

**IMMUNITIES AND CRIMINAL PROCEEDINGS
(EQUATORIAL GUINEA V. FRANCE)**

DISSENTING OPINION

JUDGE JACK LIM WEI JYE

(13 OCTOBER 2024)

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Introduction

I dissent on the ruling by the International Court of Justice on Immunities and Criminal Proceedings (Equatorial Guinea v. France). This ruling is made based on non-credible evidence, and represents a huge infringement of sovereignty, disregarding international law and giving too much power to domestic courts on international issues.

Special Note on the Testimonials of Witnesses by France

I found all three witnesses by France to be unreliable and lacking in credibility as they have proven time and time to be not knowledgeable in the cases involved. The first and second witnesses have refused to answer most of the questions by the plaintiffs, and do not demonstrate enough credibility. The third witness often contradicts himself, such as on the question on whether the conviction is based on domestic or international law. Most importantly, I believe the witnesses do not have the necessary authorities to represent the French police authorities or the foreign ministry, and their testimonials are merely their own opinion. Therefore,

in my deliberation of the final verdict, I have disregarded all testimonials made by the three witnesses by France on the basis that unreliable authorities should not be used to influence the case.

Diplomatic Immunity

The International Court of Justice does not interfere with the decisions of domestic courts, and therefore I do not question the transparency and legitimacy of the verdict by the French Court or the Special Prosecutor of Equatorial Guinea on the misappropriation of public funds by Teodoro Obiang Nguema Mbasogo. However, if France is able to prove to the court that there is indeed money laundering, then it will greatly advantage France's argument that Teodoro's criminal actions fall under the exceptions of diplomatic immunity under Article 31(c) of the Vienna Convention of Diplomatic Relations.

Status of Mr. Teodoro as a Diplomat

Although France argued that Mr. Teodoro's promotion to second vice president in 2012 is a promotion of convenience, Equatorial Guinea argued that prior to seizure, Mr. Teodoro was Minister of Forestry and therefore subjected to diplomatic immunity. I accepted the justification by Equatorial Guinea, and consequently the claim that Mr. Teodoro was a diplomatic agent at the time of seizure.

Question on whether Mr. Teodoro's Action is an Official Act

As France has agreed that they have not communicated with Equatorial Guinea despite multiple applications by them, this action can be interpreted as a violation of Article 15(5) of the Palermo Convention as accused by Equatorial Guinea, which states: *"If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions."*, weakening legitimacy of France's investigation. I also agree with Equatorial Guinea's argument that none of the witnesses are able to provide strong and substantial evidence supporting their claim of embezzlement and breaching of domestic law, and hence I rejected the claim by France that Mr. Teoderen's actions fall under the exceptions of diplomatic immunity under Article 31(c) of the Vienna Convention of Diplomatic Relations.

I agree with Equatorial Guinea's argument that it should be under the jurisdiction of the International Court of Justice, not the domestic court, to give judgement, especially as this case involves disputes between two states. Should France suspect or accuse Mr. Teodoro of wrongdoing, she should file a report to the International court and not take matters into their own hands.

Decision of the Court

The court has ruled that Mr. Teodoro's actions cannot be strictly considered diplomatic and therefore is not subjected to diplomatic immunity. I dissent the ruling because it sets a dangerous precedent extending the jurisdiction of domestic courts to determine the status of Mr. Teodoro, disregarding accountability by domestic courts on foreign states. I believe it is a serious infringement of sovereignty under the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States under the Charter of the United Nations. In addition, as mentioned before, I found the evidence by France not sufficient enough to support their claim that Mr. Teodoro's actions fall outside his official duties.

The Status of 42 Avenue Foch at the time of Seizure

Since Equatorial Guinea has conceded that 42 Avenue Foch does not have the status of "premises of the mission" until 27 July 2012, the actions of French authorities in relation to that building before that date, including searches and seizures cannot be considered as being in violation of Article 22 of the Vienna Convention on Diplomatic Relations as alleged by Equatorial Guinea, which states: "*The premises of the mission shall be inviolable*". I found the arguments of Equatorial Guinea that "no response is consent", "no solid reasoning behind objection" and "French officers apply visa at 42 Avenue Foch" unconvincing as France has provided a clear objection to Equatorial Guinea's application for diplomatic mission on 42 Avenue Foch, a claim accepted by both sides. No countries are allowed to unilaterally establish a diplomatic mission without consent from other countries, as stated in Article 12 of the Vienna Convention on Diplomatic Relations. Hence, the establishment of the diplomatic mission of Equatorial Guinea in France is unlawful.

However, Equatorial Guinea has provided substantial evidence to prove that 42 Avenue Foch is its state property owned by Equatorial Guinea at the time of seizure (such as testament by the Minister of Justice of Equatorial Guinea regarding the French tax authorities recognition of the transfer of Mr. Teodoro's

shareholder's rights in the co-owning Swiss companies to the State of Equatorial Guinea). France has also accepted the claim, contracting their earlier argument that it is a private property of Mr Teodere. And hence, I'm convinced that the seizure of 42 Avenue Foch is a violation of the Principle of Non-Intervention in Contemporary International Law. I also believe that the justification provided by France, such as corruption and spending above payload, is not sufficient to override the principle. Ruling against this matter will set a dangerous precedent allowing states to violate other countries' properties and sovereignty under the state's own interpretation of international and state law.

Decision of the Court

I dissent the court ruling which states since there is sufficient evidence to support that since the mansion is used for private purposes by Mr. Teodoro, 42 Avenue Foch is not subjected to the same protection that state properties enjoy. Although 42 Avenue Foch does not have the status of "premises of the mission", it is agreed upon that 42 Avenue Foch is a state property at the time of seizure. This is a blatant attack on the sovereignty of Equatorial Guinea, and again, extending the jurisdiction to the domestic court of the Receiving State on international matters. I am confused as to on what grounds that the court finds 42 Avenue Foch has been used for private activities, considering that none of the testimonies by French witnesses is credible and none of the evidence are strong enough, as compared to the overwhelming evidence and testimonies by Equatorial Guinea.

Conclusion

I believe the verdict by the International Court of Justice in 2020 Case concerning the Immunities and Criminal Proceedings (Equatorial Guinea v. France) should be upheld in order to protect the sovereignty of states under 970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States under the Charter of the United Nations.

The court ruling on this matter is a serious infringement on the principle of sovereignty, staging a dangerous precedent based on incomplete evidence. Therefore, I respectfully dissent from the majority's opinion.

(Signed) JACK LIM WEI JYE.