PARTIES

Applicant
1. Anatolie Stati
20 Dragomirna Street
Chisinau MD-2008
Moldova

2. Ascom Group S.A
75 A Mateevici Street
Chisinau MD
Moldova

3. Gabriel Stati
1 A Ghioceilor Street
Chisinau MD-2008
Moldova

4. Terra Raf Trans Trading Ltd
Don House Suite 31
30-38 Main street
Gibraltar

Counsel for 1-4: Attorneys Ginta Ahrel, Therése Isaksson and Bo G H Nilsson
Advokatfirman Lindahl KB
P.O Box 1065
101 39 Stockholm

Respondent
Republic of Kazakhstan
11 Pobeda Avenue
Astana 1000
Kazakhstan

Counsel: Attorney Alexander Foerster and LL.M Ludwig Metz and Hjalmar Dunås
Mannheimer Swartling Advokatbyrå AB
P.O Box 1711
Stockholm

MATTER
Application for *ex parte* attachment

FINAL DECISION

1. The Republic of Kazakhstan's request that the application shall be rejected is dismissed.
2. The District Court orders attachment of property belonging to the Republic of Kazakhstan located in Sweden to the amount sufficient to cover Antatolie Stati's, Gabriel Stati's, Ascom Group S.A's and Terra Raf Trans Traiding Ltd's claim for a) USD 8,975,496.40, and b) USD 497,685,101, with interest calculated in accordance with a yearly interest rate corresponding to the average interest for six months' American treasury bills from 30 April 2009 to the day for payment, but no longer than the date when the award rendered on 19 December 2013 in Stockholm Chamber of Commerce' case no. V (116/2010), with correction on 17 January 2014, has been enforced against the Republic of Kazakhstan.
3. The Republic of Kazakhstan shall pay each one of Anatolie Stati, Gabriel Stati, Ascom Group S.A and Terra Raf Trans Traiding Ltd their legal costs amounting to SEK 193 200 with interest calculated in accordance with Section 6 of the Swedish Interest Act, from this day until payment is made. Of the amount of SEK 193,200, cost for legal counsel is SEK 192,500.

_____

BACKGROUND

The Republic of Kazakhstan ("Kazakhstan") has, with the purpose of allowing foreign investors to assist the country in the extraction of natural resources such as oil and natural gas, ratified the international agreement Energy Charter Treaty ("ECT"). During the years 1999 to 2003, Anatolie Stati and Gabriel Stati acquired through the companies Ascom Group S.A. and Terra Raf Trans Traiding Ltd (Anatolie Stati, Gabriel Stati and the companies are hereinafter referred to as the "applicants") all shares in two Kazakh companies which owned the exploitation and prospecting rights to an oil field and a gas field in Kazakhstan.

After Kazakhstan had terminated the agreements regarding the exploitation rights in 2010, the applicants requested arbitration and invoked that Kazakhstan had breached its obligations under ECT through violations of the rules for protection of investors. The arbitration took place at the Stockholm Chamber of Commerce ("SCC") and an award was rendered on 19 December 2013. The tribunal found that the applicants were entitled to compensation for damages amounting to USD 508,130,000 with interest from 30 April 2009 calculated in accordance with an interest rate corresponding to the average interest rate for American treasury bills. From the amount of damages an amount of USD 10,444,899 was redacted, which regarded debts the tribunal considered Kazakhstan as no longer answering for. The amount Kazakhstan was ordered by the award to pay thus amounted to USD 497,685,101 with interest. Kazakhstan was also ordered to pay the applicants' legal costs amounting to USD 8,975,496.40. The award could not be appealed.

The applicants initiated enforcement proceedings in several countries, inter alia England and the USA.

Kazakhstan filed a challenge action regarding the award on 19 March 2014 at the Svea Court of Appeal. Kazakhstan requested firstly that the Court of Appeal should declare the award

invalid partially or wholly, and, secondly, that the Court of Appeal should, partially or wholly, set-aside the award.

The Court of Appeal rendered its judgment in the case on 9 December 2016. The Court of Appeal dismissed Kazakhstan's claims and ordered Kazakhstan to pay the applicants' costs to an amount of approximately SEK 30,000,000. The judgment could not be appealed.

Kazakhstan filed an action for annulment of the Court of Appeal's judgment due to miscarriage of justice at the Supreme Court on 3 February 2017.

The applicants filed an application on 18 August 2017 at the Stockholm District Court, requesting that the District Court in accordance with Chapter 15 Section 1 the Swedish Code of Judicial Procedure decided on attachment of as much of Kazakhstan's property as sufficed in covering the applicants claim of a) USD 8,975,496.40, and b) USD 497,685,101, with interest calculated in accordance with a yearly interest rate corresponding to the average interest rate on six months' American treasury bills from 30 April 2009 until payment has been made. In the second place, the applicants requested that the District Court decided on attachment, in accordance with what has been stated above, on shares belonging to Kazakhstan and registered at Euroclear Sweden AB. The applicants requested that the District Court would decide on interim attachment, without providing Kazakhstan with the opportunity of commenting.

Further, the applicants requested that they were released from the obligation of providing security in accordance with Chapter 15 Section 6 paragraph 1 the Code of Judicial Procedure.

In a decision dated 21 August 2017, the District Court granted the applicants claim in the first instance, without providing Kazakhstan the opportunity of commenting. The District Court further decided that the execution of the decision would be postponed.

The Enforcement Authority has thereafter decided to attach shares, subscription rights, and share dividend up to a certain value. The Enforcement Authority further has attached a claim for repayment of dividend tax. The Enforcement Authority has issued decisions on execution regarding the attached property. The Enforcement Authority's decisions have been appealed to Nacka District Court by Kazakhstan as well as the central bank of Kazakhstan, The National Bank of the Republic of Kazakhstan (the "National Bank"). Nacka District Court has dismissed Kazakhstan's request for suspension of implementation. Nacka District Court has further rejected the National Bank's appeal, referring to lack of legal capacity. Lastly, Nacka District Court has dismissed Kazakhstan's actions for appeal.

The applicants have applied for enforcement of the award as well as the Court of Appeal's judgment as regards the legal costs. The Enforcement Authority has not been able to service Kazakhstan.

The Supreme Court dismissed Kazakhstan's request for annulment of the judgment due to miscarriage of justice on 24 October 2017.

REQUESTS

The applicants have maintained the requests as accounted for above and requested compensation for legal costs amounting to SEK 772,800, out of which SEK 770,000 regards costs for legal counsel and SEK 2,800 application fee, to be divided into a quarter per each applicant.

Kazakhstan has firstly requested that the District Court shall reject the application, secondly that the District Court shall dismiss their applications for attachment, and thirdly that the District Court shall order the applicants to provide security for damages. Kazakhstan has requested payment of legal costs amounting to USD 90,000.

GROUNDS

The applicants

The applicants have shown probable reason that a claim exists that – by analogy in accordance with preparatory works and case law – is or could be expected to be subject to court proceedings or review in any similar order.

It can reasonably be expected that Kazakhstan by disposing of property or in any other acting will evade payment of the debt.

The circumstances are such that the applicants are not obliged to provide security for damages. The applicants shall under all circumstances be relieved from such obligation, as they have exceptional reasons for their claims and are unable to provide security.

Kazakhstan

Kazakhstan enjoys immunity against jurisdiction in the present case. The District Court does thus not have authority to assess it.

There is immunity against enforcement measures following a judgment.

There is no risk of sabotage. Kazakhstan lacks possibility as well as intent to take any feared measures of sabotage.

The allocated property does not belong to Kazakhstan and is not located in Sweden. It is thus not possible to execute it for Kazakhstan’s debt.

The applicants must provide security for damages. They do not lack the ability to do so. The necessary prerequisites for releasing the applicants from the obligation to provide security for damages following a potential decision on attachment are thus not met.

The applicants

It is disputed that Kazakhstan enjoys immunity from jurisdiction. The District Court has authority to try the case.

It is disputed that there is immunity from enforcement measures following a judgment.

EVIDENCE

Both parties have invoked written evidence.

STATEMENT OF THE CASE

The applicants

The rules in Chapter 15 the Code of Judicial Procedure are applicable

A Swedish arbitral award – as opposed to a Swedish judgment – cannot be executed previous to the counterparty being provided the opportunity to give his opinion. It is convention through precedents that a party through the rules in Chapter 15 the Code of Judicial Procedure can apply for attachment in order to ensure that all claims according to an arbitral award are secured.

Swedish courts' jurisdiction

Kazakhstan owns shares in certain Swedish listed public limited companies. These shares are traded on Nasdaq OMX Nordic, which is a stock exchange in Sweden. As a practical matter,

the shares are handled by Euroclear Sweden AB through registration in a CSD register in accordance with the Act on Account Management of Financial Instruments. According to extracts from Euroclear the shares are held in trust with The Bank of New York Mellon ("BNY Mellon") on behalf of the Ministry of Finance of Kazakhstan. The shares are thus owned by Kazakhstan.

The shares are held by SEB on the securities account no. 01-100261060 by assignment of BNY Mellon. SEB is also registered as custodian in the respective companies' share registers with Euroclear. The registration operations are thus managed in Sweden by SEB. The property assigned for attachment is within the jurisdiction of the District Court of Stockholm.

Nominee-registered shares can be subject to enforcement and thus also be attached for the owner's debts.

Risk for sabotage

It can reasonably be feared that Kazakhstan will evade execution through quickly disposing of its assets. Kazakhstan has in all contexts thus far in relation to the applicants avoided all payment duties and obligations. Kazakhstan refused to pay its share of the advance to the SCC meaning that the Investors were forced to stand the cost of almost the whole amount of arbitral proceedings totaling USD 1,425,449.

Kazakhstan has not complied with the arbitral award but instead has challenged the award by way of a protest action before the Svea Court of Appeal and an annulment action against the judgment before the Supreme Court. Kazakhstan has also opposed its enforcement in various enforcement jurisdictions. The applicants have inter alia been accused of procuring the arbitral award by way of fraud. Kazakhstan has, in spite of demands, not rendered payment for the litigation costs. Kazakhstan has for almost four years avoided virtually every payment obligation related to the arbitration, enforcement, or challenge proceedings.

On 26 October 2017 – soon after the Supreme Court had dismissed Kazakhstan's action for annulment due to a grave procedural error – the Kazakh Ministry of Justice published a press release on its web page, which contained statements that The Republic of Kazakhstan is

taking all necessary steps to oppose enforcement by submitting the evidence of Stati's fraud to the respective courts. The statement cannot be interpreted in any other way than meaning that Kazakhstan does not have any intention to comply with its established payment obligation. It is difficult to envisage what further measures or court proceedings Kazakhstan is investigating and may come to initiate in Sweden that would not constitute a flagrant abuse of the right to trial. Kazakhstan has not willingly allowed itself to be serviced of the enforcement matter at the Swedish Enforcement Authority. As far as the applicant is aware service has not been able to have been completed yet. Considering that Kazakhstan's counsel did accept service in the attachment proceedings before the Stockholm District Court and is acting in the attachment matter before the Enforcement Authority this is remarkable. Kazakhstan obviously sees obstruction as a natural way of protecting its interests. The conspicuous disloyalty manifested during the ongoing matters should have importance for the assessment of whether a risk for sabotage exists.

It is easy and quick to divest shares through electronic transactions. The requirement "be suspected for good reason" indicates a fairly low evidentiary level. It can be noted that Kazakhstan during the last year has disposed shares in Electrolux to a value of several hundreds of millions SEK.

The applicants shall be relieved from the obligation to provide security

The applicants had to turn to the Stockholm District Court with a request for attachment because of a mandatory provision in the Enforcement Act entailing that in case of enforcement of arbitral award a respondent has to be given the opportunity to comment before any enforcement measure is taken. The purpose of the provision is to give the counterparty an incentive to act if he opposes enforcement, and at the same time guarantee that the counterparty receives the award before the Enforcement Authority takes any enforcement measures. The legislator has not observed the situation where enforcement of an award is initiated after set aside and annulment proceedings which have been determined by a court. The purpose of the security is thus usually to secure the respondent's right in case the applicant's claim would be dismissed. Here is no such risk. In a situation like this, the provision appears to be an anomaly. In the present case, where there is a final ruling declaring

the obligation to pay for Kazakhstan, the risk of the applicants' action in the subsequent enforcement proceedings being dismissed – and thereby also the risk of Kazakhstan suffering loss through the interim measure – is non-existent.

It is to be noted that in order to attach the shares, nothing more is required than a notification to the Bank of New York Mellon and Euroclear about the fact that the shares may not be disposed of. If Kazakhstan does not intend to dispose of the shares, this does not mean any intervention in relation to the Republic's business affairs. Kazakhstan will thus not incur any loss. If, on the other hand, there is an intention to dispose of the shares, the ex parte action is obviously justified. In case Kazakhstan would have any relevant objection against an arbitral award, declared enforceable by the Svea Court of Appeal, such opportunity may be offered during the course of the enforcement proceedings before disposal of the shares take place. The decision of ex parte attachment will thus not cause Kazakhstan any inconvenience.

If the District Court would find that the requirements in Chapter 15 Section 6 of the Code of Judicial Procedure must nevertheless be fulfilled, the applicants put forward the following.

The applicants have shown exceptional reasons for their claim which is based on an arbitral award rendered in Sweden. Svea Court of Appeal rejected Kazakhstan's request to set aside and by doing that it clarified that the award is in force and can be enforced.

As a result of the unlawful expropriation of the applicants' assets in Kazakhstan which the Republic subjected the applicants to, and because of the many and extensive legal proceedings the applicants are forced to participate in, the applicants lack assets to provide security. The period of relative financial wealth and stability a few years ago, which the applicants previously enjoyed came to an abrupt end when Kazakhstan's expropriation of the applicants' oil & gas interests in the country. The applicants have received funding from a third party. However, this does not mean that the applicants is able to provide security for losses incurred.

Kazakhstan

General

In March 2009, the applicants abandoned the LPG Plant which they had started to construct. The applicants alleged in the Arbitration that the reason for this was that they were in a dire economic situation because Kazakhstan had orchestrated a "harassment campaign" against them. In contrast, Kazakhstan argued that this was due to reasons within their own sphere and related to the worldwide financial crisis. After the Award had been rendered, Kazakhstan obtained access to a number of documents which revealed that the alleged investment of USD 245,000,000, for which the applicants had requested and been granted damages in the ECT Arbitration, was the product of a comprehensive and advanced fraudulent scheme on the applicants' part. The applicants had inflated the construction costs and at least SEK 1,000,000,000 of the alleged investment was fabricated. The fraudulent scheme was systematic, advanced and conducted for a number of years.

In the challenge proceedings before the Svea Court of Appeal the court did not examine all of Kazakhstan's assertions. This led to that Kazakhstan was forced to request miscarriage of justice at the Supreme Court.

Jurisdiction of Swedish courts – Immunity from the jurisdiction of the courts of another state

The relevant case is not a judicial proceeding

Under international customary law a state enjoys immunity in respect of itself and its property from the jurisdiction of the courts of another state. The principles about state immunity are to a large extent codified in the United Nations Convention on Jurisdictional Immunities of States and Their Property from 2004 (the " Convention"). The Convention has not yet entered into force, however it has been ratified by Sweden. In addition to that, the Supreme Court has declared in NJA 2011 p. 475 that the Convention to large extent is a codification of international customary law. The question related to immunity must therefore be answered in the light of the provisions of the Convention. The question about immunity from post-judgment measures of constraint does not arise until the question about immunity from the

jurisdiction of the courts of another state is answered. First, the District Court has to declare its position regarding the question about immunity from the jurisdiction of the courts of another state.

In NJA 2011 p. 475 the Supreme Court declared that the question about state immunity should not be examined separately in a matter regarding enforcement of the foreign state's property. However, the case concerned a judicial proceeding. An attachment proceeding at the District Court is not a judicial proceeding. Even if attachment is generally considered as only one legal institution, as a matter of fact it is one court proceeding and one judicial proceeding. The decision about attachment decided by the District Court constitutes the title for execution itself. The applicants' title for execution – which they have used to request enforcement – is created by way of the decision from the District Court. Thus, it is not possible to categorize the case at Stockholm District Court as a judicial proceeding.

In connection here with, article 19 of the Convention is applicable regarding enforcement matters against certain property. The decision from Stockholm District Court is however not limited to certain property, even if it is based on alleged risk of attempted sabotage. An objection against immunity cannot be made under article 19 of the Convention. The District Court cannot within the scope of this case decide if an undefined, generic property is used for non-commercial purposes and if immunity from enforcement measure is applicable on that ground.

The question related to immunity from the jurisdiction of the courts of another state should be separately examined on the basis of article 6 and 10-16 of the Convention.

According to article 6 of the Convention a Swedish court, as Stockholm District Court, shall give effect to state immunity by refraining from exercising jurisdiction in a proceeding before its courts against another state than Sweden. Article 10-16 put forward some proceedings in which state immunity cannot be revoked. Article 10 states that if a state "engages in a commercial transaction" with a foreign natural or legal person and, by virtue of the applicable

rules of private international law, differences relating to the "commercial transaction" fall within the jurisdiction of a court of another State, the State cannot invoke immunity from that jurisdiction in a proceeding arising out of that "commercial transaction".

Under the Convention, "commercial transaction" means (i) a commercial contract or a commercial transaction between states regarding sale of goods or services, (ii) a contract regarding a loan or a transaction of other financial character (…), or (iii) any other contract or transaction of commercial, industrial, trade or professional character. The relevant case does not arise out of any "commercial transaction", as defined in the Convention.

As the relevant case does not relate to the validity, interpretation or application of the arbitration, and neither the arbitration procedure nor the confirmation or the setting aside of the award, article 17 of the Convention does not give any jurisdiction.

There are no other grounds that the District Court can establish its jurisdiction on in a proceeding like that. Thus, Swedish courts do not have jurisdiction, meaning that the action should be dismissed.

Immunity from post-judgment measures of constraint

If article 19 were still to be applied it would be obvious that the decision of the District Court – which makes no distinction between immune and alleged non-immune property – must be annulled.

The property indicated by the applicant is subject to immunity under article 19 as well as article 21 of the Convention. The indicated property constitutes a part of The National Fund of the Republic of Kazakhstan (the "National Fund"). The purpose of the holding of the shares is to stabilize the social and economic development of Kazakhstan. This is a sovereign act and the property is therefore subject to immunity under article 19. As the property belongs to the National Bank it is subject to immunity also under article 21, which explicitly states that property like that which belongs to the central bank or other monetary authority of the state, shall not be considered as property specifically in use or intended for use by the State

for other than government non-commercial purposes. The property is subject to immunity under article 21 even if the property should be considered to belong to Kazakhstan.

Risk for sabotage

Kazakhstan has no actual opportunity to carry on its feared sabotage measures

Kazakhstan has no actual opportunity to carry on the feared sabotage measures required under chapter 15 section 1 the Code of Judicial Procedure. The property indicated by the Applicants constitutes a part of the National Fund. The National Fund is managed by the National Bank, which is legal entity separate from Kazakhstan.

The assignment to manage the National Fund is regulated by Presidential Decree no 402, in the Kazakh Budget Law and in an agreement between Kazakhstan and the National Bank (the "National Fund Agreement"). In the National Fund Agreement it is put forward that the funds on the National Fund have been transferred to the National Bank for management. The National Bank has according to the agreement the authority to transfer the management to external advisers. The National Bank has transferred some of the funds in the National Fund to the external part BNY Mellon. BNY Mellon is exclusive party to the contract in relation to the National Bank. BNY Mellon and Kazakhstan have no contractual relationship regarding the property indicated by the Applicant. BNY Mellon does not act on instructions from Kazakhstan regarding the asset. Kazakhstan does not have the opportunity to dispose of it. Therefore, no damaging measure can be taken. A hypothetical risk for sabotage is not sufficient for attachment.

BNY Mellon has contacted the National Bank regarding repayment of dividend tax in order to receive information about the right person to sign the application beneficial owner.

The National Bank has requested Kazakhstan to sign the application, which later has been sent by the National Bank to BNY Mellon who, through SEB, has requested repayment of dividend tax. The repayment is not made to an account held by or which Kazakhstan can dispose of.

Funds from the National Fund can be transferred to the Kazakh state budget in two ways only, either as a guaranteed transfer or as a directed transfer. Therefore, Kazakhstan cannot dispose of the funds which constitute a part of the National Fund.

The indicated property does not belong to Kazakhstan

Decisive of if Kazakhstan does not have the opportunity to take the evident risk of sabotage is not dependent on whether Kazakhstan is considered to be the owner of the property or not, however if Kazakhstan actually have the possibility to dispose of it. However, the indicated property is not attachable to cover the debts of Kazakhstan, as it belongs to the National Bank and not Kazakhstan.

In an enforcement proceeding in Belgium, where a Belgian court on 11 October 2017 rendered a decision on provisional attachment, BNY Mellon does not take a stand on whom the property belongs to or on whose behalf the property is held. BNY Mellon expect that the parties either themselves or a court decides to whom the property belong.

The property is not located in Sweden

The property at hand is not located in Sweden. It regards dematerialized shares, held by BNY Mellon's London branch. The National Bank is the registered owner in BNY Mellon's books.

Chapter 5 Section 3 of the Act (1991:980) on Trade in Financial Instruments prescribes that when disposing dematerialized financial instruments the legal effects in relation to third parties shall be assessed in accordance with the law of the country in which the nominee has his business. As the nominee is BNY Mellon's London branch, English law is applicable regarding the legal effects of disposals.

Financial instruments which are account-held in accordance with the Act (1998:1479) on Account Management of Financial Instruments, and which are nominee registered on a nominee whose business is conducted abroad, are considered to be located at the nominee.

According to the European Parliament's and the Council's regulation (EU) 2015/848 dated 20 May 2015, financial instruments to which the ownership is clear be considered to be located in the member state where the records or the account on which the information is put are held. The ownership to the shares does not appear from Euroclear's records, as they are nominee registered. The National Bank is however the registered owner at BNY Mellon. BNY Mellon keeps records showing the ownership of the assigned property. The National Bank is the registered owner. The accounts are managed from London. The property is thus located in London and not possible to execute in Sweden.

In the judicial proceedings in Belgium, the parties are disputing whether the assets are located in London or in Belgium. It should thus be undisputed that they are not located in Sweden.

The Enforcement Authority has exceeded its executive mandate and erroneously taken enforcement measures. If the risk for sabotage shall be assessed based on the assets' accessibility after the Enforcement Authority's executive measures, it is clear that no risk for sabotage is at hand already because Kazakhstan under such circumstances impossibly could take any sabotage measures regarding the property, as it is executed.

Kazakhstan has no intent of taking sabotage measures

Kazakhstan at least has no intent of taking sabotage measures. No concrete fear of such measures has been shown, which is required. Kazakhstan's actions up until now do not indicate such intent. The ongoing proceedings are not a result of obstruction on Kazakhstan's part. They rather show that Kazakhstan works with full force against the applicants' unjustified claim. With this purpose Kazakhstan uses all available means of legal remedies. It follows from the press release that Kazakhstan considers all alternatives available under public international law and national law in each jurisdiction. This is not obstruction. The applicants' allegation regarding conspicuous disloyalty is disputed.

The applicants must provide security

A typical case of damage and right to damages for the respondent exist when the District Court, after a decision on provisional attachment have decided on enforcement measures, annul the decision after the respondent is given the opportunity to comment. There is an apparent risk that Kazakhstan suffers damage when a wrongful attachment, especially considering the extensive costs Kazakhstan had in order to defend itself against the enforcement measures initiated by the applicant and the applicants' alleged insolvency. Hence, Kazakhstan may suffer damage because of enforced attachment in the present case. Damage may arise when for example shares cannot be disposed of when profitable, even though the National Bank and not Kazakhstan who would suffer this loss. The legal costs may however under all circumstances constitute damage.

The applicant does not lack the opportunity to provide security. Anatolie Stati and Gabriel Stati own a worldwide conglomerate of companies. Anatolie Stati is one of the wealthiest persons in Moldova. The submitted witness statements do not meet the imposed requirements.

The applicants have not presented any evidence that they have tried to have a bank to provide a bank guarantee. If the applicants have the possibility to, with help from third party, provide security they also have the possibility to provide security.

The applicants' reply

The question of immunity from the jurisdiction of the courts of another state

In NJA 2011 p. 475, the Supreme Court stated that state immunity shall not be examined separately in a matter concerning enforcement against the property of the foreign state. The present case is not a regular civil case, but a case concerning security measures to enable enforcement. Thus it, similarly to the mentioned case, concerns only prerequisites for the attachment as a part of a subsequent enforcement matter. Article 19 of the Convention includes rules on state immunity from enforcement measures after judgment. Article 19 would be futile should the approach of Kazakhstan be correct as in Sweden only a court can decide on attachment. This proves that what Kazakhstan has stated is not correct.

Thus, Kazakhstan does not hold immunity from jurisdiction. The District Court therefore holds jurisdiction to examine the case. The action shall not be dismissed.

The risk for sabotage is evident

General

The questions of exactly what assets which are located in Sweden and whether it is rightfully owned by Kazakhstan should be determined in the subsequent enforcement proceedings and not by the District Court in the attachment case. However, the applicants would, like to account for the reasons behind its view that the attached property belongs to Kazakhstan, that Kazakhstan may dispose of it and that it is located in Sweden.

The attached property belongs to Kazakhstan and Kazakhstan may dispose of it

It is undisputed that the National Fund is not a separate legal entity. It follows from the Presidential Decree no. 402 that the funds in the National Fund belong to the state through the Government and that the National Bank only manages the funds on behalf of the Government. The National Fund Agreement is a standard asset management agreement. The National Bank's assignment to manage the shares on behalf of the Government does not entail transfer of ownership rights.

Electrolux AB's prospectus shows that the Ministry of Finance is one of the major shareholders in Electrolux AB. According to an excerpt from Euroclear AB's registry the shares are owned by the Ministry of Finance of the Republic of Kazakhstan, being the only ministry with the stated address is the Republic's Ministry of Finance. SEB is the nominee of the attached property in Sweden, on behalf of BNYM. Thus it was SEB who, upon instructions from BNYM, registered Kazakhstan as a shareholder in Euroclear's register. All documentation shows that it is Kazakhstan that is the end customer of BNYM. Also the Enforcement Authority has concluded that the attached property belongs to Kazakhstan.

On 22 November 2017, Kazakhstan and the National Bank brought an action against BNYM's London branch. The action can be described as a summary declaratory claim and the purpose of the action was to obtain a judgment which would establish, *inter alia*, that BNYM, regardless of the Belgian and the Dutch attachment decisions, did not have the right to freeze the assets managed by BNYM under the Global Custody Agreement. The Court dismissed the action in its entirety. Kazakhstan and the National Bank acted as co-claimants in the proceedings with respect to all declarations sought. It is questionable why Kazakhstan chose that position if Kazakhstan is not the rightful owner of the property. From Kazakhstan's request for repayment of dividend tax on shares held by SEB on behalf of BNYM in its capacity as sub-custodian it is evident that Kazakhstan controls the management of the asset.

The attached property is located in Sweden

The shares are in deposit with SEB. SEB is also registered as nominee in the respective companies' share registers with Euroclear. The registration operations are thus managed in Sweden by SEB. SEB, as custodian, has received prohibition orders from the Enforcement Authority and has not objected that the shares are not located in Sweden. The Enforcement Authority had not been able to attach the shares if they were not located in Sweden. However, the letter does not state who the owner of the shares is, it only shows that the shares are registered with BNYM as belonging to the principal, i.e. the National Bank. The shares are similarly registered with SEB as belonging to their principal BNY Mellon.

A witness statement by James R Ronald, Managing Director and Relationship Executive with BNYM's London branch has been submitted. It shows that the securities handled by BNY Mellon under the Global Custody Agreement are held by the sub-custodian in the country where the securities in question are traded. Thus the attached property is located in Sweden.

The failure of Kazakhstan to contribute to the recognition of the arbitral award

According to the court order during the attachment proceedings in Belgium BNY Mellon has frozen all of Kazakhstan's assets held by BNY Mellon. The decision has been appealed by Kazakhstan. Both the National Bank and BNY Mellon has chosen to intervene in the case.

The arbitral award must be recognized by the courts in all respective jurisdictions before any enforcement measures (not limited to security measures) may take place. Kazakhstan has objected to any recognition in all ongoing enforcement proceedings.

Kazakhstan's reply

The assigned property does not belong to Kazakhstan. The person stated in Euroclear's nominee records and the one entitled to dispose of the shares is BNY Mellon's London branch. BNY Mellon has confirmed that Kazakhstan is not the registered owner of the shares. SEB does not manage the shares. From SEB's letter to the Enforcement Authority it follows that SEB holds the shares on behalf of BNY, but that SEB as regards these assets does not have a role as manager or adviser. It is disputed that SEB on assignment from BNY Mellon would have entered the information regarding Kazakhstan as shareholder in Euroclear's records. The records do not show ownership. How the account is named is irrelevant.

The applicants have alleged that it follows from the witness statement of James Robert Ronald that the securities are considered to be located at the nominee in the country in which they are traded. The expression "regarded" can in this context not be considered as legally meaning that the securities are located at the nominee, as it clearly follows from para. 35 of the witness attest that it does not concern this aspect. As the securities at hand are dematerialized the only relevant question is where they legally are considered to be located. The statement is thus irrelevant.

BNY Mellon has confirmed that the bank acts in accordance with an agreement with the National Bank (not Kazakhstan), that BNY Mellon holds the assets referred to the SEB account on behalf of the National Bank, that the National Bank is the registered owner in BNY Mellon's books, and that BNY Mellon has no contractual relationships with Kazakhstan regarding the assets on the SEB account.

REASONS

Legal basis

The Convention has not yet entered into force. Taking into consideration that, to a large extent, it is a codification of international customary law (see *inter alia* the Supreme Court's statements in NJA 2011 p. 475 and NJA 2009 p. 905) and the circumstance that both parties have invoked it in the relevant case the District Court concludes that the questions related to immunity that are to be assessed in the case should be assessed under the provisions of the Convention.

Immunity from the jurisdiction

It is put forward in article 5 and 6 of the Convention that a state enjoys immunity in respect of itself and its property from the jurisdiction of the courts of another state subject to the provisions of the present Convention.

Immunity from the jurisdiction and immunity from enforcement are two different concepts, which are to be examined separately. This follows *inter alia* from the structure of the Convention. Part III, which includes articles 10-17, has the title "Proceedings in which State immunity cannot be invoked". Part IV, which includes articles 18-21, has the title "State immunity from measures of constraint in connection with proceedings before a court". In the preparatory works the following is put forward regarding the provisions in Part IV (Government bill 2008:09:204 p. 79).

> *Through the articles state immunity as to the measures against state property, especially enforcement measures, is distinctively separated from the state immunity's first part, i.e. immunity from the jurisdiction of the courts of another state. The question about immunity from enforcement is not raised until after the question about immunity from the jurisdiction of the courts of another state is answered in negative and there is a decision to the advantage of the counterparty of the foreign state.*

The wording of the Government bill clearly indicates that the question related to immunity from the jurisdiction should not be examined when – as in the relevant case – there exists a ruling to the advantage of the counterparty of the foreign state.

The Supreme Court has – in accordance with what is stated – in NJA 2011 p. 475 declared that the question about state immunity should not be examined separately in a matter regarding enforcement.

The parties disagree about whether the case at hand is to be considered as an enforcement matter or not and hence – as a consequence – if the District Court has to specifically examine the question related to immunity from the jurisdiction.

Kazakhstan's line of argument is that the legal concept of attachment consists of two parts: first, legal proceedings before a court and second, subsequent enforcement proceedings before the Enforcement Authority. Because the case in the District Court is not about enforcement, but instead of creation of an enforceable title to be used by the applicant to obtain enforcement, the case at hand should not be considered as an enforcement matter.

In view of the District Court, Kazakhstan's reasoning is patently absurd. The applicants have filed a request for attachment with the District Court only because the Enforcement Authority, as opposed to what applies to judgment from Swedish courts, cannot enforce an arbitral award without giving the opposing party an opportunity to comment. In such case, the attachment order is only means of enforcement. The case before the District Court concerns only attachment; when the decision is rendered, the case is closed. Against this background, it is difficult to see how this case should be categorized if not as an enforcement matter in the sense that the Supreme Court obviously refers to. It would be unreasonable to examine the question about immunity from the jurisdiction separately in a case as the one at hand, but not when the Enforcement Authority's subsequent enforcement decision is appealed to court. Kazakhstan has alleged that an objection against immunity cannot be made under article 19 of

the Convention, as the court's decision concerns an undefined, generic property, however this does not give rise to a different assessment.

In sum, the case in the District Court must be considered as an "enforcement matter against property of a foreign state", in the sense referred to by the Supreme Court in the above-mentioned case.

Based of what has been stated above, the issue of immunity from the jurisdiction should not be examined separately. The request should not be dismissed.

Immunity against enforcement

Points of departure

Kazakhstan has also alleged that it enjoys immunity from post-judgment measures of constraint under article 19 (c) and 21 (c) of the Convention.

According to Kazakhstan, the applicants' request must be dismissed if article 19 is to be applied, as it covers *specific property* and on the whole cannot be applied in a case as this because the District Court has decided on *ex parte* attachment of an undefined, generic property.

Article 19 (c) states – in the relevant part – that enforcement measures, such as attachment or seizure, regarding state property in a case before a court in another state, may only be taken against property where it has been established that the property is exclusively in use or intended for use by the state for other than governmental, non-commercial purposes.

The provision does not include any special rule for cases when the national legal system provides for an opportunity to obtain a decision on enforcement measures prior to an upcoming enforcement proceeding. When deciding about attachment under Chapter 15 Section 1 of the Swedish Code of Judicial Procedure, the court as a rule should not set out

specific property to be used for enforcement, instead the court only orders the attachment of as much of the opponents property that the claim may be assumed to be secured (see Fitger et al. the Code of Judicial Procedure, a comment [Zeteo, 19 January 2018], the comment to Chapter 15 Section 1). It lays in the nature of such decision that it has to be taken quickly, without any exhaustive exchange of briefs. The requirements set out in article 19 will be examined in the subsequent enforcement proceedings in relation to the specific property which the Enforcement Authority intends to seize and the parties will be provided the opportunity to comment further with regard to this.

Against this background, it would be unreasonable to interpret article 19 in such a way that the court's attachment decision has to refer to a certain, specific property in order for the immunity assessment to be made at all and if not, it exist hindrance to attachment. On the other hand, neither can the provision be interpreted – especially since the term attachment is mentioned and under Swedish law only a court can decide on attachment – in a way that the court should not examine the requirements in article 19 in an attachment decision such as this.

The District Court concludes that the assessment in this case must be limited to whether it can be considered proved that the property indicated by the applicants is of such nature as stated in article 19.

Does the indicated property belong to Kazakhstan?

The first prerequisite necessary in order to take measures of constraint against the property under article 19 is that the property belongs to the state ("state property"). Kazakhstan has objected that Kazakhstan does not own the indicated property, instead it is owned by the National Bank. In article 21 (c) it is explicitly stated that property of a country's central bank shall not be considered as property specifically in use or intended for use by the state for other than non-commercial purposes. It is undisputed that the relevant property constitutes a part of the National Fund which, also undisputedly, is managed by the National Bank. In Presidential Decree No. 402 dated 23 August 2000 it is stated that it is the President of Kazakhstan who, upon proposals from the government, decides how the funds of the National Fund are to be used. Nothing in Presidential Decree No. 402 or in the National Fund Agreement indicates

that the ownership of the funds is transferred to the National Bank. The fact that there is no contractual relationship between Kazakhstan and BNY Mellon – who manages the funds on behalf of the National Bank – is irrelevant for this assessment. The District Court concludes that it is shown in the case that the property belongs to Kazakhstan. This means that the first prerequisite of article 19 is satisfied, and that there are no hindrance against attachment under article 21 (c).

Does Kazakhstan use or intend to use the indicated property for other than state non-commercial purposes?

The indicated property consists of commercial shares in profit-making companies. Kazakhstan has itself stated that absence of increase in the value of the shares could entail loss for the owner. The purpose of the shareholding is obviously primarily to manage the funds in a profitable manner and not to stabilize Kazakhstan's social and economic development. It is unlikely that funds, held for the latter purpose, are invested in such a way that the value can rapidly come to nothing. This leads to the conclusion that it has been shown that the property in question, even though it is a part of the National Fund, is exclusively used or intended to be used for other than state non- commercial purposes.

Is the indicated property located in Sweden?

Another requirement in article 19 (c) in order to attach the property is that it is located in the territory of the state of the forum. It is not unusual that the nominee of the shares has customers which themselves are not owners of the relevant securities. In this case, the applicants have shown that BNY Mellon has engaged SEB for deposit of its customers' Swedish securities. Thus, the shares are held in Sweden by SEB in deposit in behalf of BNY Mellon. Whether SEB acts as nominee or adviser is of no relevance. The indicated property is obviously located in Sweden.

Summary of the assessment

In sum, the District Court concludes that there is no state immunity that would hinder enforcement and thus there is no hindrance for attachment either.

Applicability of Chapter 15 of the Code of Judicial Procedure

It follows from the case law that the court has the power to order attachment in order to secure enforcement of a Swedish arbitral award. Kazakhstan has not questioned that the provisions in Chapter 15 of the Code of Judicial Procedure as such are applicable in a situation as the one at hand.

Risk of sabotage

Kazakhstan asserts that the requests should be dismissed because Kazakhstan lacks both possibility and intention to take any sabotage action.

The District Court has above found that Kazakhstan is the owner of the property in question. It is managed by BNY Mellon on behalf of the National Bank, who in turn has been assigned to manage the funds of the National Fund. It follows from the Presidential Decree No. 402, which the District Court has accounted for above, that it is the President who determines how the funds of the National Fund shall be used. Taking this into account, Kazakhstan's statement regarding lack of opportunity to dispose of the property can be disregarded.

Kazakhstan has clearly shown that Kazakhstan does not intend to voluntarily pay the debt under the legally binding arbitral award, despite the fact that an action for annulment was dismissed by Svea Court of Appeals and that a request for extraordinary review was dismissed by the Supreme Court. This, taken together with what applicants have stated otherwise in this regard, means that it may reasonably be surmised that Kazakhstan will try to evade the debt by disposing of the property or by other means.

Security for damages

Chapter 15 Section 6 of the Code of Judicial Procedure provides that a security measure under Sections 1 – 3 can be granted only if the applicant provides security to the court for damage that can be inflicted on the respondent. If the applicant is not able to provide security and he has shown exceptional reasons for his claim, the court can grant exemption from requirement to provide security.

The applicants have asserted that the provision does not apply in a situation such as this, given that the arbitral award no longer can be challenged and that the applicants already because of that are not obliged to provide security.

The letter of the law of this provision does not expressly support such an interpretation. However, there is an implicit assumption that the counterparty in the specific case can suffer damage.

In the commentary to Chapter 15 Section 6 of the Code of Judicial Procedure it is stated that the provision should be read in light of the provision in Chapter 3 Section 22 of the Enforcement Code. Therein it is stated, *inter alia*, that when an execution title is revoked, all enforcement measures shall be immediately cancelled and the applicant will be responsible for any damages the respondent has suffered due to the enforcement. In the commentary to the provision it is further clarified that the provision only is applicable to cases when an execution title is being revoked. In such cases the applicant bears strict liability towards the respondent.

In the commentary to Chapter 15 Section 6 the Code of Judicial Procedure it is further noted that the provision in the Enforcement Code should not be applicable if the applicant's claim has been granted on substance, but that it should be applicable in principle in cases when a security measure has been removed or terminated due to an action or omission on the applicant's part when it afterwards can be concluded that the applicant did not have a justified claim.

In doctrine – Ekelöf (Rättegång, third book, 7:ed. p. 26-27) and Westberg (Det provisoriska rättsskyddet i tvistemål, book 4, 2004, p. 213-215 and 236-238) – various viewpoints have been accounted for regarding the interpretation of Chapter 15 Section 6 the Code of Judicial Procedure. According to Ekelöf the respondent should not have suffered any losses in this regard if the claim has been granted. He refers in footnote 64 to Hassler, who argues that the creditor should be obliged to reimburse losses incurred by attachment that is ”removed or cancelled”, but notes that he cannot find reason for this in cases when the claim has been granted.

Westberg on the other hand has criticized Ekelöf’s view. He states *inter alia* that it is not sure that the court would limit the application of the rule regarding the applicant’s escape from liability to cases when the claim has been granted; *inter alia* the court could find it logical to compare favorable judgments to certain situations when the claim regarding the main matter has been revoked. Possibly the courts however will, he continues, in a subsequent case for damages closer examine the question of whether the applicant should have won in the main matter if this had been decided through a judgment. Westberg further notes that it would lead to peculiar results if every removal of a decision on security measures would render liability. That a removal will cause liability if the removal is due to a higher instance making a different assessment than the lower instance is one thing, he notes; that the removal is due to the respondent taking measures causing the risk of sabotage to cease is another matter.

In NJA 1995 p. 631 a company had filed an action against another company, claiming copyright infringement. The claimant company requested interim injunction under penalty of a fine for the respondent company to continue certain production. As security a bank guarantee was offered, according to the wording of which the guarantee would cease to be valid when the question of copyright infringement had been finally decided through a judgment having legal force and it had been decided that no infringement had existed. The Supreme Court did not accept the bank guarantee with reference to the fact that an interim injunction under penalty of a fine for various reasons could be removed either by way of a

decision during the proceedings or a final decision. As the bank guarantee was not valid in such cases, it was not accepted as security.

Westberg has drawn the conclusion from the Supreme Court's ruling that the applicant cannot through conditional securities control the fundamental preconditions for liability for damages and that in principle every removal of a decision on security measures can render liability.

There is no authoritative case law apart from the abovementioned Supreme Court case.

In the present case there is a final and legal binding title for execution in the form of an award. Kazakhstan brought a challenge action against it, which was dismissed by the Svea Court of Appeal. Kazakhstan further has applied for extraordinary review, which has been dismissed by the Supreme Court. It appears to be completely out of the question that the title for execution could be revoked.

The case at hand is thus different from the one assessed by the Supreme Court in NJA 1995 p. 631.

The award is enforceable through the Enforcement Authority. The reason why the applicants have applied for attachment is solely because of the circumstance that the Enforcement Authority may not enforce an award without allowing the counterparty the opportunity to comment even when there is a risk for evasion, in contrast to what the case is regarding regular judgments. The purpose of this is to give the counterparty incentive to act if he opposes enforcement and to create a guarantee that the counterparty takes notice of the award before the Enforcement Authority takes any enforcement measures (Government Bill 1998/99:35 p. 179). Under corresponding circumstances when the Enforcement Authority enforces a judgment without prior notice due to an established risk of evasion, no liability is prescribed for the applicant other than in situations when the title for execution is revoked.

The legal costs from the attachment proceedings cannot on their own be considered such a loss as is referred to in Chapter 15 Section 6 the Code of Judicial Procedure.

In sum, the District Court considers the circumstances in this case to be such that there is no risk for loss in the sense of Chapter 15 Section 6 the Code of Judicial Procedure and the applicants are thus not obliged to provide security for losses.

The District Court would however like to add the following.

As the case regards an award, which cannot be appealed and the validity of which thereto has been tried by the Svea Court of Appeal, the applicants have shown exceptional reasons for their claim in the way prescribed in Chapter 15 Section 6 the Code of Judicial Procedure. Another prerequisite in order for the applicant to be released from the obligation to provide security is that he "is not able to" do so. It is not stated in the provision or in the preparatory works what evidentiary requirement is applicable.

The Supreme Court has in a case, NJA 1979 p. 317, assessed the question of whether an applicant was unable to provide security for losses. In that case the question regarded a bankruptcy estate. The estate submitted the estate inventory and presented certain information regarding its financial situation through the receiver in bankruptcy. The Supreme Court found that the bankruptcy estate "with regard to what had been shown must be considered as unable to provide security for any losses which W might incur".

It is clear that the applicant is not obliged to present full evidence showing that he is unable to provide security. This is also reasonable, as it is impossible for an applicant to fully show that he is unable to provide security. "Must be considered" appears to be a rather low evidentiary standard. It should be even more difficult for a foreign person or company to present evidence regarding his inability to provide security. In this context it is of relevance that hearings with taking of evidence or a possibility to present information under oath are normally not held in such proceedings. When assessing whether an applicant is unable to

provide security regard must also reasonably be taken to all circumstances – including the claim at hand and what has been shown otherwise.

Anatolie Stati as well as Gabriel Stati have submitted statements presenting that they currently lack financially ability to provide security for losses. They have also attested that neither Ascom Group S.A., which is wholly owned by Anatolie Statie, nor Terra Raf Trans Traiding Ltd, which is owned partly by Anatolie Stati and partly by Gabriel Stati, has such ability. In the statements it is asserted that all four applicants and the subsidiaries of the companies are heavily indebted due to the ongoing conflict with Kazakhstan and that the present proceedings are financed by a third party. The applicants have invoked statements of account, showing zero balance, and an annual financial statement regarding Ascom Group S.A. Further, a decision on execution regarding Ascom Group S.A. has been invoked. Anatolie Stati has also invoked his personal statements of bank accounts.

The invoked evidence does naturally not present full evidence on inability to provide security. Other relevant circumstances – that various disputes between the applicants and Kazakhstan have been ongoing since 2010, that the applicants under the award have a claim on Kazakhstan amounting to over USD 500,000,000 concerning damages for losses incurred to them due to Kazakhstan's actions, that the applicants have had and can be expected to have even further extensive costs in connection to the challenge proceedings, the proceedings before the Supreme Court, various enforcement proceedings etc. – must however, as mentioned, also be observed in connection to this.

According to Chapter 2 section 25 of the Enforcement Code, which Chapter 15 section 6 of the Code of Judicial Procedure refers to, any security shall consist of a pledge, guarantee, or floating charge. A guarantee shall be unconditional and, if given by two or more persons together, be joint and several.

If a bank or other comparable financial institution shall provide security, the commitment of the financial institution to cover the liability under the security can be accepted.

Considering the extraordinary circumstances of this case it appears to be out of the question that someone would be prepared to enter into such a guarantee undertaking that is required for a financial institution to be prepared to undertake to fulfil the commitment under the security.

The question of security in the form of pledging one's own claim has not been discussed in the case. Westberg writes (op. cit. p. 214) that there have been cases wherein the applicant, lacking better options or as a kind of expression of creativity, has offered the claim itself as security, for example the claim on the respondent which the applicant wants the court to secure by ways of attachment of the respondent's property. Westberg alleges that there, in principal, are no obstacles to approving such an object as security, but that the applicant has to consider that the court will not deem it secure enough to be accepted as a pledge. The Supreme Court has, as far as the District Court is aware, not had the question up for consideration other than in NJA 1953 s. 60, which concerned the question whether a debtor in bankruptcy's pledge of its balance with a bank could be accepted to establish preference in the bankruptcy. The Supreme Court's judgment in the case in question does not to conclusion that such a pledge has been accepted generally in case law as security under Chapter 15 Section 6 of the Code of Judicial Procedure.

Regardless of whether a pledging of the applicants' claim on Kazakhstan could be accepted as security, the question is if the mere possibility to provide such security means that the lack of it leads to the conclusion that the applicants actually have the capacity to provide security for damages and thus that the prerequisites to exempt them from this are wanting. There is in the opinion of the District Court a difference between accepting, in a particular case, such a pledge as security and – when the ability to provide security is lacking – demanding such, in order to apply the exemption rule in Chapter 15 Section 6 paragraph 1 sentence 2 of the Code of Judicial Procedure. The following can be added. Under Swedish law an overdue claim, as a rule, can be invoked as set-off against a claim. Pledging one's own claim seems in the circumstances to be pure construction when the matter is that of a claim such as the one in this case. Based on this, the absence of such a pledge *per se* cannot reasonably lead to the conclusion that the applicants have the capacity to provide security.

The District Court all in all considers that the applicants, with regard to what has been shown, must be considered as being unable to provide security for losses which Kazakhstan may incur. There is thus under all circumstances reason to exempt the applicants from the requirement to provide security.

Conclusion

The above-stated means that the applicants' request in the first instance shall be granted.

Legal costs

Given the outcome of the case, the applicants are entitled to compensation for costs reasonably called for in order to look after their interests.

Kazakhstan has invoked that the applicants cannot have had any legal costs, as they lack funds for the proceedings and the costs obviously have been carried by the third party funder.

The District Court considers that the fact that the applicants may have been helped by a third party in funding the proceedings partially or wholly does not mean that they have not had any legal costs. The requested amount is reasonable. The request shall therefore be granted in this regard.

HOW TO APPEAL, see exhibit 1

An appeal shall be filed with the District Court no later than 14 February 2018. The appeal shall state that it is directed to the Svea Court of Appeal. Leave for appeal is required.

Karin Palmgren Goohde Axel Taliercio (Dissenting) Mirja Högström

Dissenting opinion, see next page

Dissenting opinion

Judge Axel Taliercio dissents and states as follows.

Chapter 3, Section 22 of the Enforcement Code states that an applicant is required to pay compensation for damage suffered by the counter-party through the execution of an enforcement order that has been reversed. The most probable interpretation of the provision in accordance with the letter of the law is that an order for security measure constitutes an enforcement order and the reversal of the security measure leads to compensable damage. This is how the provision has been interpreted in case law (see NJA 1995 p. 631 and e.g. Svea Court of Appeal's decision on 2 February 2011 in case no Ö 8867-10). An appropriate interpretation of the provision also indicates that an unnecessary security measure can constitute liability even in the case of the applicant having support in substantive law. The opposite would namely mean that the applicant would be free from liability even if he or she acted negligently or applied for the measure to achieve purposes for which the safety measure is not intended for. All in all, I consider that an applicant in a case such as the present is obliged to provide security for the damage the counter-party may suffer from the execution of the attachment. It is another matter that, when the application for attachment is based on a legally binding arbitrational award, instead of a claim which has not yet been settled in a trial, it may affect the amount of security which the applicant has to provide.

The applicants have alleged that they are unable to provide security for damage which Kazakhstan may suffer. In my opinion, from the documents presented by the applicants, it is not possible to conclude that they are to be considered unable to provide security for such damage (cf. NJA 1979 p. 317). Nor have any obstacles for the applicants to pledge their claim on Kazakhstan to Kazakhstan been found. Such a procedure, which means that the debtor is given a "pledge in own debt" has generally been accepted in case law (see NJA 1953, p. 60) and in the doctrine it has been argued that, in principle, there is no hindrance to accepting a corresponding pledge in a case about attachment (see Peter Westberg, Det provisoriska rättsskyddet i tvistemål, Book 4, p. 214). However, as a matter of principle there could be hesitation to accept an attachment applicant's pledge of a claim on the counter-party when the claim carries interest for default (cf. above-mentioned decision by Svea Court of Appeal).

However, the applicants have a significant claim against Kazakhstan for accrued interest on both principal amount and compensation for legal costs which do not carry interest. This claim simply suffices to provide acceptable security in the case.

As a result of the above, it is evident that there is no basis to exempt the applicants from the requirement to provide security. Consequently, the *ex parte* decision on attachment shall be revoked and the sought security measure shall be rejected.

Being in the minority in this view, I agree with the majority on the rest.