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RUSSIAN FEDERATION

Explanatory Note

There are two main sources regulating the issues of jurisdictional immunities of foreign States in the Russian Federation: international treaties to which the Russian Federation is a party and national legislation.

Until recently the prevailing view on the problem of jurisdictional immunities of a State was "absolute immunity." Without the consent of a foreign State no claim could be made in a court against that State. Several provisions of the former legislation on this issue are still in force. Therefore, there are practically no judicial cases on this point.

With the adoption in 1994 of a new Civil Code of the Russian Federation there has been some evolution in the concept of jurisdictional immunity of a State and the Russian legislation started moving towards "functional", or limited immunity, yet a special law on the immunity of a foreign State and its property is still under work.

1. International legal instruments

According to article 15 (4) of the Constitution of the Russian Federation the generally recognized norms and principles of international law and international treaties of the Russian Federation form an integral part of its legal system.

Russian Federation is a party to several conventions, dealing with various aspects of immunity of foreign States, among them the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1982 United Nations Convention on the Law of the Sea and others.

Russian Federation is not a party to the 1972 European Convention on State Immunity.

2. Domestic legislation

Legislation of the Russian Federation has no special act regulating the issue of State immunity. However, certain laws contain provisions dealing with particular aspects of foreign State immunity.

(a)	Registration no.	RUS/1
(b)	Date	11.06.1964 (as amended on 01.08.1980)
(c)	Authority	Supreme Soviet of the Russian Soviet Federative Socialist Republic
(d)	Parties	-
(e)	Points of law	<p>Civil Procedural Code of the Russian Soviet Federative Socialist Republic</p> <p><u>Article 435</u></p> <p>Marking a claim against a foreign State, pre-judgement measures of constraint and attachment against property of a foreign State located on the territory of the USSR, may be taken only with the consent of the competent authorities of the respective State.</p> <p>Members of diplomatic missions accredited in the USSR and other persons indicated in the relevant laws and international treaties of the USSR, may be subject to the jurisdiction of Soviet courts in respect of civil proceedings only to the extent provided by the norms of international law or international treaties of the USSR.</p> <p>In accordance with article 61 of the Principles of civil proceedings in the USSR and union republics, in cases where a foreign State doesn't ensure to the Soviet state, its property or representatives of the Soviet State the same scope of immunity, which is provided to a foreign state, its property or its representatives in the USSR according to the present article, the Council of Ministers of the USSR or any other competent authority may provide for counter-measures in respect of this State, its property or its representative.</p>
(f)	Classification	1.a; 2.a
(g)	Source	Vedomosty of the Supreme Council of the RSFSR, 1980, № 32, p.987
(h)	Additional information	Article 435 is reproduced as amended by the Decree of the Presidium of the Supreme

		Council of the Russian Soviet Federative Socialist Republic of 01.08.1980, the article is still in force.
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(a)	Registration no.	RUS/2
(b)	Date	24.07.2002
(c)	Authority	State Duma of the Russian Federation
(d)	Parties	-
(e)	Points of law	<p>Arbitration Procedural Code of the Russian Federation</p> <p><u>Article 251</u></p> <p>A foreign State acting as a sovereign enjoys immunity from the jurisdiction of the court in respect of a claim, brought against it in arbitration courts of the Russian Federation, in respect of its involvement in a proceeding as a third person, in respect of arrest of the property belonging to that foreign State and located on the territory of the Russian Federation, and in respect of measures of constraint.</p> <p>Execution against property by a decision of an arbitration court is permitted only with the consent of the competent authorities of the relevant State, unless otherwise provided by an international treaty of the Russian Federation or a federal law.</p> <p>Judicial immunity of international organisations is determined by international treaties of the Russian Federation and a federal law.</p> <p>Renouncement from judicial immunity must be made in the order, provided by the law of a foreign state or by the rules of an international organisation. In this case the arbitration court proceeds with the case according to the order provided by the present Code.</p>
(f)	Classification no.	1.b; 2.a.
(g)	Source	<p>Federal law № 95,</p> <p>"Sobranie zakonodatelstva Rossijskoy Federatsii"</p> <p>29.07.2002, № 30, p.3012</p>
(h)	Additional information	-

(a)	Registration no.	RUS/3
(b)	Date	30.11.1994
(c)	Authority	State Duma of the Russian Federation
(d)	Parties	-
(e)	Points of law	Civil Code of the Russian Federation, Part One <i>Article 127</i> Particular aspects of liability of the Russian Federation and subjects of the Russian Federation in relations, regulated by civil legislation, with foreign entities, citizens or States are defined by a law on immunity of State and its property.
(f)	Classification no.	1.c; 2.c.
(g)	Source	"Sobranie zakonodatelstva Rossijskoy Federatsii", 05.12.1994, № 32, p.3301, Federal law № 51
(h)	Additional information	The law on immunity of State and its property, to which art.127 of the Civil Code referes, is not yet adopted.

(a)	Registration no.	RUS/4
(b)	Date	14.11.2002 Federal law № 138
(c)	Authority	State Duma of the Russian Federation
(d)	Parties	-
(e)	Points of law	<p>Civil Procedural Code of the Russian Federation</p> <p><u>Article 401</u></p> <p>1. Marking a claim against a foreign state, evolving a foreign State into a proceeding as a defendant or a third person, arrest of property of a foreign State located on the territory of the Russian Federation, taking against that property other measures of constraint, attachment against that property for execution of a decision of a court may be taken only with the consent of the competent authorities of the respective State, unless otherwise provided by an international treaty of the Russian Federation or by a federal law.</p> <p>2. International organisations may be subject to jurisdiction of the courts of the Russian Federation in respect of civil matters to the extent it is provided by the international treaties of the Russian Federation, by federal laws.</p> <p>3. Members of diplomatic missions accredited in the Russian Federation and other persons indicated in the relevant federal laws and international treaties of the Russian Federation, may be subject to the jurisdiction of the courts of the Russian Federation in respect of civil proceedings only to the extent provided by the generally recognized principles and norms of international law or international treaties of the Russian Federation.</p>
(f)	Classification	1.a; 2.a
(g)	Source	-
(h)	Additional information	The Civil Procedural Code of the Russian Federation will enter into Force in February 2003. Article 401 will substitute article 435

		of the Civil Procedural Code of the RSFSR.
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3. Judicial practice

(a)	Registration no.	RUS/5
(b)	Date	-
(c)	Authority	High Arbitration Court of the Russian Federation
(d)	Parties	Russian Co. Embassy of State X
(e)	Points of law	<p>A foreign Embassy concluded a building contract with a Russian company.</p> <p>The Russian company applied to the arbitration court claiming to take recourse upon debt for the works done.</p> <p>The Embassy appealed to the High Arbitration Court stating that the contract was concluded not for commercial purposes and therefore the Embassy enjoyed immunities from the jurisdiction of Russian courts.</p> <p>High Arbitration court recommended to the lower court to study if the Embassy had expressed its consent to the exercise of jurisdiction by Russian courts through concluding a contract. In case the Embassy has not consented to the exercise of jurisdiction, the High Arbitration Court recommended to apply Article 213 (1) of Arbitration Procedural Code of the Russian Federation and to stop the proceedings for the reasons of the immunity of a foreign state.</p>
(f)	Classification no.	1.a
(g)	Source	Review of practice of arbitration courts concerning the protection of foreign investments (Information letter of Presidium of the High Arbitration Court of the Russian Federation № 58 of 18.01.2001)

(a)	Registration no.	RUS/6
(b)	Date	-
(c)	Authority	High Arbitration Court of the Russian Federation
(d)	Parties	Embassy of State X v. Russian Company
(e)	Points of law	<p>An Embassy of a foreign State brought a claim from a building contract to a Russian company. The Russian company brought a counter-claim arising out of the same contract. The Embassy invoked immunity from the jurisdiction of the Russian court and for these reasons the counter-claim was rejected by the arbitration court.</p> <p>The court of appeal revoked the decision of the lower court stating that the Embassy had lost its right to invoke immunity by instituting the initial proceeding before the Russian court.</p>
(f)	Classification no.	1.b
(g)	Source	Review of practice of arbitration courts concerning the protection of foreign investments (Information letter of Presidium of the High Arbitration Court of the Russian Federation № 58 of 18.01.2001)
(h)	Additional information	-

(a)	Registration no.	RUS/7
(b)	Date	02.11.2000
(c)	Authority	Constitutional Court of the Russian Federation
(d)	Parties	M.Kalashnikova
(e)	Points of law	<p>Russian citizen M.Kalashnikova was dismissed from the Embassy of the United States on the basis of article 33 (2) of the Labour Code of the Russian Federation. Considering her dismissal unlawful, she made a claim against the US Embassy which was based on a contract of employment.</p> <p>The Russian court rejected the claim for the reasons of immunity of an Embassy of a foreign State provided for in art. 435 of the Civil Procedural Code. M.Kalashnikova appealed to the Constitutional Court claiming that art. 435 of the Civil Procedural Code was in contradiction with the Constitution of the Russian Federation, which guarantees her right for judicial protection.</p> <p>The Constitutional Court stated that the relevant provisions of Civil Procedural Code were subsidiary to the provisions of the Labour Code in case of disputes arising from labour contracts.</p> <p>It also stated that the Russian court didn't study the question if the application of Russian legislation by an Embassy of a foreign State could be considered as its consent for the jurisdiction of Russian courts.</p> <p>For these reasons the claim of M.Kalashnikova was to be reconsidered by the lower court and art. 435 of Civil Procedural Code was to be applied subject to the afore-mentioned order of the Constitutional Court.</p>
(f)	Classification no.	1.b
(h)	Additional information	-