

Strasbourg, 13/03/03

CAHDI (2003) 3 bil.

**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW**  
**COMITÉ DES CONSEILLERS JURIDIQUES SUR LE DROIT INTERNATIONAL PUBLIC**  
**(CAHDI)**

**25th meeting/25e réunion**  
**Strasbourg, 17-18 March/mars 2003**

**PILOT PROJECT OF THE COUNCIL OF EUROPE**  
**ON STATE PRACTICE REGARDING STATE IMMUNITIES/**  
**PROJET PILOTE DU CONSEIL DE L'EUROPE**  
**SUR LA PRATIQUE DES ETATS RELATIVE AUX IMMUNITES**

Secretariat memorandum  
Prepared by the Directorate General of Legal Affairs/  
Note du Secrétariat  
préparée par la Direction Générale des Affaires Juridiques

## **Foreword**

At its 21<sup>st</sup> meeting (Strasbourg, 6-7 March 2001) the CAHDI decided to carry out an activity entitled "Pilot Project of the Council of Europe on State practice regarding State Immunities". This activity focuses particularly, although not exclusively, on judicial practice in the member States of the Council of Europe and aims at collecting the most relevant judicial decisions involving foreign States and their property.

It is modelled on the Pilot Project of the Council of Europe on State Practice regarding State Succession and Issues of Recognition which the CAHDI implemented in the mid-1990s and which resulted in a publication including an analytical study.

At its 22<sup>nd</sup> meeting (Strasbourg, 11-12 September 2001) the CAHDI agreed on Secretariat proposals for the implementation of this activity and decided that the activity should be carried out on the basis of the guidelines which appear in Appendix I.

The present document was prepared on the basis of the replies submitted by the following member States: Austria, Belgium, Croatia, Cyprus, Czech Republic, Finland, Greece, Ireland, Netherlands, Norway, Poland, Portugal, Russian Federation, Slovakia, Spain, Sweden, Switzerland and United Kingdom.

Appendixes marked with an \* are not included in this version but will be included in the final version.

## **Action required**

Delegations are invited to take note of the document and discuss about possible follow-up.

## **Avant-propos**

A sa 21<sup>e</sup> réunion (Strasbourg, 6-7 mars 2001) le CAHDI a décidé de mener une activité intitulée "Projet pilote du Conseil de l'Europe sur la pratique des Etats au regard de l'immunité des Etats". Cette activité se concentre plus particulièrement, mais pas exclusivement, sur la pratique judiciaire dans les Etats membres du Conseil de l'Europe et a pour but de rassembler les décisions judiciaires les plus importantes concernant les Etats étrangers et leurs biens.

L'activité suit le modèle du Projet pilote du Conseil de l'Europe sur la pratique des Etats concernant la succession d'états et les questions de reconnaissance, mis en oeuvre au milieu des années 90 et ayant abouti à une publication comprenant une étude analytique.

A sa 22<sup>e</sup> réunion (Strasbourg, 11-12 septembre 2001) le CAHDI s'est accordé sur les propositions du Secrétariat pour la mise en oeuvre de cette activité et a décidé que l'activité devrait être menée sur la base des directives qui se trouvent en Annexe I.

Le présent document a été préparé sur la base des réponses des Etats membres suivants: Autriche, Croatie, Chypre, Belgique, République Tchèque, Finlande, Grèce, Irlande, Norvège, Pays-Bas, Pologne, Portugal, Fédération de Russie, Slovaquie, Espagne, Suède, Suisse et Royaume-Uni.

Les annexes marqués d'un \* ne sont pas incluses dans ce document mais le seront dans la version finale.

## **Action requise**

Les délégations sont invitées à prendre note du document et discuter de la suite à donner.

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**AUSTRIA**

(a)	<b>Registration no./N° d'enregistrement</b>	A/1
(b)	<b>Date</b>	10 May 1950
(c)	<b>Author(ity)/(Service) auteur</b>	Supreme Court (Oberster Gerichtshof), judgment
(d)	<b>Parties</b>	Hoffmann Dralle(individual) vs. Czechoslovakia (State)
(e)	<b>Points of law/ Points de droit</b>	Pursuant to international and Austrian law Foreign States are exempted from Austrian jurisdiction only in relation to acts of a ius imperii character.
(f)	<b>Classification no./n°</b>	O.b.3., 1.b, 2.b
(g)	<b>Source(s)</b>	No. 1Ob167/49 and 1Ob171/1950; Austrian legal information system (see: <a href="http://www.ris.bka.gv.at">http://www.ris.bka.gv.at</a> - Rechtsinformationssystem – Judikatur Justiz (OGH); see as well: Grotius International Law Reports Volume 17 p 155
(h)	<b>Additional information/Renseignements complémentaires</b>	similar decisions:1Ob622/49; 1Ob130/50; 2Ob21/48; 2Ob448/50;1Ob264/52; 2Ob243/60; 5Ob343/62;5Ob56/70;3Ob38/86;9ObA170/89;9Ob A244/90; 7Ob627/91; 1Ob28/92; 1Ob100/98g; 8ObA201/00t; 4Ob97/01w
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés</b>	Summary English: see below Full text: Appendix A/1 *

**Summary:**

The appellant (Mr. Hoffmann) was the representative in Austria of the German firm of G. Dralle which owned certain trade marks registered in Austria and which were applied to goods manufactured by them and offered for sale by the appellant in Austria. A branch office of the Hamburg firm in Bohemia was the owner of the mentioned trade marks registered in the Austrian register. In 1945 the branch office was nationalized. The nationalized firm requested the appellant's customers in Austria not to offer for sale under the mentioned trade marks any of the goods supplied by the appellant. Mr. Hoffmann applied for an injunction to restrain the Czechoslovak firm (the respondent) from using the mentioned trade marks in Austria. The respondent claimed to be immune from Austrian jurisdiction and to be entitled in any case to use the trademarks concerned.

1 The supreme Court stated that the question whether a foreign State can be subject to jurisdiction of another State has not been answered in a uniform manner by Austrian and foreign courts. Some countries stuck to the concept of absolute immunity others only in the context of acts of ius imperii character. Thus there was no generally accepted rule in international law establishing the concept of absolute immunity of foreign States. The Supreme Court stated further that in the present case the respondent's claim to immunity concerned commercial and not political activities of a foreign sovereign State and thus the respondent was subject to Austrian jurisdiction. The Czechoslovak nationalization decree was only valid in the territory of Czechoslovakia and had no extraterritorial effect. Accordingly the respondent was not entitled to use trademarks owned by its predecessor in Austria. The Supreme Court decided that in result the appellant was entitled to an injunction restraining the respondent from using the trade marks in Austrian territory.

(a)	<b>Registration no./N° d'enregistrement</b>	A/2
(b)	<b>Date</b>	30 April 1986
(c)	<b>Author(ity)/(Service) auteur</b>	Supreme Court (Oberster Gerichtshof), judgment
(d)	<b>Parties</b>	L-W Verwaltungsgesellschaft mbH&Co.KG (individual) vs. D V A (State)
(e)	<b>Points of law/ Points de droit</b>	The Court establishes that execution of a judgment on a running account of an embassy is only exceptionally permitted if the plaintiff proves that the account serves exclusively for private purposes of the embassy.
(f)	<b>Classification no./n°</b>	O.b., 1.b, 2.b
(g)	<b>Source(s)</b>	No. 30b38/86, Austrian legal information system (see: <a href="http://www.ris.bka.gv.at">http://www.ris.bka.gv.at</a> - Rechtsinformationssystem – Judikatur Justiz (OGH); see as well: Grotius International Law Reports Volume 77 p 489
(h)	<b>Additional information/Renseignements complémentaires</b>	see as well judgment of the Supreme Court no. 6 0b 126/58
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés</b>	Summary English: see below Full text: Appendix A/2 *

#### Summary:

The plaintiff held a default judgment against the Democratic Republic of A. The judgment was subsequently declared enforceable and the plaintiff obtained an attachment order on a bank account held by the embassy of the D. R. of A. in Vienna. The D. R. of A. appealed against the attachment in reliance on a certificate issued by its embassy in Vienna which stated that the bank account in question was an official account allocated for the performance of sovereign functions. The Court of Appeal held that in these circumstances the bank account was not subject to attachment. The judgment was confirmed by the Supreme Court. Contrary to its previous view (see judgement no. 6 0b 126/58) the Supreme Court found that although there was no rule in international law which prohibits execution against foreign States in general, there is such rule as to the execution on property which serves the performance of sovereign (embassy) functions. Due to the difficulties involved in judging whether the ability of a diplomatic mission to function was endangered international law gave wide protection to foreign States and referred to the typical, abstract danger to the ability of the mission to function and not to the specific threat in a particular case. Thus operating accounts of embassies were not subject to execution without the consent of the State concerned, unless the plaintiff proves that the account serves exclusively for private purposes of the embassy.

(a)	<b>Registration no./N° d'enregistrement</b>	A/3
(b)	<b>Date</b>	21 November 1990 and 13 September 1994
(c)	<b>Author(ity)/(Service) auteur</b>	Supreme Court (Oberster Gerichtshof), judgment, and Administrative Court (Verwaltungsgerichtshof), decision
(d)	<b>Parties</b>	R. W. (individual) vs. Embassy of X. (State)
(e)	<b>Points of law/ Points de droit</b>	Employment contracts between foreign missions in Austria (States) and Austrian employees are subject to Austrian jurisdiction.
(f)	<b>Classification no./n°</b>	O.b.2., 1.b, 2.b
(g)	<b>Source(s)</b>	No. 9ObA244/1990 (Supreme Court) and No.93/09/0346 (Adm. Court), Austrian legal information system (see: <a href="http://www.ris.bka.gv.at-Rechtsinformationssystem-„JudikaturJustizOGH“and„Verwaltungsgerichtshof“">http://www.ris.bka.gv.at-Rechtsinformationssystem – „Judikatur Justiz OGH“and „Verwaltungsgerichtshof“</a> )
(h)	<b>Additional information/Renseignements complémentaires</b>	similar decisions: see No. 04/01/0260-11 (Administrative Court, 29 April 1985), No. 98/08/0127 (Administrative Court, 12 October 1998).
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés</b>	Summary English: see below Full text: Appendix A/3 *

#### Summary:

An individual employed locally as a photographer by a foreign embassy in Vienna filed a suit against her employer who had issued a notice terminating her contract arguing that the employer had not observed the relevant provisions of Austrian industrial law. The defendant appealed to the Supreme Court claiming immunity. The Court noted that the employment contract in this case was a legal relationship under private law in respect of which a foreign State was subject to Austrian jurisdiction by virtue of the rules of both international and Austrian law. The Supreme Court noted as well that international organisations enjoyed more far-reaching privileges and immunities than States, the immunity of international organisations arose from the relevant international agreements and intended to protect international organisations from interference of States.

The same case was dealt with by the Administrative Court, which agreed to the view of the Supreme Court as to the applicability of Austrian industrial law in this case.

(a)	<b>Registration no./N° d'enregistrement</b>	A/4
(b)	<b>Date</b>	10 February 1961
(c)	<b>Author(ity)/(Service) auteur</b>	Supreme Court (Oberster Gerichtshof), judgment
(d)	<b>Parties</b>	X:Y. (individual) vs. Embassy of X (State)
(e)	<b>Points of law/ Points de droit</b>	The Court establishes that driving a government owned vehicle for official purposes is not an act of ius imperii character
(f)	<b>Classification no./n°</b>	O.b.1, 1.b, 2.b
(g)	<b>Source(s)</b>	No. 2Ob243/60, Austrian legal information system (see: <a href="http://www.ris.bka.gv.at">http://www.ris.bka.gv.at</a> ); see as well: Grotius International Law Reports Volume 40 p 73)
(h)	<b>Additional information/Renseignements complémentaires</b>	judgement of the Supreme Court No. 1Ob167/49 and 1Ob171/1950
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés</b>	Summary English: see below Full text: Appendix A/4 *

Summary:

The plaintiff's car was damaged in a car accident with a vehicle owned by the Government of the United States (defendant). The defendant contended that since at the time of the accident the car was carrying diplomatic mail, the act was of ius imperii character and the case was therefore not subject to Austrian jurisdiction. The Supreme Court reiterated its view previously expressed in *Dralle vs Republic of Czechoslovakia* that a distinction must be drawn between *acta iure imperii* and *acta iure gestionis* and that in respect of the latter a foreign State is subject to Austrian jurisdiction. In determining whether an act was *iure imperii* or *iure gestionis* the Court stated that the act itself and not the purpose for which it was performed had to be considered. In the present case the US Government had operated a vehicle on a public road, an act which could be performed as well by an individual. Therefore the case was subject to Austrian jurisdiction.



(a)	<b>Registration no./N° d'enregistrement</b>	A/5
(b)	<b>Date</b>	23 February 1988
(c)	<b>Author(ity)/(Service) auteur</b>	Supreme Court (Oberster Gerichtshof), decision
(d)	<b>Parties</b>	X.Y. (individual) vs. X (State)
(e)	<b>Points of law/ Points de droit</b>	The construction as well as the operation of nuclear power plants is not an act of ius imperii but of ius gestionis character and therefore not excluded from national jurisdiction.
(f)	<b>Classification no./n°</b>	O.b., 1.b, 2.b
(g)	<b>Source(s)</b>	No.5Nd509/87, Austrian legal information system (see: <a href="http://www.ris.bka.gv.at">http://www.ris.bka.gv.at</a> ) and Austrian Journal of Public and International Law, Vol. 39, 1988/89 p.360
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés</b>	Summary English: see below Full text: Appendix A/5 *

Summary:

The plaintiff, owner of a real estate in Austria, claimed the omission of the construction of a nuclear power plant in a neighbouring State, arguing that already in normal operation the effects would be above the standards customary in place. Jurisdiction *ratione loci* was not given. The plaintiff requested the Supreme Court to determine which court was competent *ratione loci* pursuant to section 28 of the Austrian law concerning the jurisdiction of courts in civil law matters, RGBI. 111/1895 as most recently amended, BGBl. I Nr. 98/2001. The Supreme Court decided that the request was justified and stated that legal proceedings in the State concerned were unreasonable for the claimant and obviously not possible, as there the problem under consideration was treated a public law problem and from acts *iure imperii* no civil obligations could arise. The Supreme Court stated further that the question of whether an act is of *ius imperii* or *ius gestionis* character needed to be assessed according to general international and not national law. The construction as well as the operation of a nuclear power plant were in the area of *iure gestionis* and therefore not excluded from national (Austrian) jurisdiction.

(a)	<b>Registration no./N° d'enregistrement</b>	A/6
(b)	<b>Date</b>	14 June 1989
(c)	<b>Author(ity)/(Service) auteur</b>	Supreme Court (Oberster Gerichtshof), judgment
(d)	<b>Parties</b>	N. P. (individual) vs. R. F. (State)
(e)	<b>Points of law/ Points de droit</b>	The European Convention on State Immunity is only applicable if both the State against which legal action is taken and the State in which the procedure takes place are parties to the convention
(f)	<b>Classification no./n°</b>	O.b.2, 1.b, 2.b
(g)	<b>Source(s)</b>	No. 9ObA170/89, Austrian legal information system (see: <a href="http://www.ris.bka.gv.at">http://www.ris.bka.gv.at</a> - „Judikatur Justiz, OGH”)
(h)	<b>Additional information/Renseignements complémentaires</b>	see as well No. 30b38/86 (Supreme Court)
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés</b>	Summary English: see below Full text: Appendix A/6 *

Summary:

An individual employed locally by a foreign consulate in Austria filed a suit against her employer for payment of overtime and vacation compensation. The defendant claimed immunity pursuant to the Vienna Convention on Consular Relations and the European Convention on State Immunity. The Court noted that the first convention was not applicable as the plaintiff had a contract with the sending State and not with a consular officer. The European Convention on State immunity could only be applied if both the State against which legal action is taken and the State in which the procedure takes place were parties to the convention, which was not the case. The Court reiterated its view that employment contracts of this kind were a legal relationship under private law in respect of which a foreign State was subject to Austrian jurisdiction by virtue of the rules of both international and Austrian law.

(a)	<b>Registration no./N° d'enregistrement</b>	A/7
(b)	<b>Date</b>	23 January 2001
(c)	<b>Author(ity)/(Service) auteur</b>	Regional Court Vienna as appellate Court (Landesgericht Wien), judgment
(d)	<b>Parties</b>	E. AG Wien (individual) vs. L (State)
(e)	<b>Points of law/ Points de droit</b>	The conclusion of a rental lease by a foreign State is a relationship under private law, even if the rented real estate is used for the location of the embassy of that State.
(f)	<b>Classification no./n°</b>	O.b.1, 1.b, 2.b
(g)	<b>Source(s)</b>	40/R7/01b, Austrian legal information system (see: <a href="http://www.ris.bka.gv.at">http://www.ris.bka.gv.at</a> - Judikatur, Justiz LG)
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés</b>	Summary English: see below Full text: Appendix A/7 *

Summary:

The landlord (plaintiff) took legal action against the tenant (a State) who was in arrears with the payment of rent. The defendant argued that the real estate had been rented to accommodate its embassy in Vienna and that the conclusion of the lease contract was therefore in performance of sovereign function and the case not subject to Austrian jurisdiction. The Regional Court of Vienna noted that for determining whether an act was *iure imperii* or *iure gestionis* the act itself and not the purpose for which it was performed had to be considered. The conclusion of a rental lease by a foreign State needed to be qualified as a relationship under private law, even if the rented real estate is used for official purposes (location of the embassy) of that State. Therefore the case was subject to Austrian jurisdiction.

(a)	<b>Registration no./N° d'enregistrement</b>	A/8
(b)	<b>Date</b>	11 June 2001
(c)	<b>Author(ity)/(Service) auteur</b>	Supreme Court (Oberster Gerichtshof), decision
(d)	<b>Parties</b>	R. W. (individual) vs. US (State)
(e)	<b>Points of law/ Points de droit</b>	The denial of a State to comply with a request of service of a legal documents is an act of ius imperii character.
(f)	<b>Classification no./n°</b>	O.a, 1.a, 2.a
(g)	<b>Source(s)</b>	No. 8ObA201/00t, Austrian legal information system (see: <a href="http://www.ris.bka.gv.at">http://www.ris.bka.gv.at</a> - „Judikatur Justiz, OGH”)
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés</b>	Summary English: see below Full text: Appendix A/8 *

Summary:

The plaintiff filed a suit against the US (her employer) for compensation for damages arising from her employment contract. The Court requested the Federal Ministry of Justice to forward the respective legal documents through diplomatic channels to the defendant (US Department of Justice). The documents were left with the Department of State by the driver of the Austrian Embassy in Washington, the signature on the acknowledgement of receipt was not readable. The defendant claimed immunity referring to a note verbale of its embassy and failed to appear before the Court. The plaintiff requested a default judgment. The Court did not comply with this request, arguing that there was no sufficient proof that the action and the summon had been served on the defendant correctly. The Appellate and the Supreme Court stated that according to international law the implementation of letters rogatory or their denial was an act of ius imperii character and the case therefore not subject to Austrian jurisdiction. In determining whether an act was iure imperii or iure gestionis the Court repeated its view previously expressed (see A/4) that the act itself and not the purpose for which it was performed had to be considered.

(a)	<b>Registration no./N° d'enregistrement</b>	A/9
(b)	<b>Date</b>	14 February 2001
(c)	<b>Author(ity)/(Service) auteur</b>	Supreme Court (Oberster Gerichtshof), decision
(d)	<b>Parties</b>	A. W. (individual) vs. J.(H).A. F.v.L.(Head of State)
(e)	<b>Points of law/ Points de droit</b>	An incumbent Head of State against whom legal action for the declaration of paternity is taken in a foreign State is immune from jurisdiction of that State unless it impossible to sue the Head of State concerned in his home country
(f)	<b>Classification no./n°</b>	1.a, 2.a
(g)	<b>Source(s)</b>	No. 70b316/00x, Austrian legal information system (see: <a href="http://www.ris.bka.gv.at">http://www.ris.bka.gv.at</a> -, „Judikatur Justiz, OGH“)
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés</b>	Summary English: see below Full text: Appendix A/9 *

#### Summary:

The plaintiff brought an action against an incumbent head of State as well as against his sister and two brothers and applied for a declaration of paternity.

The first defendant claimed immunity. The District Court dismissed the application. The Regional Court as Court of Appeal affirmed the judgment of the District Court concerning the question of absolute immunity of foreign heads of States. The plaintiff finally lodged an appeal with the Supreme Court. She argued that the right of a person to a declaration of paternity by a court took precedence over immunity. Even if the first respondent, due to its immunity, did not fall under the jurisdiction of Austrian courts, the plaintiff had to be granted a right to redress against the other respondents.

The Supreme Court stated that an essential principle deriving from international law was that foreign heads of State, by virtue of their office (ex officio) and at least during the term of their office “ratione materiae”, were exempt from the jurisdiction of other States. They were also exempt from the jurisdiction of other States with regard to private acts “ratione personae” (absolute immunity). The Supreme Court noted that the first defendant therefore enjoyed immunity and was not subject to Austrian jurisdiction. This was not true for the other defendants who do not live in the same household with the head of State concerned. The Supreme Court further stated that only if legal action against an incumbent head of State in his home country is impossible the right of declaration of paternity might - under the aspects of humanitarian law - precede the relevant principles of international law concerning immunity of heads of State.

(a)	<b>Registration no./N° d'enregistrement</b>	A/10
(b)	<b>Date</b>	14 May 2001
(c)	<b>Author(ity)/(Service) auteur</b>	Supreme Court (Oberster Gerichtshof), decision
(d)	<b>Parties</b>	K. S. (individual) vs. Kingdom of B. (State)
(e)	<b>Points of law/ Points de droit</b>	<p>The Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters (Lugano Convention 1988) creates a system of international jurisdiction and does not refer to the immunity of states and diplomatic agents. Claims which arise from iure imperii acts and state liability are excluded from this convention.</p> <p>Art. 11 of the European Convention on State immunity does not cover compensation for immaterial damage. The distinction between acts iure imperii and iure gestionis is irrelevant in this context.</p>
(f)	<b>Classification no./n°</b>	0.a, 1.a, 2.a
(g)	<b>Source(s)</b>	No. 40b97/01w, Austrian legal information system (see: <a href="http://www.ris.bka.gv.at">http://www.ris.bka.gv.at</a> - „Judikatur Justiz, OGH“)
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés</b>	<p>Summary English: see below</p> <p>Full text: Appendix A/10 *</p>

#### Summary:

An Austrian citizen filed an action against the Kingdom of B. claiming inter alia compensation of damages which arose from the sanctions imposed by Austria's 14 EU partners claiming that the call to boycott and the decision to impose sanctions on Austria were not iure imperii acts and that the Kingdom of B. was therefore subject to Austrian jurisdiction. The Kingdom of B claimed immunity. The Supreme Court noted that the question whether and under which conditions legal action can be taken against a foreign State was ruled both by international customary and treaty law. One of such international treaties was the European Convention on State immunity. Both the Kingdom of B. and Austria are parties to the convention, but Article 11 of this convention was not applicable (as claimed by the plaintiff) as it did not cover immaterial damage. Therefore the Kingdom of B. was immune from Austrian jurisdiction according to Article XV of the mentioned convention. The Court noted further that there was no distinction between acts iure imperii and iure gestionis in this context.

The Supreme Court also stated that the question of immunity had not been ruled specifically EU law. Therefore general international law was applicable and this fact led as well to the immunity of the Kingdom of B. from Austrian jurisdiction.

This legal situation was not changed by the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters (Lugano Convention 1988) as this convention created a system of international jurisdiction and does not refer to the immunity of states and diplomatic agents . Claims which arose from iure imperii acts and state liability were excluded from the mentioned convention. Finally the Supreme Court stated that the mentioned acts of the Kingdom of B. were with no doubt an activity in the field of foreign policy and therefore acts of ius imperii character.

(a)	<b>Registration no./N° d'enregistrement</b>	A/11
(b)	<b>Date</b>	envisaged for autumn 2002
(c)	<b>Author(ity)/(Service) auteur</b>	Austrian Parliament; amendment to the law on the status of OSCE institutions in Austria
(d)	<b>Parties</b>	
(e)	<b>Points of law/ Points de droit</b>	The principle of customary international law that State aircrafts and their personnel enjoy certain privileges and immunities will be codified for Austria if the Austrian Parliament approves a government bill (see draft para. 5b sub-section 2 of the above-mentioned amendment).
(f)	<b>Classification no./n°</b>	O.a; 1.a, 2.a
(g)	<b>Source(s)</b>	see amendment to be adopted to BGBl. Nr. 511/1993 as amended by BGBl. Nr. 735/1995; see Austrian legal information system ( <a href="http://www.ris.bka.gv.at">http://www.ris.bka.gv.at</a> - Bundesrecht)
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés</b>	Summary English: see below Full text: Appendix A/11 *

The Austrian government has submitted a bill to Parliament containing various amendments to the Austrian law on the status of OSCE institutions in Austria, BGBl. Nr. 511/1993 as amended by BGBl. Nr. 735/1995. One of these (draft para. 5b sub-section 2) relates to State aircrafts which participate in observation flights within the framework of the Open Skies Treaty (to which Austria is not a party). In accordance with international customary law the new provision will, if adopted by Parliament, grant certain privileges and immunities to these aircrafts and their personnel when passing through Austria.



**BELGIUM**

(a)	<b>Registration no./ N° d'enregistrement</b>	B 01
(b)	<b>Date</b>	11 juin 1903
(c)	<b>Author(ity)/(Service) auteur</b>	Cour de cassation
(d)	<b>Parties</b>	Société anonyme des chemins de fer liégeois - luxembourgeois contre Etat néerlandais (Ministère du Waterstaat)
(e)	<b>Points of law/Points de droit</b>	<p>Les Etats étrangers, en tant que personnes civiles, et agissant non comme puissance publique, mais pour la défense ou l'exercice d'un droit privé, sont justiciables des tribunaux belges.</p> <p>Cet arrêt consacre le principe d'une immunité de juridiction restreinte ou relative.</p> <p>La Cour de Cassation a jugé que c'est la nature de l'acte qui détermine pour les tribunaux le caractère public ou privé de l'acte étatique.</p>
(f)	<b>Classification no./n°</b>	O.b,1.b
(g)	<b>Source(s)</b>	Pasicrisie 1903, I, 294-303
(h)	<b>Additional Information/ Renseignements complémentaires</b>	La distinction s'établit dès lors entre les actes de souveraineté (actes accomplis « jure imperii ») pour lesquels l'immunité de juridiction subsiste et les actes de gestion privée (actes accomplis « jure gestionis »), pour lesquels l'immunité est désormais refusée
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	Texte complet annexe B 01

**Résumé des faits :**

La Société des Chemins de fer liégeois-luxembourgeois a payé la part de l'Etat néerlandais (34 000 florins )dans les frais d'extension de la gare d'Eindhoven et tend par une action en justice à en obtenir le remboursement.

1<sup>re</sup> CH. — 11 juin 1903.

ÉTAT ÉTRANGER. — EXERCICE OU DÉFENSE D'UN DROIT PRIVÉ. — COMPÉTENCE DES TRIBUNAUX BELGES.

*Les Etats étrangers, en tant que personnes civiles et agissant non comme puissance publique, mais pour la défense ou l'exercice d'un droit privé, sont justiciables des tribunaux belges.*

(SOCIÉTÉ ANONYME DES CHEMINS DE FER LIÉGEOIS-LUXEMBOURGEOIS, — C. ETAT NÉERLANDAIS (MINISTÈRE DU WATERSTAAT).)

#### ARRÊT.

LA COUR; — Sur l'unique moyen du pourvoi accusant la violation des articles 52, 53 et 54 de la loi du 25 mars 1876, de l'article 14 du code civil et de l'article 92 de la Constitution et fautive application des principes du droit des gens, en ce que l'arrêt attaqué décide qu'un Etat étranger, ayant traité comme personne civile, ne peut être justiciable des tribunaux belges, et ce à raison de sa souveraineté;

Attendu que la règle du droit des gens, qui proclame l'indépendance des nations, découlée du principe de leur souveraineté; qu'elle est, dès lors, sans application quand la souveraineté n'est pas en cause;

Attendu que la souveraineté n'est engagée que par les actes de la vie politique (le l'Etat;

Que les actes par lesquels la puissance publique s'affirme sont régis à l'intérieur par le droit constitutionnel et échappent, à raison de la séparation des pouvoirs, au contrôle de l'autorité judiciaire; que leurs effets, en dehors du territoire, ne relèvent que du droit international et sont soustraits, à ce titre, à l'appréciation des tribunaux, tant du pays que de l'étranger;

Mais attendu que l'Etat ne doit pas se confiner dans son rôle politique; qu'en vue du besoin de la collectivité, il peut acquérir et posséder des biens, contracter,

devenir créancier et débiteur; qu'il peut même faire le commerce, se réserver des monopoles ou la direction de services d'utilité générale;

Que, dans la gestion de ce domaine ou de ces services, l'Etat ne met pas en œuvre la puissance publique, mais fait ce que des particuliers peuvent faire, et partant, n'agit que comme personne civile ou privée;

Que lorsqu'en cette qualité il est engagé dans un différend, après avoir traité d'égal à égal avec son cocontractant ou a encouru la responsabilité d'une faute étrangère à l'ordre politique, la contestation a pour objet un droit civil du ressort exclusif des tribunaux, aux termes de l'article 92 de la Constitution;

Attendu que les Etats étrangers sont, en tant que personnes civiles et au même titre que les autres étrangers, justiciables des tribunaux belges;

Que pour ces Etats, comme pour l'Etat belge, la souveraineté n'est pas en jeu, quand ils sont en cause, non pas comme pouvoir, mais uniquement pour l'exercice ou la défense d'un droit privé;

Attendu, à cet égard, qu'il n'y a pas à distinguer, comme l'arrêt dénoncé le tente, entre la contestation qui concerne, comme celle de l'espèce, l'exécution d'un contrat conclu par l'Etat étranger et celle relative à un immeuble qu'il possède sur le territoire; qu'il n'y a pas à rechercher non plus si l'Etat étranger a saisi comme demandeur les tribunaux de sa réclamation, s'il répond à une demande reconventionnelle, si assigné comme défendeur il n'excipe pas d'incompétence ou s'il a compromis sur les difficultés à naître de la convention qu'il a souscrite;

Qu'il ne se voit pas, en effet, en quoi l'Etat abdiquerait sa souveraineté en se soumettant à la juridiction des tribunaux étrangers pour le jugement des conventions qu'il a librement formées, et conserverait cette souveraineté intacte lorsqu'il subit leur juridiction ou y recourt dans les autres hypothèses ci-dessus visées, pour lesquelles une doctrine et une jurisprudence presque unanimes admettent leur compétence;

Que, d'ailleurs, dans le cas de contrat, comme dans les autres, il y aurait renonciation au moins implicite à l'immunité, s'il pouvait être question de renonciation en une matière qui intéresse des prérogatives inhérentes;

Qu'en réalité, dans toutes les hypothèses, la compétence dérive, non du consentement du justiciable, mais de la nature de l'acte et de la qualité en laquelle l'Etat y est intervenu; que si l'Etat étranger peut saisir nos

tribunaux de poursuites contre ses débiteurs, il doit répondre devant eux à ses créanciers;

Attendu que l'arrêt argumente vainement des travaux préparatoires du code civil; qu'en effet, l'immunité généralement reconnue aux ambassadeurs repose sur leur caractère représentatif de la personne du souverain et sur une fiction d'extraterritorialité qui serait inutile si cette immunité se rattachait, comme celle de l'Etat, à la notion de la souveraineté; que l'observation de Portalis n'a eu d'autre but que d'empêcher l'introduction dans une loi de régime intérieur, comme le code civil, d'une disposition qui appartenait au droit des gens; mais que Portalis n'a proposé aucune solution pour la question des immunités diplomatiques et qu'il n'a pas même touché à celle de l'exception de juridiction des Etats qui n'était pas en discussion;

Que de la suppression dans le projet de code civil de l'article 11 il n'y a donc à tirer aucune lumière pour l'interprétation de l'article 14 de ce code ni de la loi de 1876 sur la compétence qui l'a remplacé;

Attendu que par étranger il faut entendre dans les articles 52, 53 et 54 de cette dernière loi non seulement les personnes morales étrangères, et qu'il faut ranger au nombre de celles-ci, à côté des sociétés anonymes et des corps moraux tels que les communes et les établissements publics, la plus éminente de toutes, l'Etat, auquel la loi accorde, quand il est reconnu, la jouissance de droits privés, en lui permettant de posséder et de contracter, et auquel elle ouvre, comme à des particuliers, le recours à la justice même contre les nationaux;

Attendu que l'arrêt dénoncé signale enfin la difficulté, sinon l'impossibilité, d'exécuter le jugement obtenu contre un gouvernement étranger; mais que l'objection n'a rien de décisif; que, fallût-il concéder à cet égard à l'Etat étranger une condition différente de celle des personnes privées étrangères, il n'en faudrait pas conclure à l'incompétence des tribunaux belges; que ceux-ci, en effet, ne cessent pas d'être compétents pour juger l'Etat belge lui-même, quoique ses biens soient insaisissables, et que, d'autre part, la validité d'une décision de justice est indépendante des difficultés que peut présenter sa mise à exécution;

Attendu, au surplus, que l'objection a le tort de perdre de vue l'autorité morale qui s'attache, dans nos sociétés modernes, à une décision rendue par des juges indépendants; que si l'Etat étranger fonde sur des motifs d'éter-

nelle et universelle justice a par lui-même, sur la conscience publique, une action autrement puissante que les moyens les plus énergiques de coercition;

Attendu que, d'après les constatations de l'arrêt dénoncé, l'Etat néerlandais était assigné en remboursement d'une somme de 34,000 florins ou 70,822 francs payée par la Compagnie des chemins de fer liégeois-luxembourgeois pour les frais d'extension d'une gare commune;

Que la convention sur laquelle l'action était fondée a été souscrite par l'Etat néerlandais, défendeur, pour la gestion d'une de ses lignes ferrées au profit d'une autre administration de chemin de fer; que cette convention apparaît donc comme un acte d'intérêt privé dont l'interprétation ne peut en rien entamer sa souveraineté;

Attendu qu'il suit des considérations ci-dessus développées, qu'en se déclarant incompétente pour connaître d'une demande se produisant dans ces conditions, la cour d'appel de Bruxelles a contrevenu aux dispositions des articles 52 et 53 de la loi du 25 mars 1876 visées au pourvoi et à l'article 92 de la Constitution;

Par ces motifs, casse...; renvoie la cause à la cour d'appel de Gand.

Du 11 juin 1903. — 1<sup>re</sup> ch. — Prés. M. van Maldeghem, conseiller faisant fonctions de président. — Rapp. M. van Maldeghem. — Concl. conf. M. Terlinden, premier avocat général. — Pl. MM. Beernaert, Delacroix, Leciercq et Despret.

(a)	<b>Registration no./ N° d'enregistrement</b>	B 02
(b)	<b>Date</b>	25 avril 1983
(c)	<b>Author(ity)/(Service) auteur</b>	Tribunal du Travail de Bruxelles
(d)	<b>Parties</b>	Rousseau contre République de Haute Volta
(e)	<b>Points of law/Points de droit</b>	L'immunité de juridiction ne concerne que les actes accomplis par l'Etat étranger dans l'exercice de sa souveraineté et non les actes de gestion accomplis comme personne privée tels ceux accomplis à l'occasion de la rupture d'un contrat de travail.
(f)	<b>Classification no./n°</b>	0.b.2, I,b
(g)	<b>Source(s)</b>	Journal des Tribunaux du Travail (JTT) 1984, p. 276
(h)	<b>Additional Information/ Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	Voir annexe B 02

#### Résumé des faits:

Monsieur Rousseau a été engagé par l'Ambassade de Haute-Volta à Bruxelles en qualité de chauffeur par contrat écrit du 10 janvier 1977. Suite à des demandes de réenregistrement de salaires et d'autres malentendus, congé lui est notifié le 11 mars 1982. Le dossier est présenté à la justice. Le tribunal du Travail de Bruxelles a à se prononcer sur sa compétence dans ce litige.

## ANNEXE B02

Trib. Trav. Bruxelles (3<sup>e</sup> ch.),  
25 IV 1983

Siég. : Mme LION, prés.; MM. RENARD et STEENS, juges soc.  
Plaid. : M<sup>e</sup> CHARTIER.

(Rousseau c. République de Haute-Volta.)

## COMPETENCE. — IMMUNITÉ DE JURIDICTION.

*L'immunité de juridiction ne concerne que les actes accomplis par l'Etat étranger dans l'exercice de sa souveraineté et non les actes de gestion accomplis comme personne privée tels ceux accomplis à l'occasion de la conclusion ou de la rupture d'un contrat de travail d'ouvrier.*

## BEVOEGDHEID. — GERECHTELIIKE IMMUNITIEIT.

*De gerechtelijke immuniteit betreft slechts de handelingen door de vreemde Staat gesteld in de uitoefening van zijn soevereiniteit en niet de beheershandelingen gesteld als privaat persoon, zoals die welke gesteld worden naar aanleiding van het sluiten en het verbreken van een arbeids-overeenkomst voor arbeider.*

La demande tend à obtenir condamnation de la partie défenderesse à payer au demandeur :

— 164.142 F à titre d'indemnité pour licenciement abusif;

Les faits peuvent être résumés comme suit :

Par contrat écrit du 10 janvier 1977, l'ambassade de Haute-Volta à Bruxelles engage M. Rousseau en qualité de chauffeur, à partir du 13 janvier 1977, moyennant un salaire mensuel de 18.000 F.

Une lettre du 6 janvier 1977 précisait que le demandeur serait assujéti à la sécurité sociale, ce qui a été fait.

Par lettre dont la copie n'est pas datée, mais qui pourrait être du 4 mai 1981, le demandeur demande le réajustement de son salaire en fonction du revenu mensuel moyen garanti.

Le 29 octobre 1981, il lui est répondu qu'il sera fait droit à sa demande; il lui est demandé une plus grande rigueur dans le respect des horaires de travail et une meilleure volonté dans l'exécution de ses tâches.

Par lettre du 2 novembre 1981, M. Rousseau demande que soit respectée l'indexation de son salaire.

Le mercredi 11 mars 1982, il lui est notifié congé par la voie recommandée, dans les termes suivants :

« Nous avons constaté ce jour mardi 9 mars 1982, votre absence irrégulière de votre poste de travail.

« Cette absence que vous avez tenté de justifier au téléphone en invoquant une soi-disant grève des trains, vient s'ajouter à celle du 8 février 1982 et est, comme cette dernière, totalement injustifiable.

« N'étant pas, à notre connaissance, syndiqué et n'étant pas en grève ce jour, vous ne pouvez arguer du motif pris de la grève pour vous absenter toute une journée et ainsi paralyser le service, d'autant que vous avez toujours dit avoir une voiture et que vous pouvez avoir, si vous étiez de bonne foi, toutes les possibilités pour vous rendre au service.

« Dans tous les cas, chaque agent à l'ambassade est responsable de sa ponctualité au service, et l'ambassade n'a droit d'intervention pour aucun d'eux.

« Les moyens mis à notre disposition par notre gouvernement ne nous permettant pas d'engager plusieurs chauffeurs, nous ne pouvons plus longtemps garder à notre service un chauffeur qui ne vient que quand bon lui semble, et qui ne peut se conformer aux nécessités minimales du service et qui notoirement fait preuve de graves négligences dans l'exécution des tâches qui lui sont assignées.

« En conséquence, devant ces faits et absences irrégulières incompatibles avec les contraintes de l'ambassade, j'ai l'honneur par la présente de vous notifier votre préavis de congé pour compter du lundi 15 mars 1982, date à laquelle je vous libère de vos obligations de service.

« Vous pourrez donc mettre à profit ce délai pour la recherche éventuelle d'un autre emploi ».

Il s'ensuit un échange de correspondance entre l'organisation représentative des travailleurs à laquelle M. Rousseau a confié la défense de ses intérêts, et l'ambassade.

## 1. — La juridiction :

Le tribunal doit examiner tout d'abord sa compétence *ratione materiae* au sens du droit public international, soit, en d'autres termes, le problème de l'application en la cause de la règle spéciale de compétence, issue du droit des gens, qu'est l'immunité de juridiction.

Si les Etats étrangers jouissent en effet de l'immunité de juridiction, que doctrine et jurisprudence fondent généralement sur l'égalité entre Etats, l'indépendance ou la souveraineté de ceux-ci, cette immunité n'est toutefois pas absolue : il faut distinguer le cas où l'Etat étranger a agi comme puissance publique, dans l'exercice de sa souveraineté (son *imperium*) ou comme personne privée, en vue d'actes de gestion.

Le principe de l'indépendance des Etats, déduit de leur souveraineté, n'est en effet pas d'application lorsque cette souveraineté n'est pas en cause : « si l'Etat ne met pas en œuvre la puissance publique, mais fait ce que les particuliers peuvent faire et, partant, n'agit que comme personne civile ou privée », les cours et tribunaux ont compétence pour connaître d'un différend entre un Belge et un Etat étranger, compétence qui dérive « non du consentement du justiciable, mais de la nature de l'acte et de la qualité en laquelle l'Etat y est intervenu » (Cass., 1903, *Pas.*, I, 294; Bruxelles, 2<sup>e</sup> ch., 4 déc. 1963, *J.T.*, 1964,

p. 44; De Page, t. I, n<sup>os</sup> 105 et s.; E. Suy, « L'immunité des Etats dans la jurisprudence belge », in *L'immunité de juridiction et d'exécution des Etats*, Bruxelles, éd. de l'Institut de sociologie, 1971 spéc. pp. 286 et 298; Paul de Visscher et Joe Verhoeven, « L'immunité de juridiction de l'Etat étranger dans la jurisprudence belge et le projet de Convention du Conseil de l'Europe », dans le même ouvrage).

L'immunité de juridiction ne s'applique pas davantage en cas de renonciation « expresse, voire même tacite, mais certaine et régulière » (Léopoldville, 29 mai 1956, *Pas.*, 1957, II, 56; *J.T.*, 1956, p. 716, confir. Civ. Léopoldville, 14 oct. 1955, *J.T.*, 1956, p. 292; E. Suy, *op. cit.*, p. 303).

Cette renonciation est superflue si, en raison de la nature même de l'acte — celui-ci étant étranger à l'exercice de l'*imperium* de l'Etat — le tribunal est compétent; il convient donc de déterminer si la relation de travail entre les parties est de droit public, si cet engagement est constitutif d'acte de gouvernement ou si au contraire, il s'agit d'un acte de la vie civile, ne rentrant pas dans ses attributions essentielles de la puissance publique.

Le contrat liant les parties est, sans aucun doute possible, un contrat de travail d'ouvrier : c'est un lien de droit privé qui les a unis, et la partie défenderesse n'a pas fait acte de gouvernement : elle a agi comme personne civile; le tribunal a juridiction en la cause.

Il est compétent *ratione materiae* sur base de l'article 635 du Code judiciaire, et *ratione loci* conformément à l'article 627, 9<sup>o</sup> du Code judiciaire.

## 2. — Le fond :

Par ces motifs :

LE TRIBUNAL,

Statuant par défaut réputé contradictoire.

Dit la demande recevable.

(a)	<b>Registration no./ N° d'enregistrement</b>	B 03
(b)	<b>Date</b>	22 septembre 1992
(c)	<b>Author(ity)/(Service) auteur</b>	Cour du Travail de Bruxelles
(d)	<b>Parties</b>	Queiros Magalhaes Abrantes c/Etat du Portugal
(e)	<b>Points of law/Points de droit</b>	<p>Le Tribunal de travail s'étant déclaré incompétent pour juger l'affaire en vertu de l'immunité de juridiction (jugement du 28 mai 1991), la Cour de travail a jugé que :</p> <ul style="list-style-type: none"> <li>- L'Etat du Portugal ne s'est pas comporté comme pouvoir public dans l'exercice de sa souveraineté politique, mais comme une personne civile ;</li> <li>- Le Portugal a signé mais pas ratifié la Convention de Bâle du 16 mai 1972 sur l'immunité des Etats de sorte que, en principe, celle-ci n'est pas applicable au présent litige, sauf dans les dispositions déclaratives de droit coutumier à savoir le paragraphe 1<sup>er</sup> de l'article 5, lequel stipule « <i>Un Etat ne peut invoquer l'immunité de juridiction devant un tribunal d'un autre Etat contractant si la procédure a trait à un contrat de travail conclu entre l'Etat et une personne physique, lorsque le travail doit être accompli sur le territoire de l'Etat du for.</i> »</li> <li>- La juridiction du travail belge doit dès lors se déclarer compétente.</li> </ul>
(f)	<b>Classification no./n°</b>	O .b.2,1.b
(g)	<b>Source(s)</b>	Pasicrisie 1992, II, 104
(h)	<b>Additional Information/ Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	Voir annexe B 03

### Résumé des faits:

L'appelant a été engagé en 1976 par l'Etat portugais par contrat à durée déterminée en qualité de professeur de langue et de culture portugaise de l'Ambassade du Portugal à Bruxelles. Le contrat est renouvelé à plusieurs reprises ; en 1990 il se voit signifier par l'employeur qu'il est mis fin au contrat du travail . L'appelant exige une indemnité, l'Etat portugais fait appel à l'immunité de juridiction

## ANNEXE B03

COUR DU TRAVAIL  
DE BRUXELLES

22 septembre 1992

1° COMPÉTENCE ET RESSORT. — MATIÈRE CIVILE. — COMPÉTENCE D'ATTRIBUTION. — IMMUNITÉ DE JURIDICTION D'UN ETAT ÉTRANGER. — CONVENTION EUROPÉENNE SUR L'IMMUNITÉ DES ETATS DU 16 MAI 1972, ARTICLE 5. — APPLICATION A L'ÉGARD D'UN ETAT

CONTRACTANT N'AYANT PAS RATIFIÉ LA CONVENTION.

2° IMMUNITÉ. — IMMUNITÉ DE JURIDICTION D'UN ETAT ÉTRANGER. — CONVENTION EUROPÉENNE SUR L'IMMUNITÉ DES ETATS DU 16 MAI 1972, ARTICLE 5. — APPLICATION A L'ÉGARD D'UN ETAT CONTRACTANT N'AYANT PAS RATIFIÉ LA CONVENTION.

3° CONTRAT DE TRAVAIL. — CONTRAT DE TRAVAIL CONCLU ENTRE UN ETAT ÉTRANGER ET UNE PERSONNE PHYSIQUE AYANT LA NATIONALITÉ DE L'ETAT EMPLOYEUR AU MOMENT DE L'INTRODUCTION DE L'INSTANCE, LE TRAVAIL ÉTANT ACCOMPLI SUR LE TERRITOIRE BELGE. — COMPÉTENCE DES COURS ET TRIBUNAUX BELGES. — CONVENTION EUROPÉENNE SUR L'IMMUNITÉ DES ETATS DU 16 MAI 1972, ARTICLE 5. — APPLICATION A L'ÉGARD D'UN ETAT CONTRACTANT N'AYANT PAS RATIFIÉ LA CONVENTION.

4° TRAITÉS INTERNATIONAUX. — ABSENCE DE RATIFICATION PAR UN ETAT CONTRACTANT. — DISPOSITIONS DU TRAITÉ REPRODUISANT UNE COUTUME PRÉEXISTANTE. — CONSÉQUENCES. — CONVENTION EUROPÉENNE SUR L'IMMUNITÉ DES ETATS DU 16 MAI 1972, ARTICLE 5.

1°, 2°, 3° et 4° Nonobstant le fait qu'elle n'a pas été ratifiée par un Etat qui cependant l'a signée, une convention internationale est néanmoins d'application à son égard en ses dispositions se limitant à reproduire une coutume préexistante.

Tel est le cas de l'article 5, § 1<sup>er</sup> de la Convention européenne sur l'immunité des Etats, conclue à Bâle le 16 mai 1972, en ce qu'il constitue la codification d'une coutume préexistante quand il dispose qu'un Etat ne peut invoquer l'immunité de juridiction devant un tribunal d'un autre Etat contractant si la procédure est fondée sur un contrat de travail conclu entre l'Etat et une personne physique et que le travail doit être accompli sur le territoire de l'Etat du for.

Par contre, tel n'est pas le cas du paragraphe 2 du même article, lequel prévoit, par dérogation, que le paragraphe 1<sup>er</sup> ne s'applique pas lorsque la personne physique possède la nationalité de l'Etat employeur au moment de l'introduction de l'instance.

L'Etat étranger qui n'a pas ratifié la Convention précitée, ne peut invoquer l'article 5, § 2 pour décliner la compétence des cours et tribunaux belges pour connaître d'un litige qui l'oppose à un de ses ressortissants et ayant pour objet un contrat de travail, le travail ayant été accompli en Belgique.

(QUEIROZ MAGALHAES ABRANTES,  
C. L'ÉTAT DU PORTUGAL.)

## ARRÊT.

LA COUR; — Vu le jugement *a quo* prononcé par défaut à l'égard de l'intimé le 28 mai 1991 par le Tribunal du travail de Bruxelles;

## Antécédents.

L'appelant, demandeur originaire, travaille comme professeur de langues au service de l'Ambassade du Portugal, section consulaire, du 19 octobre 1976 au 31 août 1990.

Un formulaire C4 lui est remis le 18 septembre 1990 mentionnant comme motif de chômage « fin de contrat ».

L'employeur mentionné est l'Ambassade du Portugal — section consulaire — n° d'affiliation 032.0398501.21 ».

Monsieur de Queiroz devint immédiatement bénéficiaire des allocations de chômage à titre provisoire.

En première instance, le demandeur originaire réclame une indemnité de rupture (1.127.963 F).

Le premier juge s'est déclaré incompétent pour connaître de la cause. La partie défenderesse originaire faisait défaut.

Le tribunal fait valoir que le demandeur a la même nationalité que l'Etat employeur. Il y a donc lieu d'appliquer le § 2 de l'article 5 de la convention européenne du 16 mai 1972 sur l'immunité des Etats (convention dite de Bâle).

Certes, dit le tribunal, le Portugal n'a ni signé, ni ratifié cette convention. Comme ce texte ne fait que reproduire

une coutume existante, dit-il, « la force obligatoire de ses dispositions s'étend au-delà des seules parties contractantes et atteint tous ceux qui sont régulièrement assujettis à la coutume codifiée ».

L'appelant demande la mise à néant de ce jugement et réintroduit sa demande originaire égale à 15 mois de rémunération.

L'intimé fait défaut comme en première instance.

## Examen.

## 1. Compétence des tribunaux belges.

Attendu que le litige porte sur l'exécution d'une obligation née en Belgique;

Que l'étranger peut être assigné devant les tribunaux du royaume, même par un étranger (article 635, 3° du Code judiciaire);

Que l'intimé défaillant ne soulève pas l'immunité de juridiction;

Que le tribunal a considéré cependant qu'il devait soulever ce moyen d'office, l'immunité de juridiction le rendant incompétent en raison de la nationalité du demandeur (application de l'article 5, § 2 de la Convention européenne sur l'immunité des Etats du 16 mai 1972, approuvée par la loi du 19 juillet 1975);

Attendu que cette convention établit pour règle (article 5, § 1<sup>er</sup>) « qu'un Etat contractant ne peut invoquer l'immunité de juridiction devant un tribunal d'un autre Etat contractant si la procédure a trait à un contrat de travail conclu entre l'Etat et une personne physique lorsque le travail doit être accompli sur le territoire de l'Etat du for »;

Qu'à titre de dérogation (article 5, § 2), cette règle ne s'applique pas « lorsque la personne physique a la nationalité de l'Etat employeur au moment de l'introduction de l'instance... », ce qui est le cas en l'espèce;

Attendu que le Portugal a signé cette convention le 10 mai 1979 mais ne l'a pas ratifiée;

Que le premier juge souligne « qu'il est admis lorsque le traité se contente de reproduire une coutume préexistante, que la force obligatoire de ses dispositions s'étend au-delà des seules parties contractantes et atteint tous ceux qui sont régulièrement assujettis à la coutume codifiée (voir citations doctrinales dans le jugement);

Qu'en l'espèce, dit le tribunal « les dispositions de la convention constituent

à l'évidence la codification d'une règle coutumière préexistante;

Attendu que l'appelant fait valoir que l'article 5, § 2 n'est qu'une dérogation à la règle générale de l'article 5, § 1<sup>er</sup>; qu'elle doit donc être interprétée restrictivement;

Qu'il convient de rejeter son application aux Etats non contractants;

Attendu que l'appelant relève en outre que l'Etat employeur ne peut se soustraire à la juridiction de l'Etat du for lorsque le droit du travail de cet Etat confère à ses tribunaux une compétence exclusive (article 627, 9<sup>o</sup> du Code judiciaire);

Qu'en outre, le Code de procédure du travail portugais prévoit que les actions découlant du contrat de travail intentées par un travailleur contre son employeur, doivent être soumises au tribunal du lieu où le contrat a été exécuté (article 14 décret-loi 272 A 81 du 30 avril approuvant le Code de procédure portugais du travail);

Attendu que le Ministère public en son avis très minutieusement et longuement motivé, relève, concernant la non-ratification par le Portugal de la Convention de Bâle du 16 mai 1972 que l'article 38, 2<sup>o</sup> du statut de la Cour internationale de Justice (ex Cour permanente) déclare que « la coutume internationale, comme preuve d'une pratique générale acceptée comme étant le droit, est également une source de droit et d'obligation pour les Etats dans leurs rapports réciproques (Ch. ROUSSEAU, Droit international public, t. 1<sup>er</sup>, Introduction et sources, Sirey, 1971, p. 307, n<sup>o</sup> 259);

Que les décisions des tribunaux internes et les traités internationaux contribuent à la formation du droit coutumier;

Qu'il est cependant difficile de déterminer dans une convention de codification la part de la consécration de la coutume et celle de la création d'une norme nouvelle;

Attendu qu'en l'espèce, il convient de savoir si la Convention de Bâle du 16 mai 1972, en son article 5, constitue une codification d'une règle coutumière;

Que, l'étude de la pratique des Etats membres du Conseil de l'Europe en matière d'immunité, révèle une certaine disparité d'attitude des Etats intéressés, les uns optant pour une *immunité absolue* (Royaume Uni ...), les autres ayant une position douteuse ou optant pour le principe de l'*immunité relative* (France, Belgique, Allemagne, Italie...);

Attendu que la jurisprudence belge refuse de reconnaître l'immunité lorsque la souveraineté d'un Etat n'est pas engagée, même si sa personne l'est, distinguant ainsi le *jus gestionis* du *jus imperii*;

Attendu que, appliquant cette thèse, il importe de distinguer la qualité en laquelle l'Etat est intervenu;

Que s'il exerce ses droits comme gestionnaire en participant comme personne civile à des rapports de droit privé, il n'est plus en droit de bénéficier de l'immunité qu'il invoque (DE VISSCHER et VERHOEVEN, « L'immunité de l'Etat étranger dans la jurisprudence belge et le projet de convention du Conseil de l'Europe », in *L'immunité de juridiction et d'exécution des Etats*, Bruxelles, éditions de l'Institut de sociologie, 1971, p. 46);

Que c'est la nature de l'acte qui détermine pour les tribunaux le caractère public ou privé de l'acte étatique, sans considération, en principe, de la finalité poursuivie par l'Etat étranger;

Qu'il y a donc acte d'autorité ou acte de gestion, selon que l'acte est la mise en œuvre d'un procédé de souveraineté ou d'un procédé susceptible d'être utilisé par de simples particuliers (voir en doctrine : DE VISSCHER, *op. cit.*, p. 47 et 149; RIGAUX, *Droit international privé*, t. 1<sup>er</sup>, p. 184 ...; CAMBIER, *Dr. judic. civil*, 1981, t. II, La compétence, p. 50 + note; en jurisprudence, Trib. trav. Bruxelles, 25 avril 1983, J.T.T., 1984, p. 271, R.D.I., et D. Comp., 1987, p. 169 + note SACR; Cour trav. Bruxelles, 6 novembre 1989, RG 20.524 en cause Royaume du Maroc; Cour trav. Bruxelles, 26 juin 1985, RG 16.736 en cause Air Algérie; Trib. trav. Bruxelles, 23 mai 1989, JJTB, 1989, p. 274);

Attendu que l'article 5, § 1<sup>er</sup> de la convention citée constitue une application de la théorie de l'immunité relative : non-application de l'immunité pour les actes de gestion;

Que cette disposition constitue une codification d'une coutume préexistante ou plutôt une cristallisation d'un droit coutumier en formation (voir note citée ci-dessus sous Trib. trav. Bruxelles, 25 avril 1983, J.T.T., 1984, p. 277; Cour trav. Bruxelles, 6 novembre 1989, cité également ci-dessus);

Qu'il n'en est pas de même pour l'article 5, § 2, le Ministère public relevant correctement en son avis ce qui suit :

« Les dérogations à la règle énoncée au § 1<sup>er</sup>, par l'admission d'un lien de

rattachement lié à la nationalité du travailleur s'écarte totalement des principes dégagés par la théorie de l'immunité relative dont ils constituent une remise en question contraire à la jurisprudence belge et ne sont pas la reproduction d'une coutume préexistante »;

Que cette opinion découle du commentaire de SALMON (« Le projet de convention du Conseil de l'Europe sur l'immunité des Etats », voir éd. Institut de sociologie, 1971, cité ci-dessus, p. 92) et de l'examen de l'exposé des motifs de la loi ratifiant la convention (voir Ch. représ., session 1974-1975, 426, n<sup>o</sup> 1, p. 9);

Attendu qu'en l'espèce, le contrat liant les parties est un contrat de travail établissant des liens de droit privé;

Que l'intimé n'a pas fait acte de gouvernement et a agi comme une personne privée;

Que l'Etat du Portugal en engageant l'appelant dans les liens d'un contrat de travail pour enseigner la langue et la culture portugaise en Belgique ne s'est pas comporté comme pouvoir public dans l'exercice de sa souveraineté politique;

Qu'il convient d'entériner l'opinion du Ministère public considérant que puisque le Portugal a signé mais n'a pas ratifié la convention européenne invoquée du 16 mai 1972, celle-ci n'est pas applicable au présent litige, sauf dans ses dispositions déclaratives de droit coutumier (article 5, § 1<sup>er</sup>);

Que le § 2 de cet article ne constitue pas la reproduction d'une coutume préexistante du fait de l'insertion d'un lien de rattachement tiré de la nationalité du travailleur, ce qui est la dénégation de la théorie de l'immunité restreinte basée sur la distinction entre acte d'autorité (*jure imperii*) et acte de gestion (*jure gestionis*);

Attendu que la Cour est compétente pour régler le présent litige;

... (Suite sans intérêt.)

PAR CES MOTIFS, entendu à l'audience publique du 23 juin 1992, Monsieur Werquin, substitut général, en la lecture de son avis écrit conforme qu'il dépose; reçoit l'appel; le déclare fondé; met à néant le jugement *a quo*; statuant à nouveau, dit la demande originaire fondée; se déclare compétente pour en connaître.

Du 22 septembre 1992. — Cour du travail de Bruxelles — 4<sup>e</sup> ch. — Sida.

MM. Gustot, président, Robert et Dubois, conseillers sociaux. — Min. publ. M. Werquin, substitut général. — Pl. M<sup>me</sup> Capellini loco Bourgaux.

(a)	<b>Registration no./ N° d'enregistrement</b>	B 04
(b)	<b>Date</b>	8 octobre 1996
(c)	<b>Author(ity)/(Service) auteur</b>	Cour d'appel de Bruxelles
(d)	<b>Parties</b>	République du Zaïre c/ d'Hoop et crts
(e)	<b>Points of law/Points de droit</b>	<p>Cet arrêt réforme le jugement rendu par le juge des saisies de Bruxelles le 9 mars 1995 :</p> <p><i>I. Indépendamment de la différence faite en considération des biens d' un Etat étranger ,du point de vue de leur affectation, soit qu'ils servent à l'accomplissement des fonctions inhérentes à la souveraineté, soit qu'ils sont détenus à titre purement privé, une mesure d'exécution représente un acte de coercition et est, comme telle, en temps de paix, inadmissible contre un Etat étranger.</i></p> <p><i>II. Il découle de l'indisponibilité totale des avoirs saisis-arrêtés qu'aucune mesure de saisie bancaire ne peut être ordonnée, car il ne se conçoit pas qu'un Etat étranger puisse se passer de ses avoirs bancaires, lesquels sont nécessaires à l'exercice de sa souveraineté.</i></p> <p><i>III. En vertu des principes de souveraineté et d'immunité, l'Etat étranger ne peut être contraint à apporter la preuve de la nature des fonds saisis-arrêtés.</i></p>
(f)	<b>Classification no./n°</b>	2.a
(g)	<b>Source(s)</b>	Journal des Tribunaux 1997, p. 100
(h)	<b>Additional Information/ Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	Voir annexe B 04

### Résumé des faits :

Le Zaïre agissait, par l'entremise de son ambassadeur en Belgique, en mainlevée d'une saisie-arrêt-exécution pratiquée auprès des banques Indosuez Belgique et Belgolaise à la requête de particuliers ayant obtenu du juge de paix une condamnation à charge du Zaïre d'un certain montant de Francs belges dans le cadre d'un contentieux locatif relatif à une maison utilisée à des fins privées. Il obtint satisfaction.



## ANNEXE B04

ETAT ETRANGER. — SAISIE-  
ARRET-EXECUTION. — Immunité  
d'exécution. — Indisponibilité totale.

Bruxelles (9<sup>e</sup> ch.), 8 octobre 1996

Siég. : M. Vermylen, conseiller unique.

Plaid. : MM<sup>es</sup> Lion, Himpler, Malherbe et Pa-  
peians de Morchoven.

(Zaire c. d'Hoop et crts).



I. — *Que les biens d'un Etat étranger, soit  
servent à l'accomplissement des fonctions in-  
hérentes à sa souveraineté, soit qu'ils sont dé-  
tenus à titre purement privé, une mesure d'exé-  
cution représente un acte de coercition et est,  
comme telle, en temps de paix, inadmissible  
contre un tel Etat.*

II. — *Il découle de l'indisponibilité totale des  
avoirs saisis-arrêtés qu'aucune mesure de sai-  
sie bancaire ne peut être ordonnée, car il ne se  
conçoit pas qu'un Etat étranger puisse se pas-  
ser de ses avoirs bancaires, lesquels sont né-  
cessaires à l'exercice de sa souveraineté.*

III. — *En vertu des principes de souveraineté et  
d'immunité, l'Etat étranger ne peut être con-  
traint à apporter la preuve de la nature des  
fonds saisis-arrêtés.*



Attendu que l'action originaire mue par l'appe-  
lante avait pour objet d'entendre prononcer la  
mainlevée de la saisie-arrest-exécution prati-  
quée le 18 avril 1994 à sa charge pour sûreté  
d'une créance d'un montant fixé à la somme de  
997.606 F en principal, en exécution d'un juge-  
ment prononcé par le juge de paix du canton de  
Nivelles en date du 24 mars 1993, entre les  
mains des troisième et quatrième intimées, sai-  
sie dénoncée le 22 avril 1994, et la condamna-  
tion des intimés *sub* 1 et 2 au paiement de la  
somme de 50.000 F, à titre de dommages-inté-  
rêts et des dépens;

Attendu que le premier juge a déclaré la de-  
mande recevable, mais non fondée contre l'appe-  
lante; qu'il a déclaré la demande à l'égard de  
la troisième intimée irrecevable;

Attendu qu'en page 6 de ses conclusions, l'appe-  
lante invoque le principe de l'immunité  
d'exécution dont jouissent les Etats étrangers;

Attendu que par jugement prononcé par le juge  
de paix du canton de Nivelles en date du 24  
mars 1993 l'appelante fut condamnée à des  
paiements de sommes;

Que la nature de ceux-ci est sans incidence sur  
la valeur du titre exécutoire que les premier et  
deuxième intimés entendent mettre à exécution  
à charge de l'appelante;

Attendu que le principe de l'immunité d'exé-  
cution est basée sur la nécessité d'assurer des  
relations pacifiques entre les Etats;

Que la soumission des Etats étrangers aux voies  
d'exécution et même à de simples mesures con-

servatoires menacerait de compromettre ces re-  
lations (Bela Vitanyi, *L'immunité des navires  
d'Etat*, N.T.I.R., 1963, pp. 58-59);

Que l'exécution, lorsqu'il y a lieu d'y procéder,  
entraîne l'emploi de la force publique pour la  
contrainte du débiteur;

Qu'utiliser la force publique contre un Etat  
étranger serait contraire aux droits des gens, à  
la souveraineté et l'indépendance des Etats,  
ainsi qu'à la reconnaissance de cet Etat étranger  
par la Belgique;

Qu'indépendamment de la différence faite en  
considération des biens du point de vue de leur  
affectation, soit qu'ils servent à l'accomplisse-  
ment des fonctions inhérentes à la souveraineté,  
soit qu'ils sont détenus à titre purement privé,  
une exécution représente un acte de coercition  
et est comme tel(le) (*sic*), en temps de paix  
inadmissible contre un Etat étranger, car elle est  
propre à blesser des susceptibilités et à porter  
préjudice aux rapports internationaux en y en-  
gendrant des frictions;

Attendu que, du reste, s'il était considéré que  
l'Etat étranger doit jouir de l'immunité dans la  
même mesure que l'Etat belge en bénéficie  
en pareille hypothèse, il ressort de l'article  
1412bis du Code judiciaire, que ne sont pas  
saisissables, les biens de l'Etat qui sont mani-  
festement utiles pour l'exercice de sa mission  
ou pour la continuité du service public;

Attendu que les fonds saisis-arrêtés sont mani-  
festement utiles pour l'exercice de la souverai-  
neté de l'appelante en raison du fait que la  
saisie-arrest opère une indisponibilité totale des  
avoirs saisis entre les mains des tiers saisis;

Que le principe de cette indisponibilité totale  
est unanimement admis (G. de Leval, *Traité  
des saisies, règles générales*, Faculté de droit  
de Liège, 1988, n° 197, p. 370, *in fine*; K.  
Broeckx en E. Dirix, *Bestag*, A.P.R., 1992,  
n° 687);

Attendu qu'il ne se conçoit pas qu'un Etat  
étranger, tel que l'appelante, puisse se passer de  
ses avoirs bancaires, lesquels sont nécessaires à  
l'exercice de sa souveraineté et à la continuité  
des services publics qui en sont le corollaire;

Qu'il est manifeste que cette souveraineté est  
mise en brèche par un blocage immédiat et  
total de ses comptes bancaires, comme les pre-  
mier et deuxième intimés le demandèrent dans  
l'exploit de saisie, lequel précise « que la partie  
requérante s'oppose formellement par les pré-  
sentes à ce que la partie signifiée se dessaisisse  
ou se libère de toutes sommes, deniers, valeurs  
ou objets généralement quelconques, qu'elle a  
ou aura, doit ou devra, revenant ou appartenant  
à la République populaire de Zaire »;

Attendu qu'il n'est pas établi que l'appelante  
ait renoncé à l'application de l'immunité d'exé-  
cution;

Qu'en vertu des mêmes principes, l'Etat étran-  
ger ne saurait être contraint à apporter la preuve  
de la nature des fonds saisis-arrêtés;

Attendu qu'il convient d'ordonner la mainlevée  
de la saisie-arrest querellée;

Par ces motifs :

La Cour,

Met le jugement entrepris à néant;

Condamne les intimés à donner mainlevée de la  
saisie-arrest-exécution pratiquée le 18 avril  
1994 entre les mains des intimées.

(a)	<b>Registration no./ N° d'enregistrement</b>	B 05
(b)	<b>Date</b>	27 février 1995
(c)	<b>Author(ity)/(Service) auteur</b>	Tribunal civil de Bruxelles
(d)	<b>Parties</b>	Irak c/ S.A. Dumez
(e)	<b>Points of law/Points de droit</b>	<p>Le juge des saisies de Bruxelles dit pour droit qu' « <i>en droit international public, le principe de l'immunité d'exécution n'a pas non plus une portée absolue. Il ne suffit pas qu'un bien appartienne à un Etat étranger pour qu'il doive ipso facto échapper à toute mesure d'exécution. Cette immunité ne joue que pour certains biens. Lorsque des fonds ont été saisis à charge d'une ambassade, il s'agit de savoir si ceux-ci sont affectés en tout ou en partie à des activités de souveraineté (iure imperii), l'Etat saisi ayant la charge de la preuve conformément à l'article 870 du Code judiciaire. La mainlevée de la saisie ne peut être ordonnée alors qu'il n'existe aucune proportion raisonnable entre l'importance des montants saisis et les besoins d'une ambassade réduite à sa plus simple expression.</i> »</p> <p>Le juge des saisies a donc souligné que l'immunité d'exécution de l'Etat étranger n'est pas absolue. C'est l'une des premières fois que cette solution, conforme à une pratique internationale dominante, est expressément consacrée en jurisprudence.</p> <p>En ce qui concerne le critère permettant de déterminer les biens sur lesquels une exécution forcée est possible, le juge des saisies utilise celui de leur affectation en tout ou en partie à des activités de souveraineté : il décide en outre qu'il revient à l'Etat de prouver que le bien est affecté à des activités de souveraineté, ce qui laisse croire qu'il faut présumer qu'il ne l'est pas.</p>
(f)	<b>Classification no./n°</b>	2.b
(g)	<b>Source(s)</b>	Journal des Tribunaux 1995, p. 565
(h)	<b>Additional Information/ Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	Voir annexe B 05

**Résumé des faits :**

La société française Dumez avait, en avril 1990, obtenu d'une juridiction de Bagdad la condamnation de l'Etat irakien au paiement d'une somme d'argent considérable. Le 2 août 1990, l'Irak envahit le Koweït et promulgue le 16 septembre la loi interdisant à ses tribunaux 'de connaître toute action dirigée contre lui'. Par suite, la société Dumez agit devant le tribunal de grande instance de Nanterre, obtient à nouveau satisfaction, fait procéder à diverses saisies en France et décide d'étendre celles-ci en Belgique. Devant le juge des saisies à Bruxelles, l'Irak, représenté par son ambassade en Belgique, tente d'obtenir la mainlevée d'une saisie-arrest.

## ANNEXE B05

**ETAT ETRANGER. — SAISIE-ARRÊT CONSERVATOIRE. —**  
**I. Immunité de juridiction. — Autorité de la chose jugée au fond. —**  
**II. Immunité d'exécution. — Portée des résolutions du Conseil de sécurité des Nations Unies. — Biens affectés à une activité de la souveraineté. —**  
**Charge de la preuve. — III. Immunité diplomatique. — Finalité. — Comptes d'ambassade. — IV. Saisie-arrêt conservatoire. — Conditions.**  
**Civ. Bruxelles (sais.), 27 février 1995**

Siéq. : M. Goldenberg, juge des saisies.  
 Plaid. : MM<sup>es</sup> Puelinckx, Halin, Vandemeulebroeke et Houssa.

(Irak c. s.a. Dumez).

**I. — L'autorité de chose jugée interdit au juge des saisies de remettre en cause la levée de l'immunité de juridiction d'un Etat étranger prononcée au fond par une juridiction belge ou étrangère.**

**II. — Il n'existe pas d'obstacle de principe à ce qu'un effet direct soit reconnu aux résolutions du Conseil de sécurité des Nations Unies; encore faut-il en prendre l'exacte mesure.**

*Seuls les biens d'un Etat étranger affectés à des activités de souveraineté bénéficient de l'immunité d'exécution.*

*Conformément à l'article 870 du Code judiciaire, la charge de la preuve de cette affectation incombe à l'Etat étranger agissant en mainlevée d'une saisie-arrêt conservatoire.*

**III. — La Convention de Vienne sur les relations diplomatiques ne peut être détournée de sa finalité et servir de manteau à des activités étrangères aux seules activités des diplomates.**

#### § 1<sup>er</sup>. — Objet de l'action.

Attendu que l'action tend à obtenir la mainlevée d'une saisie-arrêt conservatoire pratiquée le 3 juin 1993 par l'huissier de justice Patrick Ouart entre les mains de la s.a. Générale de Banque à la requête de la défenderesse;

#### § 2. — Antécédents.

##### 1. — Faits et procédure.

Attendu qu'il est constant que la société de droit koweïtienne Fiafi, agissant en tant qu'entrepreneur principal du ministère de la Défense irakien, demandeur en la présente cause et ci-

après appelé l'Etat d'Irak, a chargé la défenderesse ci-après appelé Dumez, de la construction de bâtiments;

Qu'il est également établi que l'Etat d'Irak a agréé Dumez comme sous-traitant et que le marché entre l'Etat d'Irak et la société Fiafi contenait une clause compromissoire;

Attendu que Dumez, se heurtant à des difficultés de paiement de la part de Fiafi, s'est adressé aux autorités irakiennes qui ont accepté de signer des lettres de change en sa faveur, les montants devant être prélevés sur les sommes dues par l'Etat d'Irak à Fiafi;

Que ces lettres de change n'ont pas été honorées de sorte que Dumez s'est adressé à la justice irakienne;

Que par décisions des 7 avril et 19 juillet 1990, une juridiction de Bagdad a enjoint à l'Etat d'Irak de payer à Dumez 22.800.000 dollars américains, décisions qui ne seront pas suivies d'effet;

Attendu qu'après avoir envahi le Koweït, l'Etat d'Irak a notamment interdit à ses cours et tribunaux de connaître de toute action dirigée contre lui ou contre les personnes de droit public irakien, par la loi n° 57 du 16 septembre 1990;

Attendu que par exploit du 8 février 1991 Dumez a fait citer le ministère de la Défense irakien à comparaître devant le tribunal de grande instance de Nanterre;

Que par jugement du 9 octobre 1991, celui-ci l'a condamné à payer à Dumez 22.821.979 dollars américains ou son équivalent en francs français, à majorer des intérêts au taux légal à compter du 16 octobre 1987, de 100.000 F au titre de l'article 700 du nouveau Code de procédure civile et des dépens;

Qu'en outre le jugement ordonnait l'exécution provisoire;

Que Dumez lui a fait signifier cette décision le 17 octobre suivant;

Attendu que les 3 juillet, 25 septembre et 5 octobre 1992, Dumez a fait procéder à plusieurs saisies-arrêts exécutions à Paris à charge de l'Etat d'Irak sur le fondement de ce jugement;

Qu'il en a demandé la validation par assignations des 2 et 5 octobre 1992 au tribunal de grande instance de Paris;

Attendu que s'appuyant sur cette même décision, Dumez a fait procéder le 7 juin 1993 à la saisie litigieuse à Bruxelles;

Que le 16 juin suivant, la banque a fait savoir qu'elle détenait en tout l'équivalent de quelque 90.000.000 FB au nom de l'ambassade d'Irak à Bruxelles;

Attendu qu'une ordonnance rendue le 26 juillet 1993 par le tribunal de céans a revêtu de l'exequatur le jugement du tribunal de grande instance de Nanterre;

Que l'Etat d'Irak a introduit un recours contre cette ordonnance; Que cette instance est toujours pendante;

Attendu que le 29 septembre 1993, l'Etat d'Irak a relevé appel du jugement de Nanterre devant la cour d'appel de Versailles qui n'a pas

encore statué si ce n'est à propos de la mise en état;

Qu'en effet, une ordonnance prononcée le 9 juin 1994 par le conseiller chargé de la mise en état a déclaré recevable l'appel formé par l'Etat d'Irak au motif que le jugement du 9 octobre 1991 ne lui avait pas été signifié régulièrement, la signification ayant eu lieu à Moscou par l'entremise des autorités russes alors que la Russie n'était pas chargée de la représentation de ses intérêts;

Attendu que dans le cadre du débat relatif à la validation des saisies-arrêts effectuées à Paris, le tribunal de grande instance de Paris a, par jugement avant dire droit du 25 mai 1994, écarté les immunités de juridiction et d'exécution invoquées par l'Etat d'Irak et rejeté les demandes tendant à faire déclarer non avenue le jugement sur lequel reposent les saisies;

#### 2. — Décisions prises à l'égard de l'Etat d'Irak sur le plan international.

Attendu qu'il y a lieu de rappeler que l'Etat d'Irak a fait l'objet de mesures décrétées à son encontre par la communauté internationale et par la Belgique parmi lesquelles l'arrêté royal du 8 août 1990 et les résolutions 687 et 778 du Conseil de sécurité de l'O.N.U. qui organisent en substance un embargo sur le commerce et les mouvements de fonds avec l'Etat d'Irak et l'astreignent notamment à réparer les conséquences de l'invasion du Koweït;

#### § 3. — Discussion.

Attendu qu'avant d'aborder l'examen des arguments en présence, il paraît opportun de rappeler — en préambule — que le juge des saisies est lié par l'autorité de chose jugée, qui s'attache aux décisions rendues entre parties par d'autres juges, français ou belges;

Que le débat devant le juge des saisies ne peut pas s'assimiler — fût-ce implicitement — à un recours exercé contre ces décisions même dans l'hypothèse, non avérée en l'espèce où ces jugements seraient affectés d'erreurs flagrantes;

Qu'en un mot, le juge des saisies ne peut étendre, restreindre ou modifier les droits consacrés par d'autres décisions;

Attendu en outre qu'en principe les décisions françaises sont reconnues d'emblée en Belgique (art. 26, Convention de Bruxelles, 27 sept. 1968);

Attendu enfin que le seul fait que la saisie litigieuse ait eu lieu dans l'arrondissement judiciaire de Bruxelles rend le juge des saisies de cet arrondissement compétent pour en connaître;

#### A. — Immunité de juridiction.

Attendu que l'Etat d'Irak croit pouvoir invoquer l'immunité de juridiction;

Mais attendu que le tribunal de grande instance de Nanterre a, par son jugement du 9 octobre 1991, estimé pouvoir connaître de la demande portée devant lui en prenant soin de constater que l'Etat d'Irak s'était comporté comme une personne privée et que les conditions générales du marché contenaient une clause compromissoire;

Que le juge des saisies ne peut remettre en cause cette décision dont la cour d'appel de Versailles doit encore apprécier la justesse;

Que l'examen du cadre contractuel initial auquel se livre l'Etat d'Irak manque de pertinence; Qu'il n'est pas permis d'y avoir égard à ce stade-ci du litige;

Que même sur le plan de l'exercice des droits de la défense, les juges de Nanterre ont constaté la régularité de l'assignation;

Attendu que l'autorité de chose jugée qui s'attache à ce jugement est encore renforcée — si besoin en était — par ordonnance du 26 juillet 1993 qui le revêt de l'exequatur en Belgique, ordonnance qui est elle aussi nantie de cette autorité;

Qu'il en découle en effet qu'aux yeux du tribunal de céans, dont le juge des saisies est membre, cette décision ne contient rien de contraire aux principes d'ordre public ni aux règles du droit public belge et que les droits de la défense ont été respectés;

Que faire droit aux arguments de l'Etat d'Irak reviendrait à contredire la décision du juge du fond et du juge de l'exequatur, ce qui n'est pas concevable;

Attendu que sur ce plan comme sur les questions qui seront examinées ci-après, l'ordonnance de la cour d'appel de Versailles — limitée à la seule question de la régularité de la signification du jugement — demeure sans incidence;

Qu'il n'y a pas lieu pour le juge des saisies d'extrapoler et d'anticiper sur ce que pourrait être la décision de cette cour sur l'ensemble du contentieux qui lui est soumis;

Que rien ne permet en plus d'exclure qu'elle raisonne à l'instar du tribunal de grande instance de Paris sur la régularité de l'acte introductif d'instance;

Attendu qu'en l'état actuel du litige, l'Etat d'Irak ne peut invoquer l'immunité de juridiction et doit être considéré comme un justiciable semblable aux autres notamment quant à l'application des règles de procédure;

#### B. — Immunité d'exécution.

Attendu que l'Etat d'Irak prétend que ses biens ne pourraient pas faire l'objet de mesures d'exécution, pas même de leurs prémisses telles une saisie conservatoire, en raison de la coutume internationale voulant qu'un Etat souverain se trouve sur un pied de stricte égalité avec les autres Etats et par là soustrait aux effets des décisions de justice étrangères;

Qu'à cela Dumez objecte qu'au jour de la saisie l'Etat d'Irak se trouvait amputé des prérogatives d'un Etat souverain à la suite de multiples résolutions du Conseil de sécurité de l'O.N.U. et que de toute façon cette immunité ne trouvait pas à s'appliquer en l'espèce;

#### b.1. — Résolutions du Conseil de sécurité de l'O.N.U.

Attendu qu'à partir du 2 août 1990, le Conseil de sécurité de l'O.N.U. a pris de nombreuses résolutions par lesquelles l'Etat d'Irak a été désigné comme agresseur à l'égard du Koweït, sommé de mettre fin à son invasion et d'en réparer les conséquences (Pierre d'Argent, « Le Fonds et la Commission de compensation

des Nations Unies », *Rev. b. dr. intern.*, rappel historique, pp. 485 et 486);

Que parmi ces résolutions, celle portant le numéro 687 dispose :

« 16. — Réaffirme que l'Irak sans préjudice de ses dettes et obligations antérieures au 2 août 1990, questions qui seront réglées par les voies normales, est responsable, en vertu du droit international, de toutes les pertes, de tous les dommages, y compris les atteintes à l'environnement et le gaspillage délibéré des ressources naturelles ainsi que de tous les préjudices subis par d'autres Etats et pour des personnes physiques et des sociétés étrangères, directement imputables à l'invasion et à l'occupation illicite du Koweït par l'Irak.

» 17. — Décide que les déclarations faites par l'Irak depuis le 2 août 1990 au sujet de sa dette extérieure sont nulles et de nul effet et exige que l'Irak honore scrupuleusement toutes ses obligations au titre du service et du remboursement de sa dette extérieure.

» 18. — Décide également de créer un fonds d'indemnisation pour les dommages et préjudices visés au paragraphe 16 et de constituer une commission qui sera chargée de gérer ce fonds.

» 19. — Charge le Secrétaire général d'élaborer et de soumettre à sa décision... des recommandations... qui devront porter notamment sur les points suivants : ... le mode de calcul de la contribution de l'Irak au Fonds, qui représentera un certain pourcentage de la valeur de ses exportations de pétrole et de produits pétroliers à concurrence d'une limite proposée au Conseil par le Secrétaire général... ».

Attendu que Dumez entend se prévaloir de ces résolutions pour affirmer qu'elles privent l'Etat d'Irak de la qualité d'Etat souverain et par voie de conséquence de toute immunité d'exécution;

Mais attendu que s'il n'existe pas d'obstacle de principe à ce qu'un effet direct soit reconnu aux résolutions du Conseil de sécurité de l'O.N.U. (J. Verhoeven, « Guerre et droit international ». Sur certaines questions soulevées par ce conflit Irak-Koweït », *J.T.*, 1991, p. 141, § 5), encore faut-il prendre l'exacte mesure des résolutions en question (Eric David, *Revue québécoise de droit international*, 1985, remarques générales sur l'effet direct, pp. 90, 91, 93, 94 notamment);

Attendu que s'il est vrai que ces résolutions, singulièrement la 687, amputent la souveraineté de l'Etat d'Irak en organisant en réalité une vaste mainmise, on pourrait même parler d'une saisie-exécution, sur une part importante de ses revenus pétroliers, elles ne le font que par le biais d'une stipulation pour autrui en faveur des seules victimes de la guerre, c'est-à-dire celles dont les droits sont nés après le 2 août 1990;

Que pour les créances antérieures, la résolution 687 prend soin de renvoyer aux « voies normales »;

Qu'il n'est pas douteux que ce faisant, le Conseil de sécurité a entendu réserver le système de réparation exceptionnel qu'il a mis sur pied aux créances issues de la guerre elle-même;

Attendu que les droits de Dumez sont de beaucoup antérieurs à l'éclatement du conflit;

Que cette société ne peut donc puiser dans ces résolutions le droit de faire procéder à la saisie litigieuse;

#### b.2. — Principe traditionnel de l'immunité d'exécution.

Attendu qu'en droit belge, les personnes de droit public ne jouissent plus d'une insaisissabilité absolue et automatique depuis la loi du 30 juin 1994, contrairement à ce qu'affirme l'Etat d'Irak;

Attendu qu'en droit international public le principe en question n'a pas la portée absolue qu'il lui prête;

Qu'il ne suffit pas qu'un bien appartienne à un Etat étranger pour qu'il doive *ipso facto* échapper à toute mesure d'exécution; Qu'il ressort nettement d'un arrêt de la cour d'appel de Bruxelles du 10 mars 1993 (*J.T.*, 1994, p. 788) que cette immunité ne joue que pour « certains » biens;

Attendu qu'il s'agit de savoir si les fonds déposés entre les mains du tiers saisi sont affectés en tout ou en partie à des activités de souveraineté;

Que l'Etat d'Irak a la charge de la preuve à ce propos conformément à l'article 870 du Code judiciaire, ce qu'il admet puisqu'il dépose certaines pièces à ce propos;

Attendu que l'attestation du 29 août 1992 qu'il a établie lui-même et qui tend à rattacher les fonds saisis aux seuls besoins de sa représentation en Belgique, ne peut naturellement pas faire foi;

Qu'outre que n'existe aucune proportion raisonnable entre l'importance des montants saisis et les besoins d'une ambassade réduite à sa plus simple expression, l'intention — également invoquée par l'Etat d'Irak — de faire l'acquisition d'un immeuble pour cette ambassade ne peut être prise en considération parce qu'elle ne s'est nullement concrétisée et qu'elle remonte au premier trimestre 1990, soit plus de trois ans avant la saisie litigieuse;

Attendu que d'une manière générale les allégations de l'Etat d'Irak à propos des fonds saisis doivent être prises avec la plus grande circonspection lorsque l'on sait que l'embargo mis en œuvre en Belgique a eu pour effet de bloquer quelque quatre milliards de francs belges selon la Banque nationale de Belgique et l'Association belge des banques ou à tout le moins 1.250.000.000 F selon la Banque centrale d'Irak, ce qui contredit ses conclusions coordonnées pages 35, 36 et surtout 37 (réponse du ministre des Affaires étrangères à la question écrite n° 7 du 31 janvier 1992, *Rev. b. dr. intern.*, 1993, n° 2, p. 598);

Qu'il est dès lors permis de croire que les fonds saisis-arrêtés entre les mains de la s.a. Générale de Banque font partie de dépôts infiniment plus importants en Belgique et qui dépassent de beaucoup les nécessités strictement liées au *jus imperii* de l'Etat d'Irak qui, à défaut d'autres éléments d'appréciation, ne peuvent censément excéder les besoins de sa maigre représentation diplomatique en Belgique;

Qu'il ne saurait dès lors être question d'immunité d'exécution;

#### C. — Convention de Vienne - Immunité diplomatique.

Attendu que cette Convention vise essentiellement à assurer l'accomplissement efficace des fonctions des missions diplomatiques en tant que représentants des Etats (voy. préambule);

Qu'elle doit être comprise à la lumière de cet objectif : permettre à l'Etat accréditant de jouir de toutes facilités dans l'Etat accréditaire pour les seules nécessités de sa représentation;

Attendu que la Convention elle-même contient des dispositions qui font obligation à l'Etat accréditant de ne pas s'écarter de sa finalité (voy. art. 27-4° relatif à la valise diplomatique; art. 36-2° relatif au bagage personnel des agents diplomatiques, art. 41-3° relatif à l'utilisation des locaux de la mission diplomatique);

Que l'Etat accréditaire puise dans la Convention le pouvoir d'en vérifier le respect, cette appréciation n'étant pas abandonnée au seul Etat accréditant;

Qu'ainsi l'article 36-2° va jusqu'à permettre aux autorités de l'Etat accréditaire d'exiger l'inspection du bagage personnel d'un agent diplomatique;

Qu'en cas d'abus, et sans même avoir à motiver sa décision, l'Etat accréditaire peut déclarer un agent diplomatique *persona non grata*;

Qu'à l'inverse de ce qu'affirme l'Etat d'Irak, il ne paraît, en principe pas incompatible avec l'esprit et la lettre de la Convention que la nature des dépôts effectués par une ambassade soit débattue devant l'autorité judiciaire de l'Etat accréditaire, particulièrement dans un litige où cet Etat a la qualité de justiciable ordinaire, « a contracté suivant les règles de forme et de fond du droit privé... s'est comporté comme une personne privée... et a entendu de façon claire et précise renoncer... à ses prérogatives de puissance publique » (Nanterre, 9 oct. 1991);

Attendu qu'il a déjà été constaté que l'Etat d'Irak ne rapporte pas la preuve de la relation entre les fonds saisis et les nécessités de la représentation diplomatique à Bruxelles;

Que la Convention de Vienne ne peut être détournée de sa finalité et servir de manteau à des activités étrangères aux seules activités de ses diplomates;

Qu'outre ce qui a été constaté lors de l'examen de l'immunité d'exécution, il faut relever que la s.a. Générale de Banque — selon sa déclaration de tiers saisi — détenait au nom de l'ambassade d'Irak des francs belges mais également et en grandes quantités des florins; des marks allemands, des dollars américains, des francs français, circonstance également peu compatible avec les seules nécessités de cette ambassade, que l'Etat d'Irak limite lui-même à l'occupation d'une maison, au paiement des traitements et à des frais administratifs;

Attendu que les points de vue des autorités belges exprimés sur ces questions et qui ne s'écarteraient au demeurant pas des principes ici rappelés, ne sauraient lier le tribunal;

Attendu enfin que les fonds saisis avaient déjà fait l'objet d'une mesure de même nature à la requête d'autres créanciers qui ont fini par accorder la mainlevée après plusieurs mois de blocage;

Que l'Etat d'Irak a eu le loisir de rétablir la transmission des fonds nécessaires à son ambassade bruxelloise, le gouvernement belge n'ayant dressé aucun obstacle à cet égard;

Qu'en conséquence rien ne permet de croire, en l'état actuel du dossier, que l'immunité diplomatique devrait jouer fût-ce partiellement;

D. — *Convention de Bruxelles du 27 septembre 1968.*

Attendu que l'Etat d'Irak demande qu'en tout état de cause et en application de l'article 27-1) et 2° de cette Convention, la décision de Nanterre ne soit pas reconnue;

Mais attendu que pour les motifs exposés sous forme de préambule au présent jugement le juge des saisies est lié tant par les termes de la décision de Nanterre que par ceux de l'ordonnance bruxelloise qui la revêt de l'exequatur, lesquelles constatent précisément la régularité de la procédure à l'égard de l'Etat d'Irak;

Que cet argument ne peut être retenu;

E. — *Conditions de la saisie.*

Attendu que le jugement de Nanterre, complété par l'exequatur consacre incontestablement pour Dumez une créance qui remplit les conditions des articles 1414 et 1415 du Code judiciaire;

Attendu, en ce qui concerne l'article 1413, force est de constater que l'Etat d'Irak met tout en œuvre depuis des années pour se soustraire à ses obligations, et ce au mépris de l'injonction formelle du Conseil de sécurité de l'O.N.U. (résolution 687, point 17);

Qu'il ignore les décisions de son propre pouvoir judiciaire;

Que bien plus par sa loi n° 57 il a créé en sa faveur un véritable état d'apesanteur juridique puisqu'elle le déclare non responsable des retards d'exécution des règlements financiers et qu'elle prohibe aux étrangers l'accès à son système judiciaire;

Que cette situation — aggravée par les immunités dont il voudrait bénéficier aujourd'hui — a pour effet, sinon pour objectif, de réduire à néant les droits évidents de sa créancière;

Qu'au vu de ces circonstances, la Dumez a pu et peut toujours estimer que le cas requerrait célérité;

Attendu qu'il s'ensuit que la saisie était et demeure justifiée par application des articles 1413, 1414 et 1415 du Code judiciaire mais uniquement sur ce fondement parce qu'à la date de la saisie, le jugement de Nanterre n'avait pas encore été déclaré exécutoire en Belgique; Qu'ainsi l'article 39 de la Convention de Bruxelles du 27 septembre 1968 ne peut servir de fondement, au demeurant d'une autre nature (voy. Bruxelles, sais., 29 juill. 1993, *J.T.*, 1994, pp. 251 et 252), à la saisie litigieuse;

Attendu que la demande est en tous points mal fondée;

Par ces motifs :

Déclarons l'action recevable mais la demande en tous points mal fondée;

En tant que de besoin, déclarons le présent jugement exécutoire par provision nonobstant tout recours et à l'exclusion de toute offre de cantonnement ou de caution.

(a)	<b>Registration no./ N° d'enregistrement</b>	B 06
(b)	<b>Date</b>	10 mars 1993
(c)	<b>Author(ity)/(Service) auteur</b>	Cour d'Appel de Bruxelles
(d)	<b>Parties</b>	Société de droit irakien Rafidain Bank et crts c. Consarc Corporation, société de droit américain et crts)
(e)	<b>Points of law/Points de droit</b>	<p>Pour ce qui trait à l'immunité de juridiction: l'Etat étranger jouit de l'immunité de juridiction dans la mesure où il accomplit des actes de puissance publique et non lorsqu'il traite, comme personne civile, dans le cadre de rapports régis par le droit privé. Le contrat conclu par le ministre irakien de l'Industrie et de l'Armement participe à un acte à caractère purement commercial. C'est donc en vain que le ministre irakien oppose son immunité de juridiction à la demande en exequatur</p> <p>Pour ce qui trait à l'immunité d'exécution : la Cour d'appel de Bruxelles laisse entendre clairement que l'immunité d'exécution n'est pas absolue lorsqu'elle précise que celle-ci a pour but de soustraire certains biens de l'Etat étranger aux mesures d'exécution de ses créanciers, elle ne se prononce en revanche pas sur le point de savoir quels sont les biens sur lesquels une exécution forcée serait licite.</p>
(f)	<b>Classification no./n°</b>	O.b.3,1.b et 2.b
(g)	<b>Source(s)</b>	Journal des Tribunaux 1994, p. 787
(h)	<b>Additional Information/ Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	Voir annexe B 06

### Résumé des faits :

Le Ministre irakien de l'Industrie et de l'Armement commande en 1989 à deux sociétés – l'une britannique et l'autre américaine- des fourneaux « destinés à des fins médicales et à la fabrication d'appareils de recherche scientifique », ses obligations étant garanties par une banque irakienne, la Rafidain Bank. En juin 1990, le gouvernement américain s'oppose à la livraison à l'Irak des premiers fourneaux, au motif qu'ils pourraient être utilisés dans la

fabrication d'armes nucléaires. Deux mois plus tard, l'Irak envahit le Koweït. Les Nations Unies décident des sanctions économiques. L'embargo sur les exportations est total ; les avoirs irakiens aux Etats-Unis sont bloqués. Le 10 avril 1991, les deux fabricants obtiennent de la district Court for the District of Columbia 9 millions de dollars à titre de dommages et intérêts. Les autorités américaines s'opposent à l'exécution du jugement sur les avoirs irakiens qui sont bloqués. Sans attendre le résultat des recours qu'elles ont introduits aux Etats-Unis, les sociétés intéressées sollicitent du tribunal de première instance de Bruxelles l'exequatur du jugement américain. L'intention est manifestement de procéder à l'exécution forcée sur des fonds irakiens déposées auprès des banques belges. Elles obtiennent partiellement gain de cause. Sur appel, le juge est plus généreux. En sa totalité le jugement est déclaré exécutoire par la Cour d'Appel de Bruxelles le 12 mars 1992. Cette décision est infirmée par l'arrêt de la Cour d'appel de 1993 (arrêt rendu sur tierce opposition).



## ANNEXE B06

**I. TIERCE OPPOSITION.** — Article 1122, alinéa 1<sup>er</sup>, du Code judiciaire. — Recevabilité. — Conditions. — Intérêt à l'action. — Notion. — SAISIE. — Régularité. — Contestation. — Tiers saisi. — II. APPEL INCIDENT. — Article 1054, alinéa 1<sup>er</sup>, du Code judiciaire. — Partie intimée, défaillante. — Opposition. — SAISIE-ARRÊT-EXECUTION. — ACTION EN MAINLEVÉE. — Jugement. — Appel. — Effets. — III. IMMUNITÉ DE JURIDICTION. — Notion. — IMMUNITÉ D'EXECUTION. — Notion. — IV. EXEQUATUR. — Article 570 du Code judiciaire. — Vérification.

Bruxelles (8<sup>e</sup> ch.), 10 mars 1993

Siég. : M. Londers, conseiller unique.

Plaid. : MM<sup>es</sup> Puelinckx, Halin, De Kock, Vandemeulebroeke, Houssa, Dal, Stranart, Bloch, Van Ommeslaghe, Heenen et Verheyden.

(Société de droit irakien Rafidain Bank et crts c. Consarc Corporation, société de droit américain et crts).

I. — *Etant étranger aux rapports entre le saisissant et le débiteur saisi, le tiers saisi n'est pas le juge de la régularité et du fondement de la saisie pratiquée entre ses mains. Il ne lui appartient en aucun cas, de contester l'existence ou la régularité de la créance que le saisissant invoque.*

II. — *Une partie intimée peut, à l'égard des parties qui sont à la cause en degré d'appel, attaquer par cette voie, toutes les dispositions du jugement dont appel qu'elle considère pouvoir lui causer préjudice, sans distinction et sans égard à une limitation de l'appel principal.*

*Lorsqu'il est statué par défaut à l'égard de la partie intimée et que celle-ci forme opposition, elle peut, avant la clôture des débats tenus suite à l'opposition, former un appel incident alors qu'elle conserve la qualité qui était sienne lors des débats par défaut et étendre ainsi régulièrement la saisine du juge d'appel.*

III. — *L'Etat étranger jouit de l'immunité de juridiction dans la mesure où il accomplit des actes de puissance publique et non lorsqu'il traite, comme personne civile, dans le cadre de rapports régis par le droit privé.*

*Contrairement à l'immunité de juridiction qui tend à soustraire certains actes d'un Etat étranger au pouvoir de juridiction des tribunaux du for, l'immunité d'exécution a pour but de soustraire certains biens de l'Etat étranger aux mesures d'exécution de ses créanciers.*

IV. — *Le juge de l'exequatur ne peut procéder à la révision au fond du jugement rendu par une juridiction étrangère et substituer sa décision à celle de la juridiction étrangère.*

*S'il est autorisé à faire les vérifications prévues à l'article 570 du Code judiciaire, sans modifier pour autant le contenu de la décision, il peut néanmoins préciser l'identité de la partie à l'égard de laquelle la décision étrangère sera rendue exécutoire, par exemple, en cas de décès, mais sans pouvoir la rendre exécutoire à l'encontre de personnes qui n'ont pas été touchées par la condamnation prononcée par le juge étranger.*

Vu le dossier de la procédure et notamment :

- a) l'arrêt rendu par défaut à l'égard des opposants le 12 mars 1992 par la cour de céans, décision à l'égard de laquelle l'opposition a été formée par exploit d'huissier signifié le 15 mai 1992 à la demande des opposants,
- b) la citation signifiée le 26 juin 1992 aux défenderesses sur opposition, ainsi qu'à la Rafidain Bank, la Central Bank of Iraq et les opposants, par laquelle la s.a. Banque Bruxelles Lambert forme tierce opposition contre l'arrêt rendu le 12 mars 1992 par la cour de céans,
- c) les conclusions additionnelles déposées le 8 décembre 1992 au greffe de la cour, par lesquelles les opposants, forment un appel incident,
- d) la requête déposée le 2 septembre 1992 au greffe de la cour, par laquelle la s.a. Générale de Banque déclare intervenir volontairement dans la cause mue par citation en tierce opposition par la s.a. Banque Bruxelles Lambert;

### III. — En droit.

#### B. — Quant à la recevabilité de la tierce opposition.

Attendu qu'il échet de se placer au moment où la tierce opposition a été formée pour vérifier la recevabilité de ce recours extraordinaire; que cet examen n'est dès lors pas affecté par le fait que par exploit signifié le 16 octobre 1992 au tiers opposant, les défenderesses sur opposition ont renoncé volontairement à la transformation de la saisie-arrêt conservatoire en saisie-arrêt-exécution, pratiquée par exploit du 27 mars 1992 sur base de l'arrêt du 12 mars 1992 de la cour de céans;

Attendu qu'en vertu de l'article 1122, alinéa 1<sup>er</sup>, du Code judiciaire, toute personne qui n'a point été dûment appelée ou n'est pas intervenue à la cause, est recevable à former tierce opposition à la décision rendue par une juridiction civile, susceptible de préjudicier à ses droits (Cass., 24 janv. 1974, *Pas.*, 1974, I, 544, avec les conclusions du procureur général Ganshof van der Meersch);

Attendu qu'il n'est pas contesté que la s.a. Banque Bruxelles Lambert n'était pas partie à la cause devant la cour lors des débats qui donnèrent lieu à l'arrêt du 12 mars 1992 et que, partant, elle a la qualité de tiers lui permettant de former tierce opposition;

Attendu que conformément aux principes généraux régissant la recevabilité de toute action en justice, le tiers opposant doit justifier d'un intérêt (art. 17, C. jud.);

qu'il suffit cependant que la décision attaquée soit susceptible de lui causer un préjudice éventuel;

qu'il n'est pas requis que le tiers opposant ait réellement subi un préjudice;

que la tierce opposition n'est irrecevable à défaut d'intérêt que si tout préjudice est exclu (Cass., 5 oct. 1972, *Pas.*, 1973, I, 136);

Attendu qu'en l'espèce, la s.a. Banque Bruxelles Lambert soutient qu'en sa qualité de tiers saisi, sommée de se dessaisir des fonds qu'elle détient pour le compte de ses clients, elle risque d'être accusée par ceux-ci d'avoir vidé ses mains de manière imprudente alors que des doutes sérieux persistent quant à l'étendue des droits des créanciers saisissants;

Attendu que le tiers saisi est étranger aux rapports entre le saisissant et le débiteur saisi;

que partant, le tiers saisi n'est pas le juge de la régularité et du fondement de la saisie pratiquée entre ses mains;

qu'il ne lui appartient en aucun cas de contester l'existence ou la régularité de la créance que le saisissant invoque;

qu'il est néanmoins généralement admis que le tiers saisi doit limiter ses vérifications à la validité de l'exploit de saisie et au respect des formes prescrites par le Code judiciaire aux fins de le protéger (E. Dirix et K. Broeckx, « Beslag », *A.P.R.*, 1992, n° 696);

qu'en outre, avant de se dessaisir au profit du saisissant, il peut exiger la production de l'acte de dénonciation de la saisie (art. 1543, C. jud.), du visa du juge des saisies (art. 1544, C. jud.) ainsi que de l'attestation du greffier (art. 1388, C. jud.) ou contester sa dette (art. 1542, C. jud.);

Attendu que lorsqu'il agit dans les limites tracées ci-dessus, le tiers saisi soit retient les fonds, soit s'en dessaisit régulièrement et ne commet en aucun cas une faute à l'égard du saisi;

que la circonstance que, comme en l'espèce, le tiers saisi est le banquier du saisi et qu'un contrat de compte les lie, ne modifie en rien les droits et obligations du premier à l'égard du second;

Attendu que les incertitudes et difficultés que le tiers opposant invoque pour justifier de son intérêt à former tierce opposition, concernent toutes la validité et l'étendue de la créance des défenderesses sur opposition ainsi que leur aptitude à poursuivre l'exécution vu la qualité des saisis;

qu'il s'agit à l'évidence d'irrégularités qu'il n'appartient pas au tiers saisi de soulever et qui ne sont, dès lors, pas de nature à lui causer éventuellement un préjudice personnel en cas de maintien de la décision entreprise;

Attendu que bien qu'il est incontestable que l'immunité de juridiction et d'exécution de l'Etat étranger sont des principes d'ordre public, il n'appartient pas au tiers opposant de

s'ériger en gardien de l'ordre public et de demander la rétractation d'une décision judiciaire alors qu'elle ne préjudicie pas à ses droits, ses intérêts personnels n'étant pas concernés;

**C. — Quant à la recevabilité de l'intervention volontaire.**

Attendu que l'intervention volontaire dans le cadre d'une procédure en tierce opposition doit satisfaire aux mêmes conditions que cette dernière;

que l'intervenante volontaire doit, dès lors, démontrer que la décision entreprise est de nature à lui causer un préjudice;

Attendu que pour les motifs invoqués ci-dessus à l'égard du tiers opposant, l'intervenante volontaire ne justifie pas d'un intérêt suffisant et son intervention est, partant, irrecevable;

**D. — Quant à l'appel incident et la saisine de la cour.**

Attendu que tant dans leur acte d'appel signifié le 13 février 1992 que dans leurs conclusions d'appel déposées le 25 février 1992 au greffe de la cour, les défenderesses sur opposition, alors appelantes, ont fait grief au tribunal de première instance de Bruxelles :

1° d'avoir limité l'exequatur du jugement du 10 avril 1991 de la United States District Court for the District of Columbia en ce qu'il a condamné la Rafidain Bank et le ministère irakien de l'Industrie et de l'Armement au paiement de la somme de 6.123.162 US \$, majorée des intérêts;

2° d'avoir déclaré la demande intégralement non fondée dans la mesure où elle est dirigée contre la Central Bank of Iraq et la Rasheed Bank;

Attendu qu'il est évident que les défenderesses sur opposition n'avaient aucun grief à formuler à l'égard du jugement dont ils avaient relevé appel dans la mesure où il accorda l'exequatur du jugement américain du 10 avril 1991 à l'encontre des opposants en ce qu'il condamne ceux-ci au paiement de l'équivalent de la somme de 6.123.162 US \$, majorée des intérêts, et était, partant, sans intérêt pour interjeter appel sur ce point;

que dans ces conditions leur demande tendant à entendre confirmer le jugement entrepris sur ce point, était parfaitement superflue et ne peut avoir comme conséquence de déférer ce chef de demande au juge d'appel;

Attendu que c'est à bon droit que les défenderesses sur opposition soutiennent que leur appel était limité;

que l'effet dévolutif de l'appel, consacré par l'article 1068 du Code judiciaire, ne porte pas atteinte à l'effet relatif de l'appel traduit par l'adage *tantum devolutum quantum appellatum*, suivant lequel la partie appelante fixe elle-même, sous réserve des règles applicables en cas d'indivisibilité du litige, les limites dans lesquelles le juge d'appel aura à statuer;

Attendu cependant qu'en vertu de l'article 1054, alinéa 1<sup>er</sup>, du Code judiciaire, la partie intimée peut former un appel incident à tout moment, contre toutes les parties en cause devant le juge d'appel, même si elle a signifié le jugement sans réserve ou si elle y a acquiescé avant sa signification;

qu'en conséquence, la partie intimée peut, à l'égard des parties qui sont à la cause en degré

d'appel, attaquer par cette voie toutes les dispositions du jugement dont appel qu'elle considère pouvoir lui causer préjudice, sans distinction et sans égard à une limitation de l'appel principal (Cass., 22 déc. 1978, *Pas.*, 1979, I, 451);

qu'ainsi la partie intimée peut, en formant un appel incident, reconstituer entièrement devant le juge d'appel le litige initial, corrigeant de cette manière les conséquences de l'effet relatif de l'appel;

Attendu que la partie intimée qui, en vertu de l'article 1054 du Code judiciaire, peut former un appel incident, est celle contre laquelle un appel principal recevable a été dirigé (Cass., 24 avril 1987, *Pas.*, 1987, I, 994 et Cass., 1<sup>er</sup> déc. 1988, *Pas.*, 1989, I, 358);

qu'en l'espèce, les défenderesses sur opposition ont dirigé de manière régulière leur appel contre les opposants, qui avaient, dès lors, la qualité de parties intimées;

qu'en cette qualité, les opposants étaient en droit de former un appel incident;

que de la seule circonstance que l'appel des défenderesses sur opposition était recevable, il découle certainement et nécessairement qu'il y a eu une instance liée entre celles-ci et les opposants;

Attendu que l'opposition provoque une nouvelle saisine de la juridiction qui a statué par défaut et celle-ci procède à un nouvel examen contradictoire de la cause, en principe dans les limites tracées par l'acte d'opposition;

que lorsque, comme en l'espèce, il est statué par défaut à l'égard de la partie intimée et que celle-ci forme opposition, elle peut, avant la clôture des débats tenus suite à l'opposition, former un appel incident alors qu'elle conserve sa qualité procesuelle qui était sienne lors des débats par défaut et étendre ainsi régulièrement la saisine du juge d'appel;

que, dès lors, les opposants pouvaient former un appel incident régulier devant la cour;

Attendu que dans le dispositif de leurs conclusions additionnelles déposées le 8 décembre 1992 au greffe de la cour — et qui précèdent donc chronologiquement les premières conclusions déposées à l'audience du 5 janvier 1993 —, les opposants déclarent explicitement former un appel incident, tendant à entendre réformer le jugement rendu le 29 janvier 1992 par le tribunal de première instance de Bruxelles en ce qu'il autorise l'exequatur du jugement américain du 10 avril 1991 dans la mesure où il les condamne au paiement de la somme de 6.123.162 US \$, majorée des intérêts, et qu'il les condamne aux dépens;

que cet appel incident, régulier quant à la forme, est recevable;

Attendu qu'à la suite de cet appel incident, régulièrement formé, le litige initialement soumis au tribunal de première instance de Bruxelles, est actuellement reconstitué devant la cour, sous la seule limitation que comme l'opposition ne peut profiter qu'aux opposants, il est définitivement jugé que la demande en exequatur est non fondée à l'égard de la Central Bank of Iraq et de la Rasheed Bank;

qu'ainsi il appartient à la cour de réexaminer si le jugement américain du 10 avril 1991 satisfait aux conditions prévues à l'article 570, alinéa 2, du Code judiciaire;

Attendu que la cour, en tant que juge du fond, n'est pas liée par la décision du juge des saisies quant à la portée du jugement en vertu duquel une saisie est pratiquée, alors que ce jugement fait toujours l'objet d'un recours dont elle est saisie;

qu'en l'espèce, la cour n'est pas liée par le jugement rendu le 7 janvier 1993 par le juge des saisies qui, pour justifier le rejet de l'action en mainlevée de la saisie-arrière-exécution pratiquée par exploit du 16 octobre 1992, a estimé que le jugement du tribunal de première instance de Bruxelles du 29 janvier 1992 est passé en force de chose jugée dans la mesure où il accorde l'exequatur de la condamnation au paiement de la somme de 6.123.162 US \$;

**E. — Quant à l'immunité de juridiction et d'exécution de l'Etat irakien.**

**1. — L'immunité de juridiction.**

Attendu que l'Etat étranger jouit de l'immunité de juridiction dans la mesure où il accomplit des actes de puissance publique (*actes iure imperii*) et non lorsqu'il traite comme personne civile dans le cadre de rapports régis par le droit privé (*actes iure gestionis*);

Attendu qu'en l'espèce, l'Etat irakien, représenté par son ministère de l'Industrie et de l'Armement, a conclu une convention portant sur l'achat de matériel médical et scientifique, ainsi que des services destinés à rendre opérationnel ce matériel;

qu'en agissant de la sorte, le ministère irakien de l'Industrie et de l'Armement participe à un acte à caractère purement commercial comme toute autre personne civile ou morale;

Attendu que le caractère d'acte *iure gestionis* de cette transaction, établi suivant le droit du for, est déterminé par la nature de cet acte, mais n'est pas influencé par le but réel poursuivi par le ministère irakien de l'Industrie et de l'Armement;

que la circonstance qu'aux dires des défenderesses sur opposition, le matériel commandé aurait pour but la production d'armes nucléaires, par hypothèse destinées à assurer la défense de la souveraineté nationale de l'Irak, est indifférent pour qualifier l'acte accompli et, partant, pour délimiter l'immunité de juridiction de l'Etat irakien;

Attendu qu'il ressort de ce qui est dit ci-dessus, que c'est en vain que le ministère irakien de l'Industrie et de l'Armement oppose son immunité de juridiction à la demande en exequatur introduite par les défenderesses sur opposition;

**2. — L'immunité d'exécution.**

Attendu que contrairement à l'immunité de juridiction, qui tend à soustraire certains actes d'un Etat étranger au pouvoir de juridiction des tribunaux du for, l'immunité d'exécution a pour but de soustraire certains biens de l'Etat étranger aux mesures d'exécution de ses créanciers;

que l'immunité d'exécution autorise l'Etat étranger à s'opposer à toute mesure de contrainte sur ses biens par la mise en œuvre d'une saisie conservatoire ou exécutoire;

Attendu qu'en l'espèce, la cour est saisie d'une demande d'exequatur d'un jugement américain rendu à l'encontre du ministère irakien de l'Industrie et de l'Armement, émanation de l'Etat irakien;

que l'exequatur étant par lui-même distinct d'une mesure d'exécution sur les biens qu'il peut néanmoins soustendre, le ministère irakien de l'Industrie et de l'Armement ne peut opposer son immunité d'exécution à la présente demande des défenderesses sur opposition;

qu'en juger autrement, reviendrait en réalité à introduire une immunité de juridiction par le biais de l'immunité d'exécution, alors qu'il s'agit de deux notions distinctes;

Attendu qu'il appartiendra éventuellement au ministère irakien de l'Industrie et de l'Armement d'invoquer cette immunité d'exécution devant le juge des saisies à l'occasion d'une opposition à saisie;

**F. — Quant au fond de la demande en exequatur.**

**1. — En tant que la demande est dirigée contre la Rafidain Bank.**

Attendu que, contrairement à la Rasheed Bank et la Central Bank of Iraq, la Rafidain Bank — seconde opposante — était partie à la cause devant la United States District Court for the District of Columbia;

que néanmoins, il apparaît tout d'abord à la lecture du jugement rendu le 10 avril 1991, que la District Court s'est limitée à constater des fautes et manquements dans l'exécution des obligations contractuelles uniquement dans le chef du ministère de l'Industrie et de l'Armement (« The Court hereby... also specifically finds that NIM (= Ministry of Industry and Minerals), as described in the testimony of..., committed egregious and wantonly malicious and willful acts of fraud and breaches of contract against plaintiffs... » et « ... due to NIM's fraud and breaches of contract... »);

que ceci est parfaitement évident alors que seul le ministère irakien de l'Industrie et de l'Armement était partie au contrat conclu avec les sociétés Consarc, tandis que l'intervention de la Rafidain Bank s'est limitée à garantir financièrement l'opération;

qu'en outre, le jugement américain ne prononce aucune condamnation au paiement soit de « compensatory damages », soit de « punitive damages » à l'encontre de la Rafidain Bank, alors que les condamnations à ces dommages et intérêts font l'objet de la demande d'exequatur;

Attendu qu'aucun élément objectif ne permet de conclure que le juge américain, comme le soutiennent les défenderesses sur opposition, a visé au moins implicitement la Rafidain Bank;

qu'au contraire, il apparaît évident que si tel avait été l'intention de la United States District Court, elle n'aurait pas manqué de condamner explicitement la Rafidain Bank, qu'elle qualifie de « agency or instrumentality of de government of Iraq », alors que celle-ci était partie à la cause;

qu'en outre, le juge américain fait une distinction très claire dans le dispositif de son jugement entre, d'une part, les condamnations prononcées à l'encontre du ministère irakien de l'Industrie et de l'Armement et, d'autre part, les interdictions et les obligations de faire prononcées à l'encontre tant du ministère irakien que de la Rafidain Bank;

que la circonstance que le 1<sup>er</sup> avril 1991 le ministère des Finances américain a dressé une liste d'individus et d'organisation qui sont con-

sidérés comme compris dans le terme « Gouvernement de l'Irak » et sur laquelle figure la Rafidain Bank, ne permet pas de considérer que, suivant le droit américain, une condamnation à payer à l'encontre de l'Etat irakien doit s'étendre automatiquement à la Rafidain Bank;

que dans la jurisprudence américaine citée par les défenderesses sur opposition, le problème de l'extension des condamnations à l'encontre de l'Irak à d'autres organismes et individus, a apparemment chaque fois été explicitement soumis au juge américain;

Attendu que contrairement à ce qu'affirment les défenderesses sur opposition, le juge de l'exequatur ne peut procéder à la révision au fond du jugement rendu par une juridiction étrangère et substituer sa décision à celle de la juridiction étrangère;

qu'il n'est autorisé qu'à faire les vérifications prévues à l'article 570 du Code judiciaire, sans modifier pour autant le contenu de cette décision;

Attendu qu'il est généralement admis en doctrine qu'il peut néanmoins, en vue d'assurer l'efficacité de l'exécution, procéder aux adaptations indispensables à cet effet;

qu'ainsi le juge de l'exequatur peut préciser l'identité de la partie à l'égard de laquelle la décision étrangère sera rendue exécutoire, par exemple, en cas de décès, mais sans pouvoir la rendre exécutoire à l'encontre de personnes qui n'ont pas été touchées par la condamnation prononcée par le juge étranger;

Attendu que pour autant que la Rafidain Bank doit être assimilée à l'Etat irakien, les défenderesses sur opposition, au cas où elles obtiendraient une condamnation déclarée exécutoire en Belgique à l'égard de celui-ci, pourront procéder à l'exécution contre elle sans que le jugement américain doive être expressément déclaré exécutoire à son encontre;

que l'exemple donné par les défenderesses sur opposition en conclusions est illustratif sur ce point : le juge belge qui condamne l'Etat belge ne doit pas énumérer expressément tous les départements ministériels belges susceptibles d'une exécution forcée;

qu'au cas où la Rafidain Bank contesterait une éventuelle exécution du jugement américain sur ses biens, après qu'il soit déclaré exécutoire à l'encontre de l'Etat irakien, il appartiendrait, le cas échéant, au juge des saisies de décider si oui ou non la condamnation à l'encontre du ministère irakien de l'Industrie et de l'Armement peut être étendue à cette banque;

Attendu que par contre, si la Rafidain Bank est un sujet de droit distinct de l'Etat irakien, la cour modifierait la décision étrangère en la déclarant exécutoire à l'encontre de cette banque, qui n'a pas été condamnée par la juridiction étrangère;

que dans ce cas, l'extension de l'exequatur à la Rafidain Bank équivaldrait à créer dans le chef des défenderesses sur opposition des droits qui excèdent ceux attribués ou reconnus par la juridiction américaine;

Attendu qu'il ressort de ce qui est exposé ci-dessus qu'il n'a pas lieu d'étendre l'exequatur du jugement américain à la Rafidain Bank aux motifs de vouloir assurer l'efficacité exécutoire de cette décision;

Attendu que dans ces conditions, la demande en exequatur est non fondée dans la mesure où elle est dirigée contre la Rafidain Bank;

**2. — En tant que dirigée contre le ministère irakien de l'Industrie et de l'Armement.**

Attendu qu'en l'absence de traité entre la Belgique et l'Irak, il y a lieu de vérifier si le jugement du 10 avril 1991 de la United States District Court for the District of Columbia satisfait aux conditions énumérées à l'article 570, alinéa 2, du Code judiciaire;

Attendu que le premier opposant soutient que les droits de la défense ont été violés, alors qu'il n'a pas été valablement cité à comparaître devant la juridiction américaine et qu'il n'a pas eu connaissance, en temps utile, du contenu de la citation;

que les défenderesses contestent ces affirmations, arguant d'avoir scrupuleusement veillé à la régularité de la citation;

Attendu qu'il apparaît des pièces produites par les défenderesses sur opposition que leur conseil belge a fait transmettre la citation, accompagnée d'une traduction en langue arabe, par la valise diplomatique belge à l'ambassade de Belgique à Bagdad;

que l'attaché commercial auprès de l'ambassade de Belgique, M. Louis Daddiza, a remis ces documents le 17 novembre 1990 à une personne nommée Mohammed Jabes Hassan au ministère irakien de l'Industrie et de l'Industrialisation militaire à Bagdad;

qu'un reçu (acknowledgement of receipt) a été délivré par la personne précitée;

Attendu que le premier opposant conteste qu'une personne de ce nom et habilitée à recevoir une citation, travaille à son service;

que même s'il était établi que le premier opposant a été atteint par la citation, il appartient de vérifier si la citation a été régulièrement signifiée au regard de la législation américaine;

Attendu que par une ordonnance (« order directing method of service ») du 22 octobre 1990, la U.S. District Court for the District of Columbia, après avoir qualifié le premier opposant comme « agency or instrumentality of a foreign state », a ordonné, conformément à l'article 1608 (b) (3) (C) du F.S.I.A. (Foreign Sovereign Immunities Act), que la citation soit remise au ministère de l'Industrie et de l'Armement à son siège à Bagdad par téléfax, télex ou à l'intervention du ministre des Affaires étrangères des Etats-Unis conformément à la procédure prescrite à l'article 1608 (a) (4) F.S.I.A. et qu'en outre elle soit notifiée à l'ambassade de l'Irak à Washington;

que cet « order » a été complété, à la demande des défenderesses sur opposition et compte tenu de difficultés rencontrées à mettre en œuvre la première ordonnance, par une seconde ordonnance rendue le 26 octobre 1990, dans la mesure où il est dit que la remise de la citation peut également se faire au siège du ministère irakien par messenger (« by courier »);

que finalement les défenderesses sur opposition ont choisi pour ce mode de signification comme il a été dit ci-dessus;

Attendu que ces ordonnances de la U.S. District Court for the District of Columbia appellent deux observations;

Attendu tout d'abord que, conformément à l'article 1608 (b) (3) (C) F.S.I.A., le juge ne peut

fixer le mode de citation que dans la mesure où celle-ci est destinée à une « agency or instrumentality of a foreign state », hypothèse visée par l'article 1608 (b) F.S.I.A.;

qu'en l'occurrence, la citation était destinée au ministère de l'Industrie et de l'Armement qui est l'Etat irakien ou tout au moins une subdivision politique de cet Etat (« a foreign state or political subdivision of a foreign state »), hypothèse visée à l'article 1608 (a) F.S.I.A. (raisonnement *a fortiori* sur la base du jugement rendu le 28 septembre 1992 par la U.S. District Court Southern District of New York dans une affaire First City c/Rafidain Bank et Central Bank of Iraq - pièce A VIII du dossier des opposants);

que cette dernière disposition ne prévoit pas de remise de la citation par messenger;

Attendu ensuite, que même si l'article 1608 (b) était d'application en l'espèce — *quod non* —, le pouvoir du juge de désigner un mode de signification est limité aux formes compatibles avec la loi du lieu où la citation doit être remise, ce en vertu du paragraphe (3) (C) de la disposition susdite (« as directed by order of the court consistent with the law of the place where service is to be made »);

qu'il n'est pas démontré que la signification par messenger (« courier ») est prévue ou tolérée par le système juridique irakien;

Attendu qu'il ressort de ce qui est dit ci-devant que la citation à comparaître n'a pas été valablement signifiée au premier opposant;

que cette irrégularité entraîne, en règle, la nullité de la procédure subséquente (voy. jugement en cause First City c/Rafidain Bank, cité ci-dessus);

que dans ces conditions il est indifférent de savoir si oui ou non le premier opposant a effectivement reçu la citation et a pu prendre connaissance de son contenu;

Attendu que l'article 6 de la loi irakienne n° 57, édictée le 16 septembre 1990 par le Revolutionary Command Council, ne peut en aucun cas excuser l'irrégularité de la citation et le défaut accordé par la U.S. District Court à l'égard des parties irakiennes;

Attendu que contrairement à ce qu'affirment les défenderesses sur opposition, l'examen de la validité de la citation par le juge américain a été très sommaire et non dénuée d'ambiguïté, comme le démontre la lecture de la transcription littérale des débats par défaut devant la U.S. District Court for the District of Columbia (pp. 3 et 4);

que plus particulièrement la situation de conflit armé existant entre l'Irak et les Etats-Unis, avec toutes les difficultés de communication qu'elle entraîne, devait l'inciter à être particulièrement attentif au respect des droits de la défense;

qu'au contraire, le déroulement des débats devant la U.S. District Court for the District of Columbia permettent de conclure que les parties irakiennes n'ont pas eu droit à un procès équitable et serein;

que cette conviction est plus particulièrement suscitée par, d'une part, certaines interventions du juge lui-même qui donnent à croire que la guerre du Golfe s'est poursuivie devant sa juridiction (par ex., un extrait de la transcription littérale des débats page 14 : « The Court : You don't think Schwarzkopf has done enough ? We've got to do some more ? This Court's

going to. Mr. Marks (conseil de Consarc, précisé par la cour) : We're counting on this Court ») et, d'autre part, l'offre faite publiquement par Consarc de transmettre un part substantielle des « punitive damages » accordés par la District Court au gouvernement des Etats-Unis (transcription p. 15 et jugement du 22 août 1991);

que cette attitude est d'autant plus regrettable que suite à l'embargo américain, il était à l'époque quasi impossible pour les défenderesses irakiennes de se faire représenter par un avocat devant les juridictions américaines;

qu'encore en juillet 1992, l'O.F.A.C. imposait des conditions draconiennes avant d'autoriser un avocat américain à représenter les parties irakiennes aux Etats-Unis (lettre du 11 juillet 1991 de l'avocat américain Fedder);

Attendu que dans ces conditions la cour ne peut que conclure que la juridiction américaine n'a pas respecté les droits de la défense du ministère irakien de l'Industrie et de l'Armement;

que dès lors, le jugement rendu le 10 avril 1991 par la United States District for the District of Columbia ne satisfait pas à une des conditions cumulatives imposées par l'article 570, alinéa 2, du Code judiciaire;

qu'il n'a plus lieu de vérifier s'il est satisfait aux autres conditions;

qu'il ne peut être donné suite à la demande d'exequatur de ce jugement à l'encontre du ministère irakien de l'Industrie et de l'Armement;

que la demande est également non fondée à l'égard de celui-ci;

Par ces motifs :

La Cour,

Déclare la tierce opposition, ainsi que l'intervention volontaire irrecevables;

Reçoit l'opposition ainsi que l'appel incident et les déclare fondés;

Rétracte l'arrêt rendu le 12 mars 1992 par la cour de céans, sauf en ce qu'il reçoit l'appel et confirme le jugement du 29 janvier 1992 dans la mesure où il déclare la demande recevable, mais non fondée à l'égard de la Central Bank of Iraq ainsi que de la Rasheed Bank;

Statuant à nouveau par voie de dispositions nouvelles;

Met à néant le jugement rendu le 29 janvier 1992 par le tribunal de première instance de Bruxelles en ce qu'il déclare la demande en exequatur partiellement fondée et, en conséquence, accorde l'exequatur du jugement prononcé le 11 avril 1991 par la United States District Court for the District of Columbia à l'encontre des opposants en ce qu'il condamne ces parties au paiement de l'équivalent en francs belges de la somme de 6.123.162 US \$, majorée des intérêts, et condamne les opposants aux dépens;

En conséquence,

Déclare la demande en exequatur non fondée à l'égard du ministère irakien de l'Industrie et de l'Armement et de la Rafidain Bank.

(a)	<b>Registration no./ N° d'enregistrement</b>	B 07
(b)	<b>Date</b>	30 avril 1951
(c)	<b>Author(ity)/(Service) auteur</b>	Tribunal civil de Bruxelles
(d)	<b>Parties</b>	Socobel c/ l'Etat hellénique et la banque de Grèce
(e)	<b>Points of law/Points de droit</b>	<p>Le jugement valide les saisies-arrêt pratiquées à charge de l'Etat hellénique et la banque de Grèce, à titre de mandataire de ce dernier; il les valide aux motifs –principalement- que l'immunité des biens de l'Etat n'est pas un principe légal, que la jurisprudence se doit de s'adapter à l'intervention croissante de l'Etat dans le domaine du commerce et que « <i>l'intérêt général de la communauté belge à laquelle les biens de l'Etat sont affectés</i> », qui justifie l'impossibilité d'exécution forcée contre l'Etat belge, « <i>n'apparaît pas au profit d'un Etat étranger ayant conclu quelque negotium en Belgique.</i> »</p> <p>Ce faisant, le tribunal civil de Bruxelles établit un parallèle entre immunités de juridiction et d'exécution : dès lors qu'il agit « <i>jure gestionis</i> », l'Etat étranger perd à la fois l'une et l'autre.</p>
(f)	<b>Classification no./n°</b>	2.b
(g)	<b>Source(s)</b>	Journal des Tribunaux, 1951, p.302
(h)	<b>Additional Information/ Renseignements complémentaires</b>	
(i)	<b>Full text-extracts-translation- summaries/Texte complet- extraits-traduction-résumés</b>	Voir annexe B07

### Résumé des faits:

Le 27 août 1925 fut conclu entre la demanderesse et l'Etat hellénique un contrat ayant pour objet la construction par la demanderesse en Grèce pour le compte de l'Etat hellénique de certaines lignes de Chemins de fer ainsi que la réfection d'autres lignes et la fourniture du matériel nécessaire à leur exploitation.

Le financement des prestations et des fournitures assumées par la demanderesse devait se faire par un prêt consenti par la demanderesse à l'Etat hellénique qui était couvert par la remise à la demanderesse ou à un trustee d'obligations d'un emprunt, émis à cet effet par l'Etat hellénique et dont les intérêts et amortissements devaient permettre à la demanderesse de faire face aux frais de dépense de son entreprise .

L'Etat hellénique a cessé tout paiement d'intérêts et tout amortissement sur lesdites obligations le 1<sup>er</sup> juillet 1932.

**ANNEXE B07**

Civ. Bruxelles (5<sup>e</sup> ch.), 30 avril 1951.

Siég. : M. WARLOMONT, j. un.

Min. publ. : M. RUTTEN, subst. Proc. Roi.

Plaid. : MMes SAND, G. DELACROIX, BERNARD, VAN REEPINGHEN et SIMONT.

(Socobel et Etat belge c. Etat hellénique, Banque de Grèce et Banque de Bruxelles).

I à III. SAISIE-ARRET. – Titre requis. – Action en validation. – Distinctions : validation de l'opposition à la remise. – Sentence arbitrale non revêtue d'exequatur. – Demande corrélative de condamnation imposant aux tiers saisis de remettre les fonds au saisissant. – Condamnations à charge du saisi. – IV. Sentence arbitrale étrangère : exécution forcée en Belgique. – V. Cour permanente internationale de Justice de La Haye : force exécutoire de ses arrêts en Belgique. – VI. – Etat Etranger. – Immunité d'exécution – exécution forcée permise à charge de l'Etat étranger. – VII. Saisie-arrêt. – Banque. – Personnalité distincte du saisi. – Mandataire jouissant du monopole pour accomplir les transactions du saisi. – Saisie valable en vertu du titre existant contre le saisi. – VIII. Ministère public. – Matières civiles. – Avis. – Collaborateur du Juge.

(...)

VI. – Le législateur belge n'a d'une manière générale, pas disposé à l'égard des exécutions forcées, exercées tant contre l'Etat belge que contre les Etats étrangers, il ne l'a fait expressément qu'en ce qui concerne les navires de mer appartenant à l'Etat et ceux qu'il exploite ou affrète pour décider que ceux-ci seraient au regard tant des actions en justice que de la procédure, soumis au régime de droit commun.

L'impossibilité d'exécuter un jugement contre l'Etat belge procède de facteurs propres à l'ordre public interne belge, c'est à dire participant de "l'intérêt général" de la communauté belge, à laquelle "les biens sont affectés" et qu'il importe "de ne pas distraire de leur destination".

Cet intérêt majeur incitant à soustraire sur son propre territoire l'Etat belge à une exécution forcée, n'apparaît pas au profit d'un Etat étranger ayant conclu quelque negotium en Belgique.

C'est à tort qu'un Etat étranger prétend au titre du principe de l'égalité, voire de l'indépendance des Etats dans la société internationale, pouvoir se réclamer de l'immunité d'exécution au regard de jugements rendus par les tribunaux belges et qui sont susceptibles d'affecter ses intérêts particuliers : qu'il prétend ainsi échapper à l'emprise d'une juridiction dont, non plus que l'Etat belge, lorsqu'il est assigné, il ne décline la compétence; mais prétend, à l'encontre de cet Etat, éluder en fait comme en droit l'application; qu'il tend de la sorte à réclamer à son profit un statu que l'Etat belge, qui s'exécute volontairement sur son propre territoire, s'interdit, effectivement, par respect pour la chose jugée.

En droit positif, la souveraineté de l'Etat étranger s'arrête à sa frontière, sous la réserve des exceptions imposées par le libre exercice de sa représentation diplomatique à l'extérieur.

La confiance étant la condition essentielle des transactions tant nationales qu'internationales, le courant de celles-ci ne peut se trouver utilement affecté du fait qu'un jugement les sanctionne et en assure, au surplus, l'exécution sur des biens étrangers qui se trouvent en Belgique.

On n'aperçoit pas quelle considération justifierait le juge de refuser une validation de saisie, fondée en droit au profil d'une société belge, par la raison que la validation pourrait préjudicier aux intérêts d'un Etat étranger, attrait, dans les conditions de la cause, devant les tribunaux belge par un ressortissant belge; en ce faisant, le juge ne fait qu'accomplir, dans

son sens le plus large, sa mission institutionnelle, sous la réserve des recours; qu'à cet égard, le législateur a en vue de porter remède aux écarts pouvant échapper à la vigilance ou à la discrétion du magistrat.

## ANTECEDENTS DE LA CAUSE

Attendu qu'il n'est pas contesté qu'à la date du 27 août 1925 fut conclu entre la demanderesse et l'Etat hellénique un contrat, ayant pour objet la construction, par la demanderesse, en Grèce, pour le compte de l'Etat hellénique, de certaines lignes de chemin de fer, ainsi que la réfection de certaines autres lignes et la fourniture du matériel nécessaire à leur exploitation; que cette convention et le décret-loi hellénique du 6 octobre 1925, qui la ratifiait, furent publiés au n° 294 du Journal Officiel du Gouvernement hellénique du 8 octobre 1925; que l'article 2 du décret-loi portait : "Toutes les clauses de la Convention précitée et de son avenant acquièrent par la présente ratification force de loi";

Attendu que le financement des prestations et des fournitures assumées par la demanderesse devait se faire par un prêt, que la demanderesse consentait à l'Etat hellénique, mais qui était couvert par la remise, à la demanderesse ou à un "trustee" d'une certaine quantité d'obligations d'un emprunt, émis à cet effet par l'Etat hellénique, - dont les intérêts et l'amortissement, conventionnellement arrêtés d'avance, devaient permettre à la demanderesse de faire face aux frais et dépenses de son entreprise;

Attendu que l'Etat hellénique ne dénie pas avoir cessé tout paiement d'intérêt, et tout amortissement sur lesdites obligations le 1<sup>er</sup> juillet 1932;

Attendu que la convention du 27 août 1925 contenait une clause compromissoire comportant, notamment, la suivante : "Les décisions des arbitres seront souveraines et sans appel";

Attendu que, par une première sentence, rendue le 3 janvier 1936, la Commission d'arbitrage, sur les conclusions de la société demanderesse, prononça la résiliation de la convention du 27 août 1925, en raison de la suspension du service de l'emprunt par le Gouvernement hellénique; que cette sentence institua une expertise, destinée à établir le montant et le mode de paiement des sommes, qui seraient constatées à être dues par l'une des parties à l'autre, à la suite de la résiliation du contrat;

Attendu que, le 25 juillet 1936, la Commission arbitrage rendit une seconde décision par laquelle, après due compensation des sommes, que les parties se devaient ou se réclamaient l'une à l'autre la créance finale de la société demanderesse, à charge de l'Etat hellénique, était fixée à 6.771.868 dollars-or U.S.A. au poids et fin d'août 1925, avec intérêts de 5 % au profit de la société demanderesse, à dater du 1<sup>er</sup> août 1936;

Attendu que la sentence obligeait, en outre, la société à remettre à l'Etat hellénique ses dossiers, plans et études, et à lui livrer une certaine quantité de matériel roulant, resté en Belgique; que, de son côté, l'Etat hellénique devait restituer une lettre de garantie et se substituer à la société dans les rapports entre celle-ci et les tiers;

Attendu que l'une des principales questions, soumises aux arbitres, était celle de savoir si les obligations pécuniaires de l'Etat hellénique, à la suite de la résiliation du contrat du 27 août 1925, constituant une dette pure et simple, ou bien, comme le prétendait l'Etat hellénique, pouvaient être considérées comme une partie de la dette extérieure hellénique, et soumises aux mêmes conditions de paiement que celles qui s'appliquaient à cette dette; que la décision des arbitres, rendue à l'unanimité, écarta les prétentions de l'Etat hellénique quant à ce, et le qualifia débiteur pur et simple de la somme, reprise ci-avant;

Attendu que les dispositions de sentences, autres que celle, relative au paiement de 6.771.668 dollars-or, furent exécutées, tant par la société que par l'Etat hellénique; que la substitution de l'Etat hellénique à la société, vis-à-vis des tiers fut réalisée par la "loi de nécessité" du 7 décembre 1936, publiée au Journal Officiel du 8 décembre, loi portée en exécution de la sentence arbitrale;

Attendu, en revanche, que la demanderesse Socobel prétend que toutes démarches pour obtenir paiement, total ou même partiel de sa créance, auraient rencontré une résistance persistante de l'Etat hellénique; que celui-ci aurait prétendu subordonner tout arrangement à la condition, écartée par les arbitres, que la dette du Gouvernement hellénique serait considérée comme partie de la Dette publique hellénique et traitée comme telle; que la Socobel déclare qu'au contraire les arbitres avaient affirmé le caractère commercial de la créance, et décidé qu'elle ne faisait pas partie de la Dette extérieure hellénique;

Attendu que la société demanderesse s'adressa, le 21 mai 1937, au Gouvernement belge, - intervenant volontaire dans la cause (R.G. 27386), afin d'obtenir sa protection; que, dès le 14 juin 1937, le Gouvernement belge prit fait et cause pour la société et fit agir son ministre à Athènes; mais que ces interventions ne furent pas suivies d'effet, le Gouvernement hellénique considérant sa dette, envers la société belge, comme faisant partie de la Dette extérieure hellénique, et ne pouvant être réglée par une autre voie que celle-ci;

Attendu que le Gouvernement belge proposa, dès lors, au Gouvernement hellénique de soumettre, par compromis, le différend au jugement de la Cour permanente de Justice internationale à La Haye; que cette proposition n'ayant pas été agréée par le Gouvernement hellénique, le Gouvernement belge saisit ladite Cour, par voie de requête unilatérale;

Attendu que la compétence de la Cour permanente de Justice internationale se fondait sur l'article 36 du Statut de ladite Cour, ainsi que sur l'article 4 de la Convention de Conciliation, d'Arbitrage et de règlement judiciaire, intervenue le 25 juin 1929 entre la Belgique et la Grèce (loi belge du 14 juillet 1930);

Attendu qu'au cours des débats devant cette haute juridiction, l'Etat hellénique tendit à obtenir que la créance de la société, au lieu d'être considéré comme une créance purement commerciale, ainsi que l'avaient décidé les arbitres, fût traitée comme faisant partie de la Dette extérieure hellénique et affectée des mêmes conditions de moratoire que celle-ci;

Attendu que la Cour, dans son arrêt du 15 juin 1939, par 13 voix (y compris celles du juge belge et du juge grec) a dit "que les sentences arbitrales rendues les 3 janvier et 25 juillet 1936 entre le Gouvernement hellénique et la Société Commerciale de Belgique, sont définitives et obligatoires";

Attendu que, prétend la demanderesse Socobel, après comme avant l'arrêt de la Cour permanente de Justice internationale, elle aurait envoyé périodiquement au Gouvernement hellénique le relevé de sa créance avec le compte des intérêts à jour;

Que jamais, le Gouvernement hellénique n'aurait répondu à ces envois de comptes, ne faisant à la société demanderesse aucun paiement d'acompte; que le seul acompte, que la demanderesse ait jamais reçu sur sa créance aurait consisté dans une somme de 111.384 dollars papier, qui se trouvaient entre les mains de la Société Nationale de Crédit à l'Industrie pour le compte de la Grèce, et que la société demanderesse avait frappée de saisi-arrêt; que l'Etat hellénique abandonna cette somme à la société demanderesse;

## DISCUSSION

Action mue par la Société Commerciale de Belgique, société anonyme demanderesse au principal, contre l'Etat hellénique et la Banque de Grèce :

(...)

III.- Attendu que l'action principale apparaissant recevable autant que fondée, dans son principe, il échet, au tribunal d'examiner la pertinence de l'exception d'immunité d'exécution, opposée par le premier défendeur à la validation des saisies querellées; qu'au seuil de ce débat, il n'est pas sans intérêt de souligner que certaine doctrine et certaine jurisprudence reconnaissent une corrélation intrinsèque entre cette immunité et celle de juridiction, dont elle ne ferait que procéder (cf. infra p. 30);



Attendu que le premier défendeur oppose deux objections, déduites, la première, du principe de l'égalité des Etats, la seconde de celui de la courtoisie internationale

#### A. - Egalité des Etats :

Attendu que, du fait que la législation belge ne permettrait pas, prétendument, les exécutions forcées contre l'Etat belge, le premier défendeur entend conclure, a pari, que semblable immunité devrait compéter aux Etats étrangers pour leurs biens et intérêts, se trouvant sur le territoire de la Belgique; qu'il fait valoir qu'il se trouve au nombre des Etats qui, chez eux, professent l'insaisissabilité des biens nationaux;

Attendu qu'au point de vue de sa teneur cette articulation mérite d'être rectifiée, dans ce sens qu'en réalité le législateur belge n'a, d'une manière générale, pas disposé à l'égard des exécutions forcées, exercées tant contre l'Etat belge que contre les Etats étrangers; qu'en vérité, il ne l'a fait expressément qu'en ce qui concerne les "navires de mer, appartenant à l'Etat et ceux qu'il exploite ou affrète" et que ce fut, précisément, pour décider que ceux-ci seraient, au regard tant des actions en justice que de la procédure, soumis au régime de droit commun (quatrième loi du 28 nov. 1928, art. 1 à 4);

Attendu qu'aucun argument a contrario ne peut être inféré de ce qu'une loi belge soit intervenue pour introduire dans notre droit positif, les dispositions d'une convention internationale soustrayant, d'une manière expresse, des navires à un régime antérieur; qu'en effet, le législateur a, lui-même, reconnu qu'en principe une intervention de la loi n'était pas indispensable mais, - et simplement - "utile" "certains gouvernements, entrés dans le commerce maritime depuis la guerre" n'ayant jamais entendu se prévaloir de l'immunité (Rapport au Sénat, Pasin. 1928, p. 488); que son propos n'a été que de régler au regard de notre régime intérieur, et en vue de l'entente internationale, une matière particulière, intéressant le droit des gens (loc. cit. et Rapport de la Commission de la Chambre, op. cit. p. 485);

Attendu qu'au regard de l'Etat belge, la doctrine se borne à enseigner que, "l'exécution forcée n'est pas possible en ce qui le concerne" (De Page, Droit civil, t. VI éd. 1942 n) 733; note 2 sous Brux. 22 nov. 1907, Pas. 1908, II, 55; note 1 sous Trib. Anvers 24 nov. 1910, Pas. 1911, III, 104; - Leurquin, op. cit. n° 74);

Attendu qu'à ce point de vue l'objection, opposée par le premier défendeur, apparaît théorique; qu'il est, en effet, notoire que l'Etat belge s'incline devant la force de la chose jugée jusqu'à inscrire d'office, - en vertu des pouvoirs que lui reconnaissent les lois organiques, - au budget des institutions publiques subordonnées, le montant des condamnations, prononcées à leur charge;

Attendu qu'il résulte, du reste, des considérations, émises par les autorités, citées ci-devant, que l'impossibilité d'exécuter un jugement contre l'Etat belge procède de facteurs, propres à l'ordre public interne belge, c'est à dire participant de "l'intérêt général" de la communauté belge, à laquelle "les biens de l'Etat sont affectés" et qu'il importe de ne pas "distraindre de leur destination" (cf. notamment, De Page, loc. cit.) :

Attendu que cet intérêt majeur, existant à soustraire, sur son propre territoire, l'Etat belge à une exécution forcée, à laquelle procéderait une quelconque partie poursuivante, n'apparaît pas au profit d'un Etat étranger, ayant conclu quelque negotium en Belgique; que semblable Etat s'est, en effet, exposé à l'application des lois belges et ne peut faire valoir les considérations d'autorité comme de prestige, compétant en Belgique aux autorités qui y exercent et y doivent exercer le pouvoir de commandement;

Attendu qu'aussi bien le premier défendeur se réclame-t-il de plano du régime de l'égalité des Etats, afin de bénéficier, en Belgique, de la condition, propre et particulière à l'Etat belge; qu'il écarte, sans y répondre, la considération déduite par la demanderesse, de ce que, en s'opposant à l'exécution, en territoire belge, des saisies-arrêts, pratiquées à sa charge, le premier défendeur, qui se réclame de l'indépendance des Etats, cause, en réalité,

préjudice à l'indépendance économique locale (Van Praag, Immunité de juridiction des Etats étrangers, Rev. Dr. Int. 935, p. 129) :

Qu'ainsi, le premier défendeur se réclame-t-il d'une considération, qui compète à l'Etat belge, en tant que responsable de l'ordre public interne, mais qui ne lui compète pas à lui-même;

Attendu qu'à l'appui de leurs thèses la demanderesse et le premier défendeur produisent des autorités, tant doctrinales que jurisprudentielles;

Attendu qu'en l'espèce les opinions divergentes ne doivent pas tant être comptées que pesées, et que leur incidence relative, dans le présent débat, dépend des facteurs concrets du litige, à propos duquel elles sont, respectivement, invoquées;

Attendu que cette considération s'impose avec toute la pertinence, qui est la sienne, dès lors que l'on a égard que ces opinions n'interprètent pas une loi écrite, mais bien une coutume, sujette à l'évolution, propre aux facteurs qui l'ont fait naître;

Attendu qu'en définitive il résulte de la teneur de ces opinions, dûment précisées et rectifiées par les parties au cours des débats, qu'il serait assurément inexact de prétendre que doctrine et jurisprudence belges soient unanimes en la matière;

Attendu que, seule, la demanderesse invoque, en conclusions, certaines versions doctrinales et jurisprudentielles, dont le premier défendeur ne récusé pas la teneur, se bornant à opposer les siennes, énoncées, suivant l'usage, en plaidoirie;

Attendu qu'il n'incombe pas au tribunal de discuter, une à une, la pertinence des opinions, dont les parties se réclament; qu'il doit, en effet, aux plaideurs d'énoncer et justifier sa jurisprudence; qu'il ne lui appartient pas, en revanche, d'abriter celle-ci sous l'invocation, pure et simple, de décisions antérieures, quels que soient l'autorité et le rang des juridictions qui les ont rendues;

(Le style des jugements-dialectique, par P. Mimin, premier président de la Cour d'Angers, n° 130 et 132, Paris, Marchal et Billard, éd. 1936);

Attendu qu'il y a lieu de retenir que le premier défendeur invoque une tradition doctrinale et jurisprudentielle ancienne, qui a trouvé, naguère encore, des échos dans nos cours et tribunaux;

Attendu qu'il échet, cependant, d'observer que la thèse, développée par la demanderesse, n'est pas sans pouvoir se réclamer d'autorités, intéressant tant la science du droit que son application juridictionnelle;

que si celles-ci ne remontent pas aussi loin dans le passé que les opinions qui leur sont opposées, elles accusent un mouvement constant, sinon continu, se manifestant de 1885 jusqu'à nos jours et dont, pour mémoire, la relation suit : Cour de cassation de Florence, 25 juillet 1885; (cf. relation d'arrêts rendus postérieurement par les Cours italiennes. Pand. Pér., 1932, p. 426; - De Paep. P., Conseiller à la Cour de cassation de Belgique, membre de la Commission de réforme du Code de procédure civile, dans la Compétence civile à l'égard des étrangers (éd. 1894, Bruxelles, Bruylant n° 47 à 50); - conclusions du procureur général Terlinden, avant Cass., 11 juin 1903, Pas. 1903, I, pp. 294 et sqq; note 1 sous Trib. Anvers, 24 nov. 1910, Pas., 1911, III, 104, par référence à l'état de la législation ottomane; André Prudhomme, directeur du Journal de droit international de Clunet, Clunet, 1926, p. 311; - Cour de Paris, 19 nov. 1926 dans Clunet, p. 406 et la note: - Cass. Fr., requ., 19 févr. 1929. Sir. 1930, I, 49 et la note du professeur Niboyet : - Trib. 1<sup>ère</sup> inst. Athènes 1930, Clunet 1932 p. 810; - Van Praag, "Possibilité d'exécution des jugements qui condamnent les Etats étrangers" dans Rev. dr. int. lég. comp., 1935, pp. 117, 122, 127 : note 260; 129 à 131, et la note 269; 135 à 137; (cf. également, op. cit., 1934, pp. 653 à 682; 1923, pp. 436 à 454, Pasim.) : - Comm. Marseille, 11 mai 1938, Clunet, 1939, p. 72; - professeur Niboyet. Traité de droit international privé. T. VI. Éd. 1949, n° 1761 à 1769, complétant et mettant à jour une information jurisprudentielle, arrêtée à l'année 1920 dans un ouvrage, jadis écrit en collaboration avec Pillet (Man. Dr. Int. pr. 1924, n°592; 1928 n° 802, Paris, Sirey);

Attendu que la relation qui précède suffit à manifester qu'à tort prétendrait-on qu'il serait interdit au juge, tenant compte et des facteurs de l'évolution contemporaine et de l'absence d'une version indicative, donnée par la Cour suprême, d'avoir, à ceux-ci tels égards que de droit;

Que la Cour de cassation, elle-même "n'est évidemment pas liée par ses arrêts" devant, au contraire "réexaminer les questions, chaque fois que celles-ci sont portées devant elle" (La Cour de cassation, considérations sur sa mission, mercuriale de M. le procureur général Cornil, J.T. 1950, p. 493); qu'il sied de remarquer, ici, que l'opinion, rappelée ci-devant, se réfère au cas d'une interprétation de la loi écrite "dépassée parla marche des idées et des faits" (loc. cit.) alors que la contestation, à présent examinée par le tribunal, concerne la portée d'une règle, simplement coutumière;

Attendu qu'il échet d'observer que le 1<sup>er</sup> défendeur n'a rien trouvé à répondre à cette considération, pertinente et essentielle, développée par la demanderesse, et suivant laquelle l'évolution jurisprudentielle contemporaine se trouve dominée par le fait, constant, du développement de plus en plus considérable de l'action de l'Etat moderne, se manifestant, de manière positive, voire directe, dans le domaine du commerce et de l'économie internationale; que le 1<sup>er</sup> défendeur n'a pu contester que, depuis un arrêt, plus que centenaire, rendu le 22 janvier 1849, par la Cour de cassation de France, ce développement n'a cessé de s'accuser; qu'il lui eût, du reste, été malaisé de la faire, la loi IV du 28 novembre 1928 dont question ci-devant, ayant procédé de ce facteur, dûment accusé par ses auteurs (Pas. 1928, loc. cit.) (cf. supra pp. 24 et 25 du présent jugement);

Attendu que c' est cette conception, dépassée par les événements, d'un "Etat-gendarme", qu'un magistrat éminent, dans des conclusions, données avant l'arrêt du 11 juin 1903, rendu par la Cour de cassation de Belgique, déjà réprouvait, en invitant la Cour suprême à casser un arrêt, rendu par le juge du fond, "les yeux tournés vers le passé" alors qu'il incombait à la Cour suprême de dire le droit "en ne tenant compte que du présent et en regardant l'avenir"; que ce haut magistrat estimait, au surplus, évident "que le pouvoir d'exécution est la conséquence du pouvoir de juridiction" (Concl. du premier avocat général Terlinden, avant Cass. 11 juin 1903. Pas. 1903, I, 298 à 300); que l'on n'aperçoit pas pourquoi l'Etat hellénique, "personne civile sur son territoire, se trouverait personne souveraine au delà de la frontière, les conditions d'une convention étant restées les mêmes et le seul changement intervenu étant la nationalité du juge, appelé à régler le différend" (op. cit. 297); (cf. au sujet de ce qui précède, également De Paepe, op. cit. n° 47; Niboyet. Op. cit. t. VI, n° 1769, p. 361).

Attendu que le fait que, même sur son territoire, la condition de l'Etat, personne civile, n'est pas, en tout point, assimilable, pratiquement, à celle des personnes civiles privées (De Page, Droit civil, t. II, n° 1067bis. Éd. 1940) est sans intérêt dans le débat, ainsi qu'il a été démontré ci-avant (page 25 du présent jugement);

Attendu que c'est l'enchevêtrement des rapports économiques entre les Etats modernes, qui a autorisé un jurisconsulte réputé à dégager les conclusions suivantes, ayant égard autant aux principes de l'ordre international qu'aux nécessités du commerce juridique entre les Etats : "La relation fondamentale des Etats n'est pas leur indépendance réciproque, c'est la reconnaissance et le respect de leurs souverainetés"; que cette version doctrinale se trouve explicitée dans les termes suivants : "L'indépendance extérieure de l'Etat ne s'affirme, en effet, comme une réalité tangible et concrète que dans les limites, internationalement acceptées, de son autorité souveraine; elle n'est, donc, qu'une conséquence, dérivée du respect mutuel des souverainetés" (Ch. de Visscher, "Les Gouvernements étrangers en Justice", Rec. dr. int. lé. Comp. 1922, p. 311); que les considérations qui précèdent, viennent consacrer le principe que la souveraineté d'un Etat ne réalise pas un absolu, devant lequel les autres Etats ne pourraient adopter d'autre attitude que celle d'une adhésion inconditionnelle; Que semblable conception, que le premier défendeur s'est, du reste, abstenu d'exprimer, irait à l'encontre de la notion même d'une société internationale ordonnée;

Attendu que c'est, dès lors, à tort que le premier défendeur prétend, au titre du principe de l'égalité, voire de l'indépendance des Etats dans la société internationale, pouvoir se réclamer de l'immunité d'exécution, au regard de jugements, rendus par les tribunaux belges, et qui sont susceptibles d'affecter ses intérêts particuliers; qu'il prétend, ainsi, échapper à l'emprise effective d'une juridiction dont, non plus que l'Etat belge, lorsque celui-ci est assigné, il ne décline la compétence, mais prétend, à l'encontre de cet Etat, éluder en fait comme en droit, l'application; qu'il tend, de la sorte, à réclamer à son profit la reconnaissance d'un statut, que l'Etat belge, qui s'exécute volontairement sur son propre territoire, s'interdit, effectivement, par respect pour la chose jugée;

Attendu, au surplus, qu'en droit positif, la souveraineté de l'Etat étranger s'arrête à sa frontière, sous la réserve des exceptions, imposées par le libre exercice de sa représentation diplomatique à l'extérieur;

Que les considérations, opposées par le premier défendeur, sont étrangères à ce concept;

(...)

Par ces motifs.

LE TRIBUNAL :

Vu la loi du 15 juin 1935 sur l'emploi des langues en matière judiciaire;

Oùï M. Rutten, substitut du procureur du Roi, en son avis conforme;

Statuant contradictoirement et rejetant toutes conclusions autres, plus amples ou contraires, comme non fondées;

Joignant comme connexes les causes inscrites au Rôle général sub nis. 26433, 26434, 26545, 26546, 26895 et 27386; Donnant acte aux parties de leurs dires, dénégations ou réserves;

Donnant acte à l'Etat belge, représenté par MM. les Ministres du Commerce et de l'Extérieur, ainsi qu'à la Société Commerciale de Belgique, l'Etat hellénique, la Banque de Grèce, et la Banque de Bruxelles, du désistement de son intervention volontaire, offert par l'Etat belge, du référé à justice et des acceptations de ce désistement, marqués par les autres parties;

Décrète le désistement de l'Etat belge, représenté comme dit ci-dessus;

Condamne l'Etat belge aux dépens de son intervention volontaire;

Statuant sur les actions inscrites au R.G. Sub. Nis. 26433, 26434, 26545 et 26546, mues à la requête de la Société Commerciale de Belgique contre l'Etat hellénique et la Banque de Grèce :

Déclare bonnes et valables, et en conséquence, valide les saisies-arrêts pratiquées à la requête de la partie demanderesse, Socobel, à charge des défendeurs, l'Etat hellénique et la Banque de Grèce, les 23 et 25 novembre 1950 par ministère de Me Baiwir de Bruxelles, entre les mains de la S.A. Banque de Bruxelles, la Banque Nationale de Belgique et la S.A. Banque de la Société Générale de Belgique : le 20 novembre 1950, par ministère de Me Vyt d'Anvers et Me Vanderhaegen de Gand, entre les mains de la S.P.R.L. Van Dosselaere et Cie, et la S.A. Colufrandes et la S.A. Clouteries et Trèfileries des Flandres; le 20 novembre 1950, par ministère de Me Baiwir de Bruxelles, entre les mains de la S.A. Ucométal et de la S.A. Société Commerciale de Sidérurgie; le 29 novembre 1950, par le ministère de Me Fossion, de résidence à Liège, entre les mains de la S.A. Ougrée Marihaye, la Société Coopérative Cobelmétal, la S.A. Phenix works, la S.A. John Cockerill, la S.A. Comptoir des Aciéries Belges, la S.A. Espérance-Longdoz, par le ministère de Me Boeckx, de Charleroi, entre les mains de la S.A. Hauts Fourneaux, Forges et Aciéries de Thy-le-Château et Marcinelle, la S.A. Métallurgie de Sambre-et-Moselle, la S.A. Usines Métallurgiques du Hainaut par le ministère de Me Lefèvre, de Binche, entre les mains de la S.A. Usines et boulonneries de Mariemont, la S.A. Forges et Laminoirs de Baume; par

ministère de Me Adant, de Charleroi, entre les mains de la S.A. Hauts Fourneaux et Laminoirs de la Providence; par ministère de Me Collette, de Huy entre les mains de la S.A. Boulonnerie de Huy, par ministère de Me Detraux, de Manage, entre les mains de la S.A. Usines Gilson; par ministère de Me Theys, de Nivelles, entre les mains de la S.A. Forges de Clabecq; par ministère de Me Monnom, de La Louvière, et Me Baiwir de Bruxelles, entre les mains de la S.A. Usines Gustave Boel, aux sièges de La Louvière et de Bruxelles;

Déboute les défendeurs, Etat hellénique et Banque de Grèce, de leur demande reconventionnelle;

Et statuant sur l'action 26895 du R.G. mue à la requête de la Banque de Grèce, demanderesse en intervention et de déclaration de jugement commun, contre la Banque de Bruxelles :

Déclare l'action recevable, mais non fondée;

En déboute la demanderesse, Banque de Grèce;

Et statuant sur la prosécution de la cause Socobel contre l'Etat hellénique et la Banque de Grèce :

Déclare qu'il y a lieu de surseoir à statuer, quant à présent, au sujet de la délivrance des sommes saisies, postulée par la demanderesse Société Commerciale de Belgique;

Dit que celle-ci sera tenue de déclarer à l'audience de ce tribunal, si elle postule ou non, après le prononcé du présent jugement, condamnation de sommes, à charge des défendeurs : Etat hellénique et Banque de Grèce;

Dit qu'à défaut par la demanderesse de s'expliquer à cet égard, il sera loisible aux défendeurs précités de prendre telles dispositions que le conseil;

Fixe à cette l'audience du 29 mai 1951;

Réserve les dépens dans les causes ci-devant, non réglées à cet égard.

(a)	<b>Registration no./ N° d'enregistrement</b>	B 08
(b)	<b>Date</b>	15 février 2000
(c)	<b>Author(ity)/(Service) auteur</b>	Cour d'appel de Bruxelles
(d)	<b>Parties</b>	Leica AG c/ Central Bank of Iraq et Etat irakien
(e)	<b>Points of law/Points de droit</b>	<p>Cet arrêt consacre d'abord l'existence d'une immunité d'exécution pour les missions diplomatiques basée sur l'article 25 de la Convention de Vienne de 1961 («selon lequel l'Etat accréditaire accorde toutes facilités pour l'accomplissement des fonctions de la mission ») ;</p> <ul style="list-style-type: none"> <li>- Ensuite, il confirme, dans le cadre de l'immunité d'exécution, la distinction entre les biens affectés à des fins souveraines (iure imperii) et les biens affectés aux fins de gestion (iure gestionis) ;</li> <li>- En ce qui concerne la charge de la preuve, il établit une présomption en faveur de l'affectation des biens au fonctionnement de la mission, d'où une présomption en faveur de l'immunité d'exécution, sauf preuve contraire que doit apporter le demandeur ;</li> <li>- Il affirme l'existence d'un contrôle marginal par le juge afin de vérifier la crédibilité de l'affectation des biens</li> </ul>
(f)	<b>Classification no./n°</b>	2
(g)	<b>Source(s)</b>	Journal des Tribunaux 2001 p. 6
(h)	<b>Additional Information/ Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	Voir annexe B 08

### Résumé des faits :

Le 25 juillet 1997, la société suisse Leica saisit des sommes sur des comptes bancaires appartenant à l'Irak. Celui-ci assigne Leica devant le juge des saisies et fait valoir l'immunité d'exécution pour ses comptes d'ambassade. Le juge des saisies tranche en faveur de l'Irak. Leica fait appel de cette décision et la Cour d'appel de Bruxelles rend son arrêt le 15 février 2000. Elle ordonne la levée de la saisie effectuée par Leica dans la mesure où elle porte sur des comptes dont est titulaire l'Ambassade d'Irak à Bruxelles.

## ANNEXE B08

**I. IMMUNITÉ DIPLOMATIQUE. —**  
Convention de Vienne sur les relations  
diplomatiques. — Article 25. —  
Interprétation. — Application aux  
comptes en banque d'ambassade. —  
Preuve de l'affectation des dépôts. —  
**II. IMMUNITÉ D'ÉTAT. —** Preuve  
de l'affectation à des fins publiques  
ou privées. — **III. CONSEIL DE  
SÉCURITÉ DES NATIONS UNIES. —**  
Résolution 687 (1991) du 3 avril 1991.  
— Effet sur la souveraineté de l'Iraq.

Bruxelles (2<sup>e</sup> Ch.), 15 juillet 2000

Siég. : M. Blondeel, prés.; M. Racs et  
Mme Schürmans, cons.

Plaid. : MM<sup>es</sup> Walravens, Sepulchre, J.V.  
Lindemans, Angelot.

(Leica AG c. Central Bank of Iraq et Etat ira-  
quien).

I. — Il résulte de la Convention de Vienne du  
18 avril 1961 sur les relations diplomatiques, et  
plus particulièrement de son article 25, que les  
comptes d'ambassade doivent bénéficier de  
l'immunité dans l'Etat d'accueil. L'immunité  
diplomatique des comptes d'ambassade trouve  
seulement à s'appliquer dans la mesure où les  
sommes y déposées sont nécessaires ou utiles à  
l'exercice des fonctions de la mission. L'utilité  
des sommes pour les fonctions de la mission ré-  
sulte, en principe et avec une large marge d'ap-  
préciation, du jugement de l'Etat d'envoi et de  
la mission.

II. — L'immunité d'exécution peut uniquement  
être écartée s'il s'avère, non seulement que les  
sommes ne sont pas utiles à l'exercice des fonc-  
tions de la mission, mais aussi que ces sommes  
n'appartiennent pas au domaine public, mais  
sont affectées à des fins privées.

III. — La Résolution 687 (1991) du Conseil de  
sécurité n'a pas modifié les règles normales  
concernant l'immunité d'exécution pour les  
dettes de l'Iraq étrangères à la guerre du Golfe.

(Traduction)

2. — La demande de levée de la saisie introduite  
par l'Iraq.

2.3. — Attendu que Leica prétend que l'Iraq  
n'est pas fondé à se prévaloir de l'immunité  
d'exécution, ni même de l'immunité diploma-  
tique, afin de demander la levée de la saisie  
sur les comptes de son ambassade, conformé-  
ment au paragraphe 17 de la Résolution 687  
(1991), adoptée le 3 avril 1991 par le Conseil  
de sécurité des Nations unies, qui prévoit ce  
qui suit :

Décide que les déclarations faites par l'Iraq  
depuis le 2 août 1990 au sujet de sa dette ex-

érieure sont nulles et de nul effet et exige que  
l'Iraq honore scrupuleusement toutes ses  
obligations au titre du service et du rembour-  
sement de sa dette extérieure;

Attendu que la reconnaissance forcée de ces  
dettes ne signifie pas nécessairement que  
l'Iraq doit renoncer à l'immunité diploma-  
tique des comptes bancaires dont sont titulaires  
ses ambassades à l'étranger, ou encore renon-  
cer à l'immunité d'exécution de l'Etat;

Attendu que dans la même Résolution, une  
distinction est faite, d'une part, entre les det-  
tes et obligations de l'Iraq qui sont antérieures  
au 2 août 1990 et qui seront réglées par les  
voies normales, et d'autre part, la responsabi-  
lité de l'Iraq en vertu du droit international  
pour tous les dommages, y compris les attein-  
tes à l'environnement et la destruction des  
ressources naturelles, ou encore les préjudices  
subis par d'autres Etats et par des personnes  
physiques et des sociétés étrangères, qui sont  
la conséquence de l'invasion et de l'occupa-  
tion illégale du Koweït par l'Iraq;

Qu'en ce qui concerne la réparation des dom-  
mages mentionnés en dernier lieu, un fonds a  
été créé par les paragraphes 18 et suivants de  
la Résolution;

Que, dès lors, cette Résolution n'a pas modi-  
fié les règles normales concernant l'immunité  
d'exécution pour les dettes de l'Iraq qui sont  
étrangères à la guerre du Golfe;

Attendu que l'immunité d'exécution de l'Etat  
n'exclut d'ailleurs pas que la reconnaissance  
de dette mène à l'exécution effective, et cela  
alors même que l'Etat iraquien ne paie pas vo-  
lontairement ou refuse de se conformer à un  
titre exécutoire;

Que, en effet, sans préjudice de l'immunité di-  
plomatique ou consulaire, l'immunité d'exé-  
cution de l'Etat peut seulement être invoquée  
pour des avoirs qui appartiennent au domaine  
public, et qui donc n'ont pas reçu une affecta-  
tion privée;

2.4. — Attendu qu'il résulte de la Convention  
de Vienne du 18 avril 1961 sur les relations  
diplomatiques, et plus particulièrement de  
l'article 25, que les comptes d'ambassade doi-  
vent bénéficier de l'immunité diplomatique  
dans l'Etat d'accueil;

Attendu que cette Convention ne prévoit pas,  
comme le fait l'article 22, § 3, pour les locaux  
de la mission, leur ameublement et les autres  
objets qui s'y trouvent ainsi que pour les  
moyens de transport de la mission, que les  
comptes en banque de la mission ne peuvent  
faire l'objet d'aucune perquisition, réquisi-  
tion, saisie ou mesure d'exécution;

Attendu néanmoins que l'article 25 de la Con-  
vention prévoit que l'Etat d'accueil accorde  
toutes facilités à la mission pour l'accomplis-  
sement de ses fonctions;

Que cela implique que les comptes en banque  
qui sont nécessaires ou utiles à l'exercice des  
fonctions de la mission ne peuvent faire l'ob-  
jet de mesures d'exécution;

Attendu que cette interprétation de la Con-  
vention de Vienne de 1961 est conforme aux rè-  
gles coutumières d'interprétation des Traités  
qui sont contenues dans la Convention de  
Vienne du 23 mai 1969 sur le droit des Traités  
(...);

Que l'article 31.1 prévoit en effet que le sens des dispositions d'un Traité doit être recherché à la lumière de son objet et de son but, et que la Convention sur les relations diplomatiques a pour but de faciliter les fonctions de la mission;

2.5. — Attendu que l'immunité diplomatique des comptes d'ambassade s'applique seulement dans la mesure où les sommes déposées sur les comptes sont nécessaires ou utiles à l'exercice des fonctions de la mission;

Que dans le cas contraire, il n'y aurait aucune raison d'octroyer l'immunité au compte de la mission conformément à l'article 25 de la Convention de Vienne sur les relations diplomatiques;

Attendu que l'utilité des sommes pour les fonctions de la mission relève, en principe et avec une large marge d'appréciation, du jugement de l'Etat d'envoi et de la mission elle-même;

Que ceci ne signifie cependant pas que cette utilité ne peut être contrôlée par les tribunaux belges;

Attendu que dans la présente affaire, il doit être admis que les sommes saisies à charge de l'Iraq, et qui se trouvent sur les comptes ouverts à la Générale de Banque au nom de l'ambassade d'Iraq, sont nécessaires ou tout au moins utiles à l'exercice des fonctions de cette ambassade;

Attendu que l'Iraq a présenté une déclaration du directeur général du ministère iraquien des Affaires étrangères, M. Tariq Al-Marouf, datée du 29 août 1992, où l'on peut lire ce qui suit :

— que la Résolution 665 des Nations unies du 25 août 1990 a pour conséquence que la représentation diplomatique de l'Iraq à Bruxelles devra être réduite, et la section commerciale de l'ambassade fermée,

— que la mission diplomatique de l'Iraq à Bruxelles ne peut utiliser les sommes mises à sa disposition par l'Iraq et qui sont déposées sur plusieurs comptes à la Générale de Banque que pour acquérir un bâtiment pour l'établissement de la nouvelle ambassade, afin de subvenir aux besoins de la mission auprès des autorités belges, et auprès des Communautés européennes, de payer le personnel intérimaire de la mission recruté sur place et de couvrir les frais liés à la résidence de l'ambassadeur, et

— que la mission n'est pas autorisée à exercer une quelconque activité commerciale, cette interdiction étant strictement contrôlée par le ministère des Affaires étrangères, conformément à l'embargo des Nations unies du 25 août 1990;

Attendu qu'il n'y a pas de raisons de douter de la crédibilité de cette déclaration;

Attendu qu'il est vrai qu'une somme de plus de 100.000.000 de FB a été saisie sur les comptes de l'ambassade d'Iraq;

Que l'Iraq a fourni quatre lettres émanant d'agents immobiliers qui montrent qu'avant la guerre du Golfe, des discussions et des négociations visant à acquérir un immeuble pour l'ambassade ont eu lieu, ce qui aurait nécessité une dépense considérable;

Que la mission diplomatique à Bruxelles est aussi la représentation de l'Iraq auprès des Communautés européennes;

Qu'il n'est pas anormal que les sommes soient libellées en monnaies étrangères;

Attendu que Leica n'a pas fait la preuve que les sommes saisies ne sont pas nécessaires ou utiles à l'exercice des fonctions de la mission;

2.6. — Attendu, de plus, que l'immunité d'exécution peut seulement être écartée, s'il apparaît, non seulement que les sommes déposées sur les comptes de la Générale de Banque ne pourraient pas être utiles à l'exercice des fonctions de la mission, mais aussi que ces sommes, qui font partie du patrimoine de l'Etat iraquien, n'appartiennent pas au domaine public de l'Iraq, mais sont affectées à des fins privées;

Attendu qu'aucun élément ne montre l'affectation des sommes à des fins commerciales;

Par ces motifs :

La Cour,

Déclare le présent appel recevable et partiellement fondé, confirme le jugement attaqué en ce qu'il juge la requête de l'Iraq recevable et fondée et par conséquent ordonne la levée de la saisie effectuée par Leica le 25 juillet 1997 dans la mesure où elle porte sur des comptes dont est titulaire l'ambassade d'Iraq à Bruxelles, confirme l'estimation des dépens, Réforme la saisie-arrest pour le reste



(a)	<b>Registration no./ N° d'enregistrement</b>	B 09
(b)	<b>Date</b>	16 mai 1972
(c)	<b>Author(ity)/(Service) auteur</b>	Exécutif – législatif(loi d'approbation du 19 juillet 1976),ratification le 27 octobre 1975.
(d)	<b>Parties</b>	Convention européenne sur l'immunité des Etats (convention multilatérale du Conseil de l'Europe (Bâle)
(e)	<b>Points of law/Points de droit</b>	La Convention fournit une liste de cas dans lesquels l'Etat ne bénéficie pas d'une immunité de juridiction dont le principe n'est pas mis en doute.
(f)	<b>Classification no./n°</b>	1,2a
(g)	<b>Source(s)</b>	Moniteur belge (M B) 10 juin 1976.
(h)	<b>Additional Information/ Renseignements complémentaires</b>	Protocole additionnel à la convention européenne sur l'immunité des Etats (ratifiée par la Belgique le 27 octobre 1975
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	Site Conseil de l'Europe ( <a href="http://convention.coe.int/treaty">http://convention.coe.int/treaty</a> ) STE n° 074,074A



## CROATIA

### 1. INTERNATIONAL LEGAL INSTRUMENTS

Republic of Croatia is not a party to, nor has it signed the European Convention on State Immunity of 1972 (European Treaty Series No. 074) with an Additional Protocol thereto (ETS No. 074A). Neither is a party or a signatory to any other international legal instrument in this field.

### 2. DOMESTIC LAW

Legislation of the Republic of Croatia does not regulate the issue of state immunity directly, however, it contains certain acts which direct to the rules of public international law. Examples include:

- a) **Civil Litigation Act** (Official Gazette of the Republic of Croatia, No. 53/91, 91/92) which reads in its Article 26, as follows:

*"Regarding the competence of Croatian courts of law to adjudicate the foreign nationals enjoying right to immunity in the Republic of Croatia, as well as foreign states and international organisations, rules of international law shall be applied.*

*In case where there is a doubt as to the existence and scope of the right of immunity, an explanation is given by an executive body in charge of judicial affairs."*

- b) **Execution Act** (Official Gazette of the Republic of Croatia, No. 57/96) reads in its Article 18, as follows:

*"An act of execution or an act of securing cannot be issued against the property of a foreign State without previous consent of the Ministry of Justice of the Republic of Croatia, except when a foreign State agrees to execution or securing."*

In the preliminary phase of the Pilot Project, the following data as annexed in standard forms (HR/1 – HR/7), has been collected.

a	<b>Registration No.</b>	HR/01
b	<b>Date</b>	26 June 1991
c	<b>Authority</b>	House of Representatives of the Parliament of the Republic of Croatia
d	<b>Parties</b>	
e	<b>Points of law</b>	Civil Litigation Act of Croatia in Article 26 states that in a dispute involving a foreign state or international organizations the relevant rules are those of public international law. In case of any uncertainties regarding the existence and scope of state immunity, an executive body in charge of judicial matters gives an explanation.
f	<b>Classification No.</b>	0.a., 0.b., 1., 2.c.
g	<b>Source</b>	Official Gazette of the Republic of Croatia, No. 53/91, 91/92.
h	<b>Additional information</b>	The act was taken over from legislation of Croatia's legal predecessor, the former Socialist Federal Republic of Yugoslavia
i	<b>Summaries</b>	

a	<b>Registration No.</b>	HR/02
b	<b>Date</b>	28 July 1996
c	<b>Authority</b>	House of Representatives of the Parliament of the Republic of Croatia
d	<b>Parties</b>	
e	<b>Points of law</b>	Execution Act of Croatia in Article 18 states that an act of execution or an act of securing cannot be issued against the property of a foreign State without previous consent of the Ministry of Justice of the Republic of Croatia, except when a foreign State agrees on execution or insurance.
f	<b>Classification No.</b>	0.a., 0.b., 1.c., 2.
g	<b>Source</b>	Official Gazette of the Republic of Croatia, No. 57/96.
h	<b>Additional information</b>	
i	<b>Summaries</b>	

a.	<b>Registration No.</b>	HR/03
b	<b>Date</b>	25 May 2001
c	<b>Authority</b>	Zagreb Municipal Court
d	<b>Parties</b>	J. Š. B. (individual) vs. the Embassy of Japan
e	<b>Points of law</b>	In this case, the Zagreb Municipal Court has not yet passed the final decision about state immunity. However, in this case there have been two opposite opinions regarding state immunity. The Ministry of Foreign Affairs establishes that in a labor dispute, a foreign country is able to be a party to the dispute because of limited state immunity in this category of cases. Contrary to that opinion, the Embassy of Japan holds that state immunity is absolute in accordance with general principles of public international law except in cases when a state expressly gives a consent for a trial before a court of a foreign country. The whole process is still ongoing.
f	<b>Classification No.</b>	0.b.2, 1b., 2.c.
g	<b>Source</b>	Zagreb Municipal Court, the Ministry of Foreign Affairs via the Ministry of Justice
h	<b>Additional information</b>	Pursuant to Article 26 of the Civil Litigation Act of Croatia, in a dispute involving a foreign state or international organizations the relevant rules are those of public international law. In case of any uncertainties regarding the existence and scope of state immunity, an executive body in charge of judicial matters gives an explanation.
i	<b>Summaries</b>	

a	<b>Registration No.</b>	HR/04
b	<b>Date</b>	9 April 2001
c	<b>Authority</b>	Zagreb Municipal Court
d	<b>Parties</b>	P.K. (individual) vs. the Embassy of the United States of America
e	<b>Points of law</b>	In this case, the Zagreb Municipal Court has not yet passed the final decision about state immunity. The defendant (Embassy of the USA) became involved in the dispute without challenging the competence of a Croatian court. By acting in this way, the defendant has given up the principle of absolute state immunity. The Ministry of Foreign Affairs establishes that in a labor dispute, a foreign country is able to be a party to the dispute because of limited state immunity in this category of cases. The whole process is still ongoing.
f	<b>Classification No.</b>	0.b.2, 1b., 2.c.
g	<b>Source</b>	Zagreb Municipal Court, the Ministry of Foreign Affairs of Croatia via the Ministry of Justice
h	<b>Additional information</b>	Pursuant to Article 26 of the Civil Litigation Act of Croatia, in a dispute involving a foreign state or international organizations the relevant rules are those of public international law. In case of any uncertainties regarding the existence and scope of state immunity, an executive body in charge of judicial matters gives an explanation.
i	<b>Summaries</b>	

a	<b>Registration No.</b>	HR/05
b	<b>Date</b>	19 October 1993
c	<b>Authority</b>	Zagreb Commercial Court
d	<b>Parties</b>	Company "S", Vinkovci, Croatia vs. the Republic of Bosnia and Herzegovina, Ministry of Transport and Communications
e	<b>Points of law</b>	The parties have previously agreed that any of their disputes would be subject to competence of the Zagreb Commercial Court. By doing so, the defendant (Republic of Bosnia and Herzegovina) did not bring up the issue of its immunity as an obstacle to settle the dispute before the Croatian court. The Court has decided and subsequently executed its decision on defendant's assets.
f	<b>Classification No.</b>	0.b.3., 1.b., 2.b.
g	<b>Source</b>	Zagreb Commercial Court
h	<b>Additional information</b>	The Commercial Court has asked for consent for execution of its decision from the Ministry of Justice and the Ministry of Foreign Affairs of Croatia. These executive bodies gave their consent.
i	<b>Summaries</b>	



a	<b>Registration No.</b>	HR/06
b	<b>Date</b>	9 June 1999
c	<b>Authority</b>	Zagreb Municipal Court
d	<b>Parties</b>	Company "S", Vinkovci, Croatia vs. the Republic of Bosnia and Herzegovina, Ministry of Transport and Communications
e	<b>Points of law</b>	In the dispute before the Municipal Court, the defendant did not raise the issue of its state immunity. Moreover, it has filed a counterclaim. The Zagreb Municipal Court has passed its decision in favor of the plaintiff.
f	<b>Classification No.</b>	0.b.3., 1.b., 2.c.
g	<b>Source</b>	Zagreb Municipal Court
h	<b>Additional information</b>	The defendant has lodged a complaint with the Zagreb District Court for the reasons unrelated to state immunity. The second-degree process is still ongoing.
i	<b>Summaries</b>	

a	<b>Registration No.</b>	HR/07
b	<b>Date</b>	4 December 2000
c	<b>Authority</b>	The Ministry of Foreign Affairs of Croatia
d	<b>Parties</b>	unknown
e	<b>Points of law</b>	The Ministry establishes that the exemption from acts of inquiry (by the court of law) is recognized only on the premises of the diplomatic mission notified as such by diplomatic protocol of the receiving country
f	<b>Classification No.</b>	0.a,1.a,2.c
g	<b>Source</b>	The Ministry of Foreign Affairs
h	<b>Additional information</b>	In the dispute initiated between private parties the issue of inquiry on the premises allegedly used by diplomatic mission of the foreign state was raised. The inviolability of such premises was not established since the premises in question were not the ones notified as such by that state's diplomatic protocol.
i	<b>Summaries</b>	

a	<b>Registration No.</b>	HR/08
b	<b>Date</b>	9 April 2001
c	<b>Authority</b>	Zagreb Municipal Court
d	<b>Parties</b>	L.O. (individual) vs. Turkish Embassy
e	<b>Points of law</b>	Based on a legal opinion given by the Ministry of Foreign Affairs via the Ministry of Justice of Croatia, the Court establishes that in a labor dispute, a foreign country is able to be a party to the dispute because of limited state immunity in this category of cases.
f	<b>Classification No.</b>	0.b.2,1.b,2.c
g	<b>Source</b>	Zagreb Municipal Court, the Ministry of Foreign Affairs via the Ministry of Justice of Croatia
h	<b>Additional information</b>	Pursuant to Article 26 of the Civil Litigation Act of Croatia, in a dispute involving a foreign state or international organizations the relevant rules are those of public international law. In case of any uncertainties regarding existence and scope of state immunity, an executive body in charge of judicial matters gives an explanation.
i	<b>Summaries</b>	



**CYPRUS**

The following Laws providing for State Immunities are in force:

1. The Diplomatic Rights, Immunities and Privileges Law, 1965 as amended by the Laws 67 of 1977 and 47 of 1985 (Annex I)
2. A Law ratifying the Vienna Convention on Diplomatic Relations (Law 40/68)
3. A Law ratifying the European Convention on State Immunities and Additional Protocol (Law 6/76).

Section 12 of law 60 of 1965 (Annex I) provides:

“12.-(1) A diplomatic agent shall enjoy immunity from criminal and civil jurisdiction of the Republic, except in the case of :

- (a) an action in respect of immovable property owned or occupied by him otherwise than on behalf of the sending State or for the purposes of the diplomatic mission;
- (b) an action in respect of succession in which the diplomatic agent is involved as executor, administrator, heir or legatee, otherwise than in this official capacity;
- (c) an action in respect of the exercise of any profession or the carrying on of any trade or business by the diplomatic agent in his private capacity.

(2) Save with the consent of the head of the diplomatic mission, a diplomatic agent shall not be required to give evidence in any civil or criminal proceedings.

(3) No execution shall be levied in respect of a diplomatic agent except in the case of paragraphs (a), (b) or (c) of sub-section (1):

Provided that in such a case execution may be levied without infringing the inviolability of the person or residence of the diplomatic agent.

(4) The immunity from civil and criminal jurisdiction of a diplomatic agent under this section may be waived by the head of the diplomatic mission:

Provided that in the case of execution of a judgment a specific waiver shall be required.”

4. It should be noted that all international treaties ratified by Law, have superior force to any other Law in Cyprus, on condition that such treaties are applied by the other party.

5. There are no judicial decisions involving state immunity and related matters.

## Appendix I

## THE DIPLOMATIC RIGHTS, IMMUNITIES AND PRIVILEGES LAW, 1965

## No. 60 of 1965

A LAW TO MAKE PROVISION FOR THE RIGHTS, IMMUNITIES AND PRIVILEGES OF THE DIPLOMATIC MISSIONS AND DIPLOMATIC AGENTS ACCREDITED TO THE REPUBLIC OF CYPRUS AND OF CERTAIN OTHER PERSONS AND FOR MATTERS CONNECTED THEREWITH.

(14th October, 1965.)

The House of Representatives enacts as follows : —

## PART I.—PRELIMINARY PROVISIONS.

1. This Law may be cited as the Diplomatic Rights, Immunities and Privileges Law, 1965. Short title.

2. In this Law, unless the context otherwise requires—

"Council of Ministers" means the Council of Ministers of the Republic; Interpretation.

"diplomatic agent" means any High Commissioner, Ambassador, Legate, Nuncio, Envoy, Internuncio, Minister, Chargé d'Affaires, Deputy High Commissioner, Counsellor, Secretary of Embassy, or Attaché (whether diplomatic, commercial, military or otherwise);

"diplomatic mission" means any High Commission, Embassy, Apostolic Delegation, Legation or United Nations mission established and functioning in the Republic;

"diplomatic premises" means any buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purpose of the diplomatic mission including the residence of the head of the mission;

"head of the diplomatic mission" means any diplomatic representative accredited by the sending State with the duty of acting in that capacity;

"immovable property" has the meaning assigned to such expression by section 2 of the Immovable Property (Tenure, Registration and Valuation) Law; Cap. 224.  
3 of 1960.

"judicial proceedings" means any proceeding had or taken in or before any Court, commission of inquiry or person in which or before whom evidence may be taken on oath, whether such Court, commission of inquiry or person takes evidence on oath or not;

"local staff" means the technical, administrative and service staff of the diplomatic mission, comprised of citizens or permanent residents of the Republic;

"members of the diplomatic mission" means any person who is a diplomatic agent, or belongs to the technical or administrative staff of the diplomatic mission or to the service staff thereof;

"private servants" means the persons who are in the domestic service of a member of the diplomatic mission and who are not employed by the sending State;

"registered" means recorded in the Land Register kept under the provisions of the Immovable Property (Tenure, Registration and Valuation) Law; Cap. 224.  
3 of 1960.

"Republic" means the Republic of Cyprus;

"sending State" means the State to which the mission belongs;

"service staff" means the members of the mission employed in the domestic service of the members of the diplomatic mission;

"technical and administrative staff" means the members of the diplomatic mission who are employed in the technical and administrative service of the diplomatic mission.

## PART II.—RIGHTS OF THE SENDING STATE AND OF ITS DIPLOMATIC MISSION.

Right of  
the sending  
State to  
acquire im-  
movable  
property  
in the  
Republic.

3.—(1) A sending State shall have the right to acquire under such form of tenure as obtains for the time being in the Republic and to own, hold or occupy in its own name immovable property situated in the Republic and required by the sending State for the purpose of its diplomatic mission or for a residence for the Head of the diplomatic mission or for any other purpose to which the Republic does not object.

(2) Subject to the provisions of any Law in force for the time being, the sending State shall have the right to erect, build, maintain, demolish, rebuild or otherwise change any immovable property owned by such State which is necessary for its diplomatic mission.

(3) Notwithstanding anything to the contrary effect in any other Law in force for the time being contained, immovable property of the sending State may be registered either in its name or in the name of its diplomatic mission.

Use of  
national  
flag and  
the State  
coat-of-  
arms.

4.—(1) The diplomatic mission shall have the right to fly the national flag and to display the State coat-of-arms, with an inscription identifying the diplomatic mission on its diplomatic premises.

(2) The Head of the diplomatic mission shall have the right to fly the national flag on his means of transport at any time.

## PART III.—IMMUNITIES AND PRIVILEGES OF THE DIPLOMATIC MISSION.

Inviolability  
of the  
diplomatic  
premises.

5.—(1) The diplomatic premises shall be inviolable.

(2) No act of any executive, administrative or judicial authority or organ of the Republic shall be performed within the diplomatic premises except by special permission of the head of the diplomatic mission.

(3) Nothing in this section contained shall be construed as precluding the compulsory acquisition or requisition by the Republic of any immovable property owned or otherwise held by the diplomatic mission under the provisions of the Constitution of the Republic and of any Law relating to compulsory acquisition or requisition in force for the time being.

Exemption  
from taxes,  
etc.

6. The sending State shall be exempted from all taxes, duties, dues, fees and any other charges imposed by the Republic in respect of its diplomatic premises, other than such as represent payment for specific services rendered.

Inviolability  
of archives.

7. The diplomatic archives, documents and official correspondence shall be inviolable.

Freedom of  
communi-  
cation.

8.—(1) The Republic shall permit and protect free communication by whatever means of the diplomatic mission for all official purposes :

Provided that for the importation, installation and use of a wireless transmitter or receiver, a previous licence by the Republic shall be required.

(2) The official correspondence of the diplomatic mission shall be inviolable.

(3) The diplomatic pouch shall not be opened or detained, if it bears visible external marks indicating its character.

Exemption  
from taxa-  
tion fees  
and charges.

9. The fees and charges levied by the diplomatic mission in the exercise of its official functions shall be exempted from any taxes, duties, dues, fees and any other charges.

**PART IV.—IMMUNITIES AND PRIVILEGES OF THE  
DIPLOMATIC AGENTS.**

**10.** A diplomatic agent shall not be liable to any form of arrest or detention.

No arrest,  
etc., of a  
diplomatic  
agent.

**11.—(1)** The private residence of a diplomatic agent shall be inviolable.

Inviolability  
of residence,  
etc.

**(2)** Any document, paper and correspondence of a diplomatic agent shall be inviolable and shall not be interfered with.

**12.—(1)** A diplomatic agent shall enjoy immunity from criminal and civil jurisdiction of the Republic, except in the case of—

Immunity  
from criminal  
and civil  
jurisdiction.

**(a)** an action in respect of immovable property owned or occupied by him otherwise than on behalf of the sending State or for the purposes of the diplomatic mission ;

**(b)** an action in respect of succession in which the diplomatic agent is involved as executor, administrator, heir or legatee, otherwise than in his official capacity ;

**(c)** an action in respect of the exercise of any profession or the carrying on of any trade or business by the diplomatic agent in his private capacity.

**(2)** Save with the consent of the head of the diplomatic mission, a diplomatic agent shall not be required to give evidence in any civil or criminal proceeding.

**(3)** No execution shall be levied in respect of a diplomatic agent except in the case of paragraphs *(a)*, *(b)* or *(c)* of sub-section (1) :

Provided that in such a case execution may be levied without infringing the inviolability of the person or residence of the diplomatic agent.

**(4)** The immunity from civil and criminal jurisdiction of a diplomatic agent under this section may be waived by the head of the diplomatic mission :

Provided that in the case of execution of a judgment a specific waiver shall be required.

**13.—(1)** A diplomatic agent shall be exempted from the requirements of any law and regulation relating to registration of aliens and so long as he performs his official functions he shall not be subject to any limitation or restriction imposed by such laws and regulations.

Exemption  
from the  
provisions  
of certain  
Laws.

**(2)** A diplomatic agent shall be exempted from any provision in force for the time being relating to social insurance.

**14.—(1)** A diplomatic agent shall be exempted from all taxes, duties, dues, fees and any other charges other than import duties, levied by the Republic.

Exemption  
from taxation,  
etc.

**(2)** A diplomatic agent shall not be exempted from—

**(a)** any indirect taxes, duties, dues, fees or any other charges which are normally incorporated in the price of goods or services ;

**(b)** any taxes, duties, dues, fees or any other charges on or in respect of immovable property owned or occupied by him unless he holds such property on behalf of the sending State for the purposes of its diplomatic mission ;

**(c)** any taxes, duties, dues, fees or any other charges levied by the Republic in the event of succession :

Provided that in the event of the death of a diplomatic agent the Republic shall permit the withdrawal of the movable property of the deceased, with the exception of any property in the Republic the export of which was prohibited at the time of his death



and the presence of which in the Republic was due to the presence of the deceased ;

- (d) any taxes, duties, dues, fees or any other charges on private income having its source in the Republic and on investments made in commercial undertakings in the Republic ;
- (e) any charges levied for specific services rendered.

Exemption from import duties and inspection of personal baggage.

15.—(1) The Republic shall, in accordance with the provisions of any law or regulation in force for the time being, permit importation of, and grant exemption from all customs duties, dues and any other charges, other than charges for storage or similar services, on—

- (a) any goods imported by a diplomatic agent for the official use of the diplomatic mission ;
- (b) any goods imported in the name of the diplomatic agent in reasonable quantities for his personal use, or for the use of members of his family forming part of his household :

Provided that in the case of the importation of a motor car for the personal use of the diplomatic agent or of his family there shall be permitted the importation and use, free of customs duties, dues and any other charges, of only one motor car so imported or of any other in replacement thereof.

(2) The personal baggage of a diplomatic agent shall be exempted from inspection, unless there are reasonable grounds for believing that it contains any goods not covered by the exemptions mentioned in sub-section (1), or any goods the importation or exportation of which is prohibited or controlled :

Provided that such inspection shall be conducted in the presence of the diplomatic agent or of his authorised representative.

Privileges of members of the family of the diplomatic agent.

16. The members of the family of the diplomatic agent forming part of his household shall, if they are not citizens of the Republic or permanent residents therein, enjoy the privileges and immunities specified in sections 10, 11, 12, 13, 14 and 15.

#### PART V.—MISCELLANEOUS.

Privileges of the members of the technical and administrative staff.

17.—(1) Any member of the technical and administrative staff of the diplomatic mission performing the duties of archivist or cypher officer together with members of his family forming part of his household shall, if they are not citizens of the Republic or permanent residents therein, subject to sub-sections (2) and (3) enjoy the privileges and immunities specified in articles 10, 11, 12, 13 and 14.

(2) Any person mentioned in sub-section (1) shall not enjoy immunity from any criminal or civil jurisdiction, as provided in sub-section (1) of section 12, for any act or omission committed by him outside the course of his official duties.

Privileges of technical and administrative staff in respect of imported goods.

18. Any member of the technical and administrative staff of the diplomatic mission together with the members of his family forming part of his household shall, if they are not citizens of the Republic or permanent residents therein, enjoy the privileges specified in sub-section (1) of section 15 in respect of goods imported on first arrival or within three months of such arrival, if such goods are declared to the Customs Authorities of the Republic on such arrival.

Privileges of service staff.

19. A member of the service staff of the diplomatic mission and a private servant who is not a citizen of the Republic or permanent resident therein shall enjoy the same privileges, subject to the same terms and conditions, as a member of the technical and administrative staff of the diplomatic mission.

**20.** The Council of Ministers may, by order published in the official *Gazette* of the Republic, confer on the technical, administrative or service staff of the diplomatic mission any other rights, immunities or privileges.

Extension of privileges.

**21.—(1)** A member of the diplomatic mission shall enjoy the rights, privileges and immunities provided by this Law from the moment he enters the territory of the Republic on proceeding to take up his duties or if already in the Republic from the moment when his appointment is notified to the Ministry of Foreign Affairs of the Republic.

Commencement and end of rights, immunities and privileges.

(2) When the functions of a member of the diplomatic mission enjoying the rights, privileges and immunities provided by this Law shall come to an end, such rights, privileges and immunities shall normally cease at the moment when he leaves the Republic or on the expiration of a reasonable period in which to do so.

(3) In the case of the death of a member of a diplomatic mission the members of his family forming part of his household shall continue to enjoy the rights, privileges and immunities provided by this Law until the expiration of a reasonable period in which to leave the Republic.

**22.—(1)** Subject to the provisions of this Law, any member of the diplomatic mission shall obey and be bound by the provisions of any law in force for the time being and of any public instrument made thereunder.

Members of the mission bound by the laws, etc.

(2) A member of the diplomatic mission shall not practice in the Republic for profit any profession or carry on any trade or business.

**23.** Any right, immunity or privilege conferred by this Law shall be on the condition of reciprocity by the sending State.

Rule of reciprocity.

**24.** Customary International Law shall continue to regulate any matter for which no express provision is made in this Law.

Customary International Law to continue to apply.

**25.—(1)** Notwithstanding the provisions of this Law, bilateral international agreements may be concluded by the Republic or accession may be made to multilateral international agreements in respect of any matters regulated by this Law.

Conclusion of bilateral agreements, etc.

(2) The provisions of any international agreement concluded by the Republic under sub-section (1) or of any international agreement applying in the Republic in respect of any matters regulated by this Law shall continue to be in force and to bind the Republic.

**26.** The Council of Ministers may make Regulations to be published in the official *Gazette* of the Republic for the better carrying out of the provisions of this Law.

Regulations.

**27.—(1)** Any provision in any other law inconsistent with any of the provisions of this Law shall cease to have effect.

Inconsistent provisions.

(2) Without prejudice to the generality of sub-section (1), items A. 3 (a), (b) and (c) and the conditions referring to such items of Part II of the Second Schedule to the Customs Tariff Law, 1961, shall have effect subject to the provisions of this Law.

32 of 1961.

**28.** Nothing in this Law contained shall be taken to be in derogation of any of the provisions of the Diplomatic Privileges (Extension) Law and of the Diplomatic Privileges (European Commission of Human Rights) Law.

Saving.  
Cap. 237.  
Cap. 238.

**CZECH REPUBLIC**

(a)	<b>Registration no.</b>	CZ/1
(b)	<b>Date</b>	4 December 1963
(c)	<b>Authority / document</b>	National Assembly of the Czechoslovak Socialist Republic (Národní shromáždění Ěskoslovenské socialistické republiky) / Act No. 97/1963 concerning private international law and the rules of procedure relating thereto, as amended
(d)	<b>Parties</b>	-
(e)	<b>Points of law</b>	Section 47 of Act No. 97/1963, as amended, provides that foreign States are, subject to stated exceptions (section 47, para. 3 lit. a) and d)), absolutely immune from the jurisdiction of Czech courts and notarial offices.
(f)	<b>Classification no.</b>	0.c, 1.a, 2.a
(g)	<b>Source(s)</b>	Collection of Laws of the Czechoslovak Socialist Republik, No. 97/1963, as amended by Acts No. 158/1969, 234/1992, 264/1992 and 125/2002
(h)	<b>Additional information</b>	<p>1. Section 47 of the Act is the principal domestic legal provision in force regulating jurisdictional immunities of foreign States and their property.</p> <p>2.</p> <p>a) Section 2 of the Act provides that the provisions of the Act shall be applied only if an international treaty binding on the Czechoslovak Socialist Republic (i. e. on the Czech Republic) does not provide otherwise.</p> <p>b) Article 10 of Constitutional Act of the Czech Republic No. 1/1993, Constitution of the Czech Republic, in the wording that came into effect on 1 June 2002 provides as follows: Promulgated international treaties the ratification of which was approved by the Parliament and which are binding on the Czech Republic shall be part of the national legislation; if an international treaty differs from a law, the international treaty shall be applied.</p>
(i)	<b>Full text - extracts - translation summaries</b>	<p>Appendix 1: Text of Section 47 of Act No. 97/1963</p> <p>Appendix 2: English translation of Section 47 of Act No. 97/1963</p>

## §47

## Vynítí z pravomoci československých soudů

(1) Pravomoci československých soudů nejsou podrobeny cizí státy a osoby, jež podle mezinárodních smluv nebo jiných pravidel mezinárodního práva anebo zvláštních československých právních předpisů požívají v Československé socialistické republice imunity.

(2) Ustanovení odstavce 1 platí i ohledně doručování písemností, předvolávání uvedených osob za svědky, výkonu rozhodnutí nebo jiných procesních úkonů.

(3) Pravomoc československých soudů je však dána, jestliže:

a) předmětem řízení je nemovitý majetek států a osob uvedených v odstavci 1, nacházející se v Československé socialistické republice, nebo jejich práva na takových nemovitých věcech patřících jiným osobám, jakož i práva z poměru nájemního k takovým nemovitým věcem, pokud není předmětem řízení placení nájemného,

b) předmětem řízení je dědictví, v němž osoby uvedené v odstavci 1 vystupují mimo rámec svých úředních funkcí,

c) předmět řízení se týká výkonu povolání nebo obchodní činnosti, které osoby uvedené v odstavci 1 provádějí mimo rámec svých úředních funkcí,

d) cizí stát nebo osoby uvedené v odstavci 1 se dobrovolně podrobí jejich pravomoci.

(4) Doručení v případech uvedených v odstavci 3 zprostředkuje ministerstvo zahraničních věcí. Nelze-li takto doručit, ustanoví soud opatrovníka pro přijímání písemností, popřípadě k obhájení práv.

## Section 47

## Exemption from the jurisdiction of Czechoslovak courts

(1) Foreign States and persons who under international treaties or other rules of international law or special Czechoslovak legal regulations enjoy immunity in the Czechoslovak Socialist Republic shall not be subject to the jurisdiction of Czechoslovak courts.

(2) The provision of paragraph 1 shall also apply to the delivery of documents, summoning of the aforesaid persons as witnesses, execution of decisions or other procedural acts.

(3) However, Czechoslovak courts shall have jurisdiction, if:

(a) the object of the proceedings is real property of the States and persons mentioned in paragraph 1, which is located in the Czechoslovak Socialist Republic, or their rights relating to such real property belonging to other persons, as well as rights arising from the lease of such real property, unless the object of the proceedings is the payment of rent,

(b) the object of the proceedings is an inheritance in which the persons mentioned in paragraph 1 act outside their official duties,

(c) the object of the proceedings concerns the pursuance of a profession or commercial activity which the persons mentioned in paragraph 1 carry out outside their official duties,

(d) the foreign State or the persons mentioned in paragraph 1 voluntarily submit to their jurisdiction.

(4) Delivery in the cases listed in paragraph 3 shall be done through the Ministry of Foreign Affairs. If delivery cannot thus be realized, the court shall appoint a guardian for accepting documents or, if necessary, for protecting the absentee's rights.

(a)	<b>Registration no.</b>	CZ/2
(b)	<b>Date</b>	9 April 1981 (date in the note of the Permanent Mission of Czechoslovakia by which the answers to the questionnaire were sent to the Secretariat of the United Nations)
(c)	<b>Authority/nature of the document</b>	The Government of the Czechoslovak Socialist Republic/answers to the questionnaire of the United Nations on the topic "Jurisdictional immunities of States and their property"
(d)	<b>Parties</b>	-
(e)	<b>Points of law</b>	The answers to the UN questionnaire describe the position of the Czechoslovak Socialist Republic on jurisdictional immunities of States and their property that was based on the doctrine of absolute immunity.
(f)	<b>Classification no.</b>	0.c, 1.a, 2.a
(g)	<b>Source(s)</b>	United Nations Legal Series, Materials on Jurisdictional Immunities of States and their Property, United Nations, New York, 1982
(h)	<b>Additional information</b>	-
(i)	<b>Full text - extracts - translation summaries</b>	Appendix: Full English text of the above mentioned questionnaire and of the answers of the Czechoslovak Socialist Republic to this questionnaire



UNITED NATIONS  
GENERAL  
ASSEMBLY



Distr.  
GENERAL

A/CN.4/343/Add.3  
5 May 1981

ORIGINAL: ENGLISH

INTERNATIONAL LAW COMMISSION  
Thirty-third session  
4 May-24 July 1981

JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

Information and materials submitted by Governments

Addendum

I. GOVERNMENT REPLIES TO THE QUESTIONNAIRE

Czechoslovakia

/Original: English/  
/9 April 1981/

Questionnaire on the topic  
"Jurisdictional immunities of States and their property"\*

Question 1

Are there laws and regulations in force in your State providing either specifically for jurisdictional immunities for foreign States and their property, or generally for non-exercise of jurisdiction over foreign States and their property without their consent? If so, please attach a copy of the basic provisions of those laws and regulations.

According to Czechoslovak law, judicial practice and legal theory, the doctrine of the sovereignty of States and their equality corresponds to that of their "absolute" immunity.

According to the provisions of section 47, paragraph 1 of the Act on private international law No. 97/1963 of the Collection of Laws of Czechoslovakia and the

\* This questionnaire is not concerned with diplomatic or consular immunities and privileges.

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English

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rules of procedure relating thereto, foreign States are not subject to the jurisdiction of Czechoslovak courts and notarial offices. However, the jurisdiction of Czechoslovak courts and notarial offices is applicable in cases where the subject of the proceedings is unmovable property located in Czechoslovakia or to rights of States on such unmovable property belonging to other persons, as well as to rights on such property arising from lease, but not in cases where the subject of the proceedings is payment of rentals and in cases where foreign States voluntarily submit to the jurisdiction of Czechoslovak courts and notarial offices (sect. 47, para. 3 (d), of the above-mentioned Act). 1/ The text of the Act is enclosed.

## Question 2

Do courts of your State accord jurisdictional immunities to foreign States and their property? If so, please indicate whether they have based their decisions on any provisions of internal law in force or on any principle of international law.

See reply to question 1 above.

1/ Section 47 provides:

"(1) Foreign States and persons who under international treaties or other rules of international law or special Czechoslovak legal regulations enjoy immunity in the Czechoslovak Socialist Republic shall not be subject to the jurisdiction of Czechoslovak courts and notarial offices.

"(2) The provision of paragraph 1 shall also apply to the service of documents, summoning of the aforesaid persons as witnesses, execution of decisions or other procedural acts.

"(3) However, Czechoslovak courts and notarial offices shall have jurisdiction, if:

"(a) the subject of the proceedings is real property of the States and persons listed in paragraph 1, which is located in the Czechoslovak Socialist Republic, or their rights relating to such real property belonging to other persons, as well as their rights arising from their tenancy of such real property, unless the subject of the proceedings is the payment of rent,

"(b) the subject of the proceedings is an inheritance in which the persons listed in paragraph 1 appear outside their official duties,

"(c) the subject of the proceedings concerns the pursuit of a profession or commercial activity which the persons listed in paragraph 1 carry out outside their official duties,

"(d) the foreign State or the persons listed in paragraph 1 voluntarily submit to their jurisdiction.

"(4) Service in the cases listed in paragraph 3 shall be done through the Ministry of Foreign Affairs. If service cannot thus be realized, the court shall appoint a trustee for accepting documents or, if necessary, for protecting the absentee's rights."

/...



Question 3

What are the main trends of the judicial practice of your State in regard to jurisdictional immunities of foreign States and their property? Do the courts regard the doctrine of State immunity as "absolute", and if not, is its application subject to qualifications or limitations?

See reply to question 1 above.

Question 4

What is the role of the executive branch of the Government of your State in matters of recognition of jurisdictional immunities of foreign States and their property, especially in the definition or delimitation of the extent of the application of State immunity?

In matters regulated by Act No. 97/1963 of the Collection, judicial organs may, in case of doubt, ask the Ministry of Justice for an opinion (sect. 53, para. 2, of the above-mentioned Act). 2/

This opinion, given in the matter of exemption of foreign States from the jurisdiction of Czechoslovak courts and notarial offices, is of those which are not binding for judicial organs.

Question 5

Is the principle of reciprocity applicable in the matters relating to jurisdictional immunities of States and their property? Inter alia, would courts of your State be expected to apply the principle of reciprocity to a foreign State which would deny your State immunity in a dispute similar to the one pending before your courts, even if the courts would normally grant immunity to other foreign States in such disputes?

According to Czechoslovak laws and regulations, the principle of absolute immunity is not bound to reciprocity.

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2/ Section 53 provides:

"(1) The judicial organ shall take all necessary measures to ascertain the provisions of a foreign law; if such provisions are not known to such an organ, it may request the information for this purpose from the Ministry of Justice.

"(2) If any doubt arises in the consideration of the cases listed in paragraph 1, the judicial organs may ask the Ministry of Justice for an opinion."

/...

Question 6

Do the laws and regulations referred to under question 1 or the judicial practice referred to in question 3 make any distinction, as far as jurisdictional immunities of foreign States and their property are concerned, between "public acts" and "non-public acts" of foreign States? If so, please outline the distinctions, and provide examples of their application.

Czechoslovak laws and regulations do not make any distinction between "public acts" and "non-public acts". This would contravene the principle of absolute immunity of States.

Question 7

If the answer to question 6 is "yes":

(a) Can jurisdictional immunities be successfully invoked before courts in your State in connexion with "non-public acts" of foreign States? If not, please indicate the types of "non-public acts" of foreign States not covered by immunities.

(b) In a dispute relating to a contract of purchase of goods, would courts of your State be expected to grant immunity to a foreign State which establishes that the ultimate object of the contract was for a public purpose or the contract was concluded in the exercise of a "public" or "sovereign" function?

(c) In a dispute relating to a foreign State's breach of a contract of sale, would courts of your State be expected to grant immunity to a foreign State which establishes that its conduct was motivated by public interests?

(d) In any dispute concerning a commercial transaction, is the nature of the transaction decisive of the question of State immunity, if not, how far is ulterior motive relevant to the question?

Considering the reply to question 6 above, no answer is required here.

Question 8

If "non-public" activities of a foreign State in the territory of your State are such as to be normally susceptible to payment of taxes, duties or other levies, would the foreign State be required to pay them or would it be exempted in all cases or on the basis of reciprocity?

Czechoslovak laws and regulations do not explicitly regulate this matter.

/...

Question 9

Are courts of your State entitled to entertain jurisdiction over any public acts of foreign States? If so, please indicate the legal grounds on which competence is based, such as consent, or waiver of immunity, or voluntary submission, etc. If jurisdiction is exercised in such cases, does it mean that the doctrine of State immunity is still recognized by the courts?

No.

Question 10

What rules are in force in your State, if any, governing:

- (a) Waiver of jurisdictional immunities of foreign States;
- (b) Voluntary submission by foreign States; and
- (c) Counter-claims against foreign States?
- (a) See Act No. 97/1963, Collection, section 47, paragraph 3. 3/
- (b) Ditto.
- (c) None.

Question 11

What are the exceptions or limitations, if any, provided by laws and regulations in force or recognized by judicial or governmental practice in your State with respect to jurisdictional immunities of foreign States and their property?

Act No. 97/1963, Collection, section 47, paragraph 3. 4/

Question 12

What is the status, under laws and regulations in force or in practice in your State, of ships owned or operated by a foreign State and employed in commercial service?

Czechoslovak laws and regulations do not explicitly regulate this matter. When signing the Convention on the High Seas at Geneva on 29 April 1958, the Czechoslovak Socialist Republic made the following reservations concerning article 9:

3/ See foot-note 1 above.

4/ See foot-note 1 above.

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"The Government of the Czechoslovak Republic holds that under international law in force government ships operated for commercial purpose also enjoy on the high seas complete immunity from the jurisdiction of any State other than the flag State."

#### Question 13

If a foreign State applies to administrative authorities of your State for a patent, a licence, a permit, an exemption or any other administrative action, would it be treated procedurally or substantively, like any other applicant or would it receive special treatment on the procedure or on the substance?

States are in principle treated in the same way as any other applicant.

A special régime might result from bilateral or multilateral agreements.

#### Question 14

If a foreign State owns or succeeds to an immovable or movable property situated in your State, how far is the foreign State subject to territorial jurisdiction in respect of title to that property or other property rights?

According to section 47, paragraph 3 (a), of Act No. 97/1963, Collection, a foreign State is subject, in these cases, to the jurisdiction of Czechoslovak organs. It is exempted from such jurisdiction only in matters related to the payment of rentals.

#### Question 15

Can a foreign State inherit or become a legatee or a beneficiary in a testate or intestate succession? If so, is voluntary submission essential to a meaningful involvement in the judicial process?

Unless stipulated otherwise by an international agreement (cf. sect. 2 of Act No. 97/1963, Coll.), 5/ matters of inheritance are governed by the law of the State whose citizen the decedent was at the time of his death (according to sect. 17 of the above-mentioned Act). If the testator was a Czechoslovak citizen, Czechoslovak law does not limit the testator in the choice of the heir when drawing up his will. The heir may therefore be even a foreign State.

With regard to escheats of foreign citizens, agreements on judicial assistance concluded by Czechoslovakia with other States provide that movable escheats go to the State whose citizen the decedent was at the time of his death; immovable escheats to the State on the territory of which the immovable escheat is located.

5/ Section 2 provides:

"The provision of the present Act shall be applied only if an international treaty binding on the Czechoslovak Socialist Republic does not provide otherwise."

/...

Question 16

Under the laws and regulations in force in your State, does the property of a foreign State enjoy immunity from attachment and other provisional or interim measures prior to an executory judicial decision? Is there any distinction based on the nature or on the use of property involved?

Yes, they enjoy immunity, with the exceptions mentioned in section 47, paragraph 3 (a), of Act No. 97/1963, Collection, concerning unmovable property.

Question 17

Similarly, does the property of a foreign State enjoy immunity from distraint and other forcible measures in aid of execution of a judicial decision? Is there any distinction based on the nature or on the use of the property involved?

See reply to question 16 above.

Question 18

Are there procedural privileges accorded a foreign State in the event of its involvement in a judicial process? If so, please elaborate.

They are not. According to the provisions of section 48 of Act No. 97/1963, Collection, 6/ Czechoslovak courts and notarial offices apply Czechoslovak rules of procedure with all participants enjoying equal status in claiming their rights.

Question 19

Are foreign States exempt from costs or security for costs in the event of participation in a judicial process?

They are not.

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6/ Section 48 provides:

"In proceedings, Czechoslovak courts and notarial offices shall act in accordance with Czechoslovak procedural rules and all parties shall have an equal status in claiming their rights."

/...

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Question 20

Is your State inclined to invoke jurisdictional immunities before foreign courts, where, in like circumstances, none would be accorded to foreign States by the courts of your State? Or conversely, are courts in your State prepared to grant jurisdictional immunities to foreign States to the same extent as that to which your State is likely to claim immunities from foreign jurisdiction?

The Czechoslovak Socialist Republic proceeds from the opinion that it enjoys before courts of foreign States absolute immunity which it grants itself to foreign States before its own courts.

(a)	<b>Registration no.</b>	CZ/3
(b)	<b>Date</b>	20 July 1979
(c)	<b>Authority / document</b>	The Government of the Czechoslovak Socialist Republic / Analysis of the topic of jurisdictional immunities of States and their property submitted by the Government of Czechoslovakia to the Secretariat of the United Nations
(d)	<b>Parties</b>	-
(e)	<b>Points of law</b>	The analysis describes the position of the Czechoslovak Socialist Republic on jurisdictional immunities of States and their property that was based on the doctrine of absolute immunity.
(f)	<b>Classification no.</b>	0.c, 1.a, 2.a
(g)	<b>Source(s)</b>	United Nations Legal Series, Materials on Jurisdictional Immunities of States and their Property, United Nations, New York, 1982
(h)	<b>Additional information</b>	-
(i)	<b>Full text - extracts - translation summaries</b>	Appendix: English text of the analysis

Analysis of the topic of jurisdictional immunities of States and their property submitted by the Government of Czechoslovakia to the Secretariat of the United Nations on 20 July 1979

The Permanent Mission of the Czechoslovak Socialist Republic would like to point out in this connection that Section 47 of Act No. 47/1963 concerning private international law and the rules of procedure relating thereto constitutes the basic provision of Czechoslovak law in the sphere of an exclusion of foreign States and their property from the jurisdiction of Czechoslovak civil courts and notarial offices. It clearly follows from this provision that the Czechoslovak law is based in this respect on the theory of absolute immunity.

This theory represents a legal concept according to which a foreign State (and its property as well), being a sovereign territorial and political entity, cannot be submitted to jurisdiction of another State unless it expressly agrees to it. The theory of absolute immunity is the only possible and logic consequence of one of the cornerstones of contemporary international law - the principle of sovereign equality of States.

The application of this principle in international relations is based on the assumption that the will of a State will always be duly and fully respected. This principle does not, however, exclude the possibility that a State under certain circumstances can find it desirable or otherwise appropriate to submit a certain case to the jurisdiction of another State. This case being the consequence of that State's own decision is the only example when a State may establish its jurisdiction in respect to another State. Where there is no expressly declared readiness on the part of one State to submit certain cases to the jurisdiction of another State be it by an oral agreement or by an international treaty, any attempts to establish the jurisdiction unilaterally (by internal law, by decisions of the courts or otherwise) must be considered to be contrary to international law.

There is no rule in contemporary international law identifying possible exceptions from the immunity of States for certain areas of their activities (e.g. economy, finance, trade etc.).

With reference to Section 47, para. 2, subpara. (a) of the enclosed Act the Permanent Mission underlines that this provision can in no way be viewed as forming an exception from the basic principle set forth in Section 47, para 1. This rule, quite on the contrary, confirms the respect for the principle of the sovereign equality of States since its sole aim is to ensure the indisputable and self-evident link that exists between a territorial State and an object forming a content of real property or rights relating to real property in the State concerned.

Summing up, the Permanent Mission would like to note that since the concept of absolute immunity is shared by a considerable number of members of the international community, the correctness and purposefulness of the attitude that the International Law Commission, or to be more exact, its appropriate Working Group, has adopted in this respect on its thirtieth session last year, must necessarily be questioned. The Permanent Mission has in mind particularly the following part of the above-mentioned Working Groups report: "A working distinction may eventually have to be drawn between activities of States performed in the exercise of sovereign authority which are covered by immunities, and other activities in which States, like individuals, are engaged in an increasing manner and often in direct competition with private sectors. ... In other words only *acta iure imperii* or acts of sovereign authority as distinct from *acta iure gestionis* or *iure negotii* are covered by State immunities." (U.N. document A/33/10, p. 388, para. 29). This approach to the topic in question cannot lead to any positive results, since it cannot be met in the affirmative by at least a significant part of the international community.\*



(a)	<b>Registration no.</b>	CZ/4
(b)	<b>Date</b>	27 August 1987
(c)	<b>Authority / document</b>	The Supreme Court of the Czechoslovak Socialist Republic (Nejvyšší soud Československé socialistické republiky) / Supreme Court Opinion Cpjf 27/86 published as Rc 26/1987
(d)	<b>Parties</b>	-
(e)	<b>Points of law</b>	<p>The Supreme Court expresses the opinion that:</p> <p>a) foreign diplomatic missions in the Czechoslovak Socialist Republic cannot be sued because they are organs of a foreign State and have no legal personality, which pertains only to the foreign State itself,</p> <p>b) the damage actions directed against a foreign State can be heard in Czechoslovak courts only if the foreign State voluntarily submits to their jurisdiction,</p> <p>c) submission of the foreign State to the hearing in Czechoslovak courts does not imply that the foreign State submits to their jurisdiction also as regards the execution of judgment.</p>
(f)	<b>Classification no.</b>	0.c, 1.a, 2.a
(g)	<b>Source(s)</b>	Sbírka soudních rozhodnutí (Collection of Judicial Decisions) 87, 9-10
(h)	<b>Additional information</b>	The Opinion is not a decision in rem, but a commentary on and interpretation of Act No. 97/1963 concerning private international law and the rules of procedure relating thereto, as amended
(i)	<b>Full text - extracts - translation summaries</b>	<p>Appendix 1: Extract from Supreme Court Opinion</p> <p>Appendix 2: English translation of the extract</p>

V praxi soudů přicházejí nikdy žaloby o náhradu škody, jež jsou podávány proti zastupitelským orgánům cizích států. Pokud neplyne nic jiného z mezinárodní smlouvy, je nutno vycházet v takovém případě z ustanovení §47 zákona č. 97/1963 Sb., nebo zastupitelský orgán (velvyslanectví, vyslanectví) tu vystupuje jménem cizího státu, který je v uvedeném právním vztahu pasivně legitimován. Žalobu o náhradu škody tu může český soud projednávat jen tehdy, jestliže se cizí stát podrobí jeho pravomoci. Podrobení se tomuto projednávání vůči českému soudem neznamena ovšem, že se cizí stát podrobil pravomoci i pokud jde o soudní výkon rozhodnutí.

Správně proto místský soud v Praze uvedl v odůvodnění svého rozhodnutí o odvolání proti rozsudku vydanému obvodním soudem pro Prahu 6 ve věci sp. zn. 8 C 111/82, v níž byla podána žaloba o náhradu škody proti velvyslanectví cizího státu a na této žalobě žalobce setrval, že diplomatické mise jsou zahraničním orgánem cizího státu a nemají právní subjektivitu, která tu náleží jen cizímu státu samotnému.

From time to time the courts are required to deal with actions for damages directed against foreign diplomatic missions. Unless an international treaty provides otherwise, Section 47 of Act No. 97/1963 must be applied because the diplomatic mission acts on behalf of a foreign State which in this legal relation has the capacity to be sued. The damage action can be heard in Czechoslovak courts only if the foreign State voluntarily submits to their jurisdiction. However, submission to the hearing in Czechoslovak courts does not imply that the foreign State submits to their jurisdiction also as regards the execution of judgement.

In the reasoning of its decision on an appeal against the judgment delivered by the District Court for Prague 6 in case ref. 8 C 111/82 where an action for damages was brought against a foreign embassy and the plaintiff insisted on the claim, the Regional Court in Prague correctly stated that a diplomatic mission is an organ of a foreign State and has no legal personality, which pertains only to the foreign State itself.

(a)	<b>Registration no.</b>	CZ/5
(b)	<b>Date</b>	1 November 2001
(c)	<b>Authority / document</b>	The Government of the Czech Republic / Guarantee Agreement between the Czech Republic and Kreditanstalt für Wiederaufbau
(d)	<b>Parties</b>	The Czech Republic and Kreditanstalt für Wiederaufbau (a corporation organised and existing under public law of Germany)
(e)	<b>Points of law</b>	In the Guarantee Agreement the Czech Republic (the Guarantor) waives its immunity (other than with respect to its property solely serving military, security or diplomatic purposes) from court, enforcement, arbitration or any other legal proceeding.
(f)	<b>Classification no.</b>	0.b.3, 1.b, 2.b
(g)	<b>Source (s)</b>	-
(h)	<b>Additional information</b>	<p>1. The Guarantee Agreement pertains to a facility agreement made between Kreditanstalt für Wiederaufbau and ĚESKÉ DRÁHY, státní organizace (state organization), in which KfW has agreed to make available a loan facility for the purpose of the partial financing of the rehabilitation of the Dièín-Praha-Bøeclav railway line (Corridor I).</p> <p>2. The Guarantee Agreement is governed by the laws of the Federal Republic of Germany.</p> <p>3. Any dispute or difference between Kreditanstalt für Wiederaufbau and the Czech Republic out of or in connection with the Guarantee Agreement shall be referred to and finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce.</p>
(i)	<b>Full text - extracts - translation summaries</b>	Appendix: English text of the relevant provision of the Guarantee Agreement

To the extent the Guarantor has or may acquire in any jurisdiction immunity from court, enforcement, arbitration or any other legal proceeding, the Guarantor hereby irrevocably waives such immunity (other than with respect to its property solely serving military, security or diplomatic purposes).

(a)	Registration no.	CZ/6
(b)	Date	15 December 1997
(c)	Authority / document	District Court for Prague 6 / case No. E 1426/97, decision of 15 December 1997
(d)	Parties in the case	General Health Insurance Company of the Czech Republic / Embassy of the State of Palestine in the Czech Republic
(e)	Points of law	<p>The Court stated in the decision that:</p> <p>a) The Embassy of the State of Palestine does not have legal personality - it is merely an authority of the State of Palestine;</p> <p>b) With regard to Section 47 of Act No. 97/1963 concerning private international law and the rules of procedure relating thereto (see CZ/1), in the given case the State of Palestine could be subject to the jurisdiction of Czech courts only if it voluntarily submitted to such jurisdiction.</p>
(f)	Classification no.	0.b.1, 1.a, 2.a
(g)	Source(s)	-
(h)	Additional information	By its decision of 15 December 1997 the District Court for Prague 6 corrected its previous erroneous decision of 30 September 1997 on the same case ordering that the General Health Insurance Company's claim be satisfied by the taking (deducting) the debt off the debtor's (Embassy's) bank account.
(i)	Full text - extracts - translation - summaries	<p>Appendix 1: Copy of the decision of the District Court for Prague 6 of 15 December 1997, No. E 1426/97</p> <p>Appendix 2: English translation of the summary of the decision</p>



Toto rozhodnutí je vykonatelné - nabylo právní moci

dne: 12.03.1998

OBVODNÍ SOUD PRO PRAHU 6

dne: 14.10.2002

E 1426/97

### U S N E S E N Í

Obvodní soud pro Prahu 6 rozhodl v právní věci oprávněného Všeobecné zdravotní pojišťovny ČR, proti povinnému Velvyslavectví státu Palestina, Na Ořechovce 4, Praha 6

#### t a k t o :

Soud prohlašuje nařízený výkon rozhodnutí dle usnesení Obvodního soudu pro Prahu 6, ze dne 30.9.1997 čj. E 1426/97 za nepřipustný. Soud řízení o výkon tohoto řízení **z a s t a v u j e .**

#### O d ů v o d n ě n í :

Návrhem ze dne 4.9.1997 se domáhá oprávněná nařízení výkonu rozhodnutí odepsáním z účtu povinného pro pohledávku ve výši 41.283,— Kč dle exekučního titulu a to platebního výměru č.Ro 2142000663 oprávněného, který nabyl právní moci dne 15.5.1997.

Soud usnesením ze dne 30.9.1997 výkon rozhodnutí odepsáním z účtu dle návrhu ze dne 4.9.1997 nařídil. Po vydání usnesení o nařízení výkonu rozhodnutí, soud tímto usnesením prohlašuje výkon rozhodnutí za nepřipustný dle § 268 odst. 1. písm. h o.s.ř. a to pro nedostatek pravomoci českého soudu vůbec.

Soud odůvodňuje toto své nové stanovisko poukazem na zákonné ustanovení § 47 odst. 1 zák. č. 97/63 sb. z kterého jasně vyplývá, že pravomoci tehdejších československých nyní českých soudů nejsou podrobeny s výjimkou § 47 odst. 3 výše uvedeného zákona cizí státy a osoby, jež podle mezinárodních smluv nebo jiných pravidel mezinárodního práva požívají v ČR imunity.

Povinný uvedený v návrhu na nařízení výkonu rozhodnutí jako Velvyslancství státu Palestina je pouze orgánem státu Palestina a vlastní právní subjektivitu nemá.

Soud pochybil, pokud výkon rozhodnutí vůči povinnému nařídil, neboť s ohledem na výše uvedená ustanovení zákona č.97/63 sb. by Stát Palestina mohl být podroben pravomoci českého soudu jedině v případě, že by se soudní pravomoci podrobil dobrovolně.

Soud nápravu vadného soudního rozhodnutí učinil tak, že prohlásil dle § 268 odst. 1. písm. h o.s.ř. nařízený výkon rozhodnutí za nepřipustný, neboť ho nelze vykonat ze nedodržení podmínky řízení spočívající v nedostatku pravomoci českých soudů.

**P o u č e n í :** Proti tomuto usnesení je možno podat odvolání do 15ti dnů ode dne jeho doručení k Městskému soudu v Praze prostřednictvím soudu zdejšího.

V Praze dne 15. prosince 1997



JUDr. Marta Beránková  
předsedkyně senátu

Za spvánost-E.Dvořáčková

The plaintiff (General Health Insurance Company of the Czech Republic) requested the court to order that the decision be executed by taking (deducting) the debt (sums charged in the payment assessment of the General Health Insurance Company) amounting to CZK 41,283 off the debtor's (Palestinian Embassy's) bank account. In its decision of 30 September 1997 the District Court for Prague 6 ordered execution of the decision. Having issued this decision, the same court by decision dated 15 December 1997 declared that the execution of the previous decision was inadmissible. In stating the reasons for this new and final opinion it referred to the provision of Section 47, para 1 of Act No. 97/1963 concerning private international law and the rules of procedure relating thereto, under which foreign States and persons who under international treaties or other rules of international law enjoy immunity in the Czech Republic are not subject to the jurisdiction of Czech courts, except for cases defined in Section 47, para 3 of the Act. The court stated that the debtor identified in the motion to commence execution proceedings was merely an authority of the State of Palestine and thus had no legal personality and that the State of Palestine could be subject to the jurisdiction of Czech courts only if it voluntarily submitted to such jurisdiction.



(a)	Registration no.	CZ/7
(b)	Date	31 August 1995
(c)	Authority / document	Superior Court in Prague / decision of 31 August 1995, No. 10 Cmo 418/95-16
(d)	Parties in the case	Petr Roith (provider of cleaning services) / Embassy of the Republic of South Africa in the Czech Republic
(e)	Points of law	<p>The court stated in its decision that:</p> <p>a) The diplomatic mission of a foreign state is neither a natural nor a legal person and therefore has no capacity to be a party to the proceedings;</p> <p>b) Even if an existing entity, i. e. a state, is identified as the defendant the proceedings against it would have to be stopped on the grounds of the want of jurisdiction of courts of the Czech Republic arising from Section 47 of Act No. 97/1963 concerning private international law and the rules of procedure relating thereto (see CZ/1).</p>
(f)	Classification no.	0.b.3, 1.a, 2.a
(g)	Source(s)	-
(h)	Additional information	In the said decision, the Superior Court in Prague affirmed the decision of the Regional Commercial Court in Prague of 8 March 1995, No. 81 Ro 1618/94-8.
(i)	Full text - extracts - translation - summaries	<p>Appendix 1: Copy of the decision of the Superior Court in Prague of 31 August 1995, No. 10 Cmo 418/95-16</p> <p>Appendix 2: English translation of the summary of the decision</p>

Č.j. 10 Cmo 418/95-16

## U s n e s e n í

Vrchní soud v Praze jako soud odvolací rozhodl v právní věci žalobce Petr ROITH - dodavatel úklidových prací, Pekárenská 2, Praha 4, právně zastoupeného JUDr. Karlem Stečinským, advokátem, Ohradní 1352, 140 00 Praha 4 proti žalovanému Jihoafrické velvyslanectví Praha, Ruská 65, Praha 10 o zaplacení 30.000,-- Kč, o odvolání žalobce proti usnesení Krajského obchodního soudu v Praze č.j. 81 Ro 1618/94-8 ze dne 8. 3. 1995

## t a k t o :

Usnesení Krajského obchodního soudu v Praze č.j. 81 Ro 1618/94-8 ze dne 8. 3. 1995 se potvrzuje.

Žalobce nemá právo na náhradu nákladů odvolacího řízení.

## O d ů v o d n ě n í :

Návrhem na zahájení řízení, podaným u Krajského obchodního soudu v Praze dne 13. 7. 1994, se žalobce domáhal na označeném žalovaném zaplacení 30.000,-- Kč jako náhrady škody, která mu vznikla tím, že mu nebylo umožněno vykonávat úklidové práce od 28. 2. 1994 po dobu 6 měsíců, takže vzniklá škoda za 1 měsíc představuje částku 5.000,-- Kč, a náhrady nákladů řízení. Navrhl vydání platebního rozkazu.

Krajský obchodní soud v Praze usnesením č.j. 81 Ro 1618/94-8 ze dne 8. 3. 1995 řízení zastavil a rozhodl, že žádný z účastníků nemá právo na náhradu nákladů řízení a žalobci se nevrací soudní poplatek, protože nebyl zaplacen. V odůvodnění uvedl, že žalobce označil jako žalovaného neexistující subjekt, což je neodstranitelný nedostatek podmínky řízení, takže řízení musí být zastaveno podle § 104 odst. 1 o.s.ř. Usnesení bylo doručeno žalobci dne 15. 5. 1995.

Proti usnesení podal žalobce v zákonem stanovené lhůtě odvolání, v němž uvedl, že jím označený žalovaný vystupoval ve smluvním vztahu pod označením, které je uvedeno v návrhu na zahájení řízení, proto zastává názor, že jako právní subjekt existuje. Navrhl zrušení napadeného usnesení.

Vrchní soud v Praze jako soud odvolací projednal věc na základě podaného odvolání podle § 212 o.s.ř. a bez nařízení jednání podle § 214 odst. 2 písm. c) o.s.ř. dospěl k závěru, že odvolání není důvodné.

Ze spisového materiálu zjistil odvolací soud, že žalobce označil jako žalovaného "Jihoafrické velvyslanectví Praha, Ruská 65, Praha 10". Soud prvního stupně zastavil řízení po zjištění, že žalobcem označený žalovaný nemá způsobilost být účastníkem řízení podle § 19 o.s.ř.

Odvolací soud se s tímto závěrem soudu prvního stupně ztotožňuje. Zastupitelský orgán jiného státu není ani fyzickou ani právnickou osobou a nemá proto způsobilost být účastníkem řízení. Podle ustanovení § 47 odst. 1 zákona č. 97/1963 Sb., o mezinárodním právu soukromém a procesním, ve znění pozdějších předpisů, jsou vyňaty z pravomoci soudů České republiky cizí státy a osoby, jež podle mezinárodních smluv nebo jiných pravidel mezinárodního práva nebo podle zvláštních českých právních předpisů požívají v České republice imunity. To znamená, že i kdyby byl žalobcem jako žalovaný označen existující subjekt tj. stát, muselo by být řízení proti němu zastaveno pro nedostatek pravomoci soudů České republiky.

Z uvedených důvodů odvolací soud rozhodnutí soudu prvního stupně potvrdil podle § 219 o.s.ř.

O náhradě nákladů odvolacího řízení bylo rozhodnuto podle § 224 odst. 1 a § 142 odst. 1 o.s.ř., jak je ve výroku uvedeno.

Proti tomuto usnesení není odvolání přípustné.

V Praze dne 31. srpna 1995

JUDr. Jiří Chudoba, v. r.  
předseda senátu

Za správnost vyhotovení:



CZ/7

## Appendix 2

The plaintiff (P. R., provider of cleaning services) applied to the Regional Commercial Court in Prague and claimed from the defendant (Embassy of the Republic of South Africa in the Czech Republic) the payment of CZK 30,000 in compensation for losses the plaintiff allegedly incurred due to the fact that he was not allowed to provide cleaning services for a period of six months. The Regional Commercial Court stopped the proceedings stating that the plaintiff identified as the defendant an inexistent entity, i.e. an entity which, under Czech law, does not have the capacity to be a party to the proceedings. The plaintiff lodged an appeal against this decision and claimed that the party he had identified as the defendant had acted in the contractual relation under the name which had been stated in the petition initiating the suit; the plaintiff therefore held the view that the defendant does exist as a legal person. The Superior Court in Prague dismissed the appeal by the plaintiff and upheld the decision of the Regional Commercial Court. According to the Superior Court, the diplomatic mission of a foreign state is neither a natural nor a legal person and therefore has not the capacity to be a party to the proceedings. With reference to Section 47, para 1, of Act No. 97/1963 concerning private international law and the rules of procedure relating thereto, under which foreign states and individuals enjoying in the Czech Republic immunity in conformity with international treaties or other rules of international law or in conformity with special Czech legal regulations shall not be subject to the jurisdiction of Czech courts, the Superior Court further stated that even if the plaintiff identified as the defendant an existing entity, i.e. a state, the proceedings against such a state would have to be stopped on the grounds of the want of jurisdiction of the courts of the Czech Republic.

(a)	Registration no.	CZ/8
(b)	Date	24 October 1997
(c)	Authority / document	The Czech Republic (the Government of the Czech Republic, the Ministry of Finance of the Czech Republic) / Credit Agreement
(d)	Parties to the contract	The Czech Republic (as guarantor); AERO Vodochody, a.s. (joint stock company) (as borrower); Canadian Imperial Bank of Commerce (as agent); Československá obchodní banka (Czechoslovak Commercial Bank), a. s. (as local agent)
(e)	Points of law	In the Credit Agreement AERO Vodochody, a.s., (the "Company") and the Czech Republic (the "Guarantor") agree to waive and not to claim or plead any immunity that it or any of their property has or hereafter may acquire in connection with any legal action or proceeding related to the Credit Agreement.
(f)	Classification no.	0.b.3, 1.b, 2.b
(g)	Source (s)	-
(h)	Additional information	-
(i)	Full text - extracts - translation - summaries	Appendix: English text of the relevant provision (Section 12.14) of the Credit Agreement

CZ 8

Appendix

Each of the Company and the Guarantor irrevocably and unconditionally agrees to waive and not to claim or plead any immunity (whether sovereign or otherwise) that it or any of its property has or hereafter may acquire from any aspect of any legal action or proceeding to enforce or collect upon the Note, the Guarantee, any other Credit Document or any other Obligation or liability related to or arising from the transactions contemplated hereby, including, without limitation, immunity from jurisdiction or judgment of any court, immunity from execution of judgment, immunity from attachment prior to judgment or in aid of execution of judgment, or immunity from set-off or any legal process (whether service of notice or otherwise). The waivers contained in this Section 12.14 shall, among other things, be effective to the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976, of the United States, as amended, and shall be irrevocable and not subject to withdrawal for the purposes of such Act; provided, however, that the waiver of immunity contained herein shall not extend to property of the Guarantor (wherever situated) serving military, national security or diplomatic purposes of the Guarantor. The Company and the Guarantor affirm their respective representations that the activities contemplated by the Credit Documents constitute commercial activities of the Company and the Guarantor within the meaning of the Foreign Sovereign Immunities Act of 1976 and agree not to contest this characterization.

## FINLAND

### Introduction

The data on State practice regarding State immunities compiled by the Ministry for Foreign Affairs of Finland mainly consists of judicial decisions. These judicial decisions include cases in which a foreign State has been sued before a Finnish court as well as cases where the State of Finland has been summoned by an individual or by a company to a foreign court. The data also contains cases where Finland has been summoned to a court of a State not member of the Council of Europe. In addition, there are some replies of the Minister for Foreign Affairs to written questions put forward by members of Parliament and a statement of the Ministry for Foreign Affairs regarding immunity from the execution of a judgment. The cases mainly deal with jurisdictional immunity. Immunity from the execution of a judgment has been less often under consideration. A more detailed description of the cases is included in the sixteen enclosed standard forms, or in the short summaries or other materials attached thereto.

Finland is not a State party to the European Convention on State Immunity (ETS No 074) nor to any other relevant convention. Finland, however, has actively contributed to the work of the ad hoc Committee of the Sixth Committee of the UN General Assembly on the Jurisdictional Immunities of States and Their Property (see also Finland/10).

As regards the table of description in the CAHDI circular 241001, particularly the section on "state immunity" with its distinction between absolute jurisdictional immunity (1.a) and limited jurisdictional immunity (1.b), it is understood that a conclusion as to whether the act in question falls under 1.a or 1.b is meant to be made by the competent authority - for example, a court or the Ministry for Foreign Affairs. Thus, the distinction has been made on the basis of a decision of the authority in question. However, the data also includes some cases that are still pending before a court. In respect of those cases the distinction could not have been made.

Most of the cases concern labour disputes between a foreign mission and a locally recruited employee. It is noted that the legal practice regarding these cases has not been entirely consistent. With the exception of one judgment rendered by a district court, the Finnish courts have, however, found that, due to the immunity, they cannot exercise jurisdiction over labour disputes involving foreign missions. This interpretation has also been confirmed by the Supreme Court of Finland in its decision No. KKO:1993:120 (see also Finland/2). Those cases concerning labour disputes where a court has concluded that it does not have jurisdiction over the case due to immunity, have been classified under 1.a (absolute immunity). In cases where the court has found that it has jurisdiction, the case has been classified under 1.c (jurisdictional immunity not applicable).

The distinction between acts of government (*jus imperii*) and acts of a commercial nature (*jus gestionis*) has been emphasized both in the judicial decisions and in the statements by the Minister for Foreign Affairs. With the exception of one judgment entered by a district court, the Finnish authorities have concluded that foreign states do not enjoy immunity in relation to their commercial transactions with a natural or juridical person (*jus gestionis*).

<b>(a)</b>	<b>Registration no/ N° d'enregistrement</b>	FIN/1
<b>(b)</b>	<b>Date</b>	1 February 2002
<b>(c)</b>	<b>Author(ity)/ (Service) auteur</b>	United States District Court, District of New Jersey
<b>(d)</b>	<b>Parties</b>	Komet Inc. and Konetehdas OY Komet (company) v. Republic of Finland (State) and John Doe
<b>(e)</b>	<b>Points of law/ Points de droit</b>	The Court established that Finland was immune from suit in the Courts of the United States for claims arising under a cooperative tax treaty between Finland and the United States (Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital). Finland claimed immunity in the case.
<b>(f)</b>	<b>Classification no/ n°</b>	0.a, 1.a, 2.c
<b>(g)</b>	<b>Source(s)</b>	Civil Action No. 99-6080 (JWB)
<b>(h)</b>	<b>Additional information/ Renseignements complémentaires</b>	The order entered by the United States District Court for the District of New Jersey vacated the default judgment previously entered by the Court on July 5, 2001 against Finland. The United States of America submitted an amicus brief on behalf of Finland.
<b>(i)</b>	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	Full text: Appendix 1



## FIN/1

Appendix 1UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEYKOMET INC., and  
KONETEHIDAS OY KOMET,

Plaintiffs,

v.

REPUBLIC OF FINLAND and  
JOHN DOE,

Defendants.

Civil Action No. 99-6080 (JWB)

O P I N I O NAPPEARANCES:HOWARD A. MILLER, ESQUIRE  
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- and -

ARENT FOX KINTNER PLOTKIN & KAHN  
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U.S. DEPARTMENT OF JUSTICE  
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- and -

CHRISTOPHER J. CHRISTIE  
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 (Attorneys for Amicus Curiae  
 United States of America)

**BISSELL, Chief Judge**

This matter comes before the Court on defendant Republic of Finland's ("Finland") motion to vacate the default judgment entered by the Court on July 5, 2001. The motion raises issues of the Court's subject matter jurisdiction and, in particular, requires the Court to consider whether Finland is immune from suit in this Court for claims arising under a cooperative tax treaty between Finland and the United States.

**FACTS**

**A. The Parties**

Plaintiff Konetehdas Oy Ko-met ("Komet-Finland") is a limited liability company of the Republic of Finland. (Compl., ¶ 2). Komet-Finland is in the machine tool business, specializing in the modification or manufacture and marketing of precision, balanced parts, such as drive shafts and fans. (Id., ¶ 7).

Plaintiff Komet USA Inc. ("Komet-USA") is a corporation of the State of Delaware whose business address is located in Riverdale, New Jersey. (Id., ¶ 1). Komet-USA was incorporated to serve as the operational arm of and in joint venture with Komet-Finland. (Id., ¶ 9). The President and "main owner" of both Komet-USA and Komet-Finland is Treho Linnavuorri. (Id., ¶ 8). Defendant Finland is a sovereign country located in Scandinavia (Europe). (Id., ¶ 3).

#### **B. Plaintiffs' Cause of Action**

The Complaint alleges that, for the tax years 1989 through 1991, Komet-USA supplied consulting services to Komet-Finland. As a result Komet-USA invoiced Komet-Finland and was paid for those consulting services. These payments were deducted by Komet-Finland to reduce its Finnish tax liability as a corporate expense. For tax years 1992 through 1995, however, Finland's taxing authority did not approve these payments as tax deductions. Komet-Finland sought rectification in accordance with Finnish procedure and secured partial deductions for 1993 and 1994. Plaintiffs contend that the Finnish tax authorities treated Komet-Finland differently than other domestic corporations in regard to these deductions. Moreover, they assert that Finland's failure to approve the tax deductions in toto have resulted in an unjust taking of revenue from Komet-USA in violation of international law and treaties. Plaintiffs

alleged generally that Finland failed to abide by the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, Dec. 30, 1990, U.S.-Fin., T.I.A.S. No. 12101 [hereinafter "Convention on Double Taxation" or "the Convention"].

#### PROCEDURAL HISTORY

On December 29, 1999, plaintiffs filed the instant action and a summons was issued for defendant Finland. On August 21, 2000, a return of service executed as to Finland on June 29, 2000 was filed with the Clerk. By May 21, 2001, no answer had been filed and plaintiffs moved for default judgment. On July 2, 2001, the Court entered default judgment in the amount of \$146,769.50 plus post-judgment interest and costs in favor of plaintiffs against Finland, at which time the case was marked closed.<sup>1</sup>

On August 30, 2001, Finland filed the instant motion to vacate the default judgment pursuant to Fed. R. Civ. P. 60(b). On December 18, 2001, with consent of the parties and permission of the Court, the United States of America submitted an amicus brief on behalf of Finland.

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<sup>1</sup> Although the Court had received correspondence in regard to plaintiffs' Complaint from a representative of the Finnish Government, these communications contained only generalized claims to sovereign immunity and were deemed inadequate to avoid the entry of default judgment.

## DISCUSSION

### A. Governing Legal Standard

Defendant seeks relief from the default judgment entered against it under Federal Rule of Civil Procedure 60(b). Rule 60(b) permits a court to vacate a prior judgment if, inter alia, the judgment is void, or for "any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b)(4) and (6). A judgment is void, for instance, if the court lacked subject matter jurisdiction over the action when it entered the judgment. Marshall v. Bd. of Educ., 575 F.2d 417, 422 (3d Cir. 1978) (citing United States v. Walker, 109 U.S. 258, 265-67 (1883)) (determining that a judgment may be void, and therefore subject to relief under 60(b)(4), if the court that rendered it lacked jurisdiction of the subject matter).

Since 1976, subject matter jurisdiction of suits against foreign sovereign states has been governed by the Foreign Sovereign Immunity Act ("FSIA"), which is codified in a number of sections of the United States Code, Title 28. In the first instance, § 1330 vests in the district courts original jurisdiction of any non-jury civil action against a foreign state as to any claim for relief in personam with respect to which the foreign state is not entitled to sovereign immunity. 28 U.S.C. § 1330. From this point, the FSIA states broadly that foreign states enjoy sovereign immunity from all suits except in certain

situations. 28 U.S.C. § 1604. Section 1605, in turn, sets forth the specific categories of actions as to which foreign states are not immune. Thus, if a civil action against a foreign state does not fit within a § 1605 exception to the general rule of sovereign immunity, the foreign state defendant is immune, and, concomitantly, the district court lacks subject matter jurisdiction. Argentine Republic v. Amerasia Shipping Corp., 488 U.S. 428, 434-39 (n.1) (1989) (determining that the text and structure of the FSIA demonstrate Congress's intention that the FSIA be the sole basis for obtaining subject matter jurisdiction over a foreign state in federal courts); Erickson v. Alitalia Linee Aeree Italiane, 1991 WL 117797, at \*2 (D.N.J. June 5, 1991).

With respect to analyzing particular claims to immunity under the FSIA, Congress intended courts to apply certain burden-shifting standards. Federal Ins. Co. v. Richard I. Rubin & Co., Inc., 12 F.3d 1270, 1285 and n.13 (3d Cir. 1993). The defendant bears an initial burden of making a prima facie showing that it is a "foreign state" and thus enjoys sovereign immunity. (Id.) If this showing is made, the burden then shifts to the plaintiff to produce evidence establishing that the foreign state is not entitled to immunity under one of the exceptions of § 1605. (Id.) The ultimate burden of proving immunity rests with the party claiming that it is a foreign state. (Id.)

## B. Analysis

In the instant case, the plaintiffs have sought direct relief in personam against Finland. Finland claims immunity from suit under the FSIA as a foreign state. That Finland is a "foreign state" under the FSIA is uncontested; therefore, the burden shifts to the plaintiffs to establish that their claims fall within a § 1605 exception.

Although plaintiffs do not cite any part of § 1605, they apparently seek to persuade the Court to determine that Finland has waived its sovereign immunity under the "express language" of the Convention.<sup>2</sup> (Plaintiffs' Br. at 2). The lone support for this argument comes in the form of the following excerpt from Article 25 of the Convention:

Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this

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<sup>2</sup> The issue of waiver is treated in the exception appearing in § 1605(a)(1), which provides:

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case -

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver...

Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national

Convention on Double Taxation, supra., art. 25, para. 1.

(Emphasis added). The scope of the term "competent authority" as used in this paragraph, plaintiffs argue, should extend to the district courts, and, thus, this provision should be found to constitute a waiver of Finland's immunity from suit in this Court.

This argument is unpersuasive. First, it is significant that plaintiffs do not cite a single decision that supports this view. Second, plaintiffs' interpretation of the express language is flawed because it renders incoherent the subsequent provisions of Article 25, which further inform the role of the "competent authority." Plaintiffs tacitly admit this fact given their complete failure to discuss the significance of the remaining paragraphs of Article 25. Third, and finally, plaintiffs' understanding is controverted by the very practice of the government in discharging its duties under the Convention. The amicus submission of the United States substantially establishes that the competent authority referred to throughout Article 25, far from pertaining to a United States court, is in fact an officer of the Department of State who negotiates with a Finnish counterpart in aid of the claim management procedure contemplated



clearly by the Convention. In sum, plaintiffs' selective employment of portions of the Convention is wholly insufficient to establishing the type of unequivocal waiver that must be present in order to support a deprivation of immunity provided a foreign state by the FSIA.<sup>3</sup>

Plaintiffs have offered nothing that addresses these difficulties with their waiver theory. Accordingly, the Court determines that plaintiffs have failed to demonstrate that a § 1605 exception applies in this case. In the absence of an applicable § 1605 exception, the FSIA compels a finding that Finland is immune from the instant suit. This conclusion, in turn, is the equivalent of a determination that this Court was without subject matter jurisdiction to enter default judgment against Finland. A judgment entered by a Court without subject matter jurisdiction is void. Marshall, 575 F.2d at 422. Consequently, defendant Finland is entitled to vacation of the default judgment pursuant to Fed. R. Civ. P. 60(b)(4).

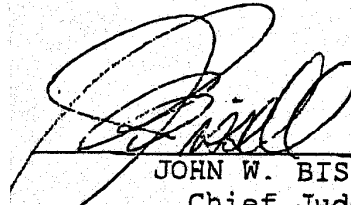
#### CONCLUSION

For the foregoing reasons, defendant Finland's motion to vacate the default judgment is granted, and the Amended Complaint is dismissed without prejudice, for lack of subject matter

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<sup>3</sup> Aquinda v. Texaco, Inc., 175 F.R.D. 50, 52 (S.D.N.Y. 1997) (citing cases) (recognizing as well settled that waiver of sovereign immunity must be clear, complete, unambiguous and unmistakable in order to be effective), vacated on other grounds sub nom., Jota v. Texaco, Inc., 157 F.3d 153 (2d Cir. 1998)).

jurisdiction in this forum. Each side shall bear its own costs and expenses.

A handwritten signature in black ink, appearing to read "J. Bissell", is written over a horizontal line.

JOHN W. BISSELL  
Chief Judge  
United States District Court

DATED: February 1<sup>st</sup>, 2002



<b>(a)</b>	<b>Registration no/ N° d'enregistrement</b>	FIN/2
<b>(b)</b>	<b>Date</b>	30 September 1993
<b>(c)</b>	<b>Author(ity)/ (Service) auteur</b>	Supreme Court (Korkein oikeus)
<b>(d)</b>	<b>Parties</b>	Hanna Heusala (individual) v. Republic of Turkey (state)
<b>(e)</b>	<b>Points of law/ Points de droit</b>	The Court established that the Finnish courts were not competent to consider labour disputes involving local employees of foreign missions when duties of the employees were closely related to the exercise of governmental authority.
<b>(f)</b>	<b>Classification no/ n°</b>	0.a, 1.a, 2.c
<b>(g)</b>	<b>Source(s)</b>	Korkeimman oikeuden ratkaisuja 1993 II at 563.
<b>(h)</b>	<b>Additional information/ Renseignements complémentaires</b>	Although Finland is not a party to the European Convention on State Immunity, the Supreme Court referred to the Convention as a source when analysing the rules and principles of customary international law.
<b>(i)</b>	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	Summary English: Appendix 1

**FIN/2**

## Appendix 1

The case before the Supreme Court of Finland concerned a labour dispute between the Embassy of Turkey and a locally recruited employee, who had worked as a secretary and translator. The Supreme Court held that the European Convention on State Immunity was a valid source when analysing the rules and principles of customary international law. The Supreme Court stated that, pursuant to the Convention, a State cannot claim immunity if the proceedings relate to a contract of employment between the State and an individual, where the work has to be performed on the territory of the forum State. However, the Court referred to Article 32 of the Convention, according to which 'nothing in the present Convention shall affect privileges and immunities relating to the exercise of the functions of diplomatic missions and consular posts and of persons connected with them'. On the basis of Article 32 and customary international law, the Court found that a foreign mission as an employer could invoke immunity from jurisdiction before a court of the receiving State when the labour dispute was closely related to the official duties of the mission.

The Court held that the duties of the Plaintiff were meant to serve the official duties of a member of the diplomatic staff of Turkey and was thus closely related to the exercise of governmental authority of Turkey. Therefore, Turkey enjoyed jurisdictional immunity in the case and the Finnish courts lacked subject matter jurisdiction.

(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/3
(b)	<b>Date</b>	3 July 2002
(c)	<b>Author(ity)/ (Service) auteur</b>	Labour Court ( <i>Tribunal regional do trabalho – 10 região</i> ), Brazil
(d)	<b>Parties</b>	Vilda Custodio de Carvalho (individual) v. Republic of Finland (state)
(e)	<b>Points of law/ Points de droit</b>	The Court established that it was competent to consider labour disputes involving locally recruited employees of foreign missions. Finland invoked immunity in the case.
(f)	<b>Classification no/ n°</b>	0.a, 1.c, 2.c
(g)	<b>Source(s)</b>	
(h)	<b>Additional information/ Renseignements complémentaires</b>	
(i)	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	Summary English: Appendix 1

**FIN/3**

## Appendix 1

The dispute related to pension contributions of a locally recruited housemaid of the official residence of the Finnish Embassy. Finland participated in the proceedings but claimed immunity as a foreign state. The Court established that it was competent to consider a labour dispute against a foreign state as, under the provisions of Brazilian law and case law, foreign missions cannot in principle invoke immunity in labour disputes. Furthermore, the Court found that the diplomatic immunity only applied to the members of the diplomatic staff and not to the mission itself. Finland was ordered by the Court to pay the pension contributions in question.

(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/4
(b)	<b>Date</b>	Plaintiff filed the Complaint on 5 March 2002.
(c)	<b>Author(ity)/ (Service) auteur</b>	United States District Court, Eastern District of New York
(d)	<b>Parties</b>	The Plaintiff (individual) v. Republic of Finland (state), et al.
(e)	<b>Points of law/ Points de droit</b>	The Plaintiff complains of his experiences <u>in Finland</u> regarding the enforcement of Finland's criminal and/or civil law by the Finnish government officials and employees. Finland has moved the court to dismiss the Complaint for lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. §§ 1330, 1604, 1605, 1608). Hence, Finland has claimed immunity from suit as a foreign state and its ministers and employees have claimed derivative immunity. Furthermore, in case that the Court will find that the sovereign immunity of Finland is not dispositive of the Plaintiff's claims, Finland has moved to dismiss the Complaint on other grounds as well. The case is pending before the Court.
(f)	<b>Classification no/ n°</b>	0.a, 2.c
(g)	<b>Source(s)</b>	Case No. 02 CV-1471 (CBA)(LB)
(h)	<b>Additional information/ Renseignements complémentaires</b>	
(i)	<b>Full text – extracts – translation - summaries/ Texte complet – extraits – traduction - résumés</b>	



<b>(a)</b>	<b>Registration no/ N° d'enregistrement</b>	FIN/5
<b>(b)</b>	<b>Date</b>	6 August 2001
<b>(c)</b>	<b>Author(ity)/ (Service) auteur</b>	The High Court of Justice, Queen's Bench Division, London
<b>(d)</b>	<b>Parties</b>	The Plaintiff (individual) v. Republic of Finland (state) and the Commissioner of Police for the Metropolis
<b>(e)</b>	<b>Points of law/ Points de droit</b>	The Claimant has filed a claim against Finland and other defendant for wrongful arrest, malicious prosecution and false imprisonment. As a response to the inquiry by the Embassy of Finland in London, the communication from the Court indicates that the case will be dealt with in accordance with the State Immunity Act 1998. The case is pending before the Court.
<b>(f)</b>	<b>Classification no/ n°</b>	0.a, 1.a, 2.c
<b>(g)</b>	<b>Source(s)</b>	
<b>(h)</b>	<b>Additional information/ Renseignements complémentaires</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	

(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/6
(b)	<b>Date</b>	Action was filed on 12 April 2000.
(c)	<b>Author(ity)/ (Service) auteur</b>	Court of Shevchenkivskyy district of the city of Kyiv
(d)	<b>Parties</b>	The Plaintiff (individual) v. Republic of Finland (state)
(e)	<b>Points of law/ Points de droit</b>	The case concerns a labour dispute between a former locally recruited employee, who worked as a interpreter and the Embassy of Finland. The Embassy of Finland stated in its answer to the note of the Ministry of Foreign Affairs of Ukraine that it did not agree to the waiver of its diplomatic immunity.
(f)	<b>Classification no/ n°</b>	0.a, 1.a, 2.c
(g)	<b>Source(s)</b>	
(h)	<b>Additional information/ Renseignements complémentaires</b>	
(i)	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	The observations of the Embassy of Finland: Appendix 1

FIN/6

Appendix 1

The Embassy of Finland present their compliments to the Protocol Department of the Ministry of Foreign Affairs of Ukraine and referring to the Latter's Note No. 202/20-140-1423 of 9 October, 2001, have the honour to state the following:

The employment of Mr. Vadim Mishakov at the Embassy of Finland ended in 1999 in full observance of all the relevant stipulations of his contract of employment, which was concluded with him by a diplomatic representation of a foreign country. Correspondingly, the Embassy of Finland consider the case closed and see no reason for agreeing to the lifting of their diplomatic immunity in the context of the legal proceedings brought against the Embassy by Mr. Mishakov.

The Embassy of Finland avail themselves of this opportunity to renew to the Protocol Department of the Ministry of Foreign Affairs the assurance of their highest consideration.

Kyiv, October 23<sup>rd</sup> 2001

To  
the Ministry for Foreign Affairs of Ukraine

(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/7
(b)	<b>Date</b>	11 November 2001
(c)	<b>Author(ity)/ (Service) auteur</b>	People's Court of Hamovnik, Moscow
(d)	<b>Parties</b>	The Plaintiff (individual) vs. Republic of Finland (state)
(e)	<b>Points of law/ Points de droit</b>	The case concerns a labour dispute between a former locally recruited employee and the Embassy of Finland. Finland claimed jurisdictional immunity, holding that the court lacked subject matter jurisdiction. Finland returned the plaintiff's note to the Ministry of Foreign Affairs of Russian Federation.
(f)	<b>Classification no/ n°</b>	0.a, 1.a, 2.c
(g)	<b>Source(s)</b>	
(h)	<b>Additional information/ Renseignements complémentaires</b>	
(i)	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	

(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/8
(b)	<b>Date</b>	26 March 1999
(c)	<b>Author(ity)/ (Service) auteur</b>	Ministry for Foreign Affairs of Finland
(d)	<b>Parties</b>	Distrain Office of Helsinki, Embassy of Iraq
(e)	<b>Points of law/ Points de droit</b>	In its statement, the Ministry for Foreign Affairs found that participation in commercial activities by a state is not to be considered an act of government, <i>jure imperii</i> and therefore, the state does not enjoy immunity in respect of these activities.
(f)	<b>Classification no/ n°</b>	0.b, 1.b, 2.b
(g)	<b>Source(s)</b>	-
(h)	<b>Additional information/ Renseignements complémentaires</b>	The Ministry referred in its statement to the European Convention on State Immunity, Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations.
(i)	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	Summary English: Appendix 1

**FIN/8**

## Appendix 1

In this case, the State of Iraq had been ordered by the court to pay a certain amount to a Finnish company. On the grounds of this judgment, the distraint office had foreclosed receivables of Iraq from the bankrupt's estate of another Finnish company. The District Bailiff of Helsinki asked for a statement from the Ministry for Foreign Affairs, concerning the immunity of Iraq from execution in the case.

The Ministry found that participation in commercial activities by a state was not to be considered an act of government, *jure imperii* and, therefore, the state did not enjoy immunity in respect of these activities. The Ministry stated that, in the case in question, the following matters should be taken into account: applicability of the European Convention on State Immunity and the Vienna Convention on Diplomatic Relations and the question of whether the State of Iraq should be considered to become, through succession, a party to the proceedings comparable to a private party in the business relationship in question.

(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/9
(b)	<b>Date</b>	19 November 1998
(c)	<b>Author(ity)/ (Service) auteur</b>	Minister of Foreign Affairs of Finland
(d)	<b>Parties</b>	A reply of the Minister for Foreign Affairs to a written question put forward by a Member of Parliament.
(e)	<b>Points of law/ Points de droit</b>	The written question concerned the following: how the status of wrecks of aircraft or ships is regulated by international law.
(f)	<b>Classification no/ n°</b>	0.a, 1.c, 2.c
(g)	<b>Source(s)</b>	KK 1213/1998
(h)	<b>Additional information/ Renseignements complémentaires</b>	
(i)	<b>Full text – extracts – translation - summaries/ Texte complet – extraits – traduction - résumés</b>	Summary English: Appendix 1

**FIN/9**

## Appendix 1

The written question put forward by a Member of Parliament concerned a Finnish wreck of fighter plane which was shut down during the Second World War and lies now in the territorial sea of the Russian Federation. It was questioned why Finland had not demanded the wreck to itself.

In his reply, the Minister for Foreign Affairs stated that international law made a distinction between acts of government and acts of a commercial nature, when examining the title to property belonging to a State. The leading principle has been that property which relates to acts of government enjoys immunity as an expression of the sovereignty of the flag state. During the war, the use of war equipment by the armed forces constitutes an act of government. However, in a state of war, the rules of armed conflict must also be taken into account. These rules create a system of regulation of their own, applicable in times of war. In the light of this, the wreck of the Finnish fighter would enjoy sovereign immunity.

In this connection, it is worth noting that, according to the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage, a wreck of a State-owned vessel which is over 100 years old does not enjoy sovereign immunity.

The Minister emphasized, however, that in the relations between Finland and Russia, the treaties in force between the countries (between Finland and the Soviet Union at first and later between Finland and Russia) are a primary concern to be taken into account when examining the status of the wreck. Thus, by virtue of the Peace Treaty of Paris 1947, the Minister concluded that claims concerning the wreck were not possible.



(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/10
(b)	<b>Date</b>	July 2001
(c)	<b>Author(ity)/ (Service) auteur</b>	Minister for Foreign Affairs of Finland
(d)	<b>Parties</b>	A reply of the Minister for Foreign Affairs to a written question put forward by two Members of Parliament.
(e)	<b>Points of law/ Points de droit</b>	The written question put forward by two members of the Parliament concerned employment security of the locally recruited employees (Finnish nationals) of the foreign embassies.
(f)	<b>Classification no/ n°</b>	0.a, 1.b, 2.c
(g)	<b>Source(s)</b>	KK 853/2001 vp
(h)	<b>Additional information/ Renseignements complémentaires</b>	
(i)	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	Summary English: Appendix 1

**FIN/10**

## Appendix 1

A written question put forward by two Members of Parliament concerned the employment security of local employees (Finnish nationals) working at foreign embassies in Helsinki.

In his reply, the Minister for Foreign Affairs referred to the International Law Commission's Draft Convention on the Jurisdictional Immunities of States and Their Property under discussion at the Ad Hoc Committee of the Sixth Committee of the UN General Assembly. Finland has actively taken part in the work of the Ad Hoc Committee. The ILC draft states, as a rule, that immunity from jurisdiction does not apply, with certain exceptions, to a contract of employment between a State and an individual. In the work of the Committee, Finland has emphasized that the group of persons against whom an employer state can claim immunity should remain as limited as possible. The question concerns the right of an individual to have a case concerning his/her contract of employment heard in a local court and, therefore, it is also a matter of human rights.

In the reply, a tendency in international law to restrict the situations where a State may claim immunity before foreign courts, was recognised. The variety of national legislations has, however, delayed the finalisation of the Convention.

Reference was also made to Article 38 of the Vienna Convention on Diplomatic Relations, according to which other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. Finland has not admitted privileges or immunities for the local employees of foreign embassies. Consequently, the foreign embassies are not exempted from their obligations under Finnish social security provisions. They are obliged to observe the peremptory provisions of the Finnish labour law in respect of their local employees.

(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/11
(b)	<b>Date</b>	31 March 1999
(c)	<b>Author(ity)/ (Service) auteur</b>	District Court of Helsinki
(d)	<b>Parties</b>	Inkeri Kivi-Koskinen (individual) v. Kingdom of Belgium (state)
(e)	<b>Points of law/ Points de droit</b>	The Court entered a default judgment against Belgium in a labour dispute between the Embassy of Belgium and its former local employee.
(f)	<b>Classification no/ n°</b>	0.a, 1.b, 2.c
(g)	<b>Source(s)</b>	
(h)	<b>Additional information/ Renseignements complémentaires</b>	The default judgment was vacated by the Court when it confirmed the friendly settlement of the parties.
(i)	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	Summary English: Appendix 1

**FIN/11**

## Appendix 1

The case concerned the termination/cancellation of an employment contract between the Embassy of Belgium and its locally recruited secretary. Belgium did not react to the claim. The Court did not expressly address the matter of state immunity, but stated that the claim was not manifestly unfounded. Therefore, the Court entered a default judgment against the Kingdom of Belgium.

Belgium moved the Court to enter an order vacating the default judgment. It claimed immunity and, therefore, held that the Court lacked subject-matter jurisdiction in the case. The parties, however, settled the dispute and this friendly settlement was confirmed by the Court. With this confirmation, the earlier default judgment was vacated by the Court.

(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/12
(b)	<b>Date</b>	Judgment was received by the Embassy of Finland on 6 July 2000.
(c)	<b>Author(ity)/ (Service) auteur</b>	Labour Court ( <i>Tribunal regional do trabalho - 3 região</i> )
(d)	<b>Parties</b>	Edvaldo Moreira de Azevedo (individual) v. Republic of Finland
(e)	<b>Points of law/ Points de droit</b>	Finland claimed immunity in the case. The Court established that it was competent to consider labour disputes involving local employees of foreign missions.
(f)	<b>Classification no/ n°</b>	0.a, 1.a, 2.c
(g)	<b>Source(s)</b>	
(h)	<b>Additional information/ Renseignements complémentaires</b>	See also the case No. FIN/3.
(i)	<b>Full text – extracts – translation - summaries/ Texte complet – extraits – traduction - résumés</b>	Summary English: Appendix 1

**FIN/12**

## Appendix 1

The labour dispute between the Embassy of Finland and its former locally recruited gardener concerned the gardener's retirement and compensation. Finland filed documents concerning the case to the Court and invoked immunity. The Embassy of Finland was not present in the proceedings. The Labour Court found that it was competent to consider the dispute and ordered Finland to pay compensation to the former employee in full compliance with the claim.

(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/13
(b)	<b>Date</b>	11 July 2001
(c)	<b>Author(ity)/ (Service) auteur</b>	District Court of Helsinki
(d)	<b>Parties</b>	As Veli ja Veljed (company) v. Republic of Estonia
(e)	<b>Points of law/ Points de droit</b>	The Court found that it was not competent to consider a case involving private companies of which one was owned by a foreign state.
(f)	<b>Classification no/ n°</b>	0.b, 1.b, 2.c
(g)	<b>Source(s)</b>	Case No. 00/23021
(h)	<b>Additional information/ Renseignements complémentaires</b>	
(i)	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	Summary English: Appendix 1

**FIN/13**

## Appendix 1

The case concerned a breach of contract between two Estonian companies. The first party to the contract - the Plaintiff in the case - was an Estonian company having a permanent place of business in Finland. The other party was a company (Püssi PPK) owned at the time the contract was concluded (1992) by the State of Estonia and being under the control of the Ministry of Trade and Energy of Estonia. The latter company was later privatized.

The Court found that, when privatizing the Püssi PPK, the State of Estonia had not assumed liability for the contract under consideration, and nor was it responsible for the liabilities of the Püssi PPK on other grounds. The Court cited legal literature and stated that the socialistic countries used to consider that immunity was enjoyed not only with respect to state acts, *jus imperii*, but also with respect to state acts, *jus gestionis*. The Court established that, due to the immunity of the State of Estonia from jurisdiction, it was not competent to consider the claim and ruled it inadmissible without considering the merits of the case.



(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/14
(b)	<b>Date</b>	14 November 2000
(c)	<b>Author(ity)/ (Service) auteur</b>	District Court of Helsinki
(d)	<b>Parties</b>	Oliva Carrasco, Ricardo (individual) v. Republic of Venezuela (state)
(e)	<b>Points of law/ Points de droit</b>	The Court established that it was not competent to consider labour disputes between foreign missions and their employees.
(f)	<b>Classification no/ n°</b>	0.a, 1.a, 2.c
(g)	<b>Source(s)</b>	Case No. 00/1467
(h)	<b>Additional information/ Renseignements complémentaires</b>	Judgment of the District Court was upheld by the Court of Appeal of Helsinki. The Plaintiff appealed against the judgement of the Court of Appeal on 28 May 2002. The Case is pending before the Supreme Court.
(i)	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	Summary English: Appendix 1

**FIN/14**

## Appendix 1

The case concerned the termination/cancellation of an employment contract between the Embassy of Venezuela and its former chauffeur. Venezuela invoked immunity. By referring to a precedent of the Supreme Court of Finland (KKO 1993:120; FIN/2), the Court established that it was not competent to consider the case and ruled the claim inadmissible without considering the merits. Further, it stated that immunity was a matter that had to be taken into account *ex officio* by the Court.

<b>(a)</b>	<b>Registration no/ N° d'enregistrement</b>	FIN/15
<b>(b)</b>	<b>Date</b>	29 October 1999
<b>(c)</b>	<b>Author(ity)/ (Service) auteur</b>	District Court of Helsinki
<b>(d)</b>	<b>Parties</b>	Metra Oy Ab (company) vs. Republic of Iraq (state)
<b>(e)</b>	<b>Points of law/ Points de droit</b>	The case concerned a debt obligation of the State of Iraq towards a Finnish company. As Iraq did not react to the claim, and as the Court found that the claim was not unfounded, it entered a default judgment against Iraq on 9 December 1994. Iraq moved to vacate the judgment. At the beginning of the proceedings, Iraq claimed immunity, but later waived the right to invoke immunity. Therefore, the Court found that it was competent to consider the case.
<b>(f)</b>	<b>Classification no/ n°</b>	0.b, 1.c, 2.c
<b>(g)</b>	<b>Source(s)</b>	Case No. 95/3561
<b>(h)</b>	<b>Additional information/ Renseignements complémentaires</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	

(a)	<b>Registration no/ N° d'enregistrement</b>	FIN/16
(b)	<b>Date</b>	21 January 1998
(c)	<b>Author(ity)/ (Service) auteur</b>	District Court of Helsinki
(d)	<b>Parties</b>	Yrityspankki Skop Oy (company) vs. Republic of Estonia (state)
(e)	<b>Points of law/ Points de droit</b>	The Court found that the case concerned acts of a commercial nature and, therefore, Estonia could not invoke immunity from the jurisdiction of the Court. Thus, the Court was competent to consider the case.
(f)	<b>Classification no/ n°</b>	0.b, 1.b, 2.c
(g)	<b>Source(s)</b>	Case No. 95/19597
(h)	<b>Additional information/ Renseignements complémentaires</b>	The judgement vacated a default judgment entered by the Court on 7 March 1995. The judgment was upheld by the Court of Appeal of Helsinki.
(i)	<b>Full text – extracts – translation - summeries/ Texte complet – extraits – traduction - résumés</b>	Summary English: Appendix 1

**FIN/16**

## Appendix 1

The case concerned a guarantee undertaken by the Estonian Soviet Socialist Republic. Estonia claimed immunity in the case. Furthermore, it stressed that as it had not become a successor to the Estonian Soviet Socialist Republic through a state succession, it could not be considered defendant in the case.

The Court emphasized the distinction to be made between acts of government (*jure imperii*) and acts of a commercial nature (*jure gestionis*). In addition, it referred to a precedent of the Supreme Court of Finland (KKO 1993:120; FIN/2). The Court stated that the Estonian Soviet Socialist Republic had undertaken a guarantee when the export association of agricultural producers had opened a credit with a private foreign bank. Thus, the matter concerned commercial activities and the status of the guarantor had a private law character.

At the time the guarantee was undertaken, the Estonian Soviet Socialist Republic was going through a period of economical and political transition. The Court found that, during that period of transition, the nature and the purpose of the state transaction had conclusive significance. It concluded that the activities in question could not be considered to have public law character by virtue of the economical system of the state only, so as to grant immunity to the defendant. Thus, the Court was competent to consider the case.



**GERMANY**

(a)	<b>Registration no./ N° d'enregistrement</b>	D-0-EXE
(b)	<b>Date</b>	31 Octobre 1978
(c)	<b>Author(ity)/(Service) auteur</b>	Bundesminister des Auswärtigen (Federal Foreign Minister)
(d)	<b>Parties</b>	
(e)	<b>Points of law/ Points de droit</b>	Objection to the reservation of the Soviet Union concerning Article XI, paragraph 2 of the International Convention on Civil Liability for Oil Pollution Damage
(f)	<b>Classification no./n°</b>	0.c, 1.b
(g)	<b>Source(s)</b>	Bundesgesetzblatt (Federal Law Gazette) 1979 Part II, p.299
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

**Article XI, paragraph 2 of the Convention:**

"With respect to ships owned by a Contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in Article IX and shall waive all defences based on its status as a sovereign State."

**Reservation of the Soviet Union:**

"The Union of Soviet Socialist Republics does not consider itself bound by the provisions of Article XI, paragraph 2 of the Convention, as they contradict the principle of the judicial immunity of a foreign State."

**Translation of the German Note:**

The Federal Republic of Germany, without excluding the accomplishment of any treaty relations on the basis of the convention, declares not to accept the reservation of the Soviet Union; according to customary international law no state can claim immunity before the courts of another state with regard to ships, which are used by the state for commercial purposes or which are operated by a corporation registered as a supplier or a ship-owner in that state.

Appendix:

German text of the objection (Bekanntmachung über den Geltungsbereich des Internationalen Übereinkommens über die zivilrechtliche Haftung für Ölverschmutzungen - see Source)

(a)	<b>Registration no./ N° d'enregistrement</b>	D-1-EXE
(b)	<b>Date</b>	6 April 1989
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Bundesregierung</i> (Federal Government)
(d)	<b>Parties</b>	
(e)	<b>Points of law/ Points de droit</b>	Government draft of Act of Parliament required by Article 59 (2) of the Basic Law (for the text see D-2-LEG under Additional Information) to enable the Federal Republic of Germany to ratify the European Convention on State Immunity of 1972 (ETS No.74). The Explanatory Memorandum shows that the Federal Government supports the concept of relative state immunity embodied in the Convention.
(f)	<b>Classification no./n°</b>	0.c, 1.b, 2.a (refers to the European Convention)
(g)	<b>Source(s)</b>	Deutscher Bundestag, 11. Wahlperiode, Drucksache 11/4307 (official prints of the German Federal Diet)
(h)	<b>Additional information/Renseignements complémentaires</b>	The Act of Parliament was passed in a slightly revised version and signed by the Federal President on 22 January 1990 (BGBl.1990 II, 34 – see D-2-LEG). The Federal Republic of Germany ratified the Convention (but not the Additional Protocol) on 15 May 1990.
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

### English Translation of Excerpt from Government Draft:

“The Convention follows the concept of relative state immunity which is approved by legal doctrine and case law in the Federal Republic of Germany ...” (title page under B.)

### Partial Summary of the *Denkschrift* (explanatory memorandum of the Federal Government to the Convention):

According to the jurisprudence of the Federal Constitutional Court approved by legal doctrine a state enjoys immunity only with regard to *acta iure imperii*. The question whether state action is *iure imperii* or *iure gestionis* must be determined according to the law of the forum state. In Germany, judicial practice focuses on the nature of the state action or of the ensuing legal relationship and not on the motive or purpose of the state action because all state activity is ultimately linked to sovereign purposes and responsibilities. With regard to execution against a foreign state, which is not *a priori* inadmissible under customary international law, there is no exact parallelism in German law between jurisdictional immunity and immunity of execution because the effects of an execution will hit a foreign state much harder than a judgment and thus the risk of political complications will be greater.



If there is no jurisdictional immunity because a private law activity of a foreign state is involved or because this state has submitted to the jurisdiction of the forum state that does not mean that an execution will also be admissible. The admissibility of an execution does not depend on whether the foreign state owns the object of the execution as a sovereign or merely as a legal person under private law. The decisive question is rather whether the object of the execution serves sovereign purposes of the foreign state at the time at which the execution is bound to commence. (Part I.A. [p.30])

Article 15 attributes immunity to states even with regard to disputes concerning *acta iure gestionis* which are not covered by the exceptions in Articles 1 to 13. However, Article 24 authorizes states parties to make a unilateral declaration, thereby extending the jurisdiction of their courts to acts of foreign states not so covered but excluding *acta iure imperii*. As the Federal Republic of Germany adheres to the restrictive theory of sovereign immunity, it intends to make such a declaration. This declaration shall primarily preserve the jurisdiction of German courts in labor disputes between employees and the foreign states which employed them. (Explanations by the Federal Government with regard to Articles 15 and 24 [pp.34, 36-7]) (see also D-2-EXE)

Appendix: *Gesetzentwurf* and *Denkschrift* of the Federal Government (see Source). Text of Convention and Additional Protocol (ibid. p.7-29) not included.

(a)	<b>Registration no./ N° d'enregistrement</b>	D-2-EXE
(b)	<b>Date</b>	15 May 1990
(c)	<b>Author(ity)/(Service) auteur</b>	Permanent Representative of Germany to the Council of Europe
(d)	<b>Parties</b>	
(e)	<b>Points of law/ Points de droit</b>	<i>Declaration concerning Article 24 made at the time of deposit of the instrument of ratification concerning the European Convention on State Immunity (ETS No.74). The declaration shows that the Federal Government supports the theory of relative state immunity beyond the scope of the Convention.</i>
(f)	<b>Classification no./n°</b>	0.b; 1.b
(g)	<b>Source(s)</b>	Council of Europe – Treaty Office ( <a href="http://conventions.coe.int/">http://conventions.coe.int/</a> )
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

**Text of Declaration:**

“The Federal Republic of Germany declares in accordance with paragraph 1 of Article 24 of the Convention that, in cases not falling within Articles 1 to 13, its courts are entitled to entertain proceedings against another Contracting State to the extent that its courts are entitled to entertain proceedings against States not Party to the Convention. Such a declaration is without prejudice to the immunity from jurisdiction which foreign States enjoy in respect of acts performed in the exercise of sovereign authority (*acta jure imperii*).“

(a)	<b>Registration no./ N° d'enregistrement</b>	D-3-EXE
(b)	<b>Date</b>	3 June 1992
(c)	<b>Author(ity)/(Service) auteur</b>	Permanent Representative of Germany to the Council of Europe
(d)	<b>Parties</b>	
(e)	<b>Points of law/ Points de droit</b>	Declaration concerning Article 28 made at the time after the reunification of Germany, replacing an earlier declaration made at the time of deposit of the instrument of ratification concerning the European Convention on State Immunity (ETS No.74). It shows that the Federal Government intended to convey the benefit of state immunity with regard to sovereign acts to all the constituent states of Germany.
(f)	<b>Classification no./n°</b>	0.c, 1.b, 2.a (refers to the European Convention)
(g)	<b>Source(s)</b>	Council of Europe – Treaty Office ( <a href="http://conventions.coe.int/">http://conventions.coe.int/</a> )
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction – résumés</b>	

## Text of Declaration:

“The Federal Republic of Germany hereby amends its declaration relating to Article 28, paragraph 2, of the Convention to the effect that all constituent states (Laender) of the Federal Republic of Germany ... shall be able to invoke the provisions of the Convention applying to the Contracting States and shall have the same duties as the latter.”

(a)	<b>Registration no./ N° d'enregistrement</b>	D-4-EXE
(b)	<b>Date</b>	11 November 1994
(c)	<b>Author(ity)/(Service) auteur</b>	Permanent Mission of Germany to the United Nations
(d)	<b>Parties</b>	
(e)	<b>Points of law/ Points de droit</b>	Statement during the discussions on the ILC draft Convention on Jurisdictional Immunities of States and their Property in the Sixth Committee of the United Nations General Assembly, 49 <sup>th</sup> Session. The statement outlines the German position on different questions arising from the draft.
(f)	<b>Classification no./n°</b>	0.c, 1.b (refers to the draft Convention)
(g)	<b>Source(s)</b>	Permanent Mission of Germany to the United Nations, 49 <sup>th</sup> General Assembly, Sixth Committee, Item 143, 60, in: Deutschland 1994 (Collection by the Federal Foreign Office)
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction – résumés</b>	

#### Excerpt from Statement:

- On the qualification of a transaction as commercial or non-commercial

"In the interest of legal certainty, my Government continues to maintain that only the objective nature of a transaction involving a foreign state and not its subjective purpose can determine whether the state is entitled to immunity. Legal transactions with foreign states would carry a risk impossible to calculate if the purpose of state action were to constitute a criterion.

[...]

Some of these proposals admit a reference to the purpose of a transaction if the purpose is relevant to the invocation of immunity under the national law of the respective state. In our opinion this would make it too difficult for a party involved in a transaction with a foreign state to predict whether it will be able to pursue a claim in court. Furthermore, the question of reciprocity would arise since the granting of state immunity would necessarily differ according to the applicable law.

As far as the idea of requiring a general declaration by a state to refer to the criterion of purpose is concerned this would solve none of the problems. It would not ensure a greater measure of certainty. Since such a general declaration would not be able to take into account that law and practice of a state might change, it would remain difficult for the private party to predict in which situations the contracting state could invoke immunity. A specific notification of the state about the potential relevance of the purpose criterion would be

preferable to a general declaration. However, in the view of my delegation, this proposal still leaves too much uncertainty since it does not require the consent of the private party.

If in addition to nature as the primary criterion, the parties could also expressly agree that a transaction be designated as non-commercial, the granting of immunity would not be left up to the discretion of a foreign state involved in a transaction. We see merit in this proposal which in cases of doubt would make the objective nature of the transaction the decisive criterion."

- On enforcement measures

"In the opinion of my Government the problem of state immunity and enforcement measures is an essential component of the draft convention without which it would be robbed of its justification.

The provision in article 18 para. 1 (c) of the ILC draft, according to which enforcement measures would be restricted to property with some connection to the claim, constitutes a limitation of the liability of the foreign state that goes too far. It would amount to a limited exemption from financial consequences of commercial transactions engaged in by a state. In our view, the interest of a state party is already sufficiently protected by the remaining limitations contained in articles 18 and 19."

- On prejudgement measures

"With regard to prejudgment measures we hold it necessary that they be subject to the same legal regime as postjudgment measures. The exclusion of measures of constraint intended to afford temporary protection could endanger the implementation of judgements against a state party in cases where it does not enjoy immunity."

- On the liability of state agencies or other legal entities connected with a state

" As far as the treatment of state agencies or other legal entities connected with a state is concerned the question is primarily whether, as compensation for the liability of such legal entities, it will be possible, in certain cases to access the property of the parent state. To exclude the possibility of recourse to the state entirely would enable states to avoid financial liability for commercial transactions by setting up independent entities."

Appendix: Full Text of the statement (see source)

(a)	<b>Registration no./ N° d'enregistrement</b>	D-5-EXE
(b)	<b>Date</b>	18 October 1995
(c)	<b>Author(ity)/(Service) auteur</b>	Bundesregierung (Federal Government)
(d)	<b>Parties</b>	
(e)	<b>Points of law/ Points de droit</b>	Verbal note from the Federal Government of Germany to the embassy of the Republic of Greece concerning Greek Court decisions dealing with claims for compensation against Germany in connection with the German occupation during World War II. In the verbal note the Federal Foreign Office explained the German position on state immunity.
(f)	<b>Classification no./n°</b>	0.a, 1.c
(g)	<b>Source(s)</b>	Grote, Völkerrechtliche Praxis der Bundesrepublik Deutschland 1995, III, 18 ( <a href="http://www.virtual-institute.de/de/prax1995/praxb95_.cfm">www.virtual-institute.de/de/prax1995/praxb95_.cfm</a> ); Röben, Völkerrechtliche Praxis der Bundesrepublik Deutschland 1996, III, 18 ( <a href="http://www.virtual-institute.de/de/prax1996/pr96_.cfm">www.virtual-institute.de/de/prax1996/pr96_.cfm</a> )
(h)	<b>Additional information/Renseignements complémentaires</b>	In an answer to a parliamentary question concerning the compensation of Greek victims of the Nazi-Regime the Federal Government in 1997 <i>inter alia</i> referred to the relevant verbal note.
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

#### Translation of Verbal Note (Excerpt):

Proceedings before Greek courts concerning claims of Greek citizens against the Federal Republic of Germany based on incidents in World War II are not consistent with international law, and therefore any action before Greek Courts against the Federal Republic of Germany is inadmissible. The basic principle of state immunity in international law hinders any conduct of a case before the courts of one state as far as the proceeding is directed against a foreign state in relation to that state's sovereign action (*acta iure imperii*).

[...]

Furthermore according to international law the direction of individual claims for compensation of material and immaterial damages against another state based on that state's belligerent conduct is impermissible.

(a)	<b>Registration no./ N° d'enregistrement</b>	D-1-JUD
(b)	<b>Date</b>	30 October 1962
(c)	<b>Author(ity)/(Service) auteur</b>	Bundesverfassungsgericht (Federal Constitutional Court)
(d)	<b>Parties</b>	Submission by the Bundesgerichtshof [Federal High Court] under Art.100 (2) of the Basic Law (for the text <i>infra</i> under Additional Information). Parties in the underlying civil suit: Vereinigte Kaliwerke Salzdettfurth AG (plaintiff); Federative National Republic of Yugoslavia (defendant)
(e)	<b>Points of law/ Points de droit</b>	Federal Constitutional Court applies theory of relative immunity to suit concerning legation premises. The case concerned the premises of the Yugoslav Military Mission in Berlin which had been sold by plaintiff to defendant. Plaintiff claimed that the conveyance of property was void and sought rectification of the land register in its favor which required defendant's consent. Suit was filed to obtain this consent.
(f)	<b>Classification no./n°</b>	0.b.1; 1.b.
(g)	<b>Source(s)</b>	<i>Entscheidungen des Bundesverfassungsgerichts</i> Vol.15, p.25 <i>et seq.</i> (German original); English extracts in: Decisions of the Bundesverfassungsgericht – Federal Constitutional Court – Federal Republic of Germany, Volume I/1: International Law and Law of the European Communities 1952-1989 (published by the Members of the Court), 1992, p.137 <i>et seq.</i>
(h)	<b>Additional information/Renseignements complémentaires</b>	<p>This Federal Constitutional Court decision was followed by the Bundesverwaltungsgericht [Federal Administrative Court] in a decision of 17 May 1999 [ZOV 1999, 381 <i>et seq.</i>] which concerned the transfer of an embassy compound to the heirs of the original owner who had been expropriated during the Nazi period because of his race.</p> <p>Article 100 (2) of the Basic Law (German Constitution of 1949) reads as follows: "Where in the course of litigation doubt exists whether a rule of international law is an integral part of federal law and whether such rule directly establishes rights and obligations for the individual (Article 25), the</p> <p>court shall seek a ruling from the Federal Constitutional Court." (Official translation published by the Press and Information Office of the Federal Government)</p>
(i)	Full text - extracts - translation - summaries/ Texte complet - extraits - traduction – résumés	

**English Excerpt** (quoted from Decisions of the Bundesverfassungsgericht [see *supra* under Source], p.148):

"[N]o general rule of public international law whereby domestic jurisdiction in suits against a foreign State in relation to its legation premises are in every case ruled out can be found.

The immunity of legation premises instead reaches only as far as is requisite for carrying out the tasks of the diplomatic mission."

Appendix 1: German original (see Source)

Appendix 2: English translation (see Source)

Appendix 3: Federal Administrative Court decision of 1999 (mentioned under Additional Information)



(a)	<b>Registration no./ N° d'enregistrement</b>	D-2-JUD
(b)	<b>Date</b>	30 April 1963
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Bundesverfassungsgericht</i> (Federal Constitutional Court)
(d)	<b>Parties</b>	Submission by the Cologne Regional Court under Art.100 (2) of the Basic Law (for the text see D-1-JUD under Additional Information). Parties in the underlying civil suit: anonymous heating installation repair shop (plaintiff); Iranian Empire (defendant)
(e)	<b>Points of law/ Points de droit</b>	Federal Constitutional Court adopts and explains the theory of relative state immunity. The case arose when the defendant refused to pay plaintiff for repair work done at the Iranian Embassy building in Cologne.
(f)	<b>Classification no./n°</b>	0.b.1; 1.b.
(g)	<b>Source(s)</b>	<i>Entscheidungen des Bundesverfassungsgerichts</i> Vol.16, p.27 <i>et seq.</i> (German original); English extracts in: Decisions of the Bundesverfassungsgericht – Federal Constitutional Court – Federal Republic of Germany, Volume I/1: International Law and Law of the European Communities 1952-1989 (published by the Members of the Court), 1992, p.150 <i>et seq</i>
(h)	<b>Additional information/Renseignements complémentaires</b>	This decision of the Federal Constitutional Court is quoted in the Explanatory Report to the European Convention on State Immunity (ETS No.74) as an “important decision” that “adopted the principle of relative State Immunity” (§5).
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

**English Excerpt** (quoted from Decisions of the Bundesverfassungsgericht [see *supra* under Source], p.150 [headnotes]):

- “1. A rule of public international law whereby domestic jurisdiction for actions against a foreign State in relation to its non-sovereign activity is ruled out is not an integral part of Federal law.
2. a) The criterion for distinguishing between sovereign and non-sovereign State activity is the nature of the State’s action.  
b) Classification as sovereign or non-sovereign State activity is in principle to be done according to national law.”

Appendix 1: German original (see Source)

Appendix 2: English translation (see Source)

(a)	<b>Registration no./ N° d'enregistrement</b>	D-3-JUD
(b)	<b>Date</b>	13 December 1977
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Bundesverfassungsgericht</i> (Federal Constitutional Court)
(d)	<b>Parties</b>	Submission by the Bonn Local Court under Art.100 (2) of the Basic Law (for the text see D-1-JUD under Additional Information). Parties in the underlying civil suit: anonymous landlord (creditor) and the Republic of the Philippines (debtor)
(e)	<b>Points of law/ Points de droit</b>	The landlord had rented a house to the Republic of the Philippines which used it as an office for its Embassy in Germany. After the end of the tenancy agreement the landlord secured a default judgment against the Philippines concerning arrears of rent and expenses for necessary repair work. To execute this judgment he seized a current bank account used by the Philippine Embassy. The Republic of the Philippines lodged an objection with the Bonn Local Court claiming sovereign immunity. The Federal Constitutional Court upheld the objection.
(f)	<b>Classification no./n°</b>	0.b.1; 1.b; 2.b.
(g)	<b>Source(s)</b>	<i>Entscheidungen des Bundesverfassungsgerichts</i> Vol.46, p.342 <i>et seq.</i> (German original); English extracts in: Decisions of the Bundesverfassungsgericht – Federal Constitutional Court – Federal Republic of Germany, Volume I/1: International Law and Law of the European Communities 1952-1989 (published by the Members of the Court), 1992, p.358 <i>et seq.</i>
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction – résumés</b>	

**English Excerpt** (quoted from Decisions of the Bundesverfassungsgericht [see *supra* under Source], p.358 *et seq.* [headnotes]):

- “5. “The fact that general customary international law contains the minimum obligation for contentious proceedings to grant immunity in relation to sovereign acts (*acta iure imperii*) does not by itself mean that, even as regards execution, it requires only limited immunity. ...
7. At present there is no practice of States that would as yet be sufficiently general and supported by the necessary legal conviction as to establish a general rule of intern[ation]al law whereby the State having jurisdiction would be barred from execution against a foreign State absolutely.

8. There is a general rule of international law that execution by the State having jurisdiction on the basis of a judicial writ of execution against a foreign State, issued in relation to non-sovereign action (*acta iure gestionis*) of that State upon that State's things located or occupied within the national territory of the State having jurisdiction, is inadmissible without assent by the foreign State, insofar as those things serve sovereign purposes of the foreign State at the time of commencement of the enforcement measure.
9. In the case of measures by way of security or execution against a foreign State, international law objects, at the time concerned serving its diplomatic representation in carrying out its official functions, may not be seized (*ne impediatur legatio*).
10. Because of the problems of demarcation in assessing endangerment of that functionality and because of the latent possibilities of abuse, general international law draws the area of protection in favour of the foreign State very broadly and focuses on the typical, abstract danger, not on the specific endangerment of the functionality of the diplomatic representation.
11. Receivables from a current ordinary bank account of the embassy of a foreign State existing in the forum State and intended to cover the embassy's expenses and costs are not subject to execution by the forum State.
12. It would constitute interference contrary to international law in the exclusive affairs of the sending State for the enforcement agencies of the receiving State to demand that the sending State, without its assent, give details of the existence or of the earlier, present or future uses of credits on such an account.
13. The question remains open whether and on what criteria claims and other rights on other accounts of a foreign State with banks in the forum State, for instance special accounts in connection with procurement purposes or issues of loans or on accounts without special earmarking, are to be treated as sovereign or non-sovereign assets and which limits in international law are accordingly to be taken into account as appropriate for the law of evidence. ...
14. The principle of the sovereign equality of States is a constitutive principle of contemporary general international law, which, at any rate within the sphere of the diplomatic transactions of States, requires far-reaching formal equality of treatment. Differential treatment of States in the sphere of diplomatic immunity according to their respective economic capacity would be incompatible therewith."

Appendix 1: German original (see Source)

Appendix 2: English translation (see Source)

(a)	<b>Registration no./ N° d'enregistrement</b>	D-4-JUD
(b)	<b>Date</b>	26 September 1978
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Bundesgerichtshof</i> (Federal High Court)
(d)	<b>Parties</b>	Plaintiff: religious association with legal personality as an association registered in Germany (branch of the Church of Scientology of California whose mother-church is domiciled in England); defendant: director of New Scotland Yard
(e)	<b>Points of law/ Points de droit</b>	Plaintiff brought action for a permanent injunction against defendant in view of the fact that New Scotland Yard had issued a report on the Scientology movement accusing it of dishonest acts to the detriment of its members. This report had been sent to the Federal Office of Criminal Investigation ( <i>Bundeskriminalamt</i> ) upon its request and transmitted by it to all the state offices of criminal investigation ( <i>Landeskriminalämter</i> ). Plaintiff claimed that certain factual allegations made in the report were untrue. The action was dismissed because the German courts did not have jurisdiction in view of defendant's sovereign immunity.
(f)	<b>Classification no./n°</b>	0.a., 1.b
(g)	<b>Source(s)</b>	Neue Juristische Wochenschrift 1979, p.1101 <i>et seq.</i>
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction – résumés</b>	

### English Summary of Relevant Parts of Decision:

The question whether defendant is subject to jurisdiction of German courts is to be answered pursuant to the general rules of international law (see Article 25 of the Basic Law [for the text see D-1-LEG under Additional Information]). This refers to customary international law. While sovereign immunity no longer covers *acta iure gestionis* it still applies to sovereign acts of states. Whether the report of Scotland Yard about Scientology qualifies as a sovereign act or a non-sovereign act must be determined according to German law as the law of the forum. According to German law the exercise of police power is undoubtedly part

of the sovereign activity of states. It even is at the core of sovereign power so that the report at issue here must be considered as an act *iure imperii* even if it had to be qualified as an act *iure gestionis* under English law. The report was sent to the Federal Office of Criminal Investigation upon its request pursuant to the international agreement between the Federal Republic of Germany and Great Britain on mutual assistance in criminal matters of 1961. Fulfilling an obligation arising under an international treaty on police cooperation in criminal matters always amounts to an act *iure imperii*. The acts of Scotland Yard and its director – the defendant – are sovereign acts of the British state and not an act of the defendant as a private person. It would undermine the unlimited immunity of foreign states with regard to their sovereign acts if German courts were to allow actions directly against the individual performing these sovereign acts on behalf of the state.

Appendix:      German original (from the Juris online retrieval system)

(a)	<b>Registration no./ N° d'enregistrement</b>	D-5-JUD
(b)	<b>Date</b>	12 April 1983
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Bundesverfassungsgericht</i> (Federal Constitutional Court)
(d)	<b>Parties</b>	Constitutional complaint by the National Iranian Oil Company (a joint stock company under Iranian law owned by the Islamic Republic of Iran) against orders of attachment and distraint by German courts, issued on petitions by British and U.S. firms.
(e)	<b>Points of law/ Points de droit</b>	The Federal Constitutional Court dismissed the complaint as unfounded because it drew a distinction between the sovereign state and separate legal entities under private law established by it.
(f)	<b>Classification no./n°</b>	0.b.1; 1.b; 2.b.
(g)	<b>Source(s)</b>	<i>Entscheidungen des Bundesverfassungsgerichts</i> Vol.64, p.1 <i>et seq.</i> (German original); English extracts in: Decisions of the Bundesverfassungsgericht – Federal Constitutional Court – Federal Republic of Germany, Volume I/2: International Law and Law of the European Communities 1952-1989 (published by the Members of the Court), 1992, p.479 <i>et seq.</i>
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

**English Excerpt** (quoted from Decisions of the Bundesverfassungsgericht [see *supra* under Source], p.479 *et seq.* [headnotes]):

“There is no general rule of international law requiring that a foreign State be treated as owner of receivables on accounts maintained with banks in the forum State kept in the name of an enterprise of the foreign State having legal capacity.

The forum State is not prevented from treating the enterprise concerned as entitled to receive claims and, on the basis of a title of enforcement given against that enterprise, issued in prior proceedings for protection of rights in relation to non-sovereign action by the enterprise, to distraint the receivables concerned in order to secure the claim in the title.

This applies irrespective of whether the credits on these accounts are freely available to the enterprise or are according to foreign law intended for transfer to an account of the foreign State with its central bank.”

Appendix 1: German original (see Source)

Appendix 2: English translation (see Source)

(a)	<b>Registration no./ N° d'enregistrement</b>	D-6-JUD
(b)	<b>Date</b>	30 September 1988
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Bundesverwaltungsgericht</i> (Federal Administrative Court)
(d)	<b>Parties</b>	Asylum seeker filed suit against rejection of his application for asylum by the Federal Government.
(e)	<b>Points of law/ Points de droit</b>	Tamile asylum seeker from Sri Lanka moved for the cross examination of the Indian minister of defense to support his allegation that Indian troops had engaged in indiscriminate killings of Tamiles in Sri Lanka. Motion was denied because of state immunity. On appeal the Bundesverwaltungsgericht rejected the argument that denial of motion amounted to procedural error.
(f)	<b>Classification no./n°</b>	0.a, 1.b
(g)	<b>Source(s)</b>	Deutsches Verwaltungsblatt 1989, 261 <i>et seq</i>
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

### English Summary of Relevant Part of Decision:

The testimony of the Indian defense minister is a piece of evidence which cannot be obtained. Sovereign states enjoy unlimited immunity with regard to their sovereign acts (*acta iure imperii*) under customary international law which binds German courts according to Art.25 of the Basic Law (for the text see D-1-LEG under Additional Information). This immunity extends to the officials acting for the states. It also excludes subpoenas which would direct them to testify as witnesses concerning those sovereign acts absent special provisions in a treaty. There is no such treaty between Germany and India. As the testimony of the Indian defense minister concerns the mission of Indian troops deployed in Sri Lanka, their motives and their official acts it undoubtedly concerns sovereign acts. Therefore the minister is under no legal obligation to testify, and he is not even required to do so by a rule of international comity.

Appendix: German original (from the Juris online retrieval system)

(a)	<b>Registration no./ N° d'enregistrement</b>	D-7-JUD
(b)	<b>Date</b>	15 May 1995
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Bundesverfassungsgericht</i> (Federal Constitutional Court)
(d)	<b>Parties</b>	Submission by the <i>Kammergericht</i> [Berlin Superior Court] under Art.100 (2) of the Basic Law (for the text see D-1-JUD under Additional Information) in criminal proceedings against persons indicted for espionage against the Federal Republic of Germany on behalf of the former German Democratic Republic. Constitutional complaints of persons against their conviction for espionage against the Federal Republic of Germany on behalf of the former German Democratic Republic.
(e)	<b>Points of law/ Points de droit</b>	The decision mainly concerns the question whether there is a general rule of international law according to which it is inadmissible to prosecute persons for espionage committed on behalf of and from the territory of a state that later peacefully acceded to the state against which the espionage was directed. The existence of such rule was denied. In the course of argument the court briefly touched upon the state immunity issue and rejected the argument that it could be used as a defense against the prosecution of spies.
(f)	<b>Classification no./n°</b>	0.a, 1.c
(g)	<b>Source(s)</b>	<i>Entscheidungen des Bundesverfassungsgerichts</i> Vol.92, p.277 et seq.
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

#### English Excerpt:

“There is no rule of international law according to which spies who are prosecuted by the state against which the espionage was directed could rely on the principles of sovereign immunity. There is an exception only if the accused enjoy the protection of the Vienna Conventions on Diplomatic Relations of 1961 or on Consular Relations of 1963 or of special agreements.” (p.321)

Appendix:            German original (see Source)



(a)	<b>Registration no./ N° d'enregistrement</b>	D-8-JUD
(b)	<b>Date</b>	3 July 1996
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Bundesarbeitsgericht</i> (Federal Labor Court)
(d)	<b>Parties</b>	Plaintiff: Argentine citizen and former employee of the Argentine Consulate General in Germany; defendant: Argentine Republic
(e)	<b>Points of law/ Points de droit</b>	Plaintiff considered termination of her labor contract as ineffective and sued defendant, seeking declaratory relief to the effect that her labor contract had continued beyond the date of the termination. Suit was dismissed according to §20 (2) of the Courts Act (see D-1-LEG) for lack of jurisdiction of the German courts. The decision of the Federal Labor Court heavily relies on the decisions of the Federal Constitutional Court reported under D-2-JUD and D-3-JUD.
(f)	<b>Classification no./n°</b>	0.a., 1.b
(g)	<b>Source(s)</b>	Entscheidungen des Bundesarbeitsgerichts Vol. 83, p.262 <i>et seq</i>
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

### English Summary of Relevant Parts of Decision:

The immunity claim by defendant must be evaluated according to the general rules of international law (§20 (2) of the Courts Act). Customary international law excludes the jurisdiction of German courts over sovereign acts of foreign states but not over their non-sovereign acts. The distinction turns not on the motive or purpose of the act but on its nature. The distinction is to be made according to the law of the forum state. However, the general rules of international law provide that all those acts of foreign states must remain exempt from the jurisdiction of the national courts which are considered as sovereign acts (*acta iure imperii*) by the majority of states even if the law of the forum state would rate them as *acta iure gestionis*. Although labor contracts are considered as private law contracts in Germany even if concluded on behalf of the state the pending case concerns *acta iure imperii* beyond the jurisdiction of the German courts. The reason is that plaintiff exercised consular functions (e.g., she issued Argentine passports and visas). These functions are within the core area of sovereignty. The concept of state immunity protects foreign states from German courts' interference in their sovereign functions. If an employee exercises sovereign functions as a consular official of a foreign state, the review of this employee's dismissal by German courts would interfere with the consular functions of this state and thus run counter to the principle *ne impediatur legatio*.

Appendix: German original (from the Juris online retrieval system)

(a)	<b>Registration no./ N° d'enregistrement</b>	D-9-JUD
(b)	<b>Date</b>	24 October 1996
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Bundesverfassungsgericht</i> (Federal Constitutional Court)
(d)	<b>Parties</b>	Constitutional complaints of members of the government of the former German Democratic Republic who had after the reunification of Germany been convicted and sentenced for homicide with regard to the shooting and killing of persons who had tried to flee the GDR across the inner-German border.
(e)	<b>Points of law/ Points de droit</b>	The decision mainly concerns the question whether the conviction of the complainants violates the prohibition of retroactive criminalization of acts not subject to punishment at the time when they were committed. But the complainants had also raised the state immunity defense which the court rejected in a short passage quoted below.
(f)	<b>Classification no./n°</b>	0.a, 1.c
(g)	<b>Source(s)</b>	<i>Entscheidungen des Bundesverfassungsgerichts</i> Vol.95, p.96 <i>et seq.</i>
(h)	<b>Additional information/Renseignements complémentaires</b>	See also the short decision of a chamber of the Federal Constitutional Court of 21 February 1992 which had rejected the immunity defense of former GDR head of state Honecker for the same reason (published in German with an English headnote in <i>Deutsche Rechtsprechung zum Völkerrecht und Europarecht</i> 1986-1993 [1997], p.129 <i>et seq.</i> ). The headnote says: "The immunity of a head of state cannot outlast the existence of the state which he or she represented. After the extinction of a state its representatives can therefore be subject to the criminal jurisdiction of other states."
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

### English Excerpt:

"... it is the generally accepted position in the international legal literature ... that the immunity does not continue beyond the existence of the state whose citizen was the person concerned. ... The argument of the complainant no.3 that Article 25 of the Basic Law was violated for the reason alone that his criminal prosecution disregarded the sovereignty of the German Democratic Republic is not correct for this reason." (p.129 *et seq.*)

Appendix 1: Relevant parts of the German original (see Source)

Appendix 2: Decision of chamber of Federal Constitutional Court (see Additional Information)

(a)	<b>Registration no./ N° d'enregistrement</b>	D-10-JUD
(b)	<b>Date</b>	10 Juni 1997
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Bundesverfassungsgericht</i> (Federal Constitutional Court)
(d)	<b>Parties</b>	Constitutional complaint of a former ambassador against an arrest warrant issued for an act he had committed in his official function
(e)	<b>Points of law/ Points de droit</b>	Complainant was accredited as the ambassador of his home state in the former German Democratic Republic. At that time, a terrorist bombing occurred in West Berlin which killed one person. The explosives had been stored at the embassy in East Berlin whose head was the complainant. After the reunification of the GDR and the Federal Republic of Germany an arrest warrant was issued against complainant for aiding and abetting the terrorist bombing. The complaint was rejected because complainant's diplomatic immunity recognized by the German Democratic Republic did not bind the Federal Republic of Germany. In this context the Federal Constitutional Court referred to distinctions between state immunity and diplomatic immunity which are summarized below.
(f)	<b>Classification no./n°</b>	0.a, 1.c
(g)	<b>Source(s)</b>	<i>Entscheidungen des Bundesverfassungsgerichts</i> Vol.96, p.68 et seq
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

#### English Summary of Parts of the Decision:

The immunity of state officials, in particular members of the government, derives directly from state immunity. It must be distinguished from diplomatic immunity. State immunity and diplomatic immunity represent two distinct concepts of international law following their own rules so that one can draw no conclusions from the limits of one of the concepts as to the existence of similar limits of the other concept. Therefore exceptions to the concept of state immunity permitting the prosecution of state officials for international crimes etc. cannot be transferred to the concept of diplomatic immunity. This is so because of the personal element involved in diplomatic immunity which protects not only the sending state but also the diplomat personally. Even if a state does not enjoy immunity for non-sovereign acts this does not mean that a diplomat involved in such acts is subject to the jurisdiction of the receiving state. The distinction between *acta iure imperii* and *acta iure gestionis* which characterizes the concept of state immunity is unknown to the law of diplomatic relations. Diplomatic immunity for official acts thus is not a mere reflection of the immunity of the sending state but has its independent basis in the special status of the diplomat. His presence and his competence to act for the sending state in the territory of the receiving

state is based on the consent of the latter in the form of the *agrément* while the extension of state immunity to state officials is based on nothing but the internal appointment processes of the state concerned (p.85 *et seq.*)

Appendix: German original (see Source)

(a)	<b>Registration no./ N° d'enregistrement</b>	D-11-JUD
(b)	<b>Date</b>	23 May 2000
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Landgericht Frankfurt/Main</i> (Frankfurt District Court)
(d)	<b>Parties</b>	Defendant is creditor of plaintiff-debtor, the state of Brazil. Creditor has two executory titles against debtor and has commenced an enforcement procedure trying to attach claims of debtor against a group of banks arising from a Brazilian government bond which banks have subscribed. Debtor has filed a special appeal petitioning for a court order declaring inadmissible the execution against these claims.
(e)	<b>Points of law/ Points de droit</b>	Inadmissibility of execution against assets of foreign state used for sovereign purposes.
(f)	<b>Classification no./n°</b>	0.b.3, 2.b
(g)	<b>Source(s)</b>	<i>Recht der Internationalen Wirtschaft</i> 2001, p.308
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

### English Summary of the Decision:

Pursuant to a general rule of international law foreign states enjoy immunity from execution. Execution against their assets which serve sovereign purposes is inadmissible even if these assets are located in the forum state. The claims arising from the government bond against which execution is directed are exempt from execution because they serve the balancing of the Brazilian state budget. This has been proven by the Brazilian finance minister's affirmation in lieu of an oath. To require further proof would constitute an illicit interference in the internal affairs of Brazil.

Appendix: German original (see Source)

(a)	<b>Registration no./ N° d'enregistrement</b>	D-12-JUD
(b)	<b>Date</b>	25 October 2001
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Bundesarbeitsgericht</i> (Federal Labor Court)
(d)	<b>Parties</b>	Plaintiff: German citizen and former employee of the Belgian Embassy in Germany working in a branch office of this Embassy; defendant: Kingdom of Belgium
(e)	<b>Points of law/ Points de droit</b>	Termination of plaintiff's labor contract after she had abused an Embassy seal for private purposes was considered as ineffective by plaintiff. She therefore sued defendant, seeking declaratory relief to the effect that her labor contract had continued beyond the date of the termination. Suit was dismissed according to §20 (2) of the Courts Act (see D-1-LEG) for lack of jurisdiction of the German courts. The decision of the Federal Labor Court relies on its earlier decision reported under D-8-JUD.
(f)	<b>Classification no./n°</b>	0.a., 1.b
(g)	<b>Source(s)</b>	Betriebs-Berater 2002, p.787 <i>et seq</i>
(h)	<b>Additional information/Renseignements complémentaires</b>	See also the decision of the Federal Labor Court of 23 November 2000 ( <i>Neue Zeitschrift für Arbeitsrecht</i> 2001, p. 683 <i>et seq.</i> )
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

### English Summary of Relevant Parts of Decision:

The defendant is not subject to the jurisdiction of the German courts (§20 (2) of the Courts Act [*Gerichtsverfassungsgesetz*]). Although Article 5 of the European Convention on State Immunity of 1972 excludes the state immunity defense in certain labor contract disputes Article 31 of the Convention expressly reserves the privileges and immunities of diplomatic and consular missions and accords priority to the Vienna Conventions on Diplomatic Relations of 1961 and on Consular Relations of 1963 in cases of conflict. Thus a state party to the European Convention on State Immunity of 1972 can claim sovereign immunity in labor contract disputes with employees of its embassies and consulates to a wider extent than in similar disputes with other employees. In particular, the international legal principle *ne impediatur legatio* applies in those cases. According to Art.32 of the European Convention on State Immunity this convention is not meant to limit the sovereign powers of the states parties with regard to diplomatic and consular personnel any further than they were limited by the general rules of international law and the Vienna Conventions when the European Convention on State Immunity entered into force. This interpretation is also supported by Article 24 (1) of the European Convention on State Immunity pursuant to which the immunity of foreign states from jurisdiction with regard to *acta iure imperii* is expressly reserved.

According to §20 (2) of the Courts Act a foreign state is exempted from the jurisdiction of the German courts with regard to disputes arising from the termination of labor contracts with consular employees. (Here the court refers to its earlier decision reported under D-8-JUD.) The same applies with regard to embassy employees who perform consular functions in a branch office of the embassy. The judicial review of the dismissal of such an employee would interfere with the sovereign functions of the foreign state and thus run counter to the principle *ne impediatur legatio*. This holds true no less if the foreign state is a party to the European Convention on State Immunity (see Article 32 of this Convention).

The plaintiff did in fact perform core consular functions at the branch office of defendant's embassy. She was empowered to sign visas and to use the embassy seal. She was also put on the list of personnel with signing authority.

Appendix 1: German original (from the Juris online retrieval system)

Appendix 2: Decision of Federal Labor Court mentioned under Additional Information

(a)	<b>Registration no./ N° d'enregistrement</b>	D-1-LEG
(b)	<b>Date</b>	17 July 1984
(c)	<b>Author(ity)/(Service) auteur</b>	Federal Parliament ( <i>Bundestag</i> and <i>Bundesrat</i> )
(d)	<b>Parties</b>	
(e)	<b>Points of law/ Points de droit</b>	Art.4 of the Second Act Amending the Act on the Federal Central Register ( <i>Zweites Gesetz zur Änderung des Bundeszentralregistergesetzes</i> ) rephrases §20 of the Courts Act ( <i>Gerichtsverfassungsgesetz</i> ). §20 (2) of the Courts Act incorporates the general rules of international law concerning the immunity of states and their officials.
(f)	<b>Classification no./n°</b>	0.c, 1.b
(g)	<b>Source(s)</b>	<i>Bundesgesetzblatt</i> (Federal Law Gazette) 1984 Part I, p.990, 993-4
(h)	<b>Additional information/Renseignements complémentaires</b>	Article 25 of the Basic Law (German Constitution of 1949) reads as follows: "The general rules of international law shall be an integral part of federal law. They shall override laws and directly establish rights and obligations for the inhabitants of the federal territory." (Official translation published by the Press and Information Office of the Federal Government)
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

### English Translation of §20 of the Courts Act:

"(1) The jurisdiction of the German courts does not extend to representatives of other states and their entourage who stay within the area of application of the present Act upon an official invitation of the Federal Republic of Germany.

(2) In other respects, the jurisdiction of the German courts does not extend either to other persons than those mentioned in paragraph (1) and in §18 [concerning diplomatic agents] and §19 [concerning consular officials] insofar as these persons are exempted from it pursuant to the general rules of international law, on the basis of international agreements or other provisions of law."

Appendix: German text of *Zweites Gesetz zur Änderung des Bundeszentralregistergesetzes*



(a)	<b>Registration no./</b> <b>N° d'enregistrement</b>	D-2-LEG
(b)	<b>Date</b>	1 September 1989
(c)	<b>Author(ity)/(Service) auteur</b>	<i>Rechtsausschuß des Deutschen Bundestages</i> (Judiciary Committee of the German Federal Diet)
(d)	<b>Parties</b>	
(e)	<b>Points of law/ Points de droit</b>	Report and Recommendation on the Government draft of Act of Parliament required by Article 59 (2) clause 1 of the Basic Law (for the text see infra under Additional Information) to enable the Federal Republic of Germany to ratify the European Convention on State Immunity of 1972 (ETS No.74). The Report shows that the Committee shares the theory of relative state immunity.
(f)	<b>Classification no./n°</b>	0.c, 1.b, 2.a (refers to the European Convention)
(g)	<b>Source(s)</b>	Deutscher Bundestag, 11. Wahlperiode, Drucksache 11/5132 (official prints of the German Federal Diet)
(h)	<b>Additional information/Renseignements complémentaires</b>	See D-1-EXE, D-3-LEG.  Article 59 (2) clause 1 of the Basic Law (German Constitution of 1949) reads as follows: "Treaties which regulate the political relations of the Federation or relate to matters of federal legislation shall require the approval or participation of the appropriate legislative body in the form of a federal law. ..." (Official Translation published by the Press and Information Office of the Federal Government)
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

#### English Translation of Excerpt from Committee Report:

"The immunity of foreign States from national jurisdiction is an internationally recognized principle of customary international law, safeguarded by reciprocity. In the course of time, however, international and national practice as well as legal doctrine have moved away from the absolute immunity of foreign states. According to the theory of relative or limited immunity a state shall enjoy immunity only with regard to sovereign acts but not with regard to private law acts. The certain and harmonious application of this by now well-established principle is not yet ensured, due to the lack of sufficiently defined agreements. Therefore the European Convention on State Immunity establishes general rules which specify the extent of immunity from jurisdiction which a state enjoys vis-à-vis the courts of other states. ..." (p.1 under A)

Appendix: *Beschlußempfehlung und Bericht des Rechtsausschusses* (see Source)

(a)	<b>Registration no./</b> <b>N° d'enregistrement</b>	D-3-LEG
(b)	<b>Date</b>	<b>28 September 1989 (passed <i>Bundestag</i>); 20 October 1989 (passed <i>Bundesrat</i>)</b>
(c)	<b>Author(ity)/(Service) auteur</b>	Federal Parliament ( <i>Bundestag</i> and <i>Bundesrat</i> )
(d)	<b>Parties</b>	
(e)	<b>Points of law/ Points de droit</b>	Act of Parliament required by Article 59 (2) of the Basic Law (for the text see D-2-LEG under Additional Information) to enable the Federal Republic of Germany to ratify the European Convention on State Immunity of 1972 (ETS No.74). In assenting to the Convention without reservation, the German Parliament recognizes the theory of relative state immunity embodied therein.
(f)	<b>Classification no./n°</b>	0.c, 1.b, 2.a (refers to the European Convention)
(g)	<b>Source(s)</b>	<i>Bundesgesetzblatt</i> (Federal Law Gazette) 1990 Part II, p.34
(h)	<b>Additional information/Renseignements complémentaires</b>	
(i)	<b>Full text - extracts - translation - summaries/ Texte complet - extraits - traduction - résumés</b>	

#### English Translation of Article 1 of the Act:

“The European Convention on State Immunity, signed by the Federal Republic of Germany in Basle on 16 May 1972, is assented to. The Convention is published below.”

Appendix: Text of the Act (see Source)

**GREECE**

(a)	<b>Registration no</b>	GR/1
(b)	<b>Date</b>	2002
(c)	<b>Author(ity)</b>	Supreme Court (Areios Pagos) Chamber
(d)	<b>Parties</b>	Judgment 302/2002 Prefecture of Boeteia v. The Fed. Rep. of Germany
(e)	<b>Points of Law</b>	The Chamber of the Supreme Court having doubts as to whether prior consent of the Minister of Justice is necessary to initiate enforcement proceedings against a foreign State, decided to refer the case to the Supreme Special Court.
(f)	<b>Classification no</b>	2, 2.b, 2.c
(g)	<b>Source</b>	
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	As stated above, the Chamber of the Supreme Court had doubts as to whether prior consent of the Minister of Justice, which is necessary according to article 923 of the Greek Code of Civil Procedure to start enforcement proceedings against a foreign state, is contrary to article 6 par. 1 of the European Convention on Human Rights and articles 2 par. 3 as well as 14 of the International Covenant on Civil and Political Rights. It therefore decided to refer the case to the Supreme Special Court which is provided for in article 100 of the Greek Constitution.

(a)	<b>Registration no</b>	GR/2
(b)	<b>Date</b>	2001
(c)	<b>Author(ity)</b>	Supreme Court (Areios Pagos) Chamber
(d)	<b>Parties</b>	Judgment 131/2001
(e)	<b>Points of Law</b>	The Chamber of the Supreme Court having doubts as to whether a foreign State enjoys State immunity for acts performed <i>jure imperii</i> which violate the laws of war on land, decided to refer the question to the Supreme Special Court.
(f)	<b>Classification no</b>	0.a, 0.c, 1c
(g)	<b>Source</b>	Nomiko Vima 2001 p. 1166
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	As stated above, the Chamber of the Supreme Court, had doubts as to the recognition or non recognition of State immunity with regard to claims arising out of violations of the laws of war on land by the nazi forces in occupied Greece. It therefore decided to refer the case to the Supreme Special Court which is provided for in article 100 of the Greek Constitution. Such Court will decide on whether a rule as to the abovementioned question exist and has reached the status of international customary law.

(a)	<b>Registration no</b>	GR/3
(b)	<b>Date</b>	2000
(c)	<b>Author(ity)</b>	Supreme Court (Areios Pagos) Plenary
(d)	<b>Parties</b>	Judgment 11/2000 Prefecture of Boeteia v. The Fed. Rep. of Germany
(e)	<b>Points of Law</b>	In cases of grave violations of the laws of war on land, and generally of rules recognized as having a <i>jus cogens</i> character, foreign States are not entitled to State Immunity
(f)	<b>Classification no</b>	0.a, 0.c, 1c
(g)	<b>Source</b>	Dike (Trial) Greek Journal of Civil Procedure 2000, p. 696
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	There is a general practice of States which has reached the status of international custom -thus constituting in accordance with article 28 par. 1 of the Greek Constitution an integral part of the Greek domestic law with increased force of validity- according to which domestic Courts have jurisdiction, in derogation of the principle of State immunity, to hear claims of compensation arising out of grave breaches of the laws of war. This derogation from the sovereign immunity rule refers to damages arising out of torts inflicted upon a specific number of persons of the civilian population by way of abuse of force by members of the occupying Force.

(a)	<b>Registration no</b>	GR/4
(b)	<b>Date</b>	1993
(c)	<b>Author(ity)</b>	Athens Court of Appeals
(d)	<b>Parties</b>	Judgment 5288/1993, X. (Professor of the Italian language) v. (Casa d' Italia) The Italian Republic
(e)	<b>Points of Law</b>	In disputes arising out of labour contracts foreign States are not entitled to sovereign immunity.
(f)	<b>Classification no</b>	0b, 0.b2, 1.b
(g)	<b>Source</b>	Epitheorisi Emborikou Dikaïou (in Greek Journal of Commercial Law) vol. 53 (1994) p. 763
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	Foreign States do not enjoy sovereign immunity for acts performed <i>jure gestionis</i> . Conversely, they enjoy immunity for acts performed <i>jure imperii</i> . Since there is no international norm establishing international jurisdiction of domestic courts on this matter, every State establishes its international jurisdiction in accordance with its domestic law. Consequently, the criteria for determining which acts are considered as <i>jure gestionis</i> or <i>jure imperii</i> are set out in the domestic legislation. Labour contracts in which a foreign State is a Party, do not fall in the ambit of governmental authority of the State (except for contracts in matters of civil service). Therefore in such cases foreign States are not entitled to sovereign immunity.

(a)	<b>Registration no</b>	GR/5
(b)	<b>Date</b>	1992
(c)	<b>Author(ity)</b>	Athens Court of Appeals
(d)	<b>Parties</b>	Judgment 1822/1992 I.G. v. The United States
(e)	<b>Points of Law</b>	In cases of labour contracts in which a foreign State is a contracting party and stands on an equal footing with private persons, the State cannot raise the plea of sovereign immunity.
(f)	<b>Classification no</b>	0b, 0.b2, 1.b
(g)	<b>Source</b>	Dike (Trial) vol. 23 (1992) p. 897
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	In accordance with article 3 par. 1 of the Greek Code of Civil Procedure foreign nationals are under the jurisdiction of Greek Courts unless they are entitled to immunity from jurisdiction. Foreign States are not immune from judicial proceeding for acts they perform as <i>fiscus</i> . In cases of labour contracts in which a foreign State is a contracting party and stands on an equal footing with private persons, the State cannot raise the plea of sovereign immunity Accordingly that State is not immune from lawsuits arising out of these contracts.

(a)	<b>Registration no</b>	GR/6
(b)	<b>Date</b>	1992
(c)	<b>Author(ity)</b>	Athens Court of First Instance
(d)	<b>Parties</b>	Judgment 600/1992 X. (Professor of the Italian language) v. (Casa d' Italia) The Italian Republic.
(e)	<b>Points of Law</b>	A foreign State is entitled to sovereign immunity in case of disputes arising out of labour contracts concluded in order to fulfil the functional needs of that State.
(f)	<b>Classification no</b>	0.a, 1.a
(g)	<b>Source</b>	Epitheorissi Ergatikou Dikaious (in greek) Journal of Labour Law 1994 p. 806
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	Foreign States are entitled to immunity from jurisdiction of domestic Courts in disputes arising out of acts performed <i>jure imperii</i> . Disputes related to the performance of labour contracts which have been concluded between a foreign State and a private person in order to fulfil functional needs of the State, are not subject to the jurisdiction of domestic Courts



(a)	<b>Registration no</b>	GR/7
(b)	<b>Date</b>	1991
(c)	<b>Author(ity)</b>	Court of Appeals of Crete
(d)	<b>Parties</b>	Judgment 491/1991 X v. Mediterranean Institute for Agriculture
(e)	<b>Points of Law</b>	Greek Courts are entitled to adjudicate on disputes between private persons and international organizations arising out of labour contracts.
(f)	<b>Classification no</b>	0.b, 0.b.2, 1.b
(g)	<b>Source</b>	"Armenopoulos" (in greek) 1993 p. 931
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	In cases of labour contracts between a private person and an international organisation, Greek Courts are entitled to adjudicate on disputes arising out of acts in which the international organisation acted as <i>fiscus</i> and not as <i>imperium</i> . Consequently, Greek Courts have jurisdiction to judge on lawsuits arising out of these contracts against the organisation

(a)	<b>Registration no</b>	GR/8
(b)	<b>Date</b>	1991
(c)	<b>Author(ity)</b>	Court of Appeals of Crete
(d)	<b>Parties</b>	Judgment 479/1991 X v. Mediterranean Institute for Agriculture
(e)	<b>Points of Law</b>	International Organisations are not entitled to immunity from jurisdiction of domestic Courts for acts they have performed as <i>fiscus</i> . Under the contrary hypothesis there could be no jurisdiction with regard to the greatest part of private law cases involving the organisation.
(f)	<b>Classification no</b>	0.b, 0.b.2, 1.b
(g)	<b>Source</b>	Epitheorissi Ergatikou Dikaïou (in greek) Journal of Labour Law 1992 p. 503
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	As stated above, international organisations are not entitled to immunity from jurisdiction of domestic Courts for acts they have performed as <i>fiscus</i> . Otherwise, there could be no jurisdiction on the greatest part of private law cases involving an international organisation. This is because the latter would enjoy immunity from jurisdiction in all its Member States, it does not possess any territory of its own and, only incidentally could a lawsuit be brought against it in a third country according to the rules on jurisdiction applying in each state.

(a)	<b>Registration no</b>	GR/9
(b)	<b>Date</b>	1990
(c)	<b>Author(ity)</b>	Athens Court of Appeals
(d)	<b>Parties</b>	Judgment 12845/1990
(e)	<b>Points of Law</b>	Greek Courts are not entitled to adjudicate on disputes arising out of acts performed <i>jure imperii</i> . Greek Courts have jurisdiction for acts performed <i>jure gestionis</i> .
(f)	<b>Classification no</b>	0.b, 0.b.3, 1.b
(g)	<b>Source</b>	Elliniki Dikaiosyni (in greek) 1992 p. 882.
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	Foreign States do not enjoy sovereign immunity for acts performed <i>jure gestionis</i> . Conversely, they enjoy immunity for acts performed <i>jure imperii</i> . Disputes arising out of acts in which a person entitled to sovereign immunity appears as a private person exercising commercial, industrial, financial or other lucrative activities are private law disputes. Consequently, those disputes fall in the ambit of jurisdiction of domestic Courts.

(a)	<b>Registration no</b>	GR/10
(b)	<b>Date</b>	1988
(c)	<b>Author(ity)</b>	Athens Court of Appeals
(d)	<b>Parties</b>	Judgment 13043/1988
(e)	<b>Points of Law</b>	Foreign States are entitled to sovereign immunity for acts performed <i>jure imperii</i> . In matters of labour law, foreign States are not acting in their sovereign capacity. They appear on an equal basis with the private person employed.
(f)	<b>Classification no</b>	0.b,1.b
(g)	<b>Source</b>	Dike (Trial) 1990 p. 288
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	Foreign States are entitled to sovereign immunity for acts performed <i>jure imperii</i> , i.e. acts performed under their governmental authority. On the contrary where a State is acting as a <i>fiscus</i> and private law rules are applicable, the State in question is not entitled to immunity. In matters of labour law, foreign States are not acting in their sovereign capacity when contracting labour law contracts. Indeed, they appear on an equal basis with the private person employed.

(a)	<b>Registration no</b>	GR/11
(b)	<b>Date</b>	1988
(c)	<b>Author(ity)</b>	Athens Court of Appeals
(d)	<b>Parties</b>	Judgment 175/1988 X. v. Iraqi Airways
(e)	<b>Points of Law</b>	Although an instrumentality of a foreign State does not possess legal personality according to its national law, such instrumentality is considered to have <i>locus standi</i> before Greek Courts, if it has developed activities of its own.
(f)	<b>Classification no</b>	0.b, 0.b.3, 1.b
(g)	<b>Source</b>	Dike (Trial) 1989 p. 264
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	Although an instrumentality of a foreign State does not possess legal personality according to its national law, an instrumentality of a foreign State is considered to have its own distinct legal capacity when such instrumentality has developed activities of its own. In the latter case even if such instrumentality is not distinct from the foreign State, it has its own <i>locus standi</i> before the Greek courts.

(a)	<b>Registration no</b>	GR/12
(b)	<b>Date</b>	1986
(c)	<b>Author(ity)</b>	Supreme Court (Areios Pagos) Chamber
(d)	<b>Parties</b>	1398/1986 X v. Japan
(e)	<b>Points of Law</b>	According to international law, foreign States are entitled to immunity from jurisdiction for acts performed <i>jure imperii</i> , i.e. disputes arising out of acts which have no relation with private law disputes.
(f)	<b>Classification no</b>	0.b,0.b2, 1.b
(g)	<b>Source</b>	Elliniki Dikaiosyni 1987 p. 1029
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	According to international law foreign States are entitled to immunity from jurisdiction for acts performed <i>jure imperii</i> . This is the case for disputes arising out of acts performed under the governmental authority of that State which have no relation to private law disputes, i.e. disputes arising out of acts where the state appears as <i>fiscus</i> . The question whether, in a particular case, an act is coming under the governmental authority of the State, or refers to private law relations, is a matter to be decided by the Greek Courts in accordance with relevant domestic law provisions.

(a)	<b>Registration no</b>	GR/13
(b)	<b>Date</b>	1982
(c)	<b>Author(ity)</b>	Court of First Instance of the Island of Kos
(d)	<b>Parties</b>	Judgment 275/1982
(e)	<b>Points of Law</b>	The request for interim measures against a foreign State is not admissible if there is no previous decision of the Minister of Justice consenting to the request.
(f)	<b>Classification no</b>	0.b, 2c
(g)	<b>Source</b>	Epitheorissi Navtikou Dikaiou (Journal of Maritime Law)
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	Article 689 of the Code of Civil Procedure provides that the request for interim measures against a foreign State is not admissible if there is no previous decision of the Minister of Justice consenting to the request. Prior consent is necessary when the request is filed against the foreign State itself and, consequently, it is not necessary when the request is filed against a foreign legal or natural person, organisation or union, irrespective of the closeness of legal ties with the foreign State.

(a)	<b>Registration no</b>	GR/14
(b)	<b>Date</b>	1981
(c)	<b>Author(ity)</b>	Court of First Instance of Thessaloniki
(d)	<b>Parties</b>	Judgment 1822/1981
(e)	<b>Points of Law</b>	According to article 689 of the Code of Civil Procedure a request for interim measures against a foreign state is admissible if the Minister of Justice has already given his/her consent.
(f)	<b>Classification no</b>	0.b, 2c
(g)	<b>Source</b>	Epitheorissi Emborikou Dikaiou (Journal of Commercial Law) 1981 p. 419
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	A request for interim measures against a foreign state-owned ship is admissible (in accordance with article 689 of the Code of Civil Procedure) if the Minister of Justice has already given his/her consent to that effect.



(a)	<b>Registration no</b>	GR/15
(b)	<b>Date</b>	1981
(c)	<b>Author(ity)</b>	Court of First Instance of Thessaloniki
(d)	<b>Parties</b>	Judgment 519/1981 X v. Japan
(e)	<b>Points of Law</b>	Foreign States are not entitled to sovereign immunity where it appears that they transacted as equals with a private person.
(f)	<b>Classification no</b>	0b, 0b.4, 1.b
(g)	<b>Source</b>	Elliniki Dikaiosyni 1983 p. 704
(h)	<b>Additional Information</b>	
(i)	<b>Full text - extracts - translation - summaries</b>	According to customary law, a foreign State is entitled to sovereign immunity for acts which fall under the governmental authority of the State. Foreign States are not entitled to sovereign immunity where it appears that they transacted as equals with a private person. Since there are no international law rules concerning the limits of international jurisdiction of States, each State is determining the international jurisdiction of its domestic courts in accordance with its domestic legislation and international treaties binding on them. Consequently, the criteria to determine which acts fall under the governmental authority of a state and which do not are set out in domestic law.

**IRELAND**

<b>(a)</b>	<b>Registration no:</b>	IRL/1
<b>(b)</b>	<b>Date:</b>	12 March 1992
<b>(c)</b>	<b>Authority:</b>	Supreme Court
<b>(d)</b>	<b>Parties:</b>	The Government of Canada (Applicant) v. The Employment Appeals Tribunal (Respondent) and Brian Burke (Notice Party)
<b>(e)</b>	<b>Points of law:</b>	The Court establishes that restrictive sovereign immunity applies to proceedings before a Court or administrative tribunal and is applicable to this case concerning employment within an embassy because it comes within the sphere of governmental or sovereign activity.
<b>(f)</b>	<b>Classification no:</b>	O.a, 1.b, 2.c
<b>(g)</b>	<b>Source:</b>	Irish Reports, 1992, Vol. 2, pp484-502
<b>(h)</b>	<b>Additional Information:</b>	Reversed the High Court decision of 14 March, 1991 and quashed the determination of the Employment Appeals Tribunal. Article 29.3 of the Irish Constitution is relevant
<b>(i)</b>	<b>Full text:</b>	Full text: Appendix *

<b>(a)</b>	<b>Registration no:</b>	IRL/2
<b>(b)</b>	<b>Date:</b>	7 July 1994
<b>(c)</b>	<b>Authority:</b>	Supreme Court
<b>(d)</b>	<b>Parties:</b>	Angelo Fusco (Plaintiff) v. Edward O'Dea (Defendant)
<b>(e)</b>	<b>Points of law:</b>	The Court establishes that sovereign immunity precludes making an order for discovery against a sovereign state
<b>(f)</b>	<b>Classification no:</b>	O.a, 1.a, 2.c
<b>(g)</b>	<b>Source:</b>	Irish Reports, 1994, Vol. 2, pp93-104
<b>(h)</b>	<b>Additional Information:</b>	High Court decision of 21 April, 1993 upheld
<b>(i)</b>	<b>Full text:</b>	Full text: Appendix *

<b>(a)</b>	<b>Registration no:</b>	IRL/3
<b>(b)</b>	<b>Date:</b>	15 December 1995
<b>(c)</b>	<b>Authority:</b>	Supreme Court
<b>(d)</b>	<b>Parties:</b>	John McElhinney (Plaintiff) v. Anthony Ivor John Williams and Her Majesty's Secretary of State for Northern Ireland (Defendants)
<b>(e)</b>	<b>Points of law:</b>	The Court establishes that sovereign immunity applies because the tortious acts of a soldier who is a foreign State's servant or agent are "jus imperii"
<b>(f)</b>	<b>Classification no:</b>	O.a, 1.a, 2.c
<b>(g)</b>	<b>Source:</b>	Irish Reports, 1995, Vol. 3, pp382-405
<b>(h)</b>	<b>Additional Information:</b>	High Court decision of 15 April, 1994 upheld. In "McElhinney v. Ireland", 21 November 2001, the European Court of Human Rights finds no violation of the Convention
<b>(i)</b>	<b>Full text:</b>	Full text: Appendix *

<b>(a)</b>	<b>Registration no:</b>	IRL/4
<b>(b)</b>	<b>Date:</b>	24 April 1997
<b>(c)</b>	<b>Authority:</b>	Supreme Court
<b>(d)</b>	<b>Parties:</b>	Norburt Schmidt (Plaintiff) v. Home Secretary of the Government of the United Kingdom et al. (Defendants)
<b>(e)</b>	<b>Points of law:</b>	The Court establishes that the Commissioner and an individual agent of the Metropolitan Police (United Kingdom) are also entitled to rely on sovereign immunity
<b>(f)</b>	<b>Classification:</b>	O.a, 1.a, 2.c
<b>(g)</b>	<b>Source:</b>	Irish Reports, 1997, Vol. 2, p121
<b>(h)</b>	<b>Additional Information:</b>	High Court decision of 22 November 1994 upheld
<b>(i)</b>	<b>Full text:</b>	Full text: Appendix *

The first traces of restrictive sovereign immunity in Irish law appear to emanate from Hanna J. in Zarine v. Owners of S.S. "Ramava" [1942] I.R.148

Other case law on State immunity:

Saorstát and Continental Steamship Co. v. De las Morenas [1945] I.R. 291

More generally, see case law on Article 29.3 of the Irish Constitution and the incorporation of international law, particularly customary international law.

ACT Shipping (Pte) Ltd. v. Minister for the Marine [1995]3 I.R. 406

State (Sumers Jennings) v. Furlong [1966] I.R. 183

The Marshal Gelovani [1995] 1 I.R. 159



**ITALY**

<b>(a)</b>	<b>Registration no.</b>	I/1
<b>(b)</b>	<b>Date</b>	August 30, 1925
<b>(c)</b>	<b>Author(ity)</b>	Italian Government
<b>(d)</b>	<b>Parties</b>	
<b>(e)</b>	<b>Points of law</b>	The law provides the impossibility to carry out confiscations, distraints or executions over properties that belong to foreign States without the authorization of the Ministry of Justice
<b>(f)</b>	<b>Classification no.</b>	0.c, 1.c, 2.b
<b>(g)</b>	<b>Source(s)</b>	Official Gazette, January 25, 1925, no. 223
<b>(h)</b>	<b>Additional information</b>	See law July 15, 1926, no. 1263
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2



<b>(a)</b>	<b>Registration no.</b>	I/2
<b>(b)</b>	<b>Date</b>	January 9, 1953
<b>(c)</b>	<b>Author(ity)</b>	Ministry of Justice
<b>(d)</b>	<b>Parties</b>	Italy (State)– Yugoslavia (State)
<b>(e)</b>	<b>Points of law</b>	The decree declares the existence of reciprocity between Italy and Yugoslavia with reference to decree-law August 30, 1925, no. 1621
<b>(f)</b>	<b>Classification no.</b>	0.c, 1.c, 2.b
<b>(g)</b>	<b>Source(s)</b>	Official Gazette January 10, 1953, no. 7
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/3
<b>(b)</b>	<b>Date</b>	June 30, 1958
<b>(c)</b>	<b>Author(ity)</b>	Ministry of Justice
<b>(d)</b>	<b>Parties</b>	Italy (State)– Great Britain (State)
<b>(e)</b>	<b>Points of law</b>	The decree declares the existence of reciprocity between Italy and Great Britain with reference to decree-law August 30, 1925, no. 1621
<b>(f)</b>	<b>Classification no.</b>	0.c, 1.c, 2.b
<b>(g)</b>	<b>Source(s)</b>	Official Gazette July 4, 1958, no. 159
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/4
<b>(b)</b>	<b>Date</b>	August 6, 1958
<b>(c)</b>	<b>Author(ity)</b>	Ministry of Justice
<b>(d)</b>	<b>Parties</b>	Italy (State)– Saudi Arabia (State)
<b>(e)</b>	<b>Points of law</b>	The decree declares the existence of reciprocity between Italy and Saudi Arabia with reference to decree-law August 30, 1925, no. 1621
<b>(f)</b>	<b>Classification no.</b>	0.c, 1.c, 2.b
<b>(g)</b>	<b>Source(s)</b>	Official Gazette August 11, 1958, no. 193
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/5
<b>(b)</b>	<b>Date</b>	May 18, 1960
<b>(c)</b>	<b>Author(ity)</b>	Ministry of Justice
<b>(d)</b>	<b>Parties</b>	Italy (State)– Argentina (State)
<b>(e)</b>	<b>Points of law</b>	The decree declares the existence of reciprocity between Italy and Argentina with reference to decree-law August 30, 1925, no. 1621
<b>(f)</b>	<b>Classification no.</b>	0.c, 1.c, 2.b
<b>(g)</b>	<b>Source(s)</b>	Official Gazette May 18, 1960, no. 121
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/6
<b>(b)</b>	<b>Date</b>	March 6, 1963
<b>(c)</b>	<b>Author(ity)</b>	Ministry of Justice
<b>(d)</b>	<b>Parties</b>	Italy (State)– Hungary (State)
<b>(e)</b>	<b>Points of law</b>	The decree declares the existence of reciprocity between Italy and Hungary with reference to decree-law August 30, 1925, no. 1621
<b>(f)</b>	<b>Classification no.</b>	0.c, 1.c, 2.b
<b>(g)</b>	<b>Source(s)</b>	Official Gazette March 6, 1963, no. 63
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/7
<b>(b)</b>	<b>Date</b>	March 1, 1965
<b>(c)</b>	<b>Author(ity)</b>	Ministry of Justice
<b>(d)</b>	<b>Parties</b>	Italy (State)– Yugoslavia (State)
<b>(e)</b>	<b>Points of law</b>	The decree declares the existence of reciprocity between Italy and Yugoslavia with reference to decree-law August 30, 1925, no. 1621
<b>(f)</b>	<b>Classification no.</b>	0.c, 1.c, 2.b
<b>(g)</b>	<b>Source(s)</b>	Official Gazette March 5, 1965, no. 57
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/8
<b>(b)</b>	<b>Date</b>	February 2, 1971
<b>(c)</b>	<b>Author(ity)</b>	Tribunal of Livorno
<b>(d)</b>	<b>Parties</b>	Cali (natural person) vs. Government of the United States of America (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Giurisprudenza di merito, 1972, III, 24
<b>(h)</b>	<b>Additional information</b>	London Convention of June 19, 1951 (NATO-SOFA Convention)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/9
<b>(b)</b>	<b>Date</b>	November 14, 1972
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Ditta Campione (body corporate) vs. Ditta Peti Nitrogenmuvek (body corporate) and Hungary (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1975, 238
<b>(h)</b>	<b>Additional information</b>	Article 10 of the Italian Constitution
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2



<b>(a)</b>	<b>Registration no.</b>	I/10
<b>(b)</b>	<b>Date</b>	November 7, 1973
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Comitato intergovernativo per le migrazioni europee (governmental body) vs. Chiti (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1976, 348
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/11
<b>(b)</b>	<b>Date</b>	November 23, 1974
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Luna (natural person) vs. Romania (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1976, 325
<b>(h)</b>	<b>Additional information</b>	Article 10 of the Italian Constitution
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/12
<b>(b)</b>	<b>Date</b>	April 29, 1977
<b>(c)</b>	<b>Author(ity)</b>	Tribunal of Rome
<b>(d)</b>	<b>Parties</b>	Società immobiliare Corte Barchetto (body corporate) vs. Morocco (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1980-81, 222
<b>(h)</b>	<b>Additional information</b>	Article 10 of the Italian Constitution
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/13
<b>(b)</b>	<b>Date</b>	July 5, 1979
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Castagna (natural person) vs. United States of America (State) and Delta Immobiliare (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision provides that, in the relationships between States Parties to the NATO Agreement, immunity from jurisdiction related to acts achieved in the territory of an host Country and referred to Member States of the Alliance or to specific bodies of the same Organization, is not regulated by customary law
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.c, 2.c
<b>(g)</b>	<b>Source(s)</b>	Diritto del lavoro, 1981, 129
<b>(h)</b>	<b>Additional information</b>	NATO Treaty (Washington, 1949)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/14
<b>(b)</b>	<b>Date</b>	April 14, 1981
<b>(c)</b>	<b>Author(ity)</b>	Pretura (lower court judge) of Milan
<b>(d)</b>	<b>Parties</b>	SIMAC-CISL (body corporate) vs. United States of America (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1985, 181
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/15
<b>(b)</b>	<b>Date</b>	June 4, 1986
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Sindacato UIL-Scuola di Bari (body corporate) vs. Istituto di Bari del Centro internazionale di studi agronomici mediterranei (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale, 1987, 182
<b>(h)</b>	<b>Additional information</b>	Article 10 of the Italian Constitution; European Convention on State immunity
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/16
<b>(b)</b>	<b>Date</b>	June 4, 1986
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Paradiso (natural person) vs. Istituto di Bari del Centro internazionale di alti studi agronomici mediterranei (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale, 1987, 190
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/17
<b>(b)</b>	<b>Date</b>	May 26, 1979
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	SpA Imprese maritime Frassinetti and SpA Italiana lavori marittimi e terrestri (body corporates) vs. Libia (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1980-81, 262
<b>(h)</b>	<b>Additional information</b>	Article 10 of the Italian Constitution
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2



<b>(a)</b>	<b>Registration no.</b>	I/18
<b>(b)</b>	<b>Date</b>	October 21, 1977
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Iasbez (natural person) vs. Centre international de hautes études agronomiques méditerranéens (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1977, 319
<b>(h)</b>	<b>Additional information</b>	European Convention on State immunity
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/19
<b>(b)</b>	<b>Date</b>	February 3, 1986
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Belgian Consulate in Naples (State) vs. Esposito (natural person)
<b>(e)</b>	<b>Points of law</b>	Working activities related to the organization and operative structure of a Consular Office, are directly expression of the foreign State and express a typical public activity of that State
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1987, 332
<b>(h)</b>	<b>Additional information</b>	European Convention on State immunity
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/20
<b>(b)</b>	<b>Date</b>	May 17, 1985
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	United States of America (State) vs. Smorra (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision is concerned with legitimacy of collective dismissals of the local personnel of NATO Headquarters
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1986, 922
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/21
<b>(b)</b>	<b>Date</b>	April 29, 1977
<b>(c)</b>	<b>Author(ity)</b>	Tribunal of Rome
<b>(d)</b>	<b>Parties</b>	Società immobiliare Corte Barchetto (body corporate) vs. Morocco (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1980-81, 222
<b>(h)</b>	<b>Additional information</b>	Confirmed by the decision of the Court of Appeal of Rome, September 12, 1979 (Italian Yearbook of International Law, 1980-81, 226)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/22
<b>(b)</b>	<b>Date</b>	September 12, 1979
<b>(c)</b>	<b>Author(ity)</b>	Court of Appeal of Rome
<b>(d)</b>	<b>Parties</b>	Morocco (State) vs. Società immobiliare Corte Barchetto (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1980-81, 226
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/23
<b>(b)</b>	<b>Date</b>	September 22, 1969
<b>(c)</b>	<b>Author(ity)</b>	Tribunal of Rome
<b>(d)</b>	<b>Parties</b>	Parravicini (natural person) vs. Commercial Office of the Republic of Bulgaria (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1970, 658
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/24
<b>(b)</b>	<b>Date</b>	November 25, 1971
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	De Ritis (natural person) vs. Government of the United States of America (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1975, 235
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/25
<b>(b)</b>	<b>Date</b>	April 19, 1973
<b>(c)</b>	<b>Author(ity)</b>	Court of Appeal of Venice
<b>(d)</b>	<b>Parties</b>	Pelizon (natural person) vs. SETAF Headquarters (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1977, 338
<b>(h)</b>	<b>Additional information</b>	London Convention of June 19, 1951 (NATO-SOFA Convention)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2



<b>(a)</b>	<b>Registration no.</b>	I/26
<b>(b)</b>	<b>Date</b>	April 29, 1974
<b>(c)</b>	<b>Author(ity)</b>	Pretore (lower court judge) of Rome
<b>(d)</b>	<b>Parties</b>	Mallavel (natural person) vs. Ministère des affaires étrangères français (governmental body)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1976, 322
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/27
<b>(b)</b>	<b>Date</b>	January 25, 1977
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Bruno (natural person) vs. United States of America (State)
<b>(e)</b>	<b>Points of law</b>	The decision provides that, in the relationships between States Parties to the NATO Agreement, immunity from jurisdiction related to acts achieved in the territory of an host Country and referred to Member States of the Alliance or to specific bodies of the same Organization, is not regulated by customary law
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International law, 1977, 344
<b>(h)</b>	<b>Additional information</b>	London Convention of June 19, 1951 (NATO-SOFA Convention)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/28
<b>(b)</b>	<b>Date</b>	January 27, 1977
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	United States of America (State) vs. Porciello (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1978-79, 174
<b>(h)</b>	<b>Additional information</b>	Article IX of the London Convention of June 19, 1951 (NATO-SOFA Convention)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/29
<b>(b)</b>	<b>Date</b>	October 13, 1977
<b>(c)</b>	<b>Author(ity)</b>	Tribunal of Naples
<b>(d)</b>	<b>Parties</b>	Di Palma (natural person) vs. Government of the United States of America (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Foro napoletano, 1979, 51
<b>(h)</b>	<b>Additional information</b>	Article IX of the London Convention of June 19, 1951 (NATO-SOFA Convention)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/30
<b>(b)</b>	<b>Date</b>	October 14, 1977
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Gereschi (natural person) vs. United States of America (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1978-79, 173
<b>(h)</b>	<b>Additional information</b>	Article IX of the London Convention of June 19, 1951 (NATO-SOFA Convention)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/31
<b>(b)</b>	<b>Date</b>	May 26, 1979
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Velloso (natural person) vs. Borla (natural person)
<b>(e)</b>	<b>Points of law</b>	Working activities immediately related to decisional, directive or responsible offices of an embassy, are not subjected to italian jurisdiction
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1980-81, 232
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/32
<b>(b)</b>	<b>Date</b>	July 14, 1980
<b>(c)</b>	<b>Author(ity)</b>	Pretore (lower court judge) of Martina Franca
<b>(d)</b>	<b>Parties</b>	Castagna (natural person) vs. United States of America (State) and Delta Immobiliare (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 2.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Diritto del lavoro, 1981, 131
<b>(h)</b>	<b>Additional information</b>	Article 9 (a) of the Paris Agreement of July 26, 1961 between the Italian Government and the Supreme Allied Headquarters in Europe (SACEUR)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/33
<b>(b)</b>	<b>Date</b>	July 5, 1982
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Special Delegate for the Vatican City State (governmental body) vs. Pieciuckiewicz (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Italian Yearbook of International Law, 1985, 179
<b>(h)</b>	<b>Additional information</b>	Article 10 of the Italian Constitution
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2



<b>(a)</b>	<b>Registration no.</b>	I/34
<b>(b)</b>	<b>Date</b>	November 25, 1983
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	United States of America (State) vs. Strino (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision is concerned with legitimacy of collective dismissals of the local personnel of NATO Headquarters
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1984, 741
<b>(h)</b>	<b>Additional information</b>	Article IX of the London Convention of June 19, 1951 (NATO-SOFA Convention)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/35
<b>(b)</b>	<b>Date</b>	May 5, 1984
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	United States of America (State) vs. Calvano (natural person)
<b>(e)</b>	<b>Points of law</b>	Article IX of the London Convention of 1951 says that working activities with civil personnel of an host Member State of NATO are subjected to legislation of such State
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1985, 584
<b>(h)</b>	<b>Additional information</b>	Article IX of the London Convention of June 19, 1951 (NATO-SOFA Convention)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/36
<b>(b)</b>	<b>Date</b>	January 17, 1986
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Church (natural person) vs. Ferraino (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1987, 325
<b>(h)</b>	<b>Additional information</b>	Article 43 (1) of the Vienna Convention of April 24, 1963 on consular relations
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/37
<b>(b)</b>	<b>Date</b>	June 11, 1990
<b>(c)</b>	<b>Author(ity)</b>	Tribunal of Piacenza
<b>(d)</b>	<b>Parties</b>	CF SpA (body corporate) vs. Libia (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.3, 1.b, 2.b
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale, 1990, 406
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/38
<b>(b)</b>	<b>Date</b>	August 23, 1990
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Libia (State) vs. Condor Srl (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 0.b, 1.b, 2.b
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale, 1991, 679
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/39
<b>(b)</b>	<b>Date</b>	November 28, 1991
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Norway (State) vs. Quattri (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale, 1991, 993
<b>(h)</b>	<b>Additional information</b>	Article 10 of the Italian Constitution
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/40
<b>(b)</b>	<b>Date</b>	March 19, 1992
<b>(c)</b>	<b>Author(ity)</b>	Tribunal of Milan
<b>(d)</b>	<b>Parties</b>	PROCURA Impianti Srl (body corporate) vs. Alberta Agriculture Department (governmental body)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1992, 584
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/41
<b>(b)</b>	<b>Date</b>	July 15, 1992
<b>(c)</b>	<b>Author(ity)</b>	Constitutional Court
<b>(d)</b>	<b>Parties</b>	Condor and Filvem (body corporates) vs. Ministry of Justice (governmental body)
<b>(e)</b>	<b>Points of law</b>	The decision declares the constitutional illegitimacy of the royal decree-law August 30, 1925, no. 1621 and the inexistence of a customary rule that absolutely forbids coercive measures on properties belonging to foreign States
<b>(f)</b>	<b>Classification no.</b>	0.c, 1.c, 2.b
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1992, 941
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2



<b>(a)</b>	<b>Registration no.</b>	I/42
<b>(b)</b>	<b>Date</b>	February 13, 1993
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Terracciano (natural person) vs. Cappellari (natural person)
<b>(e)</b>	<b>Points of law</b>	Articles 37 and 41 the italian Civil Proceedings Code enable to check italian jurisdiction in the cases of immunity
<b>(f)</b>	<b>Classification no.</b>	0.c, 1.c, 2.c
<b>(g)</b>	<b>Source(s)</b>	Foro italiano, 1993, I, 722
<b>(h)</b>	<b>Additional information</b>	Articles 37 and 41 of the italian Civil Proceedings Code
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/43
<b>(b)</b>	<b>Date</b>	April 2, 1993
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Kanton Uri (State) vs. Società Reale Mutua di Assicurazioni (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.4, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1994, 372
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/44
<b>(b)</b>	<b>Date</b>	May 7, 1994
<b>(c)</b>	<b>Author(ity)</b>	Court of Appeal of Genoa
<b>(d)</b>	<b>Parties</b>	Fincantieri-Cantieri navali SpA and Oto Melara SpA (body corporates) vs. Irak (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Nuova giurisprudenza civile commentata, 1995, I, 661
<b>(h)</b>	<b>Additional information</b>	Article 10 of the Italian Constitution
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/45
<b>(b)</b>	<b>Date</b>	January 12, 1996
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	United States of America (State) vs. Montefusco (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Giustizia civile, 1996, I, 1671
<b>(h)</b>	<b>Additional information</b>	Article 10 of the Italian Constitution
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/46
<b>(b)</b>	<b>Date</b>	February 3, 1996
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Guinea (State) vs. Buzi Jannetti (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Archivio civile, 1996, 1425
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/47
<b>(b)</b>	<b>Date</b>	March 31, 1989
<b>(c)</b>	<b>Author(ity)</b>	Pretore (lower court judge) of Rome
<b>(d)</b>	<b>Parties</b>	Cecchi Paone (natural person) vs. Czechoslovakia (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1990, 153
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/48
<b>(b)</b>	<b>Date</b>	May 15, 1989
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	British General Consulate in Naples (State) vs. Toglia (natural person)
<b>(e)</b>	<b>Points of law</b>	Consuls have immunity from civil and administrative jurisdiction of the host Country for acts related to the exercise of their functions
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1990, 652
<b>(h)</b>	<b>Additional information</b>	European Convention on State immunity
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/49
<b>(b)</b>	<b>Date</b>	November 18, 1992
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Giaffreda (natural person) vs. France (State)
<b>(e)</b>	<b>Points of law</b>	Working activities related to the organization and operative structure of a Consular Office are directly expression of the foreign State and express also a typical public activity of that State
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1994, 340
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2



<b>(a)</b>	<b>Registration no.</b>	I/50
<b>(b)</b>	<b>Date</b>	October 17, 1995
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Cuba (State) vs. Sonnino (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision excludes immunity from civil jurisdiction when a foreign embassy sues an italian citizen
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista giuridica dell'edilizia, 1996, 61
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/51
<b>(b)</b>	<b>Date</b>	December 9, 1992
<b>(c)</b>	<b>Author(ity)</b>	Tribunal of Genoa
<b>(d)</b>	<b>Parties</b>	Fincantieri SpA, Oto Melara SpA (body corporates) vs. Irak (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1993, 413
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/52
<b>(b)</b>	<b>Date</b>	November 16, 1993
<b>(c)</b>	<b>Author(ity)</b>	Tribunal of Palermo
<b>(d)</b>	<b>Parties</b>	Fall. SpA Maniglia Costruzioni (body corporate) vs. Saudi Arabia (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Diritto fallimentare, 1994, II, 379
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/53
<b>(b)</b>	<b>Date</b>	May 30, 1990
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Libia (State) vs. Riunione adriatica di Sicurtà SpA (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1991, 450
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/54
<b>(b)</b>	<b>Date</b>	May 18, 1992
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Malta (State) vs. Società Nicosia Immobiliare SpA (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1993, 397
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/55
<b>(b)</b>	<b>Date</b>	October 18, 1993
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Guinea (State) vs. Trovato (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1994, 620
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/56
<b>(b)</b>	<b>Date</b>	May 4, 1987
<b>(c)</b>	<b>Author(ity)</b>	Pretore (lower court judge) of Pisa
<b>(d)</b>	<b>Parties</b>	Greco (natural person) vs. United States of America (State)
<b>(e)</b>	<b>Points of law</b>	Working activities of civil personnel in the NATO military bases are subject to Italian jurisdiction when they are not immediately related to specific duties of the Alliance
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1988, 721
<b>(h)</b>	<b>Additional information</b>	London Convention of June 19, 1951 (NATO-SOFA Convention)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/57
<b>(b)</b>	<b>Date</b>	July 19, 1961
<b>(c)</b>	<b>Author(ity)</b>	Tribunal of Rome
<b>(d)</b>	<b>Parties</b>	Cassa di risparmio della Libia (body corporate) vs. Federazione italiana dei consorzi agrari and Consorzio agrario della Tripolitania (body corporates)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Diritto internazionale, 1963, II, 241
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2



<b>(a)</b>	<b>Registration no.</b>	I/58
<b>(b)</b>	<b>Date</b>	July 15, 1987
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Panattoni (natural person) vs. Germany (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1989, 109
<b>(h)</b>	<b>Additional information</b>	Article 10 of the Italian Constitution
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/59
<b>(b)</b>	<b>Date</b>	May 19, 1988
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	United Kingdom (State) vs. Bulli (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1990, 704
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/60
<b>(b)</b>	<b>Date</b>	July 7, 1988
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Libia (State) vs. Longo (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1990, 708
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/61
<b>(b)</b>	<b>Date</b>	October 17, 1988
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Brasil (State) vs. De Lucia (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1990, 705
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/62
<b>(b)</b>	<b>Date</b>	March 15, 1989
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Malta (State) vs. Dalli (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1991, 474
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/63
<b>(b)</b>	<b>Date</b>	January 16, 1990
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Libia (State) vs. Trobbiani (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1991, 435
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/64
<b>(b)</b>	<b>Date</b>	July 9, 1991
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Ghana (State) vs. Barbini (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1993, 87
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/65
<b>(b)</b>	<b>Date</b>	October 10, 1991
<b>(c)</b>	<b>Author(ity)</b>	Pretore (lower court judge) of Rome
<b>(d)</b>	<b>Parties</b>	Taha (natural person) vs. Egypt (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista giuridica del lavoro, 1992, II, 784
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2



<b>(a)</b>	<b>Registration no.</b>	I/66
<b>(b)</b>	<b>Date</b>	October 17, 1991
<b>(c)</b>	<b>Author(ity)</b>	Pretore (lower court judge) of Rome
<b>(d)</b>	<b>Parties</b>	Younis (natural person) vs. Jordania (State)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista giuridica del lavoro, 1992, II, 785
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/67
<b>(b)</b>	<b>Date</b>	May 18, 1992
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Zambia (State) vs. Sendanayake (natural person)
<b>(e)</b>	<b>Points of law</b>	Working activities performed in a foreign embassy and concerning subordinate and subsidiary duties are submitted to italian jurisdiction
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1993, 399
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/68
<b>(b)</b>	<b>Date</b>	February 25, 1993
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	United States of America (State) vs. Giannetti and Puccetti (natural persons)
<b>(e)</b>	<b>Points of law</b>	The decision is concerned with legitimacy of collective dismissals of the local personnel of NATO Headquarters
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1994, 361
<b>(h)</b>	<b>Additional information</b>	London Convention of June 19, 1951 (NATO-SOFA Convention)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/69
<b>(b)</b>	<b>Date</b>	September 24, 1993
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Brasil (State) vs. Magurno (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1994, 648
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/70
<b>(b)</b>	<b>Date</b>	April 21, 1995
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	United States of America (State) vs. Lo Gatto (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Il Consiglio di Stato, 1995, II, 1771
<b>(h)</b>	<b>Additional information</b>	Vienna Convention of April 24, 1963 on consular relations
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/71
<b>(b)</b>	<b>Date</b>	October 1, 1996
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	United States of America (State) vs. Trapè (natural person)
<b>(e)</b>	<b>Points of law</b>	Article IX of the London Convention of 1951 says that working activities with civil personnel of an host Member State of NATO, are subject to the jurisdiction of such State
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1998, 181
<b>(h)</b>	<b>Additional information</b>	Article IX of the London Convention of June 19, 1951 (NATO-SOFA Convention)
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/72
<b>(b)</b>	<b>Date</b>	May 6, 1997
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Spain (State) vs. Chiesa di San Pietro in Montorio (body corporate)
<b>(e)</b>	<b>Points of law</b>	The decision admits the immunity from civil jurisdiction only for foreign States when they act as sovereign bodies and not when they act as private subjects
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.1, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1998, 605
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/73
<b>(b)</b>	<b>Date</b>	February 12, 1999
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	United Arab Emirates (State) vs. Pinto (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the possibility to bring a specific trial action to protect the immunity of a foreign State from execution
<b>(f)</b>	<b>Classification no.</b>	0.c, 1.c, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 2000, 119
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2



<b>(a)</b>	<b>Registration no.</b>	I/74
<b>(b)</b>	<b>Date</b>	May 26, 1999
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Egypt (State) vs. Refaat Armia (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision admits the possibility to bring a specific trial action to protect the immunity of a foreign State from execution
<b>(f)</b>	<b>Classification no.</b>	0.c, 1.c, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 2000, 494
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/75
<b>(b)</b>	<b>Date</b>	May 27, 1999
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	British General Consulate in Milan (State) vs. Sala (natural person)
<b>(e)</b>	<b>Points of law</b>	Working activities not related to the organization and operative structure of a Consulate, are submitted to the jurisdiction of italian judges
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1999, 628
<b>(h)</b>	<b>Additional information</b>	Article 43 of the Vienna Convention of April 24, 1963 on consular relations
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/76
<b>(b)</b>	<b>Date</b>	June 12, 1999
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Austria (State) vs. Petrone (natural person)
<b>(e)</b>	<b>Points of law</b>	The decision excludes the italian jurisdiction when there is a claim for damages, due to an error of judgment, proposed against a foreign State
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 2000, 727
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/77
<b>(b)</b>	<b>Date</b>	April 20, 1998
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Canada (State) vs. Cargnello (natural person)
<b>(e)</b>	<b>Points of law</b>	Working activities immediately related to directive offices of a Consulate are not submitted to italian jurisdiction
<b>(f)</b>	<b>Classification no.</b>	0.a, 1.a, 2.a
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 1999, 1030
<b>(h)</b>	<b>Additional information</b>	Article 5 (b) (c) of the Vienna Convention of April 24, 1963 on consular relations
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Extract: Annex 1 Summary in English: Annex 2

<b>(a)</b>	<b>Registration no.</b>	I/78
<b>(b)</b>	<b>Date</b>	July 15, 1999
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court of Cassation
<b>(d)</b>	<b>Parties</b>	Saudi Arabia (State) vs. Al Baytaty Khalil (natural person)
<b>(e)</b>	<b>Points of law</b>	Working activities not immediately related to decisional, directive or responsible offices of a foreign embassy, are submitted to Italian jurisdiction
<b>(f)</b>	<b>Classification no.</b>	0.b, 0.b.2, 1.b, 2.c
<b>(g)</b>	<b>Source(s)</b>	Rivista di diritto internazionale privato e processuale, 2000, 757
<b>(h)</b>	<b>Additional information</b>	
<b>(i)</b>	<b>Full text – extracts – translation - summaries</b>	Full text: Annex 1 Summary in English: Annex 2

**I.1**

It is not possible to proceed to seizure or garnishment of, and to executive actions in general, on movables or immovable, ships, claims, stocks, valuables and whatever else a foreign State is entitled to possess without the authorisation of the Minister of Justice.

Proceedings underway cannot be continued without said authorisation.

The above provisions apply only to the States envisaging a reciprocity regime, declared by Ministerial decree.

Neither judicial remedy nor administrative claims can be filed against such decree, nor against those rejecting such authorisation.

**I.2**

The decree provides for a reciprocity regime between Italy and Yugoslavia, under article 1 of decree-law n. 1621 of August 30, 1925, turned into law n. 1263 of July 15, 1926, as amended.

**I.3**

The decree provides for a reciprocity regime between Italy and Great Britain, under article 1 of decree-law n. 1621 of August 30, 1925, turned into law n. 1263 of July 15, 1926, as amended.

**I.4**

The decree provides for a reciprocity regime between Italy and Saudi Arabia, under article 1 of decree-law n. 1621 of August 30, 1925, turned into law n. 1263 of July 15, 1926, as amended.

**I.5**

The decree provides for a reciprocity regime between Italy and Argentina, under article 1 of decree-law n. 1621 of August 30, 1925, turned into law n. 1263 of July 15, 1926, as amended.

**I.6**

The decree provides for a reciprocity regime between Italy and Hungary, under article 1 of decree-law n. 1621 of August 30, 1925, turned into law n. 1263 of July 15, 1926, as amended.

**I.7**

The decree provides for a reciprocity regime between Italy and Yugoslavia, under article 1 of decree-law n. 1621 of August 30, 1925, turned into law n. 1263 of July 15, 1926, as amended.

**I.8**

According to a principle of international customary law, enshrined also in the London Convention of June 19, 1951, on the Status of Armed Forces of NATO Countries, immunity from civil jurisdiction should be recognised to a foreign country only in case it acts as a sovereign entity, and not in case it acts as a private body. This provision is aimed at guaranteeing that public functions of States are protected from interference.

**I.9**

According to one of the commonly recognised international law rules (customary rules) enshrined in the Italian legal system under article 10 of the Italian Constitution, foreign countries are exempt from jurisdiction for those acts that are not governed by domestic law.

In fact, States act in foreign territories, but as international law subjects, or they exercise the powers of a public authority in their own legal system and within their territory.

#### **I.10**

Immunity of foreign countries from civil jurisdiction does not cover private acts, i.e. acts expressing the sovereign power of an international law subject.

#### **I.11**

The Italian jurisdiction cannot apply when an employment relation is altogether alien to domestic legislation, in that it refers to activities a foreign country is carrying out in the exercise of the powers of a public authority, within its own legal system and within its territory, or even outside it, if the State acted as an international law subject. This principle is based on the generally recognised customary international law rule providing for the immunity from jurisdiction of foreign countries, enshrined in the Italian domestic law under article 10 of its Constitution.

#### **I.12**

On the basis of a generally recognised customary international law principle enshrined in the Italian domestic law, under article 10, paragraph 1, of the Constitution, foreign States are immune from civil jurisdiction only when, acting in their capacity as international law subjects or in the exercise of the powers of a public authority, perform acts aimed at attaining public goals. On the contrary, immunity cannot be applied when a foreign State acts outside its sovereign powers, as if it were a private citizen.

#### **I.13**

In the relations between the States signatories of the NATO Treaty, immunity from jurisdiction for acts performed in the territory of the host State and involving both Member States of the Alliance and the bodies belonging to its organisation, is governed not by customary provisions, but by specific contractual provisions.

#### **I.14**

An Italian judge has no jurisdiction on a claim filed by a trade union of employees of foreign consulates against a foreign country, under article 28 of the statute of workers' rights. In fact, the effects of the provisions contained in this article are not limited to the individual working relations, but also cover the prerogatives of the employer, therefore affecting the organisation functions of the foreign State.

#### **I.15**

On the basis of an international customary principle sanctioned by scholars, jurisprudence and practice, and applied by the Italian Constitution under article 10, paragraph 1, foreign States are immune from jurisdiction and execution in the performance of the functions by which they pursue their institutional public goals. The European Convention on Immunity of States, signed in Basel on May, 16, 1972, does not bear witness to a limitation of the scope of this customary principle, in particular with reference to the exclusion of working disputes in the application of immunity from jurisdiction. To-date, said Convention was in fact accessed by a limited number of Countries, and Italy is not one of them.

#### **I.16**

On the basis of an international customary rule sanctioned by scholars, jurisprudence and practice, and enshrined in the Italian Constitution under article 10, paragraph 1, foreign States are immune from jurisdiction and execution in the performance of the functions by which they pursue their institutional public goals. The European Convention on Immunity of States, signed in Basel on May, 16, 1972, does not bear witness to a limitation of the scope of this customary rule, in particular with reference to the exclusion of working disputes in the

application of immunity from jurisdiction. To-date, said Convention was in fact accessed by a limited number of Countries, and Italy is not one of them.

### **I.17**

Since foreign countries are immune from jurisdiction on disputes on activities performed in pursuance of their public goals, and since the acquisition by a State of goods belonging to foreigners through seizure is undoubtedly a public act, foreign Countries are immune from jurisdiction on disputes originating from said acquisition.

### **I.18**

The European Convention on Immunity of States, signed in Basel on May, 16, 1972 (signed, but not yet ratified by Italy) bears witness to the evolution of customary international law. Such evolution is aimed at limiting the cases in which immunity from jurisdiction can be invoked by foreign countries and, in particular, at rejecting immunity in case of disputes related to a "working contract concluded by the State and a natural person when the job is to be performed on the territory of the State concerned" (article 5).

Immunity of foreign countries from jurisdiction only applies to working relations under which the worker is entrusted with co-operation and collaboration tasks, in that only such tasks entail the participation in the public functions of the foreign State.

### **I.19**

Working relations established in order to organise the proper functioning of a consular office are to be considered as acts performed by a foreign State and, since they concern typically public activities of the State itself, they are immune from Italian jurisdiction.

In order to ascertain the public nature of the working relation established by the Consul, the existence of a link between the activity performed by the employee and the consular function is to be verified. This link can be reasonably found in the performance of qualified co-operation and collaboration tasks, implying the status expressly covered by article 43 of the Vienna Convention of April 24, 1963 on consular relations, governing the treatment to be given to members of a consular office.

### **I.20**

The Court stated that, in the framework of relations between NATO foreign military bodies operating in Italy and their locally employed workers, collective dismissals are inadmissible, which are not governed by the individual dismissal regime, irrespective of the entrepreneurial nature of the activity carried out by workers.

### **I.21**

The Italian judge can be seized of a dispute against a foreign Embassy on the subject of lease of immovable property. The Embassy did not state its intention to enjoy the privileges of a body representing a foreign State and concluded a contract as if it were a private body, committing itself to abide by the related conditions. Not even the public aim for which the contract was signed, i.e. the use of the immovable property as premises of the Embassy, could subtract the contract from the jurisdiction of the Italian State.

### **I.22**

Foreign States are immune from civil jurisdiction only as far as public acts performed while exercising their sovereign powers are concerned.

With a view to recognising immunity, not the ultimate goal pursued by the foreign State, but only a private activity which could be performed by a private subject is relevant.

It is undoubted that, while leasing immovable property according to the Italian law, the foreign State is acting *iure privatorum*.



**I.23**

The Commercial Department of the Popular Republic of Bulgaria – which has not a legal personality of its own, distinct from the personality of the Bulgarian State – is but an office of that State, and is therefore responsible for taking actions and filing claims.

A foreign State is immune from Italian jurisdiction only in relation to acts performed by it *iure imperii*, i.e. acts expressing the exercise of its sovereignty. It is not immune in relation to acts performed *iure gestionis*, i.e. acts committing the State to property rights and obligations, at the same level as private contracting bodies. As a consequence, the Italian judge can exercise his jurisdiction only on a working dispute filed by an employee carrying out auxiliary tasks only, having no legal relation to the institutional tasks of the office itself.

**I.24**

The *United State Information Agency*, which is part of *United States Information Service (U.S.I.S.)*, is a US government agency performing public functions abroad. A dispute involving an employee working for the U.S.I.S. library in Naples falls therefore outside the Italian jurisdiction.

**I.25**

The decision rejects the exception raised by the US Government, according to which it would not be possible to distinguish between public and private relations in the exercise of a typically sovereign activity, such as the organisation and maintenance of troops.

The 1951 London Convention confirmed a customary international law principle, based on which foreign States are exempt from jurisdiction only with reference to acts being the expression of a concrete exercise of their sovereignty, i.e. private law acts. In fact, in Article IX, paragraph 4, the Convention expressly reaffirmed the principle according to which working and employment relations concluded between the armed forces or a civil body of a member State of the Atlantic Alliance and a private citizen of the host State are governed by the legislation in force in the hosting State. As a consequence, the Contracting Parties to the Convention, and therefore the United States of America too, accepted the recognition of the private law nature of working relations concluded with Italian citizens.

**I.26**

According to the Italian legislation, foreign States, and international law subjects in general, are to be given the same treatment reserved by the Italian State to any other legal person exercising the powers of a public authority. Similarly, when such a subject is exercising a merely private activity, at the same level as a natural or legal person with whom it has a relation, it is subject to the Italian legislation. On the contrary, when an international law subject, in the pursuance of its domestic institutional goals, is exercising public activities or is concluding contracts on the basis of its sovereignty, it is exempt from jurisdiction, similarly to the Italian State, according to the principle *par in parem non habet iurisdictionem*.

**I.27**

An Italian fireman in force to the US armed forces cannot be considered as part of the “civil element” of NATO. In fact, the US Command has never included Italian firemen in that element, and the working hours of such workers were the subject of a special clause of the agreement concluded on July 17, 1957, between the Italian Minister of Labour and the US Commander. The agreement aimed at governing “recruitment, administration and payment of personnel employed by the US armed forces”, in execution of Article IX, paragraph 4 of the Convention. Moreover, the fireman was covered by insurance by the National Social Security Institute. As a consequence, immunity from jurisdiction cannot be invoked in working disputes between the above-mentioned fireman and the United States of America.

**I.28**

In order to determine whether the Italian judge has jurisdiction on working relations between NATO bodies and private citizens of the State of residence, it is necessary to distinguish between workers employed under a NATO international contract and workers employed under a local contract. Such a distinction is linked to the difference between acts performed *jure imperii* and acts performed *jure gestionis*.

Article IX, paragraph 4 of the London Convention of June 19, 1951, on the Status of NATO Countries' Armed Forces recognised the distinction between the public and private nature of the disputed relation. It subjected working relations concluded locally to the legislation in force in the residence State, and consequently also to its jurisdiction.

**I.29**

Under article IX, paragraph 4, of the London Convention of June 19, 1951 on the Status of NATO Countries' Armed Forces, working relations between the Armed Forces of NATO Countries and workers employed to meet the civil manpower local needs are governed by the legislation in force in the State of residence. In no case can these locally employed workers be considered as belonging to the armed forces, or to the civil element by which they are employed, nor as belonging to the public organisation of States operating abroad.

**I.30**

The intention to put workers employed by the armed forces of a foreign country at the same level as workers employed by national subjects would be thwarted if the former were denied the possibility to appeal to judges of their State of origin for the protection of their rights. For this reason, it is to be understood that the fact that working conditions of local manpower are subjected to the laws of the State of residence should include also the fact that related disputes are to be subjected to the jurisdiction of that State. Immunity from Italian jurisdiction of a dispute between a NATO member country and a worker employed in Italy belonging to the category of workers covered by the above-mentioned provision cannot be invoked.

**I.31**

Italian jurisdiction on a foreign State is excluded in case the latter, while working in order to carry out its public functions, aimed at attaining its institutional goals, employed in Italy a subject entitled to perform decision-making, managing or clerk functions within the organisational structure of its Embassy or of bodies closely linked with it.

**I.32**

Since it was ascertained that in this specific case the supply of work and services was not in favour of the subject formally appearing as employer, but rather of the Government of the United States of America, the latter is to supply the economic and legal treatment due to the claimant employed by it.

**I.33**

In pursuance of the universally accepted customary principle *par in parem non habet iurisdictionem*, enshrined in article 10, paragraph 1 of the Italian constitution, the competence of the Italian judge is excluded in case of supply of translation and speaker services in favour of the Vatican Radio. In fact, these services clearly refer to the performance of its "mission in the world" and therefore are part of the tasks performed in order to attain the public goals of the Vatican State.

**I.34**

The Italian judge cannot question the decisions by the employer, which is a foreign NATO Member State country, on the organisation of its own armed forces and related auxiliary services. If appropriate, the employer can proceed to collective dismissal.

**I.35**

Under article IX, paragraph 4, of the 1951 London Convention on the Status of NATO Armed Forces, working relations with civil personnel of the host State are subject to the legislation of that State.

**I.36**

According to article 43, paragraph 1, of the Vienna Convention on Consular Relations, concluded on April 24, 1963, codifying an international general principle on this subject, Consuls cannot be judged by the authorities of the State of residence for acts performed in the exercise of their consular functions.

The Italian judge has no jurisdiction on a working dispute filed by an employee of the international hospital of Naples against a foreign Consul being a member of the Board of Directors of the Hospital.

**I.37**

The defending foreign State is not immune from jurisdiction in case the dispute refers to a merely private activity, such as the supply of goods.

Under paragraph 3 of the single article of Royal Decree 1621 of 1925, the authorisation of the Minister of Justice is necessary only when the Minister has previously stated the existence of reciprocity by decree duly published in the Official Journal.

Based on a customary international law principle (enshrined in the Italian law by article 10 of the Constitution, i.e. thorough a preceptive rule) the assets of a foreign State necessary to exercise sovereign functions or to attain public goals cannot be seized nor subjected to compulsory enforcement. Hence, the seizure of bank current accounts is to be excluded, in that it would deprive a foreign State of the resources needed to carry out its institutional and public tasks in the State in which the accounts are open.

**I.38**

According to a customary international law principle, the exemption of a foreign State from the jurisdiction of the territorial State can be applied only in case of acts performed *iure imperii*, except in cases where the foreign State is in the same situation as Italian citizens resorting to private instruments of domestic law.

According to an international customary law principle, the assets of a foreign State are exempt from provisional and executive measures, provided that the assets are used in the exercise of sovereign functions or to attain public goals. Hence, also in case of conservatory or enforcement acts, immunity from jurisdiction can be applied to activities carried out in the exercise of the powers of a public authority, whereas it is excluded in case of private activities.

**I.39**

According to customary international law, a foreign State is immune from jurisdiction of other States in the performance of acts aimed at attaining its institutional goals, i.e. acts through which it exercises its State functions. On the contrary, no immunity is provided for with reference to acts performed in the territory of another State by a foreign State acting as private law subject, within the domestic law of the hosting State, even if these acts are necessary in order to establish, organising and operating an office.

The Italian State cannot interfere with in the exercise of functions typical of a public service of a foreign State. Yet, there is no interference when the jurisdiction is exercised on disputes concerning working relations and the employee is carrying out merely auxiliary functions, or the claim only concerns property aspects, unless public powers related to the organisation of offices or services of an Embassy are directly involved.

**I.40**

Immunity from jurisdiction of foreign States is at present limited to functional aspects and does not cover relations in which States and employees of territorial autonomous bodies act as if they were private subjects, in an ordinary contractual framework.

**I.41**

A not written international rule prohibiting enforcement measures on assets belonging to foreign State is no longer applicable.

The single article of royal decree n. 1621 of August 30, 1925, turned into law n. 1263 of July 15, 1926, is against the Italian constitution (see Article 24). It refers to enforcement measures on assets belonging to foreign States in Italy, and subjects to the authorisation of the Minister of Justice any conservatory act or enforcement measures on assets belonging to a foreign State, other than assets which - according to generally recognised international law measures - cannot be subjected to enforcement measures.

**I.42**

The immunity of jurisdiction of the Italian judge, based on rules on immunity from civil jurisdiction in disputes between an Italian citizen and a foreign State (or another sovereign international or foreign body) can be codified through a preventive regulation on jurisdiction, under articles 37 and 41 of the civil procedure code.

**I.43**

The exercise of public powers on which the system of road signs and signals is based only concerns the law-making process, i.e. the time orders or prohibitions related to the specific requirements of road traffic regulation are planned through typical cases corresponding to different situations. On the other hand, the actual enforcement of such a system is compulsory, and those who do not comply with it are liable of sanctions. The ascertainment of this kind of responsibilities does not interfere with the exercise of the above-mentioned powers. As a consequence, a foreign State against which a claim is filed, aimed at attributing such a responsibility, cannot be exempt from the jurisdiction of the Italian judge, based on the principle *par in parem non habet iurisdictionem*, in that the related activities are not *iure imperii*.

**I.44**

A foreign State is not exempt from jurisdiction in all cases where it could become a party, but only with reference to some cases, i.e. cases concerning activities performed by a foreign State in the exercise of its sovereign power as *superiorem non recognoscens*, i.e. as international law subject. This is not the case when, like in the reference case, a foreign State acts as a private law subject, enjoying its legal capacity recognised to it by another legal system and its relevant private law instruments.

**I.45**

Customary international law, applied in the Italian domestic law through article 10 of the constitution, provides for the recognition of immunity from jurisdiction only with reference to disputes related to public activities carried out by foreign States.

**I.46**

The generally recognised international law provision on immunity from jurisdiction of foreign States and international public bodies only applies to situations which are not covered by domestic law, either because those States or bodies act in other countries as international law subjects, or because they act exercising their powers of a public authority in the legal system they belong to. When those States or foreign public bodies act not in the exercise of

their sovereign powers, but as if they were private citizens, the jurisdiction of the host State cannot be excluded, in that it performs its activities *iure privatorum*.

#### **I.47**

The provisions in articles 22, paragraphs 1 and 3, and 31, paragraph 1.a, of the Vienna Convention on Diplomatic Relations, of April 18, 1961, provide not only for immunity of the premises of a foreign Embassy from any measures of civil judges, but also for the exemption from jurisdiction, in case a concrete measures are taken on immovable property.

#### **I.48**

According to a generally recognised international principle – codified in article 43 of the Vienna Convention on Consular Relations of April 24, 1963, as well as in articles 6 and 13 of the Italian-British of June 1, 1954 – Consuls are entitled to immunity from the civil and administrative jurisdiction of the host State for acts performed in the exercise of their functions.

The European Convention on Immunity of States, concluded in Basel on May 16, 1972, excluding immunity for working relations with workers who are citizens of the accrediting State and which was not ratified by Italy, constitutes a document codifying the evolution of international customary law.

#### **I.49**

An Italian judge cannot exercise jurisdiction on disputes concerning working relations of Italian personnel of a foreign Consulate in Italy, when such personnel is carrying out activities aimed at attaining public and institutional goals of the Consulate.

#### **I.50**

An Italian judge has jurisdiction when a foreign Embassy in Italy files a civil claim against an Italian citizen. In fact, in the related proceeding it is not possible to enjoy immunity, as provided for in article 31 of the Vienna Convention on Diplomatic Relation of April 18, 1961, and therefore the acceptance of the Italian jurisdiction is clearly implied.

#### **I.51**

Immunity from jurisdiction of a foreign State applies to sovereign acts performed by that State in its capacity as international law subject or as subject of its domestic law. Such acts cannot in fact have legal consequences on a different legal system.

On the other hand, there is no immunity from jurisdiction of a foreign State for private law acts performed by that State in its capacity as a subject of the domestic law of other States. In fact, in this case it acts as if it were a subject of that legal system and resorts to the ordinary private instruments of that system, irrespective of the fact that these acts are performed in order to attain the public interests of the foreign State.

#### **I.52**

The customary international law rule on immunity from jurisdiction of foreign countries was and still is interpreted by the States belonging to the international community on the basis of the principle of relativity of immunity. Said rule therefore applies only to public acts performed by a foreign State in its relations not covered by its domestic law, or in the exercise of its sovereign powers, but does not apply to private acts it may carry out. This principle was also repeatedly supported by the joint sections Court of Cassation.

#### **I.53**

According to the international principle of limited immunity, the Italian jurisdiction applies to a dispute concerning a contract of lease of immovable property hosting the premises of a consular office.

On the basis of the principle of immunity, in the implementation stage of the proceeding the Italian jurisdiction will not apply.

#### **I.54**

Immunity from jurisdiction of foreign States and public bodies applies when they act as international law subjects or in the exercise of the powers of a public authority. It does not apply when they act as private Italian citizens, resorting to the private instruments provided for by the domestic law, e.g. in the case of the conclusion of a contract of lease, even if the premises are to host the Embassy of a foreign State.

#### **I.55**

Although ordinary practice and article 30 of the Vienna Convention of April 18, 1961, provide for the official residence of the Ambassador to be treated as the premises of the Embassy, the Italian jurisdiction applies to a dispute with a foreign State concerning the validity of a preliminary contract aimed at purchasing a building that will host the residence of the Ambassador.

With a view to establishing immunity from jurisdiction of a foreign State, the actual property of a building by its diplomatic agent is irrelevant, in case the preliminary sale contract was not subsequently sanctioned by an official document.

#### **I.56**

According to the London Convention of June 19, 1951, the acquisition of the status of civil element at NATO requires the person concerned not to be resident in the host State and to carry out an activity closely and directly linked to the performance of the tasks of the Organisation.

The jurisdiction of the Italian judge applies in case of disputes between the Government of the United States of America and a US citizen permanently residing in Italy, who is not a staff member, and was charged with the task of maintaining sports facilities at the Camp Darby NATO base in Pisa.

#### **I.57**

Immunity from jurisdiction applies to foreign public bodies only in case they are entitled to have public law relations, but not in connection to private activities, such as the conclusion of contracts entailing property obligations.

#### **I.58**

A foreign country is exempt from the Italian jurisdiction with respect to disputes on employment contracts with an Italian citizen permanently working in the organisation of the diplomatic mission, even if he/she carries out merely material functions.

#### **I.59**

In the field of working relations with the Embassy of a foreign State in Italy, the customary international principle of immunity from civil jurisdiction applies only to individuals employed to perform professional or clerk jobs. In fact, due to this reason, they are part of the public organisation of the State, thus contributing to attain its institutional goals.

#### **I.60**

Foreign States and other international law subjects are exempt from Italian jurisdiction for activities related to the exercise of their sovereign functions, or aimed at attaining their institutional goals.

Lack of jurisdiction of an Italian judge with reference to a request for conservative measures of goods in Italy belonging to the Libyan State, aimed at safeguarding credits for news reporting activities carried out in favour of such State, must be declared.

**I.61**

In order to determine whether a foreign State is immune from civil jurisdiction for working or employment relations with Italian citizens, it is necessary to consider the nature of the job of the individual worker. Based on this principle, an Italian judge has no jurisdiction for working relations entailing the participation of the employee in activities carried out by a foreign country in order to attain its public goals. On the other hand, mechanical or manual jobs, which cannot be considered as public activities of a State, are subject to the Italian jurisdiction.

**I.62**

In case of dispute between a foreign Embassy in Italy and a typist, the Italian jurisdiction cannot be applied. In fact, his/her job implies his/her participation in the public organisation of the State itself, in that it is performed in close connection with the officials' job, and therefore in a position of trust, due to his/her necessary knowledge of the State's institutional acts.

**I.63**

In case of dispute on a working relation with a foreign State, the Italian jurisdiction cannot be applied. In fact, although the dispute refers to a financial aspect of the relation itself, the claimant asks the judge to deal with the functions carried out by an employee, and thus with the autonomous activity of the State itself.

**I.64**

In case of dispute on a working relation with a foreign State, the Italian jurisdiction cannot be applied when the dispute deals with confidential jobs carried out within a foreign organisation. In fact, although the dispute only concerns financial aspects, it affects the sovereign powers of the foreign State.

**I.65**

Immunity from civil jurisdiction, enjoyed by foreign States under a customary international law principle, only applies to acts through which the public functions of said States are exercised and cannot be applied to private activity of the States. When applying this principle to working relations, it is common opinion that immunity from jurisdiction cannot be applied when the employee carries out manual or auxiliary jobs, or in case the dispute concerns property aspects not connected with the organisation of the offices of the foreign State concerned.

**I.66**

An Italian judge has no jurisdiction on a working dispute filed by a driver employed by the Embassy of a foreign State. The long time of his/her working relation bears witness to his/her permanent integration in the Embassy, which is the requirement necessary to apply immunity, irrespective of the manual job performed by the worker.

**I.67**

An Italian judge has jurisdiction on a dispute filed by a worker against the Embassy of a foreign State in Italy, in case the dispute deals with auxiliary and secondary functions. The fact the worker is a foreign citizen is insignificant, in that the right to take legal action is given to everybody and not only to Italian citizens, based on the wide scope of article 24 of the Italian constitution.

**I.68**

Working relations between Italian citizens and a foreign NATO Member State are governed by the Italian law, according to the London Convention of June 19, 1951, on the Status of the Armed Forces of the Atlantic Alliance stationed in the territory of an allied State. Yet, the

regime of collective dismissals and of the protection of employment does not apply to the above relations, in the light of the non-entrepreneurial nature of the employer.

#### **I.69**

According to the well-established principle of limited immunity, the Italian jurisdiction applies to working relations of the Italian personnel employed by foreign States, not only in case of disputes concerning the performance of auxiliary activities, but also in case of disputes filed by employees carrying out tasks closely connected to institutional functions. In fact, the decision requested from the Italian judge – even though it only involves financial aspects of the working relation – cannot affect or interfere with the above functions.

#### **I.70**

According to the Vienna Convention of April 24, 1963, on Consular Relations, an Italian judge has no jurisdiction in case of re-employment of an Italian citizen who was employed by a foreign Consulate in Italy as a switchboard operator. His job is in fact one of the confidential jobs of the public organisation of the consular office.

#### **I.71**

Article IX of the London Convention of June 19, 1951, on the Status of the Armed Forces of the Atlantic Alliance allows the Italian State to exercise its jurisdiction on personnel employed by the *Marine Navy Exchange* to meet the local requirements of civil manpower. In order to enforce the principle of protection of employment, under article 18 of law n. 300 of May 20, 1970, an Italian judge must start an inquiry on the economy of the conduct of the activity carried out by such institution.

#### **I.72**

In a dispute between a foreign government and a church body on the property of a church, the Italian jurisdiction can be applied. In fact, from the agreement signed by such body and the Italian government it can be inferred that the former acted as a private law subject within the Italian law.

#### **I.73**

Preventive jurisdiction in appeals based on the enforcement measure filed by an Italian citizen vs. a foreign State is inadmissible, in that the immunity of a foreign State from enforcement measures is adequately safeguarded by the appeal against execution.

#### **I.74**

The preventive rule of jurisdiction by which a foreign State claims immunity from jurisdiction of an Italian judge on the seizure of sums of money deposited with a bank of its Embassy is inadmissible, in that the case can be lodged appealing against execution.

#### **I.75**

Under article 43 of the Vienna Convention on Consular Relations of April 24, 1963, an Italian judge has jurisdiction on the request for payment of sums of money, submitted by an employer against a foreign Consulate, in case the relevant working relation does not consist of the exercise of organisation powers of the foreign State.

#### **I.76**

A case of compensation of damages resulting from a judicial error, filed by an Italian citizen against a foreign State does not fall within the Italian jurisdiction.



**I.77**

The fact that the State of Canada proposes an appeal in cassation through a decision concerning the Consulate General of Canada in Milan does not constitute a case for replacement. In fact said Consulate is not a subject different from the State it belongs to, but is one of its representation bodies. The Italian judge, however, has no jurisdiction on the dismissal by the Consulate General of Canada of a commercial attaché, in that the tasks performed by him fall within the consular functions under article 5.b and c of the Vienna Convention on Consular Relations of April 24, 1963. Moreover, a decision on the financial aspect of the case would entail an assessment and an inquiry on the exercise of the sovereign powers of a foreign State.

**I.78**

The Italian jurisdiction applies to the cases filed by employees of a foreign Embassy performing auxiliary functions when the decision concerns only financial aspects of the working relation and is therefore liable to interfere with the functions themselves.

The Italian judge jurisdiction applies to disputes concerning the collective wage agreement of Embassies or Consulates.

