

SUMMARY

ECtHR 8 November 2016, application 26126/07, Diplomatic immunity in labour relations

Summary

This case concerns the jurisdictional immunity of states with respect to employment disputes and the ECtHR considered whether the applicant performed particular functions in the exercise of governmental authority, for the purpose of the customs set out in Article 11 of the United Nations Convention on the jurisdictional immunity of states. The ECtHR found that Lithuania had violated Article 6(1) of the European Convention on Human Rights (access to court).

Facts

The applicant, Sniegė Naku, is a Lithuanian national who was born in 1959 and lives in Vilnius. She worked at the Swedish embassy in Vilnius for 14 years before being dismissed in January 2006.

Recruited by the Swedish Embassy in 1992 in Lithuania on a Lithuanian contract, she initially carried out secretarial duties (she worked as a receptionist and translator) before being promoted to culture, information and press officer in 2001. Her job description was modified – first in November 2001 and then in March and November 2005 – to reflect that she worked on culture and information under the guidance of Swedish diplomatic staff.

In 2004, a conflict arose between Ms Naku and her employer over her responsibilities; this escalated in the autumn of 2005 when a new counsellor for cultural affairs was appointed. In November 2005, the situation culminated in Ms Naku being given a caution and two days to hand in her resignation. She went on sick leave from that point on; the leave was extended each week without interruption until March 2006. While on sick leave, she was notified of

disciplinary proceedings against her for gross misconduct and was then dismissed from her post in January 2006.

National proceedings

Ms Naku brought a civil claim against the Swedish embassy before the Lithuanian courts, complaining of unlawful dismissal. In particular, she alleged that she had been dismissed while on sick leave, which was a clear breach of Lithuanian labour law. However, the Lithuanian lower courts decided to discontinue the case, accepting the embassy's argument that Ms Naku's claims were outside the court's jurisdiction on grounds of diplomatic immunity. In April 2007, the Supreme Court upheld the lower courts' conclusion, finding that the duties which had been assigned to her as an employee in a diplomatic mission in a foreign State, contributed to the Kingdom of Sweden's sovereign functions. Therefore, the parties were not linked by a private law employment relationship, but by a public law legal services arrangement – that is to say, a relationship for which a state may claim diplomatic immunity.

In the meantime, the trade union for locally-employed staff at the Swedish embassy, of which Ms Naku was the chair, had made several written complaints to the embassy about working conditions and this dispute received media coverage in Sweden in July 2005.

Relying in particular on Article 6§1 (access to court), Ms Naku alleged that she had been deprived of the ability to make a claim about her dismissal, as her Swedish employer had invoked jurisdictional immunity and this had been upheld by the Lithuanian courts. She maintained that her job – as part of the embassy's administrative and technical staff – was not high-ranking enough to warrant state immunity; yet nor could she have turned to the Swedish courts to make a claim about an employment contract regulated by Lithuanian law. Further relying on Article 11 (freedom of assembly and association) and Article 14 (prohibition against discrimination) she also alleged that her dismissal was linked to her trade union activities.

ECtHR's findings

The Court declared the application inadmissible, as it was lodged against Sweden, but found that on the facts, Lithuania had violated Article 6(1) of the European Convention on Human Rights.

The Court observed that in *Cudak*, which also concerned the dismissal of a member of the local staff of an embassy, it found that the grant of immunity to a state in civil proceedings was in pursuit of the legitimate aim of complying with international law to promote comity and good relations between states through the respect of another state's sovereignty.

Cudak – v – Lithuania [GC], no. 15869/02, §§ 19-22, ECHR 2010.

The Court found that there was a trend in international and comparative law towards limiting state immunity in respect of employment-related disputes, but with the exception of disputes concerning the recruitment of staff in embassies. The Court noted that over the years, what used to be absolute state immunity in this respect, has been gradually eroded. It had also affirmed that Article 11 of the 1991 Draft Articles published by the United Nations' International Law Commission (ILC), on which the 2004 United Nations Convention was based, applies to Lithuania under customary international law. The Articles enshrine the rule that a state has no jurisdictional immunity in respect of employment contracts, except in certain situations that it sets out in full. The Court must take this into consideration in assessing whether the right of access to a court within the meaning of Article 6(1) of the European Convention on Human Rights, has been respected.

Ms Naku did not fall within the exceptions of the exceptions set out in Article 11 of the 2004 United Nations Convention. She was neither a Swedish national, nor a diplomatic or consular agent of that State. The Swedish authorities did not argue before the Lithuanian courts that proceedings for Ms Naku's dismissal could undermine Sweden's security interests, nor was it argued that Ms Naku had agreed in writing to be excluded from the jurisdiction of the Lithuanian courts – another exception listed in Article 11.

The Court noted that the case turned on whether the applicant performed particular functions in the exercise of governmental authority, for the purposes of the customary rule reflected in Article 11 of the United Nations Convention on the jurisdictional immunity of states. By considering that everyone who worked in the diplomatic mission of a foreign state, including the administrative, technical and service staff, was automatically contributing to the sovereign goals of a state by the virtue of that employment alone, was unfairly to impede the right of access to the courts. In order for state immunity to take effect, there needed to be sufficient evidence to show that Ms Naku was in fact required to perform particular duties in the exercise of governmental authority. The Government's objection that Article 6(1) did not apply because of Ms Naku's special bond of trust and loyalty to the Swedish embassy was dismissed.

Accordingly, there was a breach of Article 6(1) of the Convention in respect of Lithuania. The Court awarded Ms Naku € 8,000 for non-pecuniary damage and € 17,000 in costs and expenses.

Creator: European Court of Human Rights (ECtHR)

Verdict at: 2016-11-08

Case number: 26126/07