Sovereign Immunity over French Buildings

On November 19, 2008, the French Supreme Court for private matters (*Cour de cassation*) delivered an interesting judgment on the scope of the sovereign immunity of foreign states in France.

The German state was the owner of a building which had been used in the past for the purpose of hosting first a NATO unit (possibly NATO headquarters), then a social facility for German soldiers seconded in France. Since 2002, however, at least part of the building was not used anymore, as a wall was in a very bad condition. It seems that it was necessary to actually rebuild the wall, but Germany did not intend to. The problem was that the wall was shared with a private owner who did want to wall to be repaired. She sued before French courts.

The private owner sought a variety of remedies. First, she wanted Germany to be held responsible for the damage. Secondly, she claimed damages on the basis of liability for fault (article 1382 of the French Civil Code). Thirdly, she sought an injunction to repair the wall under a financial penalty of a certain sum per day of non-compliance (*astreinte*).

The first instance court and the Paris Court of appeal did find that Germany was responsible for the damage. However, it dismissed all other claims on the ground that Germany was protected by its sovereign immunities. More precisely, it held that Germany's immunity from being sued (*immunité de juridiction*) protected it from being sued in damages, as it covered all de iure imperii actions of foreign states, and as this included managing a building for the purpose of a foreign public service. It further held Germany's immunity of enforcement (*immunité d'exécution*) protected it from being ordered anything under a financial penalty, as the property was used for public purposes.

The *Cour de cassation* reversed.

As far as the immunity of being sued is concerned, it held that the relevant action was Germany's refusal to break down a wall and to rebuild it, and that this was not a *de iure imperii* action, especially since the property was not used anymore. The claim for damages was thus admissible.

As far as the immunity from enforcement is concerned, it held that the purchase of real property in France belongs to private law, and that so does mananging the property. As a consequence, the grant of the injunction under a financial penalty was also admissible. It must be emphasized that the traditional rule under French law (since the mid-1980s) has not been that assets belonging to foreign states are only covered by a sovereign immunity (of enforcement) if they are dedicated to a public law activity. Assets dedicated to a private law activity are also protected, unless the debt which is enforced arose out of that very private law activity. This means that the reason why Germany could not raise its immunity was that the neighbour was seeking to enforce an obligation (i.e. repair the wall) on an asset (i.e. the property) which was directly related to the said obligation.