

CZECHIA

LEGAL BASIS

1. **Has your State signed and/or ratified the European Convention on State Immunity (1972) and/or the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)? Do the authorities of your State consider the provisions of these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?**

Czechia has not ratified nor signed the European Convention on State Immunity (1972).

Czechia has signed the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) on 13 October 2006. The Parliament of Czechia already consented to the ratification of the Convention and the President of Czechia ratified the Convention; Czechia will deposit the instrument of ratification with the Secretary-General of the United Nations in the forthcoming weeks.

Czechia is of the view that the United Nations Convention on Jurisdictional Immunities of States and Their Property, including the provisions on service of process, to large extent codifies customary international law.

As envisaged in the UN Convention (Article 22 para. 1 lit. (a) and Article 26), other legal instruments, binding on the State of the forum and the defendant State, in the field of legal assistance in civil matters (such as the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters) may be applied instead of the UN Convention with regard to service of judicial and extra-judicial documents in civil proceedings against a foreign State. Czechia is aware of the fact that the opinion, according to which these other legal instruments are considered to apply to service of process on foreign States, is widely recognized but not unanimous and that it is under review in some States.

2. **Please provide information on:**

- a. **National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).**

According to § 7 paragraph 5 of the Act No. 91/2012, on Private International Law, (§ 7 encapsulates in general terms the restrictive doctrine of jurisdictional immunities of States, as contained in customary international law or in the international treaties in force) „the service of process on foreign States, international organizations, institutions and persons enjoying immunity in cases, in which they are not exempted from the jurisdiction of Czech courts, shall be arranged through the Ministry of Foreign Affairs. In case the service of process cannot be effected this way, the court will establish a legal guardian.“ The internal instruction of the Ministry of Justice of 11 June 2010 regulating the contact with foreign jurisdictions in civil and commercial matters specifies (in its § 9) that the Czech judicial organs send the documents addressed to the persons enjoying immunities to the Ministry of Justice of Czechia which requests the Ministry of Foreign Affairs of Czechia to effect the service of process; in addition, the instruction provides that the same procedure is observed when the documents are to be delivered to the premises which are inviolable under international law.

Under Article 10 of the Constitution of Czechia, „promulgated treaties, the ratification of which has been approved by the Parliament and which are binding on Czechia, shall constitute a part of the legal order; should a treaty provide for something else than a law, the treaty shall

be applied.“ This provisions of the Constitution will be applicable also with regard to the UN Convention on Jurisdictional Immunities of States and Their Property (as well as to the 1965 Hague Convention and other relevant treaties), as soon as it enters into force (generally and for Czechia particularly).

b. Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.

The lawfulness of the service of process is reviewed by Czech courts on the basis of relevant rules on civil procedure. We have not identified any case-law or relevant practice of Czech courts concerning service of process on foreign States.

PROCEDURE

3. Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.

In addition to the national procedural rules described above, the hierarchy between different methods for serving process, the time when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service are assessed in accordance with the relevant treaty or customary rules of international law.

As for the moment when the service through diplomatic channels is deemed to be effected, Czechia understands the international practice as preferring the transmission of the judicial documents through the Ministry of Foreign Affairs of the State of the forum via the embassy of the State of the forum in the defendant State to this State's Ministry of Foreign Affairs (such a task may be also performed by the consular posts / officers authorized to perform diplomatic acts in accordance with Article 17 of the Vienna Convention on Consular Relations), but at the same time covering and permitting also the service of process from the Ministry of Foreign Affairs of the forum directly to the diplomatic mission of the defendant State in the forum State.

With reference to Article 22 paragraph 2 of the UN Convention, the service of process is, in principle, effected when the documents are received by the (headquarters of) Ministry of Foreign Affairs of the defendant State (it is for the defendant State's Ministry of Foreign Affairs to forward the documents received to the competent national authorities). Since the embassy of the defendant State in the State of the forum is often involved in the relevant disputes against the defendant State concerned and thus has the closest connection with the forum and with relevant information concerning the proceeding, Czechia regards it practical and advisable (a matter of courtesy) to serve a copy of the relevant documentation, for information purposes, to the embassy of the relevant defendant State in Czechia. (This practice is applied when the service of process is effected through „diplomatic channels“, i.e. not when the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Regulation (EC) No. 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters are the basis for the service of process on a foreign State.)

As stated above, Czechia is of the opinion that the service of process from the Ministry of Foreign Affairs of the forum State directly to the diplomatic mission of the defendant State in the forum State is another available procedure permissible under international law (see below under 3.a). In such a case, it seems that, for practical purposes, the service of process should be deemed to be effected by the receipt of the documents by the diplomatic mission of the defendant state.

In the practice of Czechia (in accordance with the internal instruction of the Ministry of Justice of 11 June 2010, §§ 9 and 11), the judicial documents are, if necessary (see below), accompanied by a translation and a diplomatic note whenever the foreign State is a party to a proceeding, regardless of the way in which the documents are transmitted to the defendant state.

In general, Czechia is of the opinion that it is advisable and practical to follow (if domestic law permits) international practice according to which the time-limits mentioned in the documents begin to run two months after the date of receipt of the documents by the Ministry of the Foreign Affairs of the defendant State. Furthermore, the time-limits contained in other relevant instruments (such as the 1965 Hague Convention and the Regulation (EC) No. 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters) shall be observed, where applicable. The minimum period of four months before a default judgment may be rendered, as provided for in Article 23 of the UN Convention, shall be applied with regard to other States Parties to the UN Convention as soon as the UN Convention enters into force for Czechia.

In the opinion of Czechia, alleged immunity from process is not a ground to refuse service of process. Grounds to refuse service of process could be the fact that the procedural rules on the service of process were not observed (lack of translation when necessary, inappropriate channel of service of process etc.). The consequences of the unlawfulness of the service of process will be determined by the court according to the procedural laws applicable in a particular case.

- a. How are the terms „diplomatic channels“ (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.**

Czechia is of the opinion that the terms „diplomatic channels“ mean that documents are transmitted through the Ministry of Foreign Affairs of the forum State.

In the practice of some States, including Czechia, the term „diplomatic channels“ are interpreted as including also the service of process through the Ministry of Foreign Affairs of the forum State directly to the embassy of the defendant State in the forum State. Even if Czechia prefers the practice according to which the forum State transmits the judicial documents through its diplomatic mission to the (headquarters of) the Ministry of Foreign Affairs of the defendant State, it considers the service of process from the Ministry of Foreign Affairs of the forum State directly to the diplomatic mission of the defendant State in the forum State as a practice which is permissible under international law, covered by the term „diplomatic channels“ and practical in some instances. Thus, Czechia does not consider such a service of process, if effected via diplomatic channels, i.e. through the Ministry of Foreign Affairs of the forum State, as an interference in the inviolability of the premises of the diplomatic mission under the Vienna Convention on Diplomatic Relations or Vienna Convention on Consular Relations. Such practice seems to be useful primarily in specific circumstances (i.e. if the forum State has no diplomatic representation in the defendant State or if the representation is temporarily inoperative) or if the defendant State prefers such a procedure. Such a direct transmission to the diplomatic mission or consular post in the forum State is practical also in cases of proceedings against the members of the staff of the diplomatic mission or consular post when they are not entitled to immunity.

In the cases described above, it seems that, for practical purposes, the service of process should be deemed to be effected by the receipt of the documents by the diplomatic mission of the defendant state (having regard to the fact that possible delays caused by the transmission of the originals of the documents from the embassy of the defendant state to the Ministry of Foreign Affairs in the capital of the defendant state should be satisfactorily covered by the extended periods mentioned above).

b. How are the terms „if necessary“ (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?

Czechia interprets the term as requiring a translation of the documents to be served into an official language (or one of the official languages) of the defendant state when such documents are not originally written in the official language of the defendant State. However, in our opinion, in some cases (namely if the document is sufficiently comprehensible and thus provides adequate information for the defendant State with regard to the proceeding) it is not necessary to translate all extensive technical annexes to the relevant document(s).

4. Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.

Czechia as a respondent State prefers to receive relevant judicial documents by the transmission from the diplomatic mission of the State of the forum in Czechia to the Ministry of Foreign Affairs (the headquarters) of Czechia. If the documents are transmitted through the diplomatic channels (via the Ministry of Foreign Affairs of the State of the forum) directly to the diplomatic mission of Czechia in the forum State, Czechia considers such a procedure permissible and accepts such a service.

The service of process is deemed to be effected by the receipt of the documents by (the headquarters of) the Ministry of Foreign Affairs of Czechia or by the relevant diplomatic mission of Czechia. Service of process by a document instituting a proceeding directly from the competent court or authority to the Czech embassy in the forum State would not be accepted.

Further, Czechia is of the opinion that it is advisable to follow international practice according to which the time-limits mentioned in the relevant judicial documents begin to run two months after the date of receipt of the documents by the defendant State, i.e. Czechia.

A Czech translation (for information purposes) of foreign documents that are served to Czechia is required.

Service that is not effected in accordance with the above legal rules and procedures is to be considered contrary to and therefore not effective under (Czech as well as) international law.