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Settling Renting Disputes concerning the Premises of Diplomatic Missions in Brussels

A number of diplomatic missions in Brussels are established in premises rented by the sending State. In the event of a dispute concerning the alleged failure of the tenant to fulfill the obligations relating to the lease agreement (e.g. failure of the sending State to pay the rent, to execute repairs incumbent upon it, etc.), the Protocol Directorate of the

Belgian Ministry of Foreign Affairs may play a role in trying to find an amicable settlement. The landlord may also decide to institute court proceedings against the sending State. These two situations are briefly addressed hereafter.

The Role of the Protocol Directorate

According to the Circular Note of January 18, 2007, the Protocol Directorate, once it is informed of the existence of a debt or a dispute involving a diplomatic mission, may invite the latter, by diplomatic note, to abide by its legal and contractual obligations. Should a significant debt persist over time, the Protocol Directorate may approach the head of mission, and/or the Belgian diplomatic mission may approach the Ministry of Foreign Affairs of the sending State, with a view to settling the dispute swiftly. The above Circular Note also indicates that other measures may be taken simultaneously by Belgian authorities, with respect to, e.g., the size of the mission (see Article 11 of the Vienna Convention on diplomatic relations) or tax privileges.

The example of the tax privileges is ambiguous: whilst there is no problem in curtailing a tax privilege that was granted on a voluntary basis irrespective of any obligation under international law (for instance, the exemption of roadtraffic taxes for vehicles registered in Belgium under the name of diplomatic missions: see the Circular Note of June 1, 2011), the receiving State is in principle not allowed to restrict tax privileges which are duly provided for in the Vienna Convention, even as a reaction to a dispute between the mission and a private party.

Court Proceedings

In case of court proceedings instituted by the landlord, the sending State may decide to invoke its immunity from jurisdiction in order to have the claim dismissed. However, it

is not certain that such immunity will be effectively granted by Belgian courts. There is no case-law of the Belgian Supreme Court on the applicability of State immunity from jurisdiction in the specific instance of a lease agreement pertaining to diplomatic premises. Moreover, in the light of existing Belgian case-law on State immunity from jurisdiction in general, it does not appear clearly whether such an agreement would be considered an act *jure imperii* (i.e. a sovereign act, covered by immunity) or an act *jure gestionis* (i.e. a management act, not covered by immunity).

To determine the nature of the act at stake, Belgian courts usually rely on the legal form of the act. As far as contracts are concerned, these are legal acts which are not reserved to the State specifically. Therefore, it is possible that a lease agreement relating to diplomatic premises will be regarded as a mere act *jure gestionis*, hence not enjoying immunity.

On the other hand, it could be argued that the aim of the lease agreement cannot be disregarded. As this aim is to rent a place in order to carry out the activities of a diplomatic mission – which constitute sovereign activities *par excellence* – the lease agreement should then qualify as an act *jure imperii*, covered by immunity. This view is supported by significant foreign case-law. Interestingly enough, it has also been upheld in a July 2011 decision of the Justice of the Peace of Etterbeek (Brussels).



Drapeaux et emblèmes: la pratique en Belgique

L'article 20 de la Convention de Vienne sur les relations diplomatiques consacre une pratique bien établie :

« La mission et son chef ont le droit de placer le drapeau et l'emblème de l'État accréditant sur les locaux de la mission, y compris la résidence du chef de la mission, et sur les moyens de transport de celui-ci ».

À ce sujet, les éléments suivants peuvent être soulignés dans la pratique belge :

- Le drapeau et l'emblème de l'État accréditant peuvent être arborés sur les divers bâtiments pouvant être considérés comme faisant partie des locaux de la mission diplomatique, y compris la résidence du chef de mission (mais non la demeure privée des membres du personnel de la mission).
- Ils peuvent également être placés sur les moyens de transport (principalement la voiture) du chef de mission. En pratique, toutefois, cela ne se fait plus guère de manière permanente, mais seulement lors d'occasions particulières (événements officiels, etc.).
- Quant aux moments ou circonstances du pavoiement sur les locaux de la mission, l'État accréditaire se conformera, d'une part, à sa propre réglementation interne (imposant, par exemple, de pavoyer le jour de la fête nationale de l'État accréditant), d'autre part, aux usages en vigueur en Belgique. Sur ce point, il est d'usage en Belgique que les missions arborent en tout cas leur drapeau le 21 juillet (fête nationale) et le 15 novembre (fête de la dynastie). Il convient par ailleurs de noter que la pratique consistant à pavoyer de façon continue tout au long de l'année est acceptée et relativement répandue.

- Selon l'usage, tel qu'appliqué par le Service du Protocole de la Commission européenne, les missions accréditées auprès de l'Union européenne paviseront, outre aux deux dates précitées, le 9 mai (Journée de l'Europe). Elles pourront également le faire lors de cérémonies exceptionnelles ou pour des raisons spéciales.
- En cas de deuil national en Belgique, il est d'usage que le drapeau de l'État accréditant soit mis en berne sur les locaux de la mission.
- Il n'est pas contesté que l'État accréditant membre de l'Union européenne est libre de hisser le drapeau européen, avec le drapeau national, sur les locaux à la fois de sa mission en Belgique et de sa représentation permanente auprès de l'UE.



In a Nutshell: New “P” ID Cards Available at the Protocol Directorate

As announced in the Circular Note of January 24, 2012, a new model of special ID cards of category “P” is available, since February 1, 2012, at the Protocol Directorate of the Belgian Ministry of Foreign Affairs, for all persons entitled to such a special ID card according to Belgian regulations. This new type of “P” card will be used for about two years, following which it will be replaced by electronic ID cards.

All current special ID cards remain valid until their date of expiry.

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