

INTERNATIONAL COURT OF JUSTICE

2006
General List
No. 134

APPLICATION

INSTITUTING PROCEEDINGS
CONCERNING

**VIOLATION OF RULES CONCERNING
DIPLOMATIC RELATIONS**

(COMMONWEALTH OF DOMINICA *v.* SWITZERLAND)

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APPLICATION OF THE COMMONWEALTH OF DOMINICA

26 April 2006

I. Letter to the Court

Mr. Philippe Cuvreur
The Registrar
International Court of Justice
Peace Palace
The Hague
Netherlands

Sir,

As duly authorized by the Commonwealth of Dominica I have the honour to enclose the Application on behalf of the Commonwealth of Dominica instituting proceedings against Switzerland.

I refer to the recent declaration by the Applicants and to the longstanding declaration of the Respondents under the Optional Protocol under Article 36 (2) of the Statute of the Court as well as to declarations by the Applicants and the Respondents under the Optional Protocol to the Vienna Convention on Diplomatic Relations of 18 April 1961, concerning the Compulsory Settlement of Disputes of 18 April 1961.

Under the jurisdiction conferred by these instruments upon the Court, and in accordance with Article 36 (1) and Article 40 (1) of the Statute of the Court and Article 38 of the Rules of Court, I hereby submit on behalf of the Commonwealth of Dominica, an Application instituting proceedings against Switzerland for violations of the Vienna Convention on Diplomatic Relations of 18 April 1961 (hereinafter referred to as the Vienna Convention), the Headquarters Agreement between Switzerland and the United Nations of 11 June and 1 July 1946, the Agreement on Privileges and Immunities of the United Nations between Switzerland and the United Nations of 11 April 1946, the Convention on Privileges and Immunities of the United Nations of 13 February 1946 as well as general well-established rules and principles of international law on appointment and withdrawal of diplomats, on diplomatic immunity, on equality of States and on the rights of the United Nations of passive legation.

II. Summary statement of facts

1. This Statement of Facts, as expanded in the Memorial and further submissions of the Applicants, will establish that the Commonwealth of Dominica, the Applicants, have been submitted to infringements of their sovereignty by the Respondents in so far as the Respondents have claimed the right to “withdraw the accreditation” of a diplomatic Envoy of Dominica to the United Nations in Geneva stating that this Envoy is a “businessman” and as such he would have no right to be a diplomat.

2. At no stage have the Respondents claimed that the said Envoy has violated any laws or regulations of the host State, nor that he has posed any threats to national security.

3. At no stage have the Respondents claimed that the Envoy had any commercial activities in Switzerland but the Respondents have, by what appears to the Applicants as a wrongful

interpretation of Article 42 of the Vienna Convention, claimed that a diplomat cannot engage in commercial activities *anywhere*, even outside the host country.

4. The Envoy of the Applicants was thus denied the right to remain in Switzerland as a diplomat. The Respondents furthermore denied him the usual privileges of a diplomat and in other ways treated the Envoy in ways that do not conform with rules on diplomatic immunity and the respect to be afforded to an envoy of a sovereign State.

5. The Respondents have, in particular, sought to exercise powers which they do not have under international law and have usurped rights of withdrawal of accreditation that rightly belong to the sending State and to the United Nations, the organization to which our Envoy was accredited.

6. The said infringements violate the aforementioned Vienna Convention on Diplomatic Relations, numerous other treaties such as the aforementioned Headquarters Agreement between Switzerland and the United Nations, the Agreement on Privileges and Immunities between Switzerland and the United Nations, the multilateral Convention on Privileges and Immunities of the United Nations, as well as general well-established rules and principles of international law.

7. The Applicants sent as their Envoy Mr. Roman Lakschin, (hereafter “the Envoy”), a citizen of Dominica born in Russia, to the United Nations and the Specialized Agencies and to the World Trade Organization in Switzerland in 1996. The Envoy was accredited to the United Nations and the Specialized Agencies and to the WTO on 15 March 1996 with effect as from 1 March 1996 as Counsellor to the Mission of the Commonwealth of Dominica at the United Nations and the Specialized Agencies in Geneva. This accreditation was thus effected to the organizations and not to Switzerland.

8. For a considerable time, the Respondents did not afford the Envoy of the Applicants the rights and privileges and immunities to which he was entitled to under numerous rules, treaties and conventions and under general customary rules on diplomatic privileges and immunities. The Applicants will set out the facts in this respect in greater detail in their Memorial.

9. The Respondents announced a unilateral “withdrawal” of the Envoy at the end of 1996 when they notified the Envoy, in December 1996, that he could no longer act as diplomat at the United Nations as he was also a “businessman”. He was given until February 1997 to leave his post.

10. The privileges of the Counsellor were however restored and his appointment renewed, and even put at a higher level of a Chargé d’affaires, making him *de facto* Head of Mission, as from 12 March 1997 after the intervention of the Applicants, the Government of the sending State, with the Government of Switzerland. The Applicants underlined in this context that their Envoy was accredited to the United Nations and the Specialized Agencies and the WTO in Geneva and not to Switzerland, the Respondents. The new appointment of the Envoy Chargé d’affaires was to last until July 1997 but on 15 May 1997 the Applicants appointed the Envoy to be Deputy Permanent Representative with the rank of Ambassador.

11. The Respondents again decided to unilaterally “withdraw” the Envoy’s diplomatic status at the end of the following year on 11 November 1998 after the Swiss authorities again claimed that the Envoy was a “businessman”. In such capacity he was, they claimed, not entitled to be a diplomat at the United Nations, the Specialized Agencies and the WTO in Geneva in Switzerland. It would, in the opinion of the Respondents, be contrary to the Vienna Convention for a diplomat to conduct business anywhere, even outside the host country, Switzerland.

12. The Respondents thus claim that they have a right, under Article 42 of the Vienna Convention, as a host State, to withdraw the accreditation of an envoy sent by a Member of the United Nations to a Permanent Mission at the United Nations in Geneva, even in a case where there

is no allegation that the laws of the host State have been violated and where there is no allegation that the national security of the host State is at risk. The Respondents thus claim they have a right, under Article 42 of the Vienna Convention, to “withdraw” the diplomatic status of a person who is a “businessman” even if that person is not engaged in any commercial activity in the said host State.

13. The Applicants do not share this interpretation of the Vienna Convention and requests the Court to decide and clarify whether the rights of a sovereign nation to select its envoys to the United Nations can be impaired by a host State and whether the host State can even withdraw the accreditation of an Acting Head of Mission claiming that an envoy is engaged in commercial activities *outside the host State*, and whether such change of diplomatic status can take place without even notifying, neither the sending State nor the United Nations.

14. A legal dispute now exists between the Applicants and the Respondents with regard to the right, claimed by the Respondents, to terminate an appointment of a Head of Mission of the Applicants, a diplomat accredited to the United Nations and the Specialized Agencies and to the WTO but not accredited to the host State.

15. The Applicants further contest that such right exists with regard to an Acting Head of Mission in the absence of consultation and notification of both the sending State and the United Nations.

16. The Applicants reserve the right to submit further arguments.

III. Jurisdiction of the Court

17. As a Member of the United Nations Organization, the Commonwealth of Dominica is, by succession in 1987, a party to the Statute, which forms an integral part of the Charter. The Respondents, Switzerland, are now, since 2004, a Member of the United Nations but adhered long before this, on 28 July 1948, to the Statute of the International Court of Justice.

18. The Respondents, Switzerland, accepted the compulsory jurisdiction of the Court under Article 36 (2) of the Statute of the International Court of Justice by a declaration on 28 July 1948.

19. The Applicants, the Commonwealth of Dominica, has accepted the compulsory jurisdiction of the Court under Article 36 (2) of the Statute of the International Court of Justice by a declaration signed on 17 March 2006. This declaration has been filed with the Secretary-General of the United Nations and communicated to the Court.

20. The Applicants and the Respondents are also both parties to the Vienna Convention, which has been continuously in force with respect to both Contracting Parties throughout the period of time relevant to this case.

21. The Respondents, Switzerland, signed the Vienna Convention on 18 April 1961 and deposited an instrument of ratification without reservation on 20 October 1963.

22. The Respondents signed the Optional Protocol to the Vienna Convention for the Compulsory Settlement of Disputes on 18 April 1961 and proceeded to ratification on 22 November 1963.

23. The Applicants, the Commonwealth of Dominica, succeeded to the Vienna Convention on 24 November 1987.

24. The Applicants adhered to the Optional Protocol of the Vienna Convention for the Settlement of Disputes on 17 March 2006 and the declaration of the Applicants to this effect became effective on 24 April 2006.

25. Article 1 of the Optional Protocol to the Vienna Convention provides as follows:

“Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.”

26. The claims of the Applicants involve questions of interpretation of the Vienna Convention that clearly falls within the powers, competence, and mandate of the Court as “the principal judicial organ of the United Nations” as established by Charter Article 92.

27. The Applicants respectfully request the Court to affirm and to clarify the right of a State to appoint the envoys it considers appropriate as representatives in the United Nations network and retain such representatives without the host State intervening to remove such envoys. In particular, the Applicants respectfully ask the Court to clarify whether a host State, without any further support in bilateral or multilateral agreements, can claim the right to “withdraw the accreditation” of an envoy of a State to the United Nations in situations where the national laws of the host State or binding provisions of international law have not been violated by the said envoy. As such an envoy is accredited to the United Nations and not to the host State, excessive claims of the host State to control, vet and withdraw would seem to usurp the powers of both the United Nations and those of the sending State.

28. At the moment, there is a grey area of international law with respect to the powers and duties of a host State vis-à-vis a sending State and its envoys and vis-à-vis an international organization. The Vienna Convention is applied to these situations only by analogy and with a proviso of *mutatis mutandis*. Nor is there any clear guidance in other relevant agreements such as in the Headquarters Agreement of 1946, the Agreement on Privileges and Immunities of Switzerland and the United Nations of 1946 or in the United Nations Convention on Privileges and Immunities of 1946.

29. It is in the interest of international law that there is a clarification of the competence of a host State, a sending State and the competence of an international organization, especially of the competence of the United Nations to which envoys are accredited.

30. In light of the facts described above, and as will be more fully developed in subsequent submissions, it is clear that a legal dispute exists between the Commonwealth of Dominica and Switzerland “relating to the interpretation or application of the [Vienna] Convention” as well as regards interpretation and application of general rules of international law on diplomatic immunity and privilege, on equality of States and on the rule of non-discrimination in international society.

31. For these reasons, the Applicants submit that the Court has jurisdiction to hear its claims against the Respondents for matters arising under the Vienna Convention, under the aforementioned other treaties and Conventions and under general international law.

IV. Judgment requested

32. Accordingly, while reserving the right to revise, supplement, expand or amend this Application, and subject to the presentation to the Court of the relevant evidence and legal arguments, the Commonwealth of Dominica requests the Court to

- (a) clarify the rights and duties of a host State, of a sending State and those of the United Nations, the Specialized Agencies and the WTO, with regard to Permanent Missions and their diplomatic personnel;

and further to adjudge and declare as follows:

- (b) that the Respondents have breached, and are continuing to breach, their legal obligations toward the Commonwealth of Dominica under Articles 23-47 of the Vienna Convention on Diplomatic Relations of 18 April 1961, the Headquarters Agreement between the Respondents and the United Nations of 11 June and 1 July 1946, the Agreement on Privileges and Immunities between the Respondents and the United Nations of 11 April 1946, the multilateral Convention on Privileges and Immunities of the United Nations of 13 February 1946 and under general international law;
- (c) that the Respondents, in breach of their obligations under the aforementioned treaties and conventions as well as under general and customary international law, have violated the fundamental rules of immunity of diplomats;
- (d) that the Respondents, in breach of their obligations under the aforementioned treaties and conventions as well as under general and customary international law, in the event also failed to recognize the rights under international law concerning active legation of the Applicants and on passive legation of international organizations;
- (e) that the Respondents, in breach of their obligations under the aforementioned treaties and conventions as well as under general and customary international law, have violated rules concerning their rights and duties as a host State;
- (f) that the Respondents have violated and continue to violate relevant sections on sovereignty and equality of the Declaration on Principles of International Law Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations of 24 October 1970, sections which also reflect binding general international law.
- (g) that the Respondents have violated, and continue to violate, their solemn obligations under Articles I (3), 55 and 56 of the United Nations Charter;
- (h) that the Respondents, in breach of their obligations under general and customary international law, have violated and are violating the sovereignty of the Applicants, the Government of the Commonwealth of Dominica, and the rights of its diplomatic Envoy;
- (i) that the Respondents, in breach of their obligations under general and customary international law, and under Article 2 (7) of the Charter of the United Nations, have intervened and are intervening in the internal affairs of the Applicants, the Commonwealth of Dominica;
- (j) that the Respondents and their agents and surrogates are under an obligation to cease and desist immediately from their breaches of the foregoing legal obligations;
- (k) that the Respondents have an obligation to pay the Applicants, the Commonwealth of Dominica, in their own right and as *parens patriae* for their citizens, reparations for damages to the trade and economy of the Applicants, the Commonwealth of Dominica, caused by the foregoing violations of international law in a sum to be determined by the Court. The Applicants reserve the right to introduce to the Court a precise evaluation of the damages caused by the Respondents.

V. Conclusions

33. A small country like the Applicants, the Commonwealth of Dominica, has the right to send whichever envoy they consider appropriate to the United Nations in Geneva in their attempt to better their tourism prospects and their economy. It is only by power that the Respondents could refuse an envoy chosen by the Applicants. Unless the Applicants take recourse to judicial procedures at the International Court of Justice, where all sovereign countries have equal rights, such power would prevail over the legal rights of an independent, albeit small, State.

34. The Respondents deprived the Applicants of welcome and competent assistance in establishing and running a Mission in Geneva and thereby impeded the efforts of the Commonwealth of Dominica to develop trade and investment.

35. The Respondents cannot be allowed to use colonial methods to control a small State like Dominica which has a population of merely some 70,000 people and thus severely restrained in the selection of foreign envoys. The Commonwealth of Dominica is, however, a sovereign State and demands to have the same rights and privileges as a large State in international society.

36. It is not legally justified to allow the Respondents to dictate to the Applicants whom they should send as an envoy to the United Nations or when such appointments would cease. The Applicants take great exception to any other State pretending to have the right to decide on the diplomatic representation of the Applicants.

37. It is highly relevant to emphasize that the Head of Mission of the Applicants was accredited to the United Nations and not to Switzerland. The United Nations has not had any complaint at all with regard to our Envoy nor was the sending State informed of the expulsion of our diplomat from Switzerland but faced a fait accompli.

38. A host State cannot without specific authority usurp the powers of a receiving organization and of the sending State to oust an envoy without consulting and conferring with the organization which alone has the right of passive legation and consulting and conferring with the sending State which has exercised its sovereign right of active legation.

**The Government of the Commonwealth of Dominica has designated
the undersigned as its Agent for the purpose of these proceedings.**

Dominica March 2006

Respectfully submitted by,

(Signed) Ingrid Detter FRANKOPAN
Professor of International Law
Member of the Bar of England
Agent for the Commonwealth of Dominica

(Seal) Authenticated by the
Ministry for Foreign Affairs
