

QUESTIONNAIRE

**to assess the practical difficulties in accessing the content of foreign law and
the need for the development of a global instrument in this area**

Identification

Name of the Member State: Czech Republic

For follow-up purposes

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Part I – General Questions

1) Is your State Party to:

- a) The London Convention **YES**
- b) The Montevideo Convention **NO**
- c) The Minsk Convention **NO**
- d) Any bilateral treaty **YES**

Please indicate the number of bilateral treaties concluded: **29**

2) If not, does your State intend to become in the near future a Party to:

- a) The London Convention **-**
- b) The Montevideo Convention **NO**
- c) The Minsk Convention **NO**
- d) or conclude any bilateral treaty **NO**

3) Please indicate (if applicable) the number of requests received in 2006 and the average number of weeks taken to respond to the requests under:

- a) The London Convention No of requests: **no records available** No of weeks: **0**
- b) The Montevideo Convention No of requests: **0** No of weeks: **0**
- c) The Minsk Convention No of requests: **0** No of weeks: **0**
- d) Any bilateral treaty No of requests: **no records available** No of weeks: **0**

4) Please indicate (if applicable) the number of requests that emanated from the judicial authorities in your State in 2006 and the average number of weeks taken to respond to these requests under:

- a) The London Convention No of requests: **no records available** No of weeks: **0**
- b) The Montevideo Convention No of requests: **0** No of weeks: **0**
- c) The Minsk Convention No of requests: **0** No of weeks: **0**
- d) Any bilateral treaty No of requests: **no records available** No of weeks: **0**

5) Do you foresee an increase in the number of requests referred to in:

a) Question No 3 (incoming requests)

YES

b) Question No 4 (outgoing requests)?

YES

6) If so, in which areas of the law? Please specify for each of the sub-questions:

a) Civil Law, Inheritance Law, Family Law, Business Law, Legal Aid, Company Law

b) Business Law, Civil Law, Family Law, Legal Aid, access to Legal Aid

7) Please indicate, if applicable, in bullet form to what extent you are satisfied with the instruments referred to in Question No 1:

a) The cooperation based on the London Convention is still very usefull and we have very good experiences with its application.

b) 0

c) 0

d) According to the fact that most of the bilateral treaties were concluded during the communist era, application of those treaties is limited in favour of the London Convention.

8) Please indicate, if applicable, in bullet form any shortcomings of these instruments:

Deadlines to respond the requests should be shortened.

Part II – Free public access to information on the content of the law

9) Does your State provide online access to its legislation through an official (governmental) website?

YES. Only in Czech language.

10) Does your State respond to written or oral requests for information on the content and / or application of its law?

YES. The Ministry of Justice responds official requests after the London Convention and bilateral treaties. In the accordance with the Czech Law, Ministry of Justice also settles requests from the Czech courts about the content of the Substantial Law and International Private Law of other States especially in the area of Inheritance Law and Family Law. In the year 2006 Ministry received about 400 requests from Czech judicial authorities (courts and notaries).

11) Are the services in Question No 10 available to people in other States?

NO, it is only available to the judicial authorities under the conditions mentioned above.

12) If yes, do people in other States have access to this service at the same costs as residents?

13) Do you foresee the proportion of people in other States using these services increase in the future?

Part III – Access to information on the content of foreign law at the litigation stage

14) Please indicate, where possible, a rough estimate of the percentage of civil and commercial law cases heard by the judicial authorities of your State in 2006 which required the application of foreign law and whether this percentage is likely to increase. If no estimate can be obtained for 2006, please refer to another year. Percentage: **no records available**. Likely to increase: **YES**

15) Please indicate, if possible, the most common areas of foreign law applied by or invoked before the judicial authorities of your State.

YES Marriage and nullity of marriage

YES Divorce and legal separations

YES Parental responsibility

YES Parent-child relationship

YES International child protection including child abduction and child adoption

Protection of adults

YES Maintenance (child support and other forms of family support)

YES Traffic accidents

YES Products liability

Other types of tort

- Consumer protection
- YES** Commercial contracts
- YES** Sale of goods
- YES** Securities transactions
- Property
- YES** Inheritance
- YES** Bankruptcy
- Choice of court agreements
- Other, please specify:

16) Please identify, if possible, the States whose laws are most frequently applied by or invoked before judicial authorities in your State:

German Law, Austrian Law, Swiss Law, Vietnamese Law, Polish Law, Canadian Law, English Law, Western Balcan States Law, French Law, Italian Law, Russian Law, Slovak Law, Law of the successor- States of USSR,

17) In your State, a judicial authority ascertains foreign law (check more than one box if applicable):

- a) **YES** *ex officio* without the assistance of an expert (*e.g.* law firm, specialised institute, university, government (*i.e.* specialised department or embassy), etc.)
- b) *ex officio* with the assistance of an expert
- c) **YES** submitting, *ex officio*, a request for information under a bilateral or multilateral treaty (where applicable)
- d) as the result of an (express) agreement of all parties, without the assistance of an expert
- e) as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by the judicial authority
- f) as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by all parties
- g) by submitting, as the result of an (express) agreement of all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- h) at the request of a party (without the objection of the other or another party) or all parties, without the assistance of an expert
- i) at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by the judicial authority
- j) at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by one or all parties
- k) by submitting, at the request of a party (without the objection of the other or another party) or all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- l) by any other method (please specify): **YES, to send a request to the Ministry of Justice of the Czech Republic.**

18) Please rank in order of priority (1 being the highest) the sources consulted by judicial authorities in your State to ascertain the content of foreign law under any of the methods described in a), d) and h) of Question No 17:

- 1 Internet (official legislation, case-law and legal publications websites)
- 2 Internet (legislation, case-law and legal publications from private databases (as opposed to official databases))
- Local or personal library (local electronic databases)
- Local or personal library (printed legislation, case-law and legal publications)
- 3 Others: **The official library and database of the International Department of the Ministry of Justice**

19) Please explain whether and, if so, how the judicial authorities in your State verify the reliability and / or authenticity of these sources and the information provided therein: **NO**

20) Where these sources and the information provided therein are not available in a language understood by the judicial authority, please describe the mechanisms used to address this difficulty. Description: **In case of absence of foreign language knowledge, the court has to arrange the translation to the Czech language.**

21) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of your State? In the case of a specialised institute, does it need to meet certain requirements?

- YES
- NO

22) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of the State whose laws are being ascertained? In the case of a specialised institute, does it need to meet certain requirements?

- YES
- NO

23) Please specify which individuals and / or institutions may provide expertise under any of the methods described in b), e) and i) of Question No 17:

- a) Local private expert (*e.g.* law professor, lawyer and / or jurist in private practice)
- YES
- NO

b) Foreign private expert (*e.g.* law professor, lawyer and / or jurist in private practice)

YES

NO

c) Local specialised institute

YES

NO

d) Foreign specialised institute

YES

NO

e) Local government (including embassies abroad)

YES

NO

f) Foreign government (including embassy in your State)

YES

NO

g) Member of the local judicial authority

YES

NO

h) Member of a foreign judicial authority

YES

NO

i) Other(s):

j) Which of the above is most often used?

24) Please indicate who bears the costs of the expertise provided under any of the methods described in b), e) and i) of Question No 17:

The requesting judicial authority

The party that raised the application of foreign law

The party(ies) against whom costs will be awarded

All parties

Other:

25) Would your answers to Questions Nos 21-24 be the same for the expert referred to under f) and j) of Question No 17?

YES

NO, please explain:

26) Please describe, if possible, the common characteristics of requests for information on foreign law submitted under any of the methods described in c), g) and k) of Question No 17: The type of question asked; who most frequently asks questions (*e.g.*, parties with too little or no resources to afford an expert); the reasons why questions are asked (*e.g.*, no material available in a language understood by the judicial authority seized of the matter); etc.

Description:

27) Please indicate whether judicial authorities in your State can transmit the request for information directly to a receiving agency in the State addressed under any of the methods described in c), g) and k) of Question No 17?

YES, to c) according to London Convention,

28) If so, can the request be transmitted by regular non-secured e-mail?

YES

NO