

## RUSSIAN FEDERATION

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

- A. The Code of Civil Procedure of the Russian Federation (article 401) and the Code of Arbitration Procedure of the Russian Federation (article 251)<sup>1</sup> contain provisions on immunities of foreign States and international organisations from the jurisdiction of the courts of the Russian Federation. These articles, however, do not indicate the role of the Ministry of Foreign Affairs of the Russian Federation in determining the existence and the scope of immunity of a given State or international organisation (as distinguished from the Code of Criminal Procedure that directly provides that information regarding the existence and the scope of immunity of persons shall be provided by the Ministry of Foreign Affairs of the Russian Federation).

At the same time, the Code of Civil Procedure contains a provision which may be used in order to inform a court of the position of the Ministry of Foreign Affairs regarding the immunity of a certain person participating in a process:

Article 47. Participation of state bodies and local authorities in proceedings in order to provide an opinion on the case.

1. In cases stipulated by a federal law, state bodies and local authorities shall, prior to the delivery of a judgment by a court of first instance, enter judicial proceedings on their own initiative or on the initiative of persons participating in the proceedings, in order to give an opinion on the case for the purposes of the implementation of their duties and of the protection of rights, freedoms and legitimate interests of other persons, or interests of the Russian Federation, its constituent entities or units of local self-government.

2. In cases stipulated by a federal law and in other necessary cases a court may, on its own initiative, bring a state body or a local authority into proceedings in order to attain the objectives indicated in the first paragraph of this article.

Consequently, pursuant to para. 2 of article 47 of the Code of Civil Procedure there exists a possibility for a court to bring the Ministry of Foreign Affairs into a process on its own initiative. However, for the past years there have been virtually no cases where such a procedure was applied. In fact, an authoritative opinion of the Ministry of Foreign Affairs on the existence and the scope of immunities in a concrete case may be brought to the court's attention even without MFA's formal intervention in a process (see below, part B of the reply to Question 2).

As regards para. 1 of article 47 of the Code of Civil Procedure, currently it is not applicable for the purposes of informing the court of jurisdictional immunities, since the first words of that paragraph require a special provision in a particular federal law in order for this procedure to become available. The same is true of article 53 of the Code of Arbitration Procedure:

Article 53. Application aimed at the protection of public interests, rights and legitimate interests of other persons.

1. In cases stipulated by a federal law, state bodies, local authorities and other bodies may apply to an arbitration court with the aim of protecting public interests.

[...]

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<sup>1</sup> The Russian judicial system comprises courts of "general jurisdiction", applying the Code of Civil Procedure and the Code of Criminal Procedure, and "arbitration courts" which are, in essence, not arbitral tribunals but courts responsible for cases arising out of commercial activities. The latter apply the Code of Arbitration Procedure.

B Public interests, including the observance of international legal obligations, may be protected in a court through the Prokuratura system<sup>2</sup> according to article 45 of the Code of Civil Procedure:

Article 45. Participation of a prosecutor in judicial proceedings.

1. A prosecutor may bring an application to a court with the aim to protect rights, freedoms and legitimate interests of [specific] individuals or of an indefinite number of persons, or the interests of the Russian Federation, its constituent entities or units of local self-government. [...]  
[...]

Consequently, the MFA may invite the Prokuratura to apply to a court if immunities of a foreign State or an international organisation are violated by acts of another state body. If a prosecutor takes part in proceedings at a court of first instance, the Prokuratura may appeal against a judgment that has not entered into force, and apply for a supervisory review of a judgment that has entered into force.

However, a prosecutor may not enter into ongoing judicial proceedings in which immunities may be violated. The possibility for a prosecutor to enter into ongoing proceedings exists only in cases specified by federal law (mostly to protect rights of persons in a vulnerable position, such as those seeking compensation for physical harm, reinstatement of employment etc.).

C. The Russian legal system foresees a possibility of “supervisory review” of judgments that have entered into force. Such a review may be undertaken upon request of a party to the proceedings, or of a prosecutor, if a prosecutor participated in the first or second instance proceedings, or of the President or a Deputy President of the Supreme Court of the Russian Federation. The latter option is foreseen in article 389 of the Code of Civil Procedure:

Article 389. Supervisory review of judicial decisions upon application of the President of the Supreme Court of the Russian Federation or a Deputy President of the Supreme Court of the Russian Federation.

1. With the aim of ensuring the uniformity of jurisprudence, the President of the Supreme Court of the Russian Federation or a Deputy President of the Supreme Court of the Russian Federation may, upon application by interested persons or by a prosecutor, file, with the Presidium of the Supreme Court of the Russian Federation, an application for supervisory review of judicial decisions that violate rights, freedoms or legitimate interests of an indefinite number of persons, or other public interests [...].  
[...]

Here, the Code speaks of “interested persons” rather than of persons participating in the proceedings. The MFA may be regarded as an interested person in case concerning immunities, since the Ministry’s tasks include:

assisting the interaction between the executive authorities and legislative and judicial authorities at the federal level and at the level of constituent entities of the Russian Federation in order to ensure participation of these bodies and their officials in the international activities, observance of the principle of unity of the foreign policy of the Russian Federation and implementation of its [international] rights and obligations (clause 2, subclause 6 of the Regulation on the MFA of Russia, Decree of the President of the Russian Federation No.865 of 11 July 2004);

giving clarifications, within its competence, on issues of international law upon request of state bodies (clause 6, subclause 19 of the Regulation);

general supervision over the implementation of international treaties of the Russian Federation (clause 6, subclause 22 of the Regulation).

## **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**

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<sup>2</sup> The Prokuratura is responsible, on the one hand, for prosecution in criminal cases, and, on the other hand, for “supervision” over the application of law in virtually all areas of life.

**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?**

A. Speaking of directives, guidelines or circulars etc., one to be mentioned in the first place is the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 5 of 10 October 2003 "On the application enforcement by the courts of general jurisdiction of the generally recognized principles and norms of international law and international treaties of the Russian Federation". Clause 16 of the said Decree stipulates:

16. The courts are advised, in case of difficulties in interpretation of generally recognized principles and norms of international law or international treaties of the Russian Federation, to make use of acts and decisions of international organisations, including the UN and its specialized agencies, as well as to address the Legal Department of the Ministry of Foreign Affairs of the Russian Federation or the Ministry of Justice of the Russian Federation (for example, in order to clarify such issues as duration of a treaty, composition of the parties to a treaty, international practice of its implementation).

Cases where courts of general jurisdiction address questions to the MFA are rather frequent. Although within the system of arbitration courts there are no similar directives, those courts also make use of MFA's advice on international law matters.

B. Alongside the procedures directly stipulated in the above-mentioned legal instruments, there exists a possibility for the MFA of Russia to provide a court with an opinion concerning the existence and the scope of jurisdictional immunities by its own initiative. As a general rule, that happens when the entity enjoying immunity requests the MFA to send an opinion on the matter to the respective court. In the light of the principle of independence of the judiciary, such an opinion of the MFA does not possess any special procedural status. But in practice it enjoys significant authority and courts are often guided by the opinion of the MFA.

C. The views of the Russian Federation regarding the scope of international obligations in the area under consideration may be summarised as follows. An infringement of international obligations is a violation irrespectively of which state body is directly responsible for it. Consequently, a violation may result, inter alia, from a judicial decision. In such a case the MFA of Russia, vested with the power of general monitoring over performance by the State of its international obligations, not only has the right, but is under an obligation to resort to any accessible legal means to prevent the court from rendering a decision violating international obligations, or to initiate revision of a decision already adopted. At the same time, it would be incorrect to state that this obligation of the MFA is one of an international nature. Inaction of the MFA in such cases is not a separate violation of international law, but rather constitutes a factor contributing to the violation in the form of a judicial decision.

**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)?**

Apart from the legal framework described above, as well as the general rules on the protection of state secrets, personal data and other sensitive information, there are no specific limitations upon the transmission of information by the MFA of Russia to the courts concerned.

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 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 the Judiciary.**
  - **any other related issue.**

In accordance with the legislation in force, the MFA of Russia, as any other state body, is obliged to provide replies to questions, inquiries etc. by individuals and legal persons. Consequently, in case the Ministry receives an inquiry concerning the existence and the scope of immunity of a certain entity or person, the Ministry is obliged to send a reply. It does not seem incompatible with the principle of the equality of parties to a judicial process: on the one hand, each party may send a request to the MFA; on the other hand, if the request is to be presented to the court by one party, another party will always be able to get acquainted with the MFA's opinion in the case materials or during a hearing.

At the same time, in certain cases one party to a judicial process may be notified about the request sent to the MFA by another party (e.g., where there is a need to address the entity enjoying immunity in order to clarify the facts pertaining to the case).

There are no limits imposed on the scope of information provided in pursuance of such requests (such as requiring the reply to contain only factual elements or only legal analysis). In practice, the Ministry endeavours to provide replies that would serve the best interests of justice.

It appears that MFA's communication with one of the parties to a judicial process does not contradict the principle of independence of the judiciary, as final decisions regarding all respective issues rest with the courts.