

Pax Moot 2020 – The Asser Round

Case Clarifications

Dear Teams,

We have received a high number of questions this year. We welcome all your efforts and we are glad to see that a lot of thought has already gone into the preparation of this case. Please find below the additional clarifications we would like to provide. We include both general clarifications and some selected questions we decided to answer. If your question was not answered, it is likely because 1) it has already been dealt with in another question; 2) the question is asking for a legal point that is to be established in the memorial; or 3) the question is deemed not relevant to the case.

Corrections and Amendment:

1. Facts: Paragraph 5, sentence 2 of the facts: the reference to RMC should be to KM. The sentence is therefore corrected to read: “When the mine started operation in 2010 the miners entered into contracts of employment with KM which were signed in blank by directors in Antwerp and co-signed by the employees in Almasi.”
2. Questions: Point (1) of the moot questions has been changed by adding a reference to the Brussels I Regulation Recast, so as to read: “**an application by IJC and RMC to stay or dismiss the Belgian proceedings according to Articles 29 to 34 of Brussels Regulation I Recast**”.

Moot and procedural questions:

3. Q: When asked to state what orders we believe the Belgian courts should make and the basis on which it should do so, are we right to deduce that the written Memorials should take the form of legal submissions, rather than the one of an academic essay?
A: Yes, the memorials should be written in the form of legal submissions. The first memorial should be written from the perspective of the respondent, the second from the perspective of the claimant. Further information about the form of written memorials can be found in Section 13 of the Rules and Procedures.
4. Q: We would like to know how broad the scope of the task of drafting the «conclusions» is meant to be: are «conclusions» to be understood strictly or is there some leeway towards a broader understanding? (i.e. is it possible, for instance, to submit an application for forced intervention - with the aim to file a lawsuit against a third party).
A: The written memorials should answer the questions posed in the case; references to tangential issues is allowed if the team consider it relevant, but we will not be providing extra marks for any additional points raised.

5. Q: Are legal arguments limited to European Law or is it possible to use different sources of law (case law, domestic law, international law etc)? This is necessary in order to put a limit to the available legal resources and to build legal arguments.

A: On the whole the answer is no, the focus of the moot is on European private international law and not national law. We will tolerate necessary references to national laws but we are not interested in arguments on them. International law arguments are allowed but only to the extent that they are relevant to EU law.

6. Q: Seeing that the respondent's applications ought to respond to the claimant's arguments, should we discuss questions (1) and (2) from the point of view of the claimants as well?

A: Yes.

7. Q: Normally, the respondent presents his arguments based upon the claimant's arguments. Seeing that questions (1) and (2) concern applications by the respondent, should we inverse this principle so that the claimant responds to the respondent?

A: Yes.

8. What was the nature of the Defendants' arguments before the English court in challenging the application for the freezing order.

A: The specific arguments are not known; the defendant did not submit to the English Court's jurisdiction and made its submissions on the freezing order without prejudice to its challenge to English jurisdiction.

9. Q: Regarding the proceedings introduced in Antwerp, it is mentioned that there are two claims (a and b). Are those two different actions taking place before different Belgian courts or only one?

A. They are all in the same set of proceedings.

10. Q. Which court did the claimants approach in England?

A: The High Court of Justice (of England and Wales).

11. Q: Which court did the claimant's approach in Belgium?

A: The Court of First Instance in Antwerp.

12. Q: In what language are the documents of RMC and KM and the evidence of witnesses?

A: So far as relevant, materials before the Belgian court were either in Flemish or were translated into Flemish.

Factual Questions:

13. Q: Did Almasian government take control over the KM during the period when the martial law was declared?

A: *No.*

14. Q: What was the position of the miners during the martial law?

A: *Their contracts were not revoked, but they became subject to military orders as drafted labourers.*

15. Q: Had the RMC any profit share in diamond mining after the year 2014?

A: *Yes, RMC's profit share in KM did not change.*

16. Q: Is Antwerp the registered office of IJC?

A: *Yes, that is its statutory seat.*

17. Q: Is Almasi the registered office of both RMC and KM?

A: *Yes.*

18. Q: After the coup d'état who is KM Company owned by?

A: *KM is a joint venture company owned by RMC and a state-owned company in Almasi. Its ownership did not change.*

19. Q: What does it mean that the contracts were signed "in blank"?

A: *The contracts were signed by the directors without the employees' names and personal details being stated.*

20. Q: Is there any available evidence about the health damages and pollution, or do we have to fake about their existence making our own assumptions?

A: *The allegations made by the claimants, if correct, establish that substantial damage was caused by the mine's operations.*

21. Q: Has the RMC currently any estates or did the RMC give all of its estates to the KM?

A: *RMC holds no property other than shares in KM.*

22. Q: Is there a force majeure clause in the miners' employment contracts?

A: *No.*

23. Q: The law conferring immunity is not mentioning a starting date, should we then consider that this immunity applies without any limit of time before its entry into force on 31st December 2018?

A: The legislation has no express start point for the acts in respect of which it confers immunity.

24. Q: What is the statute of limitations of claims for damages (i) in torts and (ii) in contract for physical injury and damages to a person's health under Belgium law?

A: No time-bars have elapsed before the proceedings were commenced.

25. Q: Does RMC have offices or premises in Almasi?

A: As a registered company it has a postal address, and statutory seat, but not physical premises.

26. Q: When it was found that RMC was a necessary party to the claim against IJC, what did the English court base its reasoning on? Did the English court give any indication in its judgment as to whether it considered RMC to be a real subsidiary of IJC or merely a post box company?

A: There is no dispute that RMC is a subsidiary of IJC.

International Conventions:

27. Q: Is Almasi part of the UN?

A: Yes.

28. Q: Is Almasi a party to the 2004 United Nations Convention on the Jurisdictional Immunities of State and Their Property?

A: No.

29. Q: Is Almasi party to the Lugano Convention of 21.VI.1993 on Civil Liability for Damage Resulting from Activities Dangerous to the Environment?

A: No.

30. Q: Is Almasi part of at least one of the African conventions on work rights as listed in the ILO catalogue?

A: No. We are not looking for arguments based on the ILO.

31. Q: Is it expected for the Almasian courts to give judgments capable of recognition in Belgium?

A: There are no bilateral, multi-lateral or other preferential enforcement agreements between Almasi and Belgium. This question should be answered in your submissions. You should assume that Belgian law provides that a Belgian court may order that an Almasian judgment is to be recognised, provided it does not offend Belgian public policy,

that the rights of the defence have been respected, that it is final and conclusive, that it is in proper form according to Almasian law and that, on an examination of the merits, the court of origin does not appear to have made any error of fact or law. You are not expected to include any argument about the merits of an eventual Almasian judgment.

Timeline:

The following timeline is provided in answer to some of your questions and to provide further detail:

1960's - 2010	Artisanal mining in Kotawongo
1995	Almasi government diverts river and starts construction of open pit mine
2010	Mine starts operation. Miners enter into employment contracts with KM
2010-2020	Pollution and health hazard caused by mine
2014	Martial law imposed. Miners drafted into military and become forced labourers
1 January 2019	Military <i>coup d'état</i> overthrows government; military draft revoked.
January 2019	Almasi law passed conferring immunity
1 August 2019	Almasi court seised of proceedings against RMC and KM
1 October 2019	Antwerp court seised of claims against IJC and RMC
15 January 2019	Application to English court without notice (ex parte) for freezing order against IJC and RMC. Provisional order made and served on IJC and RMC
24 January 2020	IJC and RMC appear in English court to dispute jurisdiction and oppose freezing order
7 February 2020	English court upholds jurisdiction and makes freezing order
