

EXTRACTS OF THE JUDGMENT OF THE SUPREME COURT

The Russian Federation v. Pied-Rich B.V.

Pied-Rich B.V., concluded a tripartite contract with the Baltic Shipping Company (hereinafter referred to as 'BSC') and a number of Russian importers in 1989 for the delivery of women's and children's wear. Under the contract, Pied-Rich sold and delivered the goods to the Russian importers and payment was guaranteed both by BSC, which transported the goods to Russia, and by the Ministry to which BSC was responsible. Pied-Rich made deliveries in 1990 and early 1991.

When the relevant Ministry failed to comply with its guarantees and payment was not made, Pied-Rich instituted arbitration proceedings in Moscow. As Pied-Rich wished to be certain that any award made by the arbitrators would actually be paid, it applied to the District Court in Rotterdam for leave to seize the 'Kapitan Kanevsky', a vessel which belonged to the Russian Federation (hereinafter referred to as 'the RF') and which was used by BSC.

The leave was originally granted on 27 April 1992 while the vessel was bound for Rotterdam. However, it did not arrive there. But, a month later, it did eventually dock in the port of Rotterdam. Pied-Rich then once again applied for leave to seize the vessel. The RF and BSC for their part instituted interim injunction proceedings to prevent leave being granted, in any event unless a prohibitive counter-guarantee was issued.

The Supreme Court held:

[...] The Court of Appeal did not show it had misinterpreted the law by concluding on the basis of this uncontested findings that the undertaking by the Ministry was an act performed on a footing of equality with the trading partners and by consequently not interpreting this undertaking as an act that was clearly in the nature of a governmental act. [...]

The Court of Appeal did not refrain from making its contested ruling, because the undertaking was given in order to promote the economic interests of the USSR: this circumstance may well explain what induced the Ministry to give this undertaking, but it does not mean that this act was clearly a government act. What was decisive was the nature of the act, not the motive for it.

[...]

There is no rule of unwritten international law to the effect that seizure (provisional or otherwise) of a vessel belonging to the State and intended for commercial shipping, is permissible only if the seizure is levied for the purpose of insurance or to recover a ("maritime") claim resulting from the operation of the vessel.