

## EXTRACTS OF THE JUDGMENT OF THE SUPREME COURT

### ***Société Européenne d'Etudes et d'Entreprises en liquidité volontaire (SEEE) v. Socialist Federal Republic of Yugoslavia***

In 1932, the appellant concluded an agreement with the respondent for the construction of a railroad in Yugoslavia. Since there were difficulties with regard to the payments, the appellant submitted the question to arbitration at Lausanne. In the arbitral award the respondent was ordered to pay a certain sum. However, although the Court of Appeal granted no immunity to Yugoslavia, it found itself unable to execute the award.

In the incidental appeal instituted by Yugoslavia against the decision of the Court of Appeal refusing immunity from jurisdiction and execution, it was argued as follows:

I. (a) A foreign State cannot be obliged to submit to the jurisdiction of another State.

(b) Jurisdiction over a foreign State can be exercised only where the activities in question have a definite link with the territory of the State where jurisdiction is invoked.

(c) The Court has only examined the question whether Yugoslavia's action was a "purely governmental act", and not whether Yugoslavia had acted as a private person. If the latter is what the Court had in mind then its decision is contestable: Yugoslavia acted in accordance with an enabling Act and the railway had a military character.

(d) If immunity from jurisdiction can be granted only in respect of purely governmental acts, the finding of the Court without more that the private law trades-action for the construction of a railway was not a purely governmental Act, goes too far, in the light of the enabling Act and the military character of the railway.

[...]

III. To apply for the grant of enforcement of an arbitral award is an act of execution [and, as such, contrary to Yugoslavia's immunity from execution].

[...]

The Supreme Court held:

"...With regard to subsections (a) and (b) of Section I of the incidental appeal:

In subsection (a) it is argued that as an exception, recognised under international law, to the exercise of jurisdiction by municipal courts, it should be accepted that a foreign State cannot be obliged to submit to the jurisdiction of another State;

However, no rule of international law involves taking the jurisdictional immunity to which foreign States are entitled so absolutely, as is suggested in this subsection;

Clearly, there is a tendency apparent in the international practice of treaties and in literature, as well as in the case law of national courts, to limit the extent to which a State may invoke immunity before a foreign court;

That this trend has been induced by, *inter alia*, the fact that in many States the government has increasingly engaged in activities in areas of society where the relations are governed by private law and where, consequently, the State enters into a legal relationship on an equal footing with individuals;

It is considered reasonable in such cases to grant a similar legal protection to the opposing party of the State concerned as would be granted if that party had dealt with an individual;

That on these various grounds it has to be assumed that the immunity from: jurisdiction to which a foreign State is entitled under the prevailing international law does not extend to cases in which a State has acted as set out above; Subsection (b) purports to contend that, if the rule as stated in (a) cannot be accepted, nevertheless jurisdiction over a foreign State which has acted as set out above can be exercised only where the activity in question of that State has an obvious link with the territory of the State where jurisdiction is invoked; this requirement is said not to be fulfilled in the present case;

Neither the case law of national courts nor the literature, as being a reflection of prevailing views, provide any evidence that such a link is, in international law, a condition for the exercise of jurisdiction in respect of disputes to which a foreign State is a party; therefore no rule of international law as stated in subsection (b) can be assumed;

Consequently, the arguments raised in subsections (a) and (b) fail;

With regard to subsections (c) and (d) of section I:

The Court of Appeal has established that the Kingdom of Yugoslavia has, in the present case, concluded a private law transaction whereby a private legal person was to construct a railway with delivery of materials against payment;

From this it follows that the Kingdom of Yugoslavia has entered into a legal relationship on an equal footing with SEEE; it makes no difference that the transaction has been concluded under an enabling Act nor that the railway, as contended by Yugoslavia, has a military or strategic character;

Therefore, Yugoslavia cannot invoke immunity from jurisdiction. Consequently, these arguments also fail;

[...]

With regard to section III:

To apply for a grant of enforcement of the present award could be deemed to be contrary to the immunity from execution to which a foreign State is entitled under international law only if international law is opposed to any execution against foreign State-owned property situated in the territory of an- other State;

However, such rule of international law does not exist;

Consequently, this point, whatever the relevant considerations of the Court of Appeal, cannot lead to cassation.