



MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS
Secretaria-Geral

Departamento de Assuntos Jurídicos

CAHDI

Foreign State Immunity Form Execution Measures

Seizure of Bank Accounts

Portugal

I. Foreign State Immunity from Execution Measures

As most other European states, Portugal considers that Foreign State immunity can no longer be considered absolute. However, regarding immunity from execution measures, States have been generally far more reluctant to remove the traditional immunity shield. This seems to reflect the awareness that enforcement measures imply a far greater and more direct interference with a Foreign State's sovereignty than the adjudicatory jurisdiction.

Hence, the Portuguese Ministry of Foreign Affairs considers that public service assets are exempt from measures of execution in another country. Nevertheless, we are aware that immunity from execution measures restricts the enforcement powers of national courts and other organs.

In our view, the possibility of seizure of bank accounts must be understood with reference to two core principles of International Law: **i)** the property serving sovereign purposes (*ius imperii*) – property serving non-sovereign purposes (*ius gestionis*) dichotomy; and **ii)** the *ne impediatur legatio* principle. According to the later, all assets assigned to the functioning of the Mission enjoy an autonomous immunity from execution, distinct from that of the sending State. No enforcement measures can be undertaken, unless the State agrees to waive its immunity shield, by explicitly expressing its consents on the adoption of such measures.



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II. National Jurisprudence and Diplomatic Practice

Throughout recent years, national courts have ruled, at least in two occasions, in favor of removing the immunity shield and allowing execution measures against the Foreign State/Embassy's bank account:

a) In 2012, following a decision by the *Tribunal de Grândola* (first instance), an enforcement solicitor ("*agente de execução*") ordered an execution measure against the American Embassy's bank account.

The Portuguese Ministry of Foreign Affairs considered that the seizure of the American Embassy's bank account while serving sovereign purposes was clearly contrary to International Law, particularly against customary law and to the *ne impediatur legatio* principle. The execution measure was later withdrawn.

Accordingly, the Portuguese Ministry of Foreign Affairs underlined that immunity from execution measures must encompass all foreign State's assets located in the state of the forum serving sovereign purposes at the time of the commencement of the enforcement measure, including not only the traditional assets, as land or propriety, but also bank accounts, whilst serving sovereign purposes.

Hence, we closely followed the well-known ruling of the German Constitutional Court in the "*Philippine Embassy Bank Account Case*": without the assent of the Foreign State, execution measures against Embassy bank accounts are simply inadmissible (insofar as its purpose is serving sovereign purposes).

b) In 2013, the bank account of the Embassy of the Democratic Republic of Congo in Lisbon was seized by an enforcement solicitor. This measure was undertaken following a labor suit against the Embassy and, in fact, was the second time that national judicial authorities ordered the seizure of the Congolese Embassy's bank account. The first time happened in 2010, for similar reasons. As in the previous case, the Ministry of Foreign Affairs considered that no enforcement measures could be undertaken against the Congolese Embassy's bank account (case still pending).



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c) In 2012, following a labor law suit against the Portuguese Embassy in Brasilia, a Brazilian court ("*Tribunal Regional Federal da Primeira Região*", first instance) ordered the seizure of the Portuguese Embassy's bank account in Brasilia. The Portuguese Ministry of Foreign Affairs argued along the same lines as in the two previous cases – our interpretation of state immunity from enforcement measure is the same, irrespectively of "who is" the State of the Forum or the Foreign Sate in a particular case.

Although in this case, we did recognize that Brazilian Courts had jurisdiction to rule over the case (labor issues = *acta iure gestioni*), we also considered that the Embassy's bank account, while property serving sovereign purposes (*ius imperii*), was exempt from measures of execution; we further stated that according to the *ne impediatur legatio* principle, the Embassy's bank account enjoyed an autonomous immunity from execution, and Portugal had no intentions to waive its immunity (case still pending).