

Immunity and privilege of international organizations in Kosovo

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Abstract

To speak for the Diplomatic Law (Immunities and Privileges) in International Organizations, first, this topic briefly describes the international organizations, what are they, as established, as extinct, and finally, as a shared international organizations. They are not subject of this paper, but Immunity and Privileges in International Organizations are. This paper gives an overview of the history of the immunity and privileges in international organizations, conventions, laws of the country regarding Immunities and Privileges, where the seat of the International Organization, Immunities and privileges of diplomatic representatives in international organizations, Immunities and privileges of representatives of international organizations in the state where the seat of the Organization, immunity and privileges of members of the family, diplomatic representatives International Organizations, Immunities and Privileges in the European Union, the difference between the immunity and privileges of international organizations, and Immunity and Privileges between states.

This paper analyzes also the immunity and inviolability of buildings of International Organizations, immunity and inviolability of the archives of international organizations, the immunity and privileges of goods to international organizations, the release from the obligation of tax payments, the release from the provision of the diplomatic staff of International Organizations, etc.

However, the paper includes charts, respectively, some official data from countries where the headquarters of international organizations are situated and gives an overview of the number of international governmental and nongovernmental organizations.

Keywords: Organizations, International, Immunity, Privileges, Diplomatic, Conferences, Conventions, Interstate, Entities, UNMIK, KFOR.

Introduction

To analyze Immunities and privileges in International Organizations, we should firstly speak about the history/the birth of International Organizations. First Organizations, we know since in the ancient time, or better said, in the pre-classical time is the Convention of Kadesh in the period of Pharaoh Ramses II and King Hattusi II, who had intended, to keep communities Government (Riza, 2015, 15). In Antigua classic, were *Simahit* of Greek countries, which were established as military alliances, later established as the regional organization that called Peace Links between the cities of that time, while in ancient Rome Pax Romana preceded further in the Middle Time with the creation of cities, but the impetus of the creation of international organizations, was, after holding the Congress of Vienna in 1815, after the First and Second World Wars, and today is the number of multiple international organizations (Riza, 2015, 15).

Codification of Diplomatic Law (Immunities and Privileges in International Organizations)

From what we saw above, we can see that the diplomatic immunity in International Organizations, born since their establishment more, which means that the Privileges and Immunity are quite old. However, Immunities and Privileges at the time, they were not codified. A such codification, started by the Congress of Vienna of 1815; then, at the Congress of Aachen in 1818, the Havana Conference of 1928; General Convention on the Privileges and Immunities of the United Nations in 1946; General Convention on the Privileges and Immunities of the Special Organization of the United Nations in 1947; Adoption of the Convention on the Vienna Convention of 1961; Convention of the General Assembly of the United Nations Special Missions adopted for 1969; Vienna Convention on the representation of countries and their relations with International Organizations of 1975; Convention on the safety of personnel accredited to the United Nations in 1994; Optional Protocol to the Convention on the staff of the United Nations Security 2008 (Frenzel, 2010, 151).

Types of Immunity

Immunities and privileges of international organizations are not the same as those that apply between states. Organizations enjoy immunity only as they need them, to protect their interests and to exercise the function, therefore, enjoy functional immunity (Article 105 of the UN statute from 1945) different from states that enjoy absolute immunities, organizations do not have this advantage. In general, the volume of immunities and privileges in international organizations, besides deriving from international conventions, it depends a lot, even by agreements between states, or country where the headquarters of international organizations, also own International Organization, however, they only enjoy functional immunity.

Immunity in international organizations can be:

Immunities and Privileges of international organizations staff, given that international organizations possess the civil servants, who are employees, who may be a permanent and time-bound contract. These Immunities and Privileges, mostly depend on agreements between the state, where is the headquarters of the Organization, and the International Organization itself, that, as the International Conventions concerning the Privileges and Immunities of International Organizations.

The question is, citizenship officer role, or representatives of the International Organizations Immunities and Privileges?

According to international conventions regarding Immunities and privileges, the nationality of the employees and representatives of international organizations, in the International Organization does not matter, by that it is closely connected with the organization and not the origin of the state.

These privileges and immunities include legal jurisdiction, with fees (taxes) and national services, with money exchange cases etc (Article 18 of the UN convention from 1946). The peculiarity is that in international organizations, diplomatic representatives cannot be declared *persona non grata* (UN convention from 1946)

Immunities and privileges of the family members of the staff of international organizations

Above we realized that immunity and privileges primarily of personnel accredited to international organizations, but easier to perform this function, and this means that they should not be isolated, so they may bring with themselves members of the family (Wife, Parents, Children, and others). For this reason, family members are offered privileges and immunities (UN convention from 1946).

Immunities and privileges of the national delegations to the International Organization

National delegations and their companions enjoy a wide degree of immunity and privileges at various international conferences. These delegations may be the state, which is a permanent member of the International Organization may be associated state, or monitors. If you are a representative of the state, which is a permanent member, or associated (prior to membership), then enjoy immunity and privileges of full, or absolute, and representatives of observer state immunity and privileges restricted and that the judicial jurisdiction, oral statements or writing, freedom of communication and the failure to report in that country (Riza, 2011, 131).

The immunity of diplomat's distinction of international organizations and diplomats States

The difference of immunity and privileges of diplomats of international organizations and Member States is based on material and geography. Diplomatic immunity on material is then, when the diplomat undergoes judicial jurisdiction in the state of delivery, while the International Organization diplomat, is not subject to judicial jurisdiction (Köck & Fischer, 2011, 346).

Immunity and Privileges in the European Union

Immunities and privileges in the EU include all the Union institutions (Parliament, Council, Commission, Court and other officials). Immunities and privileges in the EU are regulated by a special protocol, no. 7 dated 9.05.2008, including rules for member states and their missions, which are summarized in the Lisbon Convention (Article 39 of the Treaty of Lisbon).

Kosovo's legislation regarding Immunities and privileges

It is known that the war in Kosovo happened 1998/99 and 1244/1999 on the basis of the resolution, the Security Council of the United Nations in Kosovo set an International Mission called UNMIK,¹ where on the basis of this resolution was an authorized representative Special of the Secretary-General to lead this mission. With the same resolution, it was stressed that Kosovo should lead the Special Representative of the Secretary-General and he is the authority, which was granted the possibility to the Special Representative to issue regulations, which were a sort of legislation temporary for the territory of Kosovo. Representative, respectively UNMIK chief, knowing that in Kosovo are already in place many international organizations, the mission of UNMIK, KFOR, issued the regulation, which will be offered immunity and privileges to representatives of KFOR, UNMIK, and their persons in Kosovo.² According to the regulation of the aforementioned, the property of KFOR, funds and assets shall have

¹ <http://www.unmikonline.org/pages/default.aspx?26.02.2016>.

² Regulation No. 2000/47 of UNMIK of 18 August 2000 On the status, privileges and immunity of KFOR, UNMIK and their personnel in Kosovo.

been freed from every legal process,³ among other things the local staff, which is recruited in KFOR, so in Kosovo, is exempt from any legal process associated with the spoken word or written and acts performed by them in the performance of duties, which are exclusively with KFOR.⁴

Same as KFOR and UNMIK guaranteed property, funds and assets that are exempt from any legal process⁵ in the same way local staff employed in UNMIK is free from any form of arrest or detention. If arrested, they must be handed over to UNMIK authorities.⁶ Characteristic of this regulation was that immunity and privileges of representatives of KFOR and UNMIK are valid, even after the end of the mandate.⁷

Special Representative of the Secretary-General of the United Nations, or the chief of UNMIK, on September 9, 2002, issued a directive for the implementation of the UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR, UNMIK and their personnel in Kosovo. The reason for issuing this order was that the representatives of these missions seeing Immunities and privileges, which had started to abuse the rights in the exercise of their duties in Kosovo. Through this ordinance it was clarified that the regulation should not be interpreted as UNMIK personnel can not be detained temporarily when the request for the lifting of immunity is set by the Secretary General of the United Nations. If there is argued that the person concerned has committed an offense and if the circumstances suggest the risk of flight. So this order was understood that the representatives of foreign missions in Kosovo enjoy immunity although, nevertheless, in the case of the offense, may be stripped of immunity and privileges, to be detained, and then also be punished. But the removal of immunity by the UN in New York has happened very rarely and that justice has not put in place in Kosovo. Thus, it happened during the protests of 10-th of February 2007, which killed two Albanian citizens. Kosovo citizens, feared that these privileges and immunities may use EULEX. Comprehensive proposal for Kosovo's status, on the basis of which it declared independence, was given immunity by the Kosovo institutions, representatives of the mission of EULEX and ICO. After the declaration of independence (on February 17, 2008), Kosovo passed the law on the Status, Immunities and Privileges of Diplomatic and Consular Missions and Personnel in Kosovo, the international military presence as well as its staff. And expert staff, who enjoy diplomatic privileges and immunities are: a) The International Civilian Representative (ICR) and European Union Special Representative (EUSR); b) Mission of the European Union Rule of Law Mission (EULEX); c) The United Nations, specialized agencies of the United Nations; d) The Organization for Security and Cooperation in Europe (OSCE); and e) other international inter-governmental organizations as it sees fit Foreign Minister will also enjoy the status, privileges and immunities.

Conclusions

Like many states, Kosovo is interested, that in her country have headquarters of international organizations, despite the fiscal privileges guaranteed by the

³ Article 2 point 2.1 of Regulation No. 2000/47 of UNMIK.

⁴ Article 2 point 2.3 of Regulation No. 2000/47 of UNMIK.

⁵ Article 1 point 3.1 of Regulation No. 2000/47 of UNMIK.

⁶ Article 3 point 3.4 of Regulation No. 2000/47 of UNMIK.

⁷ Article 7 of Regulation No. 2000/47 of UNMIK.

International Covenant. But however these organizations at local and national aspect bring many advantages for the country, for example. political prestige, and greater international security. What has been seen recently, different countries compete hard to attract international organizations to establish their headquarters in these countries. Unfortunately, despite the wishes of Kosovo to establish the headquarters of the states, it remains the only delights with international missions (UNMIK, KFOR, EULEX, OSCE) and representatives of organizations located in Kosovo. The reasons are varied: non-recognition of Kosovo by some member states of the EU and some other countries with global impact such Security Council of the UN, such as Russia and China, malfunctioning sufficient state bodies, political uncertainty, no affirmation of Kosovo etc. sufficient. Kosovo, in talks with Serbia, under the auspices of the EU, agreed that Kosovo not be hindered by Serbia for membership in international organizations, but nevertheless, Serbia prevented Kosovo not to join UNESCO. Despite great difficulties, however, Kosovo has managed to be a part, either as a member or observer of many global organizations.⁸ But the focus on our subject. Despite the existence of international conventions and the existence of domestic legislation regarding Immunities and privileges, we had often exceeding the powers of the international missions in Kosovo, which fails unpunished invoking immunity and privileges. For this reason, I think that Kosovo should conclude special agreements with international organizations, which have an interest to establish its missions in Kosovo and these organizations to provide only functional immunity and not the business.

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⁸ The World Bank (UN specialized agency), IMF (UN specialized agency), International Bar Association, Central European Free Trade Agreement, Vienna Economic Forum, European Bank for Reconstruction and Development, European Investment Bank, Council of Europe Development Bank, Regional Cooperation Council, SEE Investment Committee, The Regional Rural Development Standing Working Group of South East Europe, SEE Trade Union Forum, Centre for e-Governance Development, Electronic South Eastern Europe Initiative, Energy Community Secretariat, South East Europe Transport Observatory, Network of Associations of Local Authorities of SEE, South East European Public Privat Partnership Network, South East European Public Privat Partnership Network, US – Adriatic Charter (A5), Education Reform Initiative of South Eastern Europe, RCC Task Force Fostering and Building Human Capital, Regional School of Public Administration, South East European Center for Entrepreneurial Learning, Visegrad Group, Human Dynamics, Western Balkans Investment Framework, Brdo Process, Energy Community, Regional Environmental Network for Accession, Task Force for Fostering and Building Human Capital, ISIS Programme Secretariat, Investment Compact for SEE, NATO Parliamentary Assembly, Venice Commission (CoE), South-East European Cooperation Process, Migration, Asylum, Refugees Regional Initiative.