

EXTRACTS OF THE JUDGMENT OF THE DISTRICT COURT OF ROTTERDAM

State of the Netherlands v. Azeta B.V.

Azeta arranged for the credit balances of the Chilean Embassy in an account at ABN-AMRO Bank in Amsterdam to be attached by way of execution of a judgment against Chile. After the Bank had informed the Chilean ambassador of the attachment, he lodged a protest with the Dutch Ministry of Foreign Affairs. The ambassador demanded that the Minister take steps to arrange for termination of the attachment on the ground of the Netherlands' obligation under international law to maintain the immunity of the diplomatic mission of Chile from attachment.

The District Court held:

3.2. The starting point in this dispute is that – pursuant to (unwritten) international law – a foreign State is entitled to immunity from execution when execution measures are employed against the State concerned involving the attachment of property intended for the public service of that State. Establishing, maintaining and running embassies is an essential part of the function of government and hence of the public service. Moneys intended for the performance of this function must therefore be treated as property intended for the public service.

In the present case the defendant denies that (all) bank balances which it has caused to be attached are intended for the functioning of the Chilean Embassy. The plaintiff has lodged in this connection a letter of 8 May 1998 from the deputy Foreign Minister of the Republic of Chile and a 'note verbale' from the Chilean Embassy in The Hague of 11 May 1998, in which it is stated that the credit balances in the attached bank account are intended for the running of the Chilean Embassy.

Contrary to what the defendant has alleged in this connection, the President considers that these statements are sufficient in this case to support the assumption that the present moneys are intended for the public service of the Republic of Chile. It was up to the defendant to adduce evidence of facts and/or circumstances to support its submission that this was not the case. As the defendant has failed to do so, and as such facts and/or circumstances have not become known in any other way either, the Republic of Chile is – in view of the above – in principle entitled to claim immunity from. The defendant wrongly demands that the Chilean Embassy should provide more detailed information about the nature and scope of the bank balances held by it, since this would entail an unacceptable interference under international law in the internal affairs of this mission. The defendant's submission that the State of the Netherlands should also defend the interests of its national companies does not detract from the above.

3.3. The defence put forward by the defendant that recognition of the immunity from execution would jeopardise the immunity of Dutch administration of justice is rejected. Quite apart from whether such a general principle exists in [the Dutch] legal system, a higher importance should in principle be attached to the rules of international law than to the rules of Dutch law (in particular Dutch procedural law), with the result that the interests of the uninterrupted functioning of a diplomatic mission should in this case prevail over the interests of executing (by expeditious means) a judgment given in the Netherlands.