

July 2007

ESTONIA

I. General overview

Legislation of the Republic of Estonia does not specifically regulate the issue of state immunity i.e. there is no special legal act in Estonian legal order regulating the jurisdictional or execution immunity of foreign states and their property. Some regulations, however, make references to the rules of public international law. According to article 3 of the Constitution of the Republic of Estonia the generally recognised principles and rules of international law are an inseparable part of the Estonian legal system. As long as foreign state immunity is also a principle of international law it is recognised as binding to Estonia.

In Estonian courts there is no case law concerning state immunity and related matters. Considering the short time span that Estonia has had its own court practice, the lack of practice is not astonishing. Neither do we have practice concerning the execution of court decisions on the subject.

However, the Estonian legislative acts provide for the immunity from jurisdiction for diplomatic and consular representatives or other persons if this is prescribed by international or domestic law (see annexed extracts from Estonian legislation). International law is implemented by the Estonian courts.

The Republic of Estonia is not a party to, nor has it signed the European Convention on State Immunity of 1972 (ETS No 074) with an Additional Protocol thereto (ETS No 074A). Estonia has signed the United Nations Convention on Jurisdictional Immunities of States and Their Property and acceded to the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. International treaties have superior force to laws in Estonia. If laws or other legislation of Estonia are in conflict with international treaties, the provisions of the international treaty shall apply (Constitution of the Republic of Estonia art. 123).

II. Relevant Estonian legislation in force concerning State immunities (extracts)

1. Constitution of the Republic of Estonia

§ 3.

The state authority shall be exercised solely pursuant to the Constitution and laws which are in conformity therewith. Generally recognised principles and rules of international law are an inseparable part of the Estonian legal system.

Laws shall be published in the prescribed manner. Only published laws have obligatory force.

§ 123.

The Republic of Estonia shall not enter into international treaties which are in conflict with the Constitution.

If laws or other legislation of Estonia are in conflict with international treaties ratified by the Riigikogu, the provisions of the international treaty shall apply.

2. Code of Civil Procedure

Passed 20 April 2005

§ 10. Restricted competence of court in respect of extra-territorial persons

The jurisdiction of the courts of the Republic of Estonia does not extend to:

- 1) the members of foreign diplomatic representations established in the Republic of Estonia, their family members and private servants, to the extent prescribed by the Vienna Convention on Diplomatic Relations (RT II 1993, 24, 56);
- 2) the members of consular posts, to the extent prescribed by the Vienna Convention on Consular Relations (RT II 1993, 23, 53);
- 3) to persons not specified in clauses 1) or 2) of this section if this arises from a international treaty, generally recognised principles of international law or a legal law.

3. Code of Criminal Procedure

Passed 12 February 2003

§ 3. Territorial and temporal applicability of criminal procedural law

(1) Criminal procedural law applies in the territory of the Republic Estonia unless otherwise provided by an international agreement.

(2) In criminal proceedings, the criminal procedural law in force at the time of performance of a procedural act shall be applied.

(3) The requirements for using the evidence collected abroad in criminal proceedings in Estonia are provided for in § 65 of this Code.

§ 4. Applicability of criminal procedural law by reason of person concerned

Criminal procedural law applies equally to all persons with the following exceptions:

1) the specifications concerning preparation of a statement of charges and the performance of certain procedural acts with regard to members of the Riigikogu, the President of the Republic, members of the Government of the Republic, the Auditor General, the Chancellor of Justice and the Chief Justice and justices of the Supreme Court are provided for in Chapter 14 of this Code;

2) Estonian criminal procedural law may be applied to a person enjoying diplomatic immunity or other privileges prescribed by an international agreement at the request of a foreign state, taking into account the specifications provided for in an international agreement.