

28 OCTOBER 2016

Court of Cassation of Belgium

Judgment

No. C.16.0039. N

M.R.

applicant,

represented by Mr. Bruno Maes, advocate at the Court of Cassation, with office at 1000 Brussels, Bergstraat 11, where the applicant made choice of domicile,

against

L.P.

defendant,

I. PROCEEDINGS BEFORE THE COURT

This application for review is made of a judgment of the tribunal of first instance of Leuven in appeal delivered on 9th October 2015.

President Eric Dirix made the report.

Advocate General André Van Ingelgem gave his conclusions.

II. GROUNDS OF APPEAL

The applicant raises one ground in her application for review which is attached to the present judgement.

III. DECISION OF THE COURT

Grounds of the decision

1. The applicant submits, essentially, that the judgement under attack denied her diplomatic immunity in disregard of article XII of the status of the North Atlantic Treaty Organization signed in Ottawa on the 20th September 1951, adopted by Act of the 1st February 1955, the articles 29 to 31.1 of the Treaty of Vienna of 19 April 1961, adopted by the Act of 30 March 1968 and that in any event this immunity does not violate article 6 of the European Convention of Human Rights, nor can it be considered as such in the present case.

2. According to Article 6.1 of the European Convention of Human Rights everyone is entitled to the access to a court for the hearing of his disputes regarding his civil rights and obligations.

This right of access to the courts is not absolute. It may be subject to limitations, since by its nature it calls for regulation by the State.

3. The granting of privileges and immunities to diplomats is needed to ensure the proper functioning of the diplomatic mission and to promote good relations between States. This

diplomatic immunity is, in principle, absolute, both in regard to the exercise of the function of the diplomatic mission and in regard to private life.

The immunity of jurisdiction and execution granted to diplomatic representatives based on treaties, acts constituting international organizations or international customary law and cannot be considered as a disproportionate limitation of the right of access to court as established by article 6.1 of the European Convention of Human Rights.

4. Pursuant to article 31, al. 1 a) of the Treaty of Vienna on diplomatic relations, a diplomatic agent shall enjoy immunity from civil and administrative jurisdiction of the receiving State, except in the case of real actions relating to private immovable property situated in the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission. Lawsuits regarding the lease of a private home do not fall within that category.

5. It results from the judgment under attack that:

- The defendant leased a home to the applicant located in Tervuren and a dispute has arisen regarding this contract;

- The defendant has sued the applicant before the justice of the peace for the payment of rent arrears and damages;

- The applicant raised the defence based upon her diplomatic immunity as a member of the Permanent Representative of the United States of America of NATO;

- It appears from a letter on the 16th January 2015 from the Ministry of Foreign Affairs, Directorate of Protocol, that the applicant is entitled to diplomatic status as a member of the Permanent Representative of the United States of America at NATO and accordingly enjoys the diplomatic privileges and immunity as stipulated in article XII of the Treaty of Ottawa.

6. The reasoning of the lower court that the diplomatic immunity of the applicant results in *“the consequence that the defendant is in fact denied to the right of access to the court in order to obtain a judgement for the payment of rent arrears and damages”* while such a proceeding would *“in no way compromise”* the proper functioning of the Permanent Representation of the relevant State or of NATO itself does not legally justify the lower

court's decision that the immunity invoked by the applicant is inconsistent with article 6.1 European Convention of Human Rights.

The application for review is founded.

Dictum

The Court,

Quashes the decision below,

Remits the case to the tribunal of first instance of Brussels.

This judgement was given in Brussels by the Court of Cassation, first chamber, composed of Eric Dirix (presiding), Albert Fettweis, Beatrijs Deconinck, Geert Jocqué and Bart Wylleman, and pronounced in a public hearing on the 28th October 2016 in the presence of advocate general André Van Ingelgem, with the assistance of law clerk Veronique Kosynsky.