

November 2005

HUNGARY

A summary of the relevant State practice regarding State immunities in Hungary (A preliminary response to the Pilot Project of the Council of Europe)

Introduction

State immunity should be examined from two aspects. On one hand, in legal relations of the State in civil law matters no distinction can be made between the State or any other legal entity in respect of liability, irrelevant of the legal relation having any foreign element to it. On the other hand, in legal relations arising in the context of the exercise of public authority, it is only in certain cases that the State does not enjoy immunity from the jurisdiction of other States: the State can only exceptionally be drawn under the jurisdiction of other States.

In the field of civil law jurisdiction, the State as a legal person does not enjoy any general, *ab ovo* immunity. Pursuant to the 1959 Civil Code, the State, when being a subject of property related legal relations, is to be considered as a legal person. The State is represented by the Minister of Finance in civil law legal relations, who may exercise this power via, or may transfer this power to, other State agencies. As a legal person the State has legal capacity too. Unless otherwise provided by law, the legal capacity of a legal person shall extend to all those rights and obligations that do not inherently pertain solely to individual human beings.

The State shall not in general bear liability for acts of State organs; the State may be directly sued only in the event provided for by law. Specific forms of State liability is established by separate laws which set out those cases when the State shall be under the obligation to make compensation for damage or harm caused to third persons in relation to an act carried out by a State organ. Such laws include: the Penal Code, the laws on criminal proceedings, on health care, on medicinal products for human use, on the prevention of catastrophes, on national defence, on plant protection, on animal health protection, on the protection of the wildlife, on the protection of the nature, on fire-fighting, on nuclear energy, on the railway, on water transport, on water management.

Proceedings instituted against the Hungarian State

Most of the actions filed against the Hungarian State relate to claims for compensation for an injury allegedly suffered by the claimant.¹ In respect of these claims, the State enjoys immunity only in those proceedings which are related to the omission by the State of its legislative obligations, or, in general, with the legislative power of the Parliament. Liability of the State is strongly limited (not by law, but by principles established in case-law) in such proceedings too, where citizens submit their claims in

¹ Of all ongoing proceedings in which the Minister of Finance assumes the representation of the State, 60% has been initiated against the State to seek compensation. 7% of the actions filed against the State relates to property right claims, 5% has to do with securities, and 3% concerns invalidity of contracts. The remaining 25% of actions cannot be categorized, being individualistic in character.

direct reference to a grievance that arises out of an alleged breach of one of their rights guaranteed in the Constitution.

At present, the exact number of proceedings under way against the State cannot be established, which fact is due to the somewhat inconsistent legal regulation on how the representation of the State in respect of actions concerning State property is assumed. According to the relevant law, it is the Treasury Property Directorate that represents the State in proceedings concerning pieces of real estates belonging to the treasury property. In addition, between 1998 and 2000, as a temporary solution, it was this very State Agency that was authorized to represent the State in all proceedings initiated against the State. At the same time, in actions involving compensation claims based on the Law on Criminal Procedure, representation of the State is carried out by the Minister of Finance.

[Typical judgments and court decisions that can be considered exemplary in respect of State immunity will be included in the standard forms established by the Council of Europe for the purpose of the *Pilot Project on State practice regarding State immunities*, and forwarded as soon as possible to the Directorate General of Legal Affairs.]

Relevant legislation in force concerning State immunities²

1. Law Decree No. 13 of 1979 on International Private Law

This Law Decree was significantly amended by **Law No. CX of 2000 amending Certain Legislative Acts Concerning Jurisdiction and the Recognition and Enforcement of Foreign Decisions**, with an effect as of 1 May 2001. This latter Law has — when amending the Law Decree — taken into account to a large extent the institutions and solutions provided for in the Lugano Convention of 16 September 1988 on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters with a view to modernizing the domestic framework of international private law and, in general, of civil procedural law and thus, to preparing the Hungarian legal system for the eventual accession by Hungary to the Lugano Convention after Hungary will have become a Member of the European Union. By placing the rules on jurisdiction in civil law matters on new grounds, and by modernizing the rules on recognition and enforcement of foreign court decisions an appropriate domestic legal infrastructure has been created that will allow Hungary to conclude further bilateral agreements providing for reciprocity in the field of mutual recognition and enforcement of judgments.³

The issue of State immunity arises in the context of international private law and procedural law as a twofold problem: 1) Which law is applicable to the legal relations of the State? 2) How does the State become subject to the jurisdiction of a foreign court? Our relevant Law in force deals with the issue of jurisdiction on the basis of the principle of functional (relative) immunity, making a distinction between the legal relations of the State in the context of exercising public authority (in a capacity *iure imperii*) and the private law relations of the State (*iure gestionis*). In its private law relations, the State does not enjoy immunity from the jurisdiction of a foreign court. It is to be noted that the Law Decree on International Private Law contains a regulation in conformity with the

² See also the attachment to this summary that contains the relevant provisions cited or referred to in this Summary.

³ Up to now it is only Germany, France, Greece and Cyprus among the Western European States with which Hungary has a bilateral agreement in force in this field.

Council of Europe's Convention on State Immunity of 16 May 1972 in respect of matters considered typically as *acta iure gestionis*.

The Law Decree on International Private Law sets out those cases when the Hungarian authorities exercise exclusive jurisdiction in proceedings initiated against the State.⁴ However, even in these cases Hungarian jurisdiction is not exclusive, if the Hungarian State renounces its immunity, or if the subject matter of the action filed against it constitutes such a legal relation of the State which has a foreign element to it, and in respect of which the foreign State would not enjoy immunity from the jurisdiction of Hungarian organs either.⁵

Pursuant to the Law Decree, Hungarian authorities cannot exercise jurisdiction - that is Hungarian jurisdiction is excluded - in respect of other States in the very same instances when jurisdiction would be reserved for the Hungarian State itself in actions filed against Hungarian State agencies.⁶

The Law Decree enumerates also those cases where in general, but not without exception, jurisdiction of Hungarian courts is excluded.⁷ In a proceeding filed against a foreign State or foreign State agency, or a foreign citizen acting as a diplomatic agent in Hungary, Hungarian jurisdiction — as a general rule — is excluded, unless the State/agency/person concerned has explicitly renounced its immunity, or unless the civil law legal relation of the foreign State constitutes the subject matter of the proceeding.

In the event of lack of jurisdiction, the jurisdiction of the Hungarian court may also be established by the defendant making a statement on the merits of the case (admission of suit), unless, of course, the jurisdiction of the Hungarian court is excluded under the provisions of this Law

It is also this Law Decree which provides for the law applicable in proceedings against the Hungarian State.⁸ As a main rule, the Hungarian law shall be applicable to the legal relations of the Hungarian State; the exceptions are listed in the relevant Article of the Law Decree.

Chapter XI of the Law Decree contains the rules on the recognition and enforcement of foreign decisions.⁹ These rules show that the recognition of foreign decisions depends on that whether the matter in question concerns an exclusive Hungarian jurisdiction, or whether the jurisdiction of Hungarian authorities is excluded in respect of that matter, or whether there is concurrent jurisdiction:

- in the case of exclusive Hungarian jurisdiction, a foreign decision may be recognized only if it is a judgement dissolving the marriage of a Hungarian citizen, and if the recognition is sought by this Hungarian citizen.
- in the case of excluded Hungarian jurisdiction, foreign decisions shall be recognized without prejudice to any reciprocity, provided that these decisions are construed as definitive by the foreign law, and there exist no grounds of non-recognition.

⁴ See Article 62/A.

⁵ Article 62/E lists those cases where it is the Hungarian court or other authority which has jurisdiction in an action filed against a foreign State or foreign State agency.

⁶ See Articles 62/C and 62/D.

⁷ See Articles 62/E and 62/F.

⁸ See Articles 17 and 63. See also Articles 3 to 5 and 7 to 9 concerning questions of the applicable law.

⁹ Articles 70 to 74/A.

• in the case of concurrent jurisdiction, foreign decisions shall be recognized in Hungary under certain conditions, as specified in the Law Decree.

Although recognition of foreign decisions takes place by virtue of the Law Decree, without any special procedure, there are certain conditions (jurisdiction of the foreign authority having issued the decision; definitive character of the decision; reciprocity; lack of ground of refusal) that the domestic authority, before which the party makes reference to a particular foreign decision, needs to examine.

In the case of foreign decisions that require execution, a special procedure needs to be pursued in order to establish whether the conditions for domestic recognition and enforcement are met. Here, reference is to be made to **Law No. LIII of 1994 on Judicial Execution**: any foreign decision may only be executed in Hungary, if the court issues a decree of confirmation of execution, which is to assert that the decision may be executed in accordance with Hungarian law in the same way as a decision of a Hungarian court.¹⁰

In respect of executing a decision against a foreign State, the Law Decree sets out a rule of guarantee: those assets of a foreign State in Hungary that serve the carrying out of public functions by that State or support the functioning of its agencies cannot be attached on the basis of any adverse ruling against that State.¹¹

Matters of international legal aid and request are also governed by the Law Decree.¹² In such matters, Hungarian courts shall establish contact with foreign courts and other authorities through the Minister of Justice, while other authorities shall get in contact with foreign authorities through the Minister of Foreign Affairs, via the Minister exercising supervision. At the request of a foreign court or another authority, a Hungarian court or another authority shall provide legal aid on the basis of an international treaty or in the case of reciprocity. Legal aid shall be refused, if the performance of the request were to be in contravention of the Hungarian public order.

The Law Decree sets out among its General Provisions that its provisions cannot be applied to such questions that are governed by an international treaty.¹³ It should be mentioned here that **Circular No. 8001/2001 of the Minister of Justice on the Administration of Matters Involving an International Element** names those international treaties and contains those detailed rules that are to be respected by both the Hungarian and the foreign authorities in the course of their action in international matters. The First Chapter of the Circular sets out the general rules relating to the application of the Law Decree (international treaties; jurisdiction; applicable law; reference to international treaties; getting in contact by courts with foreign authorities and persons abroad; documents filed in foreign language; use of language; formalities of documents to be used abroad; authentic and certified copies), while Chapters II and III contain the provisions concerning legal aid requested by Hungarian and foreign authorities, respectively. Chapter IV deals with the attestation of official documents, and Chapter V has detailed rules on maintenance obligations, child placement and child abduction. Chapter VI governs legacy issues, while Chapter VIII criminal matters. Detailed rules of execution in international matters are set out in Chapter VII, and finally,

¹⁰ See Articles 205 to 210.

¹¹ Article 62/E.

¹² See Articles 67 to 69.

¹³ Article 2.

Chapter IX provides for the procedure to be followed in respect of persons enjoying diplomatic or other immunities.

2. Law No. IV of 1959 on the Civil Code

The Civil Code contains the rules concerning the legal personality and representation of the State. The State, as a subject of property related legal relations, shall be deemed a legal person. Unless otherwise provided for by law, the Minister of Finance shall represent the State in civil law legal relations; he may exercise such power by way of other State agencies, or may transfer this power to other State agencies.¹⁴

3. Law No. III of 1952 on Civil Law Procedure.

This Law governs the proceedings instituted before Hungarian courts in the course of applying Hungarian law. Pursuant to this Law, the filing of an action shall be refused, if the jurisdiction of Hungarian courts is excluded by a domestic law or an international agreement. As we have seen, it is Law Decree No. 13 of 1979 which sets out the cases where the jurisdiction of Hungarian courts is excluded.¹⁵

¹⁴ Article 28.

¹⁵ Article 62/C.