

DECLARATION OF JUDGE GAJA

Premises of a diplomatic mission — Article 22 of the Vienna Convention on Diplomatic Relations — Whether Article 22 covers the issue of ownership of the building.

In section (c) of its submissions Equatorial Guinea complains about France's failure "to recognize the status of the building located at 42 Avenue Foch in Paris as the property of the Republic of Equatorial Guinea, and as the premises of its diplomatic mission". I agree with the Judgment of the Court that the Optional Protocol to the Vienna Convention on Diplomatic Relations gives the Court jurisdiction over the part of the dispute between the Parties relating to the use of the building as premises of the diplomatic mission of Equatorial Guinea. However, the Judgment does not specify that the issue concerning the ownership of the building is not covered by the Optional Protocol.

When defining the premises of the diplomatic mission, Article 1 (i) of the Vienna Convention indicates that these are "the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission". Ownership of the premises does not necessarily belong to the sending State. Missions are often located on rented or leased property. Issues concerning the ownership of buildings that are used for a mission are regulated by the municipal law of the host State, unless the matter is governed by a treaty (this case is not relevant for present purposes).

When Article 22, paragraph 3, of the Vienna Convention sets out that "[t]he premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution", it does not grant total immunity to the building. It only refers to forcible measures that interfere with the use of the building for the diplomatic mission.

Article 22, paragraph 1, of the Vienna Convention states that "[t]he premises of the mission shall be inviolable". It does not exclude that the mission should have to move out because of a change in the ownership of the property. The relevant provisions of the Vienna Convention do not imply that, once a building has been used for a diplomatic mission, the sending State is entitled to continue to use it indefinitely for that purpose. Ownership of the premises may change over time. Except for what may be provided for in a treaty, there is no obligation for the receiving State to let the sending State continue to use a specific building for its mission. Use of the premises will depend on contractual arrangements that the sending State may conclude with the owner. The sale of the property where the premises of a diplomatic mission are located could lawfully lead to terminating the use of the building for that purpose.

Thus, the issue of the ownership concerning the building located at 42 Avenue Foch must be distinguished from the issue of inviolability and immunity of the premises of the mission. While the latter comes within the scope of the Optional Protocol, the part of the dispute over the ownership of the building is not so covered. Under the Optional Protocol the Court does not have jurisdiction to decide on that part of the dispute.

(Signed) Giorgio GAJA.
