



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928

Website: www.icj-cij.org Twitter Account: [@CIJ_ICJ](https://twitter.com/CIJ_ICJ) YouTube Channel: [CIJ ICJ](https://www.youtube.com/CIJ_ICJ)

Press Release

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Immunities and Criminal Proceedings (Equatorial Guinea v. France)

The Court finds that it has jurisdiction, on the basis of the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes, to entertain the Application of Equatorial Guinea, in so far as it concerns the status of the building located at 42 Avenue Foch in Paris as premises of its mission, and that this part of the Application is admissible

THE HAGUE, 6 June 2018. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, has today delivered its Judgment on the preliminary objections raised by France in the case concerning Immunities and Criminal Proceedings (Equatorial Guinea v. France).

In its Judgment, which is final, without appeal and binding on the Parties, the Court

(1) Upholds, by eleven votes to four, the first preliminary objection raised by the French Republic that the Court lacks jurisdiction on the basis of Article 35 of the United Nations Convention against Transnational Organized Crime;

(2) Rejects, unanimously, the second preliminary objection raised by the French Republic that the Court lacks jurisdiction on the basis of the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes;

(3) Rejects, by fourteen votes to one, the third preliminary objection raised by the French Republic that the Application is inadmissible for abuse of process or abuse of rights;

(4) Declares, by fourteen votes to one, that it has jurisdiction, on the basis of the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes, to entertain the Application filed by the Republic of Equatorial Guinea on 13 June 2016, in so far as it concerns the status of the building located at 42 Avenue Foch in Paris as premises of the mission, and that this part of the Application is admissible.

History of the proceedings

The Court begins by recalling that, on 13 June 2016, Equatorial Guinea instituted proceedings against France with regard to a dispute concerning the immunity from criminal jurisdiction of the Vice-President of the Republic of Equatorial Guinea, Mr. Teodoro Nguema

Obiang Mangué, and the legal status of the building which “houses the Embassy of Equatorial Guinea”, located at 42 Avenue Foch in Paris. In its Application, Equatorial Guinea seeks to found the Court’s jurisdiction, first, on Article 35 of the United Nations Convention against Transnational Organized Crime (hereinafter the “Palermo Convention”) and, second, on Article I of the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes (hereinafter the “Optional Protocol to the Vienna Convention”).

The Court further recalls that, on 31 March 2017, France raised preliminary objections to the jurisdiction of the Court.

Factual background

The Court notes the following facts in particular. On 2 December 2008, the association Transparency International France lodged a complaint with the Paris public prosecutor against certain African Heads of State and members of their families in respect of allegations of misappropriation of public funds in their country of origin, the proceeds of which had allegedly been invested in France. This complaint was declared admissible by the French courts and a judicial investigation was opened in 2010 in respect of “handling misappropriated public funds”, “complicity in handling misappropriated public funds, complicity in the misappropriation of public funds, money laundering, complicity in money laundering, misuse of corporate assets, complicity in misuse of corporate assets, breach of trust, complicity in breach of trust and concealment of each of these offences”. The investigation focused, in particular, on the methods used to finance the acquisition of movable and immovable assets in France by several individuals, including Mr. Teodoro Nguema Obiang Mangué, the son of the President of Equatorial Guinea, who was at the time Ministre d’Etat for Agriculture and Forestry of Equatorial Guinea.

The investigation more specifically concerned the way in which Mr. Teodoro Nguema Obiang Mangué acquired various objects of considerable value and a building located at 42 Avenue Foch in Paris. In 2011 and 2012, that building was the subject of an attachment order (saisie pénale immobilière) and various objects found on the premises were seized, following a finding by the French courts that the building had been wholly or partly paid for out of the proceeds of the offences under investigation and that its real owner was Mr. Teodoro Nguema Obiang Mangué. Equatorial Guinea systematically objected to those actions, claiming that it had previously acquired the building in question and that it formed part of the premises of its diplomatic mission in France.

Mr. Teodoro Nguema Obiang Mangué, who became Second Vice-President of Equatorial Guinea in charge of Defence and State Security on 21 May 2012, challenged the measures taken against him and on several occasions invoked the immunity from jurisdiction to which he believed he was entitled on account of his functions. He was nonetheless indicted by the French judiciary in March 2014. All the legal remedies taken by Mr. Teodoro Nguema Obiang Mangué against that indictment were rejected, as were the diplomatic protestations of Equatorial Guinea.

Following the investigation, Mr. Teodoro Nguema Obiang Mangué — who had been appointed as the Vice-President of Equatorial Guinea in charge of National Defence and State Security in June 2016 — was referred for trial before the Tribunal correctionnel de Paris for alleged money-laundering offences committed in France between 1997 and October 2011. The tribunal delivered its judgment on 27 October 2017, in which it found Mr. Teodoro Nguema Obiang Mangué guilty of those offences. He was sentenced to a three-year suspended prison term and a suspended fine of €30 million. The tribunal also ordered the confiscation of all the assets seized during the judicial investigation and of the attached building at 42 Avenue Foch in Paris. Regarding the confiscation of this building, the tribunal, referring to the Court’s Order of 7 December 2016

indicating provisional measures, stated that “the . . . proceedings [pending before the International Court of Justice] make the execution of any measure of confiscation by the French State impossible, but not the imposition of that penalty”. Mr. Teodoro Nguema Obiang Mangue lodged an appeal against his conviction with the Cour d’appel de Paris. This appeal having a suspensive effect, no steps have been taken to enforce the sentences handed down to Mr. Teodoro Nguema Obiang Mangue.

Reasoning of the Court

1. The first preliminary objection: Jurisdiction under the Palermo Convention

(a) The alleged breach by France of the rules on immunities of States and State officials

The Court observes that Equatorial Guinea’s claims based on the Palermo Convention first concern France’s alleged violation of the immunity from foreign criminal jurisdiction of Mr. Teodoro Nguema Obiang Mangue, Vice-President of the Republic of Equatorial Guinea, and France’s alleged failure to respect the immunity of the building at 42 Avenue Foch in Paris as State property of Equatorial Guinea. In this respect, the Parties disagree on whether, as a consequence of the principles of sovereign equality and non-intervention in the domestic affairs of other States, to which Article 4 of the Palermo Convention refers, Mr. Teodoro Nguema Obiang Mangue is immune from foreign criminal jurisdiction, and whether the building at 42 Avenue Foch in Paris is immune from measures of constraint. The Court examines whether this aspect of the dispute between the Parties is capable of falling within the provisions of the Palermo Convention and whether, as a consequence, it is one which the Court has jurisdiction to entertain under the Palermo Convention. The Court considers, in particular, whether this aspect of the dispute concerns the interpretation or application of Article 4 read in conjunction with other articles of the Convention.

The Court thus proceeds to interpret Article 4 of the Palermo Convention. It notes that the purpose of the Article is to ensure that the States parties to the Convention perform their obligations in accordance with the principles of sovereign equality, territorial integrity and non-intervention in the domestic affairs of other States. In its view, this provision does not refer to the customary international rules, including State immunity, that derive from sovereign equality but to the principle of sovereign equality itself. The Court considers that, in its ordinary meaning, Article 4 (1) does not impose, through its reference to sovereign equality, an obligation on States parties to act in a manner consistent with the many rules of international law which protect sovereignty in general, as well as all the qualifications to those rules. With regard to context, it observes that none of the provisions of the Palermo Convention relates expressly to the immunities of States and State officials. Concerning the object and purpose of the Convention, the Court states that the interpretation of Article 4 advanced by Equatorial Guinea, whereby the customary rules relating to immunities of States and State officials are incorporated into the Convention as conventional obligations, is unrelated to the stated object and purpose of the Palermo Convention, set out in Article 1, which is the promotion of co-operation to prevent and combat transnational organized crime more effectively. The Court notes that its interpretation of Article 4 is confirmed by the travaux préparatoires of the Palermo Convention.

The Court concludes that Article 4 of the Palermo Convention does not incorporate the customary international rules relating to immunities of States and State officials. Therefore, the aspect of the dispute between the Parties relating to the asserted immunity of the Vice-President of Equatorial Guinea and the immunity claimed for the building at 42 Avenue Foch in Paris from measures of constraint as State property does not concern the interpretation or application of the Palermo Convention. Consequently, the Court lacks jurisdiction in relation to this aspect of the dispute.

(b) The alleged overextension of jurisdiction by France

The Court notes that Equatorial Guinea's claims based on the Palermo Convention also concern France's alleged overextension of its criminal jurisdiction over predicate offences associated with the crime of money laundering. In this respect, the Parties differ on whether, by establishing its jurisdiction over such offences, France exceeded its criminal jurisdiction and breached its conventional obligation under Article 4 read in conjunction with Articles 6 and 15 of the Palermo Convention. The Court examines whether this aspect of the dispute between the Parties is capable of falling within the provisions of the Palermo Convention and whether, as a consequence, it is one which the Court has jurisdiction to entertain under the Palermo Convention. The Court is of the view that neither Article 6 nor Article 15 provides for the exclusive jurisdiction of the State on whose territory a predicate offence was committed. It concludes that the alleged violations complained of by Equatorial Guinea are not capable of falling within the provisions of the Palermo Convention, notably Articles 6 and 15, and that the Court therefore lacks jurisdiction to entertain the aspect of the dispute relating to France's alleged overextension of jurisdiction.

For all of these reasons, the Court concludes that it lacks jurisdiction pursuant to the Palermo Convention to entertain Equatorial Guinea's Application and must uphold France's first preliminary objection.

2. The second preliminary objection: Jurisdiction under the Optional Protocol to the Vienna Convention

The Court observes that Equatorial Guinea's claim based on the Vienna Convention concerns France's alleged failure to respect the inviolability of the building at 42 Avenue Foch in Paris as premises of Equatorial Guinea's diplomatic mission. In this regard, it notes that the Parties disagree on the question whether the building at 42 Avenue Foch in Paris constitutes part of the premises of the mission of Equatorial Guinea in France and is thus entitled to the treatment afforded for such premises under Article 22 of the Vienna Convention. They also disagree on whether France, by the action of its authorities in relation to the building, is in breach of its obligations under Article 22. The Court considers whether this aspect of the dispute between the Parties is capable of falling within the Vienna Convention and, consequently, whether it is one which the Court has jurisdiction to entertain under the Optional Protocol to the Vienna Convention.

The Court notes that, pursuant to Article 1 (i) of the Vienna Convention, a building or part of a building "used for the purposes of [a diplomatic] mission", including the residence of the head of mission, is considered "premises of the mission", regardless of ownership. The Court further notes that Article 22 of the Vienna Convention provides a régime of inviolability, protection and immunity for "premises of [a diplomatic] mission" by obligating the receiving State, *inter alia*, to refrain from entering such premises without the consent of the head of mission and to protect those premises against intrusion, damage or disturbance of the peace of the mission by agents of the receiving State. The Article also guarantees immunity from search, requisition, attachment or execution for the premises of the mission, their furnishings and other property thereon, as well as means of transportation of the mission.

According to the Court, where, as in this case, there is a difference of opinion as to whether or not the building at 42 Avenue Foch in Paris, which Equatorial Guinea claims is "used for the purposes of its diplomatic mission", qualifies as "premises of the mission" and, consequently, whether it should be accorded or denied protection under Article 22, this aspect of the dispute can be said to "aris[e] out of the interpretation or application of the Vienna Convention" within the meaning of Article I of the Optional Protocol to that Convention. The Court therefore finds that this aspect of the dispute falls within the scope of the Vienna Convention.

The Court thus concludes that it has jurisdiction to entertain the aspect of the dispute relating to the status of the building, including any claims relating to the furnishings and other property present on the premises at 42 Avenue Foch in Paris. France's second preliminary objection is consequently dismissed.

3. The third preliminary objection: Abuse of process and abuse of rights

The Court recalls that, in its Preliminary Objections, France contends that Equatorial Guinea's conduct was an abuse of rights and that its seisin of the Court was an abuse of process. In the Court's view, this preliminary objection is properly characterized as a claim relating to the admissibility of the Application.

The Court observes that an abuse of process goes to the procedure before a court or tribunal and can be considered at the preliminary phase of these proceedings. In its view, it is only in exceptional circumstances that the Court should reject a claim based on a valid title of jurisdiction on this ground. However, it does not consider the present case to be one of those circumstances. The Court also considers that abuse of rights cannot be invoked as a ground of inadmissibility when the establishment of the right in question is properly a matter for the merits. Therefore, any argument in relation to abuse of rights will be considered at the stage of the merits of this case.

For these reasons, the Court does not consider Equatorial Guinea's present claim inadmissible on grounds of abuse of process or abuse of rights. France's third preliminary objection is therefore dismissed.

Composition of the Court

The Court was composed as follows: President Yusuf; Vice-President Xue; Judges Owada, Abraham, Bennouna, Caçado Trindade, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Crawford, Gevorgian, Salam; Judge ad hoc Kateka; Registrar Couvreur.

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Vice-President XUE, Judges SEBUTINDE, ROBINSON and Judge ad hoc KATEKA append a joint dissenting opinion to the Judgment of the Court; Judge OWADA appends a declaration to the Judgment of the Court; Judge ABRAHAM appends a separate opinion to the Judgment of the Court; Judge DONOGHUE appends a dissenting opinion to the Judgment of the Court; Judges GAJA and CRAWFORD append declarations to the Judgment of the Court; Judge GEVORGIAN appends a separate opinion to the Judgment of the Court.

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A summary of the Judgment appears in the document entitled "Summary No. 2018/3". This press release, the summary and the full text of the Judgment are available on the Court's website (www.icj-cij.org), under the heading "Cases".

Note: The Court's press releases do not constitute official documents.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the "World Court", it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Court (ICC, the only permanent international criminal court, which was established by treaty and does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), the Mechanism for International Criminal Tribunals (MICT, mandated to take over residual functions from the International Criminal Tribunal for the former Yugoslavia and from the International Criminal Tribunal for Rwanda), the Kosovo Specialist Chambers and Specialist Prosecutor's Office (an ad hoc judicial institution which has its seat in The Hague), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

Information Department:

Mr. Andrey Poskakukhin, First Secretary of the Court, Head of Department (+31 (0)70 302 2336)
Ms Joanne Moore, Information Officer (+31 (0)70 302 2337)
Mr. Avo Sevag Garabet, Associate Information Officer (+31 (0)70 302 2394)
Ms Genoveva Madurga, Administrative Assistant (+31 (0)70 302 2396)