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**The specific aspects of privileges and immunities of diplomatic agents in  
international law: theory and practice**

Doctoral Dissertation Abstract

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## **Relevance and aims of the research**

In recent times, the interest towards the status of a diplomatic agent, together with the matter of privileges and immunities provided to them, has significantly grown, in connection with the question of the faithful execution of diplomat's official functions, due to the cases of abuse of their position. In the present dissertation, according to my professional experience and scope of interests, I intend to analyze the current state of affairs concerning the diplomatic activity, concentrating on and presenting the actual issues related to the practice of diplomatic agents' activity, namely to their relation to privileges and immunities, which remain one of the most problematic matters of diplomatic law. The principal question is whether the present scope of personal privileges and immunities that modern diplomats enjoy are necessary for the efficient performance of their duties in the system of foreign relations. Subsequently, the thesis is aimed at exploration and better understanding of the characteristics and the specifics of the personal privileges and immunities of diplomatic agents through examination of the theoretical basis and practice of diplomacy, also to inspect the extent to which these privileges and immunities could be invoked, highlight the new challenges in this area that diplomats have to handle in the twentieth first century.

Consideration of issues related to this subject has both theoretical and practical significance. The suggestions and results, obtained in the course of research, could be used in the further improvement of the various issues and problems, concerning personal privileges and immunities of diplomatic agents. The present study may be of interest for subsequent researchers in the field of diplomacy, as well as for current diplomatic servants. Combination of the theoretical (including historical) introduction with concrete examples, presents the development in the field of diplomatic privileges and immunities. The specific objectives of the study, in accordance with the indicated goal, are to:

- investigate the genesis, also the main stages of the history and the advancement of the subject of diplomatic privileges and immunities;
- inquire into the concept of privileges and immunities of diplomatic agents;
- consider the sources and the subjects of diplomatic law, along with the conventions that govern the status of diplomatic agents, and define their scope of activity (authority);
- elaborate on the notion and the legal status of the diplomat itself, also categories of diplomatic privileges and immunities; review the instruments of enforcement of diplomatic privileges and immunities;

- regard the means of international protection of diplomatic agents; observe the problems, concerning privileges and immunities of diplomatic agents, through the related legal cases;
- revise the changes in development of international law to identify the gaps, existing regarding the subject of personal privileges and immunities of diplomatic agents, for their further improvement;
- identify and analyze the prospects for advancement, which are required to be addressed via legal steps.

## **Methodology and sources**

A comparative study of the concept of diplomatic privileges and immunities is presented with regard to the legal literature and the corresponding international legislation. The works of Hungarian and foreign academics in the field of international law, with special regard to diplomatic law, were used as theoretical basis of the paper. To reach the study's objectives, to define the consequences and make conclusions, I strived for a broad use of the available legal literature. Therefore, my exploration of legal ideas and notions, with application of methods, developed in legal theory, had been extended to foreign writings of legal scholars, representatives of both continental and common law. In this way, the answer, given to the main question of the thesis on necessity of the present scale of diplomatic privileges and immunities, together with addressing the accompanying specific goals, also formulation of final thoughts and conclusions, were supported by a wide-ranging spectrum of bibliography, offered by the Library of the Ministry of Foreign Affairs of Hungary, the Library of the Hungarian National Assembly, the Bodleian Law Library at the University of Oxford, the Libraries of the London Metropolitan University, the Harvard Law School Library, the Library of the Law School of Sorbonne and the University Law Library Cujas.

The main research method, applied during the preparation of the thesis is literature review, document processing and analysis, using methodical tools, such as historical, logical, systematic and comparative legal method of scientific analysis and synthesis, taking into consideration the conceptual provisions of international law and the theory of diplomacy. The complexity of the researched topic necessitated to revise, along with works on law, literature on history of international law, diplomacy, also theory and practice of foreign relations, which elaborated on certain aspects of the investigated matters. The materials examined include theoretical writings, historical resources, also various legal sources, official documents,

academic journals and relevant academic publications, policy statements, scholarly articles, website materials, internet publications, media releases, originally issued in English, Hungarian, Russian, Ukrainian, Belorussian, French and German.

The widespread foreign legal literature examined and referring to works of legal experts with different backgrounds, enriched with the selected legal cases, permitted to bring together across-the-board ideas, which occasionally led to collision of viewpoints. The existence of various standpoints discloses the fact that the foreign literature on diplomatic privileges and immunities is somewhat contentious. In this way, the examination of foreign literature showed that foreign legal studies are characterized not only by well-established classical views on diplomacy and the practice of diplomatic service, but also reflect on the new approaches to the study of diplomatic law, and include new related historiographical materials, along with critical analysis of some well-established scientific provisions. The works of foreign authors are rich in diversity of opinions and methods, comparative analysis of the origination and advancement of diplomatic service in the world, which is an instrumental contribution to the history of diplomacy and the development of the modern diplomatic practice.

### **Brief summary of the conclusions**

The aim of the present thesis is to investigate the content and specifics of the functioning of privileges and immunities of diplomats – their practical effectuation, both in theory and practice, taking into account the actualities of the modern world. With regard to the scope of the study, the regulations on the length placed some limits on the paper's volume. For that reason, to answer the principal question of the research, whether the present range of personal privileges and immunities of diplomatic agents is necessary for the efficient performance of their duties, the thesis was written focusing rather on diplomatic practice, than theory.

The authors of the Vienna Convention could not, in point of fact, foreseen in 1961 the impetuous development of scientific thought. Diplomatic agents need a certain amount of immunity to be safe from unjustifiable legal harassment, and at the same time, they have to respect and comply with the letter of law, keeping their activity abroad within the frame of their official functions. There are many cases of abuse of privileges and immunities and also cases of illegal acts by diplomats during their service at foreign missions. It has been already claimed many times that the Vienna Convention to be revised and diplomatic privileges and immunities – transformed, so that diplomatic law would be able to adapt to changes of time and to prevent crimes, committed under the cover of diplomatic freedoms. The present provisions on the status

of diplomatic agents, enshrined in the Vienna Convention, have to be improved in the light of the fact that states, being interrelated, try to boost their global presence and influence in the world, increasing the number of state servants abroad, as well. Since the adoption of the Vienna Convention, there have been many serious changes, related to diplomatic scope of activity, including the new forms of collection and transmission of information, not covered by this treaty. The existing lacunas in jurisdiction bring new challenges for diplomatic practice and sometimes lead to problems.

The lawbreaker diplomat is usually not prosecuted in the receiving state, because this question is within the discretion of the sending state. The Vienna Convention provides that immunity of diplomatic officials may be waived by the sending state, and in some cases, sending states agree to waive the immunity of their diplomats, but often after envoy had left the receiving state. Reasonably, receiving states prefer to prosecute the offenders themselves, after their diplomatic immunity was waived, rather than have him prosecuted by the sending state. It is necessary to improve the existing legislation, which will match up to the realities of the modern world and to provide satisfactory enforcement mechanism to deal with abuse. The problem of diplomatic immunity became a worldwide issue, concerning every nation. Diplomatic immunity is not immunity from legal liability, but immunity from suit. Diplomats are not placed above the law.

Despite of the high level of contemporary scientific development, the problem of protection of diplomats has not been fully resolved. Diplomatic representatives are still in danger, performing their functions and the growing wave of terrorism worldwide generated new tasks, related to their protection. Increased protection is also needed to be provided to diplomatic information – the special category of data. Consequently, in modern diplomacy, the protection of diplomatic agents, has to be ensured at physical, psychological, technical and informational level. It may be required to treat the information – whether on hard copy or in electronic form, with certain safety measures.

There were many different terrorist organizations and groups, carrying out activities, often directed at diplomatic missions. Cases of kidnapping of diplomatic personnel, murder, armed attacks on diplomatic premises, seizure of buildings or their explosion have become quite frequent. To combat terrorism, special extra safety measures are required. Scholars believe that the question of the full protection of diplomatic agents in the territory of the host state, as well during his transit through the territory of other countries is not enough developed in contemporary international law, neither by science of international law, nor by domestic legislations. Therefore, further development of these matters would be necessary, along with

improvement of the already existing legislation and codification of new norms with respect to the protection of diplomats.

Scholars note, however that the principles of the Vienna Convention are not likely be transformed in the foreseen future, therefore new ideas were proposed, to administer justice. Experts suggest to draft an annex to address the most pertinent issues. Furthermore, there are proposals regarding the compensation of victims of criminal acts, committed by diplomats, by introduction of obligatory insurance, also the creation of claims funds would provide the necessary financial means for recompense of the sufferers. Addressing the question of victim compensation is just a part of the solution to the issues, related to diplomatic privileges and immunities – the main task is to ensure that the perpetrators of such crimes would be held accountable and prosecuted. The Vienna Convention, due to its limitations, is not able to address the new emerging related issues alone. In addition, it is necessary to determine the scope of diplomatic immunities and privileges, during their transit through third states. Besides, it is needed to specify the size of the diplomatic bag, allow its electronic scanning and other ways of nonintrusive examination. The conveyance of prohibited articles is a risk factor for the host country.

States have the power and legal means to punish the violations of abuse. Some of the proposed solutions so far, at international level, along with the review and amendment of the Vienna Convention is purchase of insurance by diplomats of the sending state; establishment of a special – international and/or domestic compensation fund for the victims of abuse; declaration of *persona non grata*, request for waiver of immunity from the sending state; trial of the crime by the International Court of Justice; severing the bilateral diplomatic relations, and even political and economic isolation of felonious nations at international level. (It has to be taken into account that the sending state under the principle of reciprocity will also introduce such measures and sanctions, towards the diplomats of the receiving state.)

The compromise approach, normally taken regarding the crimes, committed by diplomats, led to the state of affairs when diplomatic agents often view diplomatic immunity as impunity. The trend towards restricting diplomatic immunity was reflected in the Vienna Convention, a serious reduction regarding the persons, entitled to broad immunities. A comprehensive solution is needed for accountability of diplomatic agents. The offenders have to be brought to account. The wrongdoer diplomat must be fully accountable for his crimes, which would include trial and punishment for the crime committed, and in justified cases – reparations, made to the victims, and development of a system of victim compensation.

States bear primary responsibility for protection of their citizens, and also bear primary accountability for the conduct of their citizens abroad. Due to the increasing frequency of assaults on diplomatic personnel, it should be specified what are the exact “appropriate steps” to be taken by the host state, referred to in the Vienna Convention with respect to the protection of diplomats. The Vienna Convention neither imposes a penalty for the infringements, nor a compensation for damages. The protection of diplomatic personnel in host countries is mostly afforded by measures, carried out by local (municipal) police, such as police post standing, uniformed presence, moving patrols, marked police vehicles. Embassies, if affordable, hire private security guards and install additional emergency telephone lines to be connected to police stations. Subsequently, the protection of diplomatic personnel and embassy premises in our days can not be called consistent and sufficient under all circumstances, in every state. (Supposedly, the sending state also could provide armed guard to protect their diplomats abroad, but in this case a question arises regarding the legal side of use and transportation of armaments.)

Regarding the privilege of diplomatic missions to organize their internal life it has its boundaries, as well. Reference to this privilege allows only in the most general way to justify the legitimacy of the existence of internal security and to define the scope of its activity. The essence of the Vienna Convention is to ensure inviolability of a diplomatic mission from executive jurisdiction of the receiving state and immunity from the executive and enforcement jurisdiction of the sending state. Authorities of the host state should be able to obtain a permission to search the premises of the diplomatic mission, with strong evidence of involvement of the concerned embassy in criminal act, or maintaining ties to extremist groups and organizations.

There are some provisions in certain legal studies, indicating the emergence of a new approach to the institution of diplomatic privileges and immunities, which have not received due development in the doctrine of international law. Consequently, at present we can not talk about the existence of a coherent theory, and therefore, future research of this area of diplomatic law is needed. The results of the present dissertation, hopefully, will contribute to awareness raising regarding to the currents issues in the field of diplomatic privileges and immunities, to be addressed via legal steps.

## List of publications in the subject matter of the thesis

### Foreign publications

- The relation between diplomacy, foreign policy and international law in the contemporary system of international relations. Monograph Series No 3. CIBUNET Publishing. New York, 2014.
- The relation between state, power and politics. Special features of modern legal systems: cases and collisions. Monograph. Volume 2. Vienna: “East West” Association for Advanced Studies and Higher Education GmbH. Vienna, 2014.
- The role of International Law in the system of International Relations. ORT Publishing. Stuttgart, 2014.
- Environmental Diplomacy in the XXIth century. CIBUNET Publishing. New York, 2014.
- The legal aspects of intellectual property in the outer space. “East West” Association for Advanced Studies and Higher Education GmbH. Vienna, 2014.
- International State Responsibility in the XXIth century. SCIEURO. London, 2014.
- Roly diplomatii v sisteme ozdorovleniia naseleniia. (The role of diplomacy in the system of health recovery of the population.) Belorussian State University of Informatics and Radioelectronics. Minsk, 2014.
- The power of Cultural diplomacy in enhancement of international cooperation. “East West” Association for Advanced Studies and Higher Education GmbH. Vienna, 2014.
- Roly sportivnoi diplomatii v razvitii mezhdunarodnyh otnoshenii. (The role of sports diplomacy in development of international relations.) Belorussian State University of Physical Culture. Minsk, 2015.
- Health diplomacy as a resourceful form of international communication. Collection of Scientific Papers. No. 41. Center of Scientific Cooperation. Novosibirsk, 2015.
- Diplomatic prerogatives and invulnerability in the light of global challenges. 3<sup>rd</sup> International Conference “Modern Jurisprudence: Legal thought and enforcement practice.” 27 December, 2015, Sheffield. B&M Publishing. San Francisco, 2015.
- Diplomats on duty: in the service for the homeland in a violent age. Scientific enquiry in the contemporary world: theoretical basics and innovative approach. B&M Publishing. San Francisco, 2016.



## **Other papers**

### **Master's Thesis**

- A modern nemzetközi jog és a diplomácia mai eszközei. (Today's means of contemporary international law and diplomacy.) Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Department of Public International Law. Budapest, 2012.