

Comments of the Czech Republic on the specific issues raised in Chapter III of the Report of the International Law Commission on the work of its 68th session (2016)

The Czech Republic presents the following information and comments on the specific issues concerning the topics mentioned in Chapter III of the Report of the International Law Commission on the work of its 68th session (2016, doc. A/71/10). As far as other topics are concerned, the Czech Republic refers to its comments to Reports of the ILC on the work of its 67th, 66th and 65th session, where appropriate.

A. Immunity of State officials from foreign criminal jurisdiction

As regards the Commission's request for information on the national legislation and practice concerning (a) the invocation of immunity, (b) waivers of immunity, (c) the stage at which the national authorities take immunity into consideration, (d) the instruments available to the executive for referring relevant information, legal documents and opinions to the national courts, and (e) relevant mechanisms for international legal assistance, cooperation and consultation that State authorities may resort to, we refer to relevant provisions of the Code of Criminal Procedure of the Czech Republic (Act No. 141/1961 Coll.):

- Pursuant to Section 10 (Exceptions from Competence of Authorities Involved in Criminal Proceedings) of the Code, persons that enjoy privileges and immunities under the law or international law will be exempt from the competence of the authorities involved in criminal proceedings. Should any doubt arise as to whether or to what extent is a person excluded from the competence of the authorities involved in criminal proceedings according to this Code, the Supreme Court of the Czech Republic will decide on the matter upon a motion from the person concerned, the public prosecutor or the court;

- Section 11 (Inadmissibility of Criminal Prosecution) of the Code provides that „[c]riminal prosecution cannot be initiated, and if it has been initiated, it cannot be proceeded with and will be terminated, if ... (c) it concerns a person who is exempt from the competence of the authorities involved in criminal proceedings (Section 10) or a person, for prosecution of which the law requires an official consent, if such consent was not granted by the competent authority, unless the exemption is only temporary or the criminal prosecution is inadmissible due to the lack of consent by the competent authority only temporarily.“;

- In case of reports of facts suggesting that a criminal offence has been committed by a person which enjoys privileges and immunities and is exempted from the competence of the authorities involved in criminal proceedings, the prosecutor or the police authority will adjourn the matter (in the stage of so called verification, i.e. before the initiation of criminal prosecution). If such a fact is ascertained at a later stage, the criminal prosecution will be immediately discontinued (by a prosecutor or a court, depending on the stage of the criminal proceedings) due to its inadmissibility. The fact that a person which is (was) subject to criminal prosecution enjoys immunity is also one of the grounds for an extraordinary appeal, i.e. an appeal against a final and effective decision of the court („An extraordinary appeal may be submitted .. if ... criminal prosecution was conducted against the accused person, although it was not admissible according to the law.“);

- In case a person enjoys the immunities only temporarily, during his or her term of office (see the last part of section 11 quoted above), the authorities involved in criminal proceedings will (before the initiation of criminal prosecution) temporarily adjourn the criminal prosecution, or (if the prosecution was already initiated) will suspend the criminal prosecution;

- As regards the instruments available to the executive for referring relevant information, legal documents and opinions to the national courts, proper cooperation with the authorities involved in criminal proceedings should be ensured primarily by the application of basic principles of criminal procedure: Under the Code of Criminal Procedure, the authorities involved in criminal proceedings act *ex officio*; during the pre-trial proceedings the authorities involved in criminal proceedings will examine, even without petitions of the parties, all the circumstances for and against the person, against whom the proceeding is conducted, with equal care and in the manner provided by this Code; in trial proceedings the public prosecutor and the accused may propose and produce evidence to support their positions; the public prosecutor is obliged to prove the guilt of the defendant; however, this does not relieve the court of the obligation to obtain additional evidence in the extent required for its decision. Further, relevant provisions of the Code set forth that all public authorities are obliged to comply with request of authorities involved in criminal proceedings in the performance of their tasks (i.e. also to provide relevant information, materials and opinions to them);

- In the framework of the international judicial cooperation in criminal matters, a competent judicial authority may request performance of any act of criminal procedure or provision of any information, which is necessary for the purposes of a concrete criminal proceedings. Thus, it is also possible to request performance of an act or provision of an information concerning the immunity of State officials from foreign criminal jurisdiction;

- As regards the immunity of members of a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for official purposes („special mission“), it may be difficult, in practice, to determine the extent of immunity from foreign criminal jurisdiction of a concrete member of the mission, since, even in the practice of States Parties to the United Nations Convention on Special Missions, it is sometimes not clear into which category of staff of a special mission a concrete member of the mission belongs.

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