

## Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italian Republic, ICSID Case No. ARB/17/14, 02 June 2025

### Document information

Authors:	CodyAnthony <a href="#">Diora Ziyaeva</a> Annalsernia
Publication:	<a href="#">A contribution by the ITA Board of Reporters</a>
Publication date:	
Organization:	International Centre for Settlement of Investment Disputes
Case date:	02 Jun 2025
Case number:	ICSID Case No. ARB/17/14
Parties:	Claimant, Rockhopper Italia S.p.A. Claimant, Rockhopper Mediterranean Ltd Claimant, Rockhopper Exploration Plc Defendant, Italian Republic
Keywords:	annulment, Eiser Test, duty of disclosure, high moral character
Bibliographic Reference:	Cody Anthony, Diora Ziyaeva, et al., 'Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italian Republic, ICSID Case No. ARB/17/14, 02 June 2025', A contribution by the ITA Board of Reporters
Copyright:	© 2025 Kluwer Law International BV, and/or its subsidiaries, licensors, and contributors. All rights reserved, including rights for text and data mining, AI training, and similar technologies.

Cody Anthony; Diora Ziyaeva; Anna Isernia

Click [here](#) to access the original PDF

### Headnote

In what appears to be the first annulment proceeding in which an arbitrator has been contended to lack high moral character, an ICSID ad hoc Committee annulled the arbitral award in favor of Rockhopper against the Italian Republic, finding that the tribunal was not properly constituted due to the failure of Rockhopper's appointed arbitrator, Dr. Charles Poncet, to disclose his prior criminal prosecution and convictions in Italy. The Committee found that, although the criminal proceedings were ultimately annulled by the Italian Court of Cassation, they could reasonably give rise to doubts about the arbitrator's impartiality in a case involving the Italian Republic.

The Committee held that ICSID arbitrators are under a strict and ongoing duty to disclose any circumstances that might cause their reliability for independent judgment to be questioned by a party, and that the burden of disclosure lies with the arbitrator, not the parties. As a result, the Committee concluded that the participation of an arbitrator whose impartiality could reasonably be doubted tainted the entire proceedings, warranting annulment of the Award, and ordered each party to bear half the costs of the annulment process and their own legal fees.

### Summary

#### Facts of the case

In August 2022, an arbitral tribunal (the "Tribunal") in Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italian Republic (ICSID Case No. ARB/17/14) (the "Arbitration") concluded that the Italian Republic ("Respondent") had unlawfully expropriated the right of Claimants—Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc (together, "Rockhopper," or "Claimants")—to receive a production concession in the Ombrina Mare oil and gas field in violation of the Energy Charter Treaty ("ECT") Article 13. Claimants were awarded EUR 190 million (USD 216.3 million), plus interest. In addition, Respondent was ordered to pay the Claimants GBP 3.5 million in costs as well as their USD 301,284.18 of ICSID advances.

In October 2022, the Italian Republic sought annulment of the Award on the following grounds:

First, under Article 52(1)(a) of the ICSID Convention (improper constitution of the Tribunal), the Tribunal was improperly constituted as a result of the failure of Claimant's-appointed arbitrator, Dr. Charles Poncet, to disclose a criminal prosecution for fabrication of documentary evidence and aiding and abetting perjury in the 1990s.

Second, under Article 52(1)(b) of the ICSID Convention (manifest excess of the Tribunal's powers), as to the Tribunal's decision to hear treaty-based claims by nationals of EU member States against another EU member state—after the Komstroy judgment, the Treaty for the Functioning of the European Union (the “TFEU”, or the “Lisbon Treaty”) required jurisdictional dismissal of Claimants’ “Intra-EU” treaty claims.

Third, under Article 52(1)(d) of the ICSID Convention (serious departure from a fundamental rule of procedure), as to the Award's finding that the Italian Republic had committed an unlawful direct expropriation— (i) the legal basis adopted in the Award had not been argued in the Arbitration, and (ii) the Tribunal failed adequately to address the Italian Republic's argument that the ECT's “fork-in-the-road” clause precluded arbitration due to earlier proceedings in the Italian courts.

Fourth, under Article 52(1)(e) of the ICSID Convention (failure to state reasons on which the Award is based), as to the award of EUR 190 in damages to Claimants, (i) the Tribunal adopted a valuation method that the Parties had not submitted or discussed, depriving the Italian Republic of the opportunity to challenge the validity of assumptions supporting the valuation, and (ii) the Tribunal failed to explain the rationale of the methodology and of its assumptions.

Notably, the European Commission sought leave to intervene as a non-disputing party, but the Committee denied the application, stating that the Commission's intervention “at this advanced stage would disrupt the proceedings.” ¶ 46.

The annulment proceedings went before an ad hoc Committee (“the Committee”), composed of Mr. Michael Nolan, Ms. Eva Kalnina, and Ms. Carita Wallgren-Lindholm. The annulment proceeding was closed on May 29, 2025. The Decision was issued on June 2, 2025.

#### **A. Facts Relating to Dr. Poncet's Criminal Proceedings**

The Committee detailed the facts of the Italian criminal proceedings against Dr. Poncet in paragraphs 268-306.

In 1982, the Banco Ambrosiano collapsed, after auditors discovered USD 1.4 billion in questionable loans. The Vatican-based Institute for the Works of Religion—commonly known as “the Vatican Bank” and Banco Ambrosiano's main shareholder—was accused of funneling funds to the Polish trade union Solidarity and the Nicaraguan right-wing rebel group Contras through Banco Ambrosiano.

Dr. Poncet represented a defendant accused in the collapse of the Banco Ambrosiano. His criminal charges stemmed from his alleged participation in the fabrication of documents and facilitation of false testimony of witnesses. Dr. Poncet's defense thereto was that he did not know that the documents were false when he created them.

The Milan Trial Court found that “there is absolutely no doubt of Charles Poncet's heavy responsibility in the whole affair” and found Dr. Poncet guilty of (i) Personal Aiding and Abetting in violation of Art. 378 of the Italian Penal Code, and (ii) False Testimony in violation of Art. 372 of the Italian Penal Code, and sentenced him to two years of imprisonment.

The Milan Court of Appeal affirmed Dr. Poncet's conviction and denied his request for a reduced sentence based on “the gravity of Dr. Poncet's conduct as a lawyer aimed at subverting the administration of justice.”

Dr. Poncet appealed his conviction, and on December 15, 1999, the Court of Cassation (*Corte di Cassazione* or Italy's Supreme Court) annulled Dr. Poncet's sentence on the basis that the legal proceedings against him had not been completed within 7.5 years, as required by Italian law.

Respondent denied having any knowledge of the criminal proceedings during the Arbitration proceedings, but instead received an anonymous communication by someone at the State Attorney General's office on September 30, 2022, at which point Italy worked to confirm Dr. Poncet's prior prosecution for and conviction of “crimes involving moral turpitude.” ¶ 152.

#### **B. Facts Relating to Dr. Poncet's Disclosure**

Dr. Poncet provided the ICSID Secretariat his disclosures on June 26, 2017. He did not mention the criminal proceedings at issue in this Annulment proceeding. He did disclose that he had been appointed in VC Holding, which also involved the Italian Republic, but did disclose that he might be entitled to Italian citizenship via his mother.

## **Question in Dispute**

Did the failure of Claimant's-appointed arbitrator, Dr. Charles Poncet, to disclose a criminal prosecution for fabrication of documentary evidence and aiding and abetting perjury in the 1990s result in an improperly constituted Tribunal under Article 52(1)(a) and (d) of the ICSID

Convention?

## Arguments of the Parties

Of the four arguments brought forth by Respondent, as explained above, the Tribunal only addressed those under Art. 52(1)(a) and (1)(d).

As an initial matter, the Parties disagreed as to the effect of the Court of Cassation's annulment. Respondent asserted that "the judgment of conviction against Dr. Poncet was annulled not because the Court of Cassation found that he was innocent." ¶ 305. Claimant, on the other hand argued that the Court of Cassation had found "violations of constitutional rights and due process" but instead annulled the proceedings on the basis of the statute of limitations due to a procedural function of Italian law. ¶ 306.

### A. Argument's Concerning Requirements of Disclosure and Inquiry

In seeking annulment, Respondent argued that the acquittal of Dr. Poncet on procedural grounds did not equate to acquittal on the merits and it did not alter the finding "that Dr. Poncet committed the acts of perjury and aiding falsification." Respondent characterized these crimes as being "against the administration of justice," and described the Banco Ambrosiano bankruptcy as "one of the darkest moments in the life of the Italian Republic." As a result, Respondent argued, Dr. Poncet failed in his disclosure obligations, constituting a serious departure from a fundamental rule of procedure within the meaning of Article 52(1)(d) of the ICSID Convention. Additionally, Respondent argued that Dr. Poncet lacked both high moral character and reliability for the exercise of independent judgment, as required in order to be a suitable arbitrator. Thus, the Tribunal having been improperly constituted, the Award should be annulled under Article 52(1)(a) of the ICSID Convention.

Respondent took the position that Dr. Poncet's failure to disclose the criminal proceedings deprived it of its right to be heard and to a fair trial, and was therefore a serious departure from a fundamental rule of procedure. These past prosecutions by the Respondent's court system in the 1990s give rise to justifiable doubts about Dr. Poncet's impartiality and independence, the appearance of which is sufficient to disqualify him from serving as an arbitrator in a case involving Italy. Additionally, Respondent submitted that the knowledge of the Italian judiciary cannot be imputed to the State as a matter of fact, and that the "curtain between the Italian judiciary and the other branches of government prevents any principle of attribution, *quod non*, from applying as against the Italian State." FN 134.

Moreover, Respondent argued that it was entitled to rely on the disclosure made by Dr. Poncet and did not have a duty of further inquiry. Respondent argued that, under Rule 6(2) of the ICSID Arbitration Rules, disclosure is not limited to "circumstances which would not be known in the public domain," and consequently "an arbitrator's disclosure ought to include even publicly available arbitral information." ¶ 156.

Claimants, on the other hand, argued that Respondent should have looked into Dr. Poncet before losing the Arbitration. It took the position that not only was Respondent's account of discovering the existence of Dr. Poncet's criminal proceedings unconvincing, but that as the criminal proceedings took place in Italian courts and relying on the ILC Article on Responsibility of States for Internationally Wrongful Acts, Respondent must be deemed to have had "actual" or "constructive" of the actions of its own courts at all relevant times.

Claimants also relied on the IBA Guidelines on Conflict of Interest in International Arbitration ("IBA Guidelines") requirement that a party to arbitration make a reasonable effort to ascertain information that might affect the arbitrator's impartiality or independence. Additionally, the IBA Guidelines prescribe that only facts occurred within three years from an arbitrator's appointment are relevant to analyzing whether there is a conflict, and here, the criminal proceedings took place over three decades ago.

### B. Arguments Concerning Waiver

Claimants argued that the Italian Republic had waived any objections regarding Dr. Poncet because "the criminal proceedings against him were in the Italian Republic's own courts and, in addition, are a matter of public record in Italian and other media." ¶ 139. Claimants also argued that the Italian Republic, having received the tip shortly after the issuance of the award, should have applied to the Tribunal for Revision of the Award pursuant to Article 51 of the ICSID Convention, such that it was procedurally improper to invoke Article 52 to consider as an annulment ground information that properly may have been submitted only to the Tribunal as a ground for revision under Article 51.

Respondent, on the other hand, argued that the qualifications under Article 14(1) of the ICSID Convention are not waivable, but even if they were, a waiver would stand only if a party was aware of the lack of these qualities and still expressly stated willingness to have such a person act as an arbitrator. In such cases, the theory of estoppel—not waiver—would operate to prevent objection.

### C. Arguments Regarding Other Rejections of Challenges to Dr. Poncet's Appointment

In *VC Holding II S.à.r.l. and others v. Italian Republic* ("VC Holding"), a challenge to Dr. Poncet's appointment on the grounds of his conviction was rejected. Respondent asserted that this case should be given no persuasive weight, as the *VC Holding* tribunal applied "an extremely formalistic test" and "refused to delve into the legal consequences of the Court of Cassation's annulment of Dr. Poncet's conviction under Italian law[.]" ¶ 163.

Claimants, on the other hand, argued that the arbitrators in *VC Holding* are highly regarded such that the Committee should view the criminal proceedings similarly. Indeed, Dr. Poncet's impartiality is further evidenced because one of the arbitrators in *VC Holding* served as President of the *Rockhopper* Tribunal.

## Judgment of the Court

The Committee began its legal analysis by emphasizing that “the fundamental function of an annulment proceeding is to safeguard the integrity of the ICSID arbitral process.” ¶ 185. Next, the Committee explained that, though interpretation of Article 52 in accordance with its object and purpose precludes review of an award on its merits and although annulment is an exceptional remedy, there is no basis in the text of Article 52 for a presumption in favor or against the validity of an award. The Committee next emphasized that it did not have the competence to go beyond the five specified grounds of Article 52 in deciding whether or not to annul the award and that, even if it did establish one of those five grounds, the decision to annul was entirely discretionary.

The Committee determined that the requirements of independence and impartiality, as required by Article 14(1) of the ICSID Convention, are to be assessed not in a general or abstract way, but against the particular case at issue.

Then, the Committee examined the disclosure requirements set out in the 2006 ICSID Arbitration Rules (which applied to the case as they were in effect on the date of the parties' consent to arbitration, per Article 44 of the ICSID Convention). Rule 6 requires, in relevant part, that each arbitrator sign a declaration form and provide a statement if certain information—(i) past and present professional, business and other relationships (if any) with the parties; and (ii) any other circumstance that might cause their reliability for independent judgment to be questioned by a party—exists (emphasis of the Committee). The Committee explained that the duty of disclosure is a continuing obligation which extends to matters in the public domain, as well as to confidential matters of which the parties, absent disclosure, could not be aware.

Additionally, under Article 57, a party need only prove the objective appearance of bias. The lack of qualities required by Article 14 need not be egregious, but must be capable of being perceived.

Agreeing with the *EDF* committee, the Committee concluded that “a tribunal should not be understood to have been properly constituted within the meaning of Article 52(1)(a) when one or more of the arbitrators composing the tribunal did not possess the qualities of high moral character or reliability for independent judgment.” ¶ 237.

### A. The Three-Step Eiser Test

Next, the Committee reviewed the three-part test from *Eiser Infrastructure Limited and Energía Solar Luxembourg S.à.r.l. v. Kingdom of Spain* (“*Eiser* test”), as follows, to determine whether annulment was warranted:

- a) was the right to raise this matter waived because the party concerned had not raised it sufficiently promptly?
- b) if not, has the party seeking annulment established that a third party would find an evident or obvious appearance of lack of impartiality or independence on the part of an arbitrator on a reasonable evaluation of the facts of the case (the Blue Bank standard)? and
- c) if so, could the manifestly apparent lack of impartiality or independence on the part of that arbitrator have had a material effect on the award?

The Committee critiqued this test, saying that the “the concerns of the third part of the *Eiser* test are likely to be present in almost every case in which the first two steps of the test are satisfied.” ¶ 243. Thus, the third step, examining the award, is of little use, suggested the Committee. ¶¶ 252-56.

### B. Consideration of Prior Challenges

The Committee considered two other challenges against Dr. Poncet: (i) *VC Holding II S.à.r.l. and others v. Italian Republic*, ICSID Case No. ARB/16/39, Decision on the Proposal for the Disqualification of Dr. Charles Poncet (April 21, 2023); (ii) *Zeph Investments Pte. Ltd v. the Commonwealth of Australia*, PCA Case No AA917, Decision on the Challenge to Dr. Charles Poncet (September 26, 2023).

While the *Rockhopper* award had already been issued, the *VC Holding* arbitration was still pending when Respondent said it received an anonymous tip regarding Dr. Poncet's criminal proceedings. Respondent asserted that, as soon as it learned of the criminal proceedings, it requested annulment in the underlying arbitration here and also requested the disqualification of Dr. Poncet in *VC Holding* under Art. 57 of the Convention and Rule 9 of the ICSID Arbitration Rules.

The unchallenged arbitrators in *VC Holding* dismissed the disqualification request on April 21, 2023. The Committee considered the Decision of the Unchallenged Arbitrators along with three sets of explanations submitted by Dr. Poncet as a part of the disqualification proceedings.

The unchallenged arbitrators reasoned that the Italian courts did not establish Dr. Poncet's lack of high moral character, thus eliminating a necessary predicate for objection to the adequacy of Dr. Poncet's disclosure. ¶ 319.

In *Zeph Investments*, the challenge to Dr. Poncet's appointment (on essentially identical grounds as in *VC Holding*) was decided by the Secretary-General for the Permanent Court of Arbitration. There, the focus was not on the procedural decisions of the Italian courts, but on the facts underlying the charges. Nevertheless, the challenge was dismissed on the basis that there was uncertainty as to the veracity of those facts, there was a significant passage of time since, and Dr. Poncet had not demonstrated any issues of integrity in his arbitral duties since.

### C. Committee's Analysis

The Committee considered (1) the criminal proceedings in Italy and Dr. Poncet's omission of those proceedings from the Statement that he provided at the outset of the Arbitration pursuant to ICSID Arbitration Rule 6; and (2) whether the Italian Republic's failure to propose Dr. Poncet's disqualification earlier in the proceedings should make Dr. Poncet's participation in the case unavailable as a basis for annulment of the Award. The Committee determined that the Respondent bore the burden of proof.

#### 1. The Omission of the Criminal Prosecution from Dr. Poncet's Disclosure

The Committee determined that "Dr. Poncet's disclosure of his criminal prosecution in the host State for grave offenses was to be expected at the outset of the Rockhopper arbitration." ¶ 339. This determination was reinforced by an article in Swiss newspaper, *Les Temps*, in which Dr. Poncet was quoted as saying "I will fight until the end," and that he had expressly waived the right to invoke the limitations period in hopes of proving his innocence, even though he later revoked that waiver. "These reported statements demonstrate Dr. Poncet's recognition of the effect that the decisions of the Italian court and his criminal convictions could have on impressions that other people would form of him." ¶ 340.

Additionally, in response to Claimant's arguments that the IBA Guidelines' time periods for various types of disclosures, the Committee explained that these guidelines are not exhaustive and are useful in certain types of situations, of which this was not one. Indeed, the IBA Guidelines favor disclosure when there is any doubt.

Thus, the Committee determined that Rule 6 did not allow Dr. Poncet to accept the case without disclosing his criminal prosecution in Italy. Invoking the duty to warn, the Committee explained that arbitrators, being in the best position to know about their relationships and to assess the circumstances of their personal and professional lives, have a duty to inquire and to warn. Dr. Poncet's failure to do so, therefore, provides a basis for annulment.

#### 2. Dr. Poncet's Qualifications to Serve on the Tribunal

The Committee, in line with the committees in *EDF* and *Eisner*, held that "when annulment is requested on the ground of Article 52(1)(a) based on facts that came to light only following the rendering of an award, the tribunal should be considered to have been not properly constituted if an objective third party, knowing all the facts, would consider there to be reasonable grounds for doubt than an arbitrator possessed the qualities that paragraph (1) of Article 40 requires." ¶ 356. Notably, the Committee emphasized that when an annulment is considered on these grounds, the ad hoc Committee is essentially a first-instance decision-maker on new facts, not as an award review mechanism. Thus, the Committee considered the Italian court decisions relevant to assess Dr. Poncet's reliability for independent judgment involving Respondent, but emphasized that it was not an arbiter of whether the allegations against Dr. Poncet in Italy were true.

Unlike the *Zeph Investments* decision, the Committee did not focus only on the outcome of the criminal proceedings, but on the effect that the criminal proceedings had on Dr. Poncet as a person. Ultimately, the Committee held that "[a]n objective observer, taking account of all the facts about Dr. Poncet's criminal prosecution in Italy, could have concerns that Dr. Poncet may be affected by biases or prejudgements regarding the Italian State and the operation of its organs that call into question his reliability for the exercise of independent judgement as an arbitrator of Claimants' claims against the Italian Republic." ¶ 370. The Committee noted that it is especially important for arbitrators in ICSID cases to possess and be seen to possess quality judgment to inspire public confidence, as these arbitrators pass judgment on the acts of States, often touching upon sensitive and contentious issues and essentially allocate public funds when ordering States to pay damages.

However, the Committee rejected Respondent's position that the criminal proceedings established Dr. Poncet's lack of high moral character such that he lacks the qualification to serve as an arbitrator in any ICSID arbitration involving any State.

#### 3. Whether Italy Should be Precluded from Requesting Annulment

The Committee considered whether a party claiming to have learned of facts only after the rendering of an award knew, or should have known, of those facts while the arbitral proceedings were being conducted.

The Committee took issue with Claimant's position that Respondent should have Googled Dr. Poncet much earlier in the proceedings, and failing to do so should operate as a waiver of its right to seek annulment. Claimant did not demonstrate that an internet search would have turned up information on the criminal proceedings. The Committee also rejected Claimant's position that the Respondent should have known of the prosecutions as they emanated from Italy's own courts and were a matter of public record; Rule 6 of the ICSID Arbitration Rules requires that arbitrators include relevant information in their disclosures, regardless of whether the information is public. Even so, the Committee stated, parties are expected to act with prudence, which it determined that the Respondent did.

#### 4. Whether Annulment Is Warranted Under Art. 52(1)(a)

Next, the Committee considered whether "the taint resulting from the participation of an unqualified arbitrator in the rendering of the award would make it appropriate to consider whether the award should be annulled under Art. 52(1)(a). ¶ 403. The Committee determined that there were clear signs that the Tribunal's deliberations may have involved compromises, and thus, the Award should be annulled.

#### 5. Whether Annulment Is Warranted Under Art. 52(1)(d)

The Committee held that Respondent had not satisfied its burden to prove that there had been a serious departure from a fundamental rule of procedure.

#### D. Costs

Using its discretion from Art. 61(2) of the ICSID Convention—supported by Regulations 15(2) and 15(5) of the ICSID Administrative and Financial Regulations—the Committee apportioned costs equally between the Parties, with each side to pay for half of the annulment proceedings, along with its own legal fees and expenses. The costs totaled USD 719,985.44.

© 2025 Kluwer Law International, a Wolters Kluwer Company. All rights reserved.

Kluwer Arbitration is made available for personal use only. All content is protected by copyright and other intellectual property laws. No part of this service or the information contained herein may be reproduced or transmitted in any form or by any means, or used for advertising or promotional purposes, general distribution, creating new collective works, or for resale, without prior written permission of the publisher.

If you would like to know more about this service, visit [KA](#) or contact our Sales staff at [lrs-sales@wolterskluwer.com](mailto:lrs-sales@wolterskluwer.com) or call +31 (0)172 64 1562.