

***November 2005***

**PORTUGAL**

This report contains sixteen judicial decisions on the subject of State immunities, compiled and treated by the national co-ordinator.

Notwithstanding the recommendation of the CAHDI not to include State practice dated before 1970, it was decided to open one exception to include a judicial decision of 1962, for it was the first one on the issue of immunity from jurisdiction and influenced most of the later decisions of Portuguese courts. Although there is not such a thing as the precedent rule in the Portuguese legal system, the importance of the 1962 decision was considerable.

<b>(a)</b>	<b>Registration no.</b>	P/1
<b>(b)</b>	<b>Date</b>	27 February 1962
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court (Supremo Tribunal de Justiça) – Appeal
<b>(d)</b>	<b>Parties</b>	United States of America (State) v. Companhia Portuguesa de Minas, SARL (Private Company) <sup>1</sup>
<b>(e)</b>	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• immunity from jurisdiction of foreign States as to the generality of cases</li> <li>• the only exceptions being express or tacit waiver and cases related to immovable property or forum hereditatis</li> </ul>
<b>(f)</b>	<b>Classification no</b>	0.a, 1.a
<b>(g)</b>	<b>Source(s)</b>	Boletim do Ministério da Justiça, 1962, No. 114
<b>(h)</b>	<b>Additional Information</b>	-
<b>(i)</b>	<b>Full Text – Extracts – Translation – Summaries</b>	Summary and Full Text: Annex 1 * Summary in English: Annex 2

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<sup>1</sup> N.B.: in the context of a contractual relationship.

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Appendix

In an appeal before the Supreme Court by the United States of America against a Portuguese private company, the Court considered that:

Foreign States are entitled to immunity from jurisdiction as to the generality of cases that could be brought against them, even if acting as private law persons. Such immunity does not encompass the cases of express or tacit waiver and cases related to immovable property or forum hereditatis. Tacit waiver presupposes a concrete will by the author of the waiver and resort to judicial proceedings by a foreign State, namely in the case of a counterclaim cannot be considered as amounting to such waiver.

<b>(a)</b>	<b>Registration no.</b>	P/2
<b>(b)</b>	<b>Date</b>	5 January 1981
<b>(c)</b>	<b>Author(ity)</b>	District Court (Tribunal da Relação do Porto) – Appeal
<b>(d)</b>	<b>Parties</b>	Aurélio Moreira de Sousa (individual <sup>2</sup> ) v. Consulado Geral de Espanha no Porto (Consular mission)
<b>(e)</b>	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• immunity from jurisdiction of foreign States</li> <li>• the only exceptions being express or tacit but unequivocal waiver</li> <li>• immunity encompasses not only acts ius imperii, but also cases where the State acts as a private law person</li> <li>• a Consulate constitutes a representation of a foreign State and its acts are, whether of ius imperii or ius gestionis, acts of the State and thus Portuguese courts lack competency to judge them</li> </ul>
<b>(f)</b>	<b>Classification no</b>	0.a, 1.a
<b>(g)</b>	<b>Source(s)</b>	Colectânea de Jurisprudência, 1981, No. VI-1
<b>(h)</b>	<b>Additional Information</b>	-
<b>(i)</b>	<b>Full Text – Extracts – Translation – Summaries</b>	Summary and Full Text: Annex 1 * Summary in English: Annex 2

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<sup>2</sup> N.B.: Portuguese national.

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### Appendix

In an appeal before the District Court of Porto by an individual against the Spanish Consulate, the Court considered that:

When one of the subjects of a judicial proceeding is a foreign State, namely when the State is the defendant, one has to look into the international rules regarding jurisdictional competency contained in treaties and custom and not in internal law. There is no general rule of international law regarding jurisdictional competency. Foreign States are entitled to immunity from jurisdiction, the only exceptions being express or tacit but unequivocal waiver, for the waiver cannot be presumed. This immunity encompasses not only acts *ius imperii*, but also cases where the State acts as a private law person. A Consulate constitutes a representation of a foreign State and its acts are, whether of *ius imperii* or *ius gestionis*, acts of the State and thus Portuguese courts lack competency to judge them.

<b>(a)</b>	<b>Registration no.</b>	P/3
<b>(b)</b>	<b>Date</b>	6 July 1983
<b>(c)</b>	<b>Author(ity)</b>	District Court (Tribunal da Relação de Lisboa) – Appeal
<b>(d)</b>	<b>Parties</b>	António Portugal e Castro (individual) v. Estado Brasileiro (State) <sup>3</sup>
<b>(e)</b>	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• foreign States are entitled to immunity from jurisdiction</li> <li>• including regarding labour law questions</li> <li>• the issue should be solved by diplomatic means</li> </ul>
<b>(f)</b>	<b>Classification no</b>	0.a, 1.a
<b>(g)</b>	<b>Source(s)</b>	Colectânea de Jurisprudência, 1983, No. VIII-4
<b>(h)</b>	<b>Additional Information</b>	-
<b>(i)</b>	<b>Full Text – Extracts – Translation – Summaries</b>	Summary and Full Text: Annex 1 * Summary in English: Annex 2

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<sup>3</sup> N.B. : the individual was employed at the Brazilian Embassy in Portugal.

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Appendix

In an appeal before the District Court of Lisbon by an individual against the Brazilian State, the Court considered that:

Foreign States are entitled to immunity from jurisdiction, including regarding labour law questions. Thus the initial request shall be considered as inadmissible and the issue should be solved by diplomatic means.

<b>(a)</b>	<b>Registration no.</b>	P/4
<b>(b)</b>	<b>Date</b>	11 May 1984
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court (Supremo Tribunal de Justiça) – Appeal
<b>(d)</b>	<b>Parties</b>	A. (Individual) v. Ambassador in Portugal (State)
<b>(e)</b>	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• a foreign State is entitled to immunity from jurisdiction in Portuguese courts, in a law suit against it by a Portuguese national fired by the Embassy where he was working</li> </ul>
<b>(f)</b>	<b>Classification no</b>	0.a, 1.a
<b>(g)</b>	<b>Source(s)</b>	Boletim do Ministério da Justiça, 1984, No. 337
<b>(h)</b>	<b>Additional Information</b>	-
<b>(i)</b>	<b>Full Text – Extracts Translation – Summaries</b>	– Summary and Full Text: Annex 1 * Summary in English: Annex 2



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Appendix

In an appeal before the Supreme Court by an individual against a foreign State, the Court considered that:

A foreign State is entitled to immunity from jurisdiction in Portuguese courts, in a law suit against it by a Portuguese national fired by the Embassy where he was working.

<b>(a)</b>	<b>Registration no.</b>	P/5
<b>(b)</b>	<b>Date</b>	17 June 1987
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court (Supremo Tribunal de Justiça) – Appeal
<b>(d)</b>	<b>Parties</b>	Carlos Manuel Flores André and Miguel Carlos Parada André (individuals) v. Spanish Institute in Lisbon (Foreign School)
<b>(e)</b>	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>the foreign school is distinct and has autonomy from the foreign State and thus can be tried in Portuguese courts.</li> </ul>
<b>(f)</b>	<b>Classification no</b>	0.c, 1.c
<b>(g)</b>	<b>Source(s)</b>	Boletim do Ministério da Justiça, 1987, No. 368
<b>(h)</b>	<b>Additional Information</b>	-
<b>(i)</b>	<b>Full Text – Extracts Translation – Summaries</b>	Summary and Full Text: Annex 1 * Summary in English: Annex 2

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Appendix

In an appeal before the Supreme Court by two individuals against a foreign school, the Court considered that:

The foreign school is distinct and has autonomy from the foreign State and thus can be tried in Portuguese courts.

<b>(a)</b>	<b>Registration no.</b>	P/6
<b>(b)</b>	<b>Date</b>	9 November 1988
<b>(c)</b>	<b>Author(ity)</b>	District Court (Tribunal da Relação de Lisboa) – Appeal
<b>(d)</b>	<b>Parties</b>	Maria Cristina Silva (individual) v. Spanish Institute, Spanish Embassy and Spanish State (Foreign School, Foreign Embassy and Foreign State).
<b>(e)</b>	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• Portuguese courts are internationally incompetent to judge a law suit against the Spanish State</li> </ul>
<b>(f)</b>	<b>Classification no</b>	0.a, 1.a
<b>(g)</b>	<b>Source(s)</b>	Colectânea de Jurisprudência, 1988, No. XIII-5
<b>(h)</b>	<b>Additional Information</b>	-
<b>(i)</b>	<b>Full Text – Extracts Translation – Summaries</b>	– Summary and Full Text: Annex 1 * Summary in English: Annex 2

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Appendix

In an appeal before the District Court of Lisbon by an individual against the Spanish Institute, the Spanish Embassy and the Spanish State, the Court considered that:

Portuguese courts are internationally incompetent to judge a law suit against the Spanish State.

<b>(a)</b>	<b>Registration no.</b>	P/7
<b>(b)</b>	<b>Date</b>	12 July 1989
<b>(c)</b>	<b>Author(ity)</b>	District Court (Tribunal da Relação de Lisboa) – Appeal
<b>(d)</b>	<b>Parties</b>	Bernardette Bravo (individual) v. Republic of Zaire (State)
<b>(e)</b>	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• Portuguese courts are internationally incompetent to judge a labour suit against a foreign State</li> </ul>
<b>(f)</b>	<b>Classification no</b>	0.a, 1.a
<b>(g)</b>	<b>Source(s)</b>	Colectânea de Jurisprudência, 1989, No. XIV-4
<b>(h)</b>	<b>Additional Information</b>	-
<b>(i)</b>	<b>Full Text – Extracts – Translation – Summaries</b>	Summary and Full Text: Annex 1 * Summary in English: Annex 2

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Appendix

In an appeal before the District Court of Lisbon by an individual against the Republic of Zaire, the Court considered that:

In view of the sovereignty and independence of States regarding other States, an international law customary rule has developed according to which foreign States are entitled local immunity from jurisdiction in the judicial proceedings filed against them. This rule applies in Portugal in accordance with article 8 of the Constitution. Therefore, Portuguese courts are internationally incompetent to judge a civil or labour suit against a foreign State.

(a)	<b>Registration no.</b>	P/8
(b)	<b>Date</b>	30 January 1991
(c)	<b>Author(ity)</b>	Supreme Court (Supremo Tribunal de Justiça) – Appeal
(d)	<b>Parties</b>	Rosa de Jesus Lourenço Barros Fonseca (individual) v. Gilbert Buddig Larren and Madeleine Laurent Larren (French Diplomats)
(e)	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• a State's immunity from jurisdiction is applicable also to its diplomatic agents, but only when the acts are practised on behalf of the State and for the purposes of the mission and not in case of acts in their private capacity</li> </ul>
(f)	<b>Classification no</b>	0.b.2, 1.b
(g)	<b>Source(s)</b>	Boletim do Ministério da Justiça, 1991, No. 403
(h)	<b>Additional Information</b>	-
(i)	<b>Full Text – Extracts – Translation – Summaries</b>	Summary and Full Text: Annex 1 * Summary in English: Annex 2



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Appendix

In an appeal before the Supreme Court by one individual against two foreign diplomats, the Court considered that:

The State's immunity from jurisdiction contained in the Vienna Convention on Diplomatic Relations aims at ensuring the reciprocal independence of States and prevents States from being placed in the position of defendants in the courts of another State. This rule is applicable also to the diplomatic agents of a State, but only when the acts are practised on behalf of the State and for the purposes of the mission and not in case of acts in their private capacity. Hiring a domestic servant for the private residence of a diplomat is an act outside of the diplomatic functions of the agent and therefore not included in the immunity from jurisdiction.

<b>(a)</b>	<b>Registration no.</b>	P/9
<b>(b)</b>	<b>Date</b>	4 May 1994
<b>(c)</b>	<b>Author(ity)</b>	District Court (Tribunal da Relação de Lisboa) – Appeal
<b>(d)</b>	<b>Parties</b>	Anabela Catarina Ramos et al. (individuals) v. US Government (State)
<b>(e)</b>	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>Portuguese courts are internationally incompetent to judge labour contracts entered into with the US Diplomatic Mission in Portugal, since this State has not waived its immunity from jurisdiction</li> </ul>
<b>(f)</b>	<b>Classification no</b>	0.a, 1.a
<b>(g)</b>	<b>Source(s)</b>	Unpublished
<b>(h)</b>	<b>Additional Information</b>	-
<b>(i)</b>	<b>Full Text – Extracts – Translation – Summaries</b>	Summary and Full Text: Annex 1 * Summary in English: Annex 2

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Appendix

In an appeal before the District Court of Lisbon by a group of individuals against the US Government, the Court considered that:

Portuguese courts are internationally incompetent to judge labour contracts entered into with the US Diplomatic Mission in Portugal, since this State has not waived its immunity from jurisdiction.

(a)	<b>Registration no.</b>	P/10
(b)	<b>Date</b>	4 February 1997
(c)	<b>Author(ity)</b>	Supreme Court (Supremo Tribunal de Justiça) – Appeal
(d)	<b>Parties</b>	Manuel Ventura Arroja (individual) v. Republic of Bolivia (State) <sup>4</sup>
(e)	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• immunity of foreign States is restricted to acts jure imperii alone, where the State exercises its sovereignty</li> <li>• honorary consuls enjoy immunity from jurisdiction for acts practised in the exercise of the consular function since it is a public administrative function</li> </ul>
(f)	<b>Classification no</b>	0.a, 1.a
(g)	<b>Source(s)</b>	Boletim do Ministério da Justiça, 1997, No. 464
(h)	<b>Additional Information</b>	-
(i)	<b>Full Text – Extracts – Translation – Summaries</b>	Summary and Full Text: Annex 1 * Summary in English: Annex 2

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<sup>4</sup> N.B.: In the context of payment of debts.

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### Appendix

In an appeal before the Supreme Court by one individual against the Republic of Bolivia, the Court considered that:

According to customary international law, foreign States are entitled to immunity from jurisdiction, based in the principle *par in parem non habet imperium*, automatically received in the Portuguese domestic law in accordance with article 8º/1 of the Constitution of the Republic. Acts of a public nature – *acta jure imperii* – are those which derive from the exercise of public power and constitute the realisation of a public function of the collective person, regardless of whether they are accompanied or not of coercive means and of technical or other rules that should be applied. Acts of a private nature – *acta jure gestionis* – are those comprised in an activity of the collective person that, in the absence of the public power, acts in a position of parity with private persons, in the same conditions and regime that would apply to a private person, the private law rules being applicable. Immunity of foreign States is restricted to acts *jure imperii* alone, for this rule having its basis in the principle of equality and autonomy, it is logical that such immunity is only to exist where the State exercises its sovereignty. Honorary consuls, that perform a merely administrative role, enjoy immunity from jurisdiction for acts practised in the exercise of the consular function since it is a public administrative function.

(a)	<b>Registration no.</b>	P/11
(b)	<b>Date</b>	5 March 1998
(c)	<b>Author(ity)</b>	District Court (Tribunal da Relação de Lisboa) – Appeal
(d)	<b>Parties</b>	Rui Manuel do Couto Mendes Valada (individual) v. Popular Republic of Angola (State)
(e)	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>the principle of the immunity from jurisdiction of foreign States does not apply when the State is sued in its quality of party to a private law contract, but only when the foreign State intervenes in the legal relationship in the quality of sovereign State, with “jus imperii”</li> </ul>
(f)	<b>Classification no</b>	0.b.2, 1.b
(g)	<b>Source(s)</b>	Colectânea de Jurisprudência, 1998, No. XXIII-2
(h)	<b>Additional Information</b>	-
(i)	<b>Full Text – Extracts – Translation – Summaries</b>	Summary and Full Text: Annex 1 * Summary in English: Annex 2

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Appendix

In an appeal before the District Court of Lisbon by an individual against the Republic of Angola, the Court considered that:

The principle of the immunity of jurisdiction of foreign States does not apply when the State is sued in its quality of party to a private law contract, but only when the foreign State intervenes in the legal relationship in the quality of sovereign State, with *jus imperii*. In this case (labour contract), the foreign State is a mere subject, acting without *jus imperii* and in the same situation as the other subjects of the legal relationship, and thus should be treated in equality as the other private persons. It would be an unjustified privilege if the foreign State that enters into a private law contract would be immune from all possibilities of being sued for violations of the contractual relationship and its consequences, namely compensation.

<b>(a)</b>	<b>Registration no.</b>	P/12
<b>(b)</b>	<b>Date</b>	9 December 1998
<b>(c)</b>	<b>Author(ity)</b>	Supreme Court (Supremo Tribunal de Justiça) – Appeal
<b>(d)</b>	<b>Parties</b>	A. (individual) v. France (State)
<b>(e)</b>	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• if there is no conventional rule binding for a State barring immunity from jurisdiction in the case of labour contracts, one has to apply the customary rule according to which foreign States enjoy such immunity</li> </ul>
<b>(f)</b>	<b>Classification no</b>	0.a, 1.a
<b>(g)</b>	<b>Source(s)</b>	Boletim do Ministério da Justiça, 1999, No. 482
<b>(h)</b>	<b>Additional Information</b>	-
<b>(i)</b>	<b>Full Text – Extracts – Translation – Summaries</b>	Summary and Full Text: Annex 1 * Summary in English: Annex 2



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Appendix

In an appeal before the Supreme Court by one individual against the French State, the Court considered that:

There is no convention or treaty binding upon Portugal regarding State immunities. Portugal is not bound by article 5<sup>o</sup>, n.º 1 of the European Convention regarding State Immunities of 1972, that bars such immunity in the case of labour contracts. Therefore, one has to apply the customary rule of international law according to which foreign States enjoy immunity from jurisdiction in local courts in judicial proceedings against them.

This customary rule is automatically received by Portuguese domestic law, in accordance with article 8<sup>o</sup>, n.º 1, of the Constitution of the Portuguese Republic.

In view of such immunity from jurisdiction, a Portuguese citizen who worked as a driver at the French Embassy in Portugal cannot resort to judicial proceedings against the French State, in order to obtain the payment of alleged labour credits.

(a)	<b>Registration no.</b>	P/13
(b)	<b>Date</b>	23 February 2000
(c)	<b>Author(ity)</b>	District Court (Tribunal da Relação de Lisboa) – Appeal
(d)	<b>Parties</b>	Jorge Manuel Nunes Marques (individual) v. Saudi Arabia Embassy (State)
(e)	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• the Court cannot judge this case against a foreign State because the Ambassador expressly rejected the jurisdiction of Portuguese Courts</li> <li>• the trial could only proceed if the defendant had waived this immunity</li> </ul>
(f)	<b>Classification no</b>	0.a, 1.a
(g)	<b>Source(s)</b>	Unpublished
(h)	<b>Additional Information</b>	-
(i)	<b>Full Text – Extracts Translation – Summaries</b>	Summary and Full Text: Annex 1 * Summary in English: Annex 2

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Appendix

In an appeal before the District Court of Lisbon by an individual against the Saudi Arabia Embassy, the Court considered that:

There is a rule of public international law according to which the sovereign State cannot be sued in a court of another State. That is what is called immunity from jurisdiction of foreign sovereign States. It is possible to renounce to this immunity, but the Court cannot judge this case against a foreign State because the Ambassador expressly rejected the jurisdiction of Portuguese Courts and there is no international treaty binding for the Portuguese State that would remove such immunity in regard to labour contracts.

(a)	<b>Registration no.</b>	P/14
(b)	<b>Date</b>	13 December 2000
(c)	<b>Author(ity)</b>	District Court (Tribunal da Relação de Lisboa) – Appeal
(d)	<b>Parties</b>	Maria Aparecida Pereira de Melo Cunha Brazão (individual) v. Brazilian Embassy and Republic of Brazil (State)
(e)	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• immunity from jurisdiction of foreign States must have a restrictive scope, limited to acts of public power, practised under the “jus imperii”</li> <li>• when the State acts “jure gestionis” there is no immunity from jurisdiction</li> <li>• in this case even if one applied the principle of absolute immunity, the Republic of Brazil waived such immunity</li> <li>• the court is internationally competent to judge the case</li> </ul>
(f)	<b>Classification no.</b>	0.b.2, 1.b
(g)	<b>Source(s)</b>	Unpublished
(h)	<b>Additional Information</b>	-
(i)	<b>Full Text – Extracts Translation – Summaries</b>	- Summary and Full Text: Annex 1 * Summary in English: Annex 2

Appendix

In an appeal before the District Court of Lisbon by an individual against the Brazilian State, the Court considered that:

Immunity from jurisdiction of foreign States must have a restrictive scope, limited to acts of public power, practised under the “jus imperii”; when the State acts “jure gestionis” there is no immunity from jurisdiction. The international community, doctrine and jurisprudence are evolving in the sense of restricting the State’s immunity. In this case (labour contract), the foreign State is a mere contractual party acting without jus imperii and in the same situation as the other subjects of the legal relationship, and thus should be treated in equality as the other private persons. However, even if one applied the principle of absolute immunity, the Republic of Brazil waived such immunity by accepting the local jurisdiction and by refraining from invoking such immunity, having accepted to the cited and having appointed a lawyer to represent her in court. The court is internationally competent to judge the case of the claimant against the Republic of Brazil for the labour relationship between her and the Brazilian Embassy in Lisbon.

(a)	<b>Registration n.º</b>	P/15
(b)	<b>Date</b>	13 November 2002
(c)	<b>Author(ity)</b>	Supreme Court (Supremo Tribunal de Justiça) – Appeal
(d)	<b>Parties</b>	A. (individual) v. Israel (State)
(e)	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• A foreign State does not enjoy immunity from jurisdiction in a case brought against it by a domestic servant of the ambassador's residence claiming that she was unlawfully dismissed.</li> <li>• Such contractual relationship is ruled by Portuguese law similarly to other labour contracts for the performance of domestic services celebrated with any other private person.</li> </ul>
(f)	<b>Classification no</b>	0.b.2, 1.b
(g)	<b>Source(s)</b>	Unpublished
(h)	<b>Additional Information</b>	-
(i)	<b>Full Text – Extracts – Translation – Summaries</b>	Summary in English: Appendix 1* Summary in English: Appendix 2

Appendix 2

In an appeal before the Supreme Court by an individual against the State of Israel, the Court considered that:

The customary rule of international law according to which foreign States enjoy immunity from jurisdiction in local courts has not been derogated by the Constitution of the Portuguese Republic of 1976, since that rule does not contradict any of the fundamental constitutional norms.

The formulation of such rule that is in accordance with the Portuguese Constitution is the narrow one, restricting immunity to acts *jure imperii* and excluding acts practised *jure gestionis*; i.e. immunity does not encompass acts practised by the foreign State that could have been performed by a private person, but only those that manifest its sovereignty.

The scope of the above-mentioned rule and the criteria to distinguish the different types of activities are not fixed and evolve in accordance with the practice, namely of the courts, of the different States that compose the international community.

Concerning labour disputes, notably cases arising from unlawful dismissal, such State practice has not recognised State immunity when the worker is subjected to an hierarchy and does not have independent and command functions in the organisation of the civil service of the defendant or functions of authority and representation.

A foreign State does not enjoy immunity from jurisdiction in a case brought against it by a domestic servant claiming that she was unlawfully dismissed, when such activity was being performed at the ambassador's residence and consisted essentially in house cleaning and preparation of meals.

Such contractual labour relationship is ruled by Portuguese law similarly to other labour contracts for the performance of domestic services celebrated with any other private person.

(a)	<b>Registration no</b>	P/16
(b)	<b>Date</b>	23 June 2004
(c)	<b>Author(ity)</b>	Court of Appeal (Tribunal da Relação de Lisboa)
(d)	<b>Parties</b>	A. (individual) v. Islamic Republic of Pakistan (State)
(e)	<b>Points of Law</b>	<ul style="list-style-type: none"> <li>• A foreign State does not enjoy immunity from jurisdiction in a case brought against it by the driver of an embassy claiming that he was unlawfully dismissed.</li> <li>• Such contractual relationship is ruled by Portuguese law similarly to other labour contracts for the performance of subordinate services celebrated with any other private person.</li> </ul>
(f)	<b>Classification no</b>	0.b.2, 1.b
(g)	<b>Source(s)</b>	Unpublished
(h)	<b>Additional Information</b>	-
(i)	<b>Full Text – Extracts – Translation – Summaries</b>	Summary and Full Text: Annex 1* Summary in English: Annex 2



Appendix 2

In an appeal before the Court of Appeal of Lisbon by an individual against the Islamic Republic of Pakistan, the Court considered that:

I - Although State immunity from the jurisdiction of the courts of another State, according to which foreign States enjoy immunity from jurisdiction in local courts, continues to be generally accepted as a fundamental principle of international law, its scope of application should be restricted, limited to acts *jure imperii*. Rooted on the principle of equality and sovereignty of States, immunity from jurisdiction of foreign States is only justifiable in cases where the State acts in the exercise of public authority.

II - A foreign State should not invoke immunity from jurisdiction with regard to an act practised *jure gestionis*, where it intervenes as any private person.

III - The signing of labour contract between a foreign State (embassy) and a driver, notably a driver's unlawful dismissal, are not considered as acts *jure imperii*. Such contractual labour relationship is ruled by Portuguese law similarly to other labour contracts for the performance of subordinate services celebrated with any other private person. Therefore, the foreign State does not enjoy immunity from jurisdiction and the Portuguese courts are competent to be acquainted with the matter .