

November 2005

CZECH REPUBLIC

(a)	Registration no.	CZ/1
(b)	Date	4 December 1963
(c)	Authority	National Assembly of the Czechoslovak Socialist Republic (Národní shromáždění Ěskoslovenské socialistické republiky) / Act No. 97/1963 concerning private international law and the rules of procedure relating thereto, as amended
(d)	Parties	-
(e)	Points of law	Section 47 of Act No. 97/1963, as amended, provides that foreign States are, subject to stated exceptions (section 47, para. 3 lit. a) and d)), absolutely immune from the jurisdiction of Czech courts and notarial offices.
(f)	Classification no.	0.c, 1.a, 2.a
(g)	Source(s)	Collection of Laws of the Czechoslovak Socialist Republik, No. 97/1963, as amended by Acts No. 158/1969, 234/1992, 264/1992 and 125/2002
(h)	Additional information	<p>1. Section 47 of the Act is the principal domestic legal provision in force regulating jurisdictional immunities of foreign States and their property.</p> <p>2.</p> <p>a) Section 2 of the Act provides that the provisions of the Act shall be applied only if an international treaty binding on the Czechoslovak Socialist Republic (i. e. on the Czech Republic) does not provide otherwise.</p> <p>b) Article 10 of Constitutional Act of the Czech Republic No. 1/1993, Constitution of the Czech Republic, in the wording that came into effect on 1 June 2002 provides as follows: Promulgated international treaties the ratification of which was approved by the Parliament and which are binding on the Czech Republic shall be part of the national legislation; if an international treaty differs from a law, the international treaty shall be applied.</p>
(i)	Full text - extracts - translation - summaries	<p>Appendix 1: Text of Section 47 of Act No. 97/1963</p> <p>Appendix 2: English translation of Section 47 of Act No. 97/1963</p>

CZ/1

Appendix 1

§47

Vynití z pravomoci èeskoslovenských soudù

(1) Pravomoci èeskoslovenských soudù nejsou podrobeny cizí státy a osoby, jež podle mezinárodních smluv nebo jiných pravidel mezinárodního práva anebo zvláštních èeskoslovenských právních pøedpisù požívají v Èeskoslovenské socialistické republice imunity.

(2) Ustanovení odstavce 1 platí i ohledni doruèování písemností, pøedvolávání uvedených osob za svídky, výkonu rozhodnutí nebo jiných procesních úkonù.

(3) Pravomoc èeskoslovenských soudù je však dána, jestliže:

a) pøedmìtem øízení je nemovitý majetek státù a osob uvedených v odstavci 1, nacházející se v Èeskoslovenské socialistické republice, nebo jejich práva na takových nemovitých vícech patøících jiným osobám, jakož i práva z pomìru nájemního k takovým nemovitým více, pokud není pøedmìtem øízení placení nájemného,

b) pøedmìtem øízení je didictví, v nimž osoby uvedené v odstavci 1 vystupují mimo rámec svých úøedních funkcí,

c) pøedmìt øízení se týká výkonu povolání nebo obchodní èinnosti, které osoby uvedené v odstavci 1 provádí mimo rámec svých úøedních funkcí,

d) cizí stát nebo osoby uvedené v odstavci 1 se dobrovolni podrobí jejich pravomoci.

(4) Doruèení v pøípadech uvedených v odstavci 3 zprostøedkuje ministerstvo zahranièních vící. Nelze-li takto doruèit, ustanoví soud opatrovníka pro pøijímání písemností, popøípadi k obhájení práv.

CZ/1

Appendix 2

Section 47

Exemption from the jurisdiction of Czechoslovak courts

(1) Foreign States and persons who under international treaties or other rules of international law or special Czechoslovak legal regulations enjoy immunity in the Czechoslovak Socialist Republic shall not be subject to the jurisdiction of Czechoslovak courts.

(2) The provision of paragraph 1 shall also apply to the delivery of documents, summoning of the aforesaid persons as witnesses, execution of decisions or other procedural acts.

(3) However, Czechoslovak courts shall have jurisdiction, if:

(a) the object of the proceedings is real property of the States and persons mentioned in paragraph 1, which is located in the Czechoslovak Socialist Republic, or their rights relating to such real property belonging to other persons, as well as rights arising from the lease of such real property, unless the object of the proceedings is the payment of rent,

(b) the object of the proceedings is an inheritance in which the persons mentioned in paragraph 1 act outside their official duties,

(c) the object of the proceedings concerns the pursuance of a profession or commercial activity which the persons mentioned in paragraph 1 carry out outside their official duties,

(d) the foreign State or the persons mentioned in paragraph 1 voluntarily submit to their jurisdiction.

(4) Delivery in the cases listed in paragraph 3 shall be done through the Ministry of Foreign Affairs. If delivery cannot thus be realized, the court shall appoint a guardian for accepting documents or, if necessary, for protecting the absentee's rights.

(a)	Registration no.	CZ/2
(b)	Date	9 April 1981 (date in the note of the Permanent Mission of Czechoslovakia by which the answers to the questionnaire were sent to the Secretariat of the United Nations)
(c)	Author(ity)	The Government of the Czechoslovak Socialist Republic/answers to the questionnaire of the United Nations on the topic "Jurisdictional immunities of States and their property"
(d)	Parties	-
(e)	Points of law	The answers to the UN questionnaire describe the position of the Czechoslovak Socialist Republic on jurisdictional immunities of States and their property that was based on the doctrine of absolute immunity.
(f)	Classification no.	O.c, 1.a, 2.a
(g)	Source(s)	United Nations Legal Series, Materials on Jurisdictional Immunities of States and their Property, United Nations, New York, 1982
(h)	Additional information	-
(i)	Full text - extracts -translation - summaries	Appendix: Full English text of the above mentioned questionnaire and of the answers of the Czechoslovak Socialist Republic to this questionnaire



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ORIGINAL: ENGLISH

INTERNATIONAL LAW COMMISSION
Thirty-third session
4 May-24 July 1981

JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

Information and materials submitted by Governments

Addendum

I. GOVERNMENT REPLIES TO THE QUESTIONNAIRE

Czechoslovakia

/Original: English/

/9 April 1981/

Questionnaire on the topic
"Jurisdictional immunities of States and their property"*

Question 1

Are there laws and regulations in force in your State providing either specifically for jurisdictional immunities for foreign States and their property, or generally for non-exercise of jurisdiction over foreign States and their property without their consent? If so, please attach a copy of the basic provisions of those laws and regulations.

According to Czechoslovak law, judicial practice and legal theory, the doctrine of the sovereignty of States and their equality corresponds to that of their "absolute" immunity.

According to the provisions of section 47, paragraph 1 of the Act on private international law No. 97/1963 of the Collection of Laws of Czechoslovakia and the

* This questionnaire is not concerned with diplomatic or consular immunities and privileges.

rules of procedure relating thereto, foreign States are not subject to the jurisdiction of Czechoslovak courts and notarial offices. However, the jurisdiction of Czechoslovak courts and notarial offices is applicable in cases where the subject of the proceedings is unmovable property located in Czechoslovakia or to rights of States on such unmovable property belonging to other persons, as well as to rights on such property arising from lease, but not in cases where the subject of the proceedings is payment of rentals and in cases where foreign States voluntarily submit to the jurisdiction of Czechoslovak courts and notarial offices (sect. 47, para. 3 (d), of the above-mentioned Act). 1/ The text of the Act is enclosed.

Question 2

Do courts of your State accord jurisdictional immunities to foreign States and their property? If so, please indicate whether they have based their decisions on any provisions of internal law in force or on any principle of international law.

See reply to question 1 above.

1/ Section 47 provides:

"(1) Foreign States and persons who under international treaties or other rules of international law or special Czechoslovak legal regulations enjoy immunity in the Czechoslovak Socialist Republic shall not be subject to the jurisdiction of Czechoslovak courts and notarial offices.

"(2) The provision of paragraph 1 shall also apply to the service of documents, summoning of the aforesaid persons as witnesses, execution of decisions or other procedural acts.

"(3) However, Czechoslovak courts and notarial offices shall have jurisdiction, if:

"(a) the subject of the proceedings is real property of the States and persons listed in paragraph 1, which is located in the Czechoslovak Socialist Republic, or their rights relating to such real property belonging to other persons, as well as their rights arising from their tenancy of such real property, unless the subject of the proceedings is the payment of rent,

"(b) the subject of the proceedings is an inheritance in which the persons listed in paragraph 1 appear outside their official duties,

"(c) the subject of the proceedings concerns the pursuit of a profession or commercial activity which the persons listed in paragraph 1 carry out outside their official duties,

"(d) the foreign State or the persons listed in paragraph 1 voluntarily submit to their jurisdiction.

"(4) Service in the cases listed in paragraph 3 shall be done through the Ministry of Foreign Affairs. If service cannot thus be realized, the court shall appoint a trustee for accepting documents or, if necessary, for protecting the absentee's rights."

/...

Question 3

What are the main trends of the judicial practice of your State in regard to jurisdictional immunities of foreign States and their property? Do the courts regard the doctrine of State immunity as "absolute", and if not, is its application subject to qualifications or limitations?

See reply to question 1 above.

Question 4

What is the role of the executive branch of the Government of your State in matters of recognition of jurisdictional immunities of foreign States and their property, especially in the definition or delimitation of the extent of the application of State immunity?

In matters regulated by Act No. 97/1963 of the Collection, judicial organs may, in case of doubt, ask the Ministry of Justice for an opinion (sect. 53, para. 2, of the above-mentioned Act). ^{2/}

This opinion, given in the matter of exemption of foreign States from the jurisdiction of Czechoslovak courts and notarial offices, is of those which are not binding for judicial organs.

Question 5

Is the principle of reciprocity applicable in the matters relating to jurisdictional immunities of States and their property? Inter alia, would courts of your State be expected to apply the principle of reciprocity to a foreign State which would deny your State immunity in a dispute similar to the one pending before your courts, even if the courts would normally grant immunity to other foreign States in such disputes?

According to Czechoslovak laws and regulations, the principle of absolute immunity is not bound to reciprocity.

^{2/} Section 53 provides:

"(1) The judicial organ shall take all necessary measures to ascertain the provisions of a foreign law; if such provisions are not known to such an organ, it may request the information for this purpose from the Ministry of Justice.

"(2) If any doubt arises in the consideration of the cases listed in paragraph 1, the judicial organs may ask the Ministry of Justice for an opinion."

Question 6

Do the laws and regulations referred to under question 1 or the judicial practice referred to in question 3 make any distinction, as far as jurisdictional immunities of foreign States and their property are concerned, between "public acts" and "non-public acts" of foreign States? If so, please outline the distinctions, and provide examples of their application.

Czechoslovak laws and regulations do not make any distinction between "public acts" and "non-public acts". This would contravene the principle of absolute immunity of States.

Question 7

If the answer to question 6 is "yes":

(a) Can jurisdictional immunities be successfully invoked before courts in your State in connexion with "non-public acts" of foreign States? If not, please indicate the types of "non-public acts" of foreign States not covered by immunities.

(b) In a dispute relating to a contract of purchase of goods, would courts of your State be expected to grant immunity to a foreign State which establishes that the ultimate object of the contract was for a public purpose or the contract was concluded in the exercise of a "public" or "sovereign" function?

(c) In a dispute relating to a foreign State's breach of a contract of sale, would courts of your State be expected to grant immunity to a foreign State which establishes that its conduct was motivated by public interests?

(d) In any dispute concerning a commercial transaction, is the nature of the transaction decisive of the question of State immunity, if not, how far is ulterior motive relevant to the question?

Considering the reply to question 6 above, no answer is required here.

Question 8

If "non-public" activities of a foreign State in the territory of your State are such as to be normally susceptible to payment of taxes, duties or other levies, would the foreign State be required to pay them or would it be exempted in all cases or on the basis of reciprocity?

Czechoslovak laws and regulations do not explicitly regulate this matter.

Question 9

Are courts of your State entitled to entertain jurisdiction over any public acts of foreign States? If so, please indicate the legal grounds on which competence is based, such as consent, or waiver of immunity, or voluntary submission, etc. If jurisdiction is exercised in such cases, does it mean that the doctrine of State immunity is still recognized by the courts?

No.

Question 10

What rules are in force in your State, if any, governing:

- (a) Waiver of jurisdictional immunities of foreign States;
- (b) Voluntary submission by foreign States; and
- (c) Counter-claims against foreign States?

(a) See Act No. 97/1963, Collection, section 47, paragraph 3. 3/

(b) Ditto.

(c) None.

Question 11

What are the exceptions or limitations, if any, provided by laws and regulations in force or recognized by judicial or governmental practice in your State with respect to jurisdictional immunities of foreign States and their property?

Act No. 97/1963, Collection, section 47, paragraph 3. 4/

Question 12

What is the status, under laws and regulations in force or in practice in your State, of ships owned or operated by a foreign State and employed in commercial service?

Czechoslovak laws and regulations do not explicitly regulate this matter. When signing the Convention on the High Seas at Geneva on 29 April 1958, the Czechoslovak Socialist Republic made the following reservations concerning article 9:

3/ See foot-note 1 above.

4/ See foot-note 1 above.

"The Government of the Czechoslovak Republic holds that under international law in force government ships operated for commercial purpose also enjoy on the high seas complete immunity from the jurisdiction of any State other than the flag State."

Question 13

If a foreign State applies to administrative authorities of your State for a patent, a licence, a permit, an exemption or any other administrative action, would it be treated procedurally or substantively, like any other applicant or would it receive special treatment on the procedure or on the substance?

States are in principle treated in the same way as any other applicant.

A special régime might result from bilateral or multilateral agreements.

Question 14

If a foreign State owns or succeeds to an immovable or movable property situated in your State, how far is the foreign State subject to territorial jurisdiction in respect of title to that property or other property rights?

According to section 47, paragraph 3 (a), of Act No. 97/1963, Collection, a foreign State is subject, in these cases, to the jurisdiction of Czechoslovak organs. It is exempted from such jurisdiction only in matters related to the payment of rentals.

Question 15

Can a foreign State inherit or become a legatee or a beneficiary in a testate or intestate succession? If so, is voluntary submission essential to a meaningful involvement in the judicial process?

Unless stipulated otherwise by an international agreement (cf. sect. 2 of Act No. 97/1963, Coll.), 5/ matters of inheritance are governed by the law of the State whose citizen the decedent was at the time of his death (according to sect. 17 of the above-mentioned Act). If the testator was a Czechoslovak citizen, Czechoslovak law does not limit the testator in the choice of the heir when drawing up his will. The heir may therefore be even a foreign State.

With regard to escheats of foreign citizens, agreements on judicial assistance concluded by Czechoslovakia with other States provide that movable escheats go to the State whose citizen the decedent was at the time of his death; unmovable escheats to the State on the territory of which the unmovable escheat is located.

5/ Section 2 provides:

"The provision of the present Act shall be applied only if an international treaty binding on the Czechoslovak Socialist Republic does not provide otherwise."

/...

Question 16

Under the laws and regulations in force in your State, does the property of a foreign State enjoy immunity from attachment and other provisional or interim measures prior to an executory judicial decision? Is there any distinction based on the nature or on the use of property involved?

Yes, they enjoy immunity, with the exceptions mentioned in section 47, paragraph 3 (a), of Act No. 97/1963, Collection, concerning unmovable property.

Question 17

Similarly, does the property of a foreign State enjoy immunity from distraint and other forcible measures in aid of execution of a judicial decision? Is there any distinction based on the nature or on the use of the property involved?

See reply to question 16 above.

Question 18

Are there procedural privileges accorded a foreign State in the event of its involvement in a judicial process? If so, please elaborate.

They are not. According to the provisions of section 48 of Act No. 97/1963, Collection, 6/ Czechoslovak courts and notarial offices apply Czechoslovak rules of procedure with all participants enjoying equal status in claiming their rights.

Question 19

Are foreign States exempt from costs or security for costs in the event of participation in a judicial process?

They are not.

6/ Section 48 provides:

"In proceedings, Czechoslovak courts and notarial offices shall act in accordance with Czechoslovak procedural rules and all parties shall have an equal status in claiming their rights."

A/CN.4/343/Add.3

English

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Question 20

Is your State inclined to invoke jurisdictional immunities before foreign courts, where, in like circumstances, none would be accorded to foreign States by the courts of your State? Or conversely, are courts in your State prepared to grant jurisdictional immunities to foreign States to the same extent as that to which your State is likely to claim immunities from foreign jurisdiction?

The Czechoslovak Socialist Republic proceeds from the opinion that it enjoys before courts of foreign States absolute immunity which it grants itself to foreign States before its own courts.

(a)	Registration no.	CZ/3
(b)	Date	20 July 1979
(c)	Author(ity)	The Government of the Czechoslovak Socialist Republic / Analysis of the topic of jurisdictional immunities of States and their property submitted by the Government of Czechoslovakia to the Secretariat of the United Nations
(d)	Parties	-
(e)	Points of law	The analysis describes the position of the Czechoslovak Socialist Republic on jurisdictional immunities of States and their property that was based on the doctrine of absolute immunity.
(f)	Classification no.	O.c, 1.a, 2.a
(g)	Source(s)	United Nations Legal Series, Materials on Jurisdictional Immunities of States and their Property, United Nations, New York, 1982
(h)	Additional information	-
(i)	Full text - extracts - translation - summaries	Appendix: English text of the analysis

Analysis of the topic of jurisdictional immunities of States and their property submitted by the Government of Czechoslovakia to the Secretariat of the United Nations on 20 July 1979

The Permanent Mission of the Czechoslovak Socialist Republic would like to point out in this connection that Section 47 of Act No. 47/1963 concerning private international law and the rules of procedure relating thereto constitutes the basic provision of Czechoslovak law in the sphere of an exclusion of foreign States and their property from the jurisdiction of Czechoslovak civil courts and notarial offices. It clearly follows from this provision that the Czechoslovak law is based in this respect on the theory of absolute immunity.

This theory represents a legal concept according to which a foreign State (and its property as well), being a sovereign territorial and political entity, cannot be submitted to jurisdiction of another State unless it expressly agrees to it. The theory of absolute immunity is the only possible and logic consequence of one of the cornerstones of contemporary international law - the principle of sovereign equality of States.

The application of this principle in international relations is based on the assumption that the will of a State will always be duly and fully respected. This principle does not, however, exclude the possibility that a State under certain circumstances can find it desirable or otherwise appropriate to submit a certain case to the jurisdiction of another State. This case being the consequence of that State's own decision is the only example when a State may establish its jurisdiction in respect to another State. Where there is no expressly declared readiness on the part of one State to submit certain cases to the jurisdiction of another State be it by an oral agreement or by an international treaty, any attempts to establish the jurisdiction unilaterally (by internal law, by decisions of the courts or otherwise) must be considered to be contrary to international law.

There is no rule in contemporary international law identifying possible exceptions from the immunity of States for certain areas of their activities (e.g. economy, finance, trade etc.).

With reference to Section 47, para. 2, subpara. (a) of the enclosed Act the Permanent Mission underlines that this provision can in no way be viewed as forming an exception from the basic principle set forth in Section 47, para 1. This rule, quite on the contrary, confirms the respect for the principle of the sovereign equality of States since its sole aim is to ensure the indisputable and self-evident link that exists between a territorial State and an object forming a content of real property or rights relating to real property in the State concerned.

Summing up, the Permanent Mission would like to note that since the concept of absolute immunity is shared by a considerable number of members of the international community, the correctness and purposefulness of the attitude that the International Law Commission, or to be more exact, its appropriate Working Group, has adopted in this respect on its thirtieth session last year, must necessarily be questioned. The Permanent Mission has in mind particularly the following part of the above-mentioned Working Groups report: "A working distinction may eventually have to be drawn between activities of States performed in the exercise of sovereign authority which are covered by immunities, and other activities in which States, like individuals, are engaged in an increasing manner and often in direct competition with private sectors. ... In other words only *acta iure imperii* or acts of sovereign authority as distinct from *acta iure gestionis* or *iure negotii* are covered by State immunities." (U.N. document A/33/10, p. 388, para. 29). This approach to the topic in question cannot lead to any positive results, since it cannot be met in the affirmative by at least a significant part of the international community.*

(a)	Registration no.	CZ/4
(b)	Date	27 August 1987
(c)	Author(ity)	The Supreme Court of the Czechoslovak Socialist Republic (Nejvyšší soud Ěskoslovenské socialistické republiky) / Supreme Court Opinion Cpjf 27/86 published as Rc 26/1987
(d)	Parties	-
(e)	Points of law	<p>The Supreme Court expresses the opinion that:</p> <p>a) foreign diplomatic missions in the Czechoslovak Socialist Republic cannot be sued because they are organs of a foreign State and have no legal personality, which pertains only to the foreign State itself,</p> <p>b) the damage actions directed against a foreign State can be heard in Czechoslovak courts only if the foreign State voluntarily submits to their jurisdiction,</p> <p>c) submission of the foreign State to the hearing in Czechoslovak courts does not imply that the foreign State submits to their jurisdiction also as regards the execution of judgment.</p>
(f)	Classification no.	0.c, 1.a, 2.a
(g)	Source(s)	Sbírka soudních rozhodnutí (Collection of Judicial Decisions) 87, 9-10
(h)	Additional information	The Opinion is not a decision in rem, but a commentary on and interpretation of Act No. 97/1963 concerning private international law and the rules of procedure relating thereto, as amended
(i)	Full text - extracts - translation - summaries	<p>Appendix 1: Extract from Supreme Court Opinion</p> <p>Appendix 2: English translation of the extract</p>

V praxi soudů přicházejí nikdy žaloby o náhradu škody, jež jsou podávány proti zastupitelským orgánům cizích států. Pokud neplyne nic jiného z mezinárodní smlouvy, je nutno vycházet v takovém případě z ustanovení §47 zákona č. 97/1963 Sb., neboť zastupitelský orgán (velvyslanectví, vyslanectví) tu vystupuje jménem cizího státu, který je v uvedeném právním vztahu pasivně legitimován. Žalobu o náhradu škody tu může český soud projednávat jen tehdy, jestliže se cizí stát podrobí jeho pravomoci. Podrobení se tomuto projednávání věci před českým soudem neznamená ovšem, že se cizí stát podrobil pravomoci i pokud jde o soudní výkon rozhodnutí.

Správně proto městský soud v Praze uvedl v odůvodnění svého rozhodnutí o odvolání proti rozsudku vydanému obvodním soudem pro Prahu 6 ve věci sp. zn. 8 C 111/82, v níž byla podána žaloba o náhradu škody proti velvyslanectví cizího státu a na této žalobě žalobce setrval, že diplomatické mise jsou zahraničním orgánem cizího státu a nemají právní subjektivitu, která tu náleží jen cizímu státu samotnému.

From time to time the courts are required to deal with actions for damages directed against foreign diplomatic missions. Unless an international treaty provides otherwise, Section 47 of Act No. 97/1963 must be applied because the diplomatic mission acts on behalf of a foreign State which in this legal relation has the capacity to be sued. The damage action can be heard in Czechoslovak courts only if the foreign State voluntarily submits to their jurisdiction. However, submission to the hearing in Czechoslovak courts does not imply that the foreign State submits to their jurisdiction also as regards the execution of judgement.

In the reasoning of its decision on an appeal against the judgment delivered by the District Court for Prague 6 in case ref. 8 C 111/82 where an action for damages was brought against a foreign embassy and the plaintiff insisted on the claim, the Regional Court in Prague correctly stated that a diplomatic mission is an organ of a foreign State and has no legal personality, which pertains only to the foreign State itself.

(a)	Registration no.	CZ/5
(b)	Date	1 November 2001
(c)	Author(ity)	The Government of the Czech Republic / Guarantee Agreement between the Czech Republic and Kreditanstalt für Wiederaufbau
(d)	Parties	The Czech Republic and Kreditanstalt für Wiederaufbau (a corporation organised and existing under public law of Germany)
(e)	Points of law	In the Guarantee Agreement the Czech Republic (the Guarantor) waives its immunity (other than with respect to its property solely serving military, security or diplomatic purposes) from court, enforcement, arbitration or any other legal proceeding.
(f)	Classification no.	0.b.3, 1.b, 2.b
(g)	Source (s)	-
(h)	Additional information	<p>1. The Guarantee Agreement pertains to a facility agreement made between Kreditanstalt für Wiederaufbau and ĚESKÉ DRÁHY, státní organizace (state organization), in which KfW has agreed to make available a loan facility for the purpose of the partial financing of the rehabilitation of the Dièín-Praha-Bøeclav railway line (Corridor I).</p> <p>2. The Guarantee Agreement is governed by the laws of the Federal Republic of Germany.</p> <p>3. Any dispute or difference between Kreditanstalt für Wiederaufbau and the Czech Republic out of or in connection with the Guarantee Agreement shall be referred to and finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce.</p>
(i)	Full text - extracts - translation - summaries	Appendix: English text of the relevant provision of the Guarantee Agreement

To the extent the Guarantor has or may acquire in any jurisdiction immunity from court, enforcement, arbitration or any other legal proceeding, the Guarantor hereby irrevocably waives such immunity (other than with respect to its property solely serving military, security or diplomatic purposes).

(a)	Registration no.	CZ/6
(b)	Date	15 December 1997
(c)	Author(ity)	District Court for Prague 6 / case No. E 1426/97, decision of 15 December 1997
(d)	Parties in the case	General Health Insurance Company of the Czech Republic / Embassy of the State of Palestine in the Czech Republic
(e)	Points of law	The Court stated in the decision that: a) The Embassy of the State of Palestine does not have legal personality - it is merely an authority of the State of Palestine; b) With regard to Section 47 of Act No. 97/1963 concerning private international law and the rules of procedure relating thereto (see CZ/1), in the given case the State of Palestine could be subject to the jurisdiction of Czech courts only if it voluntarily submitted to such jurisdiction.
(f)	Classification no.	0.b.1, 1.a, 2.a
(g)	Source(s)	-
(h)	Additional information	By its decision of 15 December 1997 the District Court for Prague 6 corrected its previous erroneous decision of 30 September 1997 on the same case ordering that the General Health Insurance Company's claim be satisfied by the taking (deducting) the debt off the debtor's (Embassy's) bank account.
(i)	Full text - extracts - translation - summaries	Appendix 1: Copy of the decision of the District Court for Prague 6 of 15 December 1997, No. E 1426/97 Appendix 2: English translation of the summary of the decision



Toto rozhodnutí je vykonatelné - nabylo právní moci

dne: 12. 03. 1998

OBVODNÍ SOUD PRO PRAHU 6

dne: 14. 10. 2002

E 1426/97

U S N E S E N Í

Obvodní soud pro Prahu 6 rozhodl v právní věci oprávněného Všeobecné zdravotní pojišťovny ČR, proti povinnému Velvyslavectví státu Palestina, Na Ořechovce 4, Praha 6

t a k t o :

Soud prohlašuje nařízený výkon rozhodnutí dle usnesení Obvodního soudu pro Prahu 6, ze dne 30.9.1997 čj. E 1426/97 za nepřipustný. Soud řízení o výkon tohoto řízení **zastavuje**.

O d ů v o d ň ě n í :

Návrhem ze dne 4.9.1997 se domáhá oprávněná nařízení výkonu rozhodnutí odepsáním z účtu povinného pro pohledávku ve výši 41.283,— Kč dle exekučního titulu a to platebního výměru č.Ro 2142000663 oprávněného, který nabyl právní moci dne 15.5.1997.

Soud usnesením ze dne 30.9.1997 výkon rozhodnutí odepsáním z účtu dle návrhu ze dne 4.9.1997 nařídil. Po vydání usnesení o nařízení výkonu rozhodnutí, soud tímto usnesením prohlašuje výkon rozhodnutí za nepřipustný dle § 268 odst. 1. písm. h o.s.ř. a to pro nedostatek pravomoci českého soudu vůbec.

Soud odůvodňuje toto své nové stanovisko poukazem na zákonné ustanovení § 47 odst. 1 zák. č. 97/63 sb. z kterého jasně vyplývá, že pravomoci tehdejších československých nyní českých soudů nejsou podrobeny s výjimkou § 47 odst. 3 výše uvedeného zákona cizí státy a osoby, jež podle mezinárodních smluv nebo jiných pravidel mezinárodního práva požívají v ČR imunity.

Povinný uvedený v návrhu na nařízení výkonu rozhodnutí jako Velvyslavectví státu Palestina je pouze orgánem státu Palestina a vlastní právní subjektivitu nemá.

Soud pochybil, pokud výkon rozhodnutí vůči povinnému nařídil, neboť s ohledem na výše uvedená ustanovení zákona č.97/63 sb. by Stát Palestina mohl být podroben pravomoci českého soudu jedině v případě, že by se soudní pravomoci podrobil dobrovolně.

Soud nápravu vadného soudního rozhodnutí učinil tak, že prohlásil dle § 268 odst. 1. písm. h o.s.ř. nařízený výkon rozhodnutí za nepřipustný, neboť ho nelze vykonat ze nedodržení podmínky řízení spočívající v nedostatku pravomoci českých soudů.

P o u č e n í : Proti tomuto usnesení je možno podat odvolání do 15ti dnů ode dne jeho doručení k Městskému soudu v Praze prostřednictvím soudu zdejšího.

V Praze dne 15. prosince 1997

JUDr. Marta Beránková
předsedkyně senátu

Za spváost-E.Dvořáčková



The plaintiff (General Health Insurance Company of the Czech Republic) requested the court to order that the decision be executed by taking (deducting) the debt (sums charged in the payment assessment of the General Health Insurance Company) amounting to CZK 41,283 off the debtor's (Palestinian Embassy's) bank account. In its decision of 30 September 1997 the District Court for Prague 6 ordered execution of the decision. Having issued this decision, the same court by decision dated 15 December 1997 declared that the execution of the previous decision was inadmissible. In stating the reasons for this new and final opinion it referred to the provision of Section 47, para 1 of Act No. 97/1963 concerning private international law and the rules of procedure relating thereto, under which foreign States and persons who under international treaties or other rules of international law enjoy immunity in the Czech Republic are not subject to the jurisdiction of Czech courts, except for cases defined in Section 47, para 3 of the Act. The court stated that the debtor identified in the motion to commence execution proceedings was merely an authority of the State of Palestine and thus had no legal personality and that the State of Palestine could be subject to the jurisdiction of Czech courts only if it voluntarily submitted to such jurisdiction.

(a)	Registration no.	CZ/7
(b)	Date	31 August 1995
(c)	Author(ity)	Superior Court in Prague / decision of 31 August 1995, No. 10 Cmo 418/95-16
(d)	Parties in the case	Petr Roith (provider of cleaning services) / Embassy of the Republic of South Africa in the Czech Republic
(e)	Points of law	The court stated in its decision that: a) The diplomatic mission of a foreign state is neither a natural nor a legal person and therefore has no capacity to be a party to the proceedings; b) Even if an existing entity, i. e. a state, is identified as the defendant the proceedings against it would have to be stopped on the grounds of the want of jurisdiction of courts of the Czech Republic arising from Section 47 of Act No. 97/1963 concerning private international law and the rules of procedure relating thereto (see CZ/1).
(f)	Classification no.	0.b.3, 1.a, 2.a
(g)	Source(s)	-
(h)	Additional information	In the said decision, the Superior Court in Prague affirmed the decision of the Regional Commercial Court in Prague of 8 March 1995, No. 81 Ro 1618/94-8.
(i)	Full text - extracts - translation - summaries	Appendix 1: Copy of the decision of the Superior Court in Prague of 31 August 1995, No. 10 Cmo 418/95-16 Appendix 2: English translation of the summary of the decision

U s n e s e n í

Vrchní soud v Praze jako soud odvolací rozhodl v právní věci žalobce Petr ROITH - dodavatel úklidových prací, Pekárenská 2, Praha 4, právně zastoupeného JUDr. Karlem Stečinským, advokátem, Ohradní 1352, 140 00 Praha 4 proti žalovanému Jihoafrické velvyslanectví Praha, Ruská 65, Praha 10 o zaplacení 30.000,-- Kč, o odvolání žalobce proti usnesení Krajského obchodního soudu v Praze č.j. 81 Ro 1618/94-8 ze dne 8. 3. 1995

t a k t o :

Usnesení Krajského obchodního soudu v Praze č.j. 81 Ro 1618/94-8 ze dne 8. 3. 1995 se potvrzuje.

Žalobce nemá právo na náhradu nákladů odvolacího řízení.

O d ů v o d n ě n í :

Návrhem na zahájení řízení, podaným u Krajského obchodního soudu v Praze dne 13. 7. 1994, se žalobce domáhal na označeném žalovaném zaplacení 30.000,-- Kč jako náhrady škody, která mu vznikla tím, že mu nebylo umožněno vykonávat úklidové práce od 28. 2. 1994 po dobu 6 měsíců, takže vzniklá škoda za 1 měsíc představuje částku 5.000,-- Kč, a náhrady nákladů řízení. Navrhl vydání platebního rozkazu.

Krajský obchodní soud v Praze usnesením č.j. 81 Ro 1618/94-8 ze dne 8. 3. 1995 řízení zastavil a rozhodl, že žádný z účastníků nemá právo na náhradu nákladů řízení a žalobci se nevrací soudní poplatek, protože nebyl zaplacen. V odůvodnění uvedl, že žalobce označil jako žalovaného neexistující subjekt, což je neodstranitelný nedostatek podmínky řízení, takže řízení musí být zastaveno podle § 104 odst. 1 o.s.ř. Usnesení bylo doručeno žalobci dne 15. 5. 1995.

Proti usnesení podal žalobce v zákonem stanovené lhůtě odvolání, v němž uvedl, že jím označený žalovaný vystupoval ve smluvním vztahu pod označením, které je uvedeno v návrhu na zahájení řízení, proto zastává názor, že jako právní subjekt existuje. Navrhl zrušení napadeného usnesení.

Vrchní soud v Praze jako soud odvolací projednal věc na základě podaného odvolání podle § 212 o.s.ř. a bez nařízení jednání podle § 214 odst. 2 písm. c) o.s.ř. dospěl k závěru, že odvolání není důvodné.

Ze spisového materiálu zjistil odvolací soud, že žalobce označil jako žalovaného "Jihoafrické velvyslanectví Praha, Ruská 65, Praha 10". Soud prvního stupně zastavil řízení po zjištění, že žalobcem označený žalovaný nemá způsobilost být účastníkem řízení podle § 19 o.s.ř.

Odvolací soud se s tímto závěrem soudu prvního stupně ztotožňuje. Zastupitelský orgán jiného státu není ani fyzickou ani právnickou osobou a nemá proto způsobilost být účastníkem řízení. Podle ustanovení § 47 odst. 1 zákona č. 97/1963 Sb., o mezinárodním právu soukromém a procesním, ve znění pozdějších předpisů, jsou vyňaty z pravomoci soudů České republiky cizí státy a osoby, jež podle mezinárodních smluv nebo jiných pravidel mezinárodního práva nebo podle zvláštních českých právních předpisů požívají v České republice imunity. To znamená, že i kdyby byl žalobcem jako žalovaný označen existující subjekt tj. stát, muselo by být řízení proti němu zastaveno pro nedostatek pravomoci soudů České republiky.

Z uvedených důvodů odvolací soud rozhodnutí soudu prvního stupně potvrdil podle § 219 o.s.ř.

O náhradě nákladů odvolacího řízení bylo rozhodnuto podle § 224 odst. 1 a § 142 odst. 1 o.s.ř., jak je ve výroku uvedeno.

Proti tomuto usnesení není odvolání přípustné.

V Praze dne 31. srpna 1995

JUDr. Jiří Chudoba, v. r.
předseda senátu

Za správnost vyhotovení:



The plaintiff (P. R., provider of cleaning services) applied to the Regional Commercial Court in Prague and claimed from the defendant (Embassy of the Republic of South Africa in the Czech Republic) the payment of CZK 30,000 in compensation for losses the plaintiff allegedly incurred due to the fact that he was not allowed to provide cleaning services for a period of six months. The Regional Commercial Court stopped the proceedings stating that the plaintiff identified as the defendant an inexistent entity, i.e. an entity which, under Czech law, does not have the capacity to be a party to the proceedings. The plaintiff lodged an appeal against this decision and claimed that the party he had identified as the defendant had acted in the contractual relation under the name which had been stated in the petition initiating the suit; the plaintiff therefore held the view that the defendant does exist as a legal person. The Superior Court in Prague dismissed the appeal by the plaintiff and upheld the decision of the Regional Commercial Court. According to the Superior Court, the diplomatic mission of a foreign state is neither a natural nor a legal person and therefore has not the capacity to be a party to the proceedings. With reference to Section 47, para 1, of Act No. 97/1963 concerning private international law and the rules of procedure relating thereto, under which foreign states and individuals enjoying in the Czech Republic immunity in conformity with international treaties or other rules of international law or in conformity with special Czech legal regulations shall not be subject to the jurisdiction of Czech courts, the Superior Court further stated that even if the plaintiff identified as the defendant an existing entity, i.e. a state, the proceedings against such a state would have to be stopped on the grounds of the want of jurisdiction of the courts of the Czech Republic.

(a)	Registration no.	CZ/8
(b)	Date	24 October 1997
(c)	Author(ity)	The Czech Republic (the Government of the Czech Republic, the Ministry of Finance of the Czech Republic) / Credit Agreement
(d)	Parties to the contract	The Czech Republic (as guarantor); AERO Vodochody, a.s. (joint stock company) (as borrower); Canadian Imperial Bank of Commerce (as agent); Československá obchodní banka (Czechoslovak Commercial Bank), a. s. (as local agent)
(e)	Points of law	In the Credit Agreement AERO Vodochody, a.s., (the "Company") and the Czech Republic (the "Guarantor") agree to waive and not to claim or plead any immunity that it or any of their property has or hereafter may acquire in connection with any legal action or proceeding related to the Credit Agreement.
(f)	Classification no.	0.b.3, 1.b, 2.b
(g)	Source (s)	-
(h)	Additional information	-
(i)	Full text - extracts - translation - summaries	Appendix: English text of the relevant provision (Section 12.14) of the Credit Agreement

CZ 8

Appendix

Each of the Company and the Guarantor irrevocably and unconditionally agrees to waive and not to claim or plead any immunity (whether sovereign or otherwise) that it or any of its property has or hereafter may acquire from any aspect of any legal action or proceeding to enforce or collect upon the Note, the Guarantee, any other Credit Document or any other Obligation or liability related to or arising from the transactions contemplated hereby, including, without limitation, immunity from jurisdiction or judgment of any court, immunity from execution of judgment, immunity from attachment prior to judgment or in aid of execution of judgment, or immunity from set-off or any legal process (whether service of notice or otherwise). The waivers contained in this Section 12.14 shall, among other things, be effective to the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976, of the United States, as amended, and shall be irrevocable and not subject to withdrawal for the purposes of such Act; provided, however, that the waiver of immunity contained herein shall not extend to property of the Guarantor (wherever situated) serving military, national security or diplomatic purposes of the Guarantor. The Company and the Guarantor affirm their respective representations that the activities contemplated by the Credit Documents constitute commercial activities of the Company and the Guarantor within the meaning of the Foreign Sovereign Immunities Act of 1976 and agree not to contest this characterization.