

November 2005

FINLAND

Introduction

The data on State practice regarding State immunities compiled by the Ministry for Foreign Affairs of Finland mainly consists of judicial decisions. These judicial decisions include cases in which a foreign State has been sued before a Finnish court as well as cases where the State of Finland has been summoned by an individual or by a company to a foreign court. The data also contains cases where Finland has been summoned to a court of a State not member of the Council of Europe. In addition, there are some replies of the Minister for Foreign Affairs to written questions put forward by members of Parliament and a statement of the Ministry for Foreign Affairs regarding immunity from the execution of a judgment. The cases mainly deal with jurisdictional immunity. Immunity from the execution of a judgment has been less often under consideration. A more detailed description of the cases is included in the sixteen enclosed standard forms, or in the short summaries or other materials attached thereto.

Finland is not a State party to the European Convention on State Immunity (ETS No 074) nor to any other relevant convention. Finland, however, has actively contributed to the work of the ad hoc Committee of the Sixth Committee of the UN General Assembly on the Jurisdictional Immunities of States and Their Property (see also Finland/10).

As regards the table of description in the CAHDI circular 241001, particularly the section on "state immunity" with its distinction between absolute jurisdictional immunity (1.a) and limited jurisdictional immunity (1.b), it is understood that a conclusion as to whether the act in question falls under 1.a or 1.b is meant to be made by the competent authority - for example, a court or the Ministry for Foreign Affairs. Thus, the distinction has been made on the basis of a decision of the authority in question. However, the data also includes some cases that are still pending before a court. In respect of those cases the distinction could not have been made.

Most of the cases concern labour disputes between a foreign mission and a locally recruited employee. It is noted that the legal practice regarding these cases has not been entirely consistent. With the exception of one judgment rendered by a district court, the Finnish courts have, however, found that, due to the immunity, they cannot exercise jurisdiction over labour disputes involving foreign missions. This interpretation has also been confirmed by the Supreme Court of Finland in its decision No. KKO:1993:120 (see also Finland/2). Those cases concerning labour disputes where a court has concluded that it does not have jurisdiction over the case due to immunity, have been classified under 1.a (absolute immunity). In cases where the court has found that it has jurisdiction, the case has been classified under 1.c (jurisdictional immunity not applicable).

The distinction between acts of government (*jus imperii*) and acts of a commercial nature (*jus gestionis*) has been emphasized both in the judicial decisions and in the statements by the Minister for Foreign Affairs. With the exception of one judgment entered by a district court, the Finnish authorities have concluded that foreign states do not enjoy

immunity in relation to their commercial transactions with a natural or juridical person (*jus gestionis*).

(a)	Registration no	FIN/1
(b)	Date	1 February 2002
(c)	Author(ity)	United States District Court, District of New Jersey
(d)	Parties	Komet Inc. and Konetehdas OY Komet (company) v. Republic of Finland (State) and John Doe
(e)	Points of law	The Court established that Finland was immune from suit in the Courts of the United States for claims arising under a cooperative tax treaty between Finland and the United States (Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital). Finland claimed immunity in the case.
(f)	Classification no	0.a, 1.a, 2.c
(g)	Source(s)	Civil Action No. 99-6080 (JWB)
(h)	Additional information	The order entered by the United States District Court for the District of New Jersey vacated the default judgment previously entered by the Court on July 5, 2001 against Finland. The United States of America submitted an amicus brief on behalf of Finland.
(i)	Full text – extracts – translation - summaries	Full text: Appendix 1

FIN/1

Appendix 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KOMET INC., and
KONETEHDAS OY KOMET,

Plaintiffs,

v.

REPUBLIC OF FINLAND and
JOHN DOE,

Defendants.

Civil Action No. 99-6080 (JWB)

OPINION

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BISSELL, Chief Judge

This matter comes before the Court on defendant Republic of Finland's ("Finland") motion to vacate the default judgment entered by the Court on July 5, 2001. The motion raises issues of the Court's subject matter jurisdiction and, in particular, requires the Court to consider whether Finland is immune from suit in this Court for claims arising under a cooperative tax treaty between Finland and the United States.

FACTS

A. The Parties

Plaintiff Konetehdas Oy Ko-met ("Komet-Finland") is a limited liability company of the Republic of Finland. (Compl., ¶ 2). Komet-Finland is in the machine tool business, specializing in the modification or manufacture and marketing of precision, balanced parts, such as drive shafts and fans. (*Id.*, ¶ 7).

Plaintiff Komet USA Inc. ("Komet-USA") is a corporation of the State of Delaware whose business address is located in Riverdale, New Jersey. (Id., ¶ 1). Komet-USA was incorporated to serve as the operational arm of and in joint venture with Komet-Finland. (Id., ¶ 9). The President and "main owner" of both Komet-USA and Komet-Finland is Treho Linnavuorri. (Id., ¶ 8). Defendant Finland is a sovereign country located in Scandinavia (Europe). (Id., ¶ 3).

B. Plaintiffs' Cause of Action

The Complaint alleges that, for the tax years 1989 through 1991, Komet-USA supplied consulting services to Komet-Finland. As a result Komet-USA invoiced Komet-Finland and was paid for those consulting services. These payments were deducted by Komet-Finland to reduce its Finnish tax liability as a corporate expense. For tax years 1992 through 1995, however, Finland's taxing authority did not approve these payments as tax deductions. Komet-Finland sought rectification in accordance with Finnish procedure and secured partial deductions for 1993 and 1994. Plaintiffs contend that the Finnish tax authorities treated Komet-Finland differently than other domestic corporations in regard to these deductions. Moreover, they assert that Finland's failure to approve the tax deductions in toto have resulted in an unjust taking of revenue from Komet-USA in violation of international law and treaties. Plaintiffs

alleged generally that Finland failed to abide by the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, Dec. 30, 1990, U.S.-Fin., T.I.A.S. No. 12101 [hereinafter "Convention on Double Taxation" or "the Convention"].

PROCEDURAL HISTORY

On December 29, 1999, plaintiffs filed the instant action and a summons was issued for defendant Finland. On August 21, 2000, a return of service executed as to Finland on June 29, 2000 was filed with the Clerk. By May 21, 2001, no answer had been filed and plaintiffs moved for default judgment. On July 2, 2001, the Court entered default judgment in the amount of \$146,769.50 plus post-judgment interest and costs in favor of plaintiffs against Finland, at which time the case was marked closed.¹

On August 30, 2001, Finland filed the instant motion to vacate the default judgment pursuant to Fed. R. Civ. P. 60(b). On December 18, 2001, with consent of the parties and permission of the Court, the United States of America submitted an amicus brief on behalf of Finland.

¹ Although the Court had received correspondence in regard to plaintiffs' Complaint from a representative of the Finnish Government, these communications contained only generalized claims to sovereign immunity and were deemed inadequate to avoid the entry of default judgment.

DISCUSSION

A. Governing Legal Standard

Defendant seeks relief from the default judgment entered against it under Federal Rule of Civil Procedure 60(b). Rule 60(b) permits a court to vacate a prior judgment if, inter alia, the judgment is void, or for "any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b)(4) and (6). A judgment is void, for instance, if the court lacked subject matter jurisdiction over the action when it entered the judgment. Marshall v. Bd. of Educ., 575 F.2d 417, 422 (3d Cir. 1978) (citing United States v. Walker, 109 U.S. 258, 265-67 (1883)) (determining that a judgment may be void, and therefore subject to relief under 60(b)(4), if the court that rendered it lacked jurisdiction of the subject matter).

Since 1976, subject matter jurisdiction of suits against foreign sovereign states has been governed by the Foreign Sovereign Immunity Act ("FSIA"), which is codified in a number of sections of the United States Code, Title 28. In the first instance, § 1330 vests in the district courts original jurisdiction of any non-jury civil action against a foreign state as to any claim for relief in personam with respect to which the foreign state is not entitled to sovereign immunity. 28 U.S.C. § 1330. From this point, the FSIA states broadly that foreign states enjoy sovereign immunity from all suits except in certain

situations. 28 U.S.C. § 1604. Section 1605, in turn, sets forth the specific categories of actions as to which foreign states are not immune. Thus, if a civil action against a foreign state does not fit within a § 1605 exception to the general rule of sovereign immunity, the foreign state defendant is immune, and, concomitantly, the district court lacks subject matter jurisdiction. Argentine Republic v. Amerasia Shipping Corp., 488 U.S. 428, 434-39 (n.1) (1989) (determining that the text and structure of the FSIA demonstrate Congress's intention that the FSIA be the sole basis for obtaining subject matter jurisdiction over a foreign state in federal courts); Erickson v. Alitalia Linee Aeree Italiane, 1991 WL 117797, at *2 (D.N.J. June 5, 1991).

With respect to analyzing particular claims to immunity under the FSIA, Congress intended courts to apply certain burden-shifting standards. Federal Ins. Co. v. Richard I. Rubin & Co., Inc., 12 F.3d 1270, 1285 and n.13 (3d Cir. 1993). The defendant bears an initial burden of making a prima facie showing that it is a "foreign state" and thus enjoys sovereign immunity. (Id.) If this showing is made, the burden then shifts to the plaintiff to produce evidence establishing that the foreign state is not entitled to immunity under one of the exceptions of § 1605. (Id.) The ultimate burden of proving immunity rests with the party claiming that it is a foreign state. (Id.)

B. Analysis

In the instant case, the plaintiffs have sought direct relief in personam against Finland. Finland claims immunity from suit under the FSIA as a foreign state. That Finland is a "foreign state" under the FSIA is uncontested; therefore, the burden shifts to the plaintiffs to establish that their claims fall within a § 1605 exception.

Although plaintiffs do not cite any part of § 1605, they apparently seek to persuade the Court to determine that Finland has waived its sovereign immunity under the "express language" of the Convention.² (Plaintiffs' Br. at 2). The lone support for this argument comes in the form of the following excerpt from Article 25 of the Convention:

Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this

² The issue of waiver is treated in the exception appearing in § 1605(a)(1) which provides:

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case -

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver....

Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national

Convention on Double Taxation, supra., art. 25, para. 1.

(Emphasis added). The scope of the term "competent authority" as used in this paragraph, plaintiffs argue, should extend to the district courts, and, thus, this provision should be found to constitute a waiver of Finland's immunity from suit in this Court.

This argument is unpersuasive. First, it is significant that plaintiffs do not cite a single decision that supports this view. Second, plaintiffs' interpretation of the express language is flawed because it renders incoherent the subsequent provisions of Article 25, which further inform the role of the "competent authority." Plaintiffs tacitly admit this fact given their complete failure to discuss the significance of the remaining paragraphs of Article 25. Third, and finally, plaintiffs' understanding is controverted by the very practice of the government in discharging its duties under the Convention. The amicus submission of the United States substantially establishes that the competent authority referred to throughout Article 25, far from pertaining to a United States court, is in fact an officer of the Department of State who negotiates with a Finnish counterpart in aid of the claim management procedure contemplated

clearly by the Convention. In sum, plaintiffs' selective employment of portions of the Convention is wholly insufficient to establishing the type of unequivocal waiver that must be present in order to support a deprivation of immunity provided a foreign state by the FSIA.³

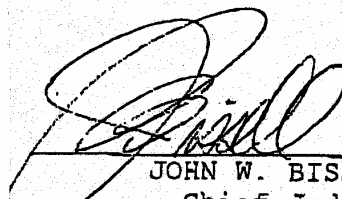
Plaintiffs have offered nothing that addresses these difficulties with their waiver theory. Accordingly, the Court determines that plaintiffs have failed to demonstrate that a § 1605 exception applies in this case. In the absence of an applicable § 1605 exception, the FSIA compels a finding that Finland is immune from the instant suit. This conclusion, in turn, is the equivalent of a determination that this Court was without subject matter jurisdiction to enter default judgment against Finland. A judgment entered by a Court without subject matter jurisdiction is void. Marshall, 575 F.2d at 422. Consequently, defendant Finland is entitled to vacation of the default judgment pursuant to Fed. R. Civ. P. 60(b)(4).

CONCLUSION

For the foregoing reasons, defendant Finland's motion to vacate the default judgment is granted, and the Amended Complaint is dismissed without prejudice, for lack of subject matter

³ Aguinda v. Texaco, Inc., 175 F.R.D. 50, 52 (S.D.N.Y. 1997) (citing cases) (recognizing as well settled that waiver of sovereign immunity must be clear, complete, unambiguous and unmistakable in order to be effective), vacated on other grounds sub nom., Jota v. Texaco, Inc., 157 F.3d 153 (2d Cir. 1998)).

jurisdiction in this forum. Each side shall bear its own costs and expenses.



JOHN W. BISSELL
Chief Judge
United States District Court

DATED: February 1, 2002

(a)	Registration no	FIN/2
(b)	Date	30 September 1993
(c)	Author(ity)	Supreme Court (Korkein oikeus)
(d)	Parties	Hanna Heusala (individual) v. Republic of Turkey (state)
(e)	Points of law	The Court established that the Finnish courts were not competent to consider labour disputes involving local employees of foreign missions when duties of the employees were closely related to the exercise of governmental authority.
(f)	Classification no	0.a, 1.a, 2.c
(g)	Source(s)	Korkeimman oikeuden ratkaisuja 1993 II at 563.
(h)	Additional information	Although Finland is not a party to the European Convention on State Immunity, the Supreme Court referred to the Convention as a source when analysing the rules and principles of customary international law.
(i)	Full text – extracts – translation - summaries	Summary English: Appendix 1

FIN/2

Appendix 1

The case before the Supreme Court of Finland concerned a labour dispute between the Embassy of Turkey and a locally recruited employee, who had worked as a secretary and translator. The Supreme Court held that the European Convention on State Immunity was a valid source when analysing the rules and principles of customary international law. The Supreme Court stated that, pursuant to the Convention, a State cannot claim immunity if the proceedings relate to a contract of employment between the State and an individual, where the work has to be performed on the territory of the forum State. However, the Court referred to Article 32 of the Convention, according to which 'nothing in the present Convention shall affect privileges and immunities relating to the exercise of the functions of diplomatic missions and consular posts and of persons connected with them'. On the basis of Article 32 and customary international law, the Court found that a foreign mission as an employer could invoke immunity from jurisdiction before a court of the receiving State when the labour dispute was closely related to the official duties of the mission.

The Court held that the duties of the Plaintiff were meant to serve the official duties of a member of the diplomatic staff of Turkey and was thus closely related to the exercise of governmental authority of Turkey. Therefore, Turkey enjoyed jurisdictional immunity in the case and the Finnish courts lacked subject matter jurisdiction.

(a)	Registration no	FIN/3
(b)	Date	3 July 2002
(c)	Author(ity)	Labour Court (<i>Tribunal regional do trabalho – 10 regiaõ</i>), Brazil
(d)	Parties	Vilda Custodio de Carvalho (individual) v. Republic of Finland (state)
(e)	Points of law	The Court established that it was competent to consider labour disputes involving locally recruited employees of foreign missions. Finland invoked immunity in the case.
(f)	Classification no	0.a, 1.c, 2.c
(g)	Source(s)	
(h)	Additional information	
(i)	Full text – extracts – translation - summeries	Summary English: Appendix 1

FIN/3

Appendix 1

The dispute related to pension contributions of a locally recruited housemaid of the official residence of the Finnish Embassy. Finland participated in the proceedings but claimed immunity as a foreign state. The Court established that it was competent to consider a labour dispute against a foreign state as, under the provisions of Brazilian law and case law, foreign missions cannot in principle invoke immunity in labour disputes. Furthermore, the Court found that the diplomatic immunity only applied to the members of the diplomatic staff and not to the mission itself. Finland was ordered by the Court to pay the pension contributions in question.

(a)	Registration no	FIN/4
(b)	Date	Plaintiff filed the Complaint on 5 March 2002.
(c)	Author(ity)	United States District Court, Eastern District of New York
(d)	Parties	The Plaintiff (individual) v. Republic of Finland (state), et al.
(e)	Points of law	The Plaintiff complains of his experiences <u>in Finland</u> regarding the enforcement of Finland's criminal and/or civil law by the Finnish government officials and employees. Finland has moved the court to dismiss the Complaint for lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. §§ 1330, 1604, 1605, 1608). Hence, Finland has claimed immunity from suit as a foreign state and its ministers and employees have claimed derivative immunity. Furthermore, in case that the Court will find that the sovereign immunity of Finland is not dispositive of the Plaintiff's claims, Finland has moved to dismiss the Complaint on other grounds as well. The case is pending before the Court.
(f)	Classification no	0.a, 2.c
(g)	Source(s)	Case No. 02 CV-1471 (CBA)(LB)
(h)	Additional information	
(i)	Full text – extracts – translation - summeries	

(a)	Registration no	FIN/5
(b)	Date	6 August 2001
(c)	Author(ity)	The High Court of Justice, Queen's Bench Division, London
(d)	Parties	The Plaintiff (individual) v. Republic of Finland (state) and the Commissioner of Police for the Metropolis
(e)	Points of law	The Claimant has filed a claim against Finland and other defendant for wrongful arrest, malicious prosecution and false imprisonment. As a response to the inquiry by the Embassy of Finland in London, the communication from the Court indicates that the case will be dealt with in accordance with the State Immunity Act 1998. The case is pending before the Court.
(f)	Classification no	0.a, 1.a, 2.c
(g)	Source(s)	
(h)	Additional information	
(i)	Full text – extracts – translation - summeries	

(a)	Registration no	FIN/6
(b)	Date	Action was filed on 12 April 2000.
(c)	Author(ity)	Court of Shevchenkivsky district of the city of Kyiv
(d)	Parties	The Plaintiff (individual) v. Republic of Finland (state)
(e)	Points of law	The case concerns a labour dispute between a former locally recruited employee, who worked as a interpreter and the Embassy of Finland. The Embassy of Finland stated in its answer to the note of the Ministry of Foreign Affairs of Ukraine that it did not agree to the waiver of its diplomatic immunity.
(f)	Classification no	0.a, 1.a, 2.c
(g)	Source(s)	
(h)	Additional information	
(i)	Full text – extracts – translation - summeries	The observations of the Embassy of Finland: Appendix 1

FIN/6

Appendix 1

The Embassy of Finland present their compliments to the Protocol Department of the Ministry of Foreign Affairs of Ukraine and referring to the Latter's Note No. 202/20-140-1423 of 9 October, 2001, have the honour to state the following:

The employment of Mr. Vadim Mishakov at the Embassy of Finland ended in 1999 in full observance of all the relevant stipulations of his contract of employment, which was concluded with him by a diplomatic representation of a foreign country. Correspondingly, the Embassy of Finland consider the case closed and see no reason for agreeing to the lifting of their diplomatic immunity in the context of the legal proceedings brought against the Embassy by Mr. Mishakov.

The Embassy of Finland avail themselves of this opportunity to renew to the Protocol Department of the Ministry of Foreign Affairs the assurance of their highest consideration.

Kyiv, October 23rd 2001

To
the Ministry for Foreign Affairs of Ukraine

(a)	Registration no	FIN/7
(b)	Date	11 November 2001
(c)	Author(ity)	People's Court of Hamovnik, Moscow
(d)	Parties	The Plaintiff (individual) vs. Republic of Finland (state)
(e)	Points of law	The case concerns a labour dispute between a former locally recruited employee and the Embassy of Finland. Finland claimed jurisdictional immunity, holding that the court lacked subject matter jurisdiction. Finland returned the plaintiff's note to the Ministry of Foreign Affairs of Russian Federation.
(f)	Classification no	0.a, 1.a, 2.c
(g)	Source(s)	
(h)	Additional information	
(i)	Full text – extracts – translation - summeries	

(a)	Registration no	FIN/8
(b)	Date	26 March 1999
(c)	Author(ity)	Ministry for Foreign Affairs of Finland
(d)	Parties	Distrain Office of Helsinki, Embassy of Iraq
(e)	Points of law	In its statement, the Ministry for Foreign Affairs found that participation in commercial activities by a state is not to be considered an act of government, <i>jure imperii</i> and therefore, the state does not enjoy immunity in respect of these activities.
(f)	Classification no	0.b, 1.b, 2.b
(g)	Source(s)	-
(h)	Additional information	The Ministry referred in its statement to the European Convention on State Immunity, Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations.
(i)	Full text – extracts – translation - summaries	Summary English: Appendix 1

FIN/8

Appendix 1

In this case, the State of Iraq had been ordered by the court to pay a certain amount to a Finnish company. On the grounds of this judgment, the distraint office had foreclosed receivables of Iraq from the bankrupt's estate of another Finnish company. The District Bailiff of Helsinki asked for a statement from the Ministry for Foreign Affairs, concerning the immunity of Iraq from execution in the case.

The Ministry found that participation in commercial activities by a state was not to be considered an act of government, *jure imperii* and, therefore, the state did not enjoy immunity in respect of these activities. The Ministry stated that, in the case in question, the following matters should be taken into account: applicability of the European Convention on State Immunity and the Vienna Convention on Diplomatic Relations and the question of whether the State of Iraq should be considered to become, through succession, a party to the proceedings comparable to a private party in the business relationship in question.

(a)	Registration no	FIN/9
(b)	Date	19 November 1998
(c)	Author(ity)	Minister of Foreign Affairs of Finland
(d)	Parties	A reply of the Minister for Foreign Affairs to a written question put forward by a Member of Parliament.
(e)	Points of law	The written question concerned the following: how the status of wrecks of aircraft or ships is regulated by international law.
(f)	Classification no	0.a, 1.c, 2.c
(g)	Source(s)	KK 1213/1998
(h)	Additional information	
(i)	Full text – extracts – translation - summeries	Summary English: Appendix 1

FIN/9

Appendix 1

The written question put forward by a Member of Parliament concerned a Finnish wreck of fighter plane which was shut down during the Second World War and lies now in the territorial sea of the Russian Federation. It was questioned why Finland had not demanded the wreck to itself.

In his reply, the Minister for Foreign Affairs stated that international law made a distinction between acts of government and acts of a commercial nature, when examining the title to property belonging to a State. The leading principle has been that property which relates to acts of government enjoys immunity as an expression of the sovereignty of the flag state. During the war, the use of war equipment by the armed forces constitutes an act of government. However, in a state of war, the rules of armed conflict must also be taken into account. These rules create a system of regulation of their own, applicable in times of war. In the light of this, the wreck of the Finnish fighter would enjoy sovereign immunity.

In this connection, it is worth noting that, according to the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage, a wreck of a State-owned vessel which is over 100 years old does not enjoy sovereign immunity.

The Minister emphasized, however, that in the relations between Finland and Russia, the treaties in force between the countries (between Finland and the Soviet Union at first and later between Finland and Russia) are a primary concern to be taken into account when examining the status of the wreck. Thus, by virtue of the Peace Treaty of Paris 1947, the Minister concluded that claims concerning the wreck were not possible.

(a)	Registration no	FIN/10
(b)	Date	July 2001
(c)	Author(ity)	Minister for Foreign Affairs of Finland
(d)	Parties	A reply of the Minister for Foreign Affairs to a written question put forward by two Members of Parliament.
(e)	Points of law	The written question put forward by two members of the Parliament concerned employment security of the locally recruited employees (Finnish nationals) of the foreign embassies.
(f)	Classification no	0.a, 1.b, 2.c
(g)	Source(s)	KK 853/2001 vp
(h)	Additional information	
(i)	Full text – extracts – translation - summaries	Summary English: Appendix 1

FIN/10

Appendix 1

A written question put forward by two Members of Parliament concerned the employment security of local employees (Finnish nationals) working at foreign embassies in Helsinki.

In his reply, the Minister for Foreign Affairs referred to the International Law Commission's Draft Convention on the Jurisdictional Immunities of States and Their Property under discussion at the Ad Hoc Committee of the Sixth Committee of the UN General Assembly. Finland has actively taken part in the work of the Ad Hoc Committee. The ILC draft states, as a rule, that immunity from jurisdiction does not apply, with certain exceptions, to a contract of employment between a State and an individual. In the work of the Committee, Finland has emphasized that the group of persons against whom an employer state can claim immunity should remain as limited as possible. The question concerns the right of an individual to have a case concerning his/her contract of employment heard in a local court and, therefore, it is also a matter of human rights.

In the reply, a tendency in international law to restrict the situations where a State may claim immunity before foreign courts, was recognised. The variety of national legislations has, however, delayed the finalisation of the Convention.

Reference was also made to Article 38 of the Vienna Convention on Diplomatic Relations, according to which other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. Finland has not admitted privileges or immunities for the local employees of foreign embassies. Consequently, the foreign embassies are not exempted from their obligations under Finnish social security provisions. They are obliged to observe the peremptory provisions of the Finnish labour law in respect of their local employees.

(a)	Registration no	FIN/11
(b)	Date	31 March 1999
(c)	Author(ity)	District Court of Helsinki
(d)	Parties	Inkeri Kivi-Koskinen (individual) v. Kingdom of Belgium (state)
(e)	Points of law	The Court entered a default judgment against Belgium in a labour dispute between the Embassy of Belgium and its former local employee.
(f)	Classification no	0.a, 1.b, 2.c
(g)	Source(s)	
(h)	Additional information	The default judgment was vacated by the Court when it confirmed the friendly settlement of the parties.
(i)	Full text – extracts – translation - summaries	Summary English: Appendix 1

FIN/11

Appendix 1

The case concerned the termination/cancellation of an employment contract between the Embassy of Belgium and its locally recruited secretary. Belgium did not react to the claim. The Court did not expressly address the matter of state immunity, but stated that the claim was not manifestly unfounded. Therefore, the Court entered a default judgment against the Kingdom of Belgium.

Belgium moved the Court to enter an order vacating the default judgment. It claimed immunity and, therefore, held that the Court lacked subject-matter jurisdiction in the case. The parties, however, settled the dispute and this friendly settlement was confirmed by the Court. With this confirmation, the earlier default judgment was vacated by the Court.

(a)	Registration no	FIN/12
(b)	Date	Judgment was received by the Embassy of Finland on 6 July 2000.
(c)	Author(ity)	Labour Court (<i>Tribunal regional do trabalho - 3 região</i>)
(d)	Parties	Edvaldo Moreira de Azevado (individual) v. Republic of Finland
(e)	Points of law	Finland claimed immunity in the case. The Court established that it was competent to consider labour disputes involving local employees of foreign missions.
(f)	Classification no	0.a, 1.a, 2.c
(g)	Source(s)	
(h)	Additional information	See also the case No. FIN/3.
(i)	Full text – extracts – translation - summeries	Summary English: Appendix 1

FIN/12

Appendix 1

The labour dispute between the Embassy of Finland and its former locally recruited gardener concerned the gardener's retirement and compensation. Finland filed documents concerning the case to the Court and invoked immunity. The Embassy of Finland was not present in the proceedings. The Labour Court found that it was competent to consider the dispute and ordered Finland to pay compensation to the former employee in full compliance with the claim.

(a)	Registration no	FIN/13
(b)	Date	11 July 2001
(c)	Author(ity)	District Court of Helsinki
(d)	Parties	As Veli ja Veljed (company) v. Republic of Estonia
(e)	Points of law	The Court found that it was not competent to consider a case involving private companies of which one was owned by a foreign state.
(f)	Classification no	0.b, 1.b, 2.c
(g)	Source(s)	Case No. 00/23021
(h)	Additional information	
(i)	Full text – extracts – translation - summeries	Summary English: Appendix 1

FIN/13

Appendix 1

The case concerned a breach of contract between two Estonian companies. The first party to the contract - the Plaintiff in the case - was an Estonian company having a permanent place of business in Finland. The other party was a company (Püssi PPK) owned at the time the contract was concluded (1992) by the State of Estonia and being under the control of the Ministry of Trade and Energy of Estonia. The latter company was later privatized.

The Court found that, when privatizing the Püssi PPK, the State of Estonia had not assumed liability for the contract under consideration, and nor was it responsible for the liabilities of the Püssi PPK on other grounds. The Court cited legal literature and stated that the socialistic countries used to consider that immunity was enjoyed not only with respect to state acts, *jus imperii*, but also with respect to state acts, *jus gestionis*. The Court established that, due to the immunity of the State of Estonia from jurisdiction, it was not competent to consider the claim and ruled it inadmissible without considering the merits of the case.

(a)	Registration no	FIN/14
(b)	Date	14 November 2000
(c)	Author(ity)	District Court of Helsinki
(d)	Parties	Oliva Carrasco, Ricardo (individual) v. Republic of Venezuela (state)
(e)	Points of law	The Court established that it was not competent to consider labour disputes between foreign missions and their employees.
(f)	Classification no	0.a, 1.a, 2.c
(g)	Source(s)	Case No. 00/1467
(h)	Additional information/	Judgment of the District Court was upheld by the Court of Appeal of Helsinki. The Plaintiff appealed against the judgement of the Court of Appeal on 28 May 2002. The Case is pending before the Supreme Court.
(i)	Full text – extracts – translation - summeries	Summary English: Appendix 1

FIN/14

Appendix 1

The case concerned the termination/cancellation of an employment contract between the Embassy of Venezuela and its former chauffeur. Venezuela invoked immunity. By referring to a precedent of the Supreme Court of Finland (KKO 1993:120; FIN/2), the Court established that it was not competent to consider the case and ruled the claim inadmissible without considering the merits. Further, it stated that immunity was a matter that had to be taken into account *ex officio* by the Court.

(a)	Registration no	FIN/15
(b)	Date	29 October 1999
(c)	Author(ity)	District Court of Helsinki
(d)	Parties	Metra Oy Ab (company) vs. Republic of Iraq (state)
(e)	Points of law	The case concerned a debt obligation of the State of Iraq towards a Finnish company. As Iraq did not react to the claim, and as the Court found that the claim was not unfounded, it entered a default judgment against Iraq on 9 December 1994. Iraq moved to vacate the judgment. At the beginning of the proceedings, Iraq claimed immunity, but later waived the right to invoke immunity. Therefore, the Court found that it was competent to consider the case.
(f)	Classification no	0.b, 1.c, 2.c
(g)	Source(s)	Case No. 95/3561
(h)	Additional information	
(i)	Full text – extracts – translation - summeries	

(a)	Registration no	FIN/16
(b)	Date	21 January 1998
(c)	Author(ity)	District Court of Helsinki
(d)	Parties	Yrityspankki Skop Oy (company) vs. Republic of Estonia (state)
(e)	Points of law	The Court found that the case concerned acts of a commercial nature and, therefore, Estonia could not invoke immunity from the jurisdiction of the Court. Thus, the Court was competent to consider the case.
(f)	Classification no	0.b, 1.b, 2.c
(g)	Source(s)	Case No. 95/19597
(h)	Additional information	The judgement vacated a default judgment entered by the Court on 7 March 1995. The judgment was upheld by the Court of Appeal of Helsinki.
(i)	Full text – extracts – translation - summaries	Summary English: Appendix 1

FIN/16

Appendix 1

The case concerned a guarantee undertaken by the Estonian Soviet Socialist Republic. Estonia claimed immunity in the case. Furthermore, it stressed that as it had not become a successor to the Estonian Soviet Socialist Republic through a state succession, it could not be considered defendant in the case.

The Court emphasized the distinction to be made between acts of government (*jure imperii*) and acts of a commercial nature (*jure gestionis*). In addition, it referred to a precedent of the Supreme Court of Finland (KKO 1993:120; FIN/2). The Court stated that the Estonian Soviet Socialist Republic had undertaken a guarantee when the export association of agricultural producers had opened a credit with a private foreign bank. Thus, the matter concerned commercial activities and the status of the guarantor had a private law character.

At the time the guarantee was undertaken, the Estonian Soviet Socialist Republic was going through a period of economical and political transition. The Court found that, during that period of transition, the nature and the purpose of the state transaction had conclusive significance. It concluded that the activities in question could not be considered to have public law character by virtue of the economical system of the state only, so as to grant immunity to the defendant. Thus, the Court was competent to consider the case.