Friday, 12 April, 2019

(All proceedings translated)

(9.06 am)

THE CHAIRMAN: So good morning. So this is the last time and, according to the plan, we will have the final statement. So the National Bank will start followed by the Republic and then a lunch, slightly delayed lunch, and this is the plan. So at 1.00, 1.15, so the lunch will be extended by 15 minutes and then two more hours for the closing statements of the investors.

Anything else we should decide before we get started before we get started?

MR AXELRYD: We need the equipment, and the National Bank will email the presentation and the script as well, once we have finished and this will be recorded.

THE CHAIRMAN: Should the connection -- **(Pause)**

Is everything ready? Please go ahead.

Closing submissions by MR AXELRYD

(Interpreted)

MR AXELRYD: Right. So it's final for the closing statement and the National Bank will start. The general structure is as follows: we have one section saying that the property doesn't belong to Kazakhstan and according to the enforcement code, 4.17. The property is that

located in Sweden and the last section which has to do with the immunity.

The first section will be dealt with by me and Karl, second by Magnus, and when it comes to the state you will hear more from more Mannheimer, being the counsel for the Republic of Kazakhstan. When it comes to the second point, it is clear that securities are not in Sweden but the money is. This structure, section 1 should be the introductions, some central legal points, then we shall describe the method which the court should apply and which requirements of the enquiry should be placed as well, then the method will applied to these matters and then some of land raising(?) about who acquired the securities, what does it mean to have the right of ownership to the securities. Then we will comment regarding the securities directive, process of economy, a couple of words the situation in England and Kazakhstan and some concluding remarks.

When I started working these cases, there were some questions. I was thinking about what is the National Fund, who owns the National Fund? So is the National Fund present here in Sweden? And you could obviously dig down into the legal aspects of this case, and this is something which we should deal, but I believe that Aliya with her mathematical and financial

perspective, she was impressive(?).

One, National Fund is a claim from Kazakhstan against National Bank.

Secondly, Kazakhstan obviously owns this claim, that is the National Fund, which means that we have an answer to the third question: National Fund is not in Sweden. This is -- it is located at the domicile of the debtor that is in Kazakhstan.

So it's my opinion that it's clear that Kazakhstan is clearly not the owner of the securities in Sweden, Kazakhstan didn't have any knowledge about any particular holdings in this. It has no right of disposal of any shares and according to the Kazakh law they can never vote in accordance with the shares.

So how could they be considered to be an owner according to any concept of ownership in Sweden?

That's the reason why we're here, is because Kazakhstan has been stated as a beneficial owner to the securities. This isn't clear. I'm not an expert in tax law but in my eyes a beneficial owner is not a very precise translation of "owner".

If you consider that the size of National Fund that is this side of Kazakhstan's claim against the National Bank, correlates directly to the value of the underlying securities after deducting the costs, it's

reasonable that the National Bank stated that the Kazakhstan was the beneficial owner of the securities.

So have the claim, the value of which correlates with the value of the underlying securities is completely different from being the owner of the underlying securities according to enforcement code 4.17.

I've noticed that during the opening statements the counsel for the opposing party said that there is full assessment of evidence of Sweden and the pattern of -- rests with the applicant, but what is the evidence that Kazakhstan was the owner in the meaning of enforcement code 4.17? A mistake recording the beneficial owner has taken place, this mistake has been entered into the description of the account, official list of custodians. However, this has no legal effect with respect to who is the owner once the error has explained, but what remains to the court is to assess the question of ownership based on the existing facts and the existing enquiry.

So what are the factual circumstances which show that Kazakhstan was the owner to the attached property? When did Kazakhstan acquire the securities for the funds which belong to Kazakhstan, or how did Kazakhstan become the owner? It's our position from the investigation of the presented facts, it follows that Kazakhstan did not

own the attached property in the meaning of enforcement code 4.17.

I will come back to that but first I'd like to present a couple of the introductory sections.

The question of the assets belongs is in accordance in the enforcement code 4.17 is tightly connected to the issue of right of separation in the bankruptcy, but there is an important difference.

The point of departure when it comes to right of separation is described by Lindskog as follows:

MR GUTERSTAM: "Initially an owner always has the right to separate movable property which is a third party."

So if the third party is declared pursuant, or as long as the identity of the property and identification of the property is kept, the rights of separation, however, doesn't stop at the identity and identifiability."

MR AXELRYD: But it moves on further us because the right of ownership could also exist with relation to surrogate.

Furthermore, it should be noted that an owner under certain -- the surrogation against separate property which has replaced the property in question.

MR GUTERSTAM: "Right for surrogation is a enforcement of the entrance which is the foundation of the separation right but the right is normally ..."

MR AXELRYD: So maintained right of ownership, the right -- which is the right which correspondences to the concept in enforcement code 4.17. But in some instances it goes even further, according to the Accounting Act and certain conditions, there's a right of separation which goes further than the concept in enforcement code 4.17. So it doesn't follow from the right of ownership, but this is a specific identity in material law which could recreated in accordance with the Accounting Act, and this identity is described as followed by Lindskog.

MR GUTERSTAM: "It should be underlined that the right of separation in accordance with the accounting law. There's a condition that the material law identity has been kept based on what follows from general material law principles, especially when the accounting law could lead to a creation to a specific type of material law identity."

MR AXELRYD: Further in his book, Lindskog states the following:

MR GUTERSTAM: "If the material identity ceases to exist, however, if the question of the principles of the -- which should be applied to assessing the creditors rights, they're two different approaches. The first approach means that through separation the original material situation should be considered to have been

recreated. The creditors right to separated funds should be considered to be rights of ownership and the fund should be considered to be a surrogate."

The other approach means that, once the material law identity has been lost and initiation situation of claim has appeared between the creditor and the debtor, this is what decides the legal assessment. In such an approach, the intent will continue to exist without the funds being separated because it's to be a sui generis. In my opinion the second approach should be to prefer, the difference of opinion..."

MR AXELRYD: And Lindskog's position is confirmed by NJA 2014 S1993, which respect to the Supreme Court decision from 1971. The meaning of this is as follows: let's assume we have a debtor and a creditor. The creditor has received funds which they have to account for and then separated the money for the sake of the creditor. If there is a bankruptcy and attachment at the creditor, the claim is part of the bankruptcy, which could be attached.

The claim to the count account at the bank cannot be attached for the sake of the creditor because the debtor has the right to the claim.

Obviously this claim is protected according to the sui generis when it comes to the creditor's bankruptcy

it's not part of the bankruptcy and cannot be attached.

To summarise the provision which I've just presented means that, if the creditor has property which belongs to him, yet a third party, it could be attached for the debt of the creditor in accordance with enforcement code 4.17, as long as the identity of the property is maintained.

If the right of ownership so this property is replaced by the right of property to a different property for surrogation, then it could be also attached for the debt according to 4.17. A mixture of the property of a surrogate, that the property cannot be identified means that the right of ownership in accordance with 4.17 ceases to exist. There is an exception to that. I will come back to this later, but it's not relevant in this particular case.

The rules on the right of separation, they apply to cash and cash on account. It follows from NJA 2009, page 500, after a general discussion of the rules of rights of separation, the following follows from the judgment.

MR GUTERSTAM: "This applies also to money, someone who has lost an amount, has the rights separated, if the perpetrator's bankruptcy, if the note could be identified and if the note is exchanged, then the right

of ownership passed on through surrogation to the money which has been exchanged if they can be identified.

"In this case, this applies to account transactions and the account transactions should be assessed based on the same principles, if this had been an issue of physical managing of notes, compared to NJA2009, page 182. For if anyone makes legal withdrawals from someone else's account, the right of separation to the cash exists when there are different competing creditors.

"If the money is deposited to an empty account, the victim through surrogation has the right of separation to the amount on the account."

MR AXELRYD: This notes that this is the justification of claim with respect to money on the accounts. Legally this is a situation of claim, for such a situation of claim, normally an account on which you have funds, regular provisions regarding claims are applicable to their situation.

I would like to show a table between the third parties in relationship to the bank, and claim to an account is a simple claim against the bank. Like Catharina Buresten said, the bank receives the money with the free rights of disposal.

This is a deposit and the money makes money by

borrowing the money to a number of people. So the simple claim is not protected, but the protection to the customer is based on the deposit guarantee and the capital adequacy of those. This is why the alarms are triggered when the banks are endangered. What's important to understand is what Lindskog says in his book, the right against the bank, that is the claim against an account is not a material claim, it's a claim.

Obviously there could be a relatively simple claim against a bank for surrogation. You can get the right to a claim from another creditor, just like the Supreme Court said in the quote which I just read out from NJA2009, this could happen if someone deposits money which has been obtained illegally to an empty account. It doesn't mean that you have to get the right of ownership to the fund, but this is a surrogation from one claim to an account in another.

I'll now proceed to demonstrate the method that should be applied by the court when it comes to the ownership rights to the attached assets, according to the enforcement code, chapter 4, section 17, and what requirements are valid for this.

We suggest that it is not possible for the court to have as their basis an image from a moment in time.

Instead, they need look at the chain of debtors with requirements for substitution and surrogation to get to the conclusion that the sequestration and attachment should not be lifted. That means that the applicant will have to carry the detrimental effects of a lack of investigation and evidence(?) when it comes to the circumstances, as well as immediate and immediate relevance for the assessment of the ownership right. And as we could see in the following quote and the next quote we will now look at, a legal doctrine that in Swedish law is referred to as "Sara's money".

In this case, KFM had attached an account for the MJM end debt. In the account, there are other funds apart from the attached funds. Sara objected to the attachment as a third person and claimed that the attached claim actually belonged for her, not to NJA. So the question was who should considered to be the owner of the attached account claim, according to the rules in the enforcement code, chapter 4, section 17.

The Supreme Court did not form their assessment from monetary understanding. They traced the funds to see if the claim referred to the funds that Sara was entitled to, according to the laws on identity and surrogation.

What happened was that MJM had stolen funds from Sara's account. It had been then transferred to the

neutral account, and then again transferred to the Akersberja account.

Though these accounts were held by MGM. Crucial to the whether or not the ownership change had been interrupted, was in the funds of the neutral account and the Akersberja account had been muddled together, so it was not longer possible to identify the specific funds. So the question was if what was in the bank in the neutral account and the account only corresponded to what MJM had transferred to these accounts from Sara's accounts, or other funds had also been transferred to these accounts and if therefore MJM's claim towards the bank was greater and thus there been a mixture of the means.

So if there had been no other funds in the account than the unlawful gained funds gained from Sara, then on general principles on separation would have had an entitlement to the funds in the account.

The court then established that it had not been investigated and proven if there were other funds in the account and who should be disadvantaged because of this.

The court established that the attachment applicant has to carry the disadvantage of this case, and in the applicable section of the law it refers to factual circumstances and these circumstances have both

an immediate and mediate effect on the ownership issues. So, on the ownership issues, if the ownership changed and if it had been interrupted or not, they needed to look at whether or not there had been a muddling of funds, it was to the detriment of the applicant and the court established that the rules on evidence applied.

MR GUTERSTAM: "The evidential requirements in chapter 4, section 17 of the enforcement code must be seen to apply not just to factual circumstances of immediate relevance to the ownership rights to attached property but also for those factual circumstances that have a more immediate relevance to the issue of ownership rights."

MR AXELRYD: So the court arrived at the conclusion that it could not be held that there had been a muddling and mixing together of funds in the Akersberja account, this was to the detriment of the applicant and to the advantage of the third party, Sara.

If these rules were applied to this case, then a flaw in the investigation and evidence should mean that this should be interpreted to the detriment of the applicants and to the benefit -- to the advantage of Kazakhstan and the National Bank.

This had been interpreted to Sara's advantage and surrogation had to occur in two stages from Sara's account to the neutral account and then to the

Akersberja account.

These funds were then transferred to an account in a limited partnership company, and in this account they had other funds, so there had been a mixing together of the funds which meant that it was no longer possible to separate certain monies from other monies.

So the claim against this bank was not only a reference to Sara's claim but the company's claim was greater.

The first stage in the Supreme Court analysis started from the point of departure that Sara's mixed funds that had been mixed in the account belonged to somebody else at MJM.

So then the Supreme Court held that there was no surrogation to the account claim to the bank. Instead, the surrogation was done to MJM's claim against the limited partnership.

Because Sara's funds had been mixed together with other funds in the company accounts, the account claim no longer only refers to Sara's funds, so you cannot can refer to an identifiable surrogacy in that stage. However, the MJM claim against the company was identifiable and therefore the surrogation is done in that direction instead.

So this conclusion shows that the mixing together

with other funds, apart from MJM's funds, also has the consequence that the identity of the funds is lost.

The next stage is that MJM also deposited other funds into the company accounts apart from the funds belonging to Sara. So you can see here to the left we have additional account from which MJM transferred funds from the limited partnership account.

This means that the MJM claim against the limited partnership account no longer only refers to Sara's funds but also other funds that are being deposited to the account.

So MJM's claim to the company account is greater than Sara's claim and this equated by the court by a mixing together of the company accounts and Sara's funds. And the main rule that should be applied, according to the Supreme Court, is that the ownership should be seen as having been lost.

However, in this case they found grounds to make an exception against the main rule because MJM had stolen the funds from Sara, so therefore it was held that Sara could be seen to be the owner of part of the funds in the limited partnership account that would be referred back to the money transferred from her account. So ownership doesn't necessarily stop when you mix together funds, but then it refers to funds that are

ill-gotten. And that is not the case in our case, so this means that the evidential requirements from the enforcement service should concern both, immediate and intermediate circumstances that are of importance to the ownership and that the applicant shall carry the disadvantage when there are any flaws in the investigation, and there should be a method where the Supreme Court does not have as their point of departure just one situation in one particular moment in time, but if there is an unbroken chain of ownership and that the ownership right is decided if the identity has been identifiable.

So let's apply the Supreme Court method to this case to see if Kazakhstan can be seen to be owner of the attached assets in the sense of chapter 4, section 17. So we need to look at the evidence presented and whether that demonstrates that there's an unbroken ownership chain in Kazakhstan to the attached assets in Sweden.

So we will look at the chain of events from the point at which the money leaves Kazakhstan going forward.

In the first step, Kazakhstan transferred funds from the National Fund account in Kazakhstan.

This transaction is governed by Kazakh law, so the question we need to ask: does Kazakhstan have an account

claim against the National Bank or do they own the funds in the National Fund account? We will hear more comment on this later, but the significance of Kazakh law is that the ownership chain has been broken already in the first chain of transactions. The funds in the National Fund account are administered by the National Bank because the National Bank fully disposes of them, means, as an owner of the means, that some of these means, these funds, are then transferred to BoNY in accordance to the GCA. This is governed by English law and BoNY's operations are supported by European regulatory frameworks which means that this should be equated to a deposit to the bank.

The account holder has an account claim against the bank but, like I explained before, this is not a property claim, it is a monetary claim, so the Central Bank has no ownership right to the funds with BoNY, so they have a credit risk that is somewhat mitigated because of the capital adequacy rules and deposit guarantees.

Then these funds are further transferred to different omnibus accounts, with different custodians and here we have a mixing together of funds and then there is also a flow of transactions back and forth between these accounts. If the ownership right didn't

stop already at the deposit, it would definitely have stopped here at the mixing of funds. So also in the second stage of transactions the ownership chain has been broken, so there is a claim but not an ownership right to the funds.

BoNY then transfers the funds from their own account or from their account customer accounts in England to a jointly held omnibus account with SEB in Sweden.

This relationship is governed by Swedish rules and, as we heard, Catharina Buresten received the funds with a free right of disposal which means that BoNY only holds an account claim against SEB ownership rights to the funds in the account. First of all this, is a deposit made to the bank. This already means that BoNY only has an account claim and the ownership right to the funds. If this is not sufficient, it should emerge in any circumstance and after the examination asserted Catharina Buresten that there's been a mixing together in the ownership account of fund belonging to BoNY and the customers and clients of BoNY. So there's a steady flow of money back and forth between different accounts and omnibus accounts relating to six deposits.

So we cannot consider that they have any ownership rights to this money according to the applicable section of the law.

So already at this stage of the ownership chain the ownership has been interrupted.

It will also be established that this sort of circumstance means that the attachment of the funds in the cash account should be lifted. This was not funds owned by Kazakhstan. There is no ownership right as referred to in 4.17 to the funds held by SEB.

However, BoNY holds an account claim against SEB. This is a claim belonging to BoNY and not to anyone else and therefore this cannot be attached to cover somebody else's debt.

So if we now go back to our analysis of the ownership of securities, it is the funds in the omnibus accounts at that BoNY used to acquire securities in Sweden through, SEB.

Does mean that Kazakhstan has an ownership right to some of these securities, even though the ownership chain, when it comes to the funds that had already been broken? No, of course not. Let us have a closer look at the transactions that occurred in Sweden.

There was a transaction between two parties, BoNY and SEB. But this transaction is governed by the sub-custodian agreement. For unclear reasons, the KFM have requested to -- decided not to request this contract. There should a flaw in the evidence that

should fall to the detriment of the applicant. You cannot prove that Kazakhstan has acquired the ownership right of certain shares without even presenting the contract on agreement according to which acquisition the allegedly took place.

We know that BoNY is a contractual partner of SEB according to the sub-custodian agreement. We also note that BoNY makes payment in this transaction. This is done through a set-off against the funds in the account. So the starting position must be that BoNY acquires the right to the securities of a certain kind in the CSD account held by SEB. So this is not a right that is held by Kazakhstan. So already for that reason the attachment of securities should be cancelled.

But let us proceed with the analysis anyway.

If we are to analyse whether a National Bank received and thus what the claimant alleged that Kazakhstan obtains, we need to go to the UK where the transaction between the National Bank and BoNY takes place.

Therefore we will continue to the next section that I will call "Who acquires securities?" Just like Wallin-Norman said in her bank account rights, there is a "foreign ownership right", within quotation marks, for the securities.

MR GUTERSTAM: "The underlying owner's right against the foreign asset manager should, in most cases, according to Swedish international private law, be stipulated by foreign law. Therefore foreign owners have, in principle, a foreign ownership right to these Swedish share and other financial instruments registered with the VPC."

MR AXELRYD: The transaction between the National Bank and BoNY takes place in the UK, and according to the GCA, is governed by the English law. In the transaction, the National Bank made payment with either their account claim with BoNY, because the National Bank has an account claim against BoNY, and they obtain what is defined as securities in the GCA. The National Bank is a party, contractual partner, to the GCA. They also pay for the securities with their account claim to BoNY and the National Bank has been noted as being the owner of the securities in the BoNY register. So the National Bank owns the securities.

Subsequently, the English court in the AIG case also established that it is the National Bank and not the Republic of Kazakhstan that is the account creditor when it comes to BoNY. So the foreign ownership right falls on the National Bank not on Kazakhstan.

Also for this reason the attachment against the

securities should be lifted and allowed.

We, however, suggest that the attachment should be lifted. Even if this were not the case, ie even if we can consider that Kazakhstan acquired the securities pursuant to the GCA, then the attachment should be lifted. This comes from an analysis of what the ownership of the securities actually means. This brings us to the next section.

Through the acquisition of securities, the National Bank acquires a claim and right to securities of certain type, central amount, but not the rights of ownership for certain specific identifiable securities. This follows first from the analysis of the GCA, was thought -- looking at definition of securities in 3A. The NJA say it's a way of continuation of it, it refers to everything which is not cash, so it's not cash assets. The definition is right. It's not about the right of ownership, identifiable securities, but also claims for a right, for example, a right for delivery to securities of certain type and number, that is a claim to securities.

This definition covers all the securities which BoNY holds under the GCA, both as securities which BoNY holds as a registered formal custodian for -- they have the same role as the SEB in the jurisdiction, plus

securities held by sub-custodians such as SEB.

The matters here to do with securities held by sub-custodians, so BoNY had retained SEB as a formal custodian.

When it comes to these in 6A, it says that BoNY should keep proper records of the client's interests, the National Bank's interests in securities.

So when it comes to securities, securities in the Swedish jurisdiction, the National Bank should hold registers of interest in the securities, and this is a very fitting description of what the National Bank acquired under the GCA, this is an interest in securities.

Moving on to 60, it doesn't refer to identifiable securities but to generic items, the securities of a certain type and certain amount. Obviously the National Bank acquires this right, owns this right. The claim against BoNY, the right to get shares delivered with the right of ownership, but until this delivery has taken place, this is only a right to non-identifiable securities. So it follows directly from the GCA that the National Fund did not acquire the right of ownership to the securities which have been attached by the enforcement agency, therefore the claims of the applicants that these securities were owned by

Kazakhstan, this falls and the attachment should be lifted.

The reason why this is in this way follows not only from the GCA, it follows from the financial structure in which the rights were acquired. So let's consider the right of BoNY and the National Bank to the shares in Handelsbanken. So SEB are registered, the CSD registered, being the custodian to the 11 million shares in the custodian. The register which is created, it's a right which is separated from the company and by the registration in the reconciliation register. That's when -- that's how the rights against the issuer appear.

The public list of the money, just like it was confirmed by Mr Gunnarsson, is not part of the reconciliation register. A note on this list has no legal effect. It is registered as no custodian in reconciliation register.

As we have presented earlier, it has the right of disposal of the shares and of the economic rights with respect to the share.

All these 630 million shares on the CSC are exactly the same, same ISIN code, and it they can be separated from each other. BoNY has the right to 131 million of shares with this ISIN code from SEB. This right doesn't apply to specific shares. BoNY doesn't have the right

to receive certain of the SEB 630 million shares but has the right to a number of shares with this ISIN code.

Never in any document or in other way is it stated which of the 630 million shares which BoNY has the right to, and it's not possible either because you cannot not make an application between the shares.

SEB obviously keeps a register of how many shares SEB owes to the different customers. These registers have no legal effect. They have only evidential effect for the existence of the situation of a claim. When the right to specific shares appears only -- if and when BoNY is registered for the shares in Euroclear's registry. Up until that point in time, after the delivery of the shares, BoNY has adjusted rate of claim.

In the corresponding manner, the National Bank has the right to 2.4 million shares with the same ISIN code from BoNY according to the agreement with BoNY. This right is not the right of ownership for identifiable property until the National Bank has received the shares through registration in Euroclear's CSC register. Up until then, this is a right of claim against BoNY. Neither BoNY or the National Bank has the right of ownership to specific identifiable shares but only rights of claim to the respective counterparty and to receive shares of a certain type and a certain amount of

shares.

The right of claim of the National Bank against BoNY is not in Sweden because BoNY is not located in Sweden. The creditor of the National Bank, the attachment should be lifted because the attachment does not cover an asset which was owned by the National Bank or Kazakhstan, owed in the meaning of enforcement code 4.17.

The difficulties in considering Kazakhstan as the owner of the shares in the meaning of 4.17, the difficulties when you consider that a lot of the shares on the account in SEB have appeared through a new issue. The ongoing issues of new shares in different companies and the shares are registered at the formal custodian's account in Euroclear, before it was registered in the owner's account. Even if the issue took place a long time ago, the shares never had to be registered at any other account than the formal custodian's account.

When acquisition and sales are handled and shares registered to custodians, no reregistration is done in Euroclear if both the seller and the buyer have the same formal custodian. Even if the buyer or seller have different custodians, no reregistration necessarily happens at the account, because the custodian account has only been suggested with the effect of all the transactions where the custodian has been involved

during the day.

This means that the share -- the party of the shares which is registered at the account were -- could be considered to have been registered there from the day their shares were issued. So according to Mali(?) and -- this line of reasoning, it could be considered whether the underlying foreign owner could have acquired the right of ownership to this shares.

MR GUTERSTAM: "If one of the customers of a formal custodian who has a certified account at VPC at the issue of the shares is a custodian in itself, which means that that this customer has customers for each account that have been created in the separate account system. The acquisition of the right of ownership to the newly issued assets, the issues become more difficult to explain based on the current Swedish law.

"To have a customer of a formal custodian, this customer is a custodian, this can happen if the last link is a foreign institution.

"On the other hand, this is about the legal positions of the Swedish companies that is -- the owner is whoever signs for the shares and receives the shares.

"What if the registration of the shares applies to an account for a formal custodian, who, in this example, has no relationship or no knowledge about the final

owner and vice versa. A conclusion could be made that the final owner, being the customer of a foreign custodian, has not made a correct acquisition according to the Swedish law."

MR AXELRYD: So the National Bank has only to claim for certain types of shares and not the right to certain identifiable shares.

Another support for our position is that BoNY's own securities are actually mixed up with the securities belonging to BoNY's customers at SEB's custodian account.

On this account, you can make a distinction between the shares which BoNY has the right, on their own behalf, to the shares which the National Bank has the right to according to the agreement.

So therefore the identifiability requirement is not fulfilled and right of ownership has ceased to exist.

To summarise the right of ownership to securities means right of claim and not the right to the attached securities. This is a claim which has been acquired according to GCA, the right of ownership appeared according to the Swedish law because the identifiability requirement was now fulfilled. A possible right of ownership in any case has not been maintained in accordance with the Swedish law because of a mingling,

commingling of BoNY's rights, BoNY's and the customer shares at the account. But if the court would still consider what the owner rights of ownership actually means.

The court probably thinks: what will happen to SEB customers if SEB could go bankrupt? Would he be able to invest in securities with SEB as a former custodian to have a credit risk with respect to SEB.

The answer to this question is clear. Considering that SEB only have their customer shares registered as SEB's account, no commingling takes place with SEB's own securities so there's -- the customers have the right of separation according to the accountants law, if SEB would go bankrupt.

What happens to the BoNY's customers if BoNY goes bankrupt? I can't answer that question because this is governed by foreign law. However, I could note that the parties have considered this area in the GCA.

MR GUTERSTAM: The reference is here.

"Where otherwise required by local law, regulation or market practice or, where possible, safer, reasonably believe it is in the client's best interests to do, Boston Safe may arrange for securities held outside of the United Kingdom to be registered in the name of either Boston Safe itself or of a sub-custodian. Such

securities may not be separately identifiable and may not be protected from the claims of general creditors in the event of default of Boston Safe or of the relevant sub-custodian."

MR AXELRYD: So it follows from this provision that the parties have considered that the National Bank's claim to securities maybe is not protected if SEB or BoNY would be declared bankrupt.

Moving onto the next section, the securities directive, in the summer 2008, directive dated 6 June 2002 recording the financial criteria. The purpose with the collateral -- financial -- the finalities directive, sorry. The meaning of the directive and the background of the directive is given in the bill 2014 05:13, but mainly it follows from item 1.8 in the preamble, the so called rei sitae rule.

MR GUTERSTAM: "It should be the law in the country where the financial security is located. This is admitted by all the member states without influencing the application of this directive to direct holdings of securities where the collateral in terms of account registered financial instruments are located.

"If the securities is covered by a valid agreement, according to the applicable law in the country where the relevant account is located, then the validity and

enforceability could be claimed against every other competing right or interest on the basis exclusively with the support of the law of country without creating legal insecurities used for other legislation."

MR AXELRYD: And first we have highlighted the law of the country where the financial security is located and then the pledged asset is where the account is.

Let's assume that the legal entity had a securities account in the bank of the European countries and the bank acquires financial securities in other EU countries. If securities will be acquired through different custodian links, the bank will become the global custodian and then the bank will have different sub-custodians to acquire securities in other countries.

The meaning of the finality directive is that the customer should be able to pledge the funds in the account in accordance with the country where the account is located, since the securities are located where the accounts are located, meaning at the global custodian.

Please note that the asset is considered to be located in the country where the account is located, which means that only two attempted conclusions could have been made: either it's the securities which are found at the account at the regional custodian and which are being pledged, or it's the customer's claim to the

securities of a certain type and number which are at the account and this is being pledged.

No matter which approach is used, the customer's property, the property which is being pledged, it is in the country where the account is located, and this is the country where the property of the customer could be used. If you could remove the securities, or the right to the securities, or the securities by attachment, if you could further down the chain, then the real holdings in the pledge would disappear and the pledge would be worthless.

If you compare to the previous case, the National Bank should be able to pledge their deposit holdings in BoNY Mellon in London without the Swedish authorities to plead the value of the pledge through attachment in Sweden, a different order would not only be a serious intrusion into the financial system, but it would also violate the finality directive and the EU law. And the Swedish law should be interpreted how well it conforms to the EU law, so therefore our interpretation of where the law should apply, therefore the attachment should be lifted.

In this context, I could note the securities in accordance with to the GCA are collateral for BoNY's claim to the National Bank according to the provisions

of the GCA which were presented in our opening statement. Maybe it's not of decisive importance for BoNY, because the collective value of securities is between $2 billion and an interpretation by 700 million SEK is not of major importance for their collateral. But no -- but it's completely unacceptable for the enforcement agency to plead this right of pledge through the Swedish attachment.

Another question I've asked myself when I've been working on these cases is whether or not the order advocated by the claimant is reasonable when you look at the economics of the procedure. Let us look at the same example again. Assume that a customer in Denmark has total balance of his accounts in Denmark according to the agreement in Denmark, is it reasonable then that the Danish customer, only based on their contract with the Danish bank might have to defend themselves against their attempted attachment from all sorts of countries, or is it more reasonable that the customer's funds can only be attached where the collected funds exist? And this customer's funds must be considered to have their strongest connection to Denmark, and it must be held unreasonable for this customer to have to defend themselves throughout the ten or 11 different jurisdictions. It is even more unreasonable if the

Danish customer asks the National Bank -- is not a debtor, but only a third party who was erroneously involved in this attachment process.

So we can look at the NJA2004, page 891, where the court came to the conclusion that a shareholder of a Swedish company through shares on the books should not -- that should not be seen as a strong enough link to Sweden for the ultimate owner to be seen to hold such property in Sweden that created jurisdictional rights, according to the applicable provisions in the law.

If BoNY had jurisdiction to attach assets for people around the world, without having any kind of connection to Sweden, only because there had been an agreement they entered into with a bank in their home country, so here we can establish that the formal custodian, SEB, and Euroclear, are domiciled in Stockholm. So this is where the attachment case that should be decided. If the underlying customer's asset exists in Sweden, is present in Sweden, only BoNY has 6,000 CSD accounts in SEB for customers around the world. Many of these customers are custodians who in their turn have a whole host of customers worldwide. Should it really being considered that all of these underlying customers are considered to hold assets in Stockholm? Should all these customers risk having to come here to defend themselves against

attachment attacks, and should Swedish courts really be encumbered with this type of attachment cases? Well, we think not.

MR GUTERSTAM: And with those words I will now continue and look at the English stage and Kazakh stage, and I will be very brief. But before I go into the factual circumstances concerning that, I would just like to say a few words about the application of foreign law in Swedish courts. And how the application of foreign law should be done in Swedish courts has been clarified by the Supreme Court. The Supreme Court writes when Swedish courts apply foreign legal rules, the court, as a principle, should construe and apply those rules in the same way as a court in the that other country would have done. And then there is a discussion on flaws in the evidence and investigations. If you do not know what the foreign law says, then you should make the assumption that it should be applied in the same way Swedish law would have done in the same situation if it's not unreasonable to do so. And in closing they say the point of departure is, however, that it is the responsibility of the Swedish court to try to apply the foreign law as far as is possible in the same way that a court in the other country would have done. And here they also refer to the NJA, page 885. And this

principle confirmed by the Supreme Court that has already been in effect has been referred to a doctrine as the application of loyal principle, and I've also added a reference here at the bottom to an expert opinion on this by Bogdan. But this is the case, this is how foreign law should be applied by Swedish courts.

Now, if we look at the assets in England and why they do not belong to Kazakhstan, and this is something that we've gone over in detail in other opening statements, and Marcus has gone into detail on this. I will not repeat what has been said. I would just like to remind the court of the evidence we have presented on this.

In the left-hand column, you can see the main evidence invoked by the National Bank when it comes to factual circumstances and how English law should be construed. And on the other side we can see what the claimant has invoked in evidence. So there's quite extensive evidence when it comes to factual circumstances, what agreement was in place, how the contractual relationship was governed, and these letters from Bank of New York Mellon demonstrating what the relationship with the Kazakhstan is and these excerpts from their databases.

There also evidence on how English law should be

construed, the AIG judgment, but also the constructions in the Dutch courts of English law.

So what can we gather from this evidence? In brief words, the National Bank asserts that this is what we learned: the National Bank has a claim for money and securities of a certain kind, nature, but not any right to a specific security. Only the National Bank has a claim against the Bank of New York Mellon, according to the GCA, and the Bank of New York Mellon does not take any instructions from or does not have any contractual relationship with Kazakhstan. And the Central Bank has been the registered owner of the assets with BoNY in London, and the Central Bank's claim against BoNY, according to English law cannot be attached on behalf of the state to cover the debt held by the Republic of Kazakhstan.

So according to the statement from NJA we just looked at, a Swedish court should assess the circumstances of this case in the same way that an English court would have assessed the circumstances. So it is very good that we have an English court that has looked at the contractual relationship with Bank of New York Mellon, the National Bank and Kazakhstan. And in this AIG judgment that we've now looked at so many times, it is confirmed that the claim is held by the

National Bank alone. The claimant has the burden of proof when it comes to proving the circumstances in the chain of debtors in the English law as well. In spite of this, they haven't introduced any evidence on English law, any evidence on the factual circumstances in the English case. The reason for this is probably that there is no such evidence that would support their case.

Also in this stage the chain of debtors has been interrupted. And I will not say any more on this, and now I will proceed to talk about Kazakhstan. And in the Kazakh stage of the chain of debtors we have the question of whether or not the National Fund is a trust and what would it mean if the National Fund constitutes a trust and how does that affect applicable laws on attachment. And, as we explained in thorough detail during the opening statements, and I won't repeat these, these are some of the main facts that we can see in the evidence presented and mainly it is the fact that the National Fund is constituted by a Kazakh trust. This comes from the law in the National Fund agreement and it has also been confirmed by all the experts in the case, also the expert appearing for the claimant.

This has only been contested by the claimant but they haven't invoked any evidence in support of that objection.

Number 2 is that the state has a conditional claim against the National Bank, but no right to specific assets. This is clear from laws and decrees and also confirmed by the oral testimony of Aliya. And here we can establish that we should have a targeted or guaranteed transfer, then the National Bank can elect, they can select what assets they can make use of to meet this obligation. They can select which securities or how many securities and then it's up to the National Bank to make this choice because it is their property.

It also becomes clear this claim for transfers to the state treasury is only relevant for tenge when it comes to the stability purposes of the National Fund, pursuant to decisions taken by the Parliament. And the assets by the National Fund are held by the Central Bank in their own name and the Central Bank has a right of claim when it comes to these assets, and, as we can see, the right of claim is the relevant ownership concept pursuant to Kazakh law.

Finally, assets in a Kazakh trust cannot be attached on behalf of a trustor, and this has not been disputed in this case, but this is explicitly stated by section 885, section 4, in the Civil Code. And, considering these facts, it's difficult to understand

how the claimant holds that Kazakhstan owns the assets in Kazakhstan. It's even more difficult to understand how Kazakhstan owns Bank of New York Mellon's claim against SEB according to the agreement in Sweden. So it's quite simply not possible, the chain of debtors has already been broken in Kazakhstan and the objection raised by the claimant.

Because, basically, the experts have agreed that the National Fund constitutes a Kazakh trust, so therefore the claimant had to try to find a way to circumvent this fact, and here they presented three main objections that the President has influence and actual control of the assets in the trust, that means it is not a trust. And then that the District Court, and even if the National Fund was a trust, that the District Court could disregard this because of the provisions of good faith in section 8 of the Kazakh Civil Code, mock and sham transactions, and also that this arrangement would be in breach of Swedish public policy.

Then I looked at these objections, and on the facts these arguments cannot be deemed to be successful and that was just legal, but can I just briefly rebut them.

The first one concerning the President's alleged influence and control, the only question the court needs to ask themselves here is: if the alleged influence of

the President and the allegation about actual control is a circumstance that is relevant pursuant to Kazakh law when it comes to deciding who the property belongs.

So, so this should, according to the Supreme Court, be decided as a Kazakh court would have decided the case. And the answer to this question is obviously, no, there's no supporting Kazakh law that this kind of circumstance is relevant in order to determine to whom the property belongs.

So, first of all, for the claimant's arguments to have cause, it would be required there was a legal rule or provision or decree or something, a source of law in Kazakh law prescribing that courts should take the circumstance into consideration, and that does not exist; and, secondly, as the National Bank understands it, they haven't even claimed that such a rule exists; but thirdly, if they would claim that there was such a Kazakh legal rule, they haven't submitted any evidence on this in this case, not even the expert invoked by the claimant's themselves, Professor Maggs, gave any supported to giving such a conclusion. And if you just consider this question, if the alleged influence and control of the President should have influence when you determine who has ownership. And this is something I mentioned in the opening statement, and we made

a comparison with Vattenfall, a wholly owned Swedish company, where the state can relieve the entire board of directors of their duties. They can give instructions how to run the company and they could even divest the entire company.

This doesn't mean that the assets of Vattenfall belong to the Swedish state or can be attached to cover the debt of the Swedish state. So these arguments are just as irrelevant according to Swedish law as it is according to Kazakh law. And finally we can mention that the Svea Court of Appeal have assessed these kinds of objections when it comes to the competence of parties in this case, and they come to the conclusion there it has no relevance, it has no significance, and there is no reason to come to another conclusion here.

During my opening statements I mentioned why the claimant's assertions in this regard are also factually incorrect. This control that they allege exists has not been proven and it is quite simply not the case. First of all, I would like to refer to what my colleagues at Mannheimer said initially, that the national banks are organised in different ways across the world, and it's not strange for a President or head of state to have certain authorities and powers to hire or interpose people. And there's a wide range of different measures

that can be taken and it doesn't have legal importance in this case, but we also heard Aliya Moldabekova talk about the work of the National Bank and what influence the state does and does not have. And considering to the statements made there the influence is very restricted, and the National Bank acts with a great deal of independence.

So influence and actual control are not relevant circumstances pursuant to Kazakh law and therefore they are not relevant factual circumstances, but should they hold relevance according to the Kazakh law, the other side has not substantiated that this is the case, that there is a large degree of control and influence exercised.

If we look at the next raised objection, the good faith and sham, mock transactions -- this is something we looked at in quite thorough detail during our opening statement -- and it is alleged that a Kazakh court of law, when applying Kazakh law, would come to the conclusion that the National Fund is invalid in its entirety because it is in violation of basic principles, more or less like sham agreement in Swedish Act on contracts, and therefore the whole structure should be invalidated. This has been alleged; of course this is incorrect. I will not go over the evidence we presented

of this, because this is incorrect and I will refer you to Mukasheva's opinion in exhibit 57.

And I would like to move over to talk about the final objection raised, that this trust arrangement is in conflict with Swedish order public, and this was alleged before the summer in 2018, but they have not gone into an expansion on the background to this objection; they haven't said what Swedish public order policy this violates and how it is in violation of it.

We can just establish that the bar for what can be seen as something to be violating public policy is very high. And similar laws are in many different countries and so far no such trust arrangement has been held to be in violation of public policy in any other country, so there's no reason that should be held to be the case here either.

The final objection raised means that even if it is established that Kazakhstan loses all possibility to dispose of the assets and the right of claim when they are transferred to a trust, the ownership of a right is still maintained with Kazakhstan because this is within quotation marks "state property", according to the definition that we find in the law on state property. And we partially covered this in our opening statement, but I would like to mention this again.

This law prescribes that any property connected to the state, local or regional authorities would be state property or communal property, according to the definitions in the law. And this definition is a definition about what level the assets are derived from, a local authority level or a state national level. It doesn't have any civil law repercussions at all and that we can see this in the expert opinion from the Suleimenov and Mukasheva. They say the following:

"The purpose of this provision is not to determine the legal status of specific entities or state organs, nor to determine what specific entity has civil law rights to certain property. The purpose of this provision is to make a distinction between the property and obligations attributed to the Republic (ie central) government level and the property attributed to the communal (ie local) government level."

So the money in the account with the National Bank can be held to be state property according to this definition, but this law has absolutely no effect on civil law rights according to the Kazakh Civil Code, and that is what is of interest to us in this case.

So, to summarise, when it comes to the Kazakh stage, all experts in the case agree that the National Fund constitutes a trust.

The assertion that this fact could be disregarded because fictitious or fake transactions, or conflict with the order public, these objections lack substance. So we can just establish that the National Fund is a Kazakh trust. It is also not disputed in this case that property in the Kazakh trust cannot be attached to cover the debt of a trustor.

Furthermore, we think that it is clear that, according to the Kazakh law, the right of claim is transferred to the trustee, the National Bank, when the property is part of a trust.

So that is really the summary of the Kazakh stage but in closing I would like to provide you with some brief comments comparing with Swedish and international relations and relationships. And I refer you to NJA, page 540, NJA2013. The Supreme Court looked at attachment of life insurance according to chapter 15, section 3. And there it says that life insurance can be attached to the insurance company without a case of insurance. Nobody died, but they could attach the life insurance anyway and then it should be attached as a claim.

So the attachment was for the policyholder's alleged claim against the insurance company. So in this case the insurance company may(?) opposed to the attachment

and the case, before the Supreme Court led to this quote:

"Because the claim was attached, the creditor substantially would take the same position as the attachment creditor compared to the second degree debtor."

So the second right debtor cannot be considered to have a better right to the property and because the policyholder in this case couldn't claim anything from the insurance company until he had died, and he hadn't died. What they looked at was: is it possible to attach this claim, a claim that the debtor could never have received because there was no legal support for this. Because there was no support for this in law, the Supreme Court dismissed this claim.

So when we come back to our case, Kazakhstan has no rights to the property that is being attached and they cannot be granted such rights. The only rights they have is a conditional claim that they can only receive in tenge, after Parliamentary decision according to certain rules in Kazakhstan. So the enforcement agency has attached much more far reaching rights than the alleged debtor. It doesn't have or couldn't have had, and this is not possible to do in Swedish law either. With those words I would like to hand over to my

colleague, Magnus.

THE CHAIRMAN: We have now continued for 1 hour 40 minutes. Shall we continue with the next section?

I think that would take us up to 11 exactly and that is what he we planned. Perhaps we could just take a short energiser break. A ten minute break.

(10.28 am)

(A short break)

(10.30 am)

THE CHAIRMAN: If everyone is set, we'll continue.

MR NYGREN: Thank you. The position of the National Bank is that the securities could be located in Sweden and now I will present -- it's not only the claim which is, but also the securities are located outside of Sweden.

The applicants say that the issue with the securities -- location is not an issue, that it's obviously the securities are located in Sweden, because the actual attachment took place here by enforcement agencies. But is it as simple as it's claimed by the applicant? Well, it's the position of the National Bank it's not as simple. It wasn't for the English court's position of the public order the attachment could have been done.

It should have issued enforcement orders against BoNY and later execute the attachment, and in this case

BoNY could execute the enforcement in two ways: either they could transfer the securities using SEB and Euroclear in Sweden. But the transfer could have been only been made in BoNY's link without the involvement of SEB, without transferring the value to one of the customers of BoNY or to BoNY themselves, and the money could have been paid to the English enforcement agency.

So this attachment could have been made without the involvement of SEB and Euroclear. So a de facto attachment could practically have been made in England in Sweden. So does it mean that, following the line of reasoning of the applicants, the securities are located in England and Sweden at the same time?

No it doesn't.

What I will present in the second, a position has been taken on where the decentralised securities are located, and this has been taken in the EU law and the Swedish law. But in addition I should like to take this on the basis of when assessing where the securities are located.

So to start with, we can take the dematerialised security, ie there is no share security, there is no document in the physical word, there is no electronic document, where Euroclear has registrations of rights to dematerialised shares, that is a right of ownership and

other rights. The right of ownership and other rights which are normally connected to the holdings of physical shares are only connected to registration, different accounts and different registers.

In our account they are considered are Euroclear and it doesn't follow from the public share ledger who the actual or the underlying owner is, but it's the registered custodian SEB which is listed as a holder on behalf of third party.

There are no documents which are stored nowhere, no physical documents, no electronic documents, so we can't say that the securities are kept in Sweden.

The applicants have referred to the judgment by the District Court, where the court found that the securities are here because they are kept in Sweden. But just like we've heard from the examination of Mr Gunnarsson, no shares, no securities, are stored at Euroclear, not physically, not electronically. And also SEB and BoNY, they have the registrations of their rights to the dematerialised securities, but no securities are stored there. With BoNY, where the right of ownership to the securities is established and therefore, on the basis of the circumstances, the court should assess the issue where the securities are located as part of this case.

The question of where the dematerialised securities are found have been established in the international private law, and a traditional principle is that the validity of the real property should be assessed in the country where the security was located, and this is called a lex rei sitae principle. This is a material to use the choice of law, first established where the asset is located and afterwards which country's law should apply. So it's a two step proceeding, and we're specifically seeing the first step where the asset is located.

When it comes to the dematerialised securities, in the EU law and the Swedish law, a specific variant of lex rei sitae has been used in order to establish this method of the account keeping principle that the security is considered to be located where the register of the rights to the securities is maintained.

We will look at this regulation in a second, but let's look at the position of the Swedish law of what applies, if the securities are considered to be in Sweden. If the securities are in Sweden, the Swedish law should be applied when it comes to the pledge or transfer, and according to the Swedish law this continues -- and, sorry, this follows from chapter 3, paragraph 10 of the accounting -- account keeping Act

and that is paragraph 3:

"If the custodian is informed that a financial instrument has been transferred or pledged, the same legal effects appear as if the transfer of the pledge would have been registered in a CJD register."

So the Swedish shares which are part of custodian chain are always considered to be located as Sweden as it is claimed by the applicant. Therefore a denunciation has to be made against the custodian in Sweden.

What are the consequences of that? If we look at one of the slides which Mr Gunnarsson presented during his examination, this is the situation which becomes more and more common according to Mr Gunnarsson. The dematerialised Swedish securities are kept through a chain of custodians where a foreign global custodian holds the securities on behalf of customer through a sub-custodian in Sweden which has been approved by Euroclear and this chain could consist of several custodians could be made and sub-custodians could be made even longer.

The foreign custodian in this case have an omnibus account at the Swedish custodian where the customers of the securities belonging to the foreign securities' customers are registered.

What Mr Gunnarsson said during his examination, if the transfer is made at the bottom part of the chain between the customers of the foreign custodian, no changes are to take place for the Swedish custodians.

So the Swedish custodian never finds out about any transfer which further means that if the securities are to be considered to be in Sweden, all these transfers would be the actual owners at the lower leg. It doesn't create any real law effect, because the Swedish custodian has not been informed about the transfer.

In this example, the global custodian has an omnibus account with the Swedish custodian but it might as well be in a segregated account. Would that make a difference?

Next example, which has been elaborated further, let's mention that the foreign custodian has segregated account for his customers with the Swedish custodian. It's the second part of the chain, and the Swedish custodian in this case is SEB.

But not even here the custodian has to receive any information that the transfer has been made at the bottom of the chain. It could be the case that the customers of the foreign custodian could be another foreign bank who have customers, so the bank customers are the actual owners of the securities.

If the customers of the bank transfer the securities between themselves, then the same information is kept at the segregated account at SEB, and in SEB would not find out about the transfer.

So does that mean that all the transfers of securities which happen at the level of customers without SEB finding out about the transfer? That would be the consequence of the security being in Sweden and the application of the Swedish law and in the European National Bank is a reasonable conclusion made, based on the fact that the Swedish shares -- securities was located in Sweden. And this is -- it goes to the point about how the transaction was made in the real world as it was described by Mr Gunnarsson, and it also doesn't correspond to the concept of the Swedish legislation and the underlying EU directives. It's clear that the situation is not as described by the applicant, but the dematerialised securities should be considered as located at the global custodian which keeps a register from which the ownership to the securities follows.

Let's look at EU directives on the choice of laws which affect the Swedish legislation, and the interpretation of the Swedish legislation, and we will start with the directive which I will call the finance directive.

In 1998 the finance directive was introduced and this refers to trade in financial instruments and the question which is raised in directive is where the dematerialised security is located. In the choice of law section, article 9.2, they use an alternative leg which jurisdiction of which law should be applicable to the real law effects of disposing of the securities.

The method is the account keeping method, which I mentioned before. As it says at the top of the page, applicable law is the law of member state where the securities are registered on the register on account or a system for a centralised deposit.

Just like my colleague mentioned, in 2002 the finance directive was followed by the pledge directive.

This directive is applicable while financial instruments are used as collateral for different transactions, for example, when it comes to pledges and in the collateral directive the issue of collateral -- of where the collateral -- the shape of dematerialised securities are located.

In count 8, which was presented by my colleague, I will read part of the text. It goes like this:

"Without affecting the application of this directive to a direct holdings in securities, it should be established where collateral in the form of account and

financial instruments used as financial collateral held by several intermediaries where they're located. If there isn't a valid agreement on pledge according to the applicable legislation in the country where the relevant account is located, the validity of the collateral and the enforcement of the collateral should be claimed with respect to any other executing right or interest on the basis of the law of this country."

If you read the choice of law provision in 9.1, you can see the applicable law to decide a case related to collateral with respect to account-kept financial securities. This is the law of the country where the account is kept.

The stipulation in ground 8 and article 9 is that you should establish a relevant account to establish where the securities are located. This is an expression of so-called PRIMA principle place of relevant intermediary approach, which means that you decide on one relevant account and the chain of custodians in order to work the problems, unless it can be located in several places at the same time. And I will come back to the PRIMA principle later.

But both of the directives which I've just heard me talk about, they refer to the fact that the securities are located where the registry is kept. You can say

that the collateral directive goes another step further, and to use the account keeping method to establish which law is applicable when the dematerialised security is held by several custodians.

Let's look at the Swedish law to see how this has been implemented in the Swedish law.

The choice of the law in the finality directive was implemented in chapter 3, paragraph in LHF.

"When signing or pledging or disclosing of the way of the financial instruments which share certificates, promissory notes or any corresponding written document has not been issued or where this document has been issued ..."

Sorry, that's too fast.

So the law of the country where the registry is kept is applied when it comes to the legal effect with respect to others than the parties. So this is based on the finality directive and it is also worded in the same manner, as opposed to the finality directive, which has a limited area of application. In the (inaudible) work, they decided that this provision should be applied generally, so therefore the choice of law is LHF it applies to the all the disposal of different dematerialised financial instruments.

So to interpret this in more detail, we have to look

at the preparatory works, to LHF. So there's the following quote in bill 1999/2000, column 18.

"The principle part point of departure in international private law is that the real law effect of a disposal(?), for example, a transfer or a pledge, should be assessed according to the law of the country where the property was located when the rate appeared lex rei sitai:

"The principle should also be applicable to the securities.

"When it comes to dematerialised and immobilised financial instrument, it is also been considered that such in the real law should be considered as property which is located in the country where the registry is kept.

"This therefore the law of applicable should be decided in accordance with the law in the country where the right is registered. If the right is registered for a custodian overseas, then this issue should be resolved according to the law of the country where the (inaudible)..."

This is what follows from this statement, that Sweden, before the finality directive was issued, they used the account keeping principle to establish where the securities were located. So this was a codification

of an earlier unwritten law.

So in accordance with the Swedish law, the application of lex rei sitae with respect to the dematerialised securities it is established that the securities are kept in a country where the registry is kept.

So the question is where is the registry kept?

This specified in the bill we've just considered. I will read both of the quotes. First:

"The meaning of Swedish law has to be the Swedish instruments according to the account keeping law if they're registered for the custodian, whose activity overall, when assessing the of pledge or the transfer of this financial instrument, it should be considered that the instrument is located at the custodian."

A bit further down in the same document, page 111:

"The expression where the registry is kept is the place where the registration of a patient's account, who, if a bank who is the custodian for certain financial instruments has his legal address in country A but contacts registration activities for a branch in country B, then the law of country B should be applied."

Therefore the place where the register is kept, the place where the custodian contracts registration activities. So this is -- so the securities are not at

Euroclear. When securities are kept through a foreign custodian, it says expressly in the law that the registry of the custodian is the relevant registry, so therefore it's kept in overseas. This is where the securities are -- the fact that Euroclear's registers in Sweden is of no importance.

The next question is where the security is kept. If it's kept through a chain of different custodians where there is a global custodian who -- which manages the dematerialised asset for its customer through a chain of sub-custodians which are located in different places. This issue was addressed in the Swedish property work where the collateral directive had to be implemented. This the implementation of the choice of law provision in the collateral directive. This is to 2004/05, column 32, and this is the operation of the 91 in the collateral directive, where the principle of lex rei sitai, where it says the registry is kept. So a financial instrument could be registered on several levels with several intermediaries and several registries, several countries, the choice of rules talks about the relevant account. So according to the so-called PRIMA principle of medial approach, all the customer of the customer's disposal of the dematerialised financial securities should be assessed

according to the custodians and in TS2003, column 38, here they express how you would legally consider the registration of the customer's right to the security at the intermediary. I will only read the second section:

"For practice reasons, you should be able to make any other conclusion that the asset is located by the intermediary or whether its account is located in the PRIMA rule. No matter whether register issues a claim for the co-ownership right, it becomes very complicated if you pay to the country of origin with the financial instrument and here is an example, a reference to Goran Millqvis article.

It is a principle which identifies the relevant account when the securities are managed by a custodian and there are underlying assets which could be kept for different custodians.

According to the principle of the underlying assets, are considered to be collected holdings which is kept at the global custodian. So it's not relevant where the underlying assets are registered at the sub-custodian.

So, like we've seen, the Swedish preparatory work, they are preferring to the PRIMA principles which explains where the securities are located, when you have several intermediaries and the position is that the securities are located with the global custodian.

A separate issue which was dealt with in the proprietary work, whether all the accounts are -- sorry, if the choice of operations in LKF applies to all the account.

This issue was considered in the Swedish property work, generally revealed when the collateral directive was published and from this it says that the meaning of the collateral directive should be interpreted based on this wording. So this is for the account which is evidentiary effect or realisable effect. They say the following:

"The securities directive states it is a question of financial instrument for which the owner shall follow by the administration. This reference could date that is the case of (inaudible) where the indicative effect follows from the registration. In this case, for example in Sweden, only accounts which are supported by the law of accounting instruments could be applied and in that case the provisions would be maintained. Additionally, there are different financial instruments which are paperless and where the registry does not have this legal effect, for example, the fund shares, the fund company kept register. Instead, this provision should be interpreted based on this wording so the relevant accounts could be accounts of the registry

which have evidentiary effect."

In the preparatory works, they also establish that the choice of law rules are consistent with the finality directives. This becomes clear when we read the following statement in the memo that was also verbatimly stated in the bill. Thus, when it comes to the intention behind the provisions in chapter 5, section 3, in the Act on trading with financial instruments has been to determine the principle regarding lex rei sitae by referencing the registration. However, it appears to not have been the intention for this provision to be limited to the registration of a constitutional character. Therefore there are no grounds to now, or substantial grounds, to change the present provisions. So in chapter 5, section 3, we only refer to registers with constitute to the -- consequence can be seen to be the relevant type of account, the account where it can be deemed that the securities are held at the place of the securities. So when it comes to drawing conclusions about where custodian registered securities are located. Well, dematerialised securities are generally speaking placed where the custodian is operating the registration activities and we've also seen how it has been demonstrated that it doesn't matter where Euroclear keeps the public share register. And if the securities

are in custody through a chain of custodians, the relevant account is deemed to be -- the account that is deemed to be the -- the correct account according to the PRIMA principle, where the original custodial keeps a register of the customer's right to the collected assets, and the relevant account can be the registered/accounts that does not have constitutive effect.

When it comes to the choice of rules in the finality directives, and this is how they should be construed can be seen in the quote from Goran Millqvist, where he gives an example very similar to the example in case. And I would like to give an example that would illustrate the point. Before I do so, it might be good to note that this is the reference to the example in the memoriam(?), 2013, where it comes to establishing where the location is of the asset according to the PRIMA principle.

But if we consider the example examined offered by Millqvist, we get the following situation. At the top of this image, we have a Swedish limited company that has been declared bankrupt, and in the bankruptcy there is a claim that there's been a pledged collateral for the account with all financial instruments in the custody of an original custodian in the shape of the

Swiss bank in Zurich, in the second step.

The holding with the Swiss bank consists of accounts held by the Swedish company, and in this account there are different types of financial instrument, but amongst other things dematerialised shares in a Spanish company. The Swiss bank, in turn, has underlying accounts with an international securities depository in Brussels. There they have an account with they keep the holdings of other customers in financial instruments. From this we cannot gather what assets are actually held by the Swedish limited company. The international security depository, in turn, has the underlying dematerialised shares in the Spanish company registered with the Spanish version of Euroclear in Madrid, where they also have the share register owned by a representative of the CSD in Spain. And here we cannot see who is the owner of the shares.

So Millqvist comes to the following conclusion from this example, with the structure I've just explained. He says:

"The only reasonable thing in this case appears to be that to understand lex rei sitae as signifying an indication of Swiss rights, Swiss law, because of the assets in question can be the collected funds in the accounts for banks with the Swiss bank which is

domiciled in Zurich where the account is registered."

What we've just said can also be the result of applying chapter 5, section 3, when you transfer a pledge or otherwise dispose of an account or financial instruments. It shall, when the acquired right of the instruments have been registered according to the rule of the law, in that country where the account is kept be applied when it comes to the legal consequences in relationship to other people than the parties involved. And also the choice of applicable rules in the finality directive, section 9, should also lead to the conclusion that the Swiss law was applied.

I've also referred to two other legal articles that have dealt with the same issues as Millqvist and they have also reached the same conclusions as Millqvist.

As I've now explained, in Sweden and in EU directives, they reach the same conclusions when it comes to the application of lex rei sitae principle, which means that first you need to establish where an asset is located, and after you've done that you can decide what law should be applied.

We reached the conclusion that securities are not with Euroclear but with the custodian keeping the register of the securities and the relevant account. If you have dematerialised securities in the custodian or

the sub-custodian, they have decided that the assets should be deemed to be the custodian country where the custodian has their register. So the register where the original custodian registered the actual owner. So what consequence arises if you apply these principles when it comes to looking at these dematerialised securities that the enforcement agency in Sweden attached.

Well, like we looked at in the beginning, it's only SEB and not the actual owner registered with Euroclear, so it's not possible to look at the public share register of Euroclear in order to decide who is the owner of the shares. We also note that SEB has no other information, apart from the one that the securities with the CSD register with SEB are registered with BoNY. And it is only in the books of BoNY in London that it is clear that the securities are actually owned by the National Bank, the actual owner, and there are no registers in Kazakhstan that would reflect this.

So in conclusion, it is the opinion of the National Bank that, according to all applicable rules, the securities are with BoNY Mellon in London, and because that is their location this enforcement agency was not able to attach these assets, because Sweden and the enforcement agency of Sweden cannot take coercive action outside of Swedish boundaries and therefore the

decision on attachment by the enforcement agency should be lifted. **(Pause)**

MR FOERSTER: So our last part of our closing arguments, we have compiled some literature, and this is not new evidence we are handed out, this is just quotes from international legislation and things we wish to refer to in our closing arguments and we'll just distributing these now. **(Handed)**

So now we come to international law and of course, to start with, I would like to say that we concur with what the National Bank has said on civil law, but we will now focus on the issue of the immunity for states. And, as we did in our opening statements, we will also share this task. So you will listen to me and then also my colleagues, Julia and Agnes, and Ludwig Metz will also present one part when it comes to this matter. Looking at international law, this is not a typical enforcement case. It has to do with Swedish relations to another state, Kazakhstan, and the important principle when it comes to immunity to enforcement measures.

This poor(?) international law principle is something that has been set aside by the Swedish enforcement agency.

The enforcement agency have, in a very ruthless way,

first seized diplomatic accounts and then also against the ambassador for Kazakhstan in Stockholm and then they took the decision to attach assets to a value of three quarters of a billion Swedish crowns belonging to the National Bank of Kazakhstan. This is something that the enforcement agency did for unclear reasons, and in conflict with international law, customary law and in breach of the law on immunity in Swedish legal order.

It is now possible for the District Court to correct this mistake committed by the enforcement agency.

This is how the Supreme Court described their principle of state immunity in NGA2009, page 475. And I will refer to this case as the Sedalmayer case -- it might be known by other names as well -- where the court says state immunity is considered to be a natural consequence of the principle that states are sovereign and equal between them, each other, and therefore they cannot exercise jurisdiction against each other. So the immunity has its basis in the most basic principles in international law on state immunity and sovereignty, and the possibility of restricting this are very limited.

So when assets belonging to the National Bank were attached, these assets were using for state non-commercial purposes and this should affect the enforcement measures that are possible to take,

therefore the attachment decision from the enforcement agency should be lifted.

The rules in question are expressed in articles 19 and 21 in the 2004 UN Convention on States Immunity. We will refer to this as "the Convention". It is very important that the court assesses these rules carefully, because if you look at both these articles, the court will have to take a stance on a number of issues. When it comes to this section, Julia and Agnes will go over the types of issues raised when you apply article 21 of the Convention, and later on we will look at what issues are raised by the implementation of article 19. But firstly I will go into the main principle behind immunity and I will also explain how and why the claimant has the burden of proof to prove that there is no immunity at hand.

Again, let me remind you of the main rule in the application of customary law. All state property is immune against enforcement measures. This has been expressed in Article 5 of the Convention when it comes to jurisdiction. Here it says:

"A state enjoys immunity in respect of itself and its property from the jurisdiction of the courts of another state, subject to the provisions of the present Convention."

Article 5 is in part 2 of the Convention and it relates to the general principles. This provision is the point of departure for the Convention. In article 5 it is -- that refers to jurisdiction -- and it says that a state enjoys immunity in respect of itself and its property from the jurisdiction of the courts of another. And Professor Wrange also said in the opinion in exhibit 95, said that there is an perception in favour of immunity that has been expressed in the jurisdiction that applies. However, there have been problems when it comes to -- immunity objections when it comes to enforcement where we look at the state functions, that there can be more (inaudible) jurisdiction in this case than when you look at civil cases. You cannot just take property away from somebody without an underlying judgment saying that this can be done.

In article 4, there is immunity concerning coercive measures in other jurisdictions. This is where we find articles 19 and 21. The main rule on enforcement and enforcement measures are also expressed in article 19. Here we can read in the first paragraph:

"No post-judgment measures of constraint, such as attachment, arrest or execution, may be taken in connection with proceedings before a court of another state."

And then we have an exemption from the main principle:

"... Unless and except to the extent that [and for us section C is applicable] it has been established that the property specifically in use or intended for use by the state for other than government non-commercial purposes and it is in the territory of the state of the forum, that the constraint may only be taken against property that has a connection with the entity against which the proceeding was directed."

I will now continue to discuss the fact that the claimants hold the burden of proof in order to demonstrate that the property does not fall under the scope of immunity. There is a presumption in favour of immunity. Let us again look at the wording of article 19(c) which is the exemption against state immunity from constraint measures. Here it needs to be established that the property is not of such a kind that it -- the English form of expressing this is "it has been established that". So the point of departure is immunity and the party that alleges that there is no immunity thus holds the burden of proof to substantialise this.

So then, if we look to the Svea Court of Appeal and the precedent of the Sedalmayer case, where the Court of

Appeal said:

"According to the provision therefore we have the burden of proof with a person who asserts that the property has been used for commercial purposes."

And this we can read on page 488. The Supreme Court then did not say anything about the burden of proof, but they said that the respect for state immunity and the respect for foreign states do not have to divulge information that they do not wish to divulge can mean that certain rules on application to provide evidence cannot be maintained. So let us proceed and look at what our experts had to say on this matter.

Mainly Professor Said Mahmoudis is very clear on this matter. He writes in his legal opinion, on page 56 the following:

"In the present case, the investors hold the burden of proof. This comes as a consequence of their principle on presumption of immunity. It's always the party applying for enforcement measures to be taken who has to prove that assets in question are being used for purposes other than non-commercial purposes and that therefore immunity does not apply."

It is only if it that has been done that the National Bank or Kazakshtan have to demonstrate why immunity still applies according to articles 19(c) and

21(c) and customary law. Let us look at the legal writing on this.

That the burden of proof is with the claimant can also be found in this quote, and now we look at Hazel Fox and Philippa Webb, who write in the book of the Law of State Immunity on page 506. Here we have an excerpt from the book from that specific page. We can submit an electronic copy of this letter:

"By reason of the general immunity of property of a foreign state from measures of constraint, the burden of proof that the property is in use or intended use for commercial purpose rests with the claimant."

So it is the applicant who has the burden of proof for property which is to be -- the applicant has to prove that this is used for commercial purposes and this is a result of the general principle that all state immunity is immune from enforcement measures.

If it has been proven that the property belongs to the state, it's up to the applicants to show that there are reasons to depart from the main principles of state immunity.

There is a presumption of immunity. This is something which follows from O'Keeffe and Tams comments on article 5 of the Convention. They say:

"Once a legal or natural person satisfies the court

that it qualifies as a foreign state within the meaning of Article 2(1)(b) of the Convention, it is presumed to enjoy immunity from the court's jurisdiction, unless the claimant can make out one of the specified exceptions to immunity.

"In other words, it follows from article 5, as formulated, that the burden of proof relies on the claimant to prove that the state is not immune from the proceedings. It is not up to the state to establish that it is entitled to immunity."

It's page 147. O'Keeffe and Tams, they are certain that the burden of proof rests with the applicant when it comes to the issue of immunity. As I mentioned before, article 5 gives an expression for article for the immunity. Professor Paul Wrange has also written a section on the placement of burden of proof. This is exhibit 95, he's not shown that the customary law is (inaudible), it has been there historically. But he says that even if the tendency from the past here is clear, most of the indicators indicate to a presumption of immunity. And this was something which was clarified a couple of years ago in a Belgian case, which Wrange was referring to. This was a case in Iraq and initial(?) constructions, the Belgian court said that this was a presumption in place, that the funds on the

accounts belonging to the embassy were used -- were immune to enforcement measures, and this exact case is described in his statement.

Wrange says that his careful conclusion is that the burden of proof rests on the applicant.

When it comes to this case, then he is much more certain, and I would like to quote from his legal opinion once again:

"Notwithstanding that it should be said with a certain degree of decisiveness that on the basis of the convincing prima facie evidence presented by Kazakhstan, it must be up to the applicant to show that the property does enjoy state immunity."

Kazakhstan and the National Bank has made it clear partly that the property belongs to the National Bank, but also regarding the purpose of the use of the assets at the National Fund, to the use of the National Fund. Considering the background, it is up to the applicant to show that it's -- the situation is different. However, applicants will not be able to present arguments regarding it, and my colleagues Agnes and Julia should apply why. So therefore the court should apply articles 21 and 19 of the Convention, specifically since the contents of these articles in the Convention express the current customary law and this is what should be

applied to this case.

That this is the case is confirmed by the Supreme Court in the Sedalmayer case, where the supreme Court said partly that the Convention codifies, to a major extent, the current customary rights. This is paragraph 12, and partly 19(c) expresses the principle saying that an enforcement can be made with respect to the approach which is not used for non-commercial purposes, and Supreme Court also says that absolute immunity should apply for such property of a specific nation, which is described in article 21.

So the Supreme Court has given clear guidelines about how we should consider the content of the Convention.

The legislature decided to implement the Convention in Swedish law through incorporation. That situation itself is a clear signal that whatever the Convention says should be applied in Sweden, just like it was mentioned by Professor Mahmoudis in his opinion. This is not a method which is usually used in Sweden, when they ratified the Convention, but the legislator in this case made the assessment that the provision of the Convention reflect the current law for the majority of the state and therefore has been incorporated to the convention.

The Swedish legislator has in the preparatory works said that articles 18 and 21 in the Convention are supported by the state practice, and therefore the codification of the existing customary law with certain compromises and specifications. Article 19 is not a clarification or a compromise but this is part of the customary law and I'd like to refer to bill 2009 487, which says is that the provisions on the state immunity with respect to poor judgment measures, in articles 18 and 19, are sponsored by state practice.

The articles should be considered to be a codification of the current customary law with the certain clarifications and compromises when the opinions on the international law have been different.

So the experts are in agreement that 19 and 21(1)(c) reflects the issue with customary law.

Let me start with the -- what the expert on civil law, Professor Linderfalk, said on this.

His opinion is found in binder 2, tab 82. You can find -- I believe it's page number 1000 and I'm reading from a section where he says:

"The conclusion I'm making is that article 21(1) (c) reflects international customary law but that the customary law at the same time is more precise. So in several respects it still leaves space for different

internally compatible solutions. So 21(1)(c) is a reflection of the customary law and then that the customary law could be interpreted in different ways. This is in a different matter.

The professor Wranges and Mahmoudis, they agree that 21 is an expression of the current customary law. Professor Mahmoudis says that this is a reasonable conclusion and this is his opinion because the convention has been adopted by the state for decision in the general assembly. After the customary long negotiations, they agreed on the wording of the Convention.

This was done by the international community and if you open Professor Mahmoudis' opinion under tab 25 in binder 1, page 246 and I'm reading what the paragraph at the top of the page. This is paragraph 33. Professor Mahmoudis makes the following conclusion on the application of articles 19 and 21, even to this particular case:

"Having this as the background, it is my opinion that, even in the present case, the UN Convention and specifically articles 21 and 19(c) should be the point of departure 204 to assess on whether the enforcement decision with respect to the assets belonging to the national right do confirm to the international law."

It's Said Mahmoudis's position that this should be the point of departure for the court when assessing the issue of state immunity.

Let's look at Pal Wranges' opinion. This is the following tab in the same binder, binder 1, tab 26. In Pal Wranges, expert opinion, page 2057 and this is the paragraph at the top, Pal Wranges conclusions is:

"So therefore it's my opinion that the international customary law doesn't provide any face(?) to limit the immunity apart from the Convention says, at least not in the aspect which are relevant now. On the contrary, sometimes the reasons to ask yourself whether the customary law is more conservative than the Convention."

So the position of Pal Wranges is that the customary right does not allow any limitations to the principles under article 19 and 21.

So summarise, all experts are in agreement that articles 19 and 21 express the current customary law in the matter -- so this should be applied by Swedish courts when assessing whether a foreign state's assets are covered by state immunity and the opinion is that the provisions are so well worded and so precise that they are directly applicable in Swedish law.

The bill says that the legal application is based on directly on the authentic text of the Convention.

I'm referring to page 115 in the bill.

The other reason why the court should apply the principles in articles 19 and 21, no matter what follows from customary law, this is because the provisions of the civil case have been treated in detail by the Supreme Court and, to summarise, it is clear that the court should apply the provisions in 19 and 21(c) to this case.

This is supported by the Supreme Court's decision. It's supported by the bill and supported by all the expert opinions.

If we have a brief look at the objections provided by the applicants, they have said that 19(c) and 21(c) are not internationally binding. It's quite unclear what's the effect of this in the opinion of the applicants, because the applicants, here they refer to article 21(1)(c). They have submitted an extract from O'Keeffe and Tam's document, but the comment provides a perspective interpretation of 21)(1)(c). The comment of the Australian professor who wrote the section, he says nothing that about 21(1) reflecting the current customary law.

Another article which has been submit was an article by Professor Ingrid Wuerth, which is in found in binder 2, tab 86, and that's where article 21(1) is given as an

example of a generous testimony of the immunity. What Professor Wuerth describes in her article, she describes the development of the different position to the immunity of the assets belonging to the Central Bank. They describe a certain trend.

When it says that the trend is that more and more states give absolute immunity to enforcement measures against the property of the Central Bank.

If we open page 10(4), you see this on the screen.

For execution of the foreign -- no, we don't have this on the screen.

So but I'm referring to page 1044 in the article by Professor Wuerth, on page 1060:

"The development in state practice is towards greater and greater protection of foreign Central Bank assets, the negotiating history of the UN Convention also suggests broad agreement on the protection of state property in article 21(1)(c) which partially explains the global trend towards greater protection."

So it's not possible so see entrants(?) in the customary law towards the absolute -- to limit the immunity of the property of the Central Bank. On the contrary, the absolutely immunity is maintained.

I'd like to once again remind you about two things, that the point of the departure from the international

law is that all state assets are protected by immunity and that the point of departure for the customary law is not from the opinion in the western world, something which is unfortunately sometimes described in the article by Professor Wuerth, but the customary law should consider the positions of all the countries. So the applicants have to show that the customary law has changed in such a manner that the absolute protection for the assets of the National Bank has ceased.

There's nothing which indicates that the customary law is moving in the direction of more -- becoming more restrictive compared to the articles expressed in the you're UN Convention.

We've mentioned earlier the English AIG case, where the High Court write at the conclusion that the assets of the National Fund are covered by state immunity. It's correct that the decision was made on the basis of English law and so says nothing directly about the Convention. But the AIG judgment is the part of the material which is part of the customary law.

The applications didn't show that the absolute protection of the National Fund has ceased to exist, although they have been looking forwards to support their evidence in -- I think their expert was able to provide any support, but Professor Lindfalk confirms

that 19(c) and 21(c) expresses the current customary law.

The UN Convention is a outer boundary for how -- in terms of how far the immunity could be limited.

I'm referring once again to the legal opinion of Professor Wranges specifically on page 7 of his legal opinion.

In the Swedish bill on rectification and incorporation of the Convention, it says that the state practice has been careful about refusing immunity to enforcement measures to foreign states. There is no common state practice in terms of limiting of immunity with respect to enforcement measures, so there is no support with giving the customary law the possibility to limit the state immunity. The Swedish legislation of the Supreme Court has classified that the principles which are expressed in articles 19 and 21(c) should be applied by a Swedish court.

Having returned to this background, I would like to move on to the next section? I'll pass over to my colleague Agnes, who will deal with article 21.

Submissions by MS FERMBÄCK

MS FERMBÄCK: I will started by explaining the special protections afforded by article 21 and then I will move on to discuss how the court should assess this on the

basis of article 21(c). I will also explain the circumstances that demonstrate that the property in question are not protected by immunity pursuant to these provisions and then I will give the floor to my colleague, Agnes, who will talk about the immunity that the claimants have alleged are in effect according to article 21(c).

Like Alexander just explained, the main rule is that all state property enjoys immunity from enforcement.

Reasons to sidestep this main rule are limited. In article 19, there are certain exceptions against the main rule on immunity and the claimant has described article 21 as being an amendment to specify article 9. This gives an erroneous description of the systematic approach of the Convention that article 21 is an exception to what is stated in article 19, ie, if property isn't immune according to article 19 because it has been used for commercial purposes, it should still fall under the scope of immunity if it belongs to a central or National Bank.

We can gather as much from the first paragraph of article 21, where it says that:

"The following categories of property of a state shall not be considered as property specifically in use or intended for use by the state for other than

government non-commercial purposes under article 19(c)."

In items A through to E there is a list of the types of property that are particularly deserving of protection. They shall under no circumstances be included by the exceptions against the main principle on absolute immunity.

As we gathered from the wording of article 21(c), all property belonging to a Central Bank is of such nature that it also falls under state immunity. This particular form of protection was considered necessary because in the 1990s there was the trend in certain jurisdictions to attach or freeze the assets of foreign National Banks.

In bill 2008 009:204 on page 82, they've expressed the following when it comes to the background to article 21. Here they write that this particular protection was considered necessary to include in the Convention because of the practice of certain states to grant claims to take coercive measures against, for example, foreign state's bank accounts or the assets of Central Banks. When you look at that type of assets, then you should not the purpose. According to applicable being customary law, such property should always be fall under immunity regardless of the purposes it is used for.

They have said the following in the Convention:

"Article 21 has the intention to prevent that certain types of assets when applying article 19(c) are deemed to be used or intended to be used for other than state non-commercial purposes."

The consequences from meeting the criteria in article 21 is that property enjoys absolutely immunity. If article 1 is applicable, it is not necessary to look at whether or not the property is used for commercial purposes or not.

When the claimants gave their presentation, we were told that the National Bank, according to article 2(1)(b) section 3 of the Convention has no reason to invoke state immunity and that is an objection based on an academic discussion into the exhibits submitted by the claimant about a week before this meeting. In exhibits S79 and S72 there is mention of this. In both exhibits, it is mentioned that it was improbable that it was the intention of the negotiating parties to evade this loophole in the Convention, but it appears to be there and this seems to be something that the claimant is trying to benefit from.

In both exhibits exhibited by complaints, it emerges that this is only an issue that that becomes that comes into question if you reach the conclusion that the

National Bank is not something that falls under the definitions in article 2.

So, according to claimants, article 2 should be interpreted as saying a Central Bank that has operations pursuant to law on the assignment of the state can still fall outside of the application scope of the Convention. That type of construction is not consistent with the intentions behind the convention. We should keep in mind that this will only bring you back to 21(c) if it is deemed that properties used for other than non-commercial state purposes.

But article 21 does also protect property that could be used for commercial purposes and, should we make the same construction of article 2 as claimed by the claimants, then the professions in article 21(c) and the manoeuvring space afforded by that would be impossible to use. To be able to do that, we first need to establish that National Bank that holds property takes action in the exercise of official authority of the state and then you have to establish at the same time that the bank takes action as part of the exercise of public authority of a state and that these assets are used for other than state non-commercial purposes and only in those circumstances could it be relevant to apply article 21(c).

It is impossible to understand when that type of situation could ever come into question and in the reverse case article 21 would be completely superfluous.

There is another construction that is closer at hand and more consistent with the Convention and the intentions behind the provisions in article 21 and also otherwise when it comes to the thoughts presented by the experts and the intention of article 21 is to clarify that entities that provide services that could be considered to be purely commercial conduct outside of the exercise of official state authority have no right to claim immunity for the commercial part of their operations.

In this case, we can establish that the Kazakh state gave the assignment to the National Bank to have the custody and administer the National Fund.

In our opening statement, we went over the provisions in article 8 on the Act of a Central Bank where we learned that the National Bank's administration of the National Fund as the implementation of the monetary policies and supervising the financial markets and the issuance of bills and coins fall under the scope of such assignments that a National Bank, pursuant to law, shall take upon themselves, and this administration of the National Fund is something that is done as part

of a state's sovereign exercise of official authority and cannot be equated to such commercial activities that can be subject to the exception in the article of the Convention.

That the National Bank can receive certain consideration for such administration does not change this circumstance. Even if the National Bank would not do so, the state alleges that there is immunity pursuant to article 21(1)(c).

I will now continue to talk about how the court should assess this according to 21(1)(c).

So the aspects that are relevant for the assessment of the court are the ones stated in article 21: is the Central Bank, such an entity that falls under the scope of this provision and is the property of the National Bank in the sense expressed by the Convention.

So first of all is the National Bank the type of entity included under this scope.

There is no definition of National Bank in the Convention. How this concept should be interpreted is discussed by Ingrid Wuerth in the article submitted by the claimants as exhibit 269. On page 1041 through to 1042, she says that a Central Bank conducts monetary policy, supervise the banking system, offer banking services to the government and administer gold and

currency reserves, foreign exchange reserves, and the goal of the monetary policies is to achieve stabilising effects, stabilising prices, by limiting inflation and to manage the fluctuations. Agnes Jaderbäck discussed the Kazakh legislation that regulates the operations of the National Bank. We looked at article 1 of the Act on National Banks, where it clearly said that the National Bank has been designated to be the Central Bank of Kazakhstan and that it is there to represent Kazakh interests in relation to other Central Banks and foreign banks. We also looked at article 7 and article 8, where it emerges that the primary task of the Central Bank is to have price stability in Kazakhstan and that it is been established in law, mandate, the Central Bank has to achieve the same.

We also looked at articles 29 and 30, where we learn that the central bank also conducts currency exchange operations. We also heard Aliya Moldabekova tell us about the operations of the Central Bank. We explained this they conduct the monetary policies of the country and that the aim is to achieve to price stability. They said that the bank had been given the task of administering the National Fund, the state pension fund and the foreign exchange reference. The oral testimony confirmed that the National Bank actually operates the

type of activities that National Banks pursuant to law should operate.

During our opening statement, we also compared it to other Central Banks that showed that the provisions in the national banks did not deviate from what is applicable in other countries.

On the contrary, it demonstrates that the National Bank has many similarities that it shares with other central and National Banks across the world.

So there is no doubt that the National Bank is the type of bank referred in article 21(1)(c).

The next question is what is meant by saying that the property is the property of a Central Bank according to the Convention. First, we can establish that this concept, property of, doesn't have the same meaning as "belongs to" as expressed in Swedish enforcement code, chapter 4, section 17. This concept of "property of" is much wider.

The claimant refers to the decision from the Stockholm District Court saying that the court already tried the matter whether or not the assets constitute property of the Central Bank.

During the previous sequestration case, the Stockholm District Court assessed article 21 very much in brief. The District Court said this:

"The District Court holds that it has been substantiated in this case that Kazakhstan is the owner of the funds in question. That means that the first requirement pursuant to article 19 has been fulfilled and that there are no impediments to sequestration supported by article 21(c)."

So the District Court only based their assessment on the ownership right to the property.

The District Court did not motivate why it would constitute applicable customary law to construe this article in this way. This is applying the Convention erroneously. From several sources of law it emerges that property of is not limited by ownership law, but also includes property that is administered by or is held by a Central Bank.

From a comment from O'Keeffe and Tams, the concept of property of the state in article 21(c) should not be restricted to only property owned by the state but also property that is possessed by or controlled by the state. The international law professors, Mahmoudis and Wranges also confirmed that the property falls under the scope of immunity, regardless of who the owner of the property is, so it is enough for the Central Bank to possess or control the property in order to establish that it falls under the scope of immunity.

On the screen we see an excerpt from the legal opinion of Said Mahmoudis. This can be found in exhibit 50. On page 246 he writes:

"This clarification means that also property possessed, disposed of, administered or controlled by the Central Bank shall a priori be considered to be property of and be included by the special protections afforded by article 21(c).

Also the claimant's expert, Ulf Linderfalk, agrees that the concept "property of a Central Bank" includes profit that a Central Bank owns, possesses, controls or administers. On the screen we see a excerpt from Linderfalk's expert opinion. In exhibit 156, Lindfalk writes the following:

If the common meaning of article 21 is established to be ambiguous, there are obviously arguments to say that property of the Central Bank shall be understood in the corresponding wider scope of an understanding as a reference to all such property that the Central Bank owns, possesses, controls and administers, that the concept "property of" in 21(c) includes all property that a Central Bank owns, possess, controls or administers. It's in the wording, it's also in the leading comments from O'Keeffe and Tams and it is also been confirmed by all of the experts in the case.

During the opening statements, we discussed that the central bank holds, administers and disposes of the property. I will quickly tie back to this now.

It is not disputed that the property was acquired within the framework of the National Fund. It is also not disputed that the Central Bank administers the National Fund. The Central Bank's right to possess, hold and dispose of the assets in the National Fund can be seen in the National Fund agreement, Article 2(1)(i). It has also emerged that the notice bank administers the National Fund in the framework of a trust. In the Kazakh Budget Code, article 21(7) it is established that the National Bank is a trustee for the National Fund. The same emerges from article 8, section 31, in the National Bank Act.

The fact that the National Bank is a trustee for the property is also confirmed by the legal opinion from Professor Suleimenov and Mukasheva.

During the opening statement we also looked at section 823(1) in that article in the Civil Code to see what is included in the trust concept. From this provision it emerges that it is National Bank that as a trustee acts in their own name and holds all right in relation to the property during the time that the property is placed in trust with them.

We've also heard Aliya Moldabekova talk about how the National Bank administers the National Fund and that it is the National Bank that entered into the GCA with BoNY and that it is the Central Bank that disposes of the property and can decide to divest specific shares.

That the property should be deemed to be the property of the National Bank has been confirmed by, amongst others, Pal Wranges. We can look at a excerpt from his legal opinion, exhibit 95, page 258. Pal Wranges writes this, when it comes to this expression "property of":

"In the preparatory works for the Convention, it emerges that property off shall also cover possession or control. This wording, its property or property in its possession of control in a previous draft was replaced with the more expressive and more clear property of. For me it is beyond all reasonable doubt that the property in question is fully covered by the scope of the significance of this expression. The National Bank freely disposes of the property even if the Kazakh state is a kind of beneficiary which might be corresponded to the English law concept "beneficial owner". It must in any case be said to be that the property is in the possession of the National Bank which is more than sufficient to state that it belongs to the

National Bank. This conclusion is confirmed in the precedent AIG versus Kazakhstan.

Yes, this is Pal Wranges's statement that he makes in his legal opinion, exhibit 95.

So Pal Wranges concludes by referring to the so-called AIG case. Where the claimants gave their presentation, we heard a very thorough explanation as to why the AIG case lacks importance. Obviously this is a court decision that is incumbering to the claimant and that is understandable.

Even if the assessment was conducted to the English State Immunity Act, the provisions in that Act hold the same structures as article 21(c) and it also deals with the same similar concepts.

There was considerable similarity between these cases. Also there it was to do with assets administered by BoNY on behalf of the Central Bank.

In the AIG case, there were several occasions drawn that were troublesome for the claimants, the first being that in the assets that the National Fund cannot be attached for Kazakhstan because Kazakhstan holds no rights who assert against BoNY.

Secondly, the court found that the assets in the National Fund constitutes property of the Central Bank and therefore is protected by immunity protection from

enforcement measures and, as has been pointed out, this forms part of the materials that constitute popular international law and it is also a precedent decision when it comes to the issue on state immunity for the assets of National Banks.

In conclusion, we can establish the following, that the National Bank is the type of entity that is included by article 21(c) in the Convention. The Stockholm District Court did not try whether or not it can be deemed that the property belongs to the National Bank according to the applicable customary law. They sufficed it to decide -- for them it was sufficient to decide that they do not own the property. According to the Convention and customary law, we get to the conclusion that the property does belong to the National Bank because in any case it is being administered by the Central Bank, it is in their custody and therefore it is protected against enforcement measures because of immunity.

THE CHAIRMAN: Ten minutes.

(11.53 pm)

(A short break)

(12.10 pm)

THE CHAIRMAN: So how are we doing in terms of time? How much is left?

MR FOERSTER: Quite a bit. At least an hour.
THE CHAIRMAN: In that case, we are still following the -- I believe the -- so please proceed.
MS JÄDERBERG: Thank you. I will turn to the objections by the applicants regarding article 21. Article 21, it's difficult for the applicants to supervene the fact that this is the property of the Central Bank. So in other words to explain why the property should not be considered to be immune, dispute a lot of, that the applicants have made claims that there are further criteria in order for the property to be protected by immunity.

These are the criterias which are now found in the Convention and which are not supported by customary law.

With the -- firstly the applicants claim that it's required that the Central Bank should own the property and in order tour it be covered by immunity, covered by 21(1) c).

Secondly, the applicants claim that the purchase should be held for its own account.

Thirdly, the applicants say that it's required that the property is for monetary policy purposes in order for that to be protected by immunity. And lastly, but not leastly, the requirement is that the National Bank is independent from the political governance in order

for the property thereafter to be protected by immunity.

The first objection is that it is a requirement that the property is owned by the National Bank for the property could be covered by 21(1)(c), but the applicants haven't been able to provide any support for such a requirement in the customary law.

My colleague, Julia Fermback just described the meaning of property of the after Central Bank, that it covers all the property which is owned, possessed, controlled or managed by a central bank. And the arguments which we had during the opening statement of the applicants was firstly that it follows from the wording of the provisions that it's only applicable to the property which is owned by the Central Bank, but this is not the case.

It doesn't say that the provision protects the property which is owned by a central bank.

On the contrary, they have decided to use this wider concept of "property of", so even the wording supports that the concept covers more than just the right of ownership.

The second argument with respect to this issue was that the consequence of this would be unreasonable if all the property in possession of the Central Bank would be covered by the provision. What kind of unreasonable

consequences there will be, the applicants have not explained.

The purpose of the provision is to provide protection for the property of a central bank and this, notwithstanding the -- how the agreement between the state and the bank has been changed and the position of the applicant is not supported by the legal experts.

During the opening statements, the applicants provided a new argument that the property should be held for its own account. That element is missing from 21(c) and it's not supported by the customary law.

In this respect, the argument of the applicants are based on a statement by an ILC, member of ILC from 1986 and an element in the -- and the American law on immunity, FSIA.

None of these sources support that, held for its own accounting would be one of the principles in 21(1)(c), and even if that would have been an element, which it isn't, it cannot be interpreted in the way done by the applicant.

First, let's consider the relevant section in ILC's annual report in 1986, which was shown on Tuesday, under 108. This is exhibit 261. We can see what this member of ILC, Mr McCafery, what he said during the course of the discussions:

"Mr McCafery said that in his understanding paragraph 1(c) referred to property of the Central Bank which was held for its own account."

The wording proposed by Mr McCafery is taken from the American FSIA Act. The applicant said during the opening statements that Mr McCafery says the statement was not objected to, and they say that this should show that the criteria held for its own account would be a part of the customary one.

This is a statement which was made by one person in 1986 during the negotiations on the Convention. "Held for its own account" wasn't a main part of the draft at the time, and it was not part of any other proposal later. And easier now, it is not found in the final version of the Convention. So therefore the parties were in agreement not to make the kind of qualifications which was proposed by Mr McCafery.

Then it's the opinion of the applicants that "held for its own account" is a part of the principle in article 21(1)(c) because there is such an element in the FSIA.

Here it seems that the applicants tried to cherry pick, because now they claim that an element which is found in the FSIA should be considered to be the customary law rather than what the Convention says,

where no such requirement is found.

At the same time as the position of the applicants, that the British State Immunity Act which corresponds to the wording of the Convention is completely of no relevance for the interpretation of the customary law. Why they are doing this? Because the English court in the AIG case arrived at the conclusion that the property of the National Fund is property of a central bank in accordance with the English Immunity Act.

The applicants recently submitted an article by Professor Wuerth; which was mentioned by my colleague. This is exhibit 269 and she describes the way how different countries consider the state immunity with respect to the property of the central bank. She describes the FSIA being more restrictive than the Convention and the English law. In other words, the FSIA and the Convention do not contain the same rules, and therefore it shall be considered that they don't(?). The only thing the applicants have presented so far is that they want the court to apply the American FSIA rather than the Convention, and this is made on the basis of two extracts from the first legal opinion of Pal Wrange, the quote which was on Tuesday. I've taken it out of the context. So let's have a look at what Mr Wrange actually says.

This quote which you see on the screen, this has been cut by the applicants to show that the criterias in FSIA should be applied, but this is not what Mr Wrange claims. What he's saying here is that several of the expressions in the UN Convention are identical with two FSIA and the first draft of the Convention are based, in terms of execution, to a large extent on section 1611 in this law.

It's true that several of the expressions in the UN Convention are identical to the American FSIA Act, but the expressions which were identified by the applicants in FSIA held for its own account are not present in the Convention. That expression is also reported by state practice and this was something which was claimed by Mr Wrange.

The applicants, they also refer to note 29 in Wranges' legal opinion, and where there is a quote of article 1611(b) of the FSIA. And the fact that the provision is quoted in a note, in opinion of the applicants, this supports Wranges' position that the contents thereof should be part of the customary law, but let's see what Wrange writes about the FSIA.

As you can see here, there is in the bottom of this page, the American, Australian and Canadian Act, just like the Convention, they contain an immunity provision

for the funds which belong to the central bank. But with the requirement that they're held for its own account, as it has expressed in the American FSIA and here you see the note, FSAI with the relevant provision, 1611(b) and the FSIA is quoted.

For the first, it was held for its own account as part of the customary law. On the contrary, like we've heard before, his clear position is that the such customary law basically provides no room for the limitations on immunity. In addition to what has been said in the Convention, it follows from page 9 in his legal opinion.

A requirement in addition to what article 21 says, that the Central Bank should keep the properties for its own account is a limitation of such a kind, and it's not supported by the customary law.

Secondly, Wrange says that the property of the National Fund in any case, in any circumstances, would still be covered by, or held for, its own account criteria if that criteria would have been applicable. But the applicants decided not to present this in the text they cut from the Pal Wrange's legal opinion.

Let's hear what he says about the provision in the American FSIA.

So it's not on the screen, but what he's saying is

what the these laws aim at, and this is includes the American FSIA. They made the decision that the National Bank keeps the funds on behalf of someone else, on behalf of someone who will be using the funds for commercial activities. However, this is not an issue at hand here. As it has been said before, the National Bank keeps the funds for the purposes which are a part of a typical mission of the Central Bank, ie stabilisation and savings.

So this is how his comments with respect to this particular case, and this takes us to what is meant by "held for its own account" in the FSIA.

The applicants seem to mean that the interpretation should be made that property can only be immune if it's presented as an asset in the annual report of the National Bank. During their opening statement, they refer to the annual report of the Central Bank for 2017. The claim was made that since the funds of National Fund are held in trust, and not presented as an asset on the balance sheet of the Central Bank, this means that the funds are not kept on behalf the Central Bank.

The reason why the means of the National Bank are not listed as an asset in the balance sheet, this is something we heard from Mr Moldabekova's examination. It's not because the funds are not managed or held by

the Central Bank, but it follows from the Kazakh law that the fund's interest has to be counted for in this manner.

This is the Civil Code of Kazakhstan. This is article 885(2), where you can see this on the screen. It says "Trustee account":

"The trust property separately from the property belonging it to him or her on the right of ownership."

So at the Central Bank is not allowed to account in any different manner.

No support has been paid to the claim that the held for returning account should be interpreted in the way made by the applicants, ie the National Bank has to account for the property as an asset on their balance sheet.

The fact is that O'Keefe and Tams explain this concept in the document submitted by the applicants.

What's being said here, "held for its own account", in 1611(b) in FSIA means that the assets are used for central bank functions as this is normally understood, even if this means that they are used for commercial purposes, which means something else and not what the applicants or not the interpretation made by the applicant.

So, to summarise, we should know that there is no

support for the claim that the element held for its own account in American legislation is applicable to this case. The District Court applied the principle in 21(1)(c) in the Convention and not the American Act, and therefore the arguments in this respect are not legally relevant.

The applicants didn't provide any support for their interpretation of what is meant by "held for its own account".

It should also be noted that it's the position of Pal Wrange, that the property, no matter what, is both property of the Central Bank and that it's disposed of -- disposed by the Central Bank for its own account and this follows from his legal opinion in exhibit 95.

Moving onto the next claim.

In a different attempt to circumvent the fact that the property is the property of the Central Bank, the applicant adds another criterion to article 21(1)(c). They claim that there is a requirement that the property should be used for the purposes of monetary policy in order to be covered by immunity in 21(1)(c).

Even this criteria is not supported by the customary law which follows from the wording of article 21, and also of what the purpose of article 21 follows from the minutes from ILC, and the statements and the doctrine

and the legal opinions. And I will deal with these items just like I heard from my colleague, Ms Fermback initially. It is of no importance what is the purpose of the specific property for the Central Bank. The purpose is relevant for the issue -- for the question of whether the article is protected by immunity in accordance with article 19, which will be dealt with by Mr Metz, but 21(1) is not dealing with property that is met for a certain purpose, but this is deals with the property of a special, sensitive nature, since it belongs to a central bank. And this follows from the wording of the provision, the immunity protects property which belongs to a central bank or another monetary policy authority of the state. It doesn't say anything about the property. The property has to be used for the purse of monetary policy.

The interpretations made by the applicants is in violation of the purpose of the exception in 21(1)(c).

The purpose of the provision is to protect state property of a particular sensitive nature, and the property of Central Bank is considered to be such a property which enjoys immunity against enforcement matters, not matter what the property is used for.

If you would interpret 21(1)(c) in the way done by the applicants then the provision in 21(1)(c) would

become meaningless and non-enforceable or non-effective.

We can agree that property of the Central Bank used for the purposes of monetary policy is also used for other purposes, other purposes from the state non-commercial purposes, and therefore this property is immune in accordance with article 19, which would mean that there would be no purpose with article 21.

So therefore 21(1) says that there is no requirement that the property should be used for the purposes of monetary policy.

I will now move on to what you could read from the history of negotiations when the Convention was developed. Through the course of the negotiations, there was a discussion about whether the property would be qualified as property which is used for the purposes of monetary policy, and this is something the applicants refer to in their opening statements by referring to a number of extracts with the ILC's year books, and I will go into detail and show what was the importance of those.

As the applicants noted in ILC's year book for 1991:

"With regard to paragraph 21(c) the Special Rapporteur suggested the addition of the word 'and used for monetary purposes' [at the end of the paragraph], but they were not included for lack of

general support."

So here the applicant emphasise that the expression "lack of general support" means that the states were not in agreement on how -- on the composition of the text, and applicants claim that this was why "for monetary purposes" was removed in order to leave the interpretation for the application of the law. But this wrong.

The way it was drafted continued for a number of years. There were a number of rounds of negotiations until the final text was adopted by all the member states in 2004. And, like, say, Mahmoudis wrote in his legal opinions, this Convention has been praised as an important codification of principles of immunity which reflected the existing customary law.

The member states of the Convention took a position on where they should be required, whether the monetary purpose should be used and this criteria was not included in the provision, but the final wording of 21(1)(c) is that all property which belongs to the central bank, no matter the purpose, is covered by state immunity.

The applicants refer specifically to the Nordic countries. In 1988 year book the countries expressed doubts with respect to whether the immunity for the

property of the central bank should be unconditional. And here I would like to remind you that the Supreme Court in modern times said that there were areas to enforcement due to state immunity are present, if a property is of the kind which is mentioned in 21(1)(c), Sweden and Finland have incorporated the Convention into national law.

So the content of ILC's report of the end of the 80s, which have been referred by the applicants, have lost their importance. The historical proposal regarding monetary purpose as an addition never became a part of the Convention and this is not what the customary law says.

I'll move on to something which has been mentioned in the doctrine and the legal opinions, both Mahmoudis and Wrange. And the opinions confirm that there is no support for the efforts of the national -- the Central Bank to be -- they have been to used for monetary purposes in order for it to enjoy immunity. Wrange summarises his position in the following manner, in his latest legal opinion, dated from October 2018.

So to summarise, the interpretation of article 21(c) has limited the immunity of the Central Bank's property to a certain use, this has no support in the wording of the Convention and there's nothing in the negotiation

history which could give us -- lead us to a different conclusion. This interpretation cannot be supported through a systematic interpretation of the Convention or an interpretation based on the goal and the purpose.

Ingrid Wuerth, she states that the general development has developed toward greater protection of the foreign banks, and this is what the section which was quoted by Alexander initially, which says that -- and here Ingrid Wuerth confirms that 21(1)(c) is an absolute protection against enforcement measures for Central Bank property, ie the immunity is not limited by a requirement that the property should be used for monetary purposes. This is article 21(1)(c) and 21(1)(c) should be applied in this case.

To summarise, it should be noted that article 21(1)(c) doesn't put up any requirements that the property should be used for monetary purposes. On the contrary, the property of the Central Bank should be protected no matter what is the purpose of the use of the property, and this is confirmed by the wording and the purpose of the provision from the negotiation history and from the conclusions of the experts.

The problem with the arguments provided by the applicants, not only that there is no element in 21(1)(c) that the property should be used for a monetary

purpose, because even if this element would be present, the Central Bank is using the property for monetary pumps. We've heard this from Ms Moldabekova this Wednesday. So the property would have been covered by state immunity, even based on the GCA which allegedly exists, in the opinion of the applicants, and this is something which is confirmed by Said Mahmoudis.

He quotes:

"No matter what interpretation of article 21(1)(c) you support, either absolute immunity for all property of a central bank due to the current wording of the article, and immunity presumption, or immunity only for the property which is used for monetary purpose. In this current case, the property of the National Bank enjoys immunity.

As it's stated above, the property in question is managed by the National Bank, and the National Bank uses the assets within the framework of the monetary policy. Therefore the assets are used as part of the functions which are normally considered to be an official exhibit of the Central Bank, being a state body.

Moving on to objection number 4 given by the applicants' claims, the applicants have objected, saying that the Central Bank has to be independent from the political power in order for 21(1)(c) to apply. Then

I will -- well, first, I would like to say that there is no support in the customary law to apply the alleged elements provided by the applicants, so this claim is not legally relevant. And subsequently I would say that if this requirement would be present, that the Central Bank has to be independent to a certain extent in order for its property to be covered by state immunity, then it would have been practically impossible to apply such a provision. And finally I will explain why the image of the Central Bank presented by the applicants, why this image is incorrect under any circumstances, so materially are the claims incorrect.

To support their claim that a Central Bank has to be independent, the applicants have referred to one document in their statement and to another one document during their opening statement.

The first one is the legal opinion of where Linderfalk, and the second one is a quote from O'Keefe and Tams.

Linderfalk applies a line of reasoning saying that a central bank regularly has a large degree of independence from the political government. Moreover, no support is presented that this is a requirement in accordance with the customary law. And the applicants also refer to O'Keefe and Tams, whether they discuss --

when O'Keefe and Tams discuss certain common properties of the central banks, which usually exist. They say the central banks are autonomous with respect to the state. But they're not saying that this is a requirement in order to enjoy immunity in accordance with the customary law.

The applicants haven't provided any legal support for the Central Bank to have a certain degree of independence here, in order -- and they will not find anything here. The ILC comments and the wording of the article do not support Pal Wrange's interpretation, and Pal Wrange states that he, during his research, could not find any support this interpretation, not in the literature, not in other sources.

This follows from page 8 in his legal opinion, and this is the legal opinion dated October 10, 2018, exhibit 2, 202. It's quite natural that no requirement exists for a certain level of independence since all these states have different forms of government, different types of organising their state apparatus.

The fact that the development in certain European countries recently have a resulted in high degree of independence for the central banks. It doesn't indicate that there's an international community consensus when it comes to this issue.

On the contrary, historically the central banks have been subjected to government control and their level of independence has varied over time.

The states have decided to organise the operations of their central banks differently, and the level of independence have never ever had any connection to the issue of the immunity of the assets of the central bank.

The criteria proposed by the applicants would have forced the national courts to make legal and political considerations and this violates the fundamental principle of international law, the principle of sovereignty, and political considerations is not something Swedish courts should do.

When it comes to international law and international law is clear, there is no requirement that a central bank should be independent from the political power in order for the property of the bank to be covered by immunity.

Such requirements would result in difficulties of application to say the least. Which central banks should prove to be central banks? What would be the decisive factor and who would decide that?

It is evident that it would never work and that such requirement does not exist.

What's decisive is whether the Central Bank as a

body covered by 21(1)(c), this is if the Central Bank has a function which central banks normally have and we have shown that the National Bank does.

The circumstances referred to by the applicants, for example, about the leadership of the Kazakhstani President, are not relevant for the assessment by the court of the issue whether the property is covered by immunity, but I would still like to say a couple of words about what the applicants claim in this respect.

It seems that the position of the applicant is that all central banks should be organised in accordance with the Swedish governance model, and as we have stated during our opening statements, the different states are organised those central banks in different ways and the level of independence varies a lot.

The constitutional order which affects the forms for the operations of the National Bank, it's not -- it doesn't have it from the common central banks.

The applicants have made several references to different provisions in the National Fund agreement, the Central Bank Act and the Budget Code, which in their opinion shows that the President exercises full control over the bank. Kazakhstan objects that such conclusion could be made. It follows clearly from the legal sources that the operations of the Central Bank is

governed by the Kazakh law and not the President, and that the National Fund was created with the purpose to create economic stability and to ensure savings for future generations, and not with the purpose of trying to create immunity.

All relevant evidence, even the evidence filed by the applicant, showed that the Central Bank is a state body which is responsible for the country's monetary policy and the management or administration of National Fund is done in accordance with the Kazakh law.

We haven't had anything which would question the function of the National Bank as the Central Bank of Kazakhstan, and therefore in any circumstances the National Bank is a central bank in the meaning of the Convention.

So to summarise, to give you a summary of this section, the objections of the applicants are not supported by customary law, therefore they are irrelevant; but, even if the alleged criterias would be applied, we haven't had any circumstances which could destabilise the immunity criteria in accordance to 21(1)(c).

Having said that, I pass over to my colleague Ludwig Metz.

THE CHAIRMAN: We were planning to take a break for lunch

about ten past one, quarter past one.

MR METZ: Well, we've taken some extra additional breaks here in the morning.

THE CHAIRMAN: I think you have one hour 27 minutes left to dispose of.

MR METZ: I can say already at this point that it will be difficult for me to get through the remaining the aspects in the remaining 33 minutes. I will try to speed my section up as much as possible. It's better to complete now, before lunch, because I understand that you would like a longer break to prepare.

MR NILSON: Well, I mean it's more purposeful, even if we do get hungry, we'll try to stick it out.

MR METZ: I think my section will be about 30 minutes long. I will need at least ten or 12 minutes for this issue of misuse or improper use that we haven't discussed at all yet.

Closing submissions by MR METZ

MR METZ: Alexander mentioned a while ago that the court should apply article 19 to this case and you should do that if you reach the conclusion that there is no immunity pursuant to article 21. And we've already looked at how article 19 is constructed. It is decisive in order to decide whether or not there is immunity pursuant to this rule, to look at the purpose of the use

of the property or the intended purpose, and this is something that all the experts who have submitted opinions on this case agree on. And, if it is the purpose of the state's use or intended use that is relevant here, both Kazakhstan and the National Bank do fall under the scope of the state in the wording and significance of the Convention, but, like my colleague Julia said just before, it says that as soon as the property is held by a National Bank, it also becomes property of the National Bank and is included by the immunity in article 21.

This means that the National Bank, in order to be able to use the assets in such a situation, where the National Bank can use the assets, it's already protected by the protection afforded by article 21 of the Convention.

In the reversion situation, it will be difficult to imagine how anyone could use property that they do not control or possess, so the only thing that could and should be subject to the court's assessment, when it comes to this, is the state's use or intended use. And the assessment that the court has to conduct is about qualifying the purpose of the use or intended use, and I will go into how that should be done momentarily, but first I will explain why the purpose is the crucial

factor, and Alexander mentioned this in the beginning, I think I quoted the Sedalmayer decision.

The Supreme Court said that immunity against enforceability, when it comes to state property, is a consequence of the view that states are equal. And the supreme court said that it has been considered more intrusive to the sovereignty of the state to take a course of measures than to allow jurisdiction over the state. It's not just something that has been considered to be the case, it continues to be the case. It is considered to be more than an intrusive measure to take forcible action against their property than to grant jurisdiction over it.

And that this is the fact is expressed in two ways. One is, as we heard, the development towards restrictive immunity. When it comes to enforcement, it has not at all been corresponded to the development we've seen in the jurisdiction as we've seen in enforcement. And the other part is that the conditions in which you can take coercive measures against the state are different from the conditions that apply for granting jurisdiction over a state.

So it should be more difficult to take coercive measures against the property of the state than it should be to have jurisdiction over a state. And the

conditions for jurisdiction and for enforcement measures, those conditions have been discussed by the experts. We can start by looking at Linderfalk. We have the excerpt in the presentation handed out to the court. We have the reference at the top of the page. I won't read it out. Linderfalk says that the distinction between commercial, non-commercial, is important also when you apply article 10 in the state immunity convention. According to this provision, commercial transactions should be exempted from the judicial immunity, so immunity against jurisdiction that a state might have been able to assert with the support of the main role expressed in article 5. It goes on by saying that, in order to decide whether or not a transaction is commercial or not, you should, according to article 2, paragraph 2, in the first hand take into consideration the nature of the transaction. So what decides whether or not there is a jurisdiction is the nature of the type of transaction.

In the first opinion submitted by Professor Wrange, he says that when it comes to civil law immunity, then it is easy to understand the principle against the state exercise of jurisdiction should go away when the state goes onto the market. It is to the protect the players on the market that the immunity no longer comes into

effect when it comes to commercial activities. So this is what he says is crucial in order to say if there's immunity against jurisdiction. But then he goes on and he talks about what is the case when it comes to immunity against enforcement measures. This is at the bottom of the screen. Here he says that, when it comes immunity against coercive measures, you cannot just apply the time is methodology and thinking as when it comes to jurisdiction. He says that every type of property can in themselves be used for commercial transactions, even, for example, equipment that was used in the maintaining of order in the state, like batons or armoured tanks, they must still be procured on a market. So the main rule in article 19 is that property used for state non-commercial purposes cannot be attached.

So he explains the thinking behind why it is the purpose that decides whether or not there should be immunity from enforcement or not. It says that it is in the nature of the use and not the intended use either.

Here we come to Said Mahmoudis' opinion, where Mahmoudi explains the difference between the two methods that exist and have been developed in order to assess whether or not the actions of the state are for sovereign law or not, public law actions. He talks about the fact that the nature of the act should be the

crucial factor, and here he says that the test becomes untenable when it comes to assessing what type of property can become the subject of coercive measures, because that would lead to basically all property belonging to a state could fall subject to such measures being taken.

So the conditions that decide whether or not you can have jurisdiction over a state is not the same as the conditions that would decide whether or not enforcement measures can be carried out against state property.

The threshold is higher in order to undertake enforcement measures and this is the intention. It should be more difficult to undertake enforcement measures than to exercise jurisdiction, because this is deemed to be more intrusive to the sovereignty of the state.

So whether or not you can take enforcement measures against state property, it is crucial to establish whether or not that property is used for, or intended to be used for, state and non-commercial purposes. That this is the fact of the matter has been confirmed by all the experts who have submitted opinions in the case. We have some quotes here but I will not read them out loud.

So the point of the departure for assessment is the purpose of the use or the intended use, and the purpose

of Kazakhstan's use or intended use that should be the basis for the assessment carried out by the court.

What should be looked at is if Kazakhstan used or intended to use the property for other than state non-commercial purposes. If the property was intended to be used specifically for a purpose that was not of the state, non-commercial, then it can be attached. Otherwise an attachment cannot take place. In the Supreme Court ruling in the Sedalmayer case, it demonstrates that it's very difficult to clearly distinguish between what is and what is not state non-commercial purposes. But this will not be necessary for the District Court to do in this case, because it would seem that the parties are agreed that the purposes of the National Fund are state and non-commercial. But the applicants have in any case not contested that is how to clarify the purposes of the National Fund, and they have not alleged that the National Fund's purposes are otherwise than those expressed in the constitution of Kazakhstan, and they haven't said anything else about the purposes of the National Fund. What they have instead done from the applicants is to assert that the National Fund consists of two investment portfolios and these two portfolios have two different purposes. So one portfolio was used in the purpose of stabilisation,

and that was not used for state purposes. And they said that the purpose of the other portfolio was to maximise profits which is not -- are the state non-commercial. And the fact that the applicant has chosen to structure their case in this way can only be construed in one way. They've understood that the purposes of the National Fund cannot be deemed to be anything but state and non-commercial. So instead they tried to divert the attention of the court away from the purposes of the National Fund, and I will get back to this in a short while.

Out of the three professors on international law in this case, two have decided on whether or not the purposes of the National Fund or state are non-commercial, than is Wrange and Mahmoudis. Linderfalk has taken a stance on a different aspect and I will get back to that later.

In the next slide we have Said Mahmoudis's opinion to the left. In paragraph 48 he says that the purpose of the National Fund, as has been stated above, is, amongst other things, to ensure stable and economic development of the country to accumulate financial resources for future generations, and to reduce the dispense on the economy on the impact of unfavourable external factors.

This is the purpose of the National Fund as it is been worded in Presidential decree 402. And what has been highlighted in the yellow is what Mahmoudis has analysed, and this conclusion continues on left of this slide. Mahmoudis says this purpose, according to my opinion, is qualified and can no in way be considered to be commercial. That means that the requirement to have a non-commercial purpose with the property in order to be protected against coercive measures according to article 19(c) has been fulfilled.

And then on the next page we can see Pal Wrange's comments on the purpose of the National Fund. Here Wranges says that the property is managed on the assignment of the National Bank and it is deemed to constitute part of a National Fund. And then he says that section 21(2) in the Kazakh Budget Act is intended:

"... to ensure the social and economic development of the state through the accumulation of financial assets and other assets, including intangible assets, reduction of the economic dependence on the oil sector and the impact of adverse external factors."

Article 21 in the Budget Act can be seen to the right of the slide and if we then go back to Wrange, we can see in the next highlighted section, which is his conclusion, where he says:

"On my part I have no doubt that the property is protected by state immunity and this is irrespectively of whether you apply the special regulations in article 21 or the general provisions in article 19. So what Wrange has done is to analyse the purpose of the National Fund as it is been stated in Kazakh law in the presidential decree 402 and, when Wrange analysed it, the Budget Code and the conclusions of both of them were that these purposes mean that there is immunity pursuant to article 19 of the Convention. What they have done is exactly what the court should do in this case.

It is a question of making an assessment of the purpose of the use or the intended use of the assets in the National Fund. It is not difficult to try this because the purpose is clearly stated in Kazakh law. But with the assistance of Linderfalk, the applicants have tried to misguide the court in this respect. On the next page we have excerpt from Linderfalk's legal opinion.

In one of the slides that I opted against, where we can quotes from three experts that I never read out, there Lindfalk said that, when applying 19(c), it is only decisive as to what purposes a property is used or intended to be used and it is what has been highlighted in yellow at the top of this image. But then Linderfalk

goes on and then he says:

"However, by saying that, it doesn't mean that the nature of a piece of property all of a sudden lacks interest. One purpose is an intended property relationship, here, more clearly, the property relationship that a state might want to realise. As so often in legal context we deal with the subjective element. That can only be studied based on objective circumstances. The nature of a property is such an objective circumstance if the state has made an investment in shares rather than for example in gold therefore, because that assists us to understand the purpose of this investment."

So what does he say? Well, like the others, he says that the purpose is decisive when it comes to deciding whether or not there's immunity and the purpose can only be established based on objective circumstances like, for example, the nature itself of the property. This almost sounds like the assessment of intent in a criminal law.

But to understand more closely what Linderfalk means, we can look at his conclusions that the part of the National Fund is that in his opinion are located in Sweden actually serve commercial purposes.

In the second paragraph that has been highlighted in

yellow, Linderfalk says that, according to what has been established in the Kazakh Budget Code of 2008, the Kazakh National Fund will have two different functions. It should assist in stabilise the Kazakh economy and it should also generate an increase of value and profit. Already on that basis we can establish that at least certain parts of the National Fund serves a commercial purpose.

Certain parts of the National Fund serves a commercial purpose: this a conclusion reached by Lindfalk without having taken a position of the purpose of the National Fund.

He says that the National Fund carries two functions and on the basis of those functions he makes the assumption "I believe what the purpose ought to be", but he never looks at the explicit purpose of the National Fund as expressed in Kazakh law and the fact is that there isn't one single reference in Linderfalk's legal opinion to any provision in any Kazakh law that relates to the purpose of the National Fund.

But here we do have a reference in footnote 40 to article 21, item 3 in the Budget Act, as we can see on the right. There it says about the savings function and the stabilising function carried by the National Fund. It's talking about what function it has. It talks about

how, not why. It explains how the purposes of the National Fund are fulfilled, not why the National Fund has these functions or what the purpose is.

The purpose has been stated in 21.2 but that is an article that Lindfalk leaves completely without comment and we haven't received any comment on that article by the applicant either and the fact that Lindfalk doesn't even try to touch upon the actual purpose of the National Fund cannot be interpreted in any other way than that he, exactly like Mahmoudis and Wrange, has the opinion that those purposes are state and not commercial. As seems to be case with the applicant, Linderfalk sees no other opportunity other than to try and bring the reader down a different path that looks at the different aspect of the assessment rather than the purpose and they want the outcome of this to be for the court to construct a purpose of the use of the assets in the National Fund rather than actually analysing the explicitly expressed purpose.

So now we can see what the applicants have stated about the purpose on the use of the funds held by the National Fund. Here they started by indicating this document, the Central Bank report for one year, 2014. In this report, it is explained how the value has developed for the National Fund in 2017 and the global

equities mandate was mentioned to generate a high yearly return but they have only looked at the report for 2017. They haven't looked at the reports for any other years, so you might ask yourself why is that.

If you look at the list of evidence from the applicants, this has been invoked to show that the returns of the savings was 79.41 per cent, not the equities mandate, the annual returns on the investment, and this was not stated in the opening statement. Perhaps they will get back to this later today, but we must assume that the applicants wish to demonstrate by showing us this is for us to look at the returns from the global equities mandate for 2017. One out of the almost 20 years out of which the National Bank has managed the National Fund and, based on that, make an assumption that the purpose of the National Bank is not non-commercial, or is commercial rather, and to reach that high return on investments they buy and sell shares on a daily basis and they demonstrated this by showing the transaction history for the National Bank accounts by showing us this statement on the screen. I have a few comments.

First of all, this document has not been called into evidence by the applicants. Secondly, Moldabekova was very clear in saying there was no trading that takes

place. Well, she said, we reinvest funds that we receive from dividends from tax refunds but we do not deal with speculation.

Thirdly, we can look at the dates. I'm not sure you can actually see the dates very clearly in your documents, but if you remember that the previous slide was the result of profit and loss for the global equity mandate for 2017. Here we can see this is January 2008.

So it's presented in such a way as to make the court believe that there is a link between transactions that occurred in January 2008 and the property and loss for the global equities mandate in 2017 ten years later.

Well, of course, there is no connection. Then it would be more reasonable to look at the transaction history for 2017 that has actually been submitted to the case file and I would encourage the members of the court to do so after we conclude the proceedings.

Well, what we are looking at now is this document that we only showed you partially, exhibit 61, the two first pages. I think it was the top ten lines of this document that we cast an eye on.

There is a column called "settled date", where we can see that there is quite a lot of activity, 28, 29 and 30 January, and 1 February 2008, and then we can go down one level and we can see just below the middle of

page there's a minor break, then nothing happens for about a month and a half and then the next day, 11 March 2008, and then after that bit of activity in mid March 2008, and then the odd event throughout the year, and then it continues a little bit onto the next page, where the court can see that we enter into 2009 at the top of page 2.

Something else that the court should be clear on is that in the transaction code column it says when, where buy and sell has occurred -- S represents buy, B represents buy -- and, as can you see, the overwhelming majority of transactions are other transactions than just buy and sell transactions. So there's quite a lot to say about this part presentation offered to us by the applicants, mainly, I would say, on how they present information.

This is not a question of day trading or speculation or maximising profits. It about holding possession that complies with the benchmark, the index and to reinvest funds that are paid out as double taxation or because of dividends and, beyond the fact that there are certain objections we can raise when it comes to how the applicants choose to present information to us, we also have something that we might easily overlook that is very important and the applicant haven't either here

carried out an analysis as to why this alleged day trading occurs.

So, again, here to lead the court down the line saying that the fact that transactions occur, then that must be taken to mean that the purpose is commercial.

The applicants have also referred to opinions from Anatoly Didenko, the Kazakh civil law professor. In slide 23 they have quoted his opinion, submitted as exhibit 152, which has been invoked to prove that the assets of the savings portfolio are used in a commercial purpose but what the professor is analysing is the nature of the Act or the commercial nature of these actions and what I mention in regard to this in my opening statement, that in Transperfect's English of the translation is:

"Therefore in our opinion, the specific actions of the National Bank to dispose of the National Fund as to the commercial nature of these transactions."

And this is something you can find in the bottom left hand corner of this image, but this quote was not emphasised by the applicants on Tuesday. This has only been done in writing.

What they did emphasise was another quote in the counsel's own in-house translation by another article by Didenko, as we can see here in slide 54 to the right,

exhibit 15615, and in their own translation in the top it says:

"In our opinion the Central Bank's concrete actions in the management of the National Fund prove that they are taken with a commercial purpose."

And below these images the court can see two sentences in Cyrillic letters. They are almost identical. One is in exhibit 152, conducted by an independent translation agency, and the other one is from exhibit 165. This is the translation carried out in-house by the applicant's counsel and the words in red to the left are the words that are different in the two wordings.

What is most interesting is the concept in bold. This is how you pronounse it in Russian, I believe, and this is just how the translation agency has translated this as being "commercial nature" and the applicant's counsel have translated this as "commercial purposes". So here we know that the purpose of the use or the intended purpose of the use of certain property is what decides whether or not there are immunity rules in effect.

So this purpose is also crucial when deciding whether or not there is immunity against enforcement measures.

I hope that this is a pure mistake but, regardless of what the truth of that matter is, we can establish that Didenko didn't reach the conclusion in the later opinion either that the assets in the savings portfolio were used for commercial purposes. Again, he concluded that it is of a commercial nature, so nothing that has been said so far is aimed at the use or the intended use.

What has been presented, and explicitly targeting the purpose is the decision in from the Stockholm District Court. Here we have a ruling from a Belgian court and the court follows this reasoning that they had as their basis the nature of the property, that these were long term investment objects and therefore the savings portfolio function was a commercial activity. The Stockholm District Court didn't spend too many words on this either. The interesting aspect of the court's ruling can be found on the next page. The District Court started by saying that the designated property is constituted by commercial shares in a company run for profit.

Commercial shares. So you might ask yourself what is that.

Then you might ask yourself how many companies are not run for profits that can hold shares in.

What Stockholm hold District Court was to have as their basis, the type of property. They had as their point of departure the nature of the property, not the purpose. They did exactly what you are not supposed to do and then the District Court goes into the purpose of the holding or the possession and they say that the purpose primarily is to generate profits and this is a conclusion because Kazakhstan, not having an increase in the value of shares, could be detrimental and then the District Court said that it is not probable that funds that are intended for the latter purpose, the commercial purpose, are invested in such a way that the value can quickly be lost.

With every degree of respect, it appears that the District Court doesn't understand what the spreading risks is and the fact that the District Court said that the value can quickly be lost is something that testifies that effect, because what could have been meant that the value of the securities was lost would be a worldwide financial markets crash and not even then I think the value would have disappeared completely, would have been lost. It would have deceased.

It wouldn't have affected the companies in the same way or the value of all the shares in equal measure and this is what I'm trying to get at. The more different

types of assets you hold, the lower is the risk that the value of the assets will quickly be lost.

There's a lower risk to have shares in 30 companies than in three companies. There's a lower risk in owning both shares and oils than just owning oil and there's lower risk in owning both shares and gold than simply to own exclusively gold.

One of the purposes behind the National Fund is to reduce the state budget dependent on revenue from the domestic oil sector. Without the National Fund, the economic and social government would in Kazakhstan would have a larger extent have been dependent on revenue from the oil sector in the country.

They achieve this purpose to reduce the dependence by placing assets in the National Fund, different types of assets in different markets and different locations, which reduces the risk for the value to be lost, in the words of the District Court, is often less than if the asset would only be constituted by the revenue from the oil sector in Kazakhstan.

It would appear that the District Court, when conducting their assessment, did not grasp this circumstance. So the reason that it is not probable that funds exist to stabilise the state of Kazakhstan's social economic development, that it is not probable

that they would be invested in such a way that their value could quickly be lost, well, that is absolutely correct, but they still ended up in an incorrect conclusion and I think the District Court failed to understand that the funds weren't invested in such a way that their value could quickly be lost.

Instead, it would appear that the District Court assumed that holding shares in itself is combined with high a degree of risk and therefore the shareholding cannot be state and non-commercial and I'm just pointing this out so that you, the members of this District Court, refrain from making the same mistake. So there are rules and regulatory frameworks that clearly stipulate how the property can be used and what the purpose of the use is and in article 3 of the Kazakh Budget Code, it emerges that the fund does have savings and stabilisation purposes to collect assets and to provide returns on these assets at a moderate risk level.

But the savings function is not an end in itself. It's just one of the answers to the questions how should the aims of the National Fund be achieved and we heard Moldabekova talk about this on Wednesday.

The fact that there is a saving function, well, that doesn't change the purpose of the National Fund and the

property used to fulfil the savings function ensures on the one hand that the stability function can continue to exist and overall that the National Fund can continue to exist even though Kazakh oil revenues will decrease.

The management of the National Bank's gold and foreign exchange reserves are done by -- we have a statement on how to achieve that in policy documents. In the first page it says that the purpose of the National Bank's gold and foreign exchange reserves is to make sure that the bank can fulfil their statutory goals and assignments.

So they have to make sure that these tasks can always be executed and the assets need to be structure in such a way that these aims can always be achieved.

So with the returns on the assets and the gold and the foreign exchange reserves and in the National Fund, but, by having this explicitly stated property, you ensure that you can achieve the objective. It's about spreading the risks and, if you would not be able to consider this type of property that is intended to be used for state non-commercial purposes, then property that could generate profit and increase value could never be used for such a purpose.

So gold and foreign exchange reserves are used in the same way as benchmarks are used for securities, to

spread risk. So this is made clear from an extract from the National Bank website, where they say that now we motivate the gold reserves to a high degree of the fact that the value of gold normally doesn't follow the same pattern as the value of the foreign exchange reserves.

Therefore the value of the collected gold and foreign exchange reserves is more stable than the value of the gold reserve and the foreign exchange reserve separately.

So with a point of view of the applicant, you could attach gold and foreign exchange reserves in the countries where the countries where the assets are and it's possible that this will be told when they gave their closing arguments, that it would corrected use, but, because this is based on a reasoning that, just because they can increase the value and generate profit, then they cannot be protected by immunity. That means that state funds must be placed in accounts that do not bear interest or be tucked away in a mattress and then the value would decrease over time because of inflation. You need returns on investments for the value to be maintained over time and this cannot be understood as anything else than that one of the reasons behind the purpose of the use of an asset should be what is intended under article 19 and not that the asset can

generate returns.

MR FOERSTER: So now between here and lunch, we'll talking about abuse of rights. This was an objection which came up quite late. I could use that as a part of the response because it's in the closing statement of the account, but, since this is very serious allegation, I want the court's attention. I will take 15 minutes, but I will do it after this closing statement.

MR NILSON: I understand that the counsel has no objection to doing this in non-normal order, but we would prefer the respondents to finish their closing statements.

THE CHAIRMAN: We cannot stop this because I would like to have a response. It's a surprise to all of us. This thing with blood sugar and ability to focus, it's very difficult to achieve the maximum equality in the proceedings. I would propose to take lunch now and we need at least an hour, which means we are back at 2.30 and normally the court closes at 4.30 and probably --

MR NILSON: No, we don't plan to make a presentation of the same magnitude. We will trying to be a bit more concise.

THE CHAIRMAN: But then probably we're able to -- so --

MR FOERSTER: I could do with a break as well. I want the court to --

THE CHAIRMAN: So maybe we can start with that after lunch

and then so this will be minus the issue of closing statements. So in an hour.

(1.30 pm)

(The luncheon adjournment)

(2.34 pm)

THE CHAIRMAN: So everyone is back, everyone is present. Please, counsel.

MR FOERSTER: Now, we'll talk about the issue of abuse of rights and during the opening statements of the applicants we heard that Kazakhstan has lost the right to invoke immunity due to the abuse of rights. This is something we first heard from the submission in August 2018, after Professor Linderfalk wrote about this in his legal opinion.

Before I will address the issue, the dramatically interesting issue whether international law includes the rights where the right to invoke immunity could be revoked and which elements should be satisfied, but the question is: what was supposed to be done in order to create a situation of abuse of power?

In their submissions and their opening statements, the applicants were quite unclear on this point. The applicants made a number of incorrect generalised statements regarding Kazakhstan's actions which in their opinion support the claim of abuse of rights. We will

not be responding to all of this during our closing statements because some of them are not of importance for Kazakhstan's right to invoke immunity.

So I'll try to present the three of them in my presentation.

First, the applicants say that Kazakhstan regularly refuses to pay compensation which they have to pay in accordance with the international charter treaty, in accordance with arbitration awards, and they invoke systematic immunity to avoid payment.

Secondly, it's alleged that Kazakhstan doesn't want(?) to pay the award of compensation in this case, as said by the arbitrators in 2013, prior to enforcement in all the countries where the applicants tried to enforce the arbitral award.

And the third claim, as understood by Kazakhstan, by ratifying the energy treatment charter, ECT, explicitly waived their right to invoke immunity.

Those three legal sources have been distributed, so they're on your tables. I will try not to read out from these documents, if it's not necessary, but I will base my presentation on the award and the comments started with good faith.

Is this a principle of international law or not?

The applicants with their wonderful spread of

opinion, they tried to claim that there was a fundamental principle of international law on good faith. The applicants say -- didn't provide any other support than Professor Linderfalk's opinion that this principle exists in the customary law. Specifically, the applicants are not very clear about the contents of this principle. They quote from Linderfalk's opinion, which was quoted, the opening statement by the applicants, means that whoever filed the international law loses the right to invoke the principle of international law, ie state immunity.

So, is this correct? If you commit a violation of international law, then your waive your right. This particular issue, it has been resolved by the International Court of Justice, where the parties were Germany and Italy, and this is the judgment which I have distributed to the parties. You can read it in its entirety, specifically page 143, Germany was permitted to invoke immunity with respect to real property in Italy, although Germany didn't pay damages for war crimes which they had to pay. The court said that you could invoke immunity.

Otherwise the applicants refer to an abuse of rights doctrine, but this is not -- a part of international law or customary law, but this is a doctrine of abuse of

rights. Linderfalk supported that this doctrine goes back to the issue of good faith and he quotes himself and no other legal sources, apart from footnote 47 in his legal opinion.

It's his opinion that the International Court of Justice -- international court have resolved this issue, having read this, you can read the entire page in the judgment.

If such rule would exist did Kazakhstan violate any international obligation? Specifically did Kazakhstan violate the energy treaty charter -- energy charter treaty by not paying the compensation from this particular award or by refusing to follow the decisions by other arbitral tribunals?

In our opinion, Kazakhstan does not violate article 26(8) in the ECT, the provision found there, and you can see -- you see it on the slide and I will not be reading this out loud. Then you have to understand what is ECT about?

Immunity is involved with respect to a Swedish court in and the Swedish public agency. According to article 6, ECT, Kazakhstan has an obligation to Sweden to pay for the investments, therefore Kazakhstan cannot lose the right to invoke immunity.

The applicant's claim is based on an incorrect

interpretation of the energy charter treaty, and therefore briefly I have to explain the mechanism of the investor protection treaties.

54 states and the EU who have acceded to the ECT in Kazakhstan, Romania, Moldova and Sweden, and they have promised each other to protect the investment of the respective citizens within the energy sector.

If a country would violate that undertaking, then a country, according to article 27, could refer the matter to arbitration where the parties to the treaty, the countries, can litigate. This hasn't happened. This is not what we're discussing here.

Here, what we're discussing is what has happened to the investors, and this treaty has a special mechanism. It offers all the advisers a dispute settlement mechanism. So the state tells the investors that if you believe that you have a claim, then it could be tried by an arbitral tribunal with the state.

We have proposed an arbitration agreement to you, the investor, which could result in an arbitration, a hearing when an arbitral tribunal would try whether the investor has been discriminated against or whether this property has been expropriated.

There are four difference types of arbitration, two according to ICSID, this is under World Bank provisions,

or they could use UNCITRAL's procedure rules, or they the SSC's institute, the so-called Stockholm rules, which is a big advantage for Stockholm as it's an arbitration seat.

However, ECT does not contain any provisions on how on arbitral award should be enforced. This could be done through ICSID, this World Bank convention, which includes an enforcement system, UNCITRAL or ICC rules, then it's the New York Convention on Enforcement of Foreign Arbitral Awards.

So ECT, the energy charter treaty, doesn't mean that the state, which are normally the respondents in these proceedings, they waive the rights which they have had in accordance with these two sets of rules: ICSID's enforcement mechanism and the New York Convention.

The ICSID Convention and the New York Convention, both of them contain a number of grounds which give a state court in a certain country a certain ability to refuse the enforcement of an arbitral award. One of these is that the award -- an award would be considered to violate the country's public order, the country where the award is being enforced.

When article 26(8) ECT says that every country which had acceded to the treaty should follow the results of the arbitral award and to make sure that those arbitral

awards could be enforced efficiently, it means the following:

One, it doesn't mean that this a promise with respect to the investors. They should ensure that the enforcement in their own country is done efficiently, taking into consideration all the rumours which govern enforcement.

We would like to refer to the line of reasoning presented by Wrange in his second legal opinion. What does it mean? It also means that the state, the state promise not to raise immunity objections when they end up in one of these enforcement procedures, for example in or New York or Switzerland.

The state is not supposed to say, "Oh, I invoke immunity so I don't have to take part in these enforcement proceedings". And Kazakhstan hasn't done just that.

The fact that this is the situation at hand, it follows from an article by Professor Thomas Waldes which is about investment arbitration under the energy charter treaty:

"And the reference to the finality of the award is likely to mean that the treaty in itself does not set up a process of review arbitral awards by, say, the charter conference. Reviews of awards are nevertheless possible

if one of the four arbitration methods selected by the treaty as ICSID Convention does allows a review."

So you're allowed to try the objections, the public order objections, and the same follows from the comment by Rafael Leal-Arcas, which is under 26(8). This is one of the most recent commentaries on the energy charter treaty which mentions the same thing.

So if the applicants claim that Kazakhstan has waived its right, the point of departure was in between the party, the right to invoke immunity in accordance with international practice could be set aside only if a state explicitly and specifically waives the right to invoke immunity. It seems to be in dispute that Kazakhstan, with the exception of this energy charter treaty, which, in the applicant's position, should be taken sequentially, this is not something Kazakhstan has done. There's no other treaty.

In Kazakhstan's opinion, such a way that could not be read out from 26(8) in the ECT, this provision refers to -- the states waive their immunity with respect to the jurisdiction and this is not something that Kazakhstan has done and Professor Waldes elaborates on this in his article:

"By submitting to the treaty arbitration, governments waive the exception of sovereign immunity.

One cannot, however, read into the submission to arbitration a waiver of sovereign immunity from execution. Waivers of sovereignty need to be construed restrictively and as a rule require an explicit formulation."

It's clear that a state, by ratifying the European charter treaty, did not waive their sovereignty. And this is confirmed by Professor Wrange on pages 12 and 13 in his second legal opinion. He refers to a judgment delivered on 14 October 2016 by the Supreme Court to the Netherlands. The judgment is in Dutch, so I won't be reading that, but this is the answer to the claims which are summarised above, as I mentioned before.

So the answer is no, Kazakhstan has the right to have the claims of the investors' fraudulent conduct tried and has the right to get a trial, whether the arbitral award is -- corresponds to the public order of each country of enforcement, and this cannot lead to the fact that Kazakhstan and Sweden loses the right to invoke immunity.

ECT only contains obligations and, with respect to the relationship with the charter, but Kazakhstan's conduct with respect to other awards can never lead to a loss of right in Sweden, in relation to Sweden, to a Swedish investor. Kazakhstan, as far as we know,

never refused to accept an award.

Therefore, according to article 27, in that case Sweden would have the right to start a breach of the treaty against Kazakhstan, which means that Kazakhstan did not lose its right to invoke immunity and Professor Wrange comes to the same conclusion in his second legal opinion, and here I would like to refer to what he writes on page 12.

Let's look at what Professor Linderfalk writes when Kazakhstan abuses its right, page 15, third paragraph.

When he writes that his point of departure is -- it's an incorrect assessment of the ECT, and he makes this conclusion based on wrong prerequisites. He believes that Kazakhstan raises the immunity objection in order to circumvent the obligations with respect to Sweden in accordance with article 26(8) the ECT. But this is not true. Kazakhstan has good grounds to have the fraudulent conduct of the investors tried.

If the court would find that the issue has been tried with -- whether Kazakhstan has good grounds to resist the enforcement of the award, this is will open it to an extensive assessment. One, whether the investors have acted fraudulently with respect to the arbitral tribunal, maybe with respect to the Svea Court of Appeal; and secondly, what is order public, the

fundamentals of the legal order in every jurisdiction where enforcement should be tried.

With respect to the first question, it should be taken into consideration that Kazakhstan now, just a week ago, (inaudible), the former CFO of the Stati companies, he was testifying under oath and we have received evidence of fraudulent conduct, one of the closest partners of the Statis.

Whether it comes to the other question, the question of the public order, the assessment standards are different between the countries, and the fundamentals of the legal order in Sweden are not the same as the one that's in England, the Netherlands or Italy.

But all of this, this is not something which could be requested from the court in Nacka. It should be sufficient what we heard about the opening statements about the parallel proceedings that the court should note that Kazakhstan has valid reason, or prima facie evidence, to request the public order objection to be tried due to fraudulent contact in order to exclude Kazakhstan acting in -- losing its rights.

Finally, comments on the incorrect statements by the applicants that the state regularly doesn't pay compensation or damages which Kazakhstan -- which had been awarded against Kazakhstan in accordance to its

international obligation. And they refer to a quote -- a law firm was quoted which represented the claimants in their two cases, against Kazakhstan. The opposing counsel didn't have a chance to comment on this. We have submitted as evidence an affidavit from the minister of justice of Kazakhstan, dated 16 May 2018, where he presents all the investment disputes which were -- where the awards were against Kazakhstan showing that the state has fulfilled the majority of the obligations which have resulted from these investment disputes and, so far as we have investigated, there have been no further awards where Kazakhstan would refuse to pay.

When it comes to the claim that there is a special department in the public administration of Kazakhstan which only manages the investment disputes with respect against the state, we can confirm that the circumstances, once again, I would like to inform the court this is not for unique for Kazakhstan.

For example, this is the department in the Ministry of Industry where a number of prominent lawyers work and their only task is to deal with litigation in Swedish. So, to summarise, there is no abuse of rights on the part of Kazakhstan. Kazakhstan has legitimate reasons to find against the investors' attempts to enforce the

award, which was awarded because the investors by fraud have misled the Tribunal.

This is about the abuse of rights. So just a summary of our closing statements.

There are four simple issues, just like we said on Monday morning, during our opening statements, which the court should find an answer to.

One, the property does not belong to Kazakhstan in the meaning of 4.17 of the Swedish enforcement code. The applicants do not demonstrate that the property belongs to Kazakhstan and therefore it cannot be subjected to enforcement measures against Kazakhstan.

Two, the property is protected by immunity.

It follows from the principle which is expressed in 21(1)(c) of the UN Convention regarding the state immunity and the immunity of state property.

The property belongs to Kazakhstan in the meaning of the Convention and the property cannot be subjected to enforcement measures.

Three, additionally the property is protected by state immunity, or by the principle which is expressed in article 9 in the Convention, since the property is used and is intended to be used to ensure Kazakhstan's social and economical development within the framework of its military policy.

Therefore the property is used and intended to use for state non-commercial purposes and therefore the property cannot be a subject of enforcement measures.

And finally regarding the securities, the securities are not in Sweden. It's a complicated legal structure but I believe it's clear that the securities which are dematerialised, it's usually considered that they are in England and not in Sweden, and therefore they are protected by immunity according to article 19. And the Swedish court and the Swedish enforcement agency lacks jurisdiction to make decisions in respect of the security measures. For that reason, the securities cannot be subjected to any enforcement measures, and we included therewith. Anything further?

Further submissions by MR AXELRYD

MR AXELRYD: Yes, on behalf of the National Bank, we would like to say that we concur with Kazakhstan and the relevant parties. I would like to comment on two slides.

THE CHAIRMAN: We're running out of the time, but --

MR AXELRYD: It will just take a couple of minutes.

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You can see the Stockholm District Court decision, and it was shown in the case that Kazakhstan is the owner of the funds in this issue. We would just like to

confirm that the National Bank wasn't involved in this case in the Stockholm District Court. This was a sequestration case and the conclusion was made because the District Court was not aware of the facts of the case, so they did not understand of the fact and circumstances of this case.

Next comment, with respect to slide 64. The same case number and a different code. And here we concur with what Kazakhstan said, that the District Court shows a lack of understanding of the financial market. And Ludwig elaborated and said that the risk in 30 companies is lower than the risk in three companies. But would like to emphasise that, when you assess the risk profile for the National Fund, you cannot limit it to the placement made in Sweden. This shall be considered as part of a global investment strategy, just like Aliya said during her examination, they have the right to invest into more or less all kinds of financial instruments and this is something they do all over the planet, not in Stockholm.

I shall also explain that the wanted to have a moderate return(?) when it comes to their investment and it is presented that the returns at 3.5 per cent on average per year, through the time that the National Fund has been in existence. And I have worked

a lot with the financial markets and can I say at that the stock exchange in Stockholm, the average 97 per cent, over a long period of time, the index of the Stockholm stock exchange. So the return investment of 3.5 per cent, the risks is lower compared to investments in the index of the Stockholm stock exchange. Thank you, this is what I wanted to say.

THE CHAIRMAN: Thank you. Over to the counsel for the investors.

Closing submissions by MR NILSSON

MR NILSSON: Maybe we also need to connect the equipment and we'll distribute a couple of quite simple slides which we want to use.

I shouldn't whinge, because it's fairly rare to first use up twice as much time as the counterparty, and then not be able to keep to the time frame set up. You work as the integrated team, but I know you are to be viewed as two parties. That is fine, but I think you have taken it quite a bit too far when you cut out more time for yourselves by running over time when you give your presentation. I wanted to start with that comment before I launch into what I myself wanted to say in my closing argument. **(Pause)**

We had planned to give a brief closing argument already from the beginning. Our intention with our

closing arguments are primarily to attempt to explain to the District Court what analysis the investors think should be carried out when it comes to the different aspects of the case. We were not going to repeat large sections of our opening statements or emphasise different submissions and documents. We will look at some of them, but I think we have gone over this material so much that by now the members of the court should have familiarised themselves with these materials.

We will structure our closing speech with a possible path of how to assess the aspects in the case.

This is similar to what was presented by the counterparty. The first stage of the trial is the security central depositories.

Did the enforcement agency have jurisdiction when they undertook the enforcement measures or did they step outside of their geographic jurisdiction? Do they also have jurisdiction over securities? If we come to that conclusion, then you also have to ask in respect of all the attached property if that property belongs to the Republic of Kazakhstan or not. If it does, in the sense expressed by the enforcement code, we have the question: is it protected by immunity pursuant to article 19(c)? If we can give an affirmative answer to that question,

then you have to continue to see if immunity can still be invoked according to 21(1)(c) article. And then, finally, if everything else fails on our part, then the court will have to look at these arguments raised on the topic of abuse.

We will start by looking at jurisdiction or not in Sweden. We are obviously in agreement that the Euroclear system or the WPC system, like all undocumented systems, means that the shares do not have a tangible location, because they are not in the form of hard copy documents. It is also been accepted that they should be considered to be located where they are registered into a register, and it should be their location where the registry is kept that should be decisive, and when deciding the geographical location of the shares.

The disagreement we have is what registry are we talking about? Which is the register to decide on the issue of location? And it is the belief of the investors that it is Euroclear's deposit CSD register, if it's to do with owner shares, where shares are directly registered in Euroclear; and if it is nominee registered shares, then it will be the custodian registered in the register of Euroclear, the SE Bank, that govern the location. And in both cases it is

a fact that the shares are located in Sweden.

And has turned out to be surprisingly difficult to find a very clear statement in the literature on these issues. We've looked here and there, anyhow how we construe what Wallin-Norman says in her comments on the Act on accounting of financial -- the LKF Act. And we can see here up on the screen that it is the segregated CSD deposit, kept in Sweden by SEB Sweden, that identifies the shares and therefore govern the location. So she says not until somebody's right to a certain number of financial instruments of a certain kind have been registered in an account is it possible to identify this right and to distinguish that from the rights of other people's right to this or another quantity of this type of financial instruments. If you in your CSD account have a certain number of securities of a certain kind of register has, according to what becomes apparent now, has a right to this quantity and this type of security, and therefore with legal consequences, dispose over this right to have ownership of them.

And in our opinion this means that in Stockholm they are dematerialised, but they have been identified in an account, and it is also possible from the information at the SEB bank as the accounting institute get the information from there who the owner is. It was

interesting when we were looking to opening statements when the National Bank was talking about where the shares were located, then they established that what is decisive, if it has a constitutive effect from this information. But today we heard something else, which was that it is enough that the accounting institute, when other notes has an evidential effect regarding the circumstances related to the share, and you cannot quite make that add up. In any case, what we suggest to be the case is that the decisive factors that the shares can be identified concerning the different CSD accounts in SEB bank, and then that can form the basis for further turnover. And it cannot be done in such a way that you just undertake certain internal reporting and accounting measures in London, because if you move the shares in the CSD account in the SEB bank, then the shares are reregistered.

SEB have to report in to Euroclear about the nominee registered shares for them to form the basis where different type of information and different ways of managing them. What my colleague quoted before when I came to foreign custodians and the importance of them being present outside of the national boundaries refers to a situation where foreign custodian is directly registered with Euroclear, which of course is fully

possible, but not for economy. In that case the immediate accounting and the information about ownership structure, et cetera, takes place with a custodian located abroad. But that is not the circumstances in this case. Here we have registration through the SEB bank.

Buresten described this in more detail during the examination and said that Mellon sends written instructions to the SE Bank in Sweden through the SWIFT system for immediate registration in the SEB CSD system with segregated CSD accounts. She also established that it was the instructions in Mellon. It became clear exactly what kind of financial instrument number and kind that the transactions refers to, and furthermore than a registration with SEB bank is done in accordance with that at the securities account, the account that has been assigned with this very complicated name ending with the Ministry of Finance of the Republic of Kazakhstan.

So in summary we think that is what is relevant to assessing where the location is of nominee registered shares is the last part of the presentation from Gunnarsson. This outline is a little bit different because he has distinguished between custodians of Euroclear and the accounting institute. Here we have

the SE Bank following both those roles, so this entire red rectangle in the drawing is such things that are done and undertaken by the SE Bank.

When it comes to determining location, in our view it lacks residence if the SEB bank has a foreign owner or manager or custodian as the person giving them assignments.

According to the Kazakh analysis here, the foreign custodian could transfer the shares to another custodian, who transfers the shares to another custodian, and so on. And thus those shares would travel around the world, like the Flying Dutchman, without finding a fixed location anywhere.

We don't think this is how the system works and it wouldn't be possible for it to work this way. The fixed location here rests with SEB.

With our point of departure, the complete structure of the custodians is the structure that we see in this image. At the top of the pecking order we have the actual owner of the securities, ie Kazakhstan. Kazakhstan gives an assignment to a first custodian or an original custodian, ie the National Bank, that has custodian management agreement. And then the National Bank in turn retains Bank of Mellon in Europe and Mellon retains SEB in Sweden, and SEB then carries

out the transactions by reporting those into the Euroclear system.

It is noteworthy that all of these individual transactions, even if there are many of them, are possible to identify. They have been data processed by the SEB bank. They can see which account was credited and debited for each transaction, so you trace the development of these CSD account. So even if a transaction is carried out by Mellon abroad, at the end of the day that needs to be reflected in the SWIFT messages to the SEB bank so that you keep everything organised in the custodian accounts where the shares are actually held.

Finally, when it comes to where the shares are deemed to be located. We can established that obviously property was available to be attached in Sweden. That is the reason we have all spent all this time here this week. If it would have not have been possible to attach them, we would not have gone through this process.

When it comes to the monetary fund, which is a smaller part, but I would say a few words about the accounts as well. Basically, the same principle applies there.

Money goes into an account through measures taken within the framework of the CSD system of the SEB bank,

and of course you can trace transactions in the system afterwards. You know specifically that a tax refund has come in, tax on debits, dividends from companies and the bank of course handles the deposits in accordance with that, to make sure that they are -- end up in the correct account and credited to the right customer at the end of the day.

And that the shareholder is the one who is entitled to dividends, et cetera, on shares might not be something that we need to go into further. Everybody understands that if you own the cow, you also own the milk.

Now, if we move away from the location and start to discuss the issue concerning ownership, and rights of ownership. Attachment of property presupposes that it is clear that the property belongs to the debtor and this follows from provisions in the enforcement code. I won't show you the legal text again, we've seen it already.

When it comes to who has the burden of proof and the evidential requirements, we will start by referring to this precedent on 983, page 436, where the Supreme Court established that, when it comes to enforcement proceedings, it is not the case that the burden of proof for all legal facts of importance in the case rest with

the applicant. As with civil cases, the burden of proof may be distributed between the parties if a third party asserts that the attached movable property belongs to him, but accepts that it previously belonged to the debtor. But claims that he acquired the property from him, then it should be possible to demand that the third party presents such support for his assertion that it can be plausible.

In this case, it would mean that the National Bank has to prove, substantiate that they acquired the property from Kazakhstan, if it can be seen as established that it initially belonged to Kazakhstan. When we refer to property here, we're not talking about the National Fund in total. Of course, there's a link. We see specifically talk about the attached property, the assets in the accounts held in the SE Bank.

It does not lack interest, what interest it is. The parties have, when it comes to considering these relationships, it became clear when Moldabekova was examined that the National Bank holds the belief that Kazakhstan who is the owner of the property. It was the National Bank who made sure that the Ministry of Finance issued this power of attorney to exercise their voting rights corresponding to their shareholding. We can look at the power of attorney showing us who it gives powers

to without going into particulars regarding share voting rights, et cetera.

So in contrary to what the Kazakh side previously and for a long time have asserted in this case, this is not a mistake that came about because Mellon sent across some documents that they just signed in Kazakhstan. We know that this is not at all how it happened. They got a power of attorney, they discussed between the National Bank and the ministry how to issue this, and then they let the ministry sign the POA to send it to Mellon, who sent it onwards to the SE Bank for their use in Stockholm.

Moldabekova was actually very clear on this point, even if during the redirect there were some attempts to get her to waver. So considering how clear she was, we felt it quite remarkable that they have asserted something completely different for such a long time.

The way the POA has been drafted and prepared is also consistent with the information provided to us on a different occasion when the National Bank opened up a new account with Mellon.

We recognise this document, exhibit 143, where the beneficial owner name is Ministry of Finance of the Republic of Kazakhstan.

The client account holder is the National Bank, and

when asked if this client is the beneficial owner, they have said "no". Instead they state the full name of the beneficial owner as should appear on any tax document, Ministry of Finance of the Republic of Kazakhstan.

When it comes to tax purposes, there's been implication that that is of minor importance, but my impression is that it's rather the contrary. Anyone can be an account holder and hold an account in the name of somebody else, but the one who is substantially entitled in tax cases, when it comes to a refund of tax on dividends who has to account for this, is of course the shareholder and nobody else.

We can also make note of the fact that as these different processes have progressed, and I won't show the documents to the court again, but you know the back story: that Mellon have progressively started to put it in this way, that probably it is Kazakhstan who has rights to the shares, even though in the beginning they might have had a more assisted -- perspective on the National Bank.

More things that should be part of the free sifting of evidence that I think we agreed should be carried out on this room. These notes on the custodian list with the exhibit S17 that, in turn, reflects the account names with SE Bank, exhibit S20, and which in both cases

clearly indicate the Ministry of Finance as being the account holder. We do not claim that this is a constituent effect, only the notes with the CSD register that go into the share register would have such an effect, but they have an evidential impact, like with the car registry. And, like I said in the beginning, when it comes to the importance of registers kept abroad, I think even the National Bank went down these lines that constitute effect is not required for this to have major importance.

The evidential value of the entries in themselves we think were further reinforced during the examination of Moldabekova. Now that we know the chain of command behind the creation of documents, because, of course, the entries with SEB bank originated from transactions given by Mellon, but Mellon in turn received instructions that are part of the communication between the National Bank and Mellon.

The National Bank hasn't presented any kind of explanation for how these account names came about. And they've said, well, it lacks importance, it might as well be in the name of Donald Duck or Mr X. But that cannot be perfectly correct if it is equivalent to Donald Duck, if you name a foreign state as being the owner of something. And we have not seen any

correspondence in this regard between the National Bank and Mellon. We assume that there might be reasons for why the instructions in this regard are obviously missing from the written descriptions that we've seen printed by the National Bank.

Something that we haven't seen either are the two contractual stages in the structure of a contractual relationships presented by Kazakhstan.

When it comes to the agreement between the National Bank and their asset managers, they have not submitted any documentation to demonstrate how the relationship is structured. Who can instruct the asset managers? Could the Ministry of Finance play a role here as well, possibly? And then, when it comes to Mellon's relationship to the SE Bank, it was said at an earlier stage of the proceedings that they didn't have access to that because they haven't requested it. And now I think they said that the request had been made but Mellon had refused to divulge it.

We cannot check the veracity of this.

Then we have the concrete acts after the power of attorney, the application to receive a tax refund that ultimately had its outcome in the tax agency decision to repay tax on dividends to the applicant, Ministry of Finance of Kazakhstan. And they are listed

as a claimant here in this supporting documentation and they are designated as being a sovereign entity, and it has been stated that they were the owner of the property.

It is true enough that the concept of beneficial owner in Sweden might not be a completely exact translation here, but they did tick this box to clarify the ownership in the way that they did.

There is also a certificate about domicile for tax purposes which was also issued in the name of the Ministry of Finance of the Republic of Kazakhstan. That all of these records somehow were done purely out of mistake for inexplicable reasons merits no plausibility, and we haven't seen any evidence to support this statement and that all these mistakes have now been corrected.

In that case, the tax obligation and the ownership to this befell the owner of the shares and nobody else.

Of importance to the issue of ownership rights is the history. The National Fund, as such, has obviously been created by Kazakhstan becomes clear just from its name: the National Fund of the Republic of Kazakhstan. And Moldabekova described in her examination how this fund on a continual basis is supplied with tax funds, mainly taxes from the oil sector.

It's a bit of a sweet piece of irony for the investors, to put it plainly, but it's not really relevant to this discussion.

In our opinion, there is no evidence to substantiate that ownership rights, in the sense of the enforcement code, was ever transferred to the National Bank, even less so that the ownership rights have been transferred to Mellon. And, as we said before, that the third party holds the burden of proof for that sort of assignment of ownership that would mean that the attachment debtor no longer owns the object of the attachment order. The presentation that we've heard from the National Bank and from the Republic doesn't at all comment on the set of circumstances that these asset managers or custodians in this chain of events are just intermediaries. The SE Bank of course don't claim to own the shares they manage for their customers. The Mellon hardly does that either. However, the National Bank are making this claim nowadays, but in actual fact we think that is becomes clear from the National Fund agreement that this is about an asset management assignment, even if the ownership of the fund still rests with Kazakhstan.

The explanation provided by Moldabekova about how these things are connected, we should be indebted to her, because we established that her training is within

financial analysis, rather than within law, but she said her view was that the fund is owned by the state but the Central Bank, the National Bank, owns the assets. I think you can ponder this issue for a very long time without reaching or gaining any clarity on the issue. There seems to be some confusion with the officials working for the National Bank who do not have legal training as to what the situation really is.

The law on this point that the intermediaries don't only manage the property, it's also quite simple or well-known law that it's not changed if the intermediaries act on their own behalf. It's quite common, both in terms of fund fees et cetera, provisions that a person could act on behalf of someone else but on their own behalf.

This also applies -- suddenly this comes back -- to taken to nominals. We'll come back to this later.

When it comes to the securities law, there's a right of ownership and legitimacy that the DPS(?) is certified to dispose of something, that you are authorised to dispose of something, doesn't mean that you're the owner.

The role of the National Bank as the manager is intermediary. We presented this in a lot of detail during the opening statement. I will not go through the

document once again, but I would like to note that it follows from the listed document. The presidential decree 402, the TMA and the supplementary agreement -- sorry, and the Global Custody Agreement. All of them talk about the management and the conditions for management. In our opinion, it's not of importance for the question of the right of ownership whether the transfer to the Central Bank has been done through a specific legal object in the Kazakhi law which they call a trust, which corresponds to the regular English concept of a trust. It's of no importance because the only thing which is being claimed is that the rights of ownership remains with this state of Kazakhstan.

I will not be reading these references either, but these are the exhibit numbers, in outlines of evidence, 25, 32, 33 and 52, where you can read that the state of Kazakhstan remains the owner.

I don't believe we have not really properly understood the trust argument because it's not referable to the right of ownership, but maybe this is our own lack of knowledge. But what we have understood is that a basic criteria for such a trust is that the ownership of the property is separated from the trust. That follows from article 86 that the trust is not allowed to give instructions during the validity of the Trust

agreement.

Now counsel Guterstam would say that, well, it's prescribed in the legislation of Kazakhstan. It's not expressly said in the agreement. Yes, we have seen this.

But it's quite clear to me that this sentence has referred to isolated, defined and limited deviations from the main pattern. You cannot -- through an agreement or a law act -- you cannot pull one of the basic components of the legal system and say that this is the same thing. It's always difficult to compare with the Swedish law, but you can say that if you call something a foundation, it doesn't become a foundation, legally speaking, if the founder maintains a full control over the assets. This is not the case.

In our particular case the Kazakhstan government and the mostly the President are being the representatives of the alleged trustor. To put it mildly, they have significant influence over the National Fund, not only through the national agreement, which is more a formal document than through this so-called management council.

And Moldabekova, who has taken the stand in this litigation earlier was, it was clear to her that this seems to be a sensitive issue. When she wanted to explain of the role of this council she said, "Well, the

advice they would give, they would advise how to use the money in the statement budget once the money has left the fund."

I believe, strictly speaking, it's completely not true. Why would you have this qualified group of people she mentioned, and this is the President, minister for economics, head of Central Bank of the Central Bank, head of the upper and lower chamber of the Parliament, it's because it's -- it's quite natural that a council -- or rather advise which is given by a group of people with that composition in that state.

This was just more than discretionary advice.

This is actually that they give instructions and what kind of instructions would they give -- well, the effective use of the National Fund at regulations and its placement in the financial instrument. So in reality this is not the case that this National Bank independently manages these assets, but the leadership of the country through the management council, we believe, has a decisive influence over what would happen.

So not according to the Swedish law, to Kazakh law, can we understand how the National Bank would be the owner of the property, because whoever owns the property in the regular sense of the word is the

Republic of Kazakhstan, and would remain to be the Republic of Kazakhstan. And therefore I've reached the issue of immunity.

Naturally, a question you would ask yourself since the debtor is a state, the question arises whether the properties cannot be attached due to state immunity.

We have talked a lot about more on restrictive immunity. I won't go into it. We presented a lot of background. I believe that we have heard a lot about that and that people are familiar with this issue. But I want to mention something -- I would read something from Professor Mahmoudis' legal opinion, not in this case. He's submitted a legal opinion regarding the so-called Lederhouse on behalf of the second word(?), which is somewhat different in terms of contents, in terms of what was submitted in this case.

The reference is here. I will not read you it. You can find the document, but it is something which is generally accepted is the property belonging to foreign states which not used for stately purposes under certain conditions could be a subject for enforcement of a judgment and then it's quite fun.

So the Supreme Court of Italy established in 1926 in a case which had to do with the enforcement measures regarding securities which belonged to Romania. That

the state is considered to be toward a state of the private law when it is involved in private law transactions, and similar legal practice exists in several European countries. I'm not saying this is against us in terms of the issue of enforcement, but this is some background.

In the same legal opinion the editors in the Lederhouse statement, Mahmoudis goes to whether an action is European or the US (inaudible). The nature of both actions and the purpose of actions should be reviewed.

In the legal opinion of this case, Mahmoudis emphasises that it's the purpose which is the most important issue to consider.

In the Ledenhouse case, section 20, we don't have to open that action for the sake of time, it follows that the assessment whether the purpose of the profession of the property is of such qualified nature that it would create an obstacle to attachment, that assessment should be made based on the factual use. This is the conclusion of the supreme court but this was also the conclusion made by Professor Mahmoudis in that case.

We could also have a look at the issue of burden of proof in freedom to attach. I believe that this slide was shown by the other party during the opening

statement, but what I'd like to point the court's attention to, to the statement at the end of this, where the Supreme Court writes that the respect -- with respect to property it's for the state functions and that if a foreign state, cannot be forced to provide information we they don't want to resolve, they results to so-called common rules of evidentiary obligations for any attachment proceedings which means, as far as I understand, that it was the opinion of the Supreme Court according to the normal rules, burden of proof rests on the party which wants to exempt the property due to its intention but here because of the state the burden of proof is east.

This is my reading of this.

Do we have any document from -- and this is Mahmoudis, our S12, exhibit S12. I will read it:

"Of the negotiations of the conventional compromises which led to the adoption of article 19(c), I am of opinion that that provision does not fulfil the requirements of international law to be considered to be customary law. Therefore (inaudible) has no obligation to show that property cost recover is used for customary purposes. However there is a category of obligation for the Russian Federation which claims states immunity to show that the property is exclusively used for official

purposes."

This is what Mahmoudis wrote.

Before I move on to the issue of nature and purpose, I will confirm that are completely right when you say that our translation, for the reasons I don't know, and I haven't seen that, is incorrect. The other translation is correct. A mistake was made and I would like to apologise for that.

In any case, moving to the attached property in our case and its handling, you should say that that is distinctly commercial, not necessarily because there's shares in listed companies but these are shares which are acquired on instruction from professional asset managers with the purpose to receive high profitability and I agreed with Dr Moldabekova -- Dr Moldabekova agreed with me when she was examined. She also confirmed that the property is part of National Fund's savings portfolio, and this has made life easier for me because it took a while for us to establish this because the Kazakhstan side has been objecting to that.

If you look -- if you would were to consider whether the property is under immunity or not. You should not consider the National Fund, but you should consider the attached property.

I don't really know what made the opposing party

angry when it comes to the list. Our intention was not to make any selective sampling. We don't want to establish anything else. The full transactions have been submitted by the other side which you find in, what, exhibit 47 in your list of evidence. And this thing about thousands of transactions, I didn't just say that this is what the submissions say, whether those lists were present. You can discuss the terminology, whether the decision -- date reading or not, but this is not the point. The point is that this extremely large number of transactions with respect to the few number of companies to the companies, it's an indicator of extremely active management, to put it very carefully.

But when you assess the purpose of the property, in our opinion it's the operational and adjacent purpose which is of the decisive nature, because nothing remains of the restrictive theory of immunity. If you take into account the general interest of achieve social welfare in a while and money for the future generation.

It sounds that the activity of all states is for or on behalf of its citizens, but the reason why all the state property is immune, you need something more specific, something to see that the purpose has been qualified in that manner.

So if you think about this, you could say that the

arguments of the Kazakhi side about this purpose it would mean that if the state would directly contract, JP Morgan would give them $1 billion and give us maximum return on investment in three years. This would have been an official state act which would protect the property from attachment, because at some point in the future it could be useful for the children and the grandchildren to the good citizens of Kazakhstan. We don't believe this is the criteria which is usually used to assess this.

I don't believe that I should say anything else about article 9(1) to finish on time so I'll move to the article 21.

Just briefly before that, I would like to remind what we said in our opening statement regarding article 2 in the Convention. That is in order for state immunity to appear in general, this should be measured as part of the state sovereign exercise of authority.

So to set what's applicable to the property of the National Bank, it is not -- we have been agreement over the fact that it's not about the application of article 21, because it's not a legal -- it hasn't entered into legal force in Swedish law, so we're talking about customary law. I don't think any of this is in dispute.

It is naturally the case that the Convention in many

respects reflects the customary law but it does it to 100 per cent.

The Kazakhi party says that, even the problems in the meaning of the enforcement code, it's owned by Kazakhstan, it could be immune as a property of the central National Bank. I don't believe the distinction between ownership and property is a good way forward when it comes to the other party's definition.

The terminology in the attachment case is the property belonging to debtor and this is the property which the debtor owns.

Now they're claiming that the concept in the article has a wider meaning than the meaning of ownership within Swedish law. The position of evidence in this respect is quite thin.

Mahmoudis in his legal opinion refers to others. It talks about 13, which talks about ownership, possession and use.

But this is not what this article 21 is saying and this something they would write if they would mean it and it is also clear.

Then he emphasises that in the annexe there's a special comment on article 19 and the commentary says that property which has a connection with the entity is wider than the ownership or possession but property

which has a connection must necessarily, by definition, by default, be something which is broader than property of any -- anyway.

We have quoted from the bill, from the government's bill, I believe it was the Government's bill, that the head of the ministry considered that the intent of the Convention was clear enough to be applied in accordance with this wording and therefore it was incorporated straight away into the Swedish law. This is what you said more or less, if I understood correctly, which might ended that you should be quite careful in terms of deviating from the regular linguistic meaning of the expressions in article 21.

But even if the court finds that there is room for deviating from the meaning of the words, it's our position that the concept should be interpreted taking into account the goal and the purpose of the application of this article, should be used using some certain degree of reason. The purpose of this extra clarification in the annex with respect to article 19, if you think about that for a second, was to broaden the possibility to enforce state property and this is why ownership wasn't required. They were to move wider to property in connection with the purpose of article 21, which we call an exception for an exception. It's

the contrary. This is to limit the possibility to enforce against specifically sensitive property and therefore the workings of departure should probably not be that the interpretations of article 19, article 21 are the same.

According to the restrictive theory of immunity, the immunity is functional and limited and not absolute.

If it's the position of the investors, it will lead to completely unreasonable results in all property of which automatically the value bank would usually be considered immune against enforcement.

We have noticed that, by the consolidated annual account of the bank, we see that National Bank offers commercial services to parties different from the Republic of the National Fund.

The question is whether it's the position of the Kazakh state that all the customers of the National Bank, the current and the future customers, are covered by immunity, because that would become a consequence of this interpretation of the article without taking into account the underlying purpose.

The important thing when it comes to a comprehensive assessment, the article is not written thinking about the situation we have at hand. They didn't think that these sovereign wealth funds would be created which

accumulate billions and billions and billions and which act like big commercial stakeholders on the international financial markets. It didn't exist in the mind of the creators of the text and, even less they could have imagined that the actual management of the wealth fund would be something contracted to professional asset managers like the Union Bank of Switzerland or JP Morgan et cetera.

Earlier we considered this with legal opinion when it comes to immunity from execution of Central Bank assets and the Kazakhi parties read some general passages when it comes to the investment with respect to immunity.

What we would like to draw the court's attention to and this is the reason why we submitted this legal opinion, was because she highlighted the possible difficulties which might appear when the National Bank started to operate outside say the regular scope of activities. This is something she wrote on the last page in her legal opinion.

"Although differences may arise if Central Banks invest in ways not typically assumed to be in foreign currencies, through sovereign wealth funds for example et cetera."

Difficulties may arise.

So it becomes problematic when the National Bank conducts the kind of activities which wouldn't be envisioned before.

The background to the article of Mahmoudis in our case, in paragraph 51, and the legal opinion is that the Central Bank regularly holds account of foreign banks for different purposes. For example, reserves in foreign currency and attachment of these assets could lead to serious financial problems. This is the rationale behind the provision. This is nothing to do with sovereign funds.

But when it comes to the savings portfolio, well, the part of the savings portfolio which was managed through Mellon, the Central Bank has no other function than being the intermediary on behalf of Kazakhstan. It would have been possible for Kazakhstan to instruct the actual asset managements directly, which is why they decided to go through the bank. We've heard they visited Norway and checked with Norway and there they probably heard that, if you do like this, you could improve your possibility to claim immunity in the future if any problems would arise.

During the opening statement, the Kazakhi parties presented a submission from this NOU 2017:13.

I wanted to emphasise, and if anyone here speaks

Norwegian, but since the purpose is the biggest possibly level of immunity for the fund, it could be -- make sure that the fund is organised in the following manner and the third party finance. The assets are a part of the Central Bank's funds, the central bank puts these funds on its own balance sheet.

If you read the NOU, you can read that it's quite important -- it could be of importance for the question of immunity, who is stated as the owner, the beneficial owner, of the fund's property. If it's the Norwegian state, or if it's the Bank of Norway, and we know that, Norway, the fund is on the balance sheet of the bank and belongs to the bank and the Norwegian investigation the position was whether management was a commercial activity or acts in an official capacity of a government body and nor -- these issues have not been tested legally anywhere, if we disregard from this case, which we know that there is no introduction(?) into legal force when it comes to the merits.

I cannot believe that it would be natural to read the property work for the conventions like my colleagues did, but there is certain support because there's no strict requirement that the assets are used specifically for monetary policy purposes. That is not there, because that qualification disappeared as we could see.

On the other hand, we can note with respect to the customary law the different states which were acting which would make their statements in this context.

There was no consensus about what the customary law really meant. That's why they were debating over the text over and over again and then, once the parties agreed on the text and presented the text, then the text was accepted by all the members and this is normal diplomatic procedure, but it has nothing to do with the properties of the customary law and the Nordic and the American representatives had some other objections which didn't directly have to deal with the monetary purpose. The Nordic position was that you shouldn't apply the exception and the property which was used for commercial purposes as it was expressed. It's not really the same thing as limiting it to monetary purposes.

It's quite difficult to say that this has been removed by removing the monetary purpose provisions. The American position that you should understand the article, this is what it was about. It's not what I believe was said, that the American delegates proposed a tax and he just said that our opinion is that this means that the point of departure is that the property is held on behalf of the bank. I can -- this hasn't disappeared, at least from the customary law.

So there is the room for assessing this as quite significant when it comes to both those components.

I believe the court should -- that the investigation shows that the property is used for other purposes rather than the state, not commercial purposes and then that the funds and the National Funds are not on the bank's balance sheet. This is something which follows from the accounts.

In addition to that, that the immune property should be limited to things which are reasonably used for a National Bank's actual operations, it's also reasonable to believe that a Central Bank should have a reasonable degree of independence from the political power. It's obviously not written anywhere but the bank in reality has no -- enjoys dependence but is rather a lap dog of the President and is treated in the same manner.

If you look at the next slide, 24 is what happened in the public eye when the Presidents calls the President of the potential bank a idiot, then you can see who is making the calls, and it's not the Central Bank.

When it comes to the burden of proof, when this comes to the applicability of the article, it's the position of the investors, just as they believe with

respect to article 19 here, that the burden of proof rests on the Kazakh side. Who wants to accept the property from enforcement.

Before I proceed to talk about the abuse of rights, I will also establish how Linderfalk put its it when it comes to the issue of applicable of customary versus the article. He leans towards the opinion that we are propagating in this case. I think I can say that it's impossible in state practice to find patterns that could assist us to exclude the other competing interpretation on the ground that is it does not correspond to international customary law.

So in many respects the legal situation remains unclear.

I have now reached the apparently very sensitive issue on the abuse of rights.

Really we are discussing two quite separate things. One is the abuse that falls under the scope of if you accept that there is a trust, then the property is withdrawn and Kazakhstan will be referred to as creditors. In this construction, there should be a possibility of bankruptcy in the extension, then the property will revert to the management of the trustor, if it was ever removed from the trustor, and we claim that it was never removed from the trustor in this case.

Mahmoudis, I think, expressed this principle rather well. If we can get it up on our screen.

Yes, we're back on track.

In his legal opinion, for Sedalmayer, he writes that the point is not for immunity to provide to the sending state an improper privilege and an opportunity to abuse their position.

Counsel Foerster, when he attacked our views on this issue, he defined it initially and, generally speaking, that is an argumentative technique that the Kazakh side likes to use. They argue against what they claim to be the position of the investors and then they attack them. We assume that the court will see our presentations as the natural source as to what we are claiming in this case, because I think in some respects the Kazakh presentation on this issue is not entirely accurate.

The allegation regarding abuse in reference to the ECT is not restricted to invoking immunity. This is not what we're saying. I think this emerged from my initial comments. It is the entire absence of convention loyalty. First, you accede the convention to get benefits because of an influx of investments. Promises are made to treat the investors fairly and justly. They commit to not expropriate assets without lawful grounds and, if they do expropriate them, they will give

a prompt, adequate and effective compensation. All of this doesn't relate to a trial. The idea's not to be forced to legal proceedings to receive the benefit of these pledges and promises that have been made by the state through the treaties.

So already when you start going into one legal process after another, already at that point you have an indication that here we have something that appears to be not entirely loyal to the convention.

Then of course it is a form of abuse if you in general use immunity to shield you from all enforcement at the same time that you have no intention of fulfilling your obligation pursuant to international law to pay compensation for the confiscation that completely unlawfully took place in this case. The abuse becomes quite clear when we establish that Kazakhstan in general doesn't at all pay voluntarily pursuant to their international law obligations and the minister writes -- or they wear white hats or they sit on white horses but I think real life differs somewhat from that image and I won't repeat what I said and the information we have about the actual situation, but in any case there is no example of an occasion whether, without a trial, they have made payment promptly, adequately and effectively. However, we have examples of compromises that have been

reached after long drawn out processes and there's been a reduction of the amount that they reasonably speaking should have paid in compensation to the investors. It's impossible to get an overview of the different proceedings. Many are still ongoing, not all of them are in the public eye but this little comment from Gharavi, known from these connections, investment disputes, I think it puts it quite well, when he says in the global arbitration review:

"Kazakhstan is not in the compliance business.

What a lovely understatement on the Kazakh attitude on this issue.

I thought I will round off by doing more or less what I did at the beginning of the proceedings.

The investors were subjected to a crime against international law. It's perfectly clear they were deprived of assets of a very significant value. At the foundation, they have disrupted the basis of their entire existence by applying what has been referred to, that the justice is at the end of a lance, as has been stated historically in Swedish law.

If you can't seek redress from other jurisdictions in other instances, so a very stiff-necked positions and innumerable accusations that have not been merited or credited in the Svea Court of Appeal that the investors

are fraudulent, they have no prospect of ever getting justice unless the courts in the countries where jurisdiction and enforcement is sought, if they cannot find that it is not possible to attach Kazakh property.

The investors hope that this will be possible when you conduct an overall assessment because the only purpose of possessing the securities and bank funds is not what was stated by the Supreme Court in the Lederhouse Properties case referred to of qualified nature, because they say qualified nature is when the properties is used by the state to exercise their official authority and therefore gains the nature similar to an official authority nature. In that context the Supreme Court also mentioned article 21 purely in general, but that of course doesn't mean that, by doing so, they have taken a stance on any details as to how the application of article 21 should really be done and I think that you ought to make note of the wording from the Supreme Court in the judgment that a immunity isn't present already because the circumstance the property is owned by the state and used for a non-commercial purpose. That is not sufficient, according to the Supreme Court. This demonstrates that the Supreme Court has gone quite far when it comes to restrictive application on assessments of immunity.

Perhaps particularly if you take into consideration that the leading property was linked to the issue of diplomatic immunity, which is the most sensitive aspect of this, and I think many people were very surprised when this action was taken to grant attachment anyway.

We hold no illusions that this will be the last time it will be our honour to meet with our colleagues across the room in this dispute, but we hope that the District Court will, in any case, proceed in an equally realistic way as the Supreme Court and the Svea Court of Appeal that here there is a necessity for all holding foreign states accountable to act decently and to fulfilling their commitments and obligations and, with those hopes expressed, I rest my case.

THE CHAIRMAN: Thank you very much. That means that we are at the end of the proceedings.

MR AXELRYD: We would like to rebut the closing arguments.

THE CHAIRMAN: Please go ahead.

Submissions in reply by MR AXELRYD

MR AXELRYD: I would like to start on page 4 in the presentation we've just seen and on page 4 -- you can also see page 5 -- and there you can see that on page 4 it says it is the segregated securities central depository that SEB Sweden keep that would identify the Kazakh shares and then you can see on page 5 that this

is the CSD account with SEB that they are referring to. Then they have a quote. Not until somebody's right to a certain number of financial instrument of a certain kind has become registered in an account, it is not until then that this right can be identified and distinguished from the rights of other people to the same or other quantity of this kind of financial instrument. If you look at item 3 in the Gunnarsson affidavit, you can see that the account is a CSD account, so that is with Euroclear, not with SEB.

We can also establish that this quote comes from comments to the LKF Act regarding CSD accounts and also the investors presented views on our way of presenting arguments based on constituent effect and there was a big difference there with the legal effects with different types of accounts and that that comes into where the location of the shares is deemed to be. So we work on the basis of a legal analysis of the legal consequences in each stage of the process. So you have a legal consequence and then a claim of rights as you go through the stages up to the custodians and this can be compared to simple claims.

If you look in the preparatory works and the legal articles that were referred to Magnus' presentation, we can see that they conduct the same analysis. It's about

the chain of debtors and different claims and, if you analyse the civil law, this is what you have. Then you have a metaphysical question when we decide, well, where do we deem that this security is located and this has been taken a position on in Sweden and in Europe and they reached the conclusion that this chain of debtors, the significance of that to make sure that everything ties in, we should hold that the securities are where the register of the account is kept for the ultimate owner and that is our view on this and we've chosen to analyse the entire chain of debtors and see how that is consistent with civil law and why we should come to the conclusion that the securities are deemed to be located outside of the boundaries of Sweden.

I can just briefly also point out that the significance of the position of the National Bank in this is what we presented in our closing argument, where we expanded the thinking behind our position. It was mentioned about the intermediaries and then the convention as well. I don't know if I need to go into that, because you look at the doctrines and the preparatory works, that would validate our analysis of the chain of debtors. But if you can still establish, if you read the book accounts right by Wallin, she questions the act and the provisions therein on these

aspects and Catharina Burestan, when she was asked the explicit question does SEB acquire securities for their own behalf and another person's name for commission, they said no. If commission would be applicable, you would be in the relationship between BoNY and SEB and then you can ask yourself in what way could that mean that Kazakhstan has ownership of anything.

If you bring everything up one level to abroad, with the National Bank and BoNY has a relationship, then it's obvious it is UK law is applicable. The Convention is not applicable. It's about foreign ownership rights.

Then we have the AIG judgment that validates our analysis and establishes that it's National Bank that has a claim against BoNY nobody else.

Those are the comments that I wanted to present on slides 5 and 6 and then I would like to briefly comment on slide 7, which is about the rules on burden of proof and the rule we presented in our closing arguments is the valid rule. This burden of proof rule is not applicable. If you read what it says here, it would be applicable if we at some point had acknowledged that the shares in Sweden are actually owned by the Republic of Kazakhstan.

We have never claimed any such thing. So it's not until we have acknowledged this and then at another

point claims that the ownership of the shares in Sweden was transferred to the National Bank, that's when this burden of proof rule becomes relevant. It's completely entirely irrelevant on this case.

Submissions in reply by MR GUTERSAM

MR GUTERSTAM: A few brief comments on page 10 also connected to issue of burden of proof. It has been alleged that there are flaws in the evidence and the flaw should be to the detriment of the applicant, because they hold the burden of proof in this respect, and then it was claimed that we had changed our position on the sub-custodian agreement and I think we have always said that we've always tried to get hold of a copy of the agreement and we heard Aliya Moldabekova confirm that she tried to get a hold of the copy of the agreement and we didn't. The only person who can get hold of a copy of the agreement is the enforcement agency and they chose not to do so. We can also mention that SEB weren't even willing to speak to us about specific issues because of bank secrecy before they were summoned by the court here. So the allegations made in this respect were completely erroneous.

Finally I would like to go to slide 15. These are my final remarks now. Here it is claimed, referring to the management council, that the state and the President

and the state have influence and that this becomes clear or comes into the system through this function of the management counsels and there were two assertions made.

One, that Aliya Moldabekova, when she gave evidence, was lying, speaking untruly, and that they also made the insinuation that she's a professional witness travelling around giving evidence. Can I just clarify that the first time she testified before a court was when she testified before this court and she has submitted affidavits but she's never given evidence before a court; where she was listening to English audio books earlier in the week to practice her English so she could explain herself to the court and she hadn't eaten 24 hours before examination because she was so nervous. She doesn't take this lightly to come here and lie.

The document that they refer to here to say that here you can see definitely that the state and the Republic have a right to decide what is done with the assets in the National Funds, now, again, they refer to this effective use of and we've gone through this so many times that this use of concept is stipulated in the Budget Code and in 37. It's about how you manage the fund and not the purpose of the fund.

When it comes to the placement of financial instruments that has been underscored here, Moldabekova

in her examination explained that this really refers to what types of assets you can invest in and nothing to do with specific investment decisions.

THE CHAIRMAN: Any final comments from counsel?

MR NILSSON: No, I think it has become clear that there is a difference of opinion here and I will not repeat my words.

THE CHAIRMAN: That means that we have concluded the proceedings. The only matter that remains to discuss is to present the bills. We discussed two weeks before. Easter is coming up, so we will not have so many working days, but, making allowances for that, if we were to say that the bills should have been submitted by 24 April -- this is the 12th today -- then you will send them to each other, also copied to the court, and after that you have until the 2 May to comment on the bill from the other side and then you will make another submission there on 2 May. So that is slightly more than two weeks, making allowances for the bank holidays.

MR GUTERSTAM: Could we ask to have the deadline for the first submission until the 25th or 26th. The 24th is a Wednesday.

THE CHAIRMAN: And you still have time to comment on the other sides bill by the second.

MR NILSSON: I would like that.

THE CHAIRMAN: Is that sufficient.

MR NILSSON: Yes, we won't put up a fight over two days. For me it's not a problem.

THE CHAIRMAN: So 26 April and 2 May and make sure that a copy comes to the court and to the counterparty and to have comments on the other sides' bills at the latest on 2 May.

MR NILSSON: Can we get a approximate indication as to when we can get a ruling.

THE CHAIRMAN: That will be difficult. Well, I can say what our objective is. We hope to be able to give a ruling before the summer.

MS ISAKSSOn: So do we.

THE CHAIRMAN: It is not a regular type of civil -- it's not a civil case, as I'm sure has been repeated several times over this days. But at the same time we will try to do it expediently, but I think you want us to consider issues at hand in a careful manner. Thank you.

(4.27 pm)

(Hearing concluded)

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