

ALBANIA

1. Provide information on any domestic legislation existing on this particular issue.

The domestic legislation does not explicitly provide for the immunity of foreign states or international bodies by the jurisdiction of Albanian courts. Albania is a Party in the Vienna Convention for Diplomatic Relations of the year 1961 and applies its provisions.

Under Article 5 of the Constitution of the Republic of Albania, "Republic of Albania applies the international law in a binding way". Pursuant to Article 122 of the Constitution: „Each ratified international agreement becomes part of the domestic juridical system after its publication in the Official Journal of Republic of Albania. It is directly applicable, unless when it is not self-applicable and unless its applicability requires the issuance of his law. Any amendment, addition or abolishment of laws endorsed by the majority of the Members of the Assembly (Parliament) for the purpose of the ratification of international agreements is made by the same majority“.

Republic of Albania has ratified some international acts which ensure immunity from national jurisdiction for the UN and its Specialized Agencies and for the members of diplomatic missions.

Albania is not a Party of the Council of Europe Convention (CETS 074) "On State Immunity". The Albanian authority are examining the possibility for the accession of Republic of Albania to this Convention.

In the framework of civil procedures, after the First World War, the principle of absolute immunity from the civil jurisdiction for Foreign States has turned into the principle of narrow or relative immunity, due to the influence of the Italian and Belgian jurisprudence. The principle of relative immunity is extensively accepted by international community and is considered as part of the Case International Law. According to the theory of the narrow or relative immunity, lifting foreign states from civil jurisdiction is limited only to the acts through which public state functions are conducted (act jure imperii) and does not include the acts of private character, as it could be, for instance, the purchase of a real estate for investment purposes. (act jure gestionis).

With regard to the immunity of international organisations, Albania is Party in the Convention "On the immunity of the United Nation" (1946) which specifies that the UN with its assets or properties, regardless of their location or the holder, shall enjoy immunity from any kind of legal process, except the cases when the above – mentioned have refrained from this immunity on their free will. With regard to specialized agencies, Albania is Party in the Convention of the United Nations "On the Immunity and Privileges for Specialized Agencies" (1947) which contains the same stipulation.

The Vienna Convention on Diplomatic Relations (1961) specifies that a diplomatic representative, under Article 29, cannot be detained or arrested. Article 31 of the Convention specifies absolute immunity in the case of a criminal court process, whereas with regard to the immunity from a civil and administrative process there are few exceptions. Thus, they might be subject to the following:

1. legal suits related to private buildings under personal possession of a diplomatic representative in the territory of the Receiving State, except for the case when this possession is made for official purposes of the Sending State.

2. the juridical actions by a diplomatic representative related to the hereditary right, when a diplomatic representative turns to be executed of the will or its administrator, when this action is carried out for his own personal and non-official purposes.
3. For actions performed by a diplomatic representative related to a free profession or its trading activity not relevant to his/her diplomatic activity.

Under this Convention, the diplomatic representative cannot be forced to provide his testimony in a trial process. Besides, no execution measure can be adopted in a coercive way against a diplomatic representative and against his dwelling place or assets. However, these immunities maybe refrained. Under Article 32 of the Convention the Sending State, may refrain in an expressed way from the immunity of the jurisdiction for the diplomatic agents and other persons enjoying immunities and privileges under this Convention. Likewise, under the same Article, when a diplomatic representative initiates on his own a juridical procedure, he cannot claim to exercise his diplomatic immunity against reversals or counter legal suits that could be lodged against him at the same juridical process. Refraining from the immunity of jurisdiction for a civil or administrative legal suit cannot be considered as refraining from the immunity with regard to the measures for the execution of a decision which requires a special refrain from such an immunity.

The consular relations are governed by the UN Convention "On Consular relations" (1963). Its Article 43 stipulates that the Counselors and consular officers enjoy immunity from the judiciary and administrative jurisdiction of the Receiving State for acts performed while exercising their duty. This immunity does not extend to the civil suits stemming from the following:

1. A contract by the Counsellor or the consular officer, which he has not expressly or clearly signed as an agent of the Sending State; or
2. By a third party for damages stemming from an accident in the Receiving State caused by a vehicle.

The Code of Civil Procedures of Republic of Albania has defined in its Article 191 that "Everyone may intervene in a trial process involving other persons, when there is an interest in supporting one or the other party, which it joins the trial with and come to its assistance" Article 195 of the Code of Criminal Procedures, in its second paragraph, stipulates that upon the consent of both parties, a third person that has intervened on his free will or has been called by one of the parties may replace the other party on whose account it has intervened, a process which may exceed the trial process boundaries. The Ministry of Foreign Affairs, in the capacity of the juridical person maybe a party in a civil trial under Article 90 of the Code of Criminal Procedures. Juridical persons attend the trial process through the representing person under the legal provisions and stipulation of Article 92 of the Code of Criminal Procedures;

The intervention by the Ministry of Foreign Affairs in a civil trial where a state or international organisation is a party is needed when these authorities are involved into negotiations in procedures that run contrary to the legal provisions in force.

Under Article 40 of the Code of Civil Procedures, the civil jurisdiction of Albanian courts does not extend to the representatives of other states and their escorts, when they stay there upon an official invitation by the Republic of Albania.

The Code of Criminal procedures, defined the general rule, under which the members of diplomatic and consular representations domiciling in the Republic of Albania are not subject to the jurisdiction of Albanian courts, specifying as an exception from this rule the case when the persons mentioned in the first paragraph of this article accept the jurisdiction voluntarily, or in the presence of the cases and conditions stipulated by the Vienna Convention " On diplomatic relations".

2. Are there any other means for the Ministry of Foreign Affairs of communicating information to national courts and how the Ministry of Foreign Affairs perceives the scope of international legal obligations in [this] field.

For example:

- **Are there any information related to international legal obligations contained in the legislative preparatory works of domestic laws on immunities?**
- **Are there any directives, guidelines or circulars that have been issued on this subject?**

The obligations stemming from international conventions, since the latter have become part of the domestic juridical order and prevail over the domestic laws that run contrary to them are presumed to be known for the judges. Yet, the Ministry of Foreign Affairs cooperates with the High School of Magistrates, which conducts the elementary and ongoing training for the magistrates, providing it with the entire necessary information on international obligations in the area of immunities and privileges as well as by assisting in the organisation of trainings under this topic.

MFA publishes in the official gazette the date when bilateral or multilateral agreements come into force, so all interested structures including judges are aware of international legal obligations.

3. Are there any prohibitions or stated limits in domestic law, which would prevent the transmission of information to national courts by the Ministry of Foreign Affairs? In this regard, are there, in your domestic legal order, any relevant legislation or national practices (any reference of case-law would be appreciated)?

Domestic legislation does not explicitly state limits on transmitting the information to national courts.

Article 224 of the Code of Civil Procedures stipulates that the courts may ask for written data or documents available in the state administration bodies, which are considered necessary to be examined in the court process and in these cases, the application may be rejected by the central body, which the state administration reports to.

The amended Law No. 8557, dated 11.02.1999 does also define rules for the use of classified information. The state is the sole possessor of state secrets, regulating this provision with the right of public to be acquainted with its activity.

Under Article 21 of the amended Law No. 8457, dated 11.02.1999, a person may have access to classified information, if he is granted the right of access by a principle of an institution or by the person delegated with such a right under the law, in the following cases:

- a) a person needs to have information in compliance with the legitimate interests and purposes;
- b) a person has signed an agreement for the non-disclosure of information;
- c) a person holds security guarantees.
- ç) a person is capable of acting.

Article 10 of the amended Law No. 8457, dated 11.02.1999 defines that the classification of information is prohibited when it is made for the following purposes:

- to hide the violation of laws, the inefficiency or errors by the administration;
- deprive a person, organisation or institution from the right of access;
- to impede or delay the provision of an information that does not require protection for the interest of national security.

Article 19 of the Law stipulates that the institutions possessing the original classified information and the state archives, in cooperation with the Directorate of Classified Information Security (DSIK) set up the bibliography of the declassified information. This information, unless it is subject to special rules under the law is open to the public.

- 4. Express your views as to whether the Ministry of Foreign Affairs can communicate with the Parties engaged in procedures before national courts and, if so, as to how it can proceed. In particular with regard to:**
- **the principle of equality of arms (e.g. does the communication with one Party imply informing the others about the content of that communication ?).**
 - **the scope of the communication (e.g. communication of possible factual elements or communication restricted to a single point of law).**
 - **the principle of independence of the Judiciary.**
 - **any other related issue.**

With regard to this point, as it was mentioned above (reply to Point1) the Code of Civil Procedures has defined in its Article 191 that “Everyone may intervene in a trial process through other persons, when there is an interest to support one or the other party, which it joins in the trial and come to its assistance. Article195 of the Code of Civil Procedures, in its second paragraph, has envisaged that with the consent of both parties, a third person that has intervened on his own or has been summoned by either party may replace the other party on whose account it has intervened, which may go exceed the trial process boundaries.