

HUNGARY

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

There are several legal instruments in Hungary regulating possibilities for the Hungarian Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities.

The Law Decree No. 7 of 1973 on the Procedures Necessary in the Case of Diplomatic or Other Immunities provides that the court and other authorities must suspend their procedures if one of the parties is another state or data arises that the person being party to the civil or administrative procedure, or acting as accused or private prosecutor in a criminal procedure might enjoy diplomatic or other immunity based on international law. In these cases, the Court or other authority seeks the assistance of the supervisory body (in the case of courts, it is the Ministry of Justice), which in agreement with the Ministry of Foreign Affairs decides upon the existence of such immunity. The same procedure applies in the case of employment disputes. This decision is binding upon the courts or other authorities.

Circular No. 8001/2001 of the Minister of Justice on the Administration of Matters Involving an International Element contains guidelines for implementation of the above-mentioned Law Decree. It further specifies that following the suspension of the procedure the Court must forward the documents relative to the case, to the International Law Department of the Ministry of Justice (such department no longer exists). On the question of immunity, the Minister for Justice in agreement with the Minister for Foreign Affairs decides on the basis of international agreements and reciprocity. The circular affirms the binding nature of such decisions, which in practical terms means, that in case the existence of immunity is verified, the Court must terminate the procedure.

It has to be noted that the binding character of the above decision regulated by the Law Decree and the Circular has been recognized by the authorities as contrary to the principle of separation of powers. However, the law remains effective and has not been modified yet. In order to balance this contradiction, in practice, in its decision the MFA solely refers to the applicable rules, leaving it for the court or other authorities to decide – after having taken into consideration the specific circumstances – whether in the given case the immunity stands.

According to Government Decree 212/2010. (VII. 1.), which specifies the tasks and responsibilities of i.a. the Minister for Foreign Affairs, "*the minister ... determines ... the existence of diplomatic and other international law based immunities.*"¹

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.

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?**

There is no national legislation or other legal instruments regulating the subject. In practice, however, in a concrete case in which a former employee of the International Labour Organisation (ILO) brought a lawsuit against the ILO Subregional Office for Central and

¹ 115. § (3) g)

Eastern Europe, the Hungarian MFA – on the request of the International Labour Office – has directly and repeatedly intervened, by bringing the inviolability and immunity from national jurisdiction of the ILO Subregional Office for Central and Eastern Europe to the attention of the competent judicial organs (first, to the court of first instance, i.e. the Budapest Labour Court, and later, in the appeals procedure, to the Supreme Court of Hungary).

- 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)?**

These issues are not regulated by domestic laws and regulations. The absence of such laws and regulations is in line with the separation of powers and the independence of the Judiciary.

- 4. From a broader perspective, delegations are called upon to express their 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.**

The MFA in principle does not communicate with the parties to a dispute. As it has been mentioned before the MFA communicates only with the courts directly or via the Ministry of Justice. In practice, however, it has happened in the case mentioned in question two, that the MFA informed the ILO about the steps it has taken in respect of informing the court about the inviolability and immunity of the ILO.

Referring back to paragraph 4 of question one, under the present practice when the MFA's decision is sought by the competent authorities, the response solely contains reference to the applicable law, and not possible factual elements that may influence the final decision.