First Instance to [grant attachments](#) on Albanian air traffic control revenues as they seek to collect on their award.

Following the annulment decision last year, Becchetti [rented a billboard](#) in Rome’s Piazza di Spagna to celebrate his win, declaring that he had fought against the “political persecution of at least one government” and had won.

Hydro Srl, Costruzioni Srl, Francesco Becchetti, Mauro de Renzis, Stefania Grigolon and Liliana Condomitti v Albania (ICSID Case No ARB/15/28)

Revision Panel

- **Grant Hanessian** (US) (chair)
- **Charles Poncet** (Switzerland) (appointed by Hydro Srl and others)
- **Robert Anderson** (UK) (appointed by Albania)

Counsel to Albania

- Omnia Strategy

Partners **Cherie Blair KC**, **James Palmer** and **James Dingley** and associates **Pietro Bombonato** and **Emily Pica** in London

- **Lucas Bastin KC** of Essex Court Chambers
- **Cameron Miles** of 3 Verulam Buildings

Counsel to Hydro Srl and others

- Debevoise & Plimpton

Partners **David W Rivkin** and **Catherine Amirfar** and associates **Romain Zamour**, **Moeun Cha**, **Janine Godbehere** and **Perpetua Chery** in New York

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

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