

Sovereign Wealth Fund assets – state immunity or not?

In the Swedish Supreme Court (case Ö 3828-20, 12, announced 18 November 2021), the court concluded that there is no immunity of enforcement of sovereign wealth fund assets under central bank management covered by the Swedish Enforcement Agency's attachment decision.

Under the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce the arbitration tribunal awarded an issue following a dispute between companies and investors seeking payment against the Republic of Kazakhstan. The Republic of Kazakhstan was ordered to pay USD 500 million, but the Republic of Kazakhstan brought an action for annulment. The Swedish Supreme Court rejected the appeal, and the Swedish District Court allowed a freezing order concerning the property of Kazakhstan's government which included their shares in listed Swedish companies. The Republic of Kazakhstan appealed the decision based on state immunity.

The Swedish Supreme Court granted leave to appeal and addressed whether property seized by the Swedish Enforcement Authority was subject to immunity from enforcement. The court considered that the shares were a part of a savings portfolio with a commercial element, but the primary function of a savings portfolio is to return high yields in a long-term plan. The Kazakh National Fund in question was established in year 2000 to ensuring stable economic development of the country, and the Republic of Kazakhstan argued that the funds belonged to the National Bank of Kazakhstan and, therefore, would enjoy immunity. Although the shares in question could be considered a long-term contribution to increasing the state's assets, the Supreme Court concluded that it was not as sufficiently qualified to be considered an expression of official acts.

The Swedish Supreme Court, in contrast to the Court of Appeal's decision, concluded that any state immunity could not cover the purpose of the possession of the property. The case signifies a ***fundamental precedent that there is no immunity from the enforcement of listed shares.***

This decision has had a significant impact on international case law regarding the immunity of state property. The Swedish Court had to rely upon customary international law when concluding as there are no provisions in Swedish legislation regarding enforcement against a foreign state. It can be considered a *precedent in an arbitral award against sovereign States* and governments who want to enjoy immunities. This decision leaves an impact and can push *states to review their asset management policies* as well as it paves the way to ensure that *awards against a state are not meaningless* and puts more responsibility on the States.