

# The UN Security Council Adopts Diplomatic Relations Sanctions Against North Korea

January 17, 2017

In the wake of the nuclear test conducted by the Democratic People's Republic of Korea (DPRK) on 9 September 2016, the Security Council, acting under Chapter VII of the UN Charter, has adopted new measures on 30 November 2016. Among others, [Resolution 2321](#) provides for the following sanctions in the field of diplomatic relations:

- All States shall take steps to limit the number of bank accounts to one per DPRK diplomatic mission and consular post, and one per accredited DPRK diplomat and consular officer, at banks in their territory (para. 16);
- All Member States shall prohibit the DPRK from using real property that it owns or leases in their territory for any purpose other than diplomatic or consular activities (para. 18);
- All Member States are called upon to reduce the number of staff at DPRK diplomatic missions and consular posts (para. 14);
- DPRK diplomatic agents are prohibited in the receiving State from practice of any professional or commercial activity for personal profit (para. 17).

The first two measures above have a mandatory nature. The third one has the effect of a recommendation. The last one is a reminder of an existing obligation under Article 42 of the [1961 Vienna Convention on Diplomatic Relations](#).

## The ICJ Indicates Provisional Measures in Relation to an Alleged Embassy Building of Equatorial Guinea in France

In an [order](#) delivered on 7 December 2016 in the *Immunities and Criminal Proceedings* case between Equatorial Guinea and France, the International Court of Justice (ICJ) has indicated binding provisional measures in connection with a building located at avenue Foch in Paris, that Equatorial Guinea presents as housing its diplomatic mission.

The building had been searched on several occasions, and then attached (*saisie pénale immobilière*), by the French authorities in the framework of a criminal investigation for allegations of misappropriation of public funds in certain African States, including by the son of the President of Equatorial Guinea. Before the ICJ, Equatorial Guinea contended that these measures infringe the inviolability which must be recognized to the building pursuant to Article 22 of the [1961 Vienna Convention on Diplomatic Relations](#). France, on the other hand, contested the categorization of the building as diplomatic premises.

Based on the finding that a dispute exists between the Parties as to the legal status of the building,

that this dispute is capable of falling within the provisions of the Vienna Convention and concerning the interpretation or application of Article 22 thereof, and that it has accordingly prima facie jurisdiction under Article I of the [1961 Optional Protocol](#) to the Vienna Convention to hear the case, the Court unanimously concluded that:

*'France shall, pending a final decision in the case, take all measures at its disposal to ensure that the premises presented as housing the diplomatic mission of Equatorial Guinea at 42 avenue Foch in Paris enjoy treatment equivalent to that required by Article 22 of the Vienna Convention on Diplomatic Relations, in order to ensure their inviolability.'*

## Embassy Staff Disputes: the European Court of Human Rights Rules Again on State Immunity from Jurisdiction v. Individuals' Right of Access to a Court

In a judgment handed down on 8 November 2016 in *Naku v. Lithuania and Sweden*, the European Court of Human Rights has confirmed its fairly well-settled case-law applicable to State immunity from jurisdiction in cases pertaining to the dismissal of embassy local staff members, especially its 2010 decision in *Cudak v. Lithuania*.

Ms. Naku, a Lithuanian national recruited in Lithuania to work at the Swedish embassy in Vilnius, argued unlawful dismissal and sought both reinstatement and damages. Immunity was recognized to Sweden by Lithuanian courts. Ms. Naku then instituted proceedings before the Strasbourg Court, alleging a breach of her right of access to a court guaranteed under Article 6 of the [European Convention on Human Rights](#).

After affirming that Article 11 of the (not in force) [2004 United Nations Convention on Jurisdictional Immunities of States and Their Property](#), concerning employment contracts, applies to Lithuania under customary international law, the European Court found that none of the exceptions listed in this provision was relevant in this case, and that therefore the rule that a State enjoys no jurisdictional immunity in respect of employment contracts was still applicable. In particular, the Court noted that the Lithuanian courts failed to give *'relevant and sufficient reasons'* that Ms. Naku *'in reality performed specific duties in the exercise of governmental authority'*: by upholding the immunity objection in such circumstances, the domestic courts *'impaired the very essence of the applicant's right of access to a court.'*

See also, largely along the same lines, the European Court of Human Rights' 25 October 2016 judgment in *Radunovic and Others v. Montenegro*.

## The Belgian Supreme Court Upholds Diplomatic Immunity in a Rental Dispute

On 28 October 2016, the Belgian Court of Cassation has given a landmark [judgment](#) (C.16.0039.N) upholding the immunity from civil jurisdiction of a member of the diplomatic staff of the U.S. Permanent Representation to NATO in Brussels.

The Court confirmed that rental disputes do not fall within the scope of the exception to immunity set forth in Article 31(1)(a) of the [1961 Vienna Convention on Diplomatic Relations](#) (to which Article XII of the [1951 Ottawa Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff](#) actually refers).

Remarkably enough, the Court further held – in a statement phrased in very broad terms – that '*the immunity from jurisdiction and the immunity from execution granted to diplomatic representatives under treaties, constituent acts of international organizations or customary international law, cannot be considered as a disproportionate restriction on the right of access to a court, as enshrined in Article 6 of the [European Convention on Human Rights](#).*'