Pursuant to the Agreement between the Government of the Kingdom of Sweden and the Government of the Russian Federation on the Promotion and Reciprocal Protection of Investments of 19 April 1995

NOTICE OF INTENT TO SUBMIT A DISPUTE TO ARBITRATION

Ms. Olga Ovchinnikova

v.

Kingdom of Sweden

23 May 2016
Aceris Law SARL

NOTICE OF INTENT TO SUBMIT A DISPUTE TO ARBITRATION

BETWEEN:

Olga Ovchinnikova, Box 1707, 140 109 Ramenskoe, Russian Federation

"**The Investor**" or "**Claimant**"

Represented by:
William Kirtley
Olivier Marquais
Andrian Beregoi
Aceris Law SARL
Rue du Rhфne 14
1204 Genиve
Tel.: +41 22 819 1812
Fax: +41 22 819 1900
E-mail: wkirtley@acerislaw.com
omarquais@acerislaw.com
aberegoi@acerislaw.com

AND

Kingdom of Sweden, Represented by Margot Wallström, Minister for Foreign Affairs, Utrikesdepartementet, Ministry for Foreign Affairs, SE-103 39 Stockholm, Sweden

"**The Host State**" or "**Defendant**"

Hereinafter collectively referred to as "**The Parties**"

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I. STATEMENT OF INTENT

1. In accordance with Article 8 of the Agreement between the Government of the Kingdom of Sweden and the Government of the Russian Federation on the Promotion and Reciprocal Protection of Investments of 19 April 1995 (the "**Sweden-Russia BIT**"), we hereby give you notice of the existence of a dispute between the foreign investor Ms. Olga Ovchinnikova and the Government of the Kingdom of Sweden ("**Sweden**").

2. Article 8(2) of the Sweden-Russia BIT records the Parties' consent to submit the present dispute to arbitration under the UNCITRAL Arbitration Rules, providing that a dispute between an investor and a Contracting Party "*shall at the request of the investor be submitted to an ad hoc tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)*" and that "*the decision of the arbitral tribunal shall be final and binding on the parties to the dispute*."

3. Sweden has expropriated Claimant's largest investment in Sweden in an unlawful manner, unfairly and inequitably prevented Claimant from completing her investments, discriminated against Claimant, and used its *puissance publique* to harass, imprison and publicly shame Claimant when she sought to uphold her basic legal right of ownership.

4. The actions of Swedish State organs in violation of the Sweden-Russia BIT have caused Claimant considerable harm, which is currently estimated in the amount of **219 million SEK** (26.5 million USD). Claimant is also entitled to compensation for the moral harm she has suffered at the hands of the Swedish State, which shall be quantified in due course.

II. FACTUAL ANALYSIS REGARDING THE DISPUTE

A. Claimant's Initial Investments in Sweden

5. The current dispute began soon after Claimant's purchase of two forest estates in 2001 from her longtime business partner Mr. Jon Frändén, who was also her husband at the time of the purchase.

6. On Thursday, 25 October 2001, Claimant purchased 85% of the Estate of Åsen 4:6, parish of Lillhärdal, municipal region of Härjedalen (a forest estate), from Jon Frändén, Claimant's

then spouse, for the amount of 1,602,240 SEK (roughly 151,684.18 USD at October 2001 exchange rates, or 190,718.12 USD at current exchange rates).

7. On the same day, Claimant also purchased 71.125% of the Estate of Viken 11:7, parish of Ytterhogdal, municipal region of Härjedalen (another forest estate), also from Jon Frändén. This purchase of land also included all chattels at the farm. The purchase amount was of 1,341,418 SEK (roughly 126,992.14 USD at October 2001 exchange rates or 164,688.03 USD at current exchange rates).

8. The agreements entered into by Claimant and Jon Frändén on 25 October 2001 (whereby Claimant acquired 85% of the Estate of Åsen for 1,602,240 SEK and 71.125% of the Estate of Viken for 1,341,418 SEK) was a straightforward example of an investment in "*immovable property*" under Article 1(1)(a) of the BIT. Claimant's other investments in Swedish companies impacted by Sweden's actions, including AB Lytkina Fastighetsförvaltning and AB Stromherren, are also clearly investments falling within the protection of the BIT.

9. Claimant entered into these agreements for the purchase of the Estates on 25 October 2001 with the intent to acquire the remaining minority parts (15 % of the Estate of Åsen and 28,875% of the Estate of Viken) the following year, when a public auction was to be held where they could be purchased.

10. There is no question that the Estate of Åsen and the Estate of Viken (the "**Estates**") were legally purchased by Claimant.

11. At the time of the acquisition of the Estate of Åsen and the Estate of Viken, Ms. Ovchinnikova and her spouse, Mr. Frändén, were business partners in a number of businesses located in Sweden, which had begun prior to their marriage.[1] Under Swedish law, each spouse owns his or her property and is liable for his or her own debts, and nothing restricts the sale of property between spouses, so there should have been no grounds for Sweden to call into question the validity of her property rights. According to a formal agreement made on 15 September 2002 in relation to her divorce from Mr. Frändén on 18 October 2002, Claimant and Mr. Frändén

[1] These businesses included the purchase of real estate portfolios, the purchase of a jewellery manufacturer and other businesses.

also agreed that Claimant could keep 17/20 of the Åsen Estate and 569/800 of the Viken Estate. This agreement was judicially confirmed on 30 November 2002.

12. Both land contracts of 25 October 2001 fulfilled all requirements imposed by Swedish law and were repeatedly recognized as valid by Swedish State organs. On 23 November 2001, the Swedish Registration Authority (an organ of the Respondent's judicial system ranking at the level of a District Court) issued "*certificates of registration*" publically confirming the validity of the acquisition (e.g., the compliance of the sale with all formal requirements under Swedish law), the legality of the transfer and of the ownership of both Estates by Claimant.[2] As set forth in additional detail below:

- All legal formalities were respected for Claimant's purchase of the Estates from Mr. Frändén under Swedish law;
- Claimant is in possession of the purchase contract and the receipt proving the amount paid for the Estates;
- While the property was paid for in cash, as was common of transactions between Russia and Sweden due to the many problems with the banking system in Russia at the time, this does not make it illegal and cash payments remain common by Russian foreign investors in Sweden;
- Claimant can prove that she actually paid for the Estates. She freed the funds necessary to purchase the Estates as established by an agreement dated 3 August 2000 which confirms a deposit of 6,957,500 Roubles made by Moscow bank on 1 August 2001. As part of a procedure engaged by Claimant to challenge a first wrongful attachment of 8 April 2003 on her property, one bank and two other companies, in Moscow, also confirmed Claimant's good financial standing and ability to purchase real estate. The Tax Authority's Observations dated 7 July 2005 moreover corroborate this fact as they admit that "*the claim that Olga Ovchinnikova during the years 2000 and 2001 had at her disposal a deposition containing the equivalent of about 2 MSEK is admittedly proven*";
- Sweden never sought to challenge the decision of the Registration Authority or

[2] While the issuance of "*certificates of registration*" is not a prerequisite for the validity of an acquisition under domestic law, their issuance is a judicial organ's decision confirming that ownership had been transferred to Claimant on 25 October 2001, which renders the question of Claimant's ownership *res judicata*.

Claimant's ownership of the Estates over the years of legal proceedings that would ensue;

- All injunctions, attachments and related decisions, discussed below, confirm that Claimant is the "*legally recognized owner*" of the Estates which were "*legally acquired*" under Swedish law,[3] although Claimant's property rights would be ignored in bad faith;
- The State-appointed trustee who organized the auction of Claimant's Estates against her will recognized that the Estates belonged to Claimant, as he calculated the value of Claimant's parts of the Estates, as discussed *infra,* the vast majority of which would not be paid to her;
- Mr. Frändén's tax declarations in Sweden reflect his payment for the Estates;
- Further to the public auction of Claimant's Estates against her will on 2 June 2006, the Tax Authority recognized Claimant's ownership of the Estates as it assessed that Claimant had made a taxable "*profit*" from the insignificant amount she actually received. In particular, the Tax Authority approved Claimant's purchase cost and accepted it as a reduction from the alleged profit.

13. Despite the legality of Claimant's purchase of the Estates, Sweden would spend many years ignoring Claimant's property rights and targeting Claimant, beginning with a first injunction targeting Claimant's Estates.

B. Phase 1 of Sweden's Expropriation of Claimant's Estates: Injunctions Targeting Claimant's Investments in Sweden

14. Claimant purchased the Estates that lie at the root of the current dispute on 25 October 2001. Months later, Claimant would learn that Mr. Jon Frändén, her Swedish husband who had sold her the Estates, was being audited by the Swedish Tax Authority.

15. A Tax Memorandum concerning Mr. Frändén was finalized and sent to him on 2 November 2001, although it is unclear when he received it since he was living abroad at the time. On 8 March 2002, the Administrative Court of Jämtland authorized the issuance of injunctions[4] on

[3] For example, the Enforcement Office Observations of 30 September 2002, the District Court of Östersund Minutes of 12 November 2002 and the Enforcement Office Observations of 28 April 2003.

[4] An injunction ("*betalningssäkring*" in Swedish) is a kind of forced taking of collateral for expected claims for taxes, customs fees or similar duties. The issuance of an injunction of this kind is atypical. The normal procedure in Sweden

the basis of the Tax Authority's request, ordering that "*so much of the property of Jon Frändén as to be equivalent of a claim in the amount of 1,550,000 SEK, referring to not established tax claims, might be seized through the issuance of injunctions*."[5] The Tax Authority then applied to the Enforcement Office[6] to issue injunctions targeting the assets of Mr. Frändén to cover the value of the tax claim (1,550,000 SEK).

16. Although the tax claim was for less than the price Claimant paid for a single Estate,[7] and although Mr. Frändén no longer owned the Estates, the Estates which had been purchased by Claimant were almost immediately targeted by an injunction issued by the Enforcement Office dated 22 March 2002. This First Injunction of 22 March 2002 was directed at Mr. Frändén but forbade anyone, including their owner, Claimant, from "*sell[ing] or in any way dispos[ing] of*" the Estates.

17. The decision to target Claimant's assets was deliberate. The text of the Enforcement Office's First Injunction explicitly provides that the assets to be targeted were "*registered on* […] *the debtor's wife* […] *Olga Ovchinnikova since 2001-10-25 when they were transferred to her from the debtor.*" The Enforcement Office Observations of 30 September 2002 also provide that "*the parts of estates were therefore made subject to injunction in spite of them being legally confirmed as belonging to* [Claimant]".

18. The decision to target the Estates became effective and the Estates "*legally acquired*"[8] by Claimant on 25 October 2001 became subject to the First Injunction on 22 March 2002, depriving Claimant of the right to dispose of these investments.

19. The First Injunction, which would set the tone for years of legal proceedings, was based on speculation and prejudice, rather than facts, and was riddled with false statements. The

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would have been to request payment of the due taxes when decisions had been taken, and only then. To request an authorisation of an injunction is unusual.

5 1,550,000 SEK was approximately the price that Claimant paid for the Estate of Åsen, the larger of the two forested estates.

6 Enforcement Office Observations of 30 September 2002.

7 Claimant purchased the Estate of Åsen for 1,602,240 SEK and the Estate of Viken for 1,341,418 SEK.

8 Enforcement Office Observations of 30 September 2002.

Enforcement Office's justification[9] for targeting the assets of Ms. Ovchinnikova was that the "*surrounding circumstances*" of the transfer of 25 October 2001 were allegedly suspicious and the agreements allegedly were "*sham transactions*" intended to shield Mr. Frändén's property from enforcement measures.

20. To support this injunction, the Enforcement Office alleged that "[*t*]*he purchase deeds referred to were handed in to the Registration authority only when the result of the tax audit was known,*" which is incorrect and highly misleading.[10] It is untrue that Claimant knew of the tax audit at the time of her purchase of the property from Mr. Frändén, and even if this were true it would not provide valid grounds to undermine Claimant's property rights:

- The sale of the Estates to Claimant was set in motion on 5 September 2001, months before the Tax Memorandum was sent to Jon Frändén. On 5 September 2001, Jon Frändén, who was then the majority owner of the Estates, applied for a public auction sale of the Estates[11] (expected to be held in 2002) in accordance with the law on joint ownership in order to allow the future purchaser of his parts,[12] Claimant, to purchase the minority parts of the Estates which did not belong to Jon Frändén.[13] Mr. Frändén could not have been aware of a tax audit that had not begun.

- The Tax Memorandum itself, notifying Mr. Frändén that he was being audited, was sent to Mr. Frändén only on 2 November 2011, after the sale of the Estates had been completed.[14] It is entirely unclear and wholly unproven that Mr. Frändén even learned of the Tax Memorandum by 23 November 2001, when the Swedish Registration Authority issued "*certificates of registration*" publically confirming the validity of the acquisition,

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[9] As stated in the Enforcement Office Observations of 30 September 2002 and District Court of Östersund Minutes of 12 November 2002.

[10] As stated in the Enforcement Office Observations of 30 September 2002 and District Court of Östersund Minutes of 12 November 2002.

[11] District Court of Sveg Decision of 29 November 2001.

[12] According to the Law on Joint Ownership [lag (1904:48 s. 1) om samäganderätt] and the Law on the Administration of Certain Jointly Owned Agricultural Estates [lag (1989:31) om förvaltning av vissa samägda jordbruksfastigheter], an agricultural estate owned by at least three can be offered for sale on public auction at the request of any of its owners.

[13] Further to the sale of 25 October 2011, Jon Frändén kept a minor fraction of each Estate (0.5%) in order for this application not to be considered lapsed.

[14] Enforcement Office Observations of 30 September 2002.

let alone by the date that the purchase deeds were given to the administrative authority for registration. Claimant does not know the precise date when Mr. Frändén learned of the Tax Memorandum, but the Memorandum was sent by post and, even under ideal circumstances, would have reached him only later, since Mr. Frändén had, for all practical purposes, already moved abroad by the time.[15]

- The Tax Memorandum itself was only the first of many steps before tax debt becomes definitive in Sweden, and many of the tax claims against Mr. Frändén would in fact be decided in his favour.[16]

- Under Swedish law, even if an attachment had been issued while the properties were still registered to Mr. Frändén, this would not have forbidden or prevented him from selling them to Claimant.[17]

21. According to the Enforcement Office, there were also grounds for an injunction because "*on 2 November 2001* […] *the parts of the estates were then still legally registered on* […] *Frändén.*" This was simply false:

- Under Swedish law, what is legally relevant is the date of sale. Claimant and Mr. Frändén concluded the contract for the purchase of land on 25 October 2001 and were not obliged to submit the purchase deeds by 2 November 2001, the date that the Tax Memorandum was sent to Jon Frändén, or legally obliged to do any more than was done.

- It is unsurprising that a land administrative authority such as the Registration Authority, in charge of verifying land contracts' compliance with formal legal requirements and registering related documents, would issue "*certificates of registration*" a bit less than one month after the conclusion of the contracts for the transfer of property. These

[15] This is moreover documented in a notification provided to the Tax Authority in its capacity of keeper of the official population register.

[16] Such memoranda can lead to prolonged correspondence before the Tax authority providing its preliminary decision ("*övervägande*") to the taxpayer for his comments and observations, prior to an actual decision being taken. This decision can then be appealed and the administrative courts of first and second instance are both required to hear the appeal on the merits. Of the tax cases against Mr. Frändén, three were in fact decided in his favour at relatively early stages and the remaining two were finalised on 25 June 2008.

[17] The acquisition would have remained valid and the attachment, worth far less than the value of the Estates, would have followed the property in the hands of Claimant.

certificates are not a prerequisite for the acquisition's validity under Swedish law, but rather a public judicial decision confirming an already existing fact. [18]

- The properties were legally transferred on 25 October 2001, and the 23 November 2001 date when certificates of registration were issued is not the date of the acquisition but refers to the date of the "*mere formality*" of validation and confirmation of the purchase deeds by the Registration Authority.

- The validity of Claimant's purchase and her status as the "*legally recognized owner*", "*legally confirmed owner*", "*legally registered owner*" and "*legally acknowledged owner*" of the Estates has been consistently recognized under Swedish law by several judicial decisions, injunctions, attachments and other related decisions.[19]

22. The Enforcement Office also alleged that the transaction was a "*sham*" on the basis that it "*concerned large amounts*" and because the registered owner (Claimant) allegedly did not have significant previous experience in forestry and no reported taxable income in Sweden for the years 2000 and 2001, an allegation that would be frequently repeated in the years to come:[20]

> "*In the present case transfer deeds regarding the parts or estates in question have been discovered, and Olga Ovchinnikova's acquisition been legally confirmed, only after the, for Frändén disadvantageous, result of the audit had become known, which fact undeniably appear as incriminating. In addition to this, the transfer has concerned large amounts and taken place to Frändén's spouse, who according to the enforcement office's claims did not declare any taxable income during neither 2000 or 2001. Finally Frändén personally, according to what is reported in the administrative court's*

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[18] As indicated by the District Court of Östersund Minutes of 12 November 2002, "*a transfer of real estate is valid in relation to the transferor's creditors on issuance of a written transfer deed and* […] *it is thus not required that the third party's acquisition, as in this case, has been officially confirmed*" and "*a request for legal confirmation and the granting of it is a mere formality once a transfer deed has been issued and legal protection vis-à-vis others is, as stated above, achieved already through the transfer.*" See District Court of Östersund Minutes of 12 November 2002, p. 3.

[19] See for example the Registration Authority's "*certificates of registration*" of 23 November 2001"*confirm*[ing] *the acquisition*", the Enforcement Office Observations of 30 September 2002 and the District Court of Östersund Minutes of 12 November 2002 stating that Claimant is the "*legally registered*" owner and "*legally acknowledged owner*" of the "*legally acquired*" Estates, the Enforcement Office Observations of 28 April 2003 stating that Claimant is the "*legally recognized owner*", the three Attachments of 8 April 2003, 18 February 2005 and 19 January 2006 stating that Claimant is the "*legally confirmed owner*", etc.

[20] District Court of Östersund Minutes of 12 November 2002.

> *decision on injunction, has not at all been heard from or participated by the tax audit. The surrounding circumstances are therefore according to the opinion of the district court such that very strong reasons support the proposition that the matter has been a sham transaction. The enforcement office has therefore had sufficient reason for its assessment. According to the above stated there has therefore been no obstacles against making the property subject to injunction. The appeal shall thus not be upheld.*"

23. While these statements were true, they are irrelevant and do not justify Sweden's highly inequitable treatment of Claimant's investments:

- Claimant does not dispute the finding that the transfer "*concerned large amounts,*" as Claimant purchased the Estates for their market value. Claimant was a foreign investor, however, and had assets at her disposal in Russia, her State of origin, as has already been confirmed before Swedish courts and conceded by the Tax Authority.

- Claimant did not have significant forestry experience, but this is entirely irrelevant to whether or not she had the capacity to make use of the Estates as she intended, or to justify Sweden's taking of her property rights.

- It is irrelevant that Claimant had no taxable income in Sweden for the years 2000 and 2001. Since her previous investments were in Russia, where she was previously located, it is quite normal that she would have no taxable income in Sweden.

24. When Claimant learned that her Estates had been unfairly targeted by the injunction, she appealed the Enforcement Office's First Injunction of 22 March 2002 before the District Court of Östersund on the ground that it lacked a legal basis and disregarded Claimant's ownership rights in the Estates. She argued that Claimant should not be deprived of property on account of another party's alleged tax debt, which in any event she lacked knowledge of at the time of the conveyance and did not even exist yet. Claimant stressed that the targeted assets did not belong to the Debtor (Mr. Jon Frändén) but to Claimant, as confirmed by the Registration Authority's issuance of "*certificates of registration,*" that no court decision had ever ruled that Claimant's assets should be the subject of an injunction[21] and that the

[21] The Administrative Court of Jamtland's decision of 8 March 2002 specified that it was Jon Frändén's assets which must be "*seized through the issuance of injunctions,*" not Claimant's.

Enforcement Office's First Injunction wrongly, unjustly and deliberately targeted Estates which it knew did not belong to the Debtor.

25. The Enforcement Office refused to modify its conclusions, however, and the District Court of Östersund's refused to uphold Claimant's appeal of the First Injunction on the Estates.[22]

26. Claimant divorced Mr. Frändén on 18 October 2002, after unsuccessfully attempting to get him to pay the amounts that were claimed by the Swedish State, some of which he contested.

C. Phase 2 of Sweden's Expropriation of Claimant's Investment: Attachments Targeting Claimant's Estates

27. Further to the First Injunction of 22 March 2002, the Enforcement Office made three decisions resulting in the Attachment of Claimant's Estates respectively on 8 April 2003, 18 February 2005 and 19 January 2006. The Enforcement Office issued the First Attachment on Claimant's Estates in order to collect "*overdue taxes on Jon Frändén*"[23] and the Second Attachment "*for the benefit of civil creditors.*"[24]

28. Under Swedish law, an Attachment ("*utmätning*" in Swedish) is a forced taking of property in order to sell it and settle overdue debts, with residual rights remaining for the owner.

29. As was the case for the First Injunction of 22 March 2002, the text of each of the Attachments provides that the attached Estates were not the property of the actual Debtor, Jon Frändén, but that their "*legally confirmed owner*" was a third party, namely Ms. Olga Ovchinnikova, his former spouse. The Attachments failed to state any motives or any legal justification as to why a third-party could be deprived of her property in Sweden.

30. Claimant appealed the First Attachment of 8 April 2003 and appealed the Second and Third Attachments together on 18 February 2005 and 19 January 2006, to no avail. Each time, Claimant stressed that the attached property did not belong to the Debtor (Jon Frändén) but to Claimant herself who was their "*legally recognized owner*" and that Claimant should not

[22] Enforcement Office Observations of 30 September 2002; District Court of Östersund Minutes of 12 November 2002.

[23] Enforcement Office Observations of 28 April 2003.

[24] Enforcement Office Observations of 13 February 2006.

be held liable for the debt of another, whether they are tax debts or debts to private individuals who applied to the Enforcement Office further to a judgment,[25] which in any event she lacked knowledge of on the date of the conveyance of 25 October 2001.

1. The First Attachment

31. Claimant appealed the First Attachment to the Enforcement Office. In its Observations of 24 April 2003, the Enforcement Office stated that it did not intend to correct its decision for the reasons expressed in its Observations of 30 September 2002 to the District Court of Östersund, giving no legal explanation for its decision. The District Court of Östersund, which heard the appeal of the First Attachment, should have ruled in accordance with Swedish law but did not.

32. According to 4 kap 24 § of the main law on collection ("*utsökningsbalken*"), "*Immovable property may be attached if it is clear that the property belongs to the debtor. If the debtor is the legally recognised owner, attachment may take place, if it is not clear that the property belongs to someone else.*" Here, the property did not belong to the debtor, but to Claimant. The Debtor was also not the legally-recognized owner of the property. There were thus no remotely valid grounds for the District Court of Östersund to conclude that the property belonged to anyone other than Claimant, or to conclude that the property could be subjected to attachments for another's debts.

33. Yet, the District Court of Östersund recopied in its Minutes of 17 October 2003, almost *verbatim* (including grammatical errors), the bad faith motives already expressed by the Enforcement Office and the District Court of Östersund in relation to the First Injunction of 22 March 2002. It again falsely suggested that the transfer took place after the tax audit was known and that it was suspicious that a large transaction would take place with a woman who had no taxable income in Sweden in 2000 and 2001:

> "[T]*he transfer deeds* […] *have been discovered only after the* […] *disadvantageous results of the audit had become known,* […] *the transfer concerned large amounts,* [Claimant] *did not declare any taxable income*

[25] Erik Frändén, Lina von Sydow and Agnes Frändén are the applicants, Enforcement Office Observations of 13 February 2006.

> *during neither 2000 or 2001,* […] *these circumstances are such that very strong reasons support the proposition that the conveyance of the estate has been a sham transaction* [so] *it* […] *is clear that the estates in question belong to Jon Frändén.*"[26]

34. Although it was obviously not "*clear that the property belongs to the debtor,*" as required by 4 kap 24 § of the main law on collection ("*utsökningsbalken*") in order for the Attachment to be valid, Claimant's Estates were nonetheless subjected to a First Attachment.

2. The Second and Third Attachments

35. Following the First Attachment, two additional attachments were made on the Estates, as if Claimant had not purchased them.

36. Claimant appealed the Second and Third Attachments of 18 February 2005 and 19 January 2006 together before the Enforcement Office which, in its Observations on 13 February 2006, again gave no legal justification for its actions but simply back-referenced its previous incorrect Observations relating to the First Injunction, to the First Attachment and to previous District Court's decisions in Claimant's disfavour.

37. In her appeal, Claimant requested the Court to (1) remove the Attachments from her properties, (2) combine this case with the District Court's case T-170-05 relating to the determination of the better right to the Estates and (3) alternatively, declare this case "*dormant*" (i.e., suspended) pending the determination of the better rights to the Estates in the case T-170-05,[27] in order to first settle issues of ownership of the Estates if there were any.

38. The District Court of Östersund rejected Claimant's request that the Attachments be removed on the usual bad faith grounds that the transaction supposedly took place after the tax audit was discovered, which is untrue, and the fact that Claimant did not declare taxable income in 2000 or 2001, which was irrelevant:

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[26] District Court of Östersund Minutes of 17 October 2003.

[27] Jan Thörnhammar's letter of 22 February 2006.

> "*In the present case transfer deeds regarding the parts of estates in question have been discovered only after the for Jon Frändén disadvantageous result of the tax audit had become known. In addition to this, the transfer has concerned large amounts and taken place to Frändén's spouse, who according to the enforcement office's claims did not declare any taxable income during neither 2000 or 2001. These circumstances are such that very strong reasons support the proposition that the conveyance of the estate has been a sham transaction. The district court finds that it from this is clear that the estates in question belong to Jon Frändén.*"[28]

39. The District Court of Östersund also rejected Claimant's request that the present case be combined with case T-170-05 relating to the determination of the better ownership right to the Estates, on the ground that "*the same form of court proceedings does not apply*" to the two cases.[29]

40. The District Court of Östersund further rejected Claimant's request that the case be declared "*dormant*" (i.e., suspended) pending the resolution of the case T-170-05 on the ground that it did not consider that a judicial finding that Claimant was the legal owner of the Estates would be a "*hindrance*" to the Estates being attached for the debts of someone else.[30]

41. While it is manifestly unjust to reach a conclusion to subject a property to injunctions and attachments for a third-party's debts while refusing to address issues of ownership, the District Court of Östersund's decision on Claimant's request clarifies its reasoning and summarizes well Sweden's judicial organs' overall position regarding Claimant's purchase of the Estates. The District Court of Östersund stated that it did not consider that a judicial finding in the case T-170-05 that Claimant was the owner of the Estates would be a "*hindrance*" to attaching the Estates. In other terms, whether or not Claimant was the legitimate owner of the Estates was simply irrelevant to Sweden's judiciary.

42. It is difficult to understand what might have been expected of Claimant in order to retain her ownership rights, and indeed nothing was ever suggested by Swedish State organs. Respondent's organs simply constructed a false narrative according to which Jon Frändén did

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[28] District Court of Östersund Minutes of 13 March 2006, p. 4

[29] District Court of Östersund Minutes of 13 March 2006, p. 4.

[30] District Court of Östersund Minutes of 13 March 2006, p. 4.

not declare taxable income, failed to cooperate during his tax audit, awaited a Tax Memorandum and then, with antedated purchase deeds, conveyed Estates to a wife who supposedly did not have the funds to buy property herself. To be very clear, such a narrative is false and is unsupported by a shred of evidence.

43. Ensuring that Claimant would gradually lose control and ownership of the Estates is the only plausible explanation of Swedish organs' actions as none of the legal decisions made by the Administrative Court of Jamtland, the Enforcement Office or the District Court of Östersund address the question of Claimant's ownership of the Estates, but rather seek ways to confiscate them "*in spite of* [Claimant] *being the legally recognized owner*"[31] of the Estates, while also reaching the contradictory conclusion that it is "*clear that the estates in question belong to Jon Frändén.*"[32]

44. There can be no doubt that, throughout the numerous legal proceedings which have taken place since 2002, Sweden's judicial organs have refused to recognize Claimant's property rights in a manifestly unjust manner, despite the fact that nothing prevented Jon Frändén from transferring the properties before the Administrative Court of Jamtland's decision of 8 March 2002 to issue injunctions, and despite Claimant's fulfilment of all legal requirements to gain legal title to the Estates being acknowledged by the very same Swedish courts which stripped her of her investments without prompt, adequate and effective compensation.

45. The Enforcement Office would also later issue a Second Injunction in November 2006 on the land which Claimant was unable to appeal since she was not even provided notice that it was issued.

3. Claimant's Request for a Determination of Better Rights Is Rejected

46. In parallel to Claimant's appeals of the Attachments, Claimant initiated, on 18 January 2005, an action before the District Court of Östersund[33] whereby Claimant sought a declaratory judgment confirming Claimant's ownership of the Estates and a finding that her rights to the

[31] District Court of Östersund Minutes of 13 March 2006, p. 3.

[32] District Court of Östersund Minutes of 13 March 2006, p. 4.

[33] Claimant initially attempted to have the case heard by the District Court of Ångermanland because of the District Court of Östersund's obvious bias against Claimant, but to no avail.

Estates are superior to the Enforcement Office's. Claimant also requested the Court to declare that her legally confirmed ownership of the Estates was a "*hindrance*" to any attachments for the debts of third parties.

47. In addition to these proceedings, Claimant also initiated proceedings against Lina von Sydow, Erik Frändén and Agnes Frändén in their capacities as beneficiaries of the Second Attachment, since the Court had been glad to grant attachments on the foreign investor's property to Swedish nationals for claims against Jon Frändén.[34]

48. Although Claimant initiated the proceedings on 18 January 2005, the District Court ruled only 2 ½ years later, on 29 June 2007 that, as a public auction sale had taken place on 2 June 2006 (against Claimant's will and 1 ½ year after she first sought declaratory judgment) any uncertainty in relation to ownership had disappeared and Claimant's rights could not affect the sale. In particular, the District Court rejected Claimant's petitions for a declaratory judgment using circular logic that there was nothing unclear about the legal situation regarding the ownership of the Estates since a sale had already taken place:

> "***The claim raised in this case cannot affect the sale of the estates that is described above and which has already taken place. If so there cannot be anything unclear about the legal situation as regards the ownership of the estates***. *A prerequisite to allow a petition for a declaratory judgment is that there is something unclear about a legal situation and that this unclearness prejudices the petitioner. This prerequisite is not present in the case at hand and for this reason Olga Ovchinnikova's petition in the case is not allowed.*"[35] [Emphases added]

49. It is difficult to imagine what Claimant could have done in order for her claims to be heard fairly or to have her property rights given more than lip service by Swedish State organs. Claimant's requests for the determination of the better rights to the Estates were aimed at obtaining a second judicial confirmation[36] that Claimant was the legal owner of the Estates in order to prevent Respondent from attaching them and taking further steps towards ordering

[34] The proceedings against Erik von Sydow and Agnes Frändén concerned only Claimant's right to her own parts of the Estates, or more directly her right not to have her parts attached for claims raised against Jon Frändén.

[35] District Court of Östersund Decision of 29 June 2007, p. 3.

[36] The Registration Authority's issuance of the certificates of 23 November 2001 was the first judicial confirmation of Claimant's ownership of the Estates.

a public auction sale, which is why Claimant initiated the proceedings as early as 18 January 2005, before lodging her first appeal of the Second and Third Attachments.

50. While Sweden had multiple opportunities to remedy the harm caused by its wrongful attachments of her property, Sweden's judicial organs, in another manifestation of injustice, preferred to rule that a determination of Claimant's rights was unnecessary and would not be a "*hindrance*" to attaching the Estates for the debts of a third party,[37] then to wait until after the properties had been confiscated from Claimant to reach the circular argument that it was too late for Claimant's ownership rights to have an impact on the status of the Estate as her property had been sold and registered to new buyers.[38]

D. Phase 3 of Sweden's Expropriation of Claimant's Investments: A Public Auction Ignoring Claimant's Property Rights and Selling Her Estates against Her Will

51. Further to Jon Frändén's application of 5 September 2001 for a public auction sale initially aimed at allowing Claimant to acquire the remaining minority parts of the Estates (15 % of the Estate of Åsen and 28,875% of the Estate of Viken) as part of the second phase of her acquisition process in 2002, the District Court of Sveg, in its decision of 29 November 2001, had appointed a trustee, Håkan Müntzing, to arrange the auction, distribute the monies and issue the sales deeds, and ruled that the each Estate could not be sold below 2,000,000 SEK.[39]

52. Claimant legitimately expected to benefit from this public auction sale, which was expected to be held during the summer of 2002, in order to complete her investment and own the entirety of the Estates. It could not be held, however, because the Enforcement Office's wrongful First Injunction of 22 March 2002 prevented the trustee from "*selling or otherwise disposing of*" the Estates.

53. The trustee, Håkan Müntzing, subsequently requested his discharge as trustee in what the evidence shows to be a reaction to the Enforcement Office's inquiries into what it referred to

[37] District Court of Östersund Minutes of 13 March 2006, p. 4.

[38] District Court of Östersund Decision of 29 June 2007.

[39] District Court of Sveg decision of 29 November 2001.

as the "*suspicious* […] *surrounding circumstances*" of the transfer of 25 October 2001.[40] On 15 October 2003, the District Court of Sveg discharged Håkan Müntzing and appointed Mårten Janzon as trustee.[41]

54. A sale of the Estates should not have been capable of being held under Swedish law by reason of Claimant's challenge of the First Attachment, which was underway, and a stay of execution having been granted.[42]

55. Nevertheless, in violation of Swedish law, the trustee appointed by the District Court of Sveg, Mårten Janzon, held a public auction sale on 2 June 2006 and transferred the Åsen Estate to Anders Skoglung for 3,000,000 SEK and the Viken Estate to D Carlberg & Son for 4,200,000 SEK,[43] against Claimant's will and despite her many protestations. Mårten Janzon further issued Purchase Deeds dated 29 September 2006 to new owners.

56. Holding such a sale approximately two weeks before the scheduled hearing of 15 June 2006 can only be seen as an attempt to strip Claimant of her properties and prejudice any possible successful outcome for Claimant regarding her title to the Estates, while placing the District Court before a "*fait accompli*" that could not be undone when it heard her challenge on the First Attachment on 15 June 2006. Not only did holding the public auction sale of 2 June 2006 blatantly disregard Claimant's ownership of the Estates, its timing was specifically scheduled to allow for their taking before she could obtain the removal of the Attachment.

1. The Expropriatory Nature of the Public Sale Auction

57. The terms of the auction of Claimant's Estates were specifically drafted to undermine Claimant's ownership rights and strip her of her properties without prompt, adequate and

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[40] As stated in the Enforcement Office Observations of 30 September 2002 and District Court of Östersund Minutes of 12 November 2002.

[41] District Court of Sveg decision of 15 October 2003.

[42] A sale because of the attachments would have been an "*executive sale*" performed by the Enforcement Office. It would have led to the attachments' being extinguished. Such a sale was forbidden through the stay of execution, until Claimant's challenge had been heard. The three Attachments of 8 April 2003, 18 February 2005 and 19 January 2006 should not have been able to lead to any measures of enforcement against Claimant's Estates while the stay was pending.

[43] Purchase deeds of 29 September 2006, see also Tax Agency's letter of 15 June 2006 addressed to Claimant.

effective compensation.

58. First, Article 8 of the Purchase Contracts entered into by the trustee appointed by the District Court of Sveg on behalf of all co-owners (up to 8 members of the Frändén family and Claimant) and the buyers (Anders Skoglung and D Carlberg & Son) explicitly provides that, if a co-owner of the Estates wishes to purchase the Estates, the "*entire purchase price shall be paid*," meaning that had Claimant wished to repurchase her property a second time, her previous ownership rights would be ignored and she would have to repay what she had already paid for the Estates.

59. The Memorandum regarding the Estate of Härjedalen Viken 11:7 and the Estate of Härjedalen Åsen 4:6 similarly records that the co-owner shall pay the "*full purchase price* [and] *not only the part of the purchase price corresponding to the other owners,*" again ignoring Claimant's ownership of the Estates.

60. Article 8 of the Purchase Contracts specifically targets Claimant, listed as a co-owner on both Purchase Contracts, who would either lose the whole of the value of her investment (if the Estates were sold to someone else) or be forced to purchase both the minority parts *and* the majority parts already purchased from Jon Frändén on 25 October 2001, as if she were not already a co-owner of the Estates. Providing that, as a part-owner, Claimant would have to pay 100% of their purchase price in order to obtain – in her case, actually, retain – ownership, was clearly unjust.

61. Second, the text of the Articles 13 of the Purchase Contracts of 2 June 2006 for the Åsen Estate and 15 for the Viken Estate circumvented the provisions of Swedish law in order to turn a "*private sale*" into what was in effect an "*executive sale*" and to strip Claimant of the monies she was otherwise entitled to further to the sale of her Estates.

62. Under Swedish law, when an attached property is *privately* sold, the property remains attached in the hands of the buyer and the purchase price is reduced accordingly, and the court therefore has no control over the amount of money generated by the sale. On the other hand, an *executive* sale frees the property of the attachment and the creditor (in favour of whom the attachment was granted) is entitled to an amount of money equivalent to the value

of the attachment. In practical terms, for the creditor, the monies generated by an executive sale replace the attached property.

63. In the present case, the auction sale took place under the form of a private sale but was treated as an executive sale. Articles 13 of the Purchase Contracts of 2 June 2006 for the Åsen Estate and 15 for the Viken Estate provide that if the trustee "*in any way makes the assessment that the attachments are not fully removed from the estate on the day of access* [i.e. 29 September 2006]*, the trustee is entitled to cancel the purchase regarding the estate.*" Despite Articles 13 and 15 of the Purchase Contracts, the properties were still attached on the day of issuance of the purchase deeds (29 September 2006). The purchasers should have therefore acquired the properties along with their attachments, or the sale should have been cancelled, although neither were true.

64. Sweden's judicial organs' attempts to give the auction the legal consequences of an executive sale also include the use of executive sale terminology, such as "*money received from the attached parts,*" [44] "*money deposited after the sale of the estates*"[45] and "*sale proceeds*"[46] which do not apply to a private sale. No money can be "*received*" by the court and there cannot be "*proceeds*" from a private sale as the court has no right or control over the monies generated, and no money can be "*deposited*" by the court which does not act as a custodian for a private sale.

65. By forcing upon Claimant an auction sale on the one hand, and imposing terms and language typical of an executive sale on the other hand, Swedish State organs ensured that Claimant would both lose her properties and not be paid further to their sale.

66. On the basis of the Articles 13 and 15 of the Purchase Contracts, upon payment of the purchase price during fall 2006, the trustee appointed by the District Court of Sveg distributed the majority portion of the monies generated by the sale to the Enforcement Office to have it cancel the three Attachments[47] illegally burdening the Estates (3,500,000 SEK, including

[44] See for example Court of Appeal for Lower Norrland of 10 June 2008 pp. 2-3.

[45] See for example Court of Appeal for Lower Norrland of 10 June 2008 p. 3.

[46] See for example District Court of Östersund Decision of 29 June 2007, p. 2.

[47] Three Attachments of 8 April 2003, 18 February 2005 and 19 January 2006, as discussed above.

2,534,901 for the debts of the Debtor to the Tax Agency)[48] for the benefit of the "*owners*" and gave an insignificant portion to Claimant, approximately 1,500,000 SEK, although the trustee had collected approximately 5,600,000 SEK in Claimant's name.[49] In addition to depriving Claimant of almost the entirety of payment from the sale, this sale of the Estates was also clearly undervalued as the Åsen Estate 4:6 alone was re-sold a year later for 8,200,000 SEK, 2.73 times the highest bid at the auction.

67. In reality, the trustee's distribution to the Enforcement Office amounted to using the monies generated by the undervalued sale of Claimant's investment against her will to pay the Enforcement Office for the debts of a third party, the Debtor, not only ignoring Claimant's ownership rights but putting an end to Claimant's ownership rights of the Estates in all practical aspects while also preventing her from benefiting from the sale.

2. The Swedish Tax Agency's Attempt to Racketeer Claimant

68. In addition to the holding of the auction and to its expropriatory terms for Claimant, the letter of the Tax Agency of 29 June 2006 reveals the judicial authorities' true intention to simply racketeer Claimant. The Tax Agency "*suggests*" that Claimant immediately transfer 2,000,000 SEK to the Tax Agency as payment for her ex-husband's taxes and fees in exchange for its support in the T-170-05 case, whereby Claimant attempted to obtain a determination of a better ownership right to the Estates, and the assurance that the Tax Agency would remove the attachments on Claimant's property if she paid her ex-husband's taxes:

> "*A suggestion is that the Tax Agency from this amount receives 2,000,000 crowns to be credited to the taxes and fees of Frändén.*
> *The Tax Agency will then agree to the claim raised in case T 170-05 at the Östersund District Court. A prerequisite for this agreement is that each party carries its own legal costs.*

[48] Tax Agency's letter of 29 June 2006 addressed to Claimant.

[49] Although the value of the Estates was largely understated at the auction sale, Claimant's ownership rights, in proportion of the sale value, entitled her to "*claims* […] *in excess of 2.9 million* [for the Viken Estate] *and 2.5 million* [for the Åsen Estate]"; Tax Agency's letter of 15 June 2006 addressed to Claimant.

> *The Tax Agency would then also refrain from later having any estate of fraction of estate, Olga Ovchinnikova's ownership of which is today legally confirmed, attached on account of Frändén's debts for taxes and fees.*"

69. In practical terms, the Tax Agency's offer again assumes that Claimant's "*legally confirmed*" ownership of the Estates was worthless, while threatening to continue the attachment on her investment unless a third-party's debt was paid.

70. Claimant's many attempts to mitigate her loss and recoup a larger part of the amount generated by the auction sale from April 2008 to November 2010 were not only unsuccessful, but led Swedish State organs to take increasingly punitive measures against her, eventually including her arrest and imprisonment.

E. Sweden's Arrest and Imprisonment of Claimant

71. In addition to being deprived of her investments against her will and without prompt, adequate and effective relief, Claimant became the subject of harassment, attempted deportation and wrongful imprisonment given her vocal efforts to uphold her basic property rights.

72. At the showing of the Viken buildings in March 2005, the police first harassed Claimant and sought to discourage her from attempting to uphold her legal rights by threatening her that she should be "*very careful* [as she could] *be suspected of many crimes.*"

73. Claimant was then registered as having left the country permanently in December 2006 by the Tax Authority, which was untrue, and her residence permit was revoked in February 2007.[50] Both decisions were eventually overturned on appeal, in December 2007 and April 2008, but required the expenditure of considerable time and cost by Claimant.

74. Far more damaging to Claimant's remaining investments in Sweden and her reputation, however, Claimant was arrested and sentenced to prison.

[50] During the autumn of 2006, the Swedish former minority owner of the Estates, Olof Frändén, set in motion a procedure to have Claimant's Swedish residence permit revoked on the ground that Claimant no longer resided in Sweden, which was untrue.

75. Imprisonment was grossly disproportional to the offences charged, which arguably do not even constitute "*crimes*" under Swedish law, and it is clear that Claimant was being targeted by Swedish State organs for her vocal stance with respect to the violation of her own ownership rights, combined with Sweden's anger that her ex-husband was outside of its jurisdiction and had not paid taxes that were demanded.

76. The most severe accusation against Claimant was that a company in which Claimant held a position had made an incorrect statement in a tax declaration four years earlier – a mistake which was however immediately noticed and corrected.

77. Claimant was, for the first time in her life, arrested while attending a court hearing in Gävle on 1 February 2007. Upon Claimant's arrest, the District Court of Östersund immediately ruled that Claimant should be imprisoned while awaiting trial on wholly spurious grounds that she would flee, destroy evidence and would "*continue her criminal activities*":

- The District Court of Östersund claimed that there was a "*risk for the suspect to abscond or otherwise evade prosecution or punishment*" on the basis of the prosecution's comment that Claimant "*emigrated and is no longer on the population register in Sweden*,"[51] which is hardly surprising as it was Respondent's Tax Authority which had conveniently decided to remove Claimant from the population register without verifying the veracity of the information provided by a Swedish national. In addition, Claimant had other investments in Sweden by this time and obviously would not abandon them.

- The District Court of Östersund also ruled that there was a "*risk for the suspect through destruction of evidence or otherwise to make the investigation of the matter more difficult*" on the basis of the prosecutor's comment that "*during the hearing has surfaced information on where documents concerning the companies can be sought after*."[52] It is difficult to understand how a court may reasonably fear destruction of evidence considering that the alleged offenses were only minor VAT and bookkeeping errors, that Claimant never objected to the prosecutor and the Tax Authority's investigation and had

[51] District Court of Östersund Minutes of 2 February 2005, pp. 3, 4.

[52] District Court of Östersund Minutes of 2 February 2007, pp. 3, 4.

even volunteered to meet with the police and prosecutor further to their letters of January and June 2006, and that Claimant had never been accused of attempting to dissimulate or destroy evidence or another crime before.

- Third, the District Court of Östersund ruled that there was a "*risk for the suspect to continue her criminal activities*" on the basis of the prosecutor's comment that "*there is a risk for continued criminality since the criminality here at hand covers the period 2002 – 2005*."[53] The alleged offence ended at least two years before the arrest, however, and concerned Mr. Frändén's bookkeeping, not Claimant's. It is worth noting that the prosecutor did not find any evidence of further errors in Claimant's accounting after having had the opportunity to investigate the conduct of her affairs in Sweden for two years.

78. Claimant was kept in prison on pre-trial detention until 2 April 2007.[54] During her imprisonment from February to April 2007, Claimant's premises were ransacked in search of evidence to retroactively incriminate her and objects and numerous documents were seized. The raids on Claimant's premises were conducted in an unnecessarily brutal manner, doors were broken, objects thrown around and stepped on and records of officially seized material made it impossible to know what was in fact taken (e.g., "*a bunch of papers*"). Claimant's imprisonment also provided the prosecution with the opportunity to seize and go through Claimant's personal belongings (e.g. mobile phone, calendar, camera, etc.) which evidently lacked relevance in relation to company accounts several years earlier.

79. Moreover, investigators illegally obtained Claimant's mobile phone password and used it to unlock the mobile and to receive incoming calls, obtained Claimant's business and bank contacts and intercepted certain email correspondence in direct violation of local laws (which was later criticized by the Parliamentary Ombudsmen (Riksdagens Ombudsmän) in case 2138-2007).

80. It is obvious that the prosecution was not investigating specific crimes but rather attempting

[53] District Court of Östersund Minutes of 2 February 2007, pp. 3-4.

[54] District Court of Östersund Verdict of 5 April 2007, p. 1.

to find evidence which could further incriminate or embarrass Claimant.

81. While Claimant was in prison, the Swedish Court of Appeals approved the "*buyers*" of the Estates being granted official recognition as owners and the trustee distributed the monies generated from the sale of the Estates to the State. The State-appointed Trustee also distributed the monies generated from the sale of Claimant's Estates.

82. The original charges were either dropped before the trial or did not result in conviction. The charges that led to conviction in the District Court were devised after Claimant's arrest. The alleged offences were in fact minor errors in VAT statements in 2002 – 2003 and minor bookkeeping errors (e.g. annual reports not "*issued timely in the manner described in the* […] *legal regulation*" and "*failure to keep book keeping material*"), in relation to companies named Lupus, Tarhunah, Strömherren, Västanede and Tolftflon.[55]

83. Claimant had not handled bookkeeping or payments at these companies, her ex-husband had. Jon Frändén has two Masters degrees, one being master of science, within the field of economics, with specialisation in accountancy, and the other being master of laws. Claimant "*handled and had all influence in what regarded contacts with sales people, to find appropriate goods, purchase and sale of goods and to procure funds for the transactions [while] Jon Frändén on the other hand took care of all book keeping and reporting in the companies and […] handled payments through banks*".[56] The auditor for the Lupus company, Sonny Jansson, stated that during their meetings "*Jon Frändén was the principal* [and that Claimant] *did not say much*"[57] and Håkan Uddström, who was also asked to audit Lupus, stated that although Claimant "*was member of the board and also managing director* [of Lupus], *his main contacts were with the member of the board Jon Frändén*".[58] Further, Jan-Christer Persson, the auditor for Tarhunah stated that "*he was only in touch with Jon Frändén*". [59]

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55 District Court of Östersund Verdict of 5 April 2007, pp. 17-20.

56 District Court of Östersund Verdict of 5 April 2007, p. 6.

57 District Court of Östersund Verdict of 5 April 2007, p. 12.

58 District Court of Östersund Verdict of 5 April 2007, p. 13.

59 District Court of Östersund Verdict of 5 April 2007, p. 14.

84. Although her ex-husband was responsible for bookkeeping and the irregularities were minor, on 5 April 2007 Claimant was sentenced to 3 months of imprisonment by the District Court of Östersund, and Claimant was convicted of tax fraud.[60]

85. Claimant appealed the District Court of Östersund's conviction but, rather than obtaining relief, a year later the Court of Appeal for Lower Norrland extended the prison term to which Claimant was sentenced to eight months. This was partly on the basis of the unfounded assumption that "*it is obvious that* [a woman] *with her background and experience*" (i.e., now a "*criminal*") could not have been unaware of the tasks conducted by her business partner.[61]

86. Similarly, in relation to the "*failure to keep book keeping material*" and for "*having provided incorrect statement in the tax declaration,*" the Court of Appeal for Lower Norrland seems satisfied that it was enough for Claimant to be generally "*well informed*" and "*well acquainted*" with the activities of the Lupus, Tarhunah and Octerera companies[62] to find her guilty and, in relation to her accountancy duty, that it was sufficient that Claimant was an experienced business woman who is a "*member of a board*" of Västanede and Tolftflon to find her guilty.[63]

87. Shockingly, the Court of Appeal for Lower Norrland found Claimant criminally liable for an "*incorrect claim being recorded*" in relation to the Frändén Skog company but, as Claimant was neither on the board nor signs the annual reports for this company, the court had no choice but to rely solely on "*her education and experience from the business world*"[64] in order to convict her in the place of her ex-husband.

88. Claimant then sought to bring her case before the Swedish Supreme Court, but leave to appeal was rejected.

89. During this period, Claimant was also subjected to several tax reassessments in September 2007 which did not rely on *bona fide* assessments or interpretations of tax law but were rather

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60 District Court of Östersund Verdict of 5 April 2007, pp. 5, 6, 12.

61 Court of Appeal for Lower Norrland Verdict of 8 October 2008, p. 4.

62 Court of Appeal for Lower Norrland Verdict of 8 October 2008, pp. 7-8.

63 Court of Appeal for Lower Norrland Verdict of 8 October 2008, p. 11.

64 Court of Appeal for Lower Norrland Verdict of 8 October 2008, p. 9.

a result of Claimant being targeted by State organs and solely aimed at causing Claimant further additional financial harm.

90. It was the imprisonment that did the most damage to Claimant's health, reputation and non-Estate-related business activities. Even a judicial decision overruling the decision to imprison Claimant would be insufficient to remove the social stigma of having been incarcerated for the first time in her life and to cure the mental, bodily and financial harm caused, where the conditions of detention were designed to impair the possibilities of defence, cause discomfort, mental and physical damage, and Claimant was restricted from having any contacts with the outside world.

91. During her imprisonment, Swedish State organs even rejected Claimant's request to contact the Russian Consulate in violation of Sweden's undertakings under public international law.

92. To make matters worse, the Swedish public prosecutor went on to publicly shame Claimant and to interfere with her business relations, directly harming Claimant's other investment in the country.

F. The Public Shaming of Claimant by the Swedish Prosecutor

93. During Claimant's imprisonment, the Swedish prosecutor publicized Claimant's case in every possible way by making repeated statements in local newspapers and making public statements as to Claimant's guilt and the publicly-alleged "*scheming and serpentine nature*" of her actions.

94. Further to the ransacking of Claimant's premises in February 2007, the prosecution was actively searching for and speaking with Claimant's business contacts, such as banks and other financial institutions, with the obvious intent to disturb and destroy her business relations, which the prosecution also achieved by answering Claimant's incoming mobile calls during Claimant's incarceration (which is a fact documented by the official mobile record), subjecting callers to interrogation and explicitly suggesting to stop cooperating with

Claimant and her companies.[65]

95. The prosecutor's advertising of information about Claimant's arrest and detention, and its answering of her calls, directly harmed Claimant's other investment in Sweden, most directly by causing banks to cancel existing loans to another of Claimant's investments, AB Lytkina Fastighetsförvaltning, a subsidiary of the Tolftflon Real Estate Company Group also owned by Claimant.[66]

96. AB Lytkina Fastighetsförvaltning's records had been seized by the prosecution during the raids conducted shortly after Claimant's arrest in February 2007. The next month, in March 2007, while Claimant was still imprisoned, Handelsbanken and the Swedbank[67] were induced to cancel all loans to AB Lytkina Fastighetsförvaltning. The loan cancellations were clearly caused by Claimant's imprisonment and the public divulgation of information concerning it by the prosecutor. Swedbank's cancellation of the loan contained an instruction that it should be delivered to Claimant "*presently under arrest*" at a particular prison facility: in its claim of 3 March 2007, the bank writes that "*Ovchinnikova is presently under arrest and can be served with the claim at Kriminalvården, Häktet i Härnösand, Box 193, 871 24 Härnösand*." This information obviously originated from Swedish State organs, since Claimant's own communications were restricted and under the control of the prosecutor from prison.[68]

97. Swedbank refused Claimant's offer to pay AB Lytkina Fastighetsförvaltning's debts in return for the collateral held by the Swedbank and, instead of accepting to receive its money back, the Swedbank insisted on the forced sale of the company's largest piece of real estate, largely below its market value, thereby putting an end to the existing loan and causing additional harm to Claimant's investments in Sweden.

98. Claimant's attempts to argue AB Lytkina Fastighetsförvaltning's case before the national

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[65] This will be shown by witness statements of individuals who spoke with the prosecutor.

[66] While the cancellation of the company's loans was officially motivated by delayed interest payments, there were in fact no outstanding payments as any delays in loan payments had already been settled and all payments fulfilled in January 2007.

[67] The Swedbank AB and the Swedbank Hypothek AB.

[68] The cancellation of the company's loans was officially motivated by delayed interest payments, but there were in fact no outstanding payments as any delays in loan payments had already been settled and all payments fulfilled in January 2007.

courts were unsuccessful, as Swedish courts refused to consider them. While AB Lytkina Fastighetsförvaltning was attempting to argue its case before the courts, several enforcement orders deprived of legal support were also issued by State organs, which resulted in depriving the company of its incoming cash-flow and left it unable to maintain its basic operations.

99. The Swedbank Hypotek AB and the Swedbank AB's cancellations of loans taken by AB Lytkina Fastighetsförvaltning directly resulted in the company's bankruptcy. This would not have occurred unless the prosecutor had publicly-divulged information concerning Claimant's imprisonment and Claimant had not been unjustly imprisoned. It would also not have occurred if the Estates had not been wrongfully taken from Claimant, since Claimant's Tolftflon Real Estate Company Group could have handled the loan cancellations but, as Respondent had placed the Real Estate Company Group in a financially vulnerable position by confiscating the Estates, the loan cancellations had a destructive effect which could only lead to the sale of the Group's most valuable assets and to the bankruptcy of AB Lytkina Fastighetsförvaltning in July 2010.

100. Further to the prosecution's actions and cancellations of the loans, creditors of AB Strömherren, another subsidiary of the Tolftflon Real Estate Company Group owned by Claimant, also increased the interest rate on the main mortgage loan significantly until it became unsustainable, forcing Claimant to sell AB Strömherren's main piece of real estate in June 2014 well below market prices and leading to additional losses.

101. While Claimant can understand Sweden's frustration that it wished to reclaim debt that was claimed against her ex-husband, who was no longer living in Sweden, this did not give Swedish State organs the right to ignore Sweden's own laws, to expropriate Claimant's investment, to hold Claimant responsible for minor accounting irregularities for which her ex-spouse was responsible, or to publicly shame Claimant while harming her existing investments. In addition to being morally reprehensible, Sweden's actions constitute perfectly clear violations of the Sweden-Russia BIT, which was intended to protect foreign investors from precisely such abuses.

III. JURISDICTION OF THE ARBITRAL TRIBUNAL UNDER THE SWEDEN-RUSSIA BIT

A. Sweden's Consent to Arbitration

102. Article 8 of the Bilateral Investment Treaty of 19 April 1995 between Sweden and the Russian Federation includes provisions to ensure effective party consent to arbitration. The Parties' consent to submit the present dispute to arbitration under the UNCITRAL Arbitration Rules is contained in Article 8(2) of the BIT which provides that "[the dispute] *shall at the request of the investor be submitted to an ad hoc tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)*" and that "*the decision of the arbitral tribunal shall be final and binding on the parties to the dispute*." Therefore, having disputes resolved via arbitration under the UNCITRAL Rules is the default procedure if the disputing Parties do not agree on a method of settlement within six months of the date of this notice. It cannot be disputed that Sweden has consented to Arbitration for the reasons set forth below.

103. An arbitral tribunal has jurisdiction (a) *ratione personae*, (b) *ratione materiae*, and (c) *ratione temporis* over the present dispute.

B. An Arbitral Tribunal has Jurisdiction *Ratione Personae* over this Dispute

104. Sweden is clearly a "*Contracting Party*" within the terms of the BIT and Claimant clearly qualifies as an "*Investor*" in Sweden.

105. According to Article 1(2) of the BIT, physical individuals clearly qualify as investors:

> "*(2) The term 'Investor' shall mean:*
> *(a) any natural person who is a citizen of a Contracting Party in accordance with its laws;*
> *(b) any legal person constituted in accordance with the legislation of a Contracting Party.*"

106. Olga Ovchinnikova is a national of one Contracting Party, the Russian Federation. The issue of the citizenship of Olga Ovchinnikova was never disputed in the various decisions targeting

Claimant's Estates or her other investments in Sweden.

107. It cannot be disputed that both Claimant and Sweden are proper Parties to the arbitration.

C. An Arbitral Tribunal has Jurisdiction *Ratione Materiae* over this Dispute

108. An arbitral tribunal also has jurisdiction *ratione materiae* over this dispute. Article 8 of the Sweden-Russian Federation BIT allows disputes between an Investor and a Contracting Party concerning an Investment to be settled via arbitration, after a six-month period of attempting settlement:

> "*Article 8*
>
> *Disputes between an Investor and a Contracting Party*
> *(1) Disputes between an Investor of one Contracting Party and the other Contracting Party concerning an Investment in its territory, shall if possible, be settled amicably.*
> *(2) If the dispute cannot thus be settled within a period of six months from the date of written notification of the claim, it shall at the request of the Investor be submitted to an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).*
> *The decision of the arbitral tribunal shall be final and binding on the parties to the dispute.*"

109. Article 1 of the Sweden-Russian Federation BIT provides an expansive definition of "*Investment*" that specifically includes immovable property such as the Estates and related property rights, as well as the participation in companies. Claimant's investments are thus clearly protected under the BIT:

> "*Article 1 Definitions*
> *For the purposes of this Agreement:*
> *(1) The term 'Investment' shall mean any kind of asset, invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with its legislation, and shall include in particular, though not exclusively:*
> *(a) movable and immovable property, related property rights, as well as leases;*
> *(b) shares, stocks, bonds and other forms of participation in a company or enterprise;*

> *(c) claims to money or to any performance under contract having an economic value;*
> *(d) intellectual property rights, as well as technology, know-how and goodwill;*
> *(e) rights, conferred by law or under contract to undertake economic activity, including rights to search for, extract or exploit natural resources.*"

110. An arbitral tribunal therefore has jurisdiction over the subject matter of this dispute on the basis of the Sweden-Russian Federation BIT, no later than six months from the date of the present Notice.

D. An Arbitral Tribunal has Jurisdiction *Ratione Temporis* over this Dispute

111. Finally, the temporal conditions for a tribunal's exercise of jurisdiction are satisfied in full.

112. An arbitral tribunal also clearly has jurisdiction *ratione temporis* over this dispute. Article 11(1) of the Sweden-Russian Federation BIT indicates that:

> "*(1) The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after 1 January 1963.*"

113. All of Claimant's investments in Sweden were made after 1 January 1963, including the purchase of the Estates, so there is no doubt that the temporal conditions for a tribunal's exercise of jurisdiction have been satisfied in full.

114. In conclusion, the record establishes that the conditions for jurisdiction *ratione personae*, *ratione materiae* and *ratione temporis* of an arbitral tribunal are met. It is also very clear that Sweden violated its treaty obligations under the Sweden-Russia BIT.

IV. SWEDEN CLEARLY VIOLATED ITS OBLIGATIONS UNDER THE SWEDEN-RUSSIA BILATERAL INVESTMENT TREATY

115. Claimant's responsibility arises from the internationally wrongful acts of its State organs (including Sweden's Tax Agency, the Swedish judiciary, a Swedish enforcement office and the Swedish public prosecutor) and persons or entities exercising elements of governmental authority (including the court-appointed trustee who wrongfully sold Claimant's Estates).

116. The actions and inactions of Swedish State organs and persons or entities exercising elements of governmental authority plainly violate a number of Sweden's obligations under the bilateral investment treaty between Sweden and the Russian Federation.

A. Protections Afforded by the Sweden-Russia BIT

117. Article 2 of the Sweden-Russia BIT provides for the promotion and protection of investments. In order to promote and protect the investments of investors of each Contracting Party, Article 2(1) of the BIT obliges "*each Contracting Party* [to] *promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation*" and further stresses at Article 2(2) that said investments "*enjoy full protection in accordance with the provisions of this Agreement.*"

118. The BIT further contains protections against nationality-based discrimination against investors or their investments, providing for fair and equitable treatment and non-impairment by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments. In particular, Article 3(1) of the BIT provides that:

> *"(1) Each Contracting Party shall at all times ensure in its territory fair and equitable treatment of the investments made by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments.*
> *(2) The treatment referred to in paragraph (1) of this Article shall not be less favourable than that which is accorded by the Contracting Party to investments, and to any activity associated with investments, by its own investors or by investors of any third State, whichever treatment is more favourable.*"

119. The BIT also grants most-favoured nation treatment and national treatment to foreign investors in Article 3(2), providing that treatment shall not be less favourable than that which is accorded to investments and activity associated with investments of nationals or investors of any third State.

120. Article 4 of the Sweden-Russian Federation BIT identifies the limited circumstances in which investments may be lawfully expropriated by the host State, stipulating that, in any event, such a legal expropriation shall be appropriately compensated:

"*Article 4 Expropriation*
(1) Neither Contracting Party shall expropriate or nationalize investments made by investors of the other Contracting Party or take any other measure having effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except where the expropriation is
(a) in the public interest;
(b) not discriminatory;
(c) carried out under due process of law;
(d) accompanied by the payment of prompt, adequate and effective compensation.
Such compensation shall include interest from the date of expropriation up to the date of payment in accordance with the interest rate applicable in the territory of the expropriating Contracting Party.
(2) The provisions of Paragraph (1) of this Article shall also apply to returns."

121. In light of the obligations set out in the Sweden-Russian Federation BIT, along with its obligations pursuant to customary international law, Sweden's obligations towards investors of Russian nationality, which may not be inferior to those duties accorded to its own investors or other foreign investors, include the following:

- To provide fair and equitable treatment to a Russian foreign investor (Treatment of Investments, Article 3);
- To provide full protection and security to Russian investors and Russian investors' investments (Promotion and Reciprocal Protection of Investments, Article 2);
- Not to act unreasonably or to discriminate against Russian investors or their investments (Treatment of Investments, Article 3); and
- Not to expropriate a Russian investor's assets except where in the public interest, in a non-discriminatory manner, in accordance with due process of law and accompanied with prompt, adequate and effective compensation (Expropriation, Article 4).

122. The actions and inactions of Sweden's State organs and persons or entities exercising elements of governmental authority which violate the standards of protection afforded to investors under the BIT are set forth, in turn, below.

B. Sweden Abjectly Failed to Protect Claimant's Investments

1. Sweden's Failure to Provide Fair and Equitable Treatment to Claimant's Investments

123. As noted above, Article 3(1) of the Sweden-Russian Federation BIT obliges each Contracting Party to:

> "*[E]nsure in its territory fair and equitable treatment of the investments made by investors of the other Contracting Party and* […] *not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments.*"

124. Commentators concur that the fair and equitable treatment standard can be given its plain meaning, i.e., fairness and equity of treatment as these terms are generally understood (as opposed to unfair and inequitable).[69] The phrase "*fair and equitable treatment*" is imprecisely defined, thereby permitting arbitrators to apply the necessary standards to the dispute in question in light of the factual matrix before them. Arbitral tribunals have considered that the fair and equitable standard "*basically ensures that the foreign investor is not unjustly treated, with due regard to all surrounding circumstances, and that it is a means to guarantee justice to foreign investors*."[70] Other tribunals have found a similar meaning of "*fair and equitable treatment*."[71] Principles have also emerged in arbitral jurisprudence that define or help to identify fair and equitable treatment, or unfair and inequitable treatment. Notably:

- The host State must act in good faith (*Tecmed v. Mexico*,[72] *Waste Management v. Mexico*,[73] *Rumeli v. Kazakhstan*[74] and *Roussalis v. Romania*[75]);

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[69] F.A. Mann, "*British Treaties for the Promotion and Protection of Investments*", 52 British Y.B. Int'l L. 241, 244 (1981).

[70] *Swisslion DOO Skopje v. Macedonia, former Yugoslav Republic of, ICSID* Case No. ARB/09/16, Award, 6 July 2012, ¶ 273.

[71] *PSEG Global, The North American Coal Corporation, and Konya Ingin Electrik ve Ticaret Sirketi v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award, 19 January 2007, ¶ 239; *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No ARB/03/15, Award, 31 October 2011, ¶ 373.

[72] *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No ARB(AF)/00/2, Award, 29 May 2003, ¶ 153.

[73] *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, ¶ 138.

[74] *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 28 July 2008, ¶ 583.

[75] *Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award, 7 December 2011), ¶ 314.

- The host State's conduct cannot be arbitrary, grossly unfair, unjust, idiosyncratic, discriminatory, or lacking in due process (*Waste Management v. Mexico*, [76] *Rumeli v. Kazakstan,*[77] *Roussalis v. Romania,*[78] *SD Myers v. Canada*[79] and *Occidental v. Ecuador*[80]);
- The host State must act in a transparent manner (*Metalcad v. Mexico,*[81] *Siemens v. Argentina,*[82] *LG&E v. Argentina,*[83] *Saluka v. Czech Republic,*[84] *Tecmed v. Mexico,*[85] *Maffezini v. Spain,*[86] *Waste Management v. Mexico,*[87] *Rumeli v. Kazakhstan*[88] and *Roussalis v. Romania*[89]);
- The host State's conduct cannot breach the investor's legitimate expectations (*Tecmed v. Mexico,*[90] *Saluka v. Czech Republic*,[91] *Azurix v. Argentina*[92] and *ADC v. Hungary*[93]); and
- The host State must act consistently vis-à-vis the investor (*CME v. Czech Republic*,[94]

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[76] *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, ¶ 98.

[77] *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 28 July 2008, ¶ 583.

[78] *Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award, 7 December 2011), ¶ 314.

[79] *SD Myers Inc. v. Government of Canada,* UNCITRAL, First Partial Award, 13 November 2000, ¶ 263.

[80] *Occidental Exploration and Production Company v. The Republic of Ecuador*, LCIA Case No. UN3467, Final Award, 1 July 2004, ¶¶ 162-163.

[81] *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 99.

[82] *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007, ¶¶ 308-309.

[83] *LG&E Energy Corp., LG&E Capital Corp., and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, ¶ 128.

[84] *Saluka Investments v. Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶ 307.

[85] *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No ARB(AF)/00/2, Award, 29 May 2003, ¶ 154.

[86] *Emilio Agustín Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/9717, Award, 13 November 2000, ¶ 83.

[87] *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, ¶ 138.

[88] *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 28 July 2008, ¶ 583.

[89] *Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award, 7 December 2011, ¶ 314.

[90] *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No ARB(AF)/00/2, Award, 29 May 2003, ¶ 154.

[91] *Saluka Investments v. Czech Republic*, UNCITRAL, Partial Award, 17 March 2006 ¶¶ 301-302.

[92] *Azurix Corp. v. Argentina*, ICSID Case No. ARB/01/12, Final Award, 14 July 2006, ¶ 372.

[93] *ADC Affliate Limited and ADC & ADMC Management Limited v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶ 424.

[94] *CME Czech Republic B.V. v. The Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, ¶ 611.

MTD v. Chile[95] and *El Paso v. Argentina*[96]).

125. Sweden clearly violated its obligation to provide "*fair and equitable treatment*" to Claimant's investments and indeed did everything possible to undermine Claimant's property rights.

126. The Enforcement Office's issuance of the First Injunction of 22 March 2002, the first limit to Claimant's property rights, was arbitrary, discriminatory, grossly unfair, utterly lacking in due process, and in clear violation of Claimant's legitimate expectations that basic property rights in Sweden would be respected, violating multiple principles that guide in determining a violation of fair and equitable treatment.

127. Without any investigation, and despite recognizing that Claimant was the lawful owner of the property, the Enforcement Office chose to subject Claimant's property to injunctions while expressly recognizing that the property was not registered to the Debtor but to "*the debtor's wife* […] *Olga Ovchinnikova since 2001-10-25 when they were transferred to her from the debtor*."[97]

128. The Enforcement Office's own journal, of which Claimant obtained a copy, shows that the Enforcement Office made the initial, unjust decision to target Claimant's property within just two days of receiving a request for injunction concerning Mr. Frändén, highlighting that the decision to target Claimant's investments was taken with almost no consideration and no semi-proper investigation:[98]

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[95] *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, ¶ 99.

[96] *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, 31 October 2011, ¶¶ 375-379.

[97] Proof of Issued Injunction of 22 March 2002.

[98] Extracts from the Enforcement Office's journal between 2002 and 2008.

Year 2002

11 March, Hans Ihrén: *"Came request for execution of injunction 020308 afternoon investigative work begun.*
Jan-Erik Nilsson & Per Olander SKM Östersund visited KFM, additional information on the debtor was given to the undersigned.
... [some notes on contacts with banks]"

12 March Hans Ihrén makes a note on further contacts with banks.

13 March, Hans Ihrén: *"...[some notes on contacts with banks]*
Kf Sune Persson investigates which possibilities there are to subject to injunction the spouse's fractions of the estates Härjedalen Åsen 4:6 (85/100) and Härjedalen Viken 11:7 (569/800) and reports back."

21 March, Hans Ihrén: *"...[some notes on contacts with Mr Frändén's father]*
Called the Registration authority in Härnösand, copy of purchase contract, purchase deed is faxed immediately to the undersigned.
Purchase deed received. The fractions of Åsen 4:6 have been conveyed against 1,602,250.- and the fractions of Viken 11:7 have been conveyed against 1,341,418.- to Olga Ovchinnikova.
Conversation with Per Olander SKM, one single control statement is available on Olga Ovchinnikova regarding 2001 which (see more information from mail of 020320).
... [some notes on discussion with Marita Palmgren at KFM in Uppsala]"

22 March, Hans Ihrén: *"Conversation with Sune P. He has checked some different legal cases and come to the conclusion that I can subject to injunction the wife's fraction of the estates since they are conveyed from the debtor. The wife's fractions subjected to injunction this day, notification sent to IM in Härnösand."*

129. While the above-mentioned evidence states that "*Sune P. […] has checked some different legal cases and come to the conclusion that I can subject to injunction the wife's fraction of the estates since they are conveyed from the debtor*," it is highly unlikely that Sune P. conducted any legal research whatsoever, since this affirmation is obviously false under Swedish law so. Swedish law is perfectly clear that each partner in a marriage is liable for his or her own debts:[99]

[99] European Commission General Direction, Justice and Home Affairs, Unit A3, JAI/A3/2001/03, *Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law National Report*, Sweden, p. 6.

1.1.3 Primary regime

Regarding fundamental rights: The public administration shall guarantee equal rights to men and women and protect the private and family lives of the individual (Ch 1, Art 2 the Instrument of Government). See also1950 European Convention for the Protection of Human Rights and Fundamental Freedoms Art 8 on the protection of private and family life and Art 12 on the right to marry the and Art 1, on protection of property the Additional Protocol of the 20 March 1952. Sweden is a partner to the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (521 U.N.T.S 231).

Rules on matrimonial property are given in the MC, primarily in chapters 7-12.

According to Swedish law each of the spouses owns his or her property and is liable for his or her own debts (Ch 1 Sec 1 MC).

The property owned by each of the spouses according to Swedish law is defined as either marital property or separate property (Ch 7 MC). The legal nature of the property is decisive for whether or not certain restrictions shall apply in regard to the transfer of real estate and the family home. It is further of essential importance upon the dissolution of marriage by divorce or by the death of one of the spouses. The system of marital property is sometimes described as deferred community property rights.[3]

130. Moreover, sales between spouses, such as the one in question here, are also perfectly legal under Swedish law.

131. When forced to explain his actions, the Enforcement Officer justified ignoring Claimant's investments in the Estates on the basis that he was not aware of whether Ms. Ovchinnikova had experience in forestry, she declared no taxable income in Sweden for 2000 or 2001 and the purchase deeds were allegedly "*handed in*" only after a tax audit of Mr. Frändén had been finalized, as has been previously indicated.[100] These grounds for *de facto* ignoring Claimant's legal rights are not legal grounds upon which Respondent was entitled to rely, making the Enforcement Officer's conduct arbitrary and unreasonable.

132. As previously indicated, Ms. Ovchinnikova's experience in forestry is irrelevant for her ownership rights and irrelevant to her ability to run forest estates as a business, and she had considerable prior business experience and there is nothing particularly complex with respect to allowing hunting, the harvesting of trees and the renting of property at commercial rates as she was planning to do. In addition, there is no reason why the Swedish Enforcement office would have any knowledge of Ms. Ovchinnikova's professional experience, since it undertook no investigation of the circumstances concerning the purchase and decided to seize Claimant's property over a two-day period.

[100] Enforcement Officer Sune Persson's Observations of 30 September 2002.

133. Lack of taxable income in Sweden in 2000 and 2001, while true, is equally irrelevant. There is no reason why Ms. Ovchinnikova should have had taxable income in Sweden before having invested there, and there is ample evidence that her funds in Russia were used to purchase the Estates.

134. The third ground for the initial injunction, that the purchase deeds were "*handed in*" only after a tax audit by the seller had been finalized is unproven, irrelevant and merely an *ex post facto* justification for Sweden's actions. Claimant was under no obligation to have "*handed in*" the purchase deeds by the date of Tax Memorandum being sent to Jon Frändén and had three months from the date of purchase to do so. In any event, failure to do so would not have carried any penalties and would not have affected the legal validity of the transaction. Respondent's allegation that Claimant's purchase was directly caused by the results of Mr. Frändén's tax memorandum, which became available after the purchase, is obviously untrue. As indicated *supra*, the purchase of the Estates was set into motion months before the Tax Memorandum was even issued, the purchase occurred prior to the Tax Memorandum and Mr. Frändén could have sold the Estates at any time after the Tax Memorandum. Had the decision for the injunction been based on a suspicion of the purchase deeds' having been antedated, which it was not, a redundant but explicit reference to 25 October 2001 would hardly have been made in the injunction.

135. The only quasi-legal reference in the Enforcement Office's justification is to what is called "*Legal information C*" ("*Rättsinformation C*"), which is an internal handbook compiled by the Enforcement Office for the use of its staff and has no legal significance.

136. The Enforcement Officer, Hans Ihrén, also explained his decision to Mr. Frändén in a telephone conversation on 11 April 2002, where he stated that it "*should be pretty obvious, that some Russian woman would have no money and no interest in buying forest land in Sweden*," which is also discriminatory and merely reflects the narrow-mindedness and prejudice of provincial Sweden.

137. The First Injunction was challenged in court, but upheld on similar grounds by the court, without any legal justification, and higher Swedish instances did not grant leave to appeal.

138. In short, all aspects of fair and equitable treatment were violated with respect to the First Injunction. Sweden did not act in good faith and knowingly ignored Claimant's ownership of her investment, wishing its own tax claims against a third party to take precedence over a foreign investor's ownership rights on what are arbitrary and discriminatory grounds. The Enforcement Officer's conduct was arbitrary and not based on Swedish law, grossly unfair since it ignored a foreign investor's property rights, discriminatory since it unfairly targeted a Russian woman, and entirely lacking in due process without even the slightest serious investigation taking place. The Enforcement Office's First Injunction, and the judicial proceedings that followed and built on it, were not based on facts, but simple prejudice.

139. In addition, notes from the Extracts from the Enforcement Office's journals clearly illustrate the bad faith of the Enforcement Office, while also suggesting its collaboration with Swedes who were also interested in the Estates. Sweden's conduct also breached the foreign investor's legitimate expectations that if Swedish law was respected her property rights would also be respected, and she would obviously not have purchased the Estates had she known how violently and unfairly Swedish State organs would act.

140. The Enforcement Office's actions also prevented Claimant from acquiring the minority fractions of the Estates, breaching the investor's legitimate expectations that she would be able to purchase the entirety of the Estates. As previously indicated, Claimant entered into contracts for the purchase of 71.125% of the Viken Estate and 85% of the Åsen Estate on 25 October 2001 expecting to buy the remaining minority parts in 2002 in the second phase of the acquisition process. The acquisition procedure of the remaining minority parts was set in motion before Claimant's acquisitions of 25 October 2001 as Mr. Frändén applied on 5 September 2001 for a public auction sale leading the District Court to appoint a trustee, Håkan Müntzing, on 29 November 2001, to distribute the amounts generated by the sale and issue the sales deeds. However, as the obviously unfair and inequitable First Injunction of 22 March 2002 prevents the appointed trustee from "*selling or otherwise disposing*" of the Estates, the 2002 public auction, which Claimant initially intended to benefit from, never occurred, and Claimant was denied the right to purchase the entirety of the Estates.

141. The Enforcement Office's issuance of the First Attachment of the Viken and Åsen Estates of

8 April 2003, again based on no legal grounds but mere prejudice, further demonstrates Swedish State organs' bad faith, arbitrary conduct, discriminatory intent and the breach of Claimant's legitimate expectations. The Enforcement Office's decision to attach the Estates itself recognized that Olga Ovchinnikova was the *"legally recognized owner*" of the property despite attaching her property to illegally recover her ex-husband's tax debts. The Enforcement Office's Observations of 28 April 2003 on Claimant's application against the attachment also do not provide any further rationale for the arbitrary decision, and did not modify the decision despite again recognizing that Olga Ovchinnikova is the "*legally recognized owner*" of the attached property.

142. On appeal by Claimant of the First Attachment of 8 April 2003 on the ground that Claimant should not be responsible for her ex-husband's tax debts, the District Court of Östersund on 17 October 2003 also unfairly refused to modify the Enforcement Office's initial decision, while relying on similar motives with respect to the unreasoned, two-day initial injunction that had been supplied by the Enforcement Office. All of the grounds of the District Court of Östersund's rejection of the appeal were arbitrary, incorrect or obviously irrelevant: (a) that the "*transfer deeds regarding the parts or estates in question have been discovered only after Jon Frändén's disadvantageous result of the audit had become known*" is untrue and was not in fact shown, (b) that the transfer "*has concerned large amounts and taken place to Frändén's spouse*" is totally irrelevant and (c) that Claimant's lack of taxable income for the years 2000 and 2001 is quite normal since Claimant's prior investments were in Russia. Its final ground, (d) that "*the circumstances are such that very strong reasons support the proposition that the conveyance of the estate has been a sham transaction*" was cut-and-pasted from previous documents and merely a reflection of the District Court of Östersund's prejudice against a female, Russian investor.

143. The Enforcement Office's issuance of the Second Attachment of 18 February 2005, again simply ignoring Claimant's property rights, is also probative of the State organ's bad faith and lack of transparency. This Second Attachment unfairly attached the Claimant's Estates for the amount of 616,160 SEK and 41,445 SEK owed by the Debtor (Claimant's ex-husband) to the applicants (Erik Frändén, Agnes Frändén and Lina von Sydow) further to a judgment 040326. The Enforcement Office not only failed to provide any grounds for the attachment

of Claimant's investments, but failed to provide a single legal ground whereby it could subject Claimant's investments to an attachment for a third party's debt.

144. The Enforcement Office's decision of 19 January 2006 to attach for a third time Claimant's Estates for the amount of 2,013,342 SEK, on application by the State, was again unfair and inequitable. It, too, fails to provide any reasoning or legal grounds to subject Claimant's Estates to an attachment for a third party's debts, contrary to Swedish law and Claimant's legitimate expectations.

145. The Enforcement Office's Observations of 13 February 2006, issued following Claimant's application, do not provide any further information and merely refer back to its Observations on the First Injunction case of 22 March 2002 and to the motives of the First Attachment which were themselves discriminatory in nature, arbitrary, completely lacking in due process and merely probative of provincial Swedish State organs' bad faith and prejudice against a female Russian investor.

146. The Swedish judiciary's rejection of Claimant's appeal of these attachments, as well as its rejection of Claimant's request that the attachment of Claimant's property resulting from her ex-husband's debt to civil creditors further to the judgment 040326 "*be declared dormant awaiting a resolution in the civil case*" concerning the rights to the Estates, was also grossly unfair. The District Court of Östersund, on 13 March 2006, reached the same unjustifiable and prejudice conclusions as previous judicial organs, going as far as to correctly state the rule of law (i,e. according to 4 kap para. 24 of the main law on collection, "*immovable property may be attached if it is clear that the property belongs to the debtor*") while relying *verbatim* on the Enforcement Office's arbitrary motives relating to the date of discovery of the content of the Tax Memorandum, the large amounts spent by Claimant to acquire the Estates and Claimant's lack of taxable income for 2001 and 2002 to reach the arbitrary result that "*from this it is clear that the estates in question belong to Jon Frändén.*"

147. Moreover, the various decisions targeting the properties of Claimant over the years for the debts of a third party forced Claimant to bring a claim for better rights to the property, initially before the District court of Ångermanland, on 18 January 2005, in an attempt to put an end to the ownership disputes. Claimant brought forward the fact that measures of execution

targeting properties during an ongoing dispute on joint ownership violate the protection of ownership according to the jurisprudence of the European Court of Human Rights, in particular *Allard v. Sweden* of 24 June 2003. Nevertheless, while the District Court once again correctly stated the law (i,e. According to 32 kap para. 5 of the code of judicial procedure, "*the case, if it* […] *is of particular importance that a matter, which is subject of another trial* […] *is first decided,* […] *shall be declared dormant in awaitance of the hindrance being removed*") it reached the grossly unfair conclusion that it was not worth waiting for the determination of the ownership rights over the Estates to attach these Estates for the debts of Mr. Frändén. What could be of greater importance concerning whether or not the Estates could be attached for the debt of Mr. Frändén than a final ruling on who legally owned the property? The District Court's bad faith and rejections of Claimant's demands are again clearly indicative of the unfair and inequitable treatment of Claimant's investment, as well as its prejudice against a female, Russian investor.

148. The County Administrative Board's permission of 4 July 2006 to transfer ownership of the Åsen Estate to Anders Skoglung and the Viken Estate to D Carlberg & Son, Swedish nationals, was also grossly unfair, as well as expropriatory, as explored in further detail below. The text of Article 8 of the purchase agreements stipulate explicitly that a co-owner of the Estates who wishes to purchase the Estates shall pay the full purchase price, rather than taking into account the amount that had already been paid. It was undisputed that Claimant was the majority holder of both Estates, which the purchase agreements also confirm, so Claimant would therefore be required to purchase a second time the Estates already purchased if she wished to retain her ownership rights. When the County Administrative Board accepted, on 4 July 2006 for both the Åsen and Viken Estates, to "*grant* [the buyers] *permission according to the law on acquisition of land,*" despite Claimant's legal title, this was plainly confiscatory in nature.

149. Sweden's judicial organs' failure to act in a transparent manner is also demonstrated through their disregard for Claimant's ownership rights when issuing a Second Injunction covering Claimant's part of the Åsen Estate, on or around 21 November 2006, while failing to communicate this decision to Claimant, despite the provisions of the law on administrative procedure. Further to the Enforcement Office's lack of transparency, Claimant lacked

knowledge of this Second Injunction and was unable to appeal it, submit its observations or granted the right to access the documents on which the injunction relied.

150. It was also grossly unfair for Sweden to target Claimant for minor accounting errors that were the fault of her ex-husband and to imprison her for this, as well as unfair and inequitable for the public prosecutor to publicize her imprisonment and to publicly accuse her of having a "*scheming and serpentine nature*" while also harming her business relationships and intercepting her phone calls while she was imprisoned.

151. Claimant's investments were also subjected to several tax reassessments as of September 2007 which do not rely on *bona fide* assessments or interpretations of tax law but rather seemed to aim at causing Claimant additional financial harm. For example, the Tax Agency decided to impose fines of 26,000 SEK on Claimant on the basis of a simple assumption that Claimant would have earned extra income elsewhere – which Claimant contests – while being neither able to prove its origin nor provide any evidence supporting this assumption.

152. In conclusion, Sweden clearly violated its obligation to provide fair and equitable treatment to Claimant's investments in the country. It also failed to provide full protection and security to her investments, as set forth next.

2. Sweden's Failure to Provide Full Protection and Security to Claimant's Investments

153. Article 2 of the Sweden-Russian Federation BIT obliges Sweden to provide full protection and security to Claimant's investments, another common standard of protection found in BIT's:

> "*Article 2*
>
> *Promotion and Reciprocal Protection of Investments*
> *(1) Each Contracting Party will promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.*
> *(2) The investments made by investors of one Contracting Party in the territory of the other Contracting Party enjoy full protection in accordance with the provisions of this Agreement.*"

154. It is widely understood that treatment which is not fair and equitable necessarily constitutes an absence of full protection and security, as was held by the arbitral tribunal in *Occidental.*[101] Full protection and security is also, however, an independent obligation of the host State of investment.

155. The obligation to accord full protection and security to foreign investors' investments requires the host State to exercise due diligence in the protection of foreign investments.[102] International law has interpreted this due diligence to impose an objective standard of vigilance and thus to require the State to afford the degree of protection and security that should be legitimately expected to be secured by a reasonably well-organized modern State.[103]

156. The State has a "*primary obligation*" to exercise due diligence to provide adequate protection, "*failure to comply with which creates international responsibility*."[104] The full protection and security standard not only encompasses the physical security of foreign investors and their investments, but also the legal security in which the investment operates, as held by the arbitral tribunal in *Azurix*:

> "*The Tribunal is persuaded of the interrelationship of fair and equitable treatment and the obligation to afford the investor full protection and security. The cases referred to above show that full protection and security was understood to go beyond protection and security ensured by the police. It is not only a matter of physical security; the stability afforded by a secure investment environment is as important from an investor's point of view.*"[105]

157. In the present case, the treatment according to Claimant's person and Claimant's investment is irreconcilable with the right to full protection and security.

158. The State failed to accord legal security to Claimant's investment and did nothing whatsoever

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[101] *Occidental Exploration & Production Co. v. The Republic of Ecuador*, UNCITRAL, Final Award, 1 July 2004, ¶ 187.

[102] R. Dolzer and M. Stevens, *Bilateral Investment Treaties*, Martinus Nijhoff Publishers, 15 June 1995, p. 61.

[103] *Asian Agricultural Products Ltd. v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Final Award, 27 June 1990, ¶ 77.

[104] *Asian Agricultural Products Ltd. v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Final Award, 27 June 1990, ¶ 77.

[105] *Azurix Corp. v. Argentina*, ICSID Case No. ARB/01/12, Final Award, 14 July 2006, ¶ 408.

to protect her investments in the Estates. It simply ignored her property rights *de facto* while repeatedly recognizing them *de jure*. In addition, the State actively contributed to Claimant's harassment by the minority co-owners of the Åsen and Viken Estates, namely Erik Frändén, Agnes Frändén, Lina von Sydow and Olof Frändén, their representative, who, thanks to the State courts' active collaboration, successfully applied on 18 February 2005 to attach and later sell the properties of Claimant for the debts of a third party, Jon Frändén, irrespective of the fact that Claimant was not liable for Mr. Frändén's debts under Swedish law.

159. The State of Sweden also failed to ensure the physical protection and security of Claimant's person, and Claimant was the subject of harassment, attempted deportation and wrongful imprisonment for nearly a year by the State itself. The Östersund District court, on 2 February 2007, issued a decision for the arrest of Claimant on the ground of aggravated tax fraud in February 2003 and aggravating accounting offenses for the period of 27 February 2002 to 20 July 2005 for what were minor offenses committed by Mr. Frändén, not Claimant, who was in charge of all bookkeeping and handled tax matters. Although the charges could not reasonably motivate a pre-trial arrest – the most severe accusation related to an incorrect statement in a tax declaration four years earlier - Claimant was nevertheless kept in prison for two months, subject to physical and mental abuse, and set free only on 2 April 2007 as she was considered to have served her sentence during her pre-trial detention. Claimant's imprisonment for the minor clerical errors of Mr. Frändén was clearly disproportionate to the alleged misconduct.

160. Moreover, the Court of Appeals on 8 October 2008 also convicted Claimant to 8 months of imprisonment for crimes she did not commit, or which are arguably not even crimes, in relation to the use of incorrect documents and alleged aggravated bookkeeping offences in seven different companies.

161. In addition, while Claimant was being detained, multiple raids were authorized at Claimant's premises which were ransacked in search of evidence which could not reasonably be expected to be found by the searches conducted. Doors were broken, material was taken, personal belongings such as calendars, a camera, a mobile telephone and the procurement of personal pin code do not comply with Swedish law and are in violation of the State's duty to provide

full protection and security under the Sweden-Russia BIT.

162. In short, rather than providing the protection to the investor and her investments as required by the Sweden-Russia BIT, Swedish State organs took all measures available to them to deprive Claimant of her investments and drive her from the country, while also subjecting the foreign investor to physical harassment and detention and even ignoring her requests for assistance from the Russian Embassy.

3. Sweden's Unreasonable and Discriminatory Measures Targeting Claimant

163. A measure that breaches national or most-favoured nation treatment would be "*discriminatory*" for the purposes of the BIT standard.[106] The standard of protection against arbitrariness or discrimination is also related to that of fair and equitable treatment: "*Any measure that might involve arbitrariness or discrimination is in itself contrary to fair and equitable treatment. The standard is next related to impairment*"[107] of the management, maintenance, use, enjoyment, conduct, operation, expansion, sale, disposal or liquidation of such investment. It is also an independent basis for a finding of liability, and the Sweden-Russia BIT provides in Article 3(1) that the host State of investment "*shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments*."

164. According to C. Schreuer, the following should be considered as arbitrary, or unreasonable:

> "[A.] *a measure that inflicts damage on the investor without serving any apparent legitimate purpose;*
> [B.] *a measure that is not based on legal standards but on discretion, prejudice or personal preference;*
> [C.] *a measure taken for reasons that are different from those put forward by the decision maker;*

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[106] *BG Group Plc. v. Republic of Argentina*, UNCITRAL, Final Award, 24 December 2007, ¶ 355.

[107] *CMS Gas Transmission Co. v. the Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005, ¶ 290; *SAUR International S.A. v. Argentine Republic*, ICSID Case No. ARB/04/4, Decision on Jurisdiction and Liability, 6 June 2012, ¶ 485: "*Les principes de TJE et de PSPE sont intimement liés aux interdictions de discrimination et de caractère arbitraire*."; S. Vasciannie, *The Fair and Equitable Treatment Standard in International Investment Law and Practice*, 70 Brit. Y.B. of Int'l L. 133 (1999): "[…] *if there is discrimination on arbitrary grounds, or if the investment has been subject to arbitrary or capricious treatment by the host State, then the fair and equitable standard has been violated. This follows from the idea that fair and equitable treatment inherently precludes arbitrary and capricious actions against investors.*"

> [D.] *a measure taken in wilful disregard of due process and proper procedure.*"[108]

165. The harm inflicted by the public prosecutor on Claimant by advertising the fact that she had been (wrongfully and disproportionately) imprisoned in the media and Claimant's business associates is but one example of the acts of State organs that inflicted harm to Claimant without serving any legitimate purpose.

166. The entirety of Swedish State organs' treatment of Claimant's investments in the Estates was not based on legal standards, but on discretion and obvious prejudice, making the treatment of Claimant's investments unreasonable. From the First Injunction issued against the Estates, through the selling of Claimant's property against her will, Sweden impaired by unreasonable or discriminatory measures the management, maintenance, use, enjoyment and disposal of Claimant's investments, in violation of Article 3(2) of the Sweden-Russia BIT.

167. A measure is discriminatory when it provides "*the foreign investment with a treatment less favorable than domestic investment*"[109] or "*when the measure against foreign investment and the measure against domestic investment are of a different nature, and the former is less favourable than the latter*."[110] Discrimination by a host State is also found when "*(i) similar cases are (ii) treated differently (iii) and without reasonable justification*."[111] and it covers all forms of discrimination including discrimination based on race, religion, political affiliation, disability or nationality.[112] According to this legal standard, an investor must also not be treated, because of her nationality, less favourably than other foreign investors or nationals.[113]

168. The witch hunt to which Claimant was subjected was clearly aimed at putting an end to a

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[108] Legal Opinion of Prof. Scheurer, accepted and applied by the arbitral tribunal in, in *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, 8 October 2009, ¶ 303.

[109] *Elettronica Sicula S.p.A*. (ELSI), ICJ Reports of Judgments, Advisory Opinions and Orders, Judgment of 20 July 1989, ¶ 128.

[110] *Ronald S. Lauder v. Czech Republic*, UNCITRAL, Final Award, 3 September 2001, ¶ 257.

[111] *Saluka Investments BV v. Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶ 313.

[112] U. Kriebaum *Arbitrary/ Unreasonable or Discriminatory Measures*, in M. Bungenberg, J. Griebel, S. Hobe, A. Reinisch (eds), *International Investment Law* (Baden Baden: Nomos, forthcoming 2013), p. 8.

[113] *National Grid P.L.C. v. Argentina Republic*, UNCITRAL, Award, 3 November 2008, ¶ 198.

female Russian foreign investor's real estate activities in Sweden. This prejudice was explicit in such statements as the Enforcement Officer's comment to Mr. Frändén that it "*should be pretty obvious, that some Russian woman would have no money and no interest in buying forest land in Sweden,*" but it was also implicit throughout the legal proceedings to which Claimant was subjected, and such actions as the District Court of Östersund's rejection of Claimant's request that the present case be declared "*dormant*" pending the resolution of the case T-170-05 on the ground that it did not consider that a judicial finding that Claimant was the legal owner of the Estates would be a "*hindrance*" to the Estates being attached for the debts of someone else. Would Swedish courts have treated a Swedish national in a similar manner and simply ignored a Swede's property rights? Certainly not.

169. That Respondent's actions were arbitrary and "*not based on legal standards but on discretion, prejudice or personal preference*" is also perfectly clear from the record, as Swedish State organs did not even pretend to have a legal justification for the actions they took that undermined Claimant's rights to her investments.

170. Ms. Ovchinnikova's purchases of the majority parts of the Estates could have been formally challenged by Sweden or – in the case of the seller's hypothetical bankruptcy – even reversed. No such steps were taken to this end, however. Instead, the Enforcement Officer, Mr. Ihrén, simply ignored Claimant's property rights and ensured they would be superseded by Respondent's tax claims against a third-party.

171. Sweden's conduct was unreasonable and discriminatory, and Sweden cannot justify the actions of its State organs and the trustee that it appointed to auction the Estate on other grounds than basic prejudice.

4. Sweden's Unlawful Expropriation of Claimant's Investment

172. Like most bilateral investment treaties, the Sweden-Russian Federation BIT provides investments with guarantees against expropriations, nationalizations or any measure having an equivalent effect which are inconsistent with customary international law. In particular, Article 4 of the Sweden-Russian Federation BIT provides as follows:

> "*Article 4 Expropriation*

> *(1) Neither Contracting Party shall expropriate or nationalize investments made by investors of the other Contracting Party or take any other measure having effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except where the expropriation is:*
> *(a) in the public interest;*
> *(b) not discriminatory;*
> *(c) carried out under due process;*
> *(d) accompanied by the payment of prompt, adequate and affective compensation.*
> *Such compensation shall include interest from the date of expropriation up to the date of payment in accordance with the interest rate applicable in the territory of the expropriating Contracting Party.*
> *(2) The provisions of Paragraph (1) of this Article shall also apply to returns.*"

173. The expropriation provision in the Sweden-Russian Federation BIT does not prohibit the Contracting Parties from expropriating private property for public use. It requires, rather, that any action by a branch of government which amounts to expropriation be conducted on the basis of several conditions widely recognized under customary international law and the domestic laws of virtually all national legal systems, including that of Sweden. In particular, Article 4(1) of the Sweden-Russian Federation BIT provides that a legal expropriation occurs "*in the public interest*", in a "*not discriminatory*" manner, is "*carried out under due process of law*" and is accompanied with "*payment of prompt, adequate and effective compensation.*"

174. Article 4(1) also provides for expropriations in an indirect form, as it covers "*any other measure having effect equivalent to expropriation*." The Tribunal in *Telenor Mobile* held that "*phrases such as 'equivalent to expropriation'* […] *are usually taken to indicate that the BIT covers indirect as well as direct expropriation, thus looking at the substance of the measures in question rather than the label attached to them.*"[114]

175. The precise form of expropriation is of no importance except to determine whether or not the expropriation was lawful, which is only relevant with respect to compensation; international law looks to the effect of the expropriatory measure on the investor's property - the '*sole effect doctrine*' – and the intent of the host State of investment need not be proven by the

[114] *Telenor Mobile Communications A.S. v. The Republic of Hungary,* ICSID Case No. ARB/04/15, Final Award, 13 September 2006, ¶ 63.

foreign investor:[115]

> "*The intent of the government is less important than the effects of the measures on the owner, and the form of the measures of control or interference is less important than the reality of their impact.*"[116]

176. Under customary international law, states may legitimately exercise their sovereign police powers in a *bona fide*, proportional, and reasonable manner.[117] International tribunals may determine if such application of police power constitutes, in fact and effect, an unlawful expropriation. In such cases "*reference to international standards will be of assistance in determining whether the state measure is reasonable in the circumstances. In the absence of accepted international standards, evidence of consistent and general comparative practice in a variety of states is likely to be relevant,* […]."[118]

177. Here, the expropriation of Claimant's assets was unlawful under customary international law and in violation of the bilateral investment treaty since it was (1) discriminatory, (2) lacked a legitimate public purpose, (3) occurred in violation of due process of law (Claimant's property rights were recognized repeatedly but ignored) and (4) was not followed by prompt, adequate and effective compensation, establishing that the expropriation of Claimant's investment in Sweden was illegal.

178. It is perfectly clear that Claimant was deprived of her property rights by Sweden, starting with the First Injunction of 22 March 2002 which restricted the use of the Estates through the public auction of 2 June 2006 and continuing until the Court of appeals approved of the "*buyers*" of the Estates being granted official recognition as owners while Claimant was being held in a Swedish prison in 2007.

179. Swedish State organs, and the trustee appointed by the District Court of Sveg, Mårten Janzon, not only stripped Claimant of the right to use her properties and to complete her intended full

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[115] A. Newcombe and L. Paradell, *Law and Practice of Investment Treaties: Standards of Treatment*, Kluwer Law International, 2009, pp. 325 and 326.

[116] *Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA (Consulting Engineers of Iran, the Government of the Islamic Republic of Iran*, Award, 22 June 1984, Iran-US CTR, Vol. 6, p. 225

[117] A. Newcombe and L. Paradell, *op. cit*. p. 358.

[118] A. Newcombe and L. Paradell*, op. cit*. p. 360.

investment, but obviously deprived Claimant of her investment.

180. It is furthermore clear that Claimant was not paid effective compensation for this expropriation. She was paid only 1,500,000 SEK, whereas the buyers, namely Anders Skiglund for the Åsen Estate and D Carlberg & Son Intressenter AB for the Viken Estate, purchased the Estates for 3,000,000 SEK and 4,200,000 SEK respectively in 2006 and, in 2007, the Åsen Estate alone was "*resold*" for 8,200,000 SEK.

181. Claimant is entitled to compensation for the illegal expropriation of her Estates, as well as to compensation for Sweden's other treaty breaches, in an amount that is preliminarily estimated at 219 million SEK, prior to consideration of moral damages.

V. CLAIMANT IS OWED OVER 219 MILLION SEK IN COMPENSATION BY SWEDEN

182. Claimant is entitled to five principal heads of compensation for Sweden's violations of the Sweden-Russia BIT.

183. Claimant is entitled to (1) compensation for the expropriated forest Estates and the movable and immovable property that was on the Estates, (2) compensation for Sweden's impairment of Claimant's ability to manage, maintain, use and enjoy her investments in the Estates, (3) compensation for Sweden's harm to Claimant's other investments in Sweden, (4) compensation for the direct costs Claimant has incurred since 2002 in order to have her property rights to her investment upheld and to defend herself from State-organized harassment and (5) compensation for the moral harm to Claimant and her other businesses in Sweden. Claimant is also entitled to full compensation of all legal costs spent in order to resolve the current dispute with Sweden, as well as interest on the amounts that are owed.

184. Under customary international law, Claimant is, generally-speaking, entitled to reparation under the so-called *Chorzów Factory* standard of the PCIJ according to which "*reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the*

situation which would, in all probability, have existed if that act had not been committed."[119]

185. The BIT also provides for "*the payment of interest, calculated from the date of expropriation up to the date of payment*," as well as interest with respect to "*returns*." While the BIT does not provide for compound interest or simple interest, it is common for arbitral tribunals to award compound interest.[120]

A. Compensation for the Unlawful Expropriation of the Forest Estates

186. Claimant's preferred reparation is restitution in kind of the Estates that were taken from her. Alternatively, she is entitled to an amount of compensation sufficient to purchase estates of at least equivalent size and standard as the two Estates that were taken from her in violation of the Sweden-Russia BIT.

187. Either physical restitution, or payment of a sum corresponding to the value which a restitution in kind would bear, is supported by customary international law. In the *Chorzów Factory* case itself, which similarly concerned the consequences of an illegal expropriation, the PCIJ found this to be the appropriate measure of compensation:

> "*Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it.*"[121]

188. ICSID jurisprudence generally adheres to the distinction between lawful and unlawful expropriation and the different consequences stemming from these different acts. For instance, the *Metalclad v. Mexico* arbitral tribunal found that:

> "[t]*he award to Metalclad of the cost of its investment in the landfill is consistent with the principles set forth in Chorzów* […] *namely, that where the state has acted contrary to its obligations, any award to the claimant should, as far as is possible, wipe out all the consequences of the illegal act*

[119] *Factory at Chorzów (Claim for Indemnity) (Germany v. Poland)*, Judgment on Merits, 13 September 1928, PCIJ Series A, No. 17 (1928), p. 40.

[120] C. Dugan, D. Wallace, N. Rubins, *Investor-State Arbitration*, Oxford University Press, 2011, p. 609.

[121] *Factory at Chorzów (Claim for Indemnity) (Germany v. Poland)*, Judgment on Merits, 13 September 1928, PCIJ Series A, No. 17 (1928), p. 40.

> *and re-establish the situation which would in all probability have existed if that act had not been committed (the status quo ante).*"[122]

189. In cases where an expropriated investment had changed in value, payment of a sum corresponding to the value which a restitution in kind would bear has been upheld by arbitral tribunals. In *ADC v. Hungary*, where the expropriated investment had changed in value, the arbitral tribunal held:

> "*It is clear that actual restitution cannot take place and so it is, in the words of the Chorzów Factory Decision , 'payment of a sum corresponding to the value which a restitution in kind would bear', which is the matter to be decided.*"[123]

190. Since the value of the expropriated investment had risen after the expropriation took place, the tribunal found that the appropriate point in time to value the sum "*corresponding to the value which a restitution in kind would bear*" was the date of the award:

> "[The arbitral tribunal] *must assess the compensation to be paid by the Respondent to the Claimants in accordance with the Chorzów Factory standard, i.e., the Claimants should be compensated the market value of the expropriated investments as at the date of this Award, which the Tribunal takes as of September 30, 2006.*"[124]

191. The price of forest land in Sweden is shown by official statistics published by the Swedish State itself, which are well-documented, available online, and can scarcely be criticized by Sweden, since it is their author. The average price increase of forest land in Sweden has been approximately 11% per year since 2001, when Claimant purchased the Estates.

192. If we use this 11% annual increase in the value of forested estates, and assume a 3-year period before an arbitral award is rendered (the average duration of arbitral proceedings), this would amount to a value of approximately 56,160,529 SEK for average Estates based on official Swedish statistics.

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[122] *Metalclad Corporation v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 122.

[123] *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶ 483.

[124] *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶ 499.

193. The above figures are the average values of forested estates, understating the value of Viken and Åsen which were better than average. Viken was a well-known farm, with several centuries of continuity, which had never been on the market before and together, the Estates amounted to 1,211 hectares of land with suitable buildings. There are very few forested estates of such a size for sale at any given moment in Sweden and to be able to buy one would require either spending years following the market, with costs and risks for increases in the price level, or offering a premium. While the 1,500,000 SEK that Claimant actually received from the auction of the Estates against Claimant's will would need to be deducted from this amount, the premium for estates of a similar quality to Åsen and Viken is far greater than this amount, and currently estimated at 15% of the total value of the Estates, or 8,400,000 SEK. The precise value of the expropriated property will be proven by way of expert evidence with greater specificity in due course.

194. In addition to the land itself, the value of the farm buildings, estimated at 2,000,000 SEK, and the pasture cottage, estimated at 300,000 SEK, must also be taken into account when determining the sum corresponding to the value which a restitution in kind would bear, increasing the compensation to which Claimant is entitled by 2,300,000 SEK, since they were unlawfully expropriated from Claimant with the land itself.

195. Claimant also estimates decreases in value to the property due to harvesting, dissipation and compensation for movable property at 500,000 SEK to 1,100,000 SEK.

196. While Claimant's compensation will be calculated with additional precision and supported by expert evidence and adjusted for changing market conditions, the value which a restitution in kind would bear is currently estimated at **66,000,000 SEK** for the value of the land, building and movable property, minus what was actually paid to Claimant when the Estates were auctioned against her will.

B. Compensation for Sweden's Impairment of Claimant's Management, Maintenance, Use and Enjoyment of her Investments in the Forest Estates

197. Equally important to the restitution of the Estates, or a sum corresponding to the value which a restitution in kind would bear, is compensation for Sweden's unfair and inequitable

impairment of Claimant's management, maintenance, use and enjoyment of her investments, in an unreasonable and discriminatory manner, for which she is entitled to compensation due to Sweden's violations of Article 3(1) of the BIT:

> "*Article 4 Treatment of Investments*
>
> *Each Contracting Party shall at all times ensure in its territory fair and equitable treatment of the investments made by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments.*"

198. Claimant is also entitled to compensation for the returns that would have been generated for the expropriated assets under Article 4(2) of the BIT, which provides:

> "*Article 4 Treatment of Investments*
>
> *(2) The provisions of Paragraph (1) of this Article shall also apply to returns.*"

199. Had Claimant been allowed to use the Estates, which was her primary capital, Claimant would have made additional profits, some of which are automatic, and others of which clearly "*would, in all probability, have existed if that act had not been committed,*" as required by the Chorzów Factory standard.

200. When calculated in an itemized manner, it is clear that Sweden's treaty violations cost Claimant over **120,000,000 SEK** in returns that would in all probability have existed if she had been able to make use of her Estates:

- Claimant would have automatically received a modest European Union agricultural subsidy of approximately 4,000 SEK annually. Accumulated value from 2005 to 2016 would amount to 44,000 SEK, plus interest.
- Claimant would also have allowed harvesting of the Estates. Stumpage price is the price for a right to harvest a unit of standing timber for which the buyer bears the cost of felling and transportation. It represents timber rent and is one of the few natural-resource rents that can be directly observed as a market price. Viken 11:7 comprises 633 hectares, mainly forestland. Åsen 4:6 comprises 578 hectares, also mainly forestland. Assuming

stumpage of 1,000 hectares only, and while the precise loss from stumpage will be determined with precision by way of expert evidence, Claimant currently estimates her lost net income at 26,000,000 SEK between 2002 and the date when an award will be rendered, including interest starting in 2002, although this amount will be determined with precision by way of expert evidence in due course.

- Net rental income from the farm buildings of Viken – two living houses, a joinery, and a number of other buildings, has been estimated by Claimant at 120,000 SEK annually, and a net rental income from the pasture cottage has been estimated at 12,000 SEK annually. The accumulated value from 2002 to the date of the award would amount to approximately 6,400,000 SEK, including interest starting in 2003.
- Shooting and hunting rights follow ownership of the land. The simplest way to monetize these rights is to let them, undivided, and without any arrangements. With a rent of 20 crowns per hectare per year, for 1,194 hectares, from 2002 to the date of the award, the accumulated value would amount to 600,000 SEK, including interest starting in 2003. It should be noted that allowing hunting would not lower the value of the rental property because a house rental would only concern the houses and land immediately around them, which would be a couple of hectares, while shooting would take place away from the main farm houses.
- Claimant is a businesswoman, has an MBA, has higher education from her homeland regarding economics and trade with other countries, is well-versed in economics and all of her investments were in real estate. Her primary constraint was access to capital and forest land is, as a rule, readily mortgageable at attractive interest rates in Sweden. The Estates would have carried a mortgage loan of approximately 5,000,000 SEK million by mid-2002, which Claimant would have used to invest in additional property. Given the 11 % in increase in land value shown by Swedish State statistics, an assumed 5 % in increase in wood volume and 0.5 % for miscellaneous other income, average returns over the period for additional forested land would have been approximately 16.5% prior to considering leverage and assuming a 5% interest rate on debt. As Claimant's other investments in Sweden were in the form of real estate, it is also relevant to look at the possible return on investment in real estate, and it was then readily possible to find stable real estate for sale at prices giving a direct return of approximately 10%. Claimant was

already targeting more profitable real estate investments in Sweden which would have been expanded with access to capital by mortgaging her property.[125] While the precise figures will be shown in due course by way of expert evidence, in all probability Claimant could have mortgaged the land in order to obtain total accumulated value, including accrued interest, of an estimated 87,000,000 SEK through the date when an arbitral award will be rendered.

- There were also possibilities to increase running income through more intensive use of the Estates' opportunities. There were plans in the works for the construction of a small sawmill for the processing of the Estates' timber, in order to increase the value added to raw timber. Plans were also under consideration to plant certain areas – primarily the de-watered ones – with faster growing, leafy trees, in order to achieve shorter cycles. During arbitration proceedings, expert evidence will be provided to substantiate these lost opportunities, which are currently estimated at 20,000,000 SEK.

201. If, instead of such an itemized list, a value would be calculated from the simplified concept that the practical value of owning and holding a property is approximately 10 % of its market value per year, the value arrived at would alternatively be alternatively be roughly **121.6 million SEK** for Claimant's loss on returns that were directly caused by Sweden's violations of the Sweden-Russia BIT.

C. Compensation for Additional Harm Caused by Sweden's Treaty Violations

202. Swedish State prosecutors wrongly revealed what should have been private information concerning Claimant's wrongful imprisonment to the press and to banks in its public shaming of Ms. Ovchinnikova, resulting in loss of credit for AB Lytkina Fastighetsförvaltning and the loss of credit at commercial rates to AB Strömherren. Combined with the financial strains caused by the taking of Claimant's Estates, her largest investment, this led directly to the

[125] For example Claimant's investment AB Strömherren bought Domherren 1 with 100 % financing, and could enjoy a good cash-flow even after repayment of loans; AB Strömherren's second property, Viken 24:4, brought around 40 % direct return during the first years, until the tenant – as expected – cancelled the contract; Gruvstugan 4 AB, another company in which Claimant was involved, bought Gruvstugan 4 with SEK 840,000 in 2001 and sold it with SEK 1,450,000 a couple of years later; and AB Lytkina Fastighetsförvaltning, with three rental buildings, was possible to buy with SEK 100,000.

bankruptcy of AB Lytkina Fastighetsförvaltning and the eventual forced sale of AB Strömherren.

203. Claimant lost the entire value of AB Lytkina Fastighetsförvaltning which went bankrupt and represented most of the value of her Tolftflon Real Estate Company Group. In January 2007, prior to Claimant's imprisonment, Tolftflon Real Estate Company Group it was a healthy real estate company group, with a total asset value of 5,400,000 SEK and debts of approximately 400,000 SEK for a net asset value of 5,100,000 SEK. AB Lytkina Fastighetsförvaltning represented a total of 4,100,000 SEK of these assets' worth.

204. When the banks cut their credit following Claimant's wrongful imprisonment and the Swedish public prosecutor's wrongful advertising of this private fact to Claimant's business contacts, Claimant contributed personal funds to the company in an attempt to stave off bankruptcy of approximately 200,000 SEK.

205. Claimant's financial losses with respect to the Tolftflon Real Estate Company Group were far greater and are currently estimated at 16,200,000 SEK, including interest, an amount that will be provided with greater precision over the course of the current arbitration.

206. The bankruptcy also made it impossible for Claimant to use the houses owned by AB Lytkina Fastighetsförvaltning as an office for Claimant's Swedish businesses, as she had been doing. A conservative value for the value of the offices can be estimated at 100,000 SEK per year. From 2009 this was no longer possible, resulting in additional harm of approximately 600,000 SEK to the current date. In addition, the office facilities had to be evacuated at an additional cost of approximately 150,000 SEK, which Claimant was forced to pay, prior to consideration of interest on these amounts. A storage facility was also plundered during the evacuation, which should have been unnecessary, causing additional losses preliminarily estimated in the region of 300,000 SEK.

207. Approximately 500,000 SEK were also paid due to the increase in interest for AB Strömherren following Claimant's imprisonment and the advertising of this private information by the public prosecutor, between 2008 and 2014. The forced sale of AB Strömherren in 2014 also resulted in losses of approximately 2,000,000 SEK.

208. Claimant currently estimates the consequential damages of her wrongful imprisonment, public shaming and the Swedish prosecutor's wrongful interference with her business relationships, combined with the financial pressure caused by the loss of her Estates, at **20,420,000 SEK**.

D. Compensation for Direct Costs Incurred by Claimant Due to Sweden's Treaty Violations

209. Claimant was wrongfully taxed by Sweden for the forced "*sale*" of her Estates of 2 June 2006, in violation of her rights under the Sweden-Russia BIT. If the host State officially recognized that no sale of the Estates took place in 2006, the conditions for the taxation 2007 would be fundamentally altered as there would be no taxable profit. Even if the sale occurred, the taxable profit ought to be reduced by the amounts wrongfully taken by State-appointed trustee Mr. Janzon, according to normal accountancy practice, in which case there remains a loss and no taxes to be paid.

210. In her tax assessment of 2007, Claimant was assessed to have made a taxable profit of some 1.7 million SEK from the forced "*sale*" of the Estates, whereof 90 % was taxable and taxed at 30 %, for a total additional tax cost of some 500,000 SEK that was wrongly taken by the Swedish State. With accrued interest from 2007, this amounts to some 1,900,000 SEK today.[126]

211. Due to Claimant's legal attempts to retrieve the parts of the monies generated by the sale kept by the State-appointed trustee Mr. Janzon, one adverse cost-order was issued by the District court of Uppsala, ordering Claimant to pay 28,500 SEK as of May 2008, and another adverse cost-order was also issued by the District court of Östersund, ordering Claimant to pay 675,617 SEK as of February 2010. Claimant has refused to pay the amounts, which remain outstanding, and which today amount to 1,000,000 SEK if Sweden applies the annual penalty interest of 8% to 10%. Claimant requests either the cancellation of these unjust amounts, which were imposed on Claimant merely for attempting to defend her basic property rights and the wrongful actions of the State-appointed trustee, or the payment of 1,000,000 SEK

[126] Claimant has refused to pay the assessed tax, but part of it has been offset against taxes otherwise due to be returned, meaning that Claimant has effectively paid nearly half of these taxes.

which Claimant will use to settle these claims.

212. Some of the movable property of Viken also had to be evacuated while Claimant lived in fear of being evicted, having her assets seized or having her property damaged by the Swedes who wanted her off the land. Storage and transportation costs of the movable property that had to be evacuated were approximately 300,000 SEK, prior to consideration of interest.

213. Claimant also paid approximately 1,200,000 SEK to lawyers for legal costs with respect to the many lawsuits that were required in an attempt to defend her legal rights to her investment, prior to consideration of the costs that she is paying for the current arbitration. She paid legal counsel to appeal both the decision to wrongly register Claimant as emigrated and the decision to withdraw her residence permit, legal fees for changes of company boards required for this modification, legal fees for work performed by external counsel with respect to the bankruptcy of the AB Lytkina Fastighetsförvaltning.

214. In addition, rather than engaging in economically productive activity, Claimant was forced to lose thousands of hours of her own time engaged in legal proceedings. If her own time was valued at that of a junior associate in Sweden to do basic legal work, it would be valued at approximately 2,000 SEK per hour. Overall, if her lost time for legal work required by Sweden's treaty violations were valued at that of a junior associate lawyer in Sweden, then she would be owed 8,560,000 SEK, prior to consideration of interest:

- Claimant lost hundreds of hours each year defending her basic property rights concerning the Estates, gathering evidence, preparing arguments and drafting factual and legal memoranda with her lawyers. This wasted 3,000 hours of work can be valued at 6,000,000 SEK.
- Claimant also lost approximately 400 hours of time on criminal defence work, in addition to the work for which her public defender was officially remunerated, amounting to an additional 800,000 SEK, plus interest. Her public defender's fees for the trial in the Court of Appeals were paid for by the State, so are not claimed.
- For Claimant's appeal to the Supreme Court, over 50 hours of time and effort were also spent, for which only symbolic remuneration was granted.
- Legal work by Claimant in the amount of at least 200 hours per year during the years

2007 – 2010, i.e., approximately 800 hours of work, was also required with respect to the bankruptcy of AB Lytkina Fastighetsförvaltning. This lost time can be evaluated at 1,600,000 SEK.

- Finally, Claimant lost approximately 80 hours of productive time due to disputed taxes concerning the forced "*sale*" of Claimant's property over a two-year period, resulting in the equivalent of 80 hours of unnecessary work, which can be evaluated in the amount of 160,000 SEK.

215. Claimant will request the arbitral tribunal to determine the proper compensation for her lost time caused directly by Sweden's treaty violations.

216. The estimated compensation for the costs incurred by Claimant due to Sweden's treaty violations amount to **12,960,000 SEK**.

E. Compensation for Moral Damages

217. The most recent award concerning moral damages, dating from March 2013, was the *Al Kharafi v. Libya* award. In this award, the claimant was awarded moral damages of 30 million USD to be paid by Libya due to reputational harm. In the better-known *Desert Lines v. Yemen* award, the claimant was awarded moral damages of only 1 million USD.

218. Ms. Ovchinnikova's case is equally strong if not stronger than either claim. She lost new experiences, the pleasure of seeing the results of her work, was subjected to constant worries and insecurity, suffered from financial shortages, spent most of her time trying to solve urgent problems with little or no possibility to look forward, received regular and systematic insults by arrogant Swedish State employees, and she had to suffer having her property freely and arrogantly taken as if she had no legal rights in Sweden because she was a Russian woman.

219. All of Claimant's investments in Sweden decreased in value due to the harm to Claimant's reputation, Claimant had to spend 62 days in prison under harsh conditions and, needless to say, Claimant's imprisonment for minor accounting irregularities for which her ex-husband was responsible caused severe damage to her name and reputation, making it virtually impossible to run a normal business in Sweden afterwards. Claimant is still suffering from the mental harm inflicted upon her, years later, and lost her ability to perform qualified work

requiring concentration or initiative following her imprisonment.

220. Claimant was also subjected to highly insulting formulations in anonymous letters that both the Swedish Tax Authority and the Migration Authority forwarded to the respective courts dealing with her disputes.

221. Claimant's homes were also ransacked in brutal forms by the police. Apart from what was officially seized related to her investments, valuables were taken and personal belongings broken. The officially seized material is still not in Claimant's possession and includes mainly working documents (e.g. bookkeeping material, notes, etc.), and their monetary value is therefore difficult to estimate. Some pieces of jewellery, porcelain figurines and other objects, although not officially seized, disappeared from the premises during the raids and have a market price of approximately 50,000 SEK.

222. As Claimant was sentenced to further imprisonment by the Court of Appeals (8 months), she has also been forced to leave Sweden for a period exceeding five years. From a practical point of view, Claimant is no longer managing her businesses in Sweden, AB Strömherren has only one remaining piece of real estate, of limited value, which is now let, and Claimant only maintains a postal address and keeps up with her companies' administrative and accounting duties from abroad.

223. While the precise amount of moral damages to which Claimant is entitled shall be left to the discretion of the arbitral tribunal, Claimant claims an additional amount that is equivalent to the above-mentioned claims, given the grievous and morally reprehensible acts of Swedish State organs, which caused serious harm to Claimant and destroyed her reputation and those of her businesses in Sweden.

VI. FINAL ATTEMPT AT AMICABLE SETTLEMENT

224. This notice represents a final request for amicable settlement of the above-mentioned matter. If Sweden is unwilling to settle this matter, Ms. Ovchinnikova will have no choice but to initiate arbitration proceedings under the Sweden-Russian BIT in order to ensure that her legal rights are finally respected and that Sweden upholds its binding international obligations.

Yours sincerely,

William Kirtley
Olivier Marquais
Andrian Beregoi

Aceris Law S.A.R.L.

Rue du Rhône 14, 1204 Genève

Telephone: +41 22 819 1812

Fax: +41 22 819 1900

E-mail: wkirtley@acerislaw.com
omarquais@acerislaw.com
aberegoi@acerislaw.com

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