

# Commisimpex Saga – 2018 Developments in France on State Immunity from Execution



Before 2018 comes to an end, I wanted to report on the developments on State immunity from execution (and more particularly on the Commisimpex saga) that took place in France this year.

The Commisimpex saga relates to a dispute between *Société Commissions Import Export (Commisimpex)* and the Republic of Congo (**Congo**) regarding unpaid debts due by Congo to Commisimpex.

After having obtained two ICC awards in its favour in 2000 and 2013, Commisimpex sought to enforce them against Congo in France.

In a notable case, it sought to attach banks accounts held by the Congolese embassy in Paris as well as by the Congolese delegation to UNESCO. In addition to the arbitral awards, Commisimpex relied on a waiver granted by Congo in the 1990s which entitled Commisimpex to attach diplomatic assets.

However, in November 2012, the Versailles Court of Appeal disregarded this waiver as it did not expressly and

specifically mention which diplomatic assets could be seized. The Versailles Court of Appeal therefore ruled in favor of Congo and refused the seizure of the Congolese bank accounts.

That decision was overturned by the French Supreme Court (the **Supreme Court**) on the ground that international customary law only required an “*express*” waiver but did not require the waiver to specifically identify which diplomatic assets could be attached.

The case was then referred back to the Paris Court of Appeal which applied the Supreme Court’s reasoning.

That decision of the Paris Court of Appeal was then again challenged by Congo before the Supreme Court, on the ground that shortly after the decision of the Paris Court of Appeal, France adopted new rules on State immunity from execution (see previous comments [here](#)). Those new rules now expressly provide that a creditor is prohibited from attaching diplomatic assets unless there is an “*express*” and “*specific*” waiver of immunity.

Surprisingly (and despite the fact that those new rules were not in force at the time of enforcement), in a decision of 10 January 2018, the Supreme Court considered that it was nevertheless necessary, in light (i) of those new provisions; (ii) of the fact that the case relates to issues touching upon State sovereignty; and (iii) of the imperious necessity not to treat differently similar situations; to reverse its previous line of case law. Therefore, the Supreme Court overturned the judgment of the Paris Court of Appeal.

That judgment of the Supreme is particularly interesting as it provides an indirect application of the new French provision on State immunity from execution. However, I am a little bit concerned with the tacit retroactive application that the Supreme Court made of those rules... I wonder whether such application is fully compliant with the principles laid down

in Article 6 of the European Convention on Human Rights.

Interestingly, on 6 September 2018, the Paris Court of Appeal ruled in other proceedings relating to the enforcement of the same arbitral awards. More particularly, the Paris Court of Appeal confirmed two previous judgments which had validated the attachments of debts owned by Congo against two private companies (Razel Bec and EDF Africa). See further reports by [Jeune Afrique](#).

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