



BRIEFING: DIPLOMATIC PROTECTION OF NAZANIN ZAGHARI-RATCLIFFE

January 2019

WHAT IS DIPLOMATIC PROTECTION?

Diplomatic protection is a formal State-to-State process under international law in which a State may secure protection and obtain reparation for a legally wrongful act committed against one of its nationals. It is based on the assertion that the injury of an individual in a foreign State is an injury to the State of nationality. Diplomatic protection must invoke the legal responsibility of the accused State.

Diplomatic protection is *not* the same as granting diplomatic immunity, which is a form of legal immunity ensuring diplomats are given safe passage as codified in the Vienna Convention on Diplomatic Relations.

WHEN CAN DIPLOMATIC PROTECTION BE EXERCISED?

Three requisites must be met for a State to exercise diplomatic protection:

1. The accused State is **responsible of a breach of an international norm**, including human rights obligations such as the prohibition of torture (whether mental or physical), arbitrary detention, or a trial that fails to comply with international standards of fairness.
2. The **person who suffered the breach is a national of the State that is exercising diplomatic protection**. In cases of dual nationality, the State of *predominant nationality* may have the right to exercise diplomatic protection on behalf of the person. Indicators such as habitual residence, employment, financial interests and family life should be taken into account to determine predominant nationality.
3. **Local remedies have been exhausted** to allow the accused State the possibility of settling the case in its domestic system before being raised to the international level. The exhaustion of local remedies is not necessary if the remedies are ineffective or their exhaustion would be futile.

WHAT INITIAL STEPS MIGHT THE UK TAKE IF IT EXERCISED DIPLOMATIC PROTECTION OVER NAZANIN ZAGHARI-RATCLIFFE?

Diplomatic protection can take many forms. If the UK granted diplomatic protection to Nazanin Zaghari-Ratcliffe, it might demand the immediate release of Nazanin. If this demand is not met the UK might take steps such as:

- Formally request a **private consular meeting** with Nazanin based on Article 36 of the Vienna Convention on Consular Relations.
- Issue a **diplomatic summons** to Iran's Ambassador to the UK, Hamid Baeidinejad, in order to lodge a formal complaint about Nazanin's continued detention.
- Issue a **formal protest** to Iran, stating that the UK:
 - considers Iran's unlawful detention of Nazanin to be an internationally wrongful act; and
 - plans to take diplomatic action and use other means of peaceful settlement to secure Nazanin and Gabriella's safe return to the UK.
- Propose to the Iranian Government the **immediate commencement of formal negotiations** to resolve the dispute over Nazanin.

WHO MAKES THE DECISION TO EXERCISE DIPLOMATIC PROTECTION?

Under international law, a State has the right to exercise diplomatic protection on behalf of a national, however the decision to exercise diplomatic protection is discretionary.

In the United Kingdom, diplomatic protection is a matter of published policy, found in the "[Rules applying to international claims](#)" (updated May 2014) and FCO internal guidelines. Ministers are consulted when a response to a request for diplomatic protection is being considered.

EXAMPLES OF DIPLOMATIC PROTECTION

Instances of diplomatic protection being exercised are not always made public, given the confidential nature of much diplomatic interaction. However, reported instances of diplomatic protection have included the following:

- Germany exercised diplomatic protection in 1999 on behalf of two German nationals who were detained in the USA, in an effort to prevent their execution. The claim for diplomatic protection was based on breaches of the USA's obligations to Germany under Article 36 of the Vienna Convention on Consular Relations, which gave German consular officers the right to communicate with their nationals overseas.
- In 2003 Mexico exercised diplomatic protection on behalf of a number of Mexican nationals detained in the USA, based on similar breaches of the Vienna Convention on Consular Relations.
- The UK has exercised diplomatic protection against Iran before, in 1951. This was on behalf of the Anglo-Iranian Oil Company in a commercial dispute with Iran.
- The USA exercised diplomatic protection against Iran in 1979 following the taking of US Embassy staff as hostages in Tehran.

For more information or for an interview, please contact Eva Sanchis, REDRESS' Head of Communications, on 020 7793 1777 or 07857110076 (out of hours) and eva@redress.org, or Josie Fathers, REDRESS' Advocacy Officer, on josie@redress.org.