ARBITRATION BATTLE

ONLINE

FIRE IN THE WINTER PALACE

1837
The dispute for the Arbitration Battle during the St. Petersburg International Legal Forum 9 ¾ relates to the fire in the Winter Palace of 18 December 1837 that, without doubt, seriously affected the future of the Russian Empire.

We are convinced that the Honorable Arbitrator will examine the dispute with the utmost impartiality, due diligence, and fairness.

Please be aware that some of the facts are fictional and never occurred in the reality.

Although the Russian Arbitration Center was established as much as 180 years later, we kindly suggest that you presume, for the purposes of the Arbitration Battle, that it has been functioning during the events described below, and be guided in all respects by the effective Arbitration Rules.

The applicable procedural Law for the purposes of the Arbitration Battle is the UCITRAL Model Law on International Commercial Arbitration.

“...Despite the thousands of people crowding the square, it was terribly quiet,” – which is unsurprising, for the entire course of Russian history, be it voluntarily or not, was tied to this magnificent palace that was now facing destruction, as was the adjacent building of the Hermitage...

V. Pikul, Where Is Our Plate Gone?

The Imperial Hermitage

A fine arts, decorative and applied arts museum, whose main museum complex comprises several interconnected buildings, including the Winter Palace – at the time, the official residence of the Russian Emperors. The Claimant in present dispute.

Nicholas I Romanov

Emperor of the Russian Empire, King of Poland and Grand Duke of Finland, the reigning monarch in the year when the fire broke out. The Imperial Hermitage is under his personal superintendence.

Henri Louis Auguste Ricard de Montferrand

A French-born architect who lived and worked in Russia. He oversaw the restoration of the Winter Palace in 1833. The Respondent in this dispute.

Ludovica Charlemagne

A renowned Russian architect. Expert appointed by the Arbitral Tribunal in this case.

Place of Action

St. Petersburg, 1838

1. The authors of the case deliberately allow for the fact that by the time of the commencement of arbitration, the Romanov residence was already part of the larger Hermitage museum ensemble and received the status of a museum (in reality, that happened in 1917).
1. The Winter Palace, founded in 1754, with its current design, is the main Imperial residence in Russia. The interiors of more than 1,000 rooms and 13 halls of the Winter Palace, whose total area covers around 60,000 m², were designed by the best architects, including Bartolomeo Rastrelli, Antonio Rinaldi, Yury Felten, Jean-Baptiste Vallin de la Mothe, and Ivan Betskoi. Its ornate and exuberant décor reflects the deep connection between the Palace and the capital of the Russian Empire.

2. In the 1790s, Catherine the Great ordered a reconstruction of the Imperial Hermitage that includes, as the main building of the architectural ensemble, the Winter Palace. The reconstruction resulted in the creation a passageway leading to the Winter Palace – the Apollo Hall – that the visitors of the Hermitage could use to avoid running into the Imperial chambers. Thus, the Imperial Hermitage and the Winter Palace were connected not only de jure, but also de facto.

3. In the early 1830s, Emperor Nicholas I decided to turn the Winter Palace into a monument to the might of the Russian Empire. To do so, Nicholas I entered into a contract for work and labour with the French architect A. de Montferrand. During the negotiations, A. de Montferrand insisted on resolution of the disputes related to alterations in the Palace by means of arbitration, since resolution of disputes before Russian state courts was alien to him as a born Frenchman. Nicholas I, for whom the confidentiality of dispute resolution was important, agreed to incorporate an arbitration agreement into the contract.

4. Before the commencement of the renovation, A. de Montferrand’s Palace reconstruction and design papers were reviewed and approved personally by the Emperor.

5. In 1833-1834, A. de Montferrand oversaw the restoration of the Winter Palace’s eastern building, decorating the Field Marshal’s and the Peter the Great’s Rooms, and the Armorial Hall.

6. When accepting the works done after the completion of restoration, the Emperor made no objections as to the quality of the construction works.

7. On 15 December 1837, at the exit to the Ministerial Corridor from the Field Marshal’s Room, one could sense a “whiff of smoke.” On 17 December 1837, fire started in one of the chimney tubes, filled with soot. All suspicious crevices from which wisps of smoke could be seen, were wetted down, but no one could find where the fire was coming from.

8. Firemen arrived to the Palace and immediately set to finding the seat of the fire.

9. After the very first strike by a crow-bar against the wall, one of the Palace’s mock mirror doors fell, flames shooting from behind it, quickly spreading up along the wooden balks.

10. Arriving to the site of the fire, Emperor Nicholas I ordered to break the windows along the galleries of the Field Marshal’s Room, thus trying to save more than 3,000 of the Palace’s inhabitants from suffocating. The flow of fresh air, however, only helped the fire spread faster. Moving in two directions at once, by 6 a.m. the fire took over the entire Palace.

11. It became evident that the fire’s fury could not be curbed. To save the rest of the museum complex, the passageways to Hermitage were disassembled, and the rest of the property was taken out of the building. That whole time, the fire victims and all of the salvaged property were lying in the snow by the Alexander Column.

12. It took three days to fully extinguish the fire. According to official reports, thirteen soldiers and firemen perished in it. Moreover, the fire altogether destroyed the magnificent décor and interiors of the Emperor’s residence, along with numerous manuscripts and various chronicles, related, among other things, to the Decembrist uprising and the Russo-Turkish wars. All that was left of the Winter Palace were the stone walls and the arches of the first floor.

13. Under the instructions of Nicholas I, on 25 December 1837, a Commission for the restoration of the Winter Palace was created. Identification of the causes of the incident fell to a special investigative commission and the Palace Quartermaster’s Department.

14. The joint investigation of the commission and the Palace Quartermaster’s Department demonstrated that the restoration of the Palace’s rooms completed in 1833 under the supervision of the architect A. de Montferrand had facilitated the breaking-out of the fire. The air vent (a round hole in the wall of the stove, through which the heat rises from the burning logs) was left unsealed after the last rebuilding of the great Field Marshal’s Room. It was located in the chimney tube that ran between the triphorium galleries and the wooden vaulting of the Peter the Great’s Room, situated next to the Field Marshal’s Room. The air vent was also fitted to the pane-
15. After the investigation report was reviewed by the Emperor and the representatives of the Imperial Hermitage, one of the representatives of the Imperial Hermitage dispatched a formal letter, sealed and signed by Emperor Nicholas I, wherein he informed the architect of the construction error found and demanded that the latter compensate the losses caused by the fire, in a fixed amount (as nobody was willing to engage the architect to work at the Palace again). Yet, neither the museum, nor the Emperor ever received a reply from A. de Montferrand.

16. The Imperial Hermitage filed a claim to the Russian Arbitration Center against A. de Montferrand for the recovery of 10,000,000 rubles – that is, the value of property lost in the fire (unique paintings, archives, bas-reliefs, furniture, etc.) in accordance with the inventory of the Imperial Hermitage. In support of the Arbitral Tribunal’s jurisdiction, the museum relied on the arbitration agreement included into the contract.

17. In his Response, the architect asked the Arbitral Tribunal to dismiss the claim in full.

18. First, A. de Montferrand submitted that the Commission for the supervision of works ordered to complete the Field Marshal’s Room and the Peter the Great’s Room be completed in five months, while in any other country creating in stone what had been created in wood would have taken five years. Just six weeks were allowed to complete the paintings and the beautiful mosaic parquet. The need to use the cheapest materials and work on short deadlines was the reason behind the choice of lightweight structures. At the same time, the procurement of construction materials that A. de Montferrand, moreover, did not oversee, and the supervision of reconstruction disputes were not covered by the contract with the Emperor. Consequently, the Arbitral Tribunal has no jurisdiction over this dispute. Furthermore, A. de Montferrand relied on the construction works certificate of acceptance, signed by the Emperor and confirming that Nicholas I had no complaints as to the quality of works. The architect thus seeks to have the Hermitage’s claim dismissed.

19. Second, the contract was concluded with Emperor Nicholas I, while the Imperial Hermitage is not a party thereto and, consequently, cannot rely on the arbitration agreement.

20. Third, the architect informed that he could offer a different explanation of the causes of the fire. The report of the joint commission for the investigation of the causes of the fire stated that Mirbach (the former commander of the guard placed in the great Field Marshal’s Room), according to his notes, had seen smoke rise from under the floor at the entrance to the Field Marshal’s Room and into the hallway. After the floor was opened, he reported, flames rose from the opening. A footman explained to Mirbach that the smoke was rising from the laboratory located on the floor below. Two days prior to the fire, a pipe had burst there and was packed with sponge and sealed with clay. “Timber next to the pipe had caught fire once before; it was extinguished and once again sealed. The putty came off, the timber kept smoldering, and now, God forbid, it was on fire in the earnest. The house is old, dry, Lord save us all,” the Winter Palace footman told the commander of the guard. For this reason, A. de Montferrand is challenging the findings of the report submitted by the Claimant, and asks the Arbitral Tribunal to appoint an expert to conduct a construction expert assessment in accordance with Art. 44 of the RAC Arbitration Rules.

21. Given that no objections to the appointment of an expert were made by the Claimant and that the Parties could not agree on the choice of the expert, the Arbitral Tribunal proceeded itself to appoint Ludovica Charlemagne as the construction expert in the case. The Arbitral Tribunal then ordered to present the Expert’s Report, once completed, in the course of oral hearings in the case.

22. Ludovica Charlemagne accepted her appointment as Expert without any further statements or disclosures.

23. In preparing for the arbitration, the Respondent advanced objections as to the choice of the appointed Expert. The architect argued that Ludovica Charlemagne was not independent or impartial: rather, since 1820, she had been appointed for restoration and repairs of the St. Petersburg palaces, including the Winter Palace by the Palace Quartermaster’s Department that had also conducted the investigation of the causes of the fire on the instructions of Nicholas I (see para. 13). Furthermore, in 1827–1829, Ludovica Charlemagne rebuilt His Imperial Majesty’s own summerhouse, as well as was engaged by the Emperor and the members of his family from time to time for minor repair works in their residences. According to A. de Montferrand, the Expert’s deliberate failure to disclose this information unequivocally evidences her prejudice and bias in favor of the Claimant.
ISSUES TO DISCUSS

CLAIMANT
(Imperial Hermitage)

RESPONDENT
(A. de Montferrand)

PROCEDURAL ISSUES

The Arbitral Tribunal has jurisdiction over this dispute, since the dispute arose from a contract by and between Nicholas I and A. de Montferrand and is directly related to architectural works: the Respondent’s errors in engineering and design, and selection of materials for the upcoming restoration works resulted in the tragic consequences at hand. Additionally, the arbitration clause also covers non-contractual claims as claims directly related to the subject matter of the contract.

The Imperial Hermitage may act as the Claimant under the contract by and between Nicholas I and A. de Montferrand, since the Hermitage is placed under the personal superintendence of Nicholas I, and the contract was executed for the Hermitage.

The Arbitral Tribunal has no jurisdiction over this dispute, since the dispute did not in any way arise directly from the contract by and between Nicholas I and A. de Montferrand. Additionally, the arbitration agreement only covers the claims related to architectural works, but not to construction or procurement, or use of construction materials. Furthermore, nor does supervision over restoration works belong to the scope of disputes covered by the arbitration clause.

The Imperial Hermitage may not act as the Claimant under the contract, since the contract was made by and between Nicholas I and A. de Montferrand, while the Imperial Hermitage, being a separate and independent legal entity, did not sign the contract or the arbitration agreement.

APPOINTMENT OF THE EXPERT

Ludovica Charlemagne is a renowned specialist in architecture and may be appointed as the Expert. She had indeed been engaged by the Claimant and the Palace Quarter-master’s Department in the past; yet, at present, Ludovica Charlemagne is not involved in any of the Claimant’s construction projects and has no ties with Museum.

Construction of a summerhouse for His Majesty, first, has nothing to do with the Claimant, since the summerhouse is not part of the museum complex and was constructed in the personal interests of the Romanov family; second, its construction was completed more than a decade ago (1827-1829). Any other works for the Imperial family, too, were completed before the commencement of this arbitration.

Ludovica Charlemagne cannot act as the Expert, since she had cooperated both with the Claimant and with the Palace Quarter-master’s Department that had produced the report underlying the Claimant’s claims. Moreover, construction of a summerhouse for His Imperial Majesty means a certain degree of trust between Nicholas I and Ludovica, since the summerhouse is a personal estate of the Romanov family.
CONTRACT FOR WORK AND LABOUR

Saint Petersburg   February 1, 1833

Emperor of the Russian Empire, King of Poland and Grand Duke of Finland Nicholas I Romanov (the “Client”) and Henri Louis Auguste Ricard de Montferrand (the “Contractor”) have entered into the following Contract on the terms and conditions set forth below:

1. Subject Matter of the Contract

1.1. The Contractor undertakes to carry out the work on the external and internal modification of appearance of the Winter Palace, located at: Russian Empire, St. Petersburg, Dvortsovaya embankment, 38, by his own means or involving external actors (the “Work”), and the Client undertakes to accept the result of the Work and pay for it.

1.2. The Work undertaken includes the following:
   - inspection of the Winter Palace, measurements of premises, analysis of possible architectural solutions;
   - elaboration of documentation reflecting the concept of interior decoration of the Winter Palace and containing information on the conceptual, coloristic, specific features of the object’s interiors, elements of furniture, decor, lighting;
   - elaboration of documentation defining functional, technological, design and engineering solutions to ensure the reconstruction of the Winter Palace in the form of diagrams;
   - elaboration of a list of materials required for the implementation of the reconstruction project;
   - renovation and reorganization of the interior of the Winter Palace;
   - construction and installation works in order to change the usable area of the Winter Palace: organization of outbuildings, superstructure of additional floors;
   - facade renovation;
   - replacement, installation and adjustment of communications, including ventilation, in the premises of the Winter Palace;
   - other necessary works.

1.3. The Client and the Contractor carry out the procurement of materials jointly at the expense of the Client’s funds.

1.4. The Contractor is obliged to use the materials cost-effectively and prudently, and after the completion of the work, provide the Client with a report on the consumption of the materials, as well as return the remainder or, with the consent of the Customer, decrease the price of the Work, taking into account the cost of the unused material remaining with the Contractor.

1.5. The Contractor is obliged to immediately notify the Client and, before receiving instructions from him, to suspend the Work if the Contractor detects:
   - unsuitability or poor quality of materials or equipment;
   - other circumstances beyond the control of the Contractor that threaten the durability or suitability of the results of the Work performed.

3. Work Performance Timeline

3.1. The overall term for the performance of the Work provided for by this Contract:
   - commencement of the Work: March 1, 1833;
   - completion of the Work: March 1, 1834.

3.2. Interim terms for the performance of separate works are established by an agreement between the Contractor and the Client (authorized representatives of the Client).

4. Acceptance of Work

4.1. The Client should inspect and accept the Work by signing the acceptance certificate. If the Client detects any deviations from the Contract that worsen the result of the Work, or other shortcomings in the Work, the Client immediately notifies the Contractor about any.
5. Dispute Resolution

5.1. Any and all disputes, controversies or claims arising out of or in connection with the performance of architectural works shall be settled by arbitration at the Russian Arbitration Center at the Autonomous Non-Profit Organisation “Russian Institute of Modern Arbitration” in accordance with the Arbitration Rules.

The Parties agree that for the purposes of sending written submissions, notifications and other written communications the following post addresses shall be used:

Emperor of the Russian Empire, King of Poland and Grand Duke of Finland Nicholas I Romanov: Russian Empire, St. Petersburg, Dvortsovaya Embankment, 38.

Henri Louis Auguste Ricard de Montferrand: Russian Empire, St. Petersburg, Moyka Embankment, 86.

In the event of change of the postal address specified above the Party shall immediately notify the other Party of such change and, if the arbitration has already commenced, also notify the Russian Arbitration Center at the Autonomous Non-Profit Organisation “Russian Institute of Modern Arbitration”. If such notice is not given, the Party failing to give notice shall be responsible for any written submissions, notifications and other written documents being sent to a wrong postal address.

The Parties hereby agree to be bound by and to execute the arbitral award.

The language used in the arbitration shall be English.