

Replies by States to the questionnaire on “Service of process on a foreign State”

At the 44th meeting of the CAHDI (Paris, 19-20 September 2012), the Portuguese delegation referred to the difficulties faced in identifying the manner in which to serve documents instituting proceedings against a foreign State. Moreover, the Austrian delegation provided information on this matter and made reference to the judgment of the European Court of Human Rights in the *Wallishauser v. Austria* case¹.

At the 45th meeting (Strasbourg, 25-26 March 2013), the Secretariat of the CAHDI prepared a document in consultation with the Portuguese and Austrian delegations (document CAHDI (2013) 4). On the basis of this document, the delegations held an exchange of views on the question of service of process on a foreign State and provided information in relation thereof. On this occasion, the CAHDI instructed the Secretariat to draw up a questionnaire in order to collect relevant information. This questionnaire was adopted by the CAHDI at its 46th meeting (Strasbourg, 16-17 September 2013).

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

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.
 - 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.
 - 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?
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.

¹ European Court of Human Rights, *Wallishauser v. Austria*, application No. 156/04, judgment delivered on 17 July 2012.