

Does Astreinte Belong to Enforcement? (I)

French courts do not have contempt power. When they issue injunctions, the only available tool that they have to ensure compliance is *astreinte*. *Astreinte* is a pecuniary penalty which typically accrues per day of non-compliance. For instance, a French commercial court may order a party to do something or to refrain from doing something under a penalty of 1,000 euros per day of non-compliance.

Obviously, *astreinte* puts pressure on the defendant to comply. However, such pressure is only indirect. If the defendant does not comply, he will not be physically forced to. But he may be ordered to pay millions of euros instead, which can certainly be compelling. So this begs the question: does *astreinte* belong to enforcement? If it does, this could have a variety of consequences as far as private international law is concerned.

In this first post, I would like to examine the interaction between *astreinte* and sovereign immunities.

If *astreinte* belongs to enforcement, this should mean that it is not admissible to use it against foreign states enjoying an immunity from enforcement. This is indeed what the Paris Court of appeal regularly rules.

I have reported earlier about a case where a private owner sought an injunction and an *astreinte* against the German state. The Paris Court of appeal had held that it could not possibly grant the *astreinte*, as it was not compatible with the immunity from enforcement of the German state. The *Cour de cassation* reversed, but on the ground that the claim fell outside of Germany's immunity. As usual, it is hard to say whether this means that the French supreme court implicitly endorsed the part of the ruling of the Court of appeal holding that *astreinte* and immunity are incompatible.

This was not an issue of first impression for the Paris Court of appeal. In a judgment of July 1, 2008, the Court had already ruled that *astreinte* could not be used against a foreign state (enjoying its immunity). In this case, a cleaning lady had been fired by the Embassy of Qatar in Paris. She sued before the Paris

labour court. She claimed for payment of unpaid wages, but also for an injunction to produce a variety of documents related to her employment, under the penalty of an *astreinte*.

The Court held that Qatar did not enjoy an immunity from being sued and could therefore be ordered to pay unpaid wages. This is because the immunity from being sued only covers *de iure imperii* actions of foreign states, and recruiting (or firing) a secretary was not one of them. However, the Court held that the foreign state did enjoy its immunity from enforcement and therefore could not be sentenced under a penalty of *astreinte*. Qatar was eventually ordered to pay € 70,000 and to hand down the relevant documents, but the claim for the grant of an *astreinte* was dismissed.

As far as sovereign immunities are concerned, therefore, it seems clear that *astreinte* is perceived as belonging to enforcement.