

INTERNATIONAL COURT OF JUSTICE

APPLICATION
INSTITUTING PROCEEDINGS

filed in the Registry of the Court
on 27 June 2023

ALLEGED VIOLATIONS
OF STATE IMMUNITIES

(ISLAMIC REPUBLIC OF IRAN v. CANADA)

COUR INTERNATIONALE DE JUSTICE

REQUÊTE
INTRODUCTIVE D'INSTANCE

enregistrée au Greffe de la Cour
le 27 juin 2023

VIOLATIONS ALLÉGUÉES
DES IMMUNITÉS DE L'ÉTAT

(RÉPUBLIQUE ISLAMIQUE D'IRAN c. CANADA)

I. THE AGENT OF THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN TO THE REGISTRAR OF THE
INTERNATIONAL COURT OF JUSTICE

27 June 2023.

On behalf of the Islamic Republic of Iran, and in accordance with Articles 36 (2) and 40 (1) of the Statute of the Court, and Article 38 of the Rules of Court, I have the honour to notify the Court that the Islamic Republic of Iran is hereby presenting an Application concerning the violations by Canada of Iran's jurisdictional immunity and immunity from measures of constraint under customary international law.

As indicated in the Application, in accordance with Article 40 of the Rules of Court, the Government of the Islamic Republic of Iran informs the Court that it has appointed the undersigned as its Agent for this proceeding and the address for service to the Agent is the Agent Bureau of the Embassy of the Islamic Republic of Iran, De Werf 15, 4th Floor, 2544 EH, The Hague.

(Signed) Tavakol HABIBZADEH.

II. APPLICATION INSTITUTING PROCEEDINGS

IN THE NAME OF GOD

1. On behalf of the Islamic Republic of Iran (hereinafter “Iran”), and in accordance with Articles 36 (2) and 40 (1) of the Statute of the International Court of Justice (hereinafter the “ICJ”, or the “Court”) and Article 38 of the Rules of Court, I respectfully submit this Application instituting proceedings against Canada, in the matter of the violations of Iran’s immunities (hereinafter the “Application”).

I. SUBJECT OF THE DISPUTE

2. The dispute arises from a series of legislative, executive and judicial measures adopted by Canada against Iran and its property since 2012 in violation of Iran’s jurisdictional immunity and immunity from measures of constraint under customary international law.

3. Iran has repeatedly protested, including through diplomatic channels, to Canada for the violation of its international obligations and has requested Canada to cease its wrongful acts and to make full reparation for the injuries caused, but to no avail.

4. Under the circumstances, Iran has no alternative but to avail itself of its right to institute proceedings before this Court.

II. JURISDICTION OF THE COURT

5. The Court has jurisdiction over the above-mentioned dispute and to rule on Iran’s claims. Both Iran and Canada have accepted the compulsory jurisdiction of the Court on 26 June 2023 and 10 May 1994, respectively.

III. THE FACTS

6. Canada has adopted and implemented a series of legislative, executive and judicial measures against Iran and its property in breach of its international obligations. These measures have abrogated the immunities to which Iran is entitled, both with respect to jurisdictional immunity and immunity from measures of constraint.

(1) Legislative and Executive Acts against Iran

7. Canada adopted the State Immunity Act in 1985 (hereinafter the “SIA”).

8. On 13 March 2012, Canada amended section 6 of the SIA to remove retroactively as from 1 January 1985, the immunity from the jurisdiction of a foreign State listed by Canada as supporter of terrorism, in proceedings against this State for alleged support of terrorism. The amendments, now section 6.1 (1) of the SIA, provide that:

“A foreign state that is set out on the list referred to in subsection (2) is not immune from the jurisdiction of a court in proceedings against it for its support of terrorism on or after January 1, 1985.”

9. Section 6.1 (2) of the SIA reads:

“The Governor in Council may, by order, establish a list on which the Governor in Council may, at any time, set out the name of a foreign state if, on the recommendation of the Minister of Foreign Affairs made after consulting with the Minister of Public Safety and Emergency Preparedness, the Governor in Council is satisfied that there are reasonable grounds to believe that the foreign state supported or supports terrorism.”

10. In addition, section 12 (1) (d) of the SIA removed the immunity from enforcement of the property of a foreign State where:

“the foreign state is set out on the list referred to in subsection 6.1 (2) and the attachment or execution relates to a judgment rendered in an action brought against it for its support of terrorism or its terrorist activity and to property other than property that has cultural or historical value”.

11. At the same time, Canada also enacted another law titled Justice for Victims of Terrorism Act (hereinafter the “JVTA”) which establishes a cause of action allowing plaintiffs to sue alleged perpetrators of terrorism and their supporters. It provides in section 4 (1) that:

“Any person that has suffered loss or damage in or outside Canada on or after January 1, 1985 as a result of an act or omission that is, or had it been committed in Canada would be, punishable under Part II.1 of the Criminal Code, may, in any court of competent jurisdiction, bring an action to recover an amount equal to the loss or damage proved to have been suffered by the person and obtain any additional amount that the court may allow from any of the following:

- (a) any listed entity, or foreign state whose immunity is lifted under section 6.1 of the State Immunity Act, or other person that committed the act or omission that resulted in loss or damage; or
- (b) a foreign state whose immunity is lifted under section 6.1 of the State Immunity Act, or listed entity or other person that — for the benefit of or otherwise in relation to the listed entity referred to in paragraph (a) — committed an act or omission that is, or had it been committed in Canada would be, punishable under any of section 83.02 to 83.04 and 83.18 to 83.23 of the Criminal Code.”

12. In addition to introducing the cause of action against a foreign State listed as supporter of terrorism, section 4 (5) of the JVTA mandates all competent Canadian courts to recognize, and therefore authorize enforcement of, any foreign judgments in favour of a person that has suffered loss or damage as a consequence of a “terrorist act”, against a foreign State whose immunity had been lifted pursuant to section 6.1 (2) of the SIA.

13. On 7 September 2012, six months after enactment of the SIA and JVTA, the Government of Canada severed diplomatic relations with Iran, closed its embassy in

Tehran, and expelled Iranian diplomats from Canada. At the same time, it listed Iran as a supporter of terrorism pursuant to section 6.1 of the SIA¹.

*(2) Litigation, Recognition and Enforcement
of Judgments against Iran*

14. Following the enactment of the legislative and executive acts referred to above, a series of claims and enforcement proceedings have been adjudicated or are underway against Iran in Canada. As of the date of this Application, Canadian courts have recognized, pursuant to section 4 (5) of the JVTA, several default judgments issued by US courts against Iran under section 1605 (a) (7) of the US Foreign Sovereign Immunities Act².

15. Also, the Ontario Superior Court of Justice, in *Estate of Marla Bennett v. Iran*, granted a Mareva injunction, that is, a pre-judgment measure of constraint, against Iran's property in Canada, in particular against three real property, during the proceedings commenced to obtain recognition of a US district court's judgment³. This Mareva injunction also applied to Iranian funds held in two bank accounts⁴. A subsequent order reduced the scope of the Mareva injunction to two real properties⁵.

16. Apart from recognition of US default judgments, in at least one case, i.e., *Tracy et al. v. Iran*, File No. 14-10-10403-00CL, Canadian courts have also enforced several US judgments against property of Iran. The case involved five consolidated actions for the recognition and enforcement of US judgments in which judgment holders had attached Iranian property in Ontario in aid of execution of the

¹ Government of Canada, "Canada Lists Both Iran and Syria as State Supporters of Terrorism", 7 September 2012, <https://www.canada.ca/en/news/archive/2012/09/canada-lists-both-iran-syria-state-supporters-terrorism.html>, retrieved on 27 June 2023.

² See for example: *Tracy/Ciccipio v. Government of Islamic Republic of Iran* (Nova Scotia), 26 September 2012; *Bennett v. Government of Islamic Republic of Iran*, Case No. CV-12-463434 (Ontario), 5 November 2012; *T. Reed v. Government of Islamic Republic of Iran*, Case No. Hfx No. 422558 (Nova Scotia), 11 July 2011; *C. Higgins v. Iranian Revolutionary Guard Corps*, Case No. CV-14-499468 (Ontario), 3 October 2014; *C. P. Holland v. Government of Islamic Republic of Iran*, Case No. CV-14-497414 (Ontario), 3 October 2014; *Marthaler et al. v. Government of Islamic Republic of Iran*, Case No. CV-13-493290 (Ontario), 3 October 2014; *F. Havlish v. Government of Islamic Republic of Iran, et al.*, Case No. S-168272 (British Columbia), 17 October 2017; *F. Havlish v. Government of Islamic Republic of Iran, et al.*, Case No. 476594 (Nova Scotia), 27 July 2018; *F. Havlish v. Government of Islamic Republic of Iran, et al.*, Case No. CV-17-584851 (Ontario), 14 June 2018; *F. Havlish v. Government of Islamic Republic of Iran, et al.*, Case No. 180313913 (Alberta), 22 March 2019; *Jacob, Rose, Steen and Fisher v. Government of Islamic Republic of Iran*, Case No. CV-10405814 (Ontario), 29 June 2019; *Marthaler, Higgins v. Government of Islamic Republic of Iran*, Case No. CV-15-10840-00CL (Ontario); *Leibovitch v. Government of Islamic Republic of Iran, et al.*, Case No. CV-16-549859 (Ontario); *S. Wise v. Government of Islamic Republic of Iran, et al.*, Case No. S137186 (British Columbia).

³ *Bennett Estate v. Islamic Republic of Iran*, 2012 ONSC 5886 (CanLII), <https://canlii.ca/t/ftj11>, retrieved on 27 June 2023.

⁴ *Estate of Marla Bennett v. Islamic Republic of Iran*, 2013 ONSC 5662 (CanLII), <https://canlii.ca/t/g0kbl>, retrieved on 27 June 2023.

⁵ *Estate of Marla Bennett v. Islamic Republic of Iran*, 2013 ONSC 6832 (CanLII), <https://canlii.ca/t/g1qrc>, retrieved on 27 June 2023.

judgments⁶. Two other plaintiffs were also trying to seize the same Iranian property, but the *Tracy* plaintiffs reached an agreement with them to stay their actions in return for receiving a portion of Iranian property⁷.

17. Upon service of the judicial papers, Iran appeared in the proceedings and *inter alia* invoked its sovereign immunity from jurisdiction of Canadian courts and immunity of its property from attachment and execution under international law. However, the courts in all instances rejected Iran's defences, recognized the US judgments pursuant to the JVTA and ordered the turnover of the property to judgment holders⁸. The property comprised of two real estates in Ottawa and Toronto together with the funds held in two bank accounts in the name of the Iranian embassy in Canada⁹. The value of the property was over CAD 30 million.

18. In addition to recognition and enforcement of US judgments, Canadian courts have also exercised jurisdiction over claims against Iran in relation to the tragic incident of Ukraine International Airlines Flight PS 752.

19. For example, in *Mehrzad Zarei et al. v. Iran et al.* (No. CV-20-635078), Zarei and five other plaintiffs as personal or estate representatives of six deceased in the incident and as their surviving family members filed a statement of claim against Iran under the SIA and the JVTA as amended in 2012.

20. In a default judgment dated 20 May 2021, the Ontario court held that the plaintiffs have established that the incident was a "terrorist activity" under the SIA, the JVTA and the provisions of the Criminal Code¹⁰. In a subsequent judgment dated 31 December 2021, the court awarded plaintiffs CAD 7 million as compensation, CAD 100 million as punitive damages and CAD 94,947.28 for their costs¹¹.

IV. THE LAW

21. Iran, as a sovereign State, is entitled to sovereign immunities from jurisdiction and from enforcement under customary international law. The principle of sovereign immunity, which derives from the fundamental principle of sovereign equality, prohibits private parties from suing another State before the courts of the forum State and from seizing its property.

⁶ *Tracy v. The Iranian Ministry of Information and Security*, 2016 ONSC 3759 (CanLII), <https://canlii.ca/t/gslr1>, retrieved on 27 June 2023.

⁷ *Edward Tracy v. The Iranian Ministry of Information and Security*, 2014 ONSC 1696 (CanLII), <https://canlii.ca/t/g66v1>, retrieved on 27 June 2023, para. 7. The plaintiffs were Sherry Wise, who had filed an action against Iran for alleged injury in Palestine under the JVTA, and Tarek Reed, whose US judgment had been recognized in Nova Scotia on 22 March 2013.

⁸ *Tracy v. The Iranian Ministry of Information and Security*, 2016 ONSC 3759 (CanLII), <https://canlii.ca/t/gslr1>, retrieved on 27 June 2023.

⁹ See Ontario Superior Court of Justice, Receiver's Certificate acknowledging that the proceeds of the assets were distributed to judgment creditors dated 7 August 2019, available at: <https://www.albertgelman.com/wp-content/uploads/2019/08/Receivers-Certificate-dated-August-7-2019-TRACY.pdf>, retrieved on 27 June 2023.

¹⁰ *Zarei v. Iran*, 2021 ONSC 3377 (CanLII), <https://canlii.ca/t/jg0tx>, retrieved on 27 June 2023.

¹¹ *Ibid.*, para. 53. There are at least two other similar actions pending against Iran in Canada: *Smith et al. v. Islamic Republic of Iran* and *Arsalani v. Islamic Republic of Iran*, which is a "class action" lawsuit.

22. Under customary international law there is no so-called “terrorist exception” allowing a State to subject another State to its jurisdiction where the latter is accused of being involved in a terrorist act. The International Court of Justice already established clearly that there is no limitation upon jurisdictional immunities in the context of cases before domestic courts concerning alleged serious violations of human rights or norms of a *jus cogens* character under customary international law¹².

23. It follows that Canada is obliged to respect the jurisdictional immunity which Iran enjoys under international law and cannot allow civil claims to be brought against it in Canadian courts seeking reparation for alleged support to, or acts of, terrorism, nor can it allow its jurisdictions to recognize in Canada foreign judgments rendered against Iran in so-called “terrorist cases”. Further, Canada has no right under international law to take measures of constraint against Iran’s property, neither for enforcing Canadian judgments nor for enforcing foreign judgments.

V. THE CLAIMS OF IRAN

24. As will be more fully developed in a subsequent stage of the proceedings:

- (i) Canada is bound to abide by the rules of customary international law regarding the sovereign immunity of Iran, both jurisdictional and from enforcement;
- (ii) there is no justification, in international law, for disregarding the jurisdictional immunity and immunity from enforcement of Iran; and
- (iii) the actions carried out by Canada against Iran as summarily described above are flagrant violations of general principles and rules of international law of State immunity including the principle of sovereign equality (i.e., *par in parem non habet imperium*).

25. Through the measures outlined above, Canada has violated and continues to violate its obligations *vis-à-vis* Iran by:

- Removing Iran’s jurisdictional immunity and immunity from enforcement by adopting sections 6.1 and 12 (1) (d) of the SIA, and enlisting Iran pursuant to section 6.1 of the SIA as so-called supporter of terrorism;
- Enacting section 4 (1) of the JVT, and enlisting Iran pursuant to section 6.1 of the SIA as so-called supporter of terrorism, thereby allowing private persons to file claims against Iran for damages resulting from alleged support of terrorism;
- Authorizing recognition and enforcement of foreign judgments against Iran by enacting section 4 (5) of the JVT and enlisting Iran pursuant to section 6.1 of the SIA as so-called supporter of terrorism;
- Enlisting Iran pursuant to section 6.1 of SIA as supporter of terrorism; and
- Authorizing, under section 12 (1) (d) of the SIA, attachment, and execution of judgments against Iran’s property protected under customary international law.

¹² See *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012 (I), p. 139, para. 91.

VI. JUDGMENT REQUESTED

26. On the basis of the foregoing, and while reserving the right to supplement, amend or modify the present Application in the course of further proceedings in the case, Iran respectfully requests the Court to adjudge and declare that by failing to respect the immunities of Iran and its property, Canada has violated its international obligations toward Iran, and in particular:

- (a) That by allowing claims to be brought against Iran for alleged support of terrorism, Canada has committed and continues to commit violations of its obligations to respect Iran's jurisdictional immunity under customary international law;
- (b) That by recognizing or enforcing in Canada foreign judgments rendered against Iran for alleged support of terrorism, it has committed and continues to commit violations of Iran's jurisdictional and enforcement immunities under customary international law;
- (c) That by allowing and adopting pre-judgment and post-judgment measures of constraint against property of Iran, Canada has failed to respect Iran's immunity from enforcement under customary international law;
- (d) That Canada shall ensure that no steps shall be taken based on the legislative, executive, and judicial acts at issue in this case which are, to the extent determined by the Court, inconsistent with the obligations of Canada toward Iran under customary international law and shall give guarantees of non-repetition;
- (e) That Canada shall, by means of its own choosing, take all necessary steps to ensure that all judicial decisions rendered by its courts in violation of Iran's immunity become unenforceable and ineffective;
- (f) That Canada is under an obligation to make full reparation including compensation to Iran for the violation of its international obligations in a form and amount to be determined by the Court at a subsequent stage of the proceedings. In this respect, Iran reserves the right to introduce and present to the Court in due course the reparation owed by Canada; and,
- (g) Any other remedy that the Court may deem appropriate.

27. For the purposes of Article 31 (3) of the Statute and Article 35 (1) of the Rules of Court, Iran declares its intention to exercise the right to designate a judge *ad hoc*.

The Government of the Islamic Republic of Iran has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to the Agent Bureau of the Embassy of the Islamic Republic of Iran, De Werf 15, 4th Floor, 2544 EH, The Hague.

The Hague, 27 June 2023.

(Signed) Tavakol HABIBZADEH,
Agent of the Government
of the Islamic Republic of Iran.

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