

ANSWERS TO THE QUESTIONNAIRE OF THE UNITED NATIONS ON THE
TOPIC "JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY"

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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.

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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 immovable property located in Czechoslovakia or to rights of States on such immovable 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."

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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."

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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; immovable escheats to the State on the territory of which the immovable 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."

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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."

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.