

CZECHIA

Delegations are invited to provide information on domestic legislation existing on this particular issue.

Domestic legislation does not include rules permitting the Ministry of Foreign Affairs to raise public international law issues in proceedings pending before national tribunals and related to the immunities of States and international organisations.

The only relevant provision is Section 47 of Act No. 97/1963 on private and procedural international law as amended:

Exclusion from the jurisdiction of Czech courts

(1) Foreign States and persons enjoying immunity in the Czech Republic under international treaties or other rules of international law or under special Czech laws and regulations shall not be subject to the jurisdiction of Czech courts.

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

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

a) the object of the proceedings is immovable property of the States and persons referred to in paragraph 1, located in the Czech Republic, or their rights to such immovable assets owned by other persons, as well as the rights arising from the tenancy of such immovable assets, unless the object of the proceedings is the payment of rent,

b) the object of the proceedings is inheritance, in cases where the persons referred to in paragraph 1 appear in such proceedings outside of their official capacity,

c) the object of the proceedings concerns the pursuit of a profession or business which the persons referred to in paragraph 1 carry out outside of their official capacity,

d) the foreign State or the persons referred to in paragraph 1 voluntarily submit to their jurisdiction,

e) necessary for the purpose of the implementation of international sanctions to which the Czech Republic is committed as a result of its membership in the United Nations or the European Union.

(4) In the cases referred to in paragraph 3, the documents shall be served through the Ministry of Foreign Affairs. If such service is not possible, the court shall appoint a guardian for the purpose of receiving documents and, where necessary, for the defence of rights.

This legislation is based on the principle of absolute immunity, which grants foreign States total immunity from any claims brought against them, regardless of the nature of the legal relationship on which the claim is based. However, in the meantime the judicial interpretation of the provision on State immunity has moved in some cases towards functional immunity (see e.g. the Czech Supreme Court ruling of 25 June 2008 which refers to the rules of international customary law that are based on the functional immunity of States).

New legislation on private international law is currently going through the Chamber of Deputies of the Czech Parliament. The new version of the rules in question is based on the principle of functional immunity, which restricts State immunity to acts performed by States in the exercise of their power or cases where State property is used for government purposes. The new legislation also refers to the regime of State immunities under the treaty and customary international law. The passage of this legislation will be followed by ratification of the United

Nations Convention on Jurisdictional Immunities of States and their Property, signed by the Czech Republic on 13 October 2006.

Section 8 of the new draft legislation

Exclusion from the jurisdiction of Czech courts

(1) Foreign States shall be excluded from the jurisdiction of Czech courts in proceedings concerning their actions and acts performed in the exercise of their state, government and other public powers and functions; the exclusion shall apply also to their property used or designated for such exercise.

(2) Any other actions, acts or cases shall be outside the scope of the exclusion from the jurisdiction of Czech courts, insofar as general international law or an international treaty permit the assertion of rights against a foreign State before the courts of another State.

(3) The persons, international organisations and institutions that enjoy immunity in the Czech Republic pursuant to international treaties, general international law or Czech laws and regulations shall not be subject to the jurisdiction of Czech courts insofar as provided for in such international treaties, general international law or Czech laws and regulations.

(4) The provisions in paragraphs 1 and 3 shall not apply to the service of documents, summoning of witnesses, enforcement of decisions, execution or other procedural acts.

(5) Service of documents on foreign States, international organisations, institutions and persons enjoying immunity, in cases where they are not excluded from the jurisdiction of Czech courts, shall be through the Ministry of Foreign Affairs. If such service is not possible, the court shall appoint a guardian for the service of documents.

(6) The provisions in paragraphs 1 – 5 shall apply, *mutatis mutandis*, to the procedures followed by other Czech public authorities.

2. Delegations are invited to inform the Committee as to whether there are 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.

- **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 issues on this subject?**

The Ministry of Foreign Affairs is not competent to participate as a third party in court proceedings. When requested by a national court in a specific case, the Ministry of Foreign Affairs gives its opinion on the immunity of a State or international organisation, as a rule through the Ministry of Justice. The Ministry of Foreign Affairs has no guidelines or circulars concerning the provision of information to national courts.

However, rules concerning service of process on persons enjoying immunities are contained in the Justice Ministry Instruction of 30 April 2004 concerning the procedures to be followed by judicial authorities in communication with foreign authorities in civil and commercial matters.

Section 8 of the Instruction

Service of process on persons enjoying immunities

1) In cases where Czech courts have jurisdiction in terms of Section 47, paragraph 3 of the Private International Law Act, the judicial authorities of the Czech Republic shall send any documents addressed to persons enjoying immunities and equivalent privileges and/or to persons residing or

present in their homes to the Ministry of Justice, with a covering report on a separate sheet (see Section 20, paragraph 3 of the Rules of Procedure for district and regional courts). The Ministry of Justice shall request the Ministry of Foreign Affairs to serve such documents.

The above rules shall apply, *mutatis mutandis*, to service of process to addresses in buildings or premises which are inviolable under international law

2) In case the judicial authority has any doubts about the need to apply the above procedures, it shall seek the opinion of the Ministry of Justice.

As regards the legislative preparatory works on immunities, national courts may use the explanatory report to the new act on international private law and the explanatory note to the United Nations Convention on Jurisdictional Immunities of States and their Property prepared by the Ministry of Foreign Affairs for the national approval procedure of the Convention's signature and ratification.

3. Delegations are invited to precise whether there are 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)?

Czech domestic legislation does not include such prohibitions or limits, except for rules concerning the protection of classified information and personal data.

4. From a broader perspective, delegations are called upon to express their views as to whether the Ministry of Foreign Affairs can communicate with 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 implies 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 Judiciary.**
- **any other related issue.**

The Ministry of Foreign Affairs does not actively communicate with the Parties. When requested by a court or by a Party, it gives its opinion as regards the Czech Republic's obligations arising from public international law, including the immunities of States and international organisations. However, the final ruling is that of an independent court. The opinion of the Ministry of Foreign Affairs is not binding on the court.