

The Thai King in Germany: The Status of Foreign Heads of State on Private Visits

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The King of Thailand Maha Vajiralongkorn frequently stayed in Germany for longer periods of time – making the country his second home. He owned a lakeside villa in the town of Tutzing in Bavaria. As he was not on an official State visit to Germany and also was not in the country at the invitation of the Federal Government, these were purely private stays. When in early 2000 mass pro-democracy protests broke out in Thailand, the king was living in Germany. While the protests were first directed at the government, they later also included demands for reform of the Thai monarchy. This triggered questions whether the king was actually ruling his country from Germany and whether he was allowed to do so under international law. The king left Germany for Thailand on 19 October 2020, but the prospect of him returning in due course triggered further questions about his status under international law while residing in Germany in his private capacity. The Thai king returned to Germany on 8 November 2021.

The first question the Federal Government faced was whether it could prevent the Thai king from returning to Germany. Like other States, Germany facilitated the entry, departure and transit of foreign heads of State by exempting them from immigration, customs and quarantine procedures as well as aviation security controls. In response to a parliamentary question, the Secretary of State at the Federal Foreign Office Antje Leendertse stated:

The Federal Government is of the opinion that section 1 paragraph 2 number 2 of the Residence Act is relevant here and that there is therefore no visa requirement for stays of any kind by foreign heads of State in Germany.

This follows from the fact that section 20 paragraph 2 of the Courts Constitution Act (GVG) is a general catch-all provision for all those cases that do not explicitly fall under sections 18 [diplomatic agents], 19 [consular agents] and 20 paragraph 1 GVG [official visitors] and thus also for the special case of a purely private stay of a head of State. ...

However, due to its territorial sovereignty, Germany is free to accept the stay of a foreign head of State or to end this acceptance.

Foreign heads of State thus do not have a right to enter or stay in Germany without the consent, implied or otherwise, of the Federal Government. It would have been

open to the Federal Government to deny entry to the Thai king for political reasons, for example, in order to avoid the embarrassment of hosting a leader facing mass pro-democracy protests and demonstrations in his own country. Such denial of entry is usually conveyed in advance by diplomatic channels to save the foreign head of State the discomfiture of being turned away at the border. A foreign head of State, however, can also be formally declared *persona non grata*. The latter, however, will usually put a serious strain on bilateral relations.

The second question raised was whether the Thai king was liable to pay various taxes in Germany. The king lived in Germany when his father, the late King Bhumibol Adulyade, died in 2016 and reportedly left him a fortune of an estimated 10 billion euros. Under German law, as a resident, the king was subject to a 30 per cent inheritance tax, meaning the king owed the German treasury nearly 3 billion euros. As a property owner in the municipality of Tutzing, the king was also subject to second home tax and council tax. However, no taxes were paid, and no tax statements were issued. As shown by the statement of Secretary of State Leendertse, the Federal Government considered the Thai king to fall under section 1 paragraph 2 number 2 of the Residence Act. Section 1 provides:

(1) This Act serves to manage and limit the influx of foreigners into the Federal Republic of Germany. It enables and organises immigration with due regard to the capacities for admission and integration and the interests of the Federal Republic of Germany in terms of its economy and labour market. At the same time, the Act also serves to fulfil Germany's humanitarian obligations. To this end, it regulates the entry, residence, economic activity and integration of foreigners. The provisions contained in other acts remain unaffected.

(2) This Act does not apply to foreigners ...

1. who are *not subject to German jurisdiction* according to the provisions of sections 18 to 20 of the Courts Constitution Act (GVG).

Section 20 paragraph 2 of the Courts Constitution Act provides that 'German jurisdiction also shall not apply to persons ... insofar as they are exempt therefrom pursuant to the general rules of international law'. The Federal Government thus took the view that the Thai king was exempt from German jurisdiction under rules of customary international law even when staying in the country privately. This is in line with the relevant circular note of the Federal Foreign Office which provides:

Hheads of State, heads of government and members of the government of other states and their entourage who are in Germany at the official invitation of the Federal Republic of Germany enjoy immunity from German jurisdiction.

This follows from section 20 paragraph 1 GVG, according to which German jurisdiction does not extend to representatives of other states. Section 20 paragraph 2 GVG clarifies that German jurisdiction does not extend to persons other than those named in section 20 paragraph 1 and in

sections 18 and 19 (members of diplomatic and consular missions or representations), insofar as they are exempted from it on the basis of general rules of international law, international agreements or other legal provisions. According to the general rules of international law, foreign heads of State are exempt from German jurisdiction *even if they are not in the Federal Republic by official invitation*. Unlike in international criminal jurisdiction (cf., e.g., Article 27 of the Rome Statute of the International Criminal Court), customary international law does not recognise any exceptions to immunity from national criminal jurisdiction even in case of grave crimes under international criminal law.

The entourage of representatives of other States include, for example, accompanying family members, advisers, interpreters, members of the press and other personal advisers as set out in the delegation list provided by the sending State. Family members of representatives of other States are exempt from jurisdiction only if they are in the country by official invitation and in their capacity as members of a visiting delegation. The exemption does not apply in case of stays or other purposes (e.g. stays for tourism or study).

According to general customary international law ... heads of State, heads of government and cabinet members are also 'inviolable', so that no sovereign coercive measures may be taken against them. As a consequence, this group of persons may not be subjected to aviation security controls, which EU member States may impose under the relevant EU regulations to be observed in this area.

As inheritance tax is within the competence of the federal states in Germany, the Bavarian state government was asked in a parliamentary question about the tax status of the King of Thailand. The state government replied:

The King of Thailand enjoys immunity as head of State. According to customary international law, heads of State and foreign ministers have comprehensive immunity for official and private acts (*ratione personae*) during their term of office. The legal basis is to ensure the exercise of their function. The Vienna Convention of 18 April 1961 on Diplomatic Relations is not applicable in this case.

This was also confirmed by the Munich public prosecutor's office. When a criminal complaint was filed against the mayor of the town of Tutzing for not enforcing the second home tax law against the Thai king, the public prosecutor declined to open an investigation against the mayor for lack of reasonable suspicion of an offence on the mayor's part because as foreign head of State the King of Thailand enjoyed immunity.

There have been voices in the literature advocating a more limited immunity of heads of State when on private visits abroad – especially with regard to their private acts. The Institute of International Law in its 2001 resolution on 'Immunities from Jurisdiction and Execution of Heads of State and of Government in International

Law' also took the position that in 'civil and administrative matters, the Head of State does not enjoy any immunity from jurisdiction before the courts of a foreign State, unless that suit relates to acts performed in the exercise of his or her official functions.... Nonetheless, nothing shall be done by way of court proceedings with regard to the Head of State while he or she is in the territory of that State, in the exercise of official functions.'

Germany, on the other hand, still adheres to the traditional customary international law position of absolute personal immunity of heads of State from criminal, civil and administrative jurisdiction even when on a private visits abroad. The immunity of heads of State thus extends further than diplomatic immunity. In addition, the person of a head of State is inviolable at all times. The head of State personifies the sovereign State. He or she is recognised under international law as representative of the State solely by virtue of the office. Any act of authority taken by another State against the head of State would be inconsistent with the sovereign equality and dignity of his or her State. These considerations apply irrespective of whether the head of State is on an official visit or a private visit. Germany's position is in line with that of the International Court of Justice (ICJ) which determined in the *Arrest Warrant* case that a head of State 'enjoy[s] immunities from jurisdiction in other States, both civil and criminal', and that 'the functions of a head of State are such that, throughout the duration of his or her office, he or she when abroad enjoys full immunity from criminal jurisdiction and inviolability. That immunity and that inviolability protect the individual concerned against any act of authority of another State.' The ICJ did not distinguish between official visits and private visits. Foreign heads of State are thus fully shielded from any act of public authority while staying in Germany. No tax statements, court summons or fines could be issued against the Thai king. He was also protected against communication surveillance in order to monitor his actions in Germany and restrictive measures taken during the coronavirus pandemic.

While Germany accords full personal immunity to heads of State it takes a more restrictive approach with regard to their family members. The entourage of the Thai king accompanying him during his stay in Germany thus did not enjoy any privileges and immunities. Other States have been more generous in this respect, granting immunity to family members of heads of State even when travelling on their own in a private capacity. The immunity of family members, however, seems to be based more on comity than established rules of customary international law. In any case, Germany was under an obligation to give special protection from any attack on the person, freedom or dignity not just to the Thai king but also to his family members. The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons defines 'internationally protected person' as 'head of State ... *whenever* any such person is in a foreign State, as well as members of his family who accompany him'. The use of the term 'whenever' indicates that such special protection is due also on private visits.

Category: [Territorial sovereignty](#)

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