

**ADMINISTRATIVE COURT OF
PARIS**

No. 1004813/6-1

FRENCH REPUBLIC

Association
FRANCE-PALESTINE
SOLIDARITE

IN THE NAME OF THE FRENCH PEOPLE

v. State

_____ Mr Bernier
Reporting Judge

Administrative Court of Paris,
(6th division – court 1)

Mr Fouassier
Independent Law Officer

Hearing of 14 October 2011
Reading of 28 October 2011

60-01-01-01
60-01-02-01-01-01
60-01-01-03
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Having regard to the petition, filed on 11 March 2010 on behalf of the association FRANCE-PALESTINE SOLIDARITÉ, having its registered office at 21 ter rue Voltaire, 75011 Paris, represented by its president and by Mr Lévy, Esq.; the association is requesting that the Court order the French State to pay the association an indemnity of one euro to compensate counts of harm that result from support provided to the involvement of two French undertakings in the construction and operating of the tramway that the State of Israel decided to build in Jerusalem with the aim of connecting the centre of the city to settlements built on Palestinian territory;

The association FRANCE-PALESTINE SOLIDARITÉ states that in 1999 the State of Israel launched an international call for tenders with a view to the construction of a tramway to connect West Jerusalem to Israeli colonies on the West Bank; that the French companies Véolia Transport and Alsthom Transport were involved in this venture, Alsthom Transport having been awarded the engineering and construction contract in February 2005; that the French State refrained from taking any action to prevent the realisation of this venture, which was contrary to international law, and even encouraged it; that the association summoned the undertakings before the Nanterre Court of First Instance in order for the Court to recognise the unlawful nature of the contract entered into by them with the State of Israel; that, in parallel to these proceedings, on 1 March 2007 the association filed a claim against the Minister for Foreign and European Affairs for the payment of a one euro indemnity to compensate counts of harm resulting from the support provided to the French

undertakings' involvement in the operating of said tramway; that, as said claim was implicitly rejected, the association is petitioning the Court to order the French State to pay it this indemnity;

The association FRANCE-PALESTINE SOLIDARITÉ, which has given itself the purpose of defending the interests of the Palestinian people before the courts, pleads that it has sufficient standing to sue;

The association FRANCE-PALESTINE SOLIDARITÉ submits that the legal position of Jerusalem was analysed in the opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the occupied Palestinian territory; that the unlawful nature of the occupation of the Palestinian territories by Israel was noted by numerous resolutions of the Security Council, which moreover called on Israel to comply with the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; that the tramway project, a vital part of ensuring the long-term survival of the settlements and the integration of the city of Jerusalem in the State of Israel, which involves the destruction of dwellings located on its route, damages archaeological sites that are protected by the Hague Convention of 14 May 1954 and contributes to the policy of annexing territories *de facto*, in breach of international law; that the French governmental authorities and diplomatic services were actively involved with a view to enabling the participation of the French undertakings in work, the unlawful nature of which was patent; that this behaviour triggers the liability of the French State, inasmuch as, pursuant to Article 1 of the [Geneva] Convention of 12 August 1949, the "High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances"; that the standards laid down by this Convention apply directly to States such as France, which signed and ratified the Convention; that, in particular, Articles 49 and 53 are directly applicable; that these peremptory, *jus cogens* norms are binding on all States; that the administrative court has jurisdiction to rule on the State's liability in respect of its international commitments; that the theory of acts of government, which is only valid when an act of foreign policy is about timing, is not applicable to matters such as the case at hand, where the French State was required to contribute to upholding international public order; that Article 148 of the Fourth Geneva Convention of 12 August 1949 prohibits a High Contracting Party from absolving itself or any other High Contracting Party of any liability incurred by itself, in particular regarding illegal population displacements; that, although the other States have a degree of discretion to adapt their reaction to the circumstances if a High Contracting Party breaches the Convention, they are nonetheless required to take active steps to make it more difficult to perpetrate breaches of international law; that deliberately passive behaviour, and certainly encouragements, constitute a breach of the State's international obligations, which triggers its liability;

Having regard to the formal notice sent on 13 July 2011 to the Minister of Foreign and European Affairs pursuant to Article R.612-3 of the French Administrative Justice Code, and the return receipt for said formal notice;

Having regard to the information letter dated 13 July 2011 informing the parties that the court was considering enrolling the case for a hearing in September 2011, as the investigation was scheduled to end on 29 August 2011;

Having regard to the submission filed on 2 September 2011 by the Minister for Foreign and European Affairs, which pleads for the petition to be rejected;

The Minister submits that the applicant association, which amended its purpose in its organisational documents with a view to filing this action more than two years after the impugned facts, has not provided evidence of the infringement of a right that is its own or of a specific count of harm; that in the absence of standing to sue, the association's petition is inadmissible; that the provisions of the last paragraph of Article 49 and Article 53 of the Fourth Geneva Convention of 12 August 1949 do not create direct rights for the benefit of individuals that can be directly asserted before the administrative courts; that, in any event, said provisions can only create an obligation with regard to the States that occupy a territory and not the other contracting States, which are not in the position of occupying powers; that the obligation to "ensure compliance" with the Convention that encumbers the parties is an obligation to use best efforts and not an obligation to achieve a specific result; that neither national law nor international law allow the French State to prohibit a French undertaking from submitting a bid in response to an international call for tenders;

Having regard to the submission filed on 4 October 2011 by the association FRANCE-PALESTINE SOLIDARITE, which makes the same pleas as the petition on the basis of the same arguments;

The applicant association submits that the interest that gives it standing to sue should not be confused with the existence of a count of harm or be contingent thereon; that the standing to sue of the association, which has given itself the mission of defending the collective interests of the Palestinian people, is linked to the purpose of the association, as determined by its organisational documents, which were amended in 2006; that the interest that gives the association standing to sue should be assessed on the date the action was brought; that case law has upheld the existence of standing to sue in comparable circumstances; that in the case at hand, the tramway is a major factor in the expansion of the colonisation of East Jerusalem and the change of the city's legal status, that it involves the destruction of road infrastructures, the confiscation of archaeological relics and expropriations;

On the merits, the association submits that the unlawful nature of the contracts is incontrovertible; that the rules contained in the Fourth Geneva Convention, the breach of which is condemned by the association, are directly applicable; that said rules are devoted to the protection of civilians, that they create precise rights that can be applied immediately, and that such immediate application corresponds to the intention of the parties; that the French State has triggered its liability in breaching its obligation to take positive action to prevent the signature of the litigious contracts and in actively encouraging their conclusion; that Article 1 creates a direct obligation for each of the signatories to ensure compliance with the provisions of the Convention; that while the resulting obligation was an obligation to use best efforts and not to obtain specific results, the French State should still have refrained from lending its support to projects undertaken in breach of the Fourth [Geneva] Convention, or should have used the legal means at its disposal to inform the stakeholders and block their projects; that its double-speak, its official abstention and the behind-the-scenes encouragements given to the undertakings trigger the State's liability; that the French courts have jurisdiction to rule on the State's liability as a result of its tortious international activities;

Having regard to the submission filed on 7 October 2011 by the Minister for Foreign and European Affairs, which pleads for the petition to be rejected;

The Minister, who notes that the final submission by the applicant does not contain any new material, confirms the line of argument in his previous submissions;

Having regard to the request for prior indemnification;

Having regard to the other case exhibits;

Having regard to the United Nations Charter;

Having regard to the Fourth Convention relative to the Protection of Civilian Persons in Time of War, signed in Geneva on 12 August 1949;

Having regard to the Convention for the Protection of Cultural Property in the Event of Armed Conflict signed in the Hague on 14 May 1954;

Having regard to the French Administrative Justice Code;

Having regard to the order of the Vice President of the Conseil d'État dated 18 March 2009 containing the list of administrative courts and administrative appeal courts that are authorised to apply, on an experimental basis, the provisions of Article 2 of Decree no. 2009-14 of 7 January 2009;

The parties having been duly notified of the date of the hearing;

After hearing, during the public hearing of 14 October 2011:

- the report by Mr Bernier, the reporting judge;
- the conclusions of Mr Fouassier, the independent law officer;
- and the oral observations of Mr Levy, Esq. for the association FRANCE PALESTINE SOLIDARITE, who makes the same pleas on the basis of the same arguments;

Whereas, in petitioning the Court to order the French State to pay it one euro of damages, the association FRANCE-PALESTINE SOLIDARITE objects to the French State having allowed French undertakings to participate in an international call for tenders for the construction and operation of a tramway to serve the territory of Jerusalem and part of the West Bank and having welcomed the conclusion of this contract; whereas, however, the State of Israel's alleged breach of some of its international obligations, and in particular those that result from Articles 49 and 53 of the Fourth Convention relative to the Protection of Civilian Persons in Time of War, signed in Geneva on 12 August 1949, which concern the parties to a conflict and encumber the occupying power, cannot directly or indirectly trigger the liability of the French Republic; whereas the association objects to the State for having breached its commitment, as stated in Article 1 of the Fourth Geneva Convention to "ensure respect for the present Convention in all circumstances", this provision only creates an obligation between the States that are party to the Convention and has no direct effect in national legal systems; whereas the compensation of a possible breach of this obligation, which is part of the management of international relations, cannot be examined before the administrative court; whereas, accordingly, and without there being any need to rule on the objection to admissibility raised by the Minister, the petition must be rejected;

DECIDES:

No. 1004813

Article 1: The petition filed by the association FRANCE-PALESTINE SOLIDARITE is rejected.

Article 2: This judgment shall be notified to the association FRANCE-PALESTINE SOLIDARITE and to the Minister for Foreign and European Affairs.

Deliberated after the hearing of 14 October 2011 during which
Ms Jacquier, president,
Mr Bernier, head judge,
Mr Langrognet, judge,
were on the bench.

Read in the public hearing of 28 October 2011.

The reporting
judge,

The
president,

C. BERNIER

C. JACQUIER

The clerk,

S. THOMAS