

Legalisation of Public Documents within the EU Member States

CZECH REPUBLIC

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PART I – Documents operating cross-border: Current legal practice as regards legalisation or other similar or equivalent requirements

PART I.A. General

I.A.1. European Community Law

I.A.1.1. Introduction

The Czech Republic has been a Member State of the European Community since 1. 5. 2004. Regarding the fact that the Czech Republic is Member State of the Hague Conference of Private International Law, Contracting State of many Hague conventions on private international law including the Apostille Convention and Contracting State of bilateral agreements with some EU Member States, the EC accession as such did not mean any radical change in legalisation requirements. With respect to the EC law, specific Community instruments including the respective standard forms, are applied by Czech authorities without any apparent problems (in some cases, e.g. medical insurance schemes, it seems that Czech Republic as a new Member State has introduced the uniform measures on formal exemptions even more rapidly than some old Member States). Specific measures have been implemented in conformity with the relevant instruments (see below I.A.1.2.), however, one must say that in some areas, e.g. enforcement of foreign judgments, sufficient experience has not been acquainted by Czech authorities so far.

The research has been conducted in collaboration with various authorities, institutions, and private persons, related to questions of legalization of cross-border operating documents, in particular, Ministry of Justice (International Department, sample authority), Ministry of Foreign Affairs (Consular Department, sample authority), Ministry of Interior (Department of Citizenship and Register Offices), Economic Chamber of the Czech Republic, Register Court (Commercial Register) in Prague, Social Security Administration of the Czech Republic, General Health Insurance Company of the Czech Republic, notaries, international law offices in Prague, judges, and legal experts at the Law Faculty of the Charles University in Prague.

I.A.1.2. Implementation of specific measures

In general, EC Regulations are incorporated automatically into the Czech law and do not require implementation of specific measures and Czech Republic does not enact supplementary legislation, unless specifically stipulated.

Area of Justice - judicial cooperation in civil matters (Article 61(c) EC)
Article 19 of Regulation (EC) No 1346/2000 Applies directly, no implementation.
Article 4(4) of Regulation (EC) No 1348/2000 Applies directly, no implementation.
Article 56 of Regulation (EC) No 44/2001 Applies directly, no implementation.
Article 57 of Regulation (EC) No 44/2001 Applies directly, no implementation.
Article 58 of Regulation (EC) No 44/2001 Applies directly, no implementation.
Article 46 Regulation (EC) No 2201/2003 Applies directly, no implementation.
Article 52 of Regulation (EC) No 2201/2003 Applies directly, no implementation.
Article 52 Regulation (EC) No 2201/2003, certificates drawn up in the standard forms of ANNEX I (Article 39), II (Article 39), III (Article 41) or IV (Article 42) Apply directly, no implementation (standard forms in Czech language).
Article 27 of Regulation (EC) No 805/2004 Applies directly, no implementation.
ANNEXES I (Article 9 - judgments), II (Article 24 – court settlements) and III (Article 25 – authentic instruments) of Regulation (EC) No 805/2004 Apply directly, no implementation (standard forms in Czech language).
Article 13(5) of Directive 2003/8/EC Directive No. 2003/8/EC was implemented by Act No. 629/2004 Sb., on Securing Legal Aid in Cross-border Disputes within the European Union; the Act does not include any additional requirements. In practice, no legalisation is required.
Free movement of goods (Article 23 EC)
Article 250 of Regulation (EEC) No 2913/92 Applies directly, no implementation.
Free movement of workers - social security (Article 42 EC)
Article 85 Regulation (EEC) No 1408/71 read in conjunction with Regulation (EEC) No 574/72 Applies directly, no implementation, social security schemes are directly based on the Regulation and the respective documents are exempt from legalisation.

I.A.1.3. Judicial control

Any relevant decisions of Czech courts reported so far.

I.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

I.A.2.0. Introduction

In general, published international treaties whose ratification was consented to by the Parliament and which are binding on the Czech Republic, form part of the Czech legal system; if an international treaty provides otherwise than a law, such a treaty shall be applied (see Art. 10 of the Constitution of the Czech Republic). International treaties and/or conventions have thus priority over the domestic law, they apply directly and immediately and there is no need to adopt special implementations unless specifically required by the treaty or convention itself.

I.A.2.1. Status

The information on the status of the Convention in the Czech Republic as stated in the Questionnaire is correct.

I.A.2.2. Scope

Geographical scope – corresponds to the website of the Hague Conference on Private International Law. The status of the Convention with respect to the Czech Republic is published on the webpage of the Ministry of Justice of the Czech Republic, see <http://portal.justice.cz>. Czech administrative authorities directly refer to the webpage of the Ministry of Justice on their websites so that the practice of Czech courts and administrative authorities is expected to be uniform.

Material scope – corresponds to the Art. 1 of the Convention (see also the decisions of the Czech Supreme Court under 1.A.2.5.).

I.A.2.3. Legislative implementation

As international treaties and conventions have priority over the Czech law and are directly applicable (the Apostille Convention was published under Nr. 45/1999 Sb., the notice of designation of the competent authorities in accordance with Art. 6 of the Convention was given to the depositary), there has been no need to adopt any special measures, see introductory remark to this part.

I.A.2.4. Practical implementation

The Ministry of Justice, International Department

Address: Ministry of Justice
Vyšehradská 16
128 10 PRAHA 2
Czech Republic

Telephone: +420 221 997 925
Fax: +420 221 997 919
Email: om@msp.justice.cz

Approachable contact person: Mgr. Věra Krajánková, the International Department
General website: <http://portal.justice.cz>

The Ministry of Foreign Affairs, Consular Department

Address: Ministry of Foreign Affairs
Loretánské náměstí 5
118 00 PRAHA 1
Czech Republic

Telephone: +420 224 181 111
Fax: -
Email: info@mzv.cz

Approachable contact person: JUDr. Ivan Záleský, Director of the Consular Department
General website: <http://www.mzv.cz>

The implementation process of the Convention in practice.

The Ministry of Justice, International Department (certificates issued by authorities of justice, including certificates issued or certified by notaries)

1. An Apostille may be requested in person or by (registered) mail.
2. The Ministry has signature cards and seal/stamp designs of all authorities of justice, including notaries.
3. The Apostille is bilingual (in Czech language and in English language), see Annex IV Cze. It has form of a label which is put on the document and completed and signed by hand of the respective official.
4. The Apostille is placed on the public document itself, if there is not enough place, the Apostille is placed on another sheet of paper which is firmly connected with the document.
5. When the public document consists of multiple pages, the Apostille is placed at the end of the document, under the seal/stamp of the authority which issued such a document.
6. The Apostille is bilingual (in Czech language and in English language).
7. The system used for the issuance of an Apostille is mechanical.
8. The main measures in order to avoid fraud are described under point 2. If there is any doubt regarding a signature or seal/stamp, the respective authority is telephonically consulted. Besides, there is a special Register of authenticated documents of this sample authority.
9. The Czech Republic as Member State of the Hague Conference on PIL takes part in the new E-Apostille Programme of the HCCH and the NNA.
10. Personal attendance of the sample authority takes several minutes, a request by

mail takes several days.

11. The fee amounts to 100 CZK. It has character of a fee, see Act No. 634/2004 Sb., as amended, on Administrative Fees –the Administrative Fees Tariff. The fee is an income of the State budget.

The same procedure applies to all documents.

The Ministry of Foreign Affairs, Consular Department (documents issued by authorities of State Administration or by the other ones)

1. Apostille may be requested in person or by (registered) mail.
2. The Ministry has signature cards and seal/stamp designs of various administrative and other authorities, including ministries, state and municipal administrations, Czech National Bank, Chamber of Commerce, etc.
3. The Apostille is in Czech language; see Annex IV Cze (with the English translation). It has a form of a seal/stamp which is put on the document and completed and signed by hand of the respective official.
4. The Apostille is placed on the public document itself, if there is not enough place, the Apostille is placed on another sheet of paper which is firmly connected with the document.
5. When the public document consists of multiple pages, the Apostille is placed at the end of the document, under the seal/stamp of the authority which issued such a document.
6. The Apostille is in Czech language.
7. The system used for the issuance of an Apostille is mechanical.
8. The main measures in order to avoid fraud are described under point 2. If there is any doubt regarding a signature or seal/stamp, the respective authority is telephonically consulted. Besides, there is a special Register of authenticated documents of this sample authority.
9. The Czech Republic as Member State of the Hague Conference on PIL takes part in the new E-Apostille Programme of the HCCH and the NNA.
10. Personal attendance of the sample authority takes approximately an hour or more, a request by mail takes about a week.
11. The fee amounts to 100 CZK. It has character of a fee, see Act No. 634/2004 Sb., as amended, on Administrative Fees – the Administrative Fees Tariff. The fee is an income of the State budget.

The same procedure applies to all documents.

In accordance with Art. 7 of the Apostille Convention, both sample authorities keep a register and card index in which all issued certificates are recorded (by the number and date of the certificate and by the name of the person signing the document).

1. The system used is not electronic.
2. There are no particular plans to modernize the system currently in use.
3. In accordance with Art. 7 of the Convention, the sample authorities can verify whether the particulars in the certificate correspond with those in the card index.

I.A.2.5. Judicial control

Annex I-1 Cze and Annex I-2 Cze include two decisions of the Czech Supreme Court, both dealing with the question of legalisation or authentication requirements, regarding a full-power in proceedings before a Commercial Register Court and a verification of existence and legal entity of a company in a proceeding before a court. The Supreme Court in both cases took a more liberal position than lower courts with respect to legalisation requirements. In the first case, the Supreme Court recognized as sufficient

the verification of signatures attached to the power-of-attorney on the Deed of incorporation, written in Czech and signed at the Embassy, by the Czech Embassy in Norway, without the requirement to append a further legalisation. In the second case, the Supreme Court recognized a secondary authentication of public documents (in form of a notarial deed) as sufficient, even if it were only indirect (secondary) verification of the documents: also a secondary verification corresponds with the purpose of an Apostille.

In my opinion, both decisions indicate that the Supreme Court tried to mitigate the rather formal attitude of lower Czech courts to the legalisation requirements.

I.A.2.6. Empirical analysis

See **Annex II Cze.**

I.A.3. Parallel international agreements

I.A.3.1. Status

Status of all relevant international agreements for Czech Republic

1. 1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular officers

Czech Republic is Member State, see No. 287/1998 Sb.

2. 1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities

Czech Republic has not ratified this Convention.

3. Agreements abolishing the requirement of legalisation for foreign public documents generally between two or more countries

Czech Republic concluded bilateral agreements on legal aid in which are specified public documents exempt from the superlegalisation with the following States:

- a) Afghanistan - No. 44/1983 Sb.
- b) Albania - No. 97/1960 Sb.
- c) Alger - No. 17/1984 Sb.
- d) Belgium - No. 59/1986 Sb.
- e) Bulgaria - No. 3/1978 Sb.
- f) France - No. 83/1985 Sb.
- g) Italy - No. 508/1990 Sb. – only the documents issued upon request of a court
- h) Yemen - No. 76/1990 Sb.
- i) Yugoslavia - No. 207/1964 Sb. – applies to all succession States
- j) Korea (People's Republic) - No. 93/1989 Sb.
- k) Cuba - No. 80/1981 Sb.
- l) Cyprus - No. 96/1983 Sb.
- m) Hungary - No. 63/1990 Sb.
- n) Mongolia - No. 106/1978 Sb.
- o) Poland - No. 42/1989 Sb.
- p) Portugal - No. 22/1931 Sb.
- q) Austria - No. 9/1963 Sb.
- r) Romania - No. 1/1996 Sb.

- s) former Soviet Union - No. 95/1983 Sb. – into the agreement formally succeeded only the Russian Federation and Belorussia.
- t) Greece - No. 102/1983 Sb.
- u) Slovakia - No. 209/1993 Sb.
- v) Syria - No. 8/1985 Sb.
- w) Spain - No. 6/1989 Sb.
- x) Switzerland - No. 9/1928 Sb.
- y) Ukraine - No. 123/2002 Sb.m.s.
- z) Uzbekistan - No. 133/2003 Sb.m.s.
- aa) Vietnam - No. 98/1984 Sb.

Note: “Sb.” – Collection of Laws of the Czech Republic, “Sb.m.s.” – Collection of International Treaties of the Czech Republic (since 2000 only)

4. Agreements abolishing the requirement of legalisation for categories of documents relating to a specific subject matter, for example:
- a) United Nations Convention on the Recovery of Abroad Maintenance (New York, 1956): Czech Republic is Member State of the Convention, see No. 33/1959 Sb.
 - b) The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (1958): Czech Republic is Member State of the Convention, see No. 14/1974 Sb.
 - c) The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969): Czech Republic is Member State of the Convention, see No. 85/1982 Sb.
 - d) The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1972): Czech Republic is Member State of the Convention, see No. 129/1976 Sb.
 - e) The Hague Convention concerning the International Administration of the Estates of Deceased Persons (1973): Czech Republic is Member State of the Convention, see No. 218/1995 Sb.
 - f) The Hague Convention on Civil Aspects of International Child Abduction (1980): Czech Republic is Member State of the Convention, see No. 34/1998 Sb.
 - g) The Hague Convention on International Access to Justice (1988): Czech Republic is Member State of the Convention, see No. 58/2001 Sb.m.s.
 - h) The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996): Czech Republic is Member State of the Convention, see No. 141/2001 Sb.m.s.

I.A.3.2. Scope

1. Geographical scope: the scope corresponds from the part of the Czech Republic to the status of respective agreements or conventions. However, Member States of some bilateral agreements do not observe the status and require an Apostille (see below).

2. Material scope: in general, the conventions and agreements apply to the stipulated categories of documents in conformity with the respective provisions.
3. Conflicts of conventions: If there are several agreements or conventions which should be applied, preference shall be given to the specific regulation (*lex specialis*).

I.A.3.3. Legislative implementation

As international treaties and conventions have priority over the Czech law and are directly applicable (see introductory remark to this part), consequently, there has been no need to adopt any special implementing measures. Both Private International Law Act (Sec. 2) and Administrative Procedure Act (Sec. 53/4, see 1.A.4.1.) have special provisions on preferential application of international treaties binding on the Czech Republic.

I.A.3.4. Practical implementation

Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular officers (1968)

- The respective documents are exempt from legalization or analogous requirements.
- The competent authority is the Ministry of Foreign Affairs, for details see above 1.A.2.4.

Bilateral agreements on legal aid

- The respective documents (details of the individual agreements see above) are exempt from legalization or analogous requirements.
- The competent authority is the Ministry of Justice, see above 1.A.2.4.

United Nations Convention on the Recovery of Abroad Maintenance (New York, 1956)

- The respective documents are exempt from legalization or analogous requirements.
- The competent authority is the Ministry of Justice, in details see above 1.A.2.4.

The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (1958)

- The respective documents are exempt from legalization or analogous requirements.
- The competent authority is the Ministry of Justice, in details see above 1.A.2.4.

The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969)

- The respective documents are exempt from legalization or analogous requirements.
- The competent authority is the Ministry of Justice, in details see above 1.A.2.4.

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1972)

- The respective documents are exempt from legalization or analogous requirements.
- The competent authority is the Ministry of Justice, in details see above 1.A.2.4.

The Hague Convention concerning the International Administration of the Estates of

Deceased Persons (1973)

- The respective documents are exempt from legalization or analogous requirements.
- The competent authority is the Ministry of Justice, in details see above 1.A.2.4.

The Hague Convention on Civil Aspects of International Child Abduction (1980)

- The respective documents are exempt from legalization or analogous requirements.
- The competent authority is the Ministry of Justice, in details see above 1.A.2.4.
- Special competent authority is the Office for International Legal Protection of Children which provides directly in English language all necessary information, including the contacts and relevant links, see <http://www.umpod.cz/> .

The Hague Convention on International Access to Justice (1988)

- The respective documents are exempt from legalization or analogous requirements.
- The competent authority is the Ministry of Justice, in details see above 1.A.2.4.

The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996)

- The respective documents are exempt from legalization or analogous requirements.
- The competent authority is the Ministry of Justice, in details see above 1.A.2.4.

I.A.3.5. Judicial control

No relevant decisions of Czech courts so far. This may also be explained by the fact that applicants usually prefer to proceed as quickly as possible and, if specifically required by an authority, they rather arrange for an Apostille and do not bring an appeal against such a requirement before a Court.

I.A.4. National Law

I.A.4.1. Legislative framework

The most important national law in this area is the Private International Law Act. This act is applied not only to documents issued by courts and notaries but also to public documents issued by administrative authorities, in particular, various documents issued by Register Offices or diplomas, as there is no other general regulation within Czech law in this respect.

1. Authentication of public documents issued or certified by an authority in Czech Republic for their use abroad

For public documents which should be used in countries with which Czech Republic did not conclude any bilateral and/or respective multilateral treaty exempting from the authentication and who are not Member States of the Hague Apostille Convention, the authentication of public documents is necessary in a form of the so-called superlegalisation (see Sec. 62 of the Private International Law Act).

The superlegalisation of Czech courts' documents or documents issued or certified by notaries is performed first by the Ministry of Justice, it is followed by a foreign representation authority (hereinafter "embassy") of the state in which the document is intended to be used.

Regarding the documents issued or authenticated by Czech administrative authorities, the superlegalisation is performed first by the organs of state administration superior to the respective administrative authority which issued the document (e.g. Ministry of Education, Ministry of Health), then the authentication is issued by the Ministry of Foreign Affairs and then it is followed by the superlegalisation by the embassy of the respective foreign state.

2. Authentication of foreign public documents for their use in the Czech Republic

Public documents issued by foreign courts and authorities shall have the probative value of public documents also in the Czech Republic, if they are furnished with the prescribed authentication (see Sec. 52 of the Private International Law Act). Such a document should be furnished by the superlegalisation of the embassy of the Czech Republic which is accredited for the state whose organ issued the document. There are two exceptions: first, states bound by a respective bilateral or multilateral treaty exempting from the authentication, and second, states who are Member States of the Hague Apostille Convention. The superlegalisation follows the higher authentication of the document by the respective authorities and by the Foreign Ministry of the state in question.

3. Relevant legislative acts

The Act concerning Private international law and the rules of procedure relating thereto No. 97/1963 Sb., as amended, Private International Law act:

Section 2

International treaties

The provisions of the present Act shall be applied only if an international treaty binding on the Czech Republic does not provide otherwise.

Section 52

Documents issued by foreign courts and authorities, which are considered as public

documents in the place of their issue, shall have the probative value of public documents also in the Czech Republic, if they are furnished with the prescribed authentication.

Section 62

Superlegalisation (authentication) of documents

Documents issued by judicial organs or documents authenticated by them or signed before them, which are to be used abroad, shall be superlegalised (authenticated) at the request of the respective party by the Ministry of Justice.

The Civil Procedure Code, Act No. 99/1963 Sb., as amended:

Section 134

Documents issued by Czech courts or other state organs (agencies) within the scope of their competence, as well as documents declared to be public under special provisions, certify that they constitute an order (a decree) or a statement of the organ (agency) which issued the document, and, unless the contrary is proven, also the truthfulness of what each of the documents certifies or confirms.

Act No. 500/2004 Sb., Code of Administrative Procedure

Section 53

Documentary evidence

(1-3)

(4) Unless an international treaty being a part of the legal order provides otherwise the authenticity of official stamps and signatures attached to public instruments issued by foreign authorities shall be verified by bodies having such powers.

Act No. 358/1992 Sb. providing for notaries and their activities (Notarial Procedure Code)

Section 73

Verification of the sameness of an engrossment or a copy of an instrument

- (1) Authentication by *vidimus* shall be executed by a *vidimus* clause immediately after the Notary has considered the sameness of an engrossment with the instrument. The *vidimus* clause shall contain (...)
- (2) The Notary shall refuse to execute a *vidimus* clause if (...)
 - (b) s/he does not know the language in which the instrument (the copy of which should be verified) was written and its translation into the Czech language has not been produced by an official interpreter; this rule does not apply where the copy of an instrument to be verified is made on a photocopying machine before the verifying person, (...)
- (3) A *vidimus* clause shall not verify the truthfulness and correctness of facts stated in the instrument or their compliance with legislation, and the notary shall not be responsible for the content of the instrument.

Section 74

Verification of authenticity of signature

- (1) The notary shall verify, by legalization, that a natural person before him in his presence has signed the instrument by his own hand, or has recognized as his own the signature attached to the instrument.
(...)
- (3) In legalizing the instrument the notary shall not be responsible for the content of the instrument.
- (4) Where the notary is not master of the language of the instrument he shall call on the applicant to submit its translation by an interpreter. Should the applicant fail to provide such translation this fail the notary shall refuse to perform.

Act No. 301/2000 Sb. providing for the register of births, marriages and deaths, and for names and surnames

Section 1

- (1) The register shall contain state records of births, marriages entered into, registered partnerships and deaths of natural persons in the Czech Republic, and births, marriages and deaths abroad of nationals of the Czech Republic.

Section 57

- (1) Instruments issued by bodies of a foreign country which are considered public instruments within the territory of their issuance and which create the grounds for the recording, additional recording or additional entry in the register book, or rectification of the recording in the book, shall be submitted with their official translation into the Czech language.
- (2) Instruments stipulated under (1) above must be appended with necessary verification. The Registry may waive verification if verification arrangements entail a close to insurmountable obstacle.

4. Travaux préparatoires

The Explanatory Reports to the respective provisions of laws cited above do not include any special rationale, legislator's intention or motivation. If any, they only formally, in one sentence, introduce the more or less classical wording of the provisions on authentication of public documents.

I.A.4.2. Scope

1. The geographical scope – national law applies to relations with the states with which there are no bilateral or multilateral treaties covering the respective issue and who are not Member States of the Apostille Convention. Such situation occurs in particular with respect to Denmark, Iraq, Iran, United Arab Emirates, India, Bolivia, Nigeria, Mali, etc. We must bear in mind that even the Apostille Convention does not relate to all public documents in question.

2. The material scope – national law applies to all documents requiring authentication which are not covered by the Hague Apostille Convention or by a bilateral treaty and/or by a respective multilateral convention.

I.A.4.3. Practical implementation

1. Responsible authority – the Ministry of Justice and the Ministry of Foreign

Affairs (in details see above I.A.4.1.).

2. **The procedure for legalisation** - in detail, see above I.A.4.1.
3. **The same procedure** applies to all documents and to all states (unless otherwise provided by an international treaty of by EC law).
4. **Documents** - in detail, see above I.A.4.1.
5. **The procedure of legalisation (higher authentication, superlegalisation)** as such is under the practical viewpoint similar to that of apostillation – card index, seal/stamp designs, the authentication is furnished by the same Sample Authorities as the apostillation, see I.A.2.4.
6. **The process of superlegalisation** takes in person or by mail approximately the same time as an apostillation regarding both ministries as sample authorities; as for the embassies, it depends whether the embassy of a foreign state is located directly in the Czech Republic or abroad (embassies for some states are located e.g. in Vienna, Austria). The fee for superlegalisation by a Czech embassy abroad amounts to 600 CZK, in case of documents necessary for the entry in the Special Births, Deaths, and Marriages Register in Brno (recording foreigners living in the Czech Republic) the fee amounts to 300 CZK. The legalisation fee of the Ministry of Foreign Affairs amounts to 600 CZK (except for legalisations by diplomatic representatives or consular officers under the Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular officers). The tariff is included in the Act No. 634/2004 Sb., as amended, on Administrative Fees (see the Tariff, items No. 5 – 100 CZK for an apostillation, No. 150 – 600 CZK for superlegalisation). The fees are an income of the State budget.

I.A.4.4. Judicial control

See above I.A.2.5. and Annexes I-1 and I-2 Cze – the relevant decisions of the Supreme Court relate both to the Apostille Convention and to the Czech law.

PART I.B. Specific

I.B.1. Introduction

First, distinction should be made between authentication of outgoing and incoming documents, that is, between documents issued or certified by Czech authorities, which are intended to be used abroad and foreign public documents, which are going to be used before Czech judicial and administrative authorities.

Most frequently used documents are certificates of birth, certificates of marriage and certificates of death.

The Special Births, Deaths, and Marriages Register Office in Brno administrates requests to an entry in the register of birth, marriage and death of Czech citizens which occurred in the territory of a foreign state, and request to an entry in the register of recordable events of former foreign citizens who acquired the Czech citizenship. After the entry in the register, the documents of a register – certificate of birth, certificate of marriage and/or registered partnership and certificate of death - are produced. The entries in the register are produced upon request of Czech citizens:

- by means of embassies of the Czech Republic abroad
- by means of a register office of the last stay in the Czech Republic
- by personal filing directly in the Special Register Office
- *ex officio* under international treaties.

Birth certificates, certificates of marriage/and or registered partnership and death certificates are issued by the competent Register Office, see the Act providing for the register of births, marriages and deaths, and for names and surnames No. 301/2000 Sb., as amended.

If necessary, these certificates are authenticated by the superior Regional Authority and afterwards are to be authenticated by the Ministry of Foreign Affairs. If superlegalisation is required, such a document should be authenticated by the embassy of the respective state.

Foreign birth certificates, certificates of marriage and/or registered partnership and death certificates shall have the probative value if they are furnished by the respective authentication (that is, either apostillation or superlegalisation, if required).

The certification and issuing of documents important in international trade, such as certificates of origin, various other types of certificates, ATA carnets etc. is furnished by the Economic Chamber of the Czech Republic (see Act No. 301/1992 Sb., on the Economic Chamber of the Czech Republic and the Agrarian Chamber of the Czech Republic).

Social security of persons moving within European Union/EEA is administered by the Ministry of Labour and Social Affairs. Both the EU social security legislation (Regulation No. 1408/71) and the international agreements on social security are administered by the Czech Social Security Administration. Medical insurance is administered by the Centre for International Reimbursements, unemployment benefits and children allowances, birth grants and funeral grants are administered by the Ministry of Labour and Social Affairs. The public documents which are not covered by the EC legislation or by international agreements on social security (under these provisions, the relevant documents are exempt from legalisation requirements) should be authenticated under the current procedure of apostillation or superlegalisation of public documents (see Sec. 53/4 of the Administrative Procedure Act).

The Czech Republic concluded bilateral agreements on social security with the following states:

- Bosnia and Hercegovina – No. 3/1958 Sb.
- Bulgaria – No. 2/2000 Sb.m.s.
- Canada – No. 1/2003 Sb.m.s.
- Chile – No. 23/2004 Sb.m.s.
- Croatia – No. 82/2000 Sb.m.s.
- Israel – No. 73/2002 Sb.m.s.
- Macedonia – No. 3/1958 Sb.
- Quebec – No. 124/2003 Sb.m.s.
- Romania – No. 25/2004 Sb.m.s.
- Russia – No. 116/1960 Sb.
- Switzerland - No. 267/1997 Sb.
- Turkey – No. 135/2004 Sb.m.s.
- Ukraine - No. 29/2003 Sb.m.s.
- Yugoslavia (applies to Serbia and – so far - to Montenegro) – No. 130/2002 Sb.m.s.

Some exemptions of authentication requirements in the social security area may also be referred from bilateral agreements on legal aid, however, it is necessary to verify in every case whether the respective public document is covered by such an agreement. The status of bilateral legal aid agreements is included above under I.A.3.1.

As to social security of migrants, see Annex V Cze Social Security of Migrants (document available on the webpage of the Ministry of Labour and Social Affairs of the

Czech Republic, see <http://www.mpsv.cz/en/1877>, author: Ministry of Labour and Social Affairs).

The Centre for International Reimbursements is an association of legal entities (health insurance companies) and it arose as a necessary condition of the institutional provision for the EU-law and international treaties on the social security execution in the field of the national health insurance. The Centre offers consultancy in legal, administrative and technical matters regarding the claim on health care material benefits from the national health insurance during the stay of Czech insured people abroad or during the stay of insured foreigners in the territory of the Czech Republic. The Czech Republic has introduced relatively quickly the European Health Insurance Card and the system of E-forms relating to medical insurance schemes and insurance benefits etc. These forms bring substantial exemptions from the authentication requirements of the respective public documents.

I.B.2. Specific documents

1. Documents proving involuntary unemployment

Under the Employment Act No. 435/2004 Sb., as amended, the application for the unemployment support in the Czech Republic is filed by the respective Labour Exchange Authority and should be accompanied for example by the proof of employment (working paper), an agreement to perform work, certificate on the participation in the pension insurance for independent (self-employed) persons, etc. The application must include the number of the identity card, birth identification number and other relevant dates. In the framework of the European Union, for unemployment benefits applications is used European Form No. E 301 (E 300), which does not require the certificate of the insurance period (the insurance period is centrally evidenced by the Czech Social Security Administration). The European forms are uniform ("mirror forms") so that they are legible and understandable for the administrative officials in all EU/EAA Member States (since 1.4.2006, also with respect to Switzerland). In the Czech Republic, the forms used are in the Czech language.

Outside the EU/EAA, the situation depends on the fact whether there is a bilateral treaty (which may include mirror forms, too) or whether the apostillation or classical superlegalisation process is necessary.

As regards the rights of EU citizens and their family to move and reside freely in the Community, the Czech Republic has recently amended the Act. No. 326/1999 Sb., on Residence of Aliens in the Territory of the Czech Republic. The residence of aliens may be: temporary or long-term, or permanent. The last amendment of this Act lays down special provisions on the stay of an EU citizen and his family members on the basis of a special stay permission. Such permission may be either temporary or permanent (in details see Sec. 87a ff. of the Act). A stay permission certificate is issued as a public document certifying the name, birth, nationality, address etc. The application for this stay permission should be accompanied by the travelling document (passport), a document certifying the purpose of the stay (whether it is employment, business or other activity, or studies), a photograph, a sickness insurance certificate: this certificate is required unless the purpose of the stay is employment, business or other gainful activity (that means that, in most cases, this certificate is no longer required), and a certificate on the accommodation in the territory.

2. Documents proving a family relationship or other durable relationship

As regards certificate of birth, certificate of marriage and/or registered partnership and certificate of death, see above I.B.1. Conditions of a marriage are stipulated by the Family Act No. 94/1963 Sb., as amended, and the conditions of a registered partnership are regulated by the Act on Registered Partnership No. 115/2006 Sb. For purpose of a marriage of a foreigner before a Czech authority, or a marriage of a Czech citizen abroad, a Certificate of no impediment to marriage is necessary (Czech Republic) and/or may be required in case of marriage act ceremony abroad.

A certificate of birth issued by the competent register office according to the birthplace should be authenticated by the superior regional authority. A certificate of marriage and/or registered partnership issued by the competent register office according to the place of celebration should be authenticated by the superior regional authority. A certificate of death issued by the competent register office according the place of death should be authenticated by the superior regional authority. A certificate of no impediment to marriage issued by the competent authority (municipal office) according to the last permanent stay should be authenticated by the superior administrative authority. These documents, if they are outgoing documents, should be legalised by the Ministry of Foreign Affairs and, if necessary, also superlegalised by the respective embassy. Incoming documents - see above I.B.1.

3. Documents proving or contesting a parent-child relationship

To these documents belong in particular birth certificates and court judgments, for example a judgment of divorce, judgment of adoption (or cancellation of adoption) or a paternity judgment. Paternity may also be determined by the common declaration of parents. The respective court judgments should be authenticated, if necessary, by the Ministry of Justice; the administrative documents are submitted, if necessary, to authentication of the Ministry of Foreign Affairs.

4. Documents proving the name and forenames of a child or adult

The name and forenames of a person can be proved by a birth certificate or a marriage certificate and/or a registered partnership certificate (see above), or by an identity card or a travelling document (passport). The identity card and the passport are public documents, there are however problems with their authentication (required by some states) because these documents are not authenticated by the sample authority. It is recommended to make certified a copy of the document with the declaration that this is my passport (and the like).

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

To the documents belong, in particular, a certificate of marriage, a certificate of registered partnership, a death certificate, a divorce judgment or a judgment on termination of the registered partnership. With respect to authentication of these documents, if necessary, see above.

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

To documents for the purpose of pursuing specific professional activities belong, *inter alia*, a trade licence certificate or a trade permit certificate issued by the Trade Licence Office (see the Trade Act No. 455/1991 Sb. as amended), or special authorisations, e.g. a banking licence (see the Act on Banks No. 21/1992 Sb. as amended). The copies of these certificates are authenticated at the Ministry of Foreign Affairs (if necessary).

A copy of an entry in the Criminal Records should be authenticated by the Ministry of Foreign Affairs, if necessary (so-called certificate for a foreign country, this document shall be directly authenticated by the Ministry without requirement of any previous authentication, see the Act on the Criminal Records No. 269/1994 Sb.).

7. Documents proving a person's professional qualifications (diplomas)

Diplomas and other education documents: originals or copies of the study documents certified by a notary or a municipal authority should be authenticated first by the Ministry of Education, Youth and Physical Education. Only if they bear prior certification of the Ministry of Education, they can be furnished by the necessary authentication of the Ministry of Foreign Affairs.

A significant step towards exemptions of authentication is the mutual recognition of diplomas, either on the level of the EU, or by means of bilateral treaties on cultural cooperation or cooperation in education.

The bilateral treaties which foresee simplification of mutual recognition of diplomas have been concluded with the following states:

Egypt – No. 49/1958 Sb.
Guinea – No. 174/1960 Sb.
Mali – No. 84/1964 Sb.
Algeria – No. 200/1964 Sb.
Spain – No. 5/1980 Sb.
Morocco – No. 45/1980 Sb.
Yemen – No. 103/1980 Sb.
Korea – No. 230/1994 Sb.
Slovenia – No. 182/1995 Sb.
Romania – No. 196/1998 Sb.

Multilateral treaty:

Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region 1979, UNESCO
– No. 77/1990 Sb.

Mutual recognition of diplomas is also anticipated by some acts on special professions, as e.g. various acts on medical or veterinary qualifications or diplomas (see e.g. Communication of the Ministry of Health No. 340/2005 Sb. Implementing the Directive No. 93/16/EEC), or the Act on profession of authorized architects No. 360/1992 Sb. as amended.

8. Documents proving a person's death

Regarding certificates of death, see above. Declaration of death: Only a Czech court shall be competent to declare a missing Czech citizen dead. A Czech court may declare a missing alien dead in accordance with Czech substantive law with legal effects for persons permanently domiciled in the Czech Republic and for property located there. A decision on declaration of death falls under the regime of court's decisions and can be

authenticated, if necessary, by the Ministry of Justice.

9. Documents proving a person's date of birth

The person's date of birth is stated in the certificate of birth, see above.

10. Documents proving the establishment by incorporation of a company

Legal entity of a person can be proved by a copy of an entry in the Commercial Register, such a copy should be authenticated (legalised or apostilled), if necessary.

11. Documents proving the constitution of a company, including any official translation thereof

Under the Commercial Code (Act No. 513/1991 Sb., as amended), an application for an entry in the Commercial Register should correspond to the requirements included in the Part I, Chapter III of the Commercial Code (Sec. 27 ff.). The details, including the individual forms and enclosures to the forms, are stipulated by the Resolution No. 250/2005 Sb., on Forms for applications for an entry in the Commercial Register. The documents proving a company and its seat are, *inter alia*, Memorandum of Association, Articles of Incorporation, deeds of incorporation, entry in the Land Register (Cadastre), contract on lease or sublease etc. (Sec. 30 of the Commercial Code). The purpose of business activity is testified by trade licence certificates and other certificates. Administration and payment of investment contributions before incorporation should be accompanied by a declaration of the administrator of the bank deposit and by the certification of a bank of the paid-up amounts into a special bank account (see Sec. 163a of the Commercial Code). Regarding authentication of copies of an entry in the Criminal Record, see above.

An official authentication of a signature or a document is either an authentication by a notary or an authentication by a municipal or other administrative authority and authentication by an embassy of the Czech Republic. An authentication by the competent authority of a foreign state shall be recognized in case of a bilateral treaty on legal aid. In other cases, the public document of a foreign state should either be furnished with the Apostille clause or superlegalised.

The documents which are required by the Czech Commercial Register should be furnished with the translation of such a document into the Czech language, unless the Court declares that the translation is not required. If the translation is required by the Court, it should be provided with authentication, except for official languages of the European Union and the European Economic Area (see Sec. 38k para. 3 of the Commercial Code).

12. Documents proving the latest banking accounts of a company

Documents proving the latest banking accounts of a company may be required by the Commercial Register for example in connection with the increase of the registered capital (see also above). Such documents should be authenticated by the bank (a bank established in the Czech Republic).

Signature cards of the Czech National Bank and of the Czech Securities Commission are available at the Sample Authority of the Ministry of Foreign Affairs, such certifications, however, are very exceptional.

13. Documents proving the deposit of cash or certificates of deposit

See above. A certification of an entry of the Czech Securities Center does not require any authentication before the Czech Commercial Register Court. Foreign securities have not yet been a subject-matter of evidence before the Commercial Register Court in Prague; in such a case, standard procedure would presumably be required (bearer stock could be evidenced by a contract, registered stock could be evidenced by the list of stockholders, these documents should be authenticated, see above).

PART II – Incoming documents: Effects in the Member State’s legal order

In general, under the Civil Procedure Code (Sec. 134), documents issued by Czech courts or other state organs (agencies) within the scope of their competence, as well as documents declared to be public under special provisions, certify that they constitute an order (a decree) or a statement of the organ (agency) which issued the document, and, unless the contrary is proven, also the truthfulness of what each of the documents certifies or confirms. In any case, the court has right to prove the authenticity of every public document, whether it was actually issued by the competent authority or whether it is a counterfeit.

As for public documents which have character of a confirmation or a certificate, the court should assess not only the authenticity but also the truthfulness of the contents. This applies both to public documents issued by Czech authorities and to foreign public documents as, under the Private International Law Act (Sec. 52), documents issued by foreign courts and authorities, which are considered as public documents in the place of their issue, shall have the probative value of public documents also in the Czech Republic, if they are furnished with the prescribed authentication.

All legalized foreign public documents are in general treated equally, irrespective of the State of their origin and irrespective of the type of document in question.

II.A.1. European Community Law

II.A.1.1. The effect of the implementation of Community law

As it has been mentioned above, EC Regulations are incorporated automatically into the Czech law so that there are no provisions in the Czech law implementing Regulations, unless specifically required (for example, as regards recognition and execution of foreign decisions in proceedings governed by the EC Regulation No. 44/2001, however, this implementation does not concern foreign public documents).

The only distinction as to documents originating in different Member States relates to Denmark.

II.A.1.2. Admissibility and evidentiary weight in judicial proceedings

The documents falling under the scope of the Community law provisions are equally admissible in judicial proceedings and produce the same evidentiary weight as equivalent domestic public documents. The judicial practice does not signalize any problems so far.

II.A.1.3. Admissibility and evidentiary weight in administrative matters

The documents falling under the scope of the Community law provisions are equally admissible in administrative proceedings and produce the same evidentiary weight as equivalent domestic public documents. The practice of administrative authorities does not indicate any problems so far.

II.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

II.A.2.1. The effect of completion of the requirements of the Hague Convention

The effect of completion of the requirements of the Apostille Convention is, as compared to the practice before the entry of the Convention into force for the Czech Republic (relatively recently), enormous. The apostillation is the most frequent practice as to legalisation of foreign public documents.

II.A.2.2. Admissibility and evidentiary weight in judicial proceedings

The documents falling under the scope of the Hague Apostille Convention are equally admissible in judicial proceedings and produce the same evidentiary weight as equivalent domestic public documents. The judicial practice does not indicate any problems so far.

An exception is the special recognition procedure under Sec. 67 of the Private International Law Act, which reads as follows:

Section 67

(1) Final foreign decisions in matrimonial matters and in matters involving determination (ascertainment or denial) of paternity, in which at least one of the parties is a Czech citizen, shall be recognized in the Czech Republic, unless barred by the provisions of Sections 63 and 64 (b), (c), (d), only on the basis of a special decision.

(2) Only the Supreme Court of the Czech Republic may pronounce the recognition of the decisions listed in paragraph 1 after hearing the opinion of the Prosecutor General of the Czech Republic. Besides the parties, the motion may be filed by any person who proves his legal interest and, in the public interest, also by the Prosecutor General of the Czech Republic. The Supreme Court of the Czech Republic shall decide by judgment; it need not order a hearing.

(3) The decisions listed in paragraph 1 may be recognized only if the facts of the case have been ascertained in a manner which basically conforms to the respective provisions of Czech law.

This means that even if the foreign judgments, originating for example in United States, are furnished with an Apostille, they are subject to a special procedure before the Supreme Court.

This procedure also applies in general to paternity judgments (see also Art. 1/3 [a] of the Regulation No. 2201/2003).

II.A.2.3. Admissibility and evidentiary weight in administrative matters

The documents falling under the scope of the Apostille Convention are equally admissible in administrative proceedings and produce the same evidentiary weight as equivalent domestic public documents. Moreover, under Sec. 57/2 of the Act providing for register of births, marriages and death, and for names and surnames, the Registry may waive verification if verification arrangements entail a close to insurmountable obstacle. This provision is applied considering all circumstances of the case (for example, a Czech tourist died in Peru and the superlegalisation of the respective certificate, which was for his parents not easily available, was waived for serious grounds).

II.A.3. Parallel international agreements

II.A.3.1. The effect of completion of the requirements of parallel agreements

Under the parallel agreements, foreign public documents are usually exempt from any legalisation requirements. This situation is advantageous with respect to most contracting states; however, problems may appear with respect to some bilateral treaties on legal aid concluded by the Czech Republic and/or former Czechoslovakia with e.g. Vietnam or former Soviet Union still within the era of socialism. These bilateral agreements are sometimes too liberal and enable – at least to a certain extent - fraud (for example, certificates of no impediment to marriage of Vietnamese citizens submitted to Czech authorities were sometimes false).

II.A.3.2. Admissibility and evidentiary weight in judicial proceedings

The documents falling under the scope of parallel agreements are equally admissible in judicial proceedings and produce the same evidentiary weight as equivalent domestic public documents.

II.A.3.3. Admissibility and evidentiary weight in administrative matters

The documents falling under the scope of parallel agreements are equally admissible in administrative proceedings and produce the same evidentiary weight as equivalent domestic public documents.

II.A.4. National Law

II.A.4.1. The effect of the completion of the requirements of national law

Under the Private International Law Act, documents issued by foreign courts and authorities, which are considered as public documents in the place of their issue, shall have the probative value of public documents also in the Czech Republic, if they are furnished with the prescribed authentication. Under the Administrative Procedure Code, the authenticity of official stamps and signatures attached to public instruments issued by foreign authorities shall be verified by bodies having such powers.

All legalized foreign public documents are in general treated equally, irrespective of the State of their origin and irrespective of the type of document in question.

II.A.4.2. Admissibility and evidentiary weight in judicial proceedings

The documents falling under the scope of national law are equally admissible in judicial proceedings and produce the same evidentiary weight as equivalent domestic public documents, if they are furnished with the prescribed authentication.

II.A.4.3. Admissibility and evidentiary weight in administrative matters

The documents falling under the scope of national law are equally admissible in administrative proceedings and produce the same evidentiary weight as equivalent domestic public documents, if they are furnished with the prescribed authentication.

PART III – Incoming documents: Difficulties

PART III.A. General

III.1. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

III.A.1.1. Legal

There are no legal problems reported so far.

III.A.1.2. Practical

The ‘Apostille’ Convention is applied by Czech courts and administrative authorities without any problems. In this respect, interesting appear both decisions of the Czech Supreme Court (see Annex I-1 Cze and Annex I-2 Cze), in which the Supreme Court took a more liberal position as compared with the practice of the lower courts. It appears that lower courts proceed very formally but, on the other hand, they proceed in conformity with the relevant legal provisions and it is a matter of the Supreme Court to mitigate the sometimes hard provisions of the law.

III.2. Parallel international agreements

III.A.2.1. Legal

Legal problems relate sometimes to outgoing documents, as Contracting States to some bilateral treaties on legal aid, in particular Spain, Switzerland, Greece, Hungary, Cyprus, Slovenia, Russia, Belorussia, Bulgaria, Vietnam, Moldavia, Georgia and some other require an Apostille and do not observe the exemption of legalisation requirements under the bilateral treaty in question.

As regards the documents, which originate in these States, incoming to the Czech Republic, Czech authorities do not apply the requirement of reciprocity towards such public documents. This means that Czech authorities proceed in conformity with the bilateral agreements, irrespective of reciprocity. The only exception applies to Switzerland: now, Czech authorities allegedly require an Apostille, too.

This information should be treated as strictly confidential.

III.A.2.2. Practical

The apostillation requirement means, of course, additional costs related to an Apostille (in details see above I.A.2.4.).

III.3. National law

III.A.3.1. Legal

Under the Czech law (Sec. 52 of the Private International Law Act, Sec. 53/4 of the Administrative Procedure Code, see above), either an apostillation or a superlegalisation of the foreign documents is required, except for cases in which EC law and/or international treaties are applied.

III.A.3.2. Practical

Problems may appear in relation to some documents which should be submitted under the Czech law but which are unknown or treated differently by some foreign states. For example, a statement of criminal records is unknown to some countries: The problem may be resolved by an additional apostillation of documents declaring before a notary that the person is without a criminal record, etc. This is rather a general problem of different public documents or other documents which should authenticate some fact, for example the evidence of a temporary or a permanent stay in some country, or the evidence of identity of a natural person as identity cards are unknown in some states, too.

PART III.B. Specific

In most cases, no particular problems except for those listed above appear. As to authentication of specific documents, see above I.B.2.

PART IV – Outgoing documents: Difficulties

PART IV.A. General

IV.A.1. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

IV.A.1.1. Legal

In general, there are no legal difficulties with an apostillation of public documents, Czech sample authorities proceed in conformity with the Convention, in details see above I.A.2.4.

IV.A.1.2. Practical

In general, there are no practical difficulties with an apostillation of public documents, Czech sample authorities proceed in conformity with the Convention, in details see above I.A.2.4.

The applicants sometimes require – as a precaution or from previous experience - an apostillation even in relations to states who are contracting parties to a bilateral treaty on legal aid.

IV.A.2. Parallel international agreements

IV.A.2.1. Legal

The bilateral treaties are mostly a great help to both authorities and private persons. The relevant documents are exempt from legalisation requirements.

IV.A.2.2. Practical

In this point, problems really exist. Despite the existing bilateral treaties on legal aid, some Contracting States, in particular Spain, Switzerland, Greece, Hungary, Cyprus, Slovenia, Russia, Belorussia, Bulgaria, Vietnam, Moldavia, Georgia and some other require an Apostille and do not observe the exemption of legalisation requirements under the bilateral treaty in question.

For example, a new state confirms its succession to the bilateral treaty concluded with the former Union or Federation (Soviet Union, Federation of Yugoslavia) but, in practice, requires from the Czech persons and companies an Apostille.
This information should be treated as strictly confidential.

IV.A.3. National law

IV.A.3.1. Legal

Under Sec. 62 of the Private International law Act, documents issued by judicial organs or documents authenticated by them or signed before them, which are to be used abroad, shall be superlegalised (authenticated) at the request of the respective party by the Ministry of Justice. This requirement is interpreted extensively and it also includes the administrative procedure within the Ministry of Foreign Affairs and the superlegalisation procedure in the Czech Embassies.

IV.A.3.2. Practical

As to practical questions, see above I.A.4.3.

PART IV.B. Specific

In most cases, no particular problems except for those listed above occur. As to authentication of specific documents, see above I.B.2.

PART V – Justification of legalisation or other similar or equivalent requirements in European context

In a European context, that is, with respect to EU and EEA citizens, legalisation requirements, if any, are not always justified, and in my opinion it seems reasonable to consider introduction of the similar regime to that laid down in the bilateral treaties on legal aid.

The questions could be answered as follows:

1. Under the viewpoint of the Czech legislation, there are no legalisation requirements or any other similar requirements (requirements procedures) or rules concerning the effects of foreign documents (effects rules) that overtly discriminate on grounds of nationality between EU Member States.
2. There are no legalisation requirements and procedures or effects rules that otherwise appear discriminatory or operate in discriminatory manner either.
3. In principle, the legalisation requirements and procedures or effects rules do not influence the free movement of goods, persons, services or capital between the Member States of the European Union in a manner to be potentially liable to hinder it or to make it less attractive; for Czech Republic, more important are for example obstacles to free movement of workers, still in force in some EU Member States.
4. There were no particular problems identified.
5. We could rather compare the superlegalisation and apostille requirements with the liberal treatment included in bilateral and/or multilateral treaties or in relevant EC rules. This is not a question of rationality but that of ability and willingness of the States to conclude an international treaty or to adopt some general regulation within the European Union that would abolish or mitigate the legalisation requirements.
6. In my opinion and experience, the applicable requirements and procedures are effective. They guarantee, at least to certain extent, that their aims - legal certainty and authenticity of submitted public documents - are achieved. Unfortunately, Czech authorities meet sometimes with fraud and it is necessary to be careful and, perhaps, to remain rather conservative with respect to evaluation of proposals leading to some extremely liberal changes.
7. The requirements and procedures or effects rules may appear ineffective or rather superfluous in relations to EU/EEA citizens within the EU/EEA. Example: in relations between Germany and Czech Republic (which are very frequent) certificates of birth, certificates of death and other current documents issued by registries of the other state should be apostilled as there is no bilateral treaty on legal aid between these two neighbour states.
8. The same aims, that is, legal certainty and authenticity of documents, cannot be unfortunately achieved by less burdensome means. However, it is possible to achieve, at least to some extent, mutual trust and interconnection in the framework of the authorities of the Community Member States.
9. In general, the requirements and procedures and effects rules could be simplified, for example with respect to certificates issued by State authorities, as Ministries, Registries, etc.
10. Apparently, there are cases in which the requirements appear superfluous or disproportionate. Such cases, however, are not often reported in the Czech Republic, as - probably - the applicants rather arrange for the respective verification requirement and do not appeal from such a requirement before a court. The above cited decisions of the Czech Supreme Court seem to be rather exceptional.
11. The exceeding requirements are sometimes resolved through an indirect (secondary) verification of the documents which was found acceptable. Such a double procedure, of course, does not reduce the administrative. The best solution with respect to simplification of the procedure seems to be the regime similar to that existing under the bilateral treaties.
12. Recently, no modifications with respect to legalisation of foreign documents were adopted, except for simplified regime for the EU/EEA nationals, corresponding to the relevant EU legislation (for example the simplified procedure for obtaining the special stay permission for EU nationals, see above I.B.2.1.).

PART V.A. General

V.A.1. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

V.A.1.1 Requirements and procedures

The requirements and procedures correspond to the Convention.

V.A.1.2 Effects rules

As stated above, ratified and published international treaties apply directly.

V.A.2. Parallel international agreements

V.A.2.1 Requirements and procedures

From the part of the Czech Republic, the requirements and procedures correspond to the respective bilateral treaties or multilateral conventions.

V.A.2.2 Effects rules

As stated above, ratified and published international treaties apply directly.

V.A.3. National law

V.A.3.1 Requirements and procedures

Czech national law has a standard and perhaps rather conservative regulation of legalisation requirements of public documents in the Private International Law Act which applies in general, not only to judicial procedure but also to administrative procedure. On the other hand, Czech Republic is Member State of many bilateral and multilateral treaties and conventions which abolish or at least mitigate the legalisation requirements.

V.A.3.2 Effects rules

The rules of the Private International Law Act (see above Sec. 52) correspond to the traditional approach to authentication requirements.

PART V.B. Specific

As to authentication of specific documents, see above I.B.2.

PART VI – Suggested action

VI.1. European

At the European level, there are various possibilities to simplify the system of authentication of public documents. An inspiration may be found either in bilateral legal aid agreements, which abolish legalisation requirements with respect to certain categories of public documents, or in various European Standard Forms, applied for example to social security of EU migrants or to medical insurance schemes. These "mirror" forms proved to be useful and efficient. In my opinion, it is possible to consider an extension of the regime of bilateral agreements to the territory of the EU/EEA. The application of European Standard Forms has, on the other hand, only limited fields of application.

VI.2. Intergovernmental

The Czech Republic shall take part in the new E-Apostille Programme of the HCCH and the NNA. Undoubtedly, liberalisation of authentication requirements has its limitations, it is necessary to ensure protection in particular against fraud. Experience shows misuse of rights, for example within the regime of bilateral treaties (in the field of commercial law and family law), or within the liberalisation of the free movement of goods.

VI.3. National

At the national level, that is, within the Czech law, the question of public documents, their legalisation, and position of foreign public documents before courts is laid down in a traditional continental way; we may say that, except for some details, the regulation of the Czech Republic is similar to those of Austria and Germany. The centre of gravity of future legislative amendments should consist in intergovernmental actions or actions on the Community level as national law, in the first line, should protect Czech legal order and Czech legal environment from fraud and counterfeit which relatively often occur even today, unfortunately, mostly “thanks” to liberal regime introduced by the treaties and EC law.

The idea of “mutual trust” is perhaps still too early; for the time being, it can be only achieved within the EU/EEA (if at all).