



School of International Arbitration

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# International Arbitration Case Law

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## SEDELMAYER V. THE RUSSIAN FEDERATION CASE NO. Ö 170-10

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On July 1, 2011, the Swedish Supreme Court upheld a Stockholm District Court decision directing enforcement of property belonging to the Russian Federation in Sweden and ordered compensation for the costs incurred by the appellant Franz J. Sedelmeyer in the Supreme Court proceedings.

**Appellant:** The Russian Federation

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**Counterparty:** Franz J. Sedelmeyer, Germany

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## *Digest*

### *1. Facts of the Case*

After losing an arbitration against Franz J. Sedelmeyer (“Mr. Sedelmeyer”) in 1998, the Russian Federation challenged the validity of the award before the Stockholm District Court. The District Court decided in Mr. Sedelmeyer’s favor in 2002 and ordered the Russian Federation to compensate him for his costs. In 2003, the Swedish Enforcement Authority ordered the execution of the District Court decision. The execution targeted a multi-family piece of real property owned by the Russian Federation (“the Disputed Property”) accommodating sixty natural persons and two travel companies.

The execution proceedings raised the issue whether the rental payments collected by the Russian Federation from the lessees of the Disputed Property were subject to distraint. The Enforcement Authority answered the question in the negative and dismissed the enforcement request. The Nacka District Court upheld this decision. Mr. Sedelmeyer appealed and won the case before the Svea Court of Appeal. The Russian Federation contested the Court of Appeal’s decision before the Supreme Court, claiming that it enjoyed diplomatic immunity with respect to the jurisdiction of Swedish courts and that the enforcement of the Stockholm District Court was thus barred. It also submitted that the property was used for official state purposes. Mr. Sedelmeyer argued that the Disputed Property did not enjoy immunity from enforcement because it was used for commercial purposes.

The issue before the Supreme Court was whether state immunity with respect to a foreign state’s property extended to the Disputed Property and the connected rental payments, thus barring the enforcement measures ordered by the District Court.<sup>1</sup>

### *2. Legal Issues Discussed in the Decision*

In its decision, the Supreme Court reviewed the general principles of immunity from enforcement with respect to a foreign state’s property and analyzed the extent to which they applied to the Russian Federation’s property in Sweden.

#### *(a) Immunity from enforcement with respect to a foreign state’s property (¶¶ 6-16)*

The Supreme Court extensively analyzed the concept of state immunity and the long-standing principles of state sovereignty and state equality that limited the jurisdiction of domestic courts. While state immunity was initially conceived in absolute terms,

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<sup>1</sup> Decision paras 1-5.

covering all state acts, the concept gradually narrowed to sovereign state acts. Currently, it excludes the state's commercial and other private law undertakings or acts (the "restrictive view").<sup>2</sup>

Parallel to the notion of state immunity, state property is immune from enforcement. This immunity derives from the principle that all states are equal. However, unlike immunity before other state's courts, immunity from enforcement has not evolved towards a more restrictive scope. Because subjecting a state's foreign property to distraint was viewed as a significant intrusion on state sovereignty, courts have been "reluctant not to grant diplomatic immunity in enforcement proceedings".<sup>3</sup> Nonetheless, despite a shortage of international case law dealing with immunity limitations, the Supreme Court noted that the Swedish *Government Bill Immunity of States and Their Property* embraced a more restrictive view, allowing enforcement measures on property "used or intended to be used for commercial purposes, even if the state has not rescinded its immunity".<sup>4</sup> In the same vein, the Supreme Court case law confirmed that it was possible to enforce judgments on payment "at least with respect to certain state property".<sup>5</sup>

The Supreme Court also referred to the United Nations Convention on Jurisdictional Immunities of States and Their Property (the "Convention"), which Sweden decided to ratify in 2009.<sup>6</sup> The Convention deals with immunity from enforcement measures in connection with court procedures. To define the scope of immunity, the Convention distinguishes between the purposes for which the state holds the property. Art. 19(c) provides that "property [...] specifically in use or intended for use by the State for other than government non-commercial purposes" may be subject to enforcement measures.<sup>7</sup> In addition, the Convention allows enforcement subsequent to a court ruling even where the state has not approved it.

The Supreme Court also recognized that the Convention mirrors "the principle currently accepted by many states that enforcement may be taken with respect to at least some property" (i.e. used "for other than government non-commercial purposes"), thus supporting a restricted scope of immunity from enforcement. The Court concluded that immunity from enforcement should "at least" extend to "property that is used for a state's official functions" and be granted "for state acts proper and similar

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<sup>2</sup> Decision paras. 7-8.

<sup>3</sup> Decision para. 9.

<sup>4</sup> *Id.*.

<sup>5</sup> Decision paras 10-11.

<sup>6</sup> When the Supreme Court decided this case neither the Swedish act nor the Convention were in force.

<sup>7</sup> Decision paras 12-14.

purposes of official nature or when the property is of such particular nature as stated in Article 21” of the Convention.<sup>8</sup>

At the junction between state immunity and diplomatic immunity (the limits of which “do not coincide”), the Supreme Court held that the real property of a state “which is to a substantial extent – but not necessarily mainly – used as premises for state officials (or for a different use which is tied to the representation based on a bilateral agreement) should be covered by immunity from enforcement measures, since the property is used for the carrying out of diplomatic functions”.<sup>9</sup> When state property is partly used for official purposes and partly for purposes that are “a prerequisite to or a consequence of a state run operation that is commercial or otherwise non-official operation, or both”, immunity attaches if “the different purposes of use together make up the specific nature” required to safeguard property from enforcement measures.<sup>10</sup>

*(b) Assessment of the present case (¶¶ 17-24)*

Turning to the present case, the Supreme Court recalled that under a 1927 agreement between the USSR and Sweden (now applicable to the Russian Federation), the Russian trade delegation in Sweden enjoyed extraterritorial privileges for its Stockholm premises. In 1976, the Russian delegation informed Swedish authorities of its change of premises from the Disputed Property to a new location. Thus, the Disputed Property lost its character of official premises under the 1927 agreement.

Notwithstanding, the Russian Federation claimed that immunity from enforcement still applied because the ground floor hosted an archive used both by the trade delegation

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<sup>8</sup> Decision para. 14. Article 21 of the Convention reads in the relevant parts:

1. The following categories, in particular, of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under article 19, subparagraph (c):

(a) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences;

(b) property of a military character or used or intended for use in the performance of military functions;

(c) property of the central bank or other monetary authority of the State;

(d) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;

(e) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale. [...]

<sup>9</sup> Decision para. 16.

<sup>10</sup> *Id.*

and the embassy, as well as a garage for diplomatic vehicles. Moreover, some of the apartments in Disputed Property were used as residence for diplomats, for other personnel working for the trade delegation or the embassy, some were used by Russian exchange students and researchers in Sweden under an official scientific cooperation project, others served as temporary residence and offices for persons with official assignments to Sweden, and a few were occupied by people with special needs and the daughter of a former diplomat.<sup>11</sup> For these reasons, the Disputed Property was not, in the Russian Federation's view, a regular commercial housing property.

The Supreme Court disagreed. Based on the actual use of the Disputed Property at the time when the Enforcement Authority received the enforcement application, the building was a housing property not used for official purposes of the Russian Federation's representation or trade delegation. While the apartments, archives and vehicle storage used by the Russian diplomatic personnel were protected by the Vienna Convention on Diplomatic Relations, "[t]he other use of the [Disputed Property] was for purposes under private law ... of non-commercial but also non-official nature".<sup>12</sup> Because the Disputed Property was not used for official purposes to a substantial extent, immunity from enforcement did not attach to it. Consequently, the claims for rent on the Disputed Property were granted.<sup>13</sup>

### *3. Decision*

The Supreme Court upheld the Court of Appeal's decision granting enforcement of the Disputed Property and the related rental payments. It also ordered the Russian Federation to compensate Mr. Sedelmeyer for his costs in the Supreme Court in amount of SEK 253,300 (out of which SEK 252,600 related to fees for legal counsel) plus interest from the date of the Supreme Court's decision until payment.

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<sup>11</sup> Decision paras 18-19.

<sup>12</sup> Decision, para 22.

<sup>13</sup> Decision paras 20-24.