

## CZECHIA

### LEGAL BASIS

- 1. Is your State a party to international legal instruments guaranteeing the immunity of State owned cultural property on loan (including bilateral agreements) such as the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)?**

The Czech Republic is a Contracting State to the United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004 (ratified on 12 March 2015).

- 2. Does your State recognise the customary international law nature of Part IV of the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)? More specifically, does your State consider that, pursuant to a rule of customary international law, cultural property owned by a foreign State while on temporary loan is not considered as property specifically in use or intended for use by the State for other than government non-commercial purposes?**

The Czech Republic recognizes the customary international law nature of Part IV of the UN Convention and considers state owned cultural property while on temporary loan abroad to be immune from execution. To support the current state of the customary law on cultural property the Czech Republic have together with Austria prepared a non-legally binding Declaration on Jurisdictional Immunities of State Owned Cultural Property. The CAHDI secretariat functions as depositary of this Declaration. The Declaration has been signed by 13 states so far (as of November 2015) and several other states are expected to sign the Declaration in the near future.

- 3. Has your State adopted a national legislation on immunity concerning:**

- a. Specifically cultural objects of foreign States; or**
- b. more generally, property of foreign States intended for official/public use; or**
- c. more generally, cultural objects either owned by foreign States or by private individuals?**

**If so, please provide information concerning national legislations (in particular title, source and content; if possible, please provide official translations in French or in English and/or references to online sources).**

In 2011 the Czech Republic has adopted Act. No. 124/2011 Collection of Laws, which amended the State Monument Protection Law (Act. No. 20/1987 Collection of Laws), in which it incorporated the new Article 20 Paragraph 3 on immunity of cultural property owned by other countries from execution. It protects specifically the property, which has characteristics of a cultural monument, is owned by the foreign State and loaned to the Czech Republic.

The more general reference to the state immunity under customary international law and international agreements is incorporated in Article 7 of the Act No. 91/2012 Collection of Laws, on Private International Law. On the basis of this provision, the rule of customary international law providing for the immunity of state owned cultural property on loan should be directly applicable in proceedings before the Czech courts.

- 4. Does your State consider that there are limitations to the rule of immunity of State owned cultural property on loan, in particular in the event of an armed conflict or when there are return obligations deriving from international or European law?**

There is no Czech practice concerning limitations to the rule of immunity of state-owned cultural property on loan. The Czech Republic is aware of the fact that the practice of states in this area is not uniform and requires clarification. It seems that according to prevailing opinion, treaties providing for the immunity of State owned cultural property on loan are regarded as *lex specialis* and should, in general, prevail over treaties containing return obligations. In such cases, the state

of the origin of the cultural property should be able to claim, on bilateral level, the cultural property from the state which is in possession of such property and exported it to a third State.

**5. Does your State consider that the rule of immunity of cultural property extends to other categories of property other than those owned by a State, i.e. property in possession or control of a State (such as property belonging to a State museum)?**

According to the Article 20 Paragraph 3 of the Act No. 20/1987 Collection of Laws, the State Monument Protection Law, the cultural property has to fulfill two conditions in order to have the immunity – have characteristics of a cultural monument and be owned by a foreign state.

In general cultural property owned by a State museum or a similar State institution - and thus in possession or under control of a State - is in Czech Republic's opinion also a property "owned by a State".

#### **NATIONAL PRACTICE AND PROCEDURE**

**6. Is here national case - law in the field of immunity of State owned cultural property on loan? If so, please provide information on these decisions (date of the judgment, authority that issued the judgment, name of the parties, main points of law, French or English translation of the judgment or summary of the judgment in English or in French).**

There is no national case-law in this field. The Czech Republic's cultural objects on loan (two paintings and one sculpture owned by the Czech Republic) to the Austrian Federal Museum Belvedere in Vienna were part of the "Diag Human Case" (D.H. SE v. the Czech Republic - Ministry of Health), judged by the Regional Court of Vienna for Civil Matters. See the information on the Diag Human Case in the appendix of the Austrian Questionnaire.

**7. Does your State resort to "letters of comfort" or other practice guaranteeing the recognition of the immunity from seizure of State owned cultural property on loan?**

The Czech institutions responsible for the respective art object on loan abroad usually request a guarantee in the form of a diplomatic note or a letter issued by a competent minister. Alternatively, a signature of the Declaration on Jurisdictional Immunities of State Owned Cultural Property by the relevant receiving State is regarded as a sufficient guarantee in this regard. The Czech cultural property can be loaned abroad for exhibition or other purposes only with the prior approval of the Ministry of Culture of the Czech Republic.

Regarding the foreign State owned cultural property in the Czech Republic - the Czech Republic, represented by the Museums, Galleries and Preservation of Movable Cultural Heritage Department of the Ministry of Culture, issues on request "Letters of Comfort" confirming the immunity, granted automatically by the law to State owned cultural property on loan (see the answer to question 3).

**8. Is the immunity granted automatically to State owned cultural property on loan or is it subject to approval by a State authority?**

Under the conditions described above (see answer to question 3), the immunity is granted to State owned cultural property on loan. On request, the immunity is confirmed by a "Letter of Comfort" from the director of the Museums, Galleries and Preservation of Movable Cultural Heritage Department of the Ministry of Culture of the Czech Republic, which confirms the immunity provided for by the Act No. 20/1987 Collection of Laws, the State Monument Protection Law.