STOCKHOLM
DISTRICT COURT **JUDGMENT**
Division 601 18 December 2002 Case No.
Department 6 Given in Stockholm T 6-583-98

CLAIMANT

Russian Federation
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RESPONDENT

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JUDGMENT

1. The District Court rejects the claims of the claimant.
2. The decision of the District Court of 26 October 1998 that enforcement of the Arbitral award of 7 July 1998 in arbitration proceedings between Mr. S and the Russian Federation until further notice shall be suspended, shall no longer apply.
3. The Russian Federation is ordered to compensate Mr. S for his litigation costs in the amounts of SEK one-million six-hundred-forty-

one-thousand six-hundred-ninety-two (1,641,692), out of which SEK 1,600,000 comprises costs for legal counsel, EUR one-hundred-thirty-two-thousand four-hundred-eighty-three (132,483) and USD seven-thousand four-hundred-fifteen (7,415) plus interest thereon pursuant to Section 6 of the Swedish Interest Act from this day until the day of payment.

BACKGROUND

Mr. S is a German citizen. He is the sole owner of the Sedelmayer Group of Companies International Inc. (below "SGC International"), with its registered seat in Missouri, U.S.A.

During 1990, Mr. S was in ongoing discussions with the police authority of Leningrad, Russia ("GUVD"), for the provision of equipment for police work and education on the use of said equipment. On 21 July 1990, GUVD and SGC International signed a letter of intent on future cooperation. This letter of intent provided that the "mutual business operations" included trade in police equipment, construction of training facilities in St Petersburg (Leningrad) and the establishment of a private armed security agency for the protection of individuals and objects.

In November of 1990, GUVD sent a letter to SGC International in which Mr. S was invited to use certain buildings belonging to GUVD for "joint business cooperation". The buildings were located at Plevaya Alleya 6/8 in St Petersburg, on the so-called Rock Island.

On 28 August 1991, GUVD as the "Soviet shareholder" and SGC International as the "Foreign shareholder" signed an agreement on the incorporation of a joint stock company – Kammenij Ostrov ("KOC") – which would carry out the business set out in the letter of intent. The Soviet and the Foreign shareholder, respectively, were to invest half of the company's share capital of RUB 1,400,000. The contribution of the Soviet shareholder

comprised the right to use the building on Rock Island, valued at RUB 700,000.

At the incorporating general meeting, Mr. S was appointed as General Director.

On 15 September 1991, Mr. S signed a loan and profit waiver agreement with SGC International concerning SGC International's "future investment in the Soviet Union". This agreement provided that Mr. S was willing to grant SGC International a loan of no more than USD 5 million. It further provided that SGC International would cede its net profits for the benefit of Mr. S until the loan had been fully repaid and that, on the other hand, Mr. S would bear all possible losses in SGC International.

On 1 November 1991, GUVD and KOC signed a transfer deed relating to the property on Rock Island.

During 1992 and 1993, several court proceedings were initiated in Russia in which KOC was involved. On 26 February 1992, an arbitrazh court (a state commercial court) in St Petersburg rendered a decision which declared the incorporation of KOC invalid due to alleged errors committed in connection with the capital contribution to KOC. On 8 February 1996, the Civil Legal Board of the St Petersburg Federal Court decided, amongst other things, that KOC should be wound up.

The Russian name for "Procurement Department" is "Upravlenye Delami presidenta Rossiskoy Federatsii". In the documents submitted in the present case, several names have been used, e.g. "Procurement Department", "Managing Department" and "Administrative Department". Below, following agreement between the parties thereon, the term "Administrative Department" will be used.

On 4 December 1994, the then president of the Russian Federation, Boris Yeltsin, issued a decree ordering the transfer of the property on Rock Island to "Upravlenye Delami presidenta Rossiskoy Federatsii" (the Administrative

Department). The transfer was made to enable receiving foreign delegations invited by the president of the Russian Federation.

As a consequence of the president's decree and regulations issued as a result thereof, on 9 March 1995 a deed of transfer was signed pursuant to which the property on Rock Island was transferred to the balance sheet of the Administrative Department from the balance sheet of GUVD.

On 20 September 1995, the College for Civil Cases of the St Petersburg Federal Court rendered a decision for the sequestration and sealing up of buildings and facilities on the property. This lead to the enforcement agency's sealing of parts of the property. Finally, on 24 January 1996, the property was sequestered.

On 15 January 1996, Mr. S, after the Administrative Department had failed to respond to a request for arbitration, submitted a request for arbitration to the chairman of the Arbitration Institute of the Stockholm Chamber of Commerce in Sweden. As noted in the request, it was based on a convention entered into on 13 June 1989 between the Federal Republic of Germany and the Union of Socialist Soviet Republics for the promotion and mutual protection of investments (hereinafter, the "Convention"), see appendix 1.

As provided in minutes attached to the Convention, the Convention parties agreed on certain provisions that would form part of the Convention. Among these, the following is provided:

> "Too Article 4
>
> The investor is also entitled to request compensation upon the other contracting party's infringement on the business of a company in which he is a shareholder, if his investment is materially adversely affected by the infringement. In the event of disagreements thereon between the investor and the other contracting party, the provisions of Article 10 shall apply in applicable parts."

In his request for arbitration, Mr. S claimed compensation for, amongst other things, investments in the joint stock company KOC, the value of sequestered assets, the value of improvements to the property and the loss of use of facilities contributed under KOC's articles of incorporation. During the arbitration proceedings, Mr. S later clarified that the correct respondent was the Russian Federation.

The respondent disputed the claims and in the main maintained that no arbitral tribunal had jurisdiction. In the arbitration proceedings, the respondent also launched counterclaims in response to Mr. S's claims. Following some correspondence, the Administrative Department notified that it had appointed Professor Z as arbitrator, provided, however, that it maintained its objection that no arbitral tribunal had jurisdiction.

In further submissions to the Arbitration Institute, the Administrative Department explained that it was not a party under the Convention and that it had no authority to appoint an arbitrator pursuant to the Convention.

Thereafter, Mr. S notified that he had appointed Dr. W as arbitrator. Upon Mr. S's request, the Institute subsequently appointed Supreme Court Justice M as chairman of the arbitral tribunal.

After the arbitral tribunal had been constituted, correspondence was exchanged between the parties. A preparatory meeting and an oral main hearing was held, both in Stockholm.

Following further correspondence, the arbitral tribunal rendered an arbitral award on 7 July 1998 "at the place of the arbitration proceedings in Stockholm, Sweden" between Mr. S on the one side, and the Russian Federation through the "President's of the Russian Federation Procurement Department" (the Administrative Department) on the other side. The award was worded in the English language. The arbitral award ordered the Russian Federation to pay the amount of USD 2,350,000 plus interest to Mr. S. In addition thereto, the Russian Federation was ordered to compensate costs for the proceedings by certain amounts.

The arbitrator Z dissented, and maintained that the arbitral tribunal had lacked jurisdiction to try the case on the merits.

The District Court by a decision of 26 October 1996 ordered a suspension of the enforcement of the arbitral award until further notice.

MOTIONS AND GROUNDS

The Russian Federation has moved that the District Court shall declare the arbitral award between the parties of 7 July 1998 invalid.

The Federation has referenced three grounds for its motion for invalidity of the arbitral award.

1. The matter for which Mr. S has requested arbitration falls outside the scope of the applicability of the Convention. Mr. S's request for an arbitral award did not, consequently, entail the formation of an arbitration agreement. Thus, the arbitral award is invalid.

2. Mr. S is not an "investor" in the sense of the Convention, and cannot, as a result, request arbitration under the provisions of the Convention for the bringing about of arbitration agreements; Mr. S's request for arbitration has, as a result, not resulted in an arbitration agreement. As consequence, the arbitral award is invalid.

3. Mr. S has requested arbitration against the Administrative Department as counterparty and presented his claims against the same. The request for arbitration was addressed to the Administrative Department and was properly received by it. There was no arbitration agreement between Mr. S and the Administrative Department and arbitration proceedings between these parties could not be initiated by reference to the Convention. The Administrative Department in due time referenced the lack of an arbitration agreement in a submission of 20 March 1996 as well as later to the Arbitration Institute of the

> Stockholm Chamber of Commerce. The arbitral tribunal's measure of replacing the Administrative Department with the Russian Federation, which was not properly represented at the arbitration proceedings, does not have any legal effects as between the parties.

In connection with the evolution of its case, the Russian Federation has maintained that what is relevant to this case is *not* whether a certain issue – i.e. Mr. S's indirect investment – falls outside the scope of an arbitration agreement valid in and of itself. Instead, the situation is that no arbitration agreement at all has been entered into; thus no jurisdiction has been exceeded, because there was no jurisdiction to be exceeded.

The term "request" [*translator's note: noun and/or verb*] in this case is not used by the Federation in the for arbitration traditional sense. According to the traditional sense, it is the case that an arbitration agreement exists between the parties and that a party requests its application.

In the present situation there is, in the Russian Federation's view, no arbitration agreement between the parties, i.e. between the state, on the one hand, and a private citizen, on the other. The request that can be made under the Convention thus has a different consequence, i.e. the announcement of a claim from the private citizen to rely on the opposing state's undertaking to submit to arbitration on the conditions provided by the Convention. Only following a request according to the provisions set out in the Convention that are applicable due to that state's unilateral declaration of intent, the "option", does an arbitration agreement come into existence.

If, however, arbitration proceedings are actually initiated and result in an arbitral award without an arbitration agreement in accordance with the aforementioned has come into existence, the only legal effect that can result with respect to the arbitral award is that it is invalid. Thus, the case of the Federation is not based on the existence of an "invalid arbitration agreement", but actually on the lack of any arbitration agreement whatsoever, i.e. a nullity.

Mr. S has disputed the case of the Russian Federation and moved that the case shall be dismissed or, in the alternative, be rejected.

In support of his case, Mr. FJS has referenced the following grounds:

1. The Swedish Arbitration Act (SFS 1929:145) (hereinafter the "Arbitration Act") is not applicable to the relevant arbitration proceedings or to the arbitral award.

1.1 The relevant arbitration proceedings must be deemed to be arbitration proceedings based on a provision of foreign law, which, similarly to arbitration proceedings based on a provision of Swedish law, only take place under the provisions of the Arbitration Act if so is provided in the said provision, which is not the case here. Arbitration proceedings based on a provision of foreign law, which are not carried out under the Arbitration Act ought to, from a Swedish law perspective, be equated to foreign arbitration proceedings and an arbitral award rendered in such arbitration proceedings ought to, from a Swedish law perspective, be equated to a foreign arbitral award. This should in any event apply to and/or a Swedish court should not have jurisdiction to annul an arbitral award rendered in arbitration proceedings based on a provision of foreign law and that only involves parties domiciled where that foreign law is the applicable law, irrespective of where the arbitration proceedings took place.

1.2 The relevant arbitration proceedings are not governed by the Arbitration Act, but are governed by provisions of international law, and consequently the relevant arbitral award is not governed by the Arbitration Act.

1.3 The Federal Republic of Germany and the Russian Federation have in the Convention agreed to waive the applicability of the provisions on invalidity and challengeability of the Arbitration Act.

1.4 The relevant arbitration proceedings cannot be deemed to have been taken place in Sweden in such a way that entails the applicability of the Arbitration Act to the arbitration proceedings or to the arbitral award.

2. In the event that the District Court would find the Arbitration Act applicable to the relevant arbitration proceedings and arbitral award, Mr. S

has referenced the following grounds in response to the three grounds referenced by the Russian Federation.

In response to the Russian Federation's first ground:

2.1 Mr. S's request for arbitration was based on the arbitration agreement for the benefit of investors from the contracting states set out in Article 10(2) of the Convention, which was entered into between the Russian Federation and the Federal Republic of Germany, and in which the contracting states have granted investors from the contracting states the autonomous right to request arbitration against the contracting states (agreement for the benefit of third parties). The arbitration clause set out in Article 10(2) of the Convention does consequently not as a precondition for arbitration proceedings between a contracting state and an investor require that an arbitration agreement is entered into between them. Thus, the arbitration agreement relevant to this case is the arbitration agreement entered into between the Russian Federation and the Federal Republic of Germany in Article 10(2) of the Convention for the benefit of investors from the contracting states, and a valid arbitration agreement is at hand already on this ground.

2.2 In the event that a valid arbitration agreement is not deemed existing based on the provisions of Article 10(2) of the Convention, then a valid arbitration agreement of the same contents and effects as that of Article 10(2) of the Convention is at hand, because Mr. S voluntarily relied on the investors' right to request arbitration as has been granted investors from the contracting states by the Russian Federation and the Federal Republic of Germany.

2.1.1 and 2.2.1 The issue for which Mr. S requested arbitration falls within the scope of the arbitration clause of the Convention, irrespective of the validity of the Russian Federation's opinion on the applicability of the Convention.

2.1.2 and 2.2.2 The arbitrators found that Mr. FJS had actually made investments in the Russian Federation falling within the scope of the applicability of the Convention. This relates to a review on the merits which

may not be reviewed by the District Court within the scope of these challenge proceedings.

2.1.3 and 2.2.3 The question of whether the investments found having been made in the Russian Federation by Mr. S fall within the scope of the applicability of the Convention is a question that, if the Russian Federation's opinion would be correct, at most could entail that the arbitrators exceeded their jurisdiction but not, however, that a valid arbitration agreement did not exist. Having regard to the fact that the Russian Federation did not challenge the arbitral award within the time set out in the third paragraph of Section 21 of the Arbitration Act, the Russian Federation's right to rely on that ground has expired.

2.1.4 and 2.2.4 The investments that the arbitrators found Mr. S had made in the Russian Federation fall within the scope of the applicability of the Convention.

2.1.4.1 and 2.2.4.1 The aforementioned applies irrespective of whether the Convention would apply only to "direct investments".

2.1.4.2 and 2.2.4.2 The aforementioned applies at least because the Convention applies to "indirect investments" and/or does not exclude the applicability of the "control theory".

2.3 In any case, since the Russian Federation requested arbitration against Mr. S, the parties have reached an arbitration agreement that must be deemed to govern the issues reviewed by the arbitral tribunal.

In response to the Russian Federation's second ground:

3.1 Mr. S's request for arbitration was based on the arbitration agreement for the benefit of investors set out in Article 10(2) of the Convention entered into between the Russian Federation and the Federal Republic of Germany, in which the contracting states have granted investors from the contracting states the right to autonomously request arbitration against the contracting states (agreement for the benefit of third parties). The arbitration clause set out in Article 10(2) of the Convention does consequently not as a precondition for

arbitration proceedings between a contracting state and an investor require that an arbitration agreement is entered into between them. Thus, the arbitration agreement relevant to this case is the arbitration agreement entered into between the Russian Federation and the Federal Republic of Germany in Article 10(2) of the Convention for the benefit of investors from the contracting states, and a valid arbitration agreement is at hand already on this ground.

3.2 In the event that a valid arbitration agreement is not deemed to exist based on the provisions of Article 10(2) of the Convention, then a valid arbitration agreement of the same contents and effects as that of Article 10(2) of the Convention exists, because Mr. S voluntarily relied on the investors' right to request arbitration as has been granted investors from the contracting states by the Russian Federation and the Federal Republic of Germany.

3.1.1 and 3.2.1 The question whether Mr. S during the case at the relevant time was a "naturliche Person mit Ständigem Wohnsitz" in the Federal Republic of Germany falls within the scope of the arbitration clause of the Convention, irrespective of whether the Russian Federation's opinion on the issue of Mr. S's "ständige Wohnsitz" would be accurate.

3.1.2 and 3.2.2 The arbitrators found that Mr. S at the time relevant to the case was a "naturliche Person mit Ständigem Wohnsitz" in the Federal Republic of Germany. This decision relates to the merits of the case, which is not subject to the District Court's review in challenge proceedings.

3.1.3 and 3.2.3 The question of whether Mr. S at the time relevant to the case was a "naturliche Person mit Ständigem Wohnsitz" in the Federal Republic of Germany is a question that, if the Russian Federation's opinion would be correct, at most could entail that the arbitrators exceeded their jurisdiction but not, however, that a valid arbitration agreement did not exist. Having regard to the fact that the Russian Federation did not challenge the arbitral award within the time set out in the third paragraph of Section 21 of the Arbitration Act, the Russian Federation's right to rely on that ground has expired.

3.1.4 At the time relevant to the case, Mr. S was a "naturliche Person mit Ständigem Wohnsitz" in the Federal Republic of Germany.

3.1.5 and 3.2.5 In any event, it would be bad faith for the Russian Federation to maintain that Mr. S at the time relevant to the case was not a "naturliche Person mit Ständigem Wohnsitz" in the Federal Republic of Germany.

3.3 In any case, since the Russian Federation requested arbitration against Mr. S, the parties have reached an arbitration agreement that must be deemed to govern the issues reviewed by the arbitral tribunal.

In response to the Russian Federation's third ground:

4.1 Mr. S's request for arbitration was based on the arbitration agreement for the benefit of investors set out in Article 10(2) of the Convention entered into between the Russian Federation and the Federal Republic of Germany, in which the contracting states have granted investors from the contracting states the right to autonomously request arbitration against the contracting states (agreement for the benefit of third parties). The arbitration clause set out in Article 10(2) of the Convention does consequently not as a precondition for arbitration proceedings between a contracting state and an investor require that an arbitration agreement is entered into between them. Thus, the arbitration agreement relevant to this case is the arbitration agreement entered into between the Russian Federation and the Federal Republic of Germany in Article 10(2) of the Convention for the benefit of investors from the contracting states, and a valid arbitration agreement is at hand already on this ground.

4.2 In the event that a valid arbitration agreement is not deemed to exist based on the provisions of Article 10(2) of the Convention, then a valid arbitration agreement of the same contents and effects as that of Article 10(2) of the Convention is at hand, because Mr. S voluntarily relied on the investors' right to request arbitration as has been granted investors from the contracting states by the Russian Federation and the Federal Republic of Germany.

4.3 In any case, since the Russian Federation requested arbitration against Mr. S, the parties have reached an arbitration agreement that must be deemed to govern the issues reviewed by the arbitral tribunal.

4.1.1 and 4.2.1 and 4.3.1 The Russian Federation was properly served the request for arbitration and was properly represented at the arbitration proceedings, to the extent this is required for the validity of the arbitral award.

4.1.1.1 and 4.2.1.1 and 4.3.1.1 Since Mr. S addressed the request to "Presidential Administration, Procurement Department, of the Honorable Boris N. Yeltsin, President of the Russian Federation, a Government Entity of the Russian Federation" referencing the Convention and sent the request to Upravlenye Delami (the Administrative Department), which is a Russian Federal Authority and forms part of the Russian state and is directly subordinate to the Russian president and which cannot be deemed unable to represent the Russian Federation in the arbitration proceedings and/or receive a request for arbitration and which also received the request and appeared in the arbitration proceedings.

4.1.1.2 and 4.2.1.2 and 4.3.1.2 In any event, during the arbitration proceedings Mr. S clarified that the Russian Federation is the correct respondent in the arbitration proceedings, and the request for arbitration was sent to a Russian Federal Authority which forms part of the Russian state and is directly subordinate to the Russian president and which cannot be deemed unable to represent the Russian Federation the arbitration proceedings and/or receive a request for arbitration and which also received the request and appeared in the arbitration proceedings.

4.1.1.3 and 4.2.1.3 and 4.3.1.3 In any event, Mr. S by handing over the original request of 10 October 1995 to the "Representative of the President of the Russian Federation in St Petersburg, Mr. [S.A.T.]" appropriately served the Russian president, and thereby also the Russian Federation, the request for arbitration in the relevant arbitration.

4.1.2 and 4.2.2 and 4.3.2 In any event, the Russian Federation does not now have the right to claim that the arbitration proceedings were not properly

initiated against the Russian Federation, since the Administrative Department never raised this objection in the arbitration proceedings. Thereby, the Russian Federation must be deemed to have accepted that the arbitration proceedings were properly initiated against the Russian Federation, to the extent that the arbitrators found that the Administrative Department had authority to represent the Russian Federation in the arbitration proceedings.

4.1.3 and 4.2.3 and 4.3.3 In any event, the Russian Federation does not now have the right to claim that were not properly initiated against the Russian Federation, since the Administrative Department, a Russian Federal Administration Authority forming part of the Russian state and is directly subordinate to the Russian president, would have been obliged to hand over the request for arbitration to the proper representative of the Russian Federation, in the event that the Administrative Department for some reason was not authorized to receive the request for arbitration or represent the Russian Federation in the arbitration proceedings.

4.1.4 and 4.2.4 and 4.3.4 In any event, the Russian Federation does not now have the right to claim that were not properly initiated against the Russian Federation, since the Russian Federation would have been obliged to appoint another authorized representative of the Russian Federation due to the Administrative Department's contacts with the Russian Federation's Foreign Department in which the Administrative Department explained that the Administrative Department represented the Russian Federation in the arbitration proceedings, in the event that the Russian Federation for any reason considered that the Administrative Department was not authorized to represent the Russian Federation in the arbitration proceedings.

4.1.5 and 4.2.5 and 4.2.6 In any event, the Russian Federation does not now have the right to claim that the arbitration proceedings were not properly initiated against the Russian Federation, since the Administrative Department submitted the application for a summons in the case in the name of the Russian Federation, signed the power of attorney initially submitted by the Russian Federation in the case, did not state in the application for a summons

as grounds for its case that the arbitration proceedings were not properly initiated against the Russian Federation or that the Administrative Department could not duly represent the Russian Federation in the arbitration proceedings despite the fact that the Administrative Department in the arbitration proceedings never maintained that the Administrative Department was not authorized to represent the Russian Federation in the arbitration proceedings, particularly since the Administrative Department duly represents the Russian Federation before other foreign courts. In any event, the Russian Federation's current claim in the case that the Administrative Department cannot duly receive requests for arbitration on behalf of the Russian Federation or duly represent the Russian Federation in the arbitration proceedings or in the present case lacks credibility.

4.1.6 and 4.2.6 and 4.3.6 In any event, the Russian Federation cannot, as a defense against liability under an international convention, reference internal rules on the authority to represent the state in arbitration proceedings, that the Administrative Department was not obliged to forward the request for arbitration to an authorized representative of the Russian Federation or that the Russian Federation was not obliged to appoint another authorized representative of the Russian Federation as a result of the Administrative Department's contacts with the Foreign Department of the Russian Federation.

The parties have claimed compensation for their respective litigation costs.

EVIDENCE

In addition to substantial documentary evidence – not least legal opinions – the following witnesses have been heard upon the request of the Russian Federation: AS, SN, Prof. RW and Dr. AZ. Upon the request of Mr. S the following witnesses have been heard: Prof. UM, Prof. BS, Prof. RG, Dr. SS, and rechtsanwälte WH. Upon his request, Mr. S has been heard under oath.

GROUNDS

First, with respect to the question of the jurisdiction of Swedish courts over challenge proceedings when both parties lack connection to Sweden, the Swedish Supreme Court has in the so-called Uganda case (NJA 1989 p. 143) held that the rules of the 1958 New York convention strongly indicate that for arbitral awards rendered in Sweden it should be possible in separate court proceedings have a court review in Sweden of, not only as the Supreme Court previously held in its judgment, the challenge grounds set out in Section 21 of the Arbitration Act, but also of the grounds for annulment set out in Section 20 of the same Act. The arbitration proceedings in our case did actually take place in Sweden and the arbitral award, according to what is explicitly stated therein, was rendered at "the place for the arbitration proceedings, Stockholm, Sweden". If the parties do not otherwise agree, the arbitrators decide the place for the proceedings and they have, without any apparent objections, at least implicitly decided to conduct the proceedings in Stockholm. This entails that the arbitral award shall be deemed Swedish and that applicable law to the proceedings shall, unless otherwise agreed, be the Swedish Arbitration Act. Mr. S has not sufficiently established that the provisions thereof in any part have been waived between the parties by agreement. The fact that the arbitration may be based on an international convention – at least when the two parties are not two sovereign states, but one of them is a private individual – does not lead to any other conclusion.

The District Court, which finds that it has jurisdiction in the case, will hereafter try the first and second grounds referenced by the Russian Federation.

To the question of whether an arbitration agreement existed between the parties and that the arbitrators consequently had jurisdiction, the so-called doctrine of assertion provides guidance (see Heuman, Skiljemannarätt, Stockholm 1999, p. 75 ff. and Welamson in SvJT 1964 p. 276 ff.). This doctrine may be applied when one party maintains that the dispute relates to the agreement which contains an arbitration clause, but the other party maintains the opposite. A common example is that the requesting party asserts – makes a statement – that it can base its claim on the main agreement

whereas the respondent maintains that it does not regulate the disputed issue at all.

Thus, the doctrine of assertion entails that a dispute falls within the jurisdiction of arbitrators already because a party asserts that hits claim is based on the main agreement which also includes an arbitration clause, provided that its assertion is not obviously unfounded. It is the dispute's – not the correct solution's – alleged connection to the main agreement that is deciding, not how this shall be properly assessed on the merits. The Supreme Court has been considered to support this doctrine (NJA 1982 p. 738, cf. NJA 1955 p. 500; Heuman, op. cit. p. 76).

Applied to this case, the doctrine entails that Mr. S's assertion – i.e. that he is an "investor" with "permanent domicile" in Germany and is thereby assured the investment protection to which such a subject is entitled under the Convention – is sufficient to grant jurisdiction to the arbitrators to try the case based on Mr. S's request for arbitration. When the arbitrators subsequently in their arbitral award shall finally decide on these issues on their merits, it is irrelevant how these issues were decided in connection with the arbitrators' review of whether a valid arbitration agreement existed between the parties or whether they have jurisdiction to try the dispute at all. Correspondingly, how the arbitrators subsequently view the questions of Mr. S's status and right to investment protection under the Convention is irrelevant to the question of whether a valid arbitration agreement existed. When the validity of an arbitration agreement forming part of another agreement shall be decided in connection with the review of the arbitrators' jurisdiction, the arbitration agreement shall actually be viewed as a separate agreement. This principle of separation, now provided by Section 3 of the Arbitration Act, was previously accepted by Swedish law and considered applicable not only when it was maintained that the main agreement subsequently had ceased to apply, but also when it is maintained that no agreement had been reached or that the agreement – for any reason – was invalid from its inception (SOU 1994:81 p. 103 f.). That the issue is maintained separate and that the arbitration agreement shall be considered a separate agreement relates to the basic

principle of Swedish arbitration law that courts shall not, with respect to the actual dispute, be entitled to carry out a review of the merits of the arbitral award.

In sum, the District Court finds that Mr. S, already based on his assertion that he was an investor with permanent domicile in Germany and thereby fell within the scope of the Convention's investment protection, could with reference to Articles 4 and 10 of the Convention turn to an international arbitral tribunal to settle dispute on "compensation and the size of the compensation" for the expropriation to which Mr. S considered himself subjected. How the arbitrators subsequently decided Mr. S's assertions are decisions on the merits of the case, which are not subject to the District Court's review.

Thus, the Russian Federation's motion cannot be granted based on the grounds referenced by the Federation under items 1 and 2.

Hereafter, the District Court proceeds to review whether the Russian Federation's motions can be granted based on the grounds referenced by the Federation under item 3.

As the Convention must be understood, it is the relevant state which in its capacity as contracting party, i.e. in this case the Russian Federation, which is liable to pay compensation, to the extent compensation shall be paid pursuant to the provisions of the Convention. The correct respondent for claims based on the Convention is therefore the Russian Federation.

In his request for arbitration, Mr. S stated as respondent "Presidential Administration, Procurement Department, of the Honorable Boris N. Yeltsin, President of the Russian Federation, a Government Entity of the Russian Federation", i.e. the Administrative Department. In the following text, he explained that his claims were based on, amongst other things, the Convention.

From the investigation, including the witness statement of Dr. SS, it is clear that the Administrative Department is directly subordinated to the president

of the Russian Federation and reports directly to him. The Administrative Department has some authority functions and it was the government body that executed the president's decree that the property on Rock Island should be transferred to its balance sheet. Further, through its representative D, the Department was present when the property was sealed for the benefit of the Department. In accession to the arbitrators' view, the District Court thus finds, having considered all circumstances, that the Russian Federation must be deemed to have been duly represented at the arbitration proceedings by the Administrative Department's participation therein. Neither the fact that Mr. S initially did not formally state the Russian Federation as respondent, nor the fact that the Administrative Department then – however not forwarding the request for arbitration to any other authority – objected to the jurisdiction, leads to any other conclusion.

Thus, the Russian Federation's motions cannot be granted on the third ground upon which they are based. In sum, the Russian Federation's case shall be wholly rejected and the decision of the District Court of 26 October 1998 on the suspension of the enforcement of the arbitral award shall be repealed.

LITIGATION COSTS

Having regard to the outcome in the case, the Russian Federation shall be ordered to compensate Mr. S for his litigation costs. The Russian Federation has declared that it makes no objections to Mr. S's claim in this respect. The claimed amount shall therefore be awarded.

HOW TO APPEAL, see appendix (DV 401)

Appeal, addressed to Svea Court of Appeal, shall have been received by the District Court no later than 8 January 2003.

[ILLEGIBLE SIGNATURES]

LC MD PF