

SPAIN

- **Do you share our analysis concerning the current state of the settlement of disputes of a private character to which an international organization is a party?**

Spain shares the perception that the issue merits attention, and welcomes the Dutch analysis as a relevant starting point for further discussion on the matter. We regard the privileges and immunities of international organisations as a necessary means to ensure their proper functioning and independence, but cannot overlook the need to provide redress to private persons for the damage these organisations may cause. Spain furthermore notes the importance of taking into consideration the jurisprudence of the European Court of Human Rights as a reference point on how such privileges and immunities interact with Article 6 (right to a fair trial) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

- **What is your experience with the settlement of disputes of a private character to which an international organization is a party in your legal system?**

Spain’s experience on the matter is limited, but considerably diverse, as it hosts the headquarters of over fifteen international organisations and branch offices of over fifteen more, each one under the conditions of its own, individually negotiated host country agreement. Furthermore, these organisations sometimes hold conferences and congresses in Spain under specific conditions established by additional *ad hoc* host agreements. Host country agreements signed by Spain range from those establishing absolute immunity for the international organisation from the civil jurisdiction of Spanish domestic courts, the IO retaining the choice of waiving or not such immunity, to those which explicitly recognize the competence of Spanish domestic courts regarding all the organisation’s activities in Spain (e.g., host agreement for the establishment of an office of the Corporación Andina de Fomento, February 18th, 2002, article 2). In some host country agreements, the principle of immunity of jurisdiction does not operate for certain cases of disputes of a private character, particularly in the sphere of traffic accidents (e.g., both the 1989 and the 2007 versions of the agreement with the International Olive Council). Most of the agreements also provide alternative remedies in case of disputes of a private law character, yet they are often based on internal mechanisms of the organisation itself (e.g., references to the dispositions of Conventions on the Privileges and Immunities of the UN and on the Privileges and Immunities of the Specialized Agencies).

The jurisprudence in Spain regarding this issue is scarce, since most cases regarding immunities involve foreign States rather than international organisations. Furthermore, most of the cases that have been brought to Spanish courts are related to employment issues, where courts apply the provisions of the corresponding host country agreement.

Since 2015, however, Spain also has a specific law regarding privileges and immunities of foreign States, international organisations with an office or headquarters in Spain, and international conferences and meetings held in Spain (Ley Orgánica 16/2015, of October 27th), which the Spanish courts apply in situations that are not specifically foreseen by the corresponding host country agreement. This new legislation establishes the immunity of international organisations in Spain as a general rule, but also two major exceptions which are directly relevant to the issue at stake: (1) disputes of a private law character; (2) disputes regarding employment issues between the organisation and its personnel. In these two cases, Ley Orgánica 16/2015 provides that immunity shall not operate unless the international organisation has an alternative mechanism for the settlement of such disputes, as foreseen in the treaty establishing the international organisation or in any of the organisation’s rulings or other instruments (article 35.1). Furthermore, it explicitly states that, unless otherwise agreed, international organisations will not benefit from immunity regarding disputes of a civil nature regarding accidents caused by motor vehicles pertaining to, or operated by, an international organisation, or regarding traffic misdemeanors where such vehicles are involved (article

35.1). In any case, where there is a contradiction between the provisions of Ley Orgánica 16/2015 and those of a treaty concluded by Spain (notably a country host agreement), the latter are to be applied.

- **In particular, are there examples in your legal system of perceived shortcomings in the settlement of disputes of private character to which an international organization is a party leading claimants to turn to the member States?**

The perceived shortcomings regarding this issue are the scenarios for which Ley Orgánica 16/2015 provides an exception from the immunity of international organisations (see answer to question 2). The fact that numerous host country agreements signed by Spain provide for immunity in disputes of private character to which the organisation is a party, however, inevitably limits the applicability of the subsidiary solutions envisaged in Ley Orgánica 16/2015.

As explained in our answer to question 2, most claims that reach Spanish courts regarding these issues are related to employment-related disputes. Before Ley Orgánica 16/2015 was passed, some Spanish courts attempted to defend the employee's perceived rights in face of the organisation's immunity through an analogical application of the UN Convention on Jurisdictional Immunities of States and Their Property of 2004.

- **Do you consider that the strengthening of the settlement of disputes of a private character to which an international organization is a party merits attention?**

Yes. Spain supports any discussion aimed at finding balanced solutions to the possible contradictions arising from the immunity of international organisations and the protection of human rights.

- **Specifically in respect of settlement of private claims in UN peace operations, how do you see the merits of the possible measures described above?**

Such measures must be considered in the context of the broader reforms that are currently being undertaken by the UN in the area of peace operations.