

September 2011

SERBIA

1. INTERNATIONAL LEGAL INSTRUMENTS

The Republic of Serbia is not a party to, nor has it signed the European Convention on State Immunity of 1972 (European Treaty Series No 074) with an Additional Protocol thereto (ETS No 074A). Neither is a party or a signatory to any other international legal instrument in this field.

2. DOMESTIC LAW

Serbia has no special law regulating the question of jurisdictional immunity of States when they appear as parties in a proceedings before domestic courts. However, the laws of the Republic of Serbia refer to the rules of international law. For instance:

a) Law on Civil Litigation (“Official Journal of RS“, Nos. 125/2004 and 111/2009) contains an article which reads as follows:

“Article 26

1) *As regards jurisdiction of domestic courts to try foreign nationals enjoying immunity in the Republic of Serbia or to try foreign states and international organizations, the rules of international law apply.*

2) *In case of doubt as to the existence and the scope of immunity, the administrative authority responsible for justice affairs shall provide explanation.”*

b) Law on Enforcement Proceedings (“Official Journal of RS“, No. 125/2004) in its article 26 provides:

“Article 26

Enforcement or security measures against the property of a foreign state or international organization located in the territory of the Republic of Serbia cannot be imposed without the previous written consent of the appropriate administrative authorities, unless the foreign state or international organization concerned has explicitly agreed to such enforcement or security.”

1.

(a)	Registration No.	
(b)	Date	15 November 2004
(c)	Authority	National Assembly of the Republic of Serbia
(d)	Parties	
(e)	Points of law	The Law on Litigation, in its article 26, provides that in legal proceedings where one of the litigants is a foreign state or international organization, the relevant rules of international law shall be applied. In case of doubt as to the existence or extent of immunity, the administrative authority in charge of justice affairs shall provide explanation.
(f)	Classification no.	
(g)	Source	“Official Journal of RS“, Nos. 125/2004 and 111/2009
(h)	Additional information	
(i)	Summaries	

2.

(a)	Registration no.	
(b)	Date	15 November 2004
(c)	Authority	National Assembly of the Republic of Serbia
(d)	Parties	
(e)	Points of law	Law on Enforcement Proceedings, in its article 26, provides that no enforcement or security measures may be applied to the property of a foreign state or international organization located in the territory of the Republic of Serbia without the previous written consent of the relevant authorities, except in cases where the foreign state or international organization concerned has explicitly agreed to such enforcement or security.
(f)	Classification no.	
(g)	Source	“Official Journal of RS“, No. 125/2004
(h)	Additional information	
(i)	Summaries	

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The 2004 Law on Enforcement Proceedings failed to specify the “competent” authority referred to in article 26 which should give its written consent for enforcement against the property of a foreign state. The previous laws on enforcement proceedings (of 1978 and 2000) provided that responsibility for giving consent was that of “the federal administrative authority in charge of justice affairs”. In practice, consent to enforcement is given by the Ministry of Justice.

3.

(a)	Registration no.	
(b)	Date	24 March 2003
(c)	Authority	District Court in Čačak
(d)	Parties	Association of Military Prisoners of War in WWII (1941–1945) versus FR Germany.
(e)	Points of law	<p>Association of Military Prisoners of War in WWII (1941–1945) sued FR Germany before the Municipal Court in Čačak seeking compensation. In December 2002, the first-instance Court rejected the applicant's claim and the District Court in Čačak, acting upon an appeal lodged in the second-instance, confirmed the decision.</p> <p>Under the provision of article 26 of the then Law on Litigation, the first-instance Court obtained an opinion of the Federal Ministry of Justice on the existence of immunity of the respondent. The Federal Ministry of Justice took the position that, in this kind of dispute, a foreign state was accorded immunity.</p>
(f)	Classification no.	
(g)	Source	"Judicial Practice" Journal, Nos. 2-3/2005, p. 35
(h)	Additional information	
(i)	Summaries	

4.

(a)	Registration no.	
(b)	Date	8 February 2006
(c)	Authority	Supreme Court of Serbia in Belgrade
(d)	Parties	AA (an individual) v. Republic of Croatia and the City of Zagreb.
(e)	Points of law	<p>AA lodged a complaint to the First Municipal Court in Belgrade against the Republic of Croatia and the City of Zagreb for material compensation for the damage caused by repeated unlawful and unfounded arrests by the competent Croatian authorities. The first-instance Court dismissed the complaint against the Republic of Croatia and the City of Zagreb in January 2004. The Prosecutor appealed against the first-instance decision to the District Court in Belgrade, but the second-instance Court confirmed the adjudication of the first- instance Court. The Prosecutor then filed for review to the Supreme Court of the Republic of Serbia.</p> <p>The Supreme Court rejected the request for review as unfounded. The Court explained in its decision that the norms relating to international jurisdiction of domestic courts were envisaged in the provisions of Article 46 and Articles 50-53 of the Law on the Settlement of Conflicts and that, on the basis of this regulation, the jurisdiction of the domestic court in this particular case was ruled out because it was a case of extra-contractual liability for damages and the respondent is based in the territory of a foreign state. The Supreme Court held the view that the first-instance Court proved right in ruling that it had no jurisdiction in the case on the grounds that the respondent was an internationally recognized state, and in abrogating the actions taken against the Republic of Croatia and the City of Zagreb by applying the provisions of article 16, paragraph 3, of the Law on Litigation.</p>
(f)	Classification no.	
(g)	Source	Decision of the Supreme Court of Serbia upon review
(h)	Additional information	<p>1. Article 16, paragraph 3, of the Law on Litigation specifies that a court, when it finds in the course of a proceeding concerning the settlement of a dispute that no court of the Republic of Serbia has jurisdiction, shall rule <i>ex officio</i> that it has no jurisdiction; that it shall abrogate all actions taken in the case and dismiss the complaint, except in cases where the jurisdiction of the domestic court depends on the consent of the respondent and where the respondent has given his consent.</p> <p>2. Articles 46 and Articles 50-53 of the Law on the Settlement of Conflict of Laws with the regulations of other countries define the cases where the domestic court has jurisdiction in matters with an international element. Thus, a domestic court has jurisdiction when the respondent has permanent residence or is based in the</p>

		territory of the Republic of Serbia or when the damage was caused in the territory of the Republic of Serbia
(i)	Summaries	

5.

(a)	Registration no.	
(b)	Date	17 November 2004
(c)	Authority	Supreme Court of Serbia
(d)	Parties	BB (an individual) versus the insurance company "D" from Belgrade and the People's Republic of China
(e)	Points of law	<p>In August 1999, BB filed a complaint to the First Municipal Court in Belgrade against the Serbian insurance company "D" and the People's Republic of China for compensation for the damage caused in a car crash. The crash involving the vehicle driven by the applicant and the vehicle driven by the Counsellor of the Chinese Embassy was caused by the employee of the Chinese Embassy. The Chinese vehicle was insured by "D" insurance company.</p> <p>The first-instance Court dismissed the complaint because of the immunity enjoyed by the Embassy of the PR of China, referring to article 26 of the Law on Litigation and the opinion of the Federal Ministry of Justice. The opinion of the said Ministry stated that according to international law, a foreign diplomatic or consular mission does not enjoy immunity before domestic courts in the performance of private acts, and that it enjoys immunity only when acting as the holder of sovereign power. The District Court in Belgrade, acting in the second-instance, rejected the applicant's appeal and confirmed the first-instance ruling of the First Municipal Court in Belgrade.</p> <p>The Supreme Court of Serbia, deciding upon the request for review, found that the lower-instance courts had correctly applied the provisions of the Law on Litigation, the Vienna Convention on Consular Relations of 1963 and the Consular Convention with the PR of China of 1982. The Supreme Court of Serbia also found that the lower-instance courts, in line with the opinion of the Federal Ministry of Justice, properly ruled that the dispute to establish responsibility for the damage caused by the diplomatic agent of a foreign state was not an act of a private legal nature for which the foreign state concerned would be responsible and for which the domestic court could find that it had jurisdiction.</p>
(f)	Classification no.	
(g)	Source	Judgment of the First Municipal Court in Belgrade of December 2002, Judgment of the District Court in Belgrade of October 2003 and the Judgment of the Supreme Court of Serbia of November 2004.

(h)	Additional information	
(i)	Summaries	

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The Federal Ministry of Justice, in its opinion given to the first-instance Court in June 2000, stated that the question of immunity of foreign states concerning the jurisdiction of domestic courts in the legal system of the (then) FRY was not more specifically regulated by international conventions (the FRY was not a party to the European Convention on State Immunity) nor was it regulated more specifically by the domestic regulations, as well as that this immunity should be viewed bearing in mind the existing rules of international law and the theory of limited immunity of states which was dominant in contemporary doctrine and international court practices. According to this concept, when establishing the legal immunity of foreign countries, both for litigation and execution purposes, a distinction should be drawn between official actions of a foreign state when it acts as holder of sovereign public authority (*acts de iure imperii*) over which the domestic state cannot declare its jurisdiction. Since the case in point was a dispute to establish responsibility of the sending State for the damage caused by its diplomatic agent in the receiving State, that, in their opinion, was not the case of responsibility based on the private legal actions of a foreign state over which a domestic court could declare its jurisdiction.

6.

(a)	Registration no.	
(b)	Date	10 October 2007
(c)	Authority	District Court in Kraljevo
(d)	Parties	DD, FF, GG, HH (individuals) versus first co-respondent state of Slovenia and second co-respondent company "G" from Slovenia
(e)	Points of law	<p>DD, FF, GG, HH, former employees of the company "G", filed to the Municipal Court in Kraljevo a complaint against the Republic of Slovenia, the first co-respondent, and the company "G" from Slovenia, the second co-respondent. They claimed that the co-respondents should pay them compensation for their shares of the sold company and for their past service. The applicants used to be employed with the affiliate of the "G" company in the Republic of Serbia before the disintegration of the SFRY.</p> <p>The Municipal Court in Kraljevo dismissed the complaint and ruled that it had no real jurisdiction to decide in this legal matter. This Court ruling was explained by referring to article 27 of the Law on Litigation which envisaged the conditions in which a domestic court may base its jurisdiction. The Court held that either the Law on Litigation or an international treaty have not provided for the jurisdiction of national courts in cases involving proceedings related to claims resulting from the privatisation process in a foreign state or the rights stemming from labour relations. The first-instance judgment was confirmed by the judgment of the District Court in Kraljevo of 23 November 2007, which decided upon appeal.</p>
(f)	Classification no.	
(g)	Source	Decision of the Municipal Court in Kraljevo of October 2007 and the Decision of the District Court in Kraljevo of November 2007.
(h)	Additional information	<p>Under article 27 of the Law on Litigation, a court in the Republic of Serbia has jurisdiction to try cases involving an international element when such jurisdiction has been established by the law or provided for in an international treaty. If jurisdiction is not envisaged in any of the above ways or if there is no explicit provision relating to the jurisdiction of national courts to decide on specific disputes, national courts shall have jurisdiction when that jurisdiction emanates from the provisions relating to jurisdiction <i>in situ</i> of a national court.</p>
(i)	Summaries	

7.

(a)	Registration no.	
(b)	Date	27 July 2011
(c)	Authority	First Basic Court in Belgrade
(d)	Parties	DD, II, JJ, SS, NN, MM, KK, DD, VV, AA, JJ (individuals) versus the respondent Delegation of the European Commission to Belgrade.
(e)	Points of law	<p>In 2008, DD, II, JJ, SS, NN, MM, KK, DD, VV, AA, JJ (individuals) filed to the Third Municipal Court in Belgrade a complaint against the Delegation of the European Commission to Belgrade, requesting their severance payments. The applicants used to work for an entity of the respondent (EU Customs and Fiscal Assistance Office).</p> <p>The Third Municipal Court in Belgrade, by its decision of November 2008, ruled that it had no jurisdiction to decide in this legal dispute.</p> <p>The Superior Court in Belgrade, by its decision of February 2011, overturned the decision of the Third Municipal Court in Belgrade and referred the case back for new proceedings, ordering the first-instance court to determine its real and absolute jurisdiction.</p> <p>The Basic Court in Belgrade, in renewed proceedings, ruled that it had absolutely no jurisdiction in this legal matter and it rejected the complaint and reversed all previous actions taken in this case. The Court explained its decision by the fact that the employment contracts signed by the applicants with a respondent's entity envisaged the jurisdiction of a court in Paris. By finding that it had absolutely no jurisdiction in this matter, the Court referred to article 22 of the Law on the Organization of Courts and to article 16, paragraph 3, of the Law on Litigation.</p>
(f)	Classification no.	
(g)	Source	Decision of the First Basic Court in Belgrade of July 2011
(h)	Additional information	<p>1. Article 16, paragraph 3, of the Law on Litigation stipulates that a court, when it finds in the proceedings that no court of the Republic of Serbia has jurisdiction for the settlement of the dispute in question, shall declare <i>ex officio</i> that it has no jurisdiction and it shall reverse all the actions taken during the proceedings and reject the complaint, unless the jurisdiction of a national court depends on the consent of the respondent and unless the respondent has given such a consent.</p> <p>2. Article 22 of the Law on the Organization of Courts envisages cases when the Basic Court has jurisdiction in civil matters.</p> <p>3. During the proceedings, the judiciary of the Republic of Serbia underwent reform so that the renewed proceedings were referred to the Basic Court in Belgrade as the first-instance court.</p>
(i)	Summaries	

8.

(a)	Registration no.	
(b)	Date	
(c)	Authority	Second Municipal Court in Belgrade
(d)	Parties	NN, NM, NB, ND (individuals) versus the respondent Royal Swedish Embassy in Belgrade
(e)	Points of law	<p>The applicants NN, NM, NB and ND instituted before the Second Municipal Court in Belgrade proceedings against the respondent Royal Swedish Embassy for the settlement of the debt owed to them on account of unpaid rents for the villa used for the purposes of the Embassy and for loss of gain as a result of the inability to use the villa in the specified period. At the time when the proceedings were initiated, the applicants had already taken possession of the villa concerned.</p> <p>The Royal Swedish Embassy in Belgrade invoked its diplomatic immunity. The Second Municipal Court in Belgrade took the decision overruling the objection on account of immunity. However, the decision was reversed by the District Court in Belgrade, in its decision of December 2003. Acting upon the orders of the second-instance court, the Second Municipal Court in Belgrade, deciding again upon the appeal of the respondent, asked for the opinion of the Ministry of Justice and the Ministry of Foreign Affairs.</p> <p>The Ministry of Foreign Affairs expressed the view that, under the provisions of the Vienna Convention on Diplomatic Relations, the Royal Swedish Embassy cannot appear as a party in litigation.</p> <p>In the renewed proceedings, the Second Municipal Court in Belgrade once again overruled the objection of immunity raised by the Swedish Embassy and established that the Embassy did not enjoy the immunity. The Court explained its decision by the fact that the subject matter of the complaint was not the determination of a real right but compensation for the damage resulting from a contract, as well as that acceptance of the objection of immunity would be in contravention of the provisions of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the right to a fair trial).</p>
(f)	Classification no.	
(g)	Source	Second Municipal Court in Belgrade
(h)	Additional information	The Ministry of Foreign Affairs clarified its position by the fact that the diplomatic agent (the Swedish Ambassador representing the Embassy of Sweden in this particular case) enjoys immunity

		under the Vienna Convention of 1961 from civil and administrative jurisdiction of courts in cases of occupancy of a property used for the purposes of a mission of the sending State.
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The Ministry of Foreign Affairs also expressed its opinion on the other relevant facts in this matter. As regards the fact that the villa concerned was no longer used for the purposes of the mission or residence of the Head of Mission, the Ministry was of the opinion that this fact was not legally relevant and that it did not affect the right of the Embassy to invoke its immunity, since the receiving State was bound to refrain from exercising sovereign acts of power in relation to the mission of a foreign state. With regard to the merit of the case invoked by the Royal Swedish Embassy in Belgrade when appealing against the decision which rejected the objection of immunity, the Ministry pointed out that this could not be interpreted as a waiver of legal immunity, because such a waiver should be explicitly stated.