EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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ECHR 048 (2015)
05.02.2015

The Court declares inadmissible an application from NML Capital Ltd, a creditor of the Republic of Argentina

In its decision in the case of NML Capital Ltd v. France (application no. 23242/12) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerns the attempts by a creditor of the Republic of Argentina, a State which defaulted on its debt in 2001, to obtain repayment of its loan by having assets belonging to Argentina seized in France. In application of the diplomatic immunity in relation to enforcement, the French ordinary courts refused to grant the applicant company's request, and it then applied to the European Court of Human Rights. The Court has declared the application inadmissible, holding that the applicant company still had available to it an effective domestic remedy, namely before the French administrative courts.

Principal facts

From 1998 to 2003 Argentina experienced a serious economic crisis which led it to default on its debt at the end of 2001. That debt was subject to the terms of a fiscal agency agreement by which Argentina waived its immunity in relation to questions of jurisdiction and enforcement (State privilege), and recognised the jurisdiction of any court in New York to rule on disputes between it and its creditors.

The applicant company, NML Capital, held 172 million dollars of Argentinian bonds in 2001. Following the sovereign default, NML Capital rejected the settlement offered by Argentina to its creditors and brought an action for payment before a federal court in New York. On 18 December 2006 that court ordered Argentina to pay the applicant company 285 million dollars. In order to recover this sum despite Argentina's refusal to comply, the applicant company attempted to have seized moveable property (shares held by banks, accounts, etc.) belonging to Argentina in various countries, on the ground that immunity in relation to execution had been waived in the fiscal agency agreement. These attempts were partly successful in the United States, where the applicant company was able to recover about 95 million dollars.

In France, the applicant company obtained on 3 April 2009 an interim attachment order, which was accordingly provisional pending a judgment authorising a final seizure, in respect of bank accounts belonging, in particular, to the embassy of the Argentinian Republic and Argentina's permanent delegation to the UN. On 4 May 2011 it obtained from the Paris *tribunal de grande instance* an exequatur (recognition) of the New York court's judgment of 18 October 2006, which was necessary for the seizure to take place. That judgment was upheld by the court of appeal and subsequently by the Court of Cassation.

At the same time, however, on 21 April 2009 the Republic of Argentina applied to the judge at the Paris *tribunal de grande instance* responsible for the execution of judgments, requesting that the interim attachment order be lifted. On 23 June 2009 the judge responsible for the execution of judgments allowed that request, holding that the accounts opened on behalf of an embassy on the territory of the receiving State could not be seized, notwithstanding Argentina's waiver of its immunity in respect of enforcement. The court based its decision on the 1961 Vienna Convention, providing for diplomatic immunity in relation to enforcement, which Argentina had not expressly waived when concluding the fiscal agency agreement. That judgment was upheld by the court of appeal and subsequently by the Court of Cassation.

Complaints, procedure and composition of the Court

The applicant company alleged that there had been a violation by France of Article 6 of the Convention (right to a fair hearing), claiming that the unfavourable decision on enforcement had deprived it of its right to the execution of a judicial decision, which was an integral part of the right of access to a court.

The applicant company also relied on Article 1 of Protocol No. 1 (protection of property), alleging that the decision by the French court had prevented it from recovering the debts owed to it.

The application was lodged with the European Court of Human Rights on 27 March 2012.

The decision was given by a Chamber of seven, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Ganna **Yudkivska** (Ukraine),
Vincent A. **de Gaetano** (Malta),
André **Potocki** (France),
Helena **Jäderblom** (Sweden), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar.*

Decision of the Court

The Court reiterated that an application could be lodged only after domestic remedies had been exhausted (Article 35 § 1 of the Convention). Although the applicant company had indeed exhausted all remedies available to it before the ordinary courts, it could still bring an action to establish liability against the State before the administrative courts. Thus, the Court noted that the *Conseil d'Etat* had in similar cases recognised the possibility of engaging the State's responsibility on the ground that there had been a breach of equality *vis-à-vis* public burdens, where the diplomatic immunity in respect of enforcement caused serious and special loss to the claimant's detriment.

In consequence, the Court rejected the application as inadmissible for failure to exhaust domestic remedies.

The decision is available only in French.

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