French Supreme Courts rules on Personal Scope of Waiver of Immunity of Enforcement

By Vincent Richard

Vincent Richard is a research fellow at the Max Planck Institute Luxembourg

On March, 5th, 2014, the French Supreme Court for private and criminal matters (*Cour de Cassation*) set aside an enforcement measure carried out by a Swiss company (Romak SA Geneva) against the Republic of Uzbekistan (here).

Facts

In 1996, an Uzbek company (Uzdon) signed a contract with Romak for the delivery of wheat to Uzbekistan. The price agreed was never paid by the Uzbek company and Romak initiated arbitral proceedings in front of the GAFTA. In August 1997, a GAFTA arbitral award ordered Uzdon to pay approximately 10 million dollars to Romak SA Geneva. This award was declared enforceable in France and in November 2009 Romak proceeded to attach a bank account opened by the Republic of Uzbekistan at the Paris branch of HSBC Bank. The Republic of Uzbekistan challenged this attachment in front of a French enforcement court.

Personal Scope of Waiver of Immunity

Uzbekistan claimed that the HSBC bank account under the name Uzbekistan Airways was supplied by air navigation charges and thus covered by enforcement immunity as resulting from public powers activities. The Swiss Company did not contest the origin of the funds but argued that they were not covered by State immunity. This argument was based on the fact that these funds were escrowed in favour of a lending Japanese company in order to guarantee a loan where Uzbekistan clearly waived its immunity.

Unsurprisingly, the enforcement court declared that the waiver of immunity was made solely in favour of the Japanese company for the purpose of the loan and could not be extended to all creditors of Uzbekistan. The Court considered that the funds were covered by Uzbekistan enforcement immunity and the attachment

was thus annulled. This decision was confirmed by the Court of Appeal and by the French Supreme Court.