

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Leffer, et al.

*Plaintiffs,*

v.

Federal Republic of Germany, et al.

*Defendants.*

Case No. 19-cv-3529 (CJN)

**MOTION OF THE KINGDOM OF BELGIUM TO QUASH SERVICE FOR  
INSUFFICIENCY OF PROCESS AND INSUFFICIENCY OF SERVICE OF PROCESS,  
LACK OF SUBJECT MATTER JURISDICTION, AND LACK OF PERSONAL  
JURISDICTION**

The Kingdom of Belgium, by counsel, Rubin, Winston, Diercks, Harris and Cooke, LLP  
moves this Court pursuant to:

1. Fed. R. Civ. P. 12 (b)(4) to quash service on Kingdom of Belgium for  
insufficiency of process;
2. Fed. R. Civ. P. 12(b)(5) to quash service on Kingdom of Belgium for  
insufficiency of service of process as required by 28 U.S.C. 1608(a);
3. Fed. R. Civ. P 12(b)(1) to dismiss the complaint for lack of subject matter  
jurisdiction because the Kingdom of Belgium is immune from the jurisdiction of  
the courts of the United States pursuant to 28 U.S.C. 1602, *et. seq.*, the Foreign  
Sovereign Immunities Act (“the FSIA”);
4. Fed. R. Civ. P 12(b)(2) to dismiss the complaint for lack of personal jurisdiction.

Memorandum of Law

The Kingdom of Belgium submits this memorandum of law in support of its motion.

Background Facts

This is an action against Kingdom of Belgium, and other defendants. The causes of action to the extent they can be deducted from the complaint relate to the allegation that the Free City of Danzig (now Gdansk, Poland) never lost its status because the decision by the Allied Powers to have it administered by Poland came with a the caveat that the administration should last until a peace treaty has been executed and that such peace treaty has never been executed and therefore the administration of the Free City of Danzig should be under the control of the United States until a peace treaty is executed.

Plaintiff von Prince, claiming to be an official of the Free City of Danzig, issued official documents of the Free City of Danzig in his supposed capacity as a civilian representative of the Allied Powers, that being of the United States, as the principal victorious party in World War II. He alleges that he has been falsely charged, indicted, extradited and imprisoned for issuing these documents. Plaintiff Leffer, claiming to be a representative of the German people, was also indicted and is living in Switzerland due to ongoing alleged politically motivated persecution. Plaintiffs seek a declaratory judgment that the Court has jurisdiction and for damages.

The relevant background facts with regard to attempts to serve the Kingdom of Belgium are as follows: Plaintiff Beowulf von Prince attempted to serve, in accordance with Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and

Commercial Matters (“the Hague Convention”),<sup>1</sup> the complaint and summons without translations of both, on the Defendant Kingdom of Belgium. The Kingdom of Belgium received the attempted service on January 3, 2020 and rejected it by letter addressed to Plaintiff Karin Leffer, dated January 8, 2020, stating that the service attempt was insufficient because it lacked translations into French or Dutch and because the required service fees were not paid by the Plaintiff.

Kingdom of Belgium seeks to appear before this Court for the limited purpose of contesting the sufficiency of process, the sufficiency of the service of process, subject matter jurisdiction and personal jurisdiction only, and does so by filing the accompanying motion to quash and dismiss.

### **Argument**

#### **Foreign Sovereign Immunities Act**

The Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. 1602 *et. seq.* contains a broad grant of sovereign immunity to foreign states, including their agencies and instrumentalities, subject to specific enumerated exceptions. The FSIA is the sole source of subject matter jurisdiction against a foreign state and its agencies or instrumentalities. *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 794 F.3d 99 , 101 , 417 U.S. App. D.C. 257 (D.C. Cir. 2015) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428 , 443 , 109 S. Ct. 683 , 102 L. Ed. 2d 818 (1989)); *see also* 28 U.S.C. §§ 1605-1607.

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<sup>1</sup> Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Feb. 10, 1969, 20 U.S.T. 361, T.I.A.S. No. 6338

### **Insufficient Process**

The FSIA specifies in how service must be made upon foreign states and their agencies and instrumentalities in §1608 (28 U.S.C. 1608). The requirements for service of process on a foreign state are set out in §1608 (a).

### **Service Under 28 U.S.C. 1608(a)**

The FSIA, at 28 U.S.C. 1608(a) states in pertinent part:

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

- (1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or
- (2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or
- (3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or
- (4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services--and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

28 U.S.C. § 1608(a) requires that plaintiff “must attempt service by the first method (or determine that it is unavailable) before proceeding to the second method, and so on.” *Ben-Rafael v. Islamic Republic of Iran*, 540 F.Supp.2d 39, 52 (D.D.C.2008), *Angellino v. Royal Family Al-*

*Saud*, 688 F.3d 771, 773, 402 U.S. App. D.C. 136, 138, 2012 BL 185851, 2 (D.C. Cir. 2012)

As set out above, §1608(a) provides four methods of service. The first two involve either special arrangements between the United States and the Kingdom of Belgium or an international convention to which the United States and the Kingdom of Belgium are parties. The last two methods involve the clerk of the court dispatching the summons and complaint to either the foreign minister of the Kingdom of Belgium or to the United States Secretary of State for further transmission through diplomatic channels to the Kingdom of Belgium.

**I. The process purportedly served on Kingdom of Belgium was insufficient and service was insufficient and should be quashed.**

The Kingdom of Belgium, in this section of its Memorandum of Law, contests the adequacy of the process itself as well as the adequacy of the service. The process in this case was fatally insufficient because the process did not include required translation of the complaint and summons and service was insufficient as Plaintiffs failed to pay the service fees levied by the Kingdom of Belgium.

The appropriate method of service is dependent upon whether a foreign sovereign is a “foreign state or [its] political subdivision” or a foreign sovereign’s “agency or instrumentality”. Thus, a court must determine into which category a defendant falls before it can determine if service was effected properly. See *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 154 (D.C. Cir. 1994).

It is undeniable that the Kingdom of Belgium is a “foreign state” and as such is subject to 28 USC § 1608(a). Thus, the service requirements must be adhered to rigorously. *Howe v. Embassy of Italy*, 68 F. Supp. 3d 26, 32, 2014 BL 251121, 6 (D.D.C. 2014).

In the instant case Plaintiffs attempted to serve the Kingdom of Belgium in accordance

with Hague Convention in accordance with 28 U.S.C. § 1608(a). The Kingdom of Belgium and the United States are both signatories to the Hague Convention. The Hague Convention requires each country to designate a Central Authority to which any request for service will be sent. 20 U.S.T. 361 at art. 5. The documents will then be sent by the Central Authority to the party being served. The Central Authority may require the documents to be translated into the official language of the country in which the party being served is located, 20 U.S.T. 361 at art. 5, and the Kingdom of Belgium requires a full translation for any document to be served:

“Regarding the translation requirements set out in article 5, third paragraph of the Convention, the Government of Belgium wishes to draw attention to the fact that the Belgian Central Authority requires a judicial document that is to be served pursuant to article 5, first paragraph, (a) or (b), to be written in or translated into the official language or one of the official languages of the place where it is to be served”

<https://www.hcch.net/en/states/authorities/details3/?aid=247>

The papers mailed to the Belgium Central Authority did not contain translations of the complaints and summons into the Dutch or French language.

The Kingdom of Belgium has also made a declaration regarding Article 12 of the Hague Convention, according to which an applicant shall pay or reimburse the costs occasioned by the employment of a judicial officer or of a person competent under the law of the State of Destination. 20 U.S.T. 361 at art. 12. The declaration states that the payment of a fee of Euro 165 is required to enable the effective transmission of the request for service to a judicial officer with territorial jurisdiction<sup>2</sup>. <https://www.hcch.net/en/states/authorities/details3/?aid=247>.

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<sup>2</sup> The Government of Belgium wishes to draw attention to the fact that any request for service filed in accordance with article 5, first paragraph, (a) or (b), requires the intervention of a judicial officer and that, in accordance with article 12, the applicant must pay €165 (including Belgian VAT) in advance for every document served on and intended for a natural or legal person.

The process that was purportedly served on Kingdom of Belgium is fatally defective. The failure to include translation of the summons and complaint into French or Dutch language mandates that service be quashed. Further, the service was never completed because Plaintiffs choose not to pay the mandatory fees.

As a result, service of process should be quashed pursuant to both Fed. R. Civ. P 12(b)(4) and (5) as there was insufficient process and, therefore, insufficient service of process.

**II. The Complaint should be dismissed for lack of subject matter jurisdiction as the Defendant is immune from prosecution under the FSIA's broad grant of immunity to foreign states and their agencies and instrumentalities. None of the exceptions to that broad grant of immunity applies in this case.**

Historically foreign sovereigns and their agencies and instrumentalities had no right to any immunity in the Courts of the United States. *Schooner Exchange v. M'Faddon*, 11 U.S. 166, 3 L.Ed. 287 (1812). However, while not a matter of right, the United States did, as a matter of grace and comity, waive its right to exercise its jurisdiction over foreign sovereigns in certain cases. *Id.* The Courts historically deferred to the Executive Branch's determination as to whether to exercise or waive jurisdiction in cases involving foreign sovereigns. Until the early 1950s, the Executive Branch requested immunity for foreign sovereigns in all cases. *Verlinden B. V. v. Central Bank of Nigeria*, 461 U.S. 480, 486, 76 L. Ed 2d 81, 103 S. Ct. 1962 (1983). Thereafter the Executive Branch, acting through the Department of State, made inconsistent suggestions to

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This payment must be made directly through a bank or financial institution in Belgium approved by the applicant's country; bank charges are to be borne by the applicant. If the VAT of the State of origin is applied to the costs of service under international regulations on value added tax, the judicial officer will reimburse any overpayment.

Once it has received the application, the Belgian Central Authority will inform the applicant of the bank account to which the payment must be made and the file reference number to be quoted in communications. The applicant's submission of proof of payment to the Belgian Central Authority will enable the effective transmission of the request for service to a judicial

the courts regarding sovereign immunity. In the wake of the resultant confusion and inconsistency Congress acted in 1976 by enacting the FSIA.

The FSIA is the sole source of subject matter jurisdiction against a foreign state and its agencies or instrumentalities. *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 794 F.3d 99, 101, 417 U.S. App. D.C. 257 (D.C. Cir. 2015) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443, 109 S. Ct. 683, 102 L. Ed. 2d 818 (1989)); *see also* 28 U.S.C. §§ 1605-1607. The broad grant of immunity is found in 28 U.S.C. 1603 and states:

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act [enacted Oct. 21, 1976] a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

As a foreign state, the Kingdom of Belgium is immune from suit in the courts of the United States under the provisions of the FSIA. Under the FSIA, a foreign state is presumptively immune from the jurisdiction of the United States courts; unless a specified exception applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state and its agencies or instrumentalities. *Saudi Arabia v. Nelson*, 507 U.S. 349, 355, 123 L. Ed. 2d 47, 113 S. Ct. 1471 (1993).

It is beyond argument that the FSIA's broad grant of immunity applies to the foreign state itself. It is also undeniable that the Kingdom of Belgium is a foreign state. *See Best Medical Belgium, Inc. v. Kingdom of Belgium*, 913 F. Supp.2d 230 (E.D. Va. 2012). Therefore, the Kingdom of Belgium is entitled to the FSIA's broad grant of immunity unless one of the enumerated exceptions is alleged with the requisite specificity.

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officer with territorial jurisdiction.



The exceptions to this broad grant are contained in 28 U.S.C. 1605 and 1607. These statutory exceptions are the source of the federal district court's subject matter jurisdiction and "if no exception applies, the district court has no jurisdiction." *Odhiambo v. Republic of Kenya*, 764 F.3d 31 (D.C. Cir. 2014); *cert. denied*, 2016 U.S. LEXIS 4064, 136 S. Ct. 2504, 195 L. Ed.2d 839 (2016).

The statute [FSIA] must be applied by the district courts in every action against a foreign sovereign, since subject-matter jurisdiction in any such action depends on the existence of one of the specified exceptions to foreign sovereign immunity. [citation and fn omitted] At the threshold of every action in a district court against a foreign state, therefore, the court must satisfy itself that one of the exceptions applies -- and in doing so it must apply the detailed federal law standards set forth in the Act.

*Verlinden B. V. v. Central Bank of Nigeria*, supra 461 U.S. at 483-484.

Section 1605 (28 U.S.C. 1605) contains a list of exceptions to the general grant of immunity, but Plaintiffs do not plead the applicability of any exception to the sovereign immunity in their complaint. Plaintiffs however allege that the Kingdom of Belgium had violated international law by extraditing Plaintiff von Prince to the Federal Republic of Germany in accordance with a European arrest warrant (Complaint para. 86 -91). Thus, the exception that might conceivably apply is the noncommercial tort exception, 28 USC § 1605(a)(5).

### **The Noncommercial Tort Exception**

Pursuant to the FSIA, a plaintiff can establish subject matter jurisdiction over a foreign sovereign under the tortious act exception if there has been a tortious act which occurred in the United States and was caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment. *See* 28 U.S.C. § 1605(a)(5). However, the tortious act exception does not apply to

any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. 28 U.S.C. § 1605(a)(5)(B).

The Complaint alleges that the Kingdom of Belgium had violated international law by extraditing Plaintiff von Prince to the Federal Republic of Germany (Complaint para. 86 -91).

It is well-settled in the D.C. Circuit that under [28 U.S.C. § 1605(a)(5)(B)], “both the tort and the injury must occur in the United States.” *Jerez v. Republic of Cuba*, 964 F. Supp. 2d 52, 56, (D.D.C. 2013) (citations omitted). Plaintiffs do not allege in their complaint that any of the alleged torts were committed in the United States. On the contrary, the Complaint sets forth a fact pattern that consists entirely of activities that took place in Belgium and Germany and does not include even one single act by Defendant Kingdom of Belgium that occurred in the United States. Thus, the causes of action that are founded in tort must be dismissed.

Even if the alleged torts had occurred in the United States, Plaintiff’s Fourth, Fifth, and Eight Cause of Action are also subject to the “exception to the exception” set forth in 28 U.S.C. § 1605(a)(5)(B), which clearly states that the tortious act exception does not apply to any claim arising out of misrepresentation, deceit, or interference with contract rights.

This language makes clear that if the predicate conduct for the alleged tort is simply a foreign state’s alleged abuse of process, then the court lacks jurisdiction to hear the resulting claim. *Khochinsky v. Republic of Poland*, 2019 BL 426812, 8 (D.D.C. Nov. 06, 2019).

In totality, these allegations do not allege jurisdiction under the FSIA, the only source of this Court’s jurisdiction, and certainly do not allege that any of the exceptions to the FSIA’s broad grant of immunity apply. As such, the Court is without jurisdiction and the Complaint against the Kingdom of Belgium should be dismissed pursuant to F. R. Civ. P 12(b)(1).

**III. The Complaint should be dismissed for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2).**

Under the FSIA, personal jurisdiction equals subject matter jurisdiction plus valid service of process. 28 U.S.C. 1330(b); *I.T. Consultants, Inc. v. Islamic Republic of Pak.*, 351 F.3d 1184, 1191 (D.C. Cir. 2003); *Reiss v. Societe Centrale Du Groupe Des Assurances Nationales*, 235 F.3d 738, 746 (2d Cir. 2000); *Shapiro v. Republic of Bolivia*, 930 F.2d 1013, 1020 (2d Cir. 1991). As demonstrated above, Plaintiffs have failed to establish subject matter jurisdiction by establishing that one of the enumerated statutory exceptions to sovereign immunity applies. Hence, the Complaint fails to establish subject matter jurisdiction, which is the first part of the two-part test for personal jurisdiction under the FSIA. The second prong of the test is that there be valid service which as discussed above, did not take place. The Court does not have personal jurisdiction over the Defendants, as it does not have subject matter jurisdiction even if service of process was sufficient. The Court should dismiss the complaint pursuant to Fed R. Civ. P. 12(b)(2).

Conclusion

The process by which Plaintiffs attempted to serve process on the Kingdom of Belgium was defective. The process failed to include the required French or Dutch translation of the papers and failed to include the required Notice of Service. Service of process therefore should also be quashed for this reason pursuant to Rule 12(b)(4) and/or (5).

For all the reasons argued above, the Complaint as to the Kingdom of Belgium should also be dismissed as the Court lacks subject matter jurisdiction and personal jurisdiction.

Dated: March 25, 2020

Respectfully submitted,

s/Jeffrey Harris

Jeffrey Harris, Esq.  
Max Riederer von Paar, Esq.  
RUBIN, WINSTON, DIERCKS, HARRIS &  
COOKE, LLP  
1250 Connecticut Avenue, N.W., Ste 700  
Washington, D.C. 20036  
(202) 861-0870  
jharris@rwdhc.com

Attorneys for Defendant  
Kingdom of Belgium

**CERTIFICATE OF SERVICE**

I hereby certify that on March 25, 2020, I electronically filed the foregoing document and proposed order with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.

s/ Jeffrey Harris  
Jeffrey Harris

Service List:

Via U.S. Mail to:

**KARIN LEFFER**  
c/o Beowolf von Price  
Schweizer Strasse 38  
AT-6830 Rankweil  
Austria  
PRO SE

**BEOWULF VON PRINCE**  
Schweizer Strasse 38  
AT-6830 Rankweil  
Austria  
PRO SE

**KARIN LEFFER**  
c/o Beowolf von Price  
Schweizer Strasse 38  
AT-6830 Rankweil  
Austria  
PRO SE

**BEOWULF VON PRINCE**  
Schweizer Strasse 38  
AT-6830 Rankweil  
Austria  
PRO SE