

CZECHIA

LEGAL BASIS

1. Has your State signed and/or ratified the *United Nations Convention on special missions (1969)*? If not, does your State intend to sign/ratify the Convention?

The Czech Republic is a party to the United Nations Convention on special missions (1969) since 22 February 1993.

2. Does your State apply other international legal instruments in this area (ex.: bilateral, multilateral agreements or headquarters agreements)?

The Czech Republic has ratified a number of multilateral agreements in this area such as the Vienna Convention on Diplomatic Relations (1961), the Vienna Convention on Consular Relations (1963), the Convention on privileges and immunities of the United Nations (1946) and of specialized agencies (1947) and other agreements providing for privileges and immunities of international organizations of which the Czech Republic is a member or a host state.

3. Has your State adopted a specific national legislation in the field of immunities of special missions?

- a. **If so, please provide information concerning the relevant legislative provisions (in particular title, source and content; if possible, please provide official translations in French or in English and/or references to online sources);**
- b. **If not, is the issue of immunities of special missions covered by another part of your legislation? If so, please provide information concerning these relevant legislative provisions (in particular title, source and content; if possible, please provide official translations in French or in English and/or references to online sources).**

The Czech Republic has not adopted any special national legislation as once the Czech Parliament has consented to the ratification of the Convention on special missions, it has been promulgated and the Czech Republic is bound by it, it forms a part of the Czech legal order. It is a self-executing treaty which is directly applicable in the Czech Republic. According to the Czech Constitution, if an international treaty stipulates something different than a law, the international treaty shall apply (Art. 10).

In so far as the immunity of special missions is a part of customary international law, Art. 1(2) of the Czech Constitution sets forth in general terms that the Czech Republic observes its obligations resulting from international law. Specific laws (such as Code on Criminal Procedure or Act on Private International Law) refer and give precedence to the application of the regime of privileges and immunities under international law, including customary international law.

4. Have the authorities of your State released official statements, reports or any other document concerning the status and the immunities of special missions? If so, please provide any relevant information relating to these documents.

The Czech authorities have not released any official statements directly addressing the status and the immunities of special missions. The topic of privileges and immunities of special missions is partly relevant for the discussions on the topic of “Immunity of State officials from foreign criminal jurisdiction”, dealt with by the International Law Commission. The Czech Republic actively participates in these discussions.

5. Does your State consider that certain obligations and/or definitions regarding immunity of special missions derive from customary international law? If so, please provide a brief description of the main requirements of customary international law in this respect.

The Czech Republic is of the view that the Convention, in particular the provisions concerning the scope of privileges and immunities, to large extent reflects customary international law. With regard to States which are not parties to the Convention, the customary nature of relevant rules will be assessed on a case-by case basis. The Head of State, Head of Government and the Minister of Foreign Affairs, mentioned in Article 21 of the Convention, enjoy immunity *ratione personae* irrespective of their status as members of special mission.

6. Please provide information on the scope of the immunities of special missions, in particular:

a. The extent of the privileges and immunities granted to special missions and to their members;

As the Czech Republic is a State Party to the Convention on special missions, it applies its relevant provisions. Among the privileges and immunities falls:

- The right to use the flag and emblem of the sending state (Art. 19);
- Granting the facilities required for the performance of the functions of the mission (Art. 22);
- Exemption of the premises of the special mission from taxation (Art. 24);
- Inviolability of the premises (Art. 25);
- Inviolability of archives and documents (Art. 26);
- Freedom of movement (Art. 27);
- Freedom of communication (Art. 28);
- Personal inviolability (Art. 29);
- Inviolability of the private accommodation (Art. 30);
- Immunity from jurisdiction (Art. 31);
- Exemption from social security legislation (Art. 32);
- Exemption from dues and taxes (Art. 33) and from customs duties and inspection (Art. 35);
- Exemption from personal services (Art. 34);
- Granting the transit through the territory of a third State (Art. 42).

Administrative and technical staff, service staff and private staff enjoy immunities to a lesser extent than the representatives of the sending State in the special mission or members of diplomatic staff (Art. 36-38). Members of the family enjoy the same immunities as the persons they accompany (Art. 39).

b. The scope *ratione personae* (categories of individuals who may enjoy an immunity of special mission);

The immunity of special mission applies to all members of a special mission to whom the receiving State has consented.

c. The scope *ratione materiae*, in particular by specifying if there are exceptions to the granting of the immunity;

The Convention on special missions distinguishes different types of members of the missions and each type enjoys different immunities. For instance, administrative and technical staff enjoys the same exemption from criminal jurisdiction as the representatives of the sending State and the diplomatic personnel, however, the exemption from civil and administrative jurisdiction is limited to the performance of official duties. In contrast, the service staff is exempted from all types of jurisdiction only to the limits of the performance of official acts.

Possible exceptions to the immunity *ratione materiae*, which will be considered by the International Law Commission under the topic "Immunity of State officials from foreign criminal jurisdiction", might be of relevance to the scope of immunities *ratione materiae* provided for by the Convention (Article 43 paragraph 2).

d. The temporal limits of the immunities accorded to special missions.

According to Article 43 of the Convention on special missions, members of the special mission enjoy the privileges and immunities from the moment they enter the territory of the receiving State for the purpose of performing their functions in the special mission or from the moment when their appointments are notified to the relevant authority of the receiving State if they are already present in its territory. The privileges and immunities cease at the moment of leaving the territory of the receiving State or on expiry of a reasonable period in which to do so, except for the immunity in respect of acts performed by them in the exercise of their functions.

NATIONAL PRACTICE AND PROCEDURE

7. Is there national case law in the field of immunities of special missions? 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 case law on this particular issue so far.

8. Is there a mechanism of formal agreement of special missions, namely a process under which your State can accept in advance that an official visit constitutes or not a special mission?

- a. If yes, which authority delivers these agreements? What weight do the courts attach to such agreements? Is there a formal notification or communication procedure between the governmental authorities and the courts?**
- b. In the absence of such a formal agreement, can an implied consent derive from the behaviour of the governmental authorities?**

No special mechanism has been established so far. In order to be considered as a special mission it is necessary to obtain a consent of the receiving State. Therefore, as envisaged by the Convention on special missions, the sending State is required to notify to the receiving State the exact composition of the special mission, travel dates and the place of seat in the host State. Although there is no relevant domestic rule, the Czech Republic accepts that the behaviour of the governmental authorities may constitute implied consent (e. g. official invitation and confirmation of such visits). However, the scope of such behaviour is not defined yet.