

Suing France instead of Foreign Diplomats

Foreign diplomats enjoy diplomatic immunities in France. This is a rule of  customary international law, which was also codified in the 1961 Vienna Convention on Diplomatic Relations. This means that employees of foreign diplomats will be unable to enforce judgments against their employer if the latter does not comply with applicable labour law. Right, but in France they may be able to sue the French state instead.

Modern Slave

Ms Susilawati had been hired by a diplomat from the sultanate of Oman who was serving at UNESCO in Paris. The job was to be a housemaid at the home of the diplomat, a five bedrooms apartment in Paris' 16th *arrondissement*. The French press has reported that the 34 year old woman had been hired in Jakarta for 200 USD per month, which was four times what she was making in Indonesia, 30% more than what she was paid when she worked in Ryad for a Saudi prince, but not quite the French minimum wage. Indeed, she was meant to work 7 days a week. That, too, was not exactly compliant with French labour law.

A neighbour called Amnesty International, who alerted the French [committee](#) against modern slavery . The case was taken to French labour courts, which eventually ordered the diplomat to pay her € 33,000 in unpaid salaries. The French judgment could not be enforced, however, as the diplomat enjoyed an immunity from execution. Why would he pay, after all: he had honored the contract. He is reported to have explained:

She got all her salary. She was happy and lived very well. Then she disappeared from my house.

The employee then petitioned the French state to have it pay instead. The French Ministry of foreign affairs refused. The employee challenged that decision before French administrative courts. She eventually won before the French supreme court for administrative matters (*Conseil d'Etat*) which, in a judgment of February 11th, 2011, held that the French state was strictly liable, and ought to

compensate for the loss of the employee.

Egalité des citoyens devant les charges publiques

To reach that result, the *Conseil d'Etat* applied a half century old common law rule providing for the liability of the French state for the application of international treaties. In 45 years, it is only the third time that the court has compensated a plaintiff pursuant to this rule.

Under French administrative law, the French state may be found liable for the application of treaties under two conditions. The first is that the relevant treaty should not have excluded all forms of compensation of victims of its application. The second rule is that the loss suffered should be “special and severe”. The foundation of this tort is that citizens should be equal before “public burdens” (*charge publiques*). It is pretty hard to translate the concept in English, but it certainly includes the burdens of the legal system. In other words, nobody should suffer disproportionately from the application of the law, and if someone was to, he could be compensated for that uncommon and severe loss, which could then be characterised as being “special and severe”.

So, had Ms Susilawati really suffered a special loss? The ~~diplomat~~ French state argued that she had not, and the argument was found to be convincing by the lower courts. There was nothing uncommon for the employee of a diplomat about being unable to enforce a judgment against his employer, and whether there were only few diplomats was irrelevant, the lower administrative courts found. The *Conseil d'Etat* reversed. It held that, for the purpose of assessing whether the loss suffered was special, the lower courts should have inquired whether the victims of similar acts were numerous or few (later in the judgment, the court actually gives its answer by stating that they are few). The court also ruled that the loss suffered was severe, but did not elaborate on this finding, and in particular did not refer to the particular circumstances of the employment.