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REGULATING THE STATUS OF OFFICIALS OF THE REGIONAL INTERGOVERNMENTAL ORGANISATIONS IN SOUTHEAST EUROPE: A QUEST FOR AN INTERNATIONAL CIVIL SERVICE

Summary

The article explores how the constituent instruments and secondary rules of the selected three regional intergovernmental organisations in Southeast Europe (Energy Community, Transport Community, Regional School of Public Administration) have incorporated some key legal concepts related to the status of international officials - professional independence of international officials and exclusivity of international service; recruitment standards; and the legal remedies for protecting the rights of international officials. The article, at the first place, defines the notion of international civil service, and elaborates, based on the legal texts of a number of international organisations and theoretical writings, the international practice in regulating the above specified concepts. The article than analyses and assesses how these concepts have been addressed in the relevant legal documents of the selected organisations. Finally, the article concludes that the explored legal texts provide for the guarantees of professional independence of the officials and contain the elaborated rules on recruitment aiming at selecting qualified staff and ensuring the geographical equilibrium within the secretariats. However, certain shortages have been identified and explained in relation to the existence of adequate legal remedies for protecting staff, particularly through the judicial proceedings.

Keywords: regional organisations, international civil service, administrative international law, international administrative tribunals, staff regulations.

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UREĐENJE STATUSA SLUŽBENIKA REGIONALNIH MEĐUVLADINIH ORGANIZACIJA U JUGOISTOČNOJ EVROPI: U TRAGANJU ZA MEĐUNARODNOM SLUŽBOM

Sažetak

Članak istražuje kako su konstitutivni instrumenti i sekundarna pravila tri odabrane regionalne međuvladine organizacije u jugoistočnoj Evropi (Energetska zajednica, Transportna zajednica, Regionalna škola za javnu upravu) inkorporisali neke ključne pravne institute koji se odnose na status međunarodnih službenika – profesionalnu nezavisnost međunarodnih službenika i isključivost međunarodne službe; standarde zapošljavanja; i pravne lekove za zaštitu prava međunarodnih službenika. Ovaj članak, pre svega, definiše pojam međunarodne državne službe, a na osnovu pravnih tekstova nekoliko različitih međunarodnih organizacija i akademskih radova istražuje međunarodnu praksu u regulisanju navedenih instituta. Članak zatim analizira i procenjuje kako su ovi koncepti obrađeni u relevantnim pravnim dokumentima odabranih regionalnih organizacija. Konačno, u članku se zaključuje da istraženi pravni tekstovi pružaju normativne i institucionalne garancije profesionalne nezavisnosti i sadrže razrađena pravila o zapošljavanju u cilju odabira kvalifikovanog osoblja i obezbeđivanja ravnomerne geografske zastupljenosti unutar sekretarijata. Međutim, određeni nedostaci su identifikovani i objašnjeni u vezi sa postojanjem adekvatnih pravnih lekova za zaštitu osoblja, posebno kroz sudske postupke.

Ključne reči: regionalne organizacije, međunarodna državna služba, međunarodno upravno pravo, međunarodni administrativni sudovi, pravilnik o osoblju.

1. Introduction

The regional intergovernmental organisations in Southeast Europe, created by the constituent agreements concluded among their members, which define their functions, procedures and bodies, including the administrative secretariats composed of their officials (Malanczuk, 2002, p. 92), have become legal and political reality in this region. Although a number of research papers and studies are

dedicated to different themes related to the regional organisations and regional cooperation in Southeast Europe, with the focus on the political and policy-related issues of cooperation and historical developments of regional cooperation,[1] there are no writings that deal with some specific legal issues, such as the status and employment relations of the officials of relevant regional organisations in Southeast Europe, i.e. employees of their secretariats. The legal regime regulating the status of the employees of the international organisation's secretariat is important because the administrative body ensures the permanent character of an organisation and provides personnel for exercising their functions. The personnel are a critical success factor for the performance of international organisations because they directly contribute to the implementation of the organisations' objectives and priorities (Plantey & Loriot, 2005, p. 6).

From the theoretical perspective, the article examines the subject matter through the prism of the doctrine of functionalism which is predominantly used in international law to explain the legal position of the international organisations. As explained by Klabbers (2015, p. 18) pursuant to this doctrine, the legal arrangements applicable to the international organisations are supposed to facilitate the execution of their functions and the international organisations are considered autonomous from the member states in a number of areas, including regulating their internal functioning. One of these areas of autonomous regulations defines the status of officials of international organisations. The international organisations autonomously regulate in this area because they are supposed to be independent from any direct interference or oversight by only one member state and to enjoy certain international legal safeguards provided for by the constituent instrument of the international organisation and secondary legal acts (Archer, 2001, p. 60).

The objective of this paper is to comparatively examine and critically asses if and how some key legal concepts, accepted in practice of many international organisations, have been incorporated into the legal framework of the selected regional organisations in South-East Europe. Due to the limited size of research,[2] the article focuses on three regional organisations that we consider illustrative of the relevant practice: the Transport Community (TC)[3], the

[1] For more details on the process of regional cooperation refer to: Delević, 2007; Lopandić & Kronja, 2010; Bechev, 2006; Marciacq, 2017; Minić, 2019; Šekarić, 2021; Džananović *et al,* 2021.

[2] Besides the size of the article and possibility to analyze the limited number of organisations, it is also the public availability of the relevant documents that defined the scope of the research.

[3] The Transport Community was established by a treaty signed in 2017 by the European Union and six Western Balkan governments (Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia and Kosovo* (This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of

Energy Community (EnC)[4] and the Regional School of Public Administration (ReSPA)[5]. The paper selected to examine the legal concepts, developed within international administrative law, professional independence of officials vis-à-vis the national governments and exclusivity of international service; recruitment standards ensuring the high quality of staff and geographical equilibrium and the legal remedies for protecting the rights of international officials. The comparative approach will not only include the legal documents of the selected regional organisations, but it will also use as a reference system the writings on the subject, as well as the rules of some international organisations, both universal and regional (United Nations, UNESCO, Organisation for Economic Cooperation and Development, European Union and Council of Europe). The writings and the rules of the international organisations, which have existed for a number of decades, will be used as the general reference point for determining the main and common traits of the examined legal concepts that are usually applied in the rules of different international organisations. The paper applies the normative method for analysing the relevant legal rules and the comparative method in order to identify the level of the rules' similarity and facilitate assessing the compliance of the regional organisations' legal framework with the examined concepts of international administrative law.

The author presents the research in the following manner. At the first place, the paper defines the notion of international civil service and discusses the applicable legal regime to it. Secondly, the author presents the above-mentioned generally accepted concepts of international administrative law as the framework of analysis for this paper. Finally, the article assesses to what extent these concepts were incorporated in the constituent instruments and other rules of the examined regional organisations.

independence.)), Treaty Establishing the Transport Community – TC Treaty.

[4] The Energy Community was established by the Energy Community Treaty (EnC Treaty), signed in 2005. The current parties to the Treaty are Albania, Bosnia and Herzegovina, Kosovo* (This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence), North Macedonia, Georgia, Moldova, Montenegro, Serbia and Ukraine.

[5] The Regional School of Public Administration (ReSPA) was established by the Agreement establishing the Regional School of Public Administration (ReSPA Agreement), concluded in 2008, that entered into force in 2010. Its current members are Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia.

2. Legal Regime Applicable to the International Civil Service

The international organisations, and so is the case with the subject regional organisations, are composed of two types of bodies – the decision-making intergovernmental institutions, on the one hand, and the administrative technical bodies – usually called secretariats that employ organisations' officials, on the other hand (Holly, 1985, p. 757). The secretariats are responsible for policy development and coordination, legal drafting, and eventually implementing and executing measures decided by the member states (Glodić, 2019, p. 136). The constituent instruments of the examined regional organisations create their administrative bodies (EnC Treaty, Chapter V; TC Treaty, Articles 29-33; ReSPA Agreement, Chapter VII) and define the tasks to be exercised by them.[6] Although these secretariats are rather small in size,[7] they perform important administrative and expert tasks in the interest of their respective organisations and provide certain support and coordination for the intergovernmental activities of their members in the relevant policy areas. Therefore, following the practice of other inter-

[6] Art. 67 of the EnC Treaty defines the responsibilities of the Secretariat as follows: "(a) provide administrative support to the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora; (b) review the proper implementation by the Parties of their obligations under this Treaty, and submit yearly progress reports to the Ministerial Council; (c) review and assist in the coordination by the European Commission of the donors' activity in the territories of the Adhering Parties and the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, and provide administrative support to the donors; (d) carry out other tasks conferred on it under this Treaty or by a Procedural Act of the Ministerial Council, excluding the power to take Measures; and (e) adopt Procedural Acts."

The Permanent Secretariat of the TC shall, according to Art. 28 of the TC Treaty: "(a) provide administrative support to the Ministerial Council, the Regional Steering Committee, the technical committees and the Social Forum; (b) act as a Transport Observatory to monitor the performance of the indicative TEN-T extension of the comprehensive and core networks to the Western Balkans; (c) support the implementation of the Western Balkans Six (WB6) Connectivity Agenda aiming to improve links within the Western Balkans as well as between the region and the European Union."

The ReSPA Secretariat is the executive body of ReSPA (ReSPA Agreement, Art. 17(1)) and according to Art. 18 of the ReSPA Agreement: "(1) The Secretariat is responsible for ensuring the proper functioning of ReSPA. (2) […] for drafting and submitting the annual Programme of Work and the Budget to the Governing Board for approval, as well as for its implementation. (3) […] submits to the Governing Board reports on ReSPA functioning, implementation of the Programme of Work and other matters as requested by the Governing Board."

[7] The Secretariat of EnC has 36 employees (Procedural Act 2022/04/MC-EnC on Adopting the Secretariat's Organigram); the Permanent Secretariat of the TC has 21 employees (https://www.transport-community.org/wp-content/uploads/2023/09/TCT-organigram-2023.pdf, (10.10.2023.); and the ReSPA Secretariat has 14 employees (ReSPA Staff Regulations, Annex II).

national organisations, the respective decision making and governing bodies of these regional organisations, pursuant to their constituent instruments, adopted the staff regulations aimed at regulating the status of their officials.

While underlining a wide variety of models of regulating the status of international civil servants by different international organisations, Vallejo (2002, p. 90) extracts a definition based on some common features. The international civil servants or international officials are persons appointed by the international organisation pursuant to its internal rules and employed on an exclusive basis for exercising the functions in the general interest of that organisation. The international officials are usually recruited from different member states of the organisation and are supposed to perform the core activities on behalf of the organisation. They should be differentiated from the local staff that is employed with a view of exercising support and technical tasks (Daillier, Forteau, & Pellet, 2010, p. 697).[8] Two basic features of international civil service are the international composition of staff coming from different member states and their exclusive international responsibility towards the organisation (Quayle, 2020, p. 6).

It is well established in the international practice to regulate the employment status, particularly the recruitment procedures and appointments, employment relations, dismissal, labour disputes and other related rights and duties of international officials by the constituent treaties and regulations adopted by the international organisations, forming so called international administrative law, and not by domestic labour or civil service laws (Kryvoi, 2015, p. 268; Daillier, Forteau & Pellet, 2010, p. 698). International administrative law[9], defined by the international administrative tribunals as "*the law which regulates the relationship between intergovernmental organisations and their staff members*" (Ago, 2020, p. 91), is fully disconnected from any national legal system and exists in

[8] As for the employment systems, the staff rules provide for two models: the statutory model, based on the conditions defined in the internal rules of the organisation, and the contractual model, based on a contract defining terms and conditions of employment. The predominant current practice favours the conclusion of a so-called adhesion contract by which the employed official accepts the defined labour regime as stipulated by the relevant internal rules (Plantey & Loriot, 2005, pp. 19-20). The relevant writings demonstrate that the practice of some administrative tribunals of international organisations proves that it is not as simple as defining the systems as either statutory or contractual, but is rather a combination of the two elements. Thus, the employment status of the international officials is based on a somewhat blended regime and rules (Kryvoi, 2015, p. 281).

[9] One should be also mindful of considerations offering a wider scope of international administrative law offering its understanding as "*a set of rules in international law that pertains mostly to the activities of international organisations in the execution of their mandates*" (Ago, 2020, p. 89).

the legal sphere of an international organisation (Kryvoi, 2015, p. 300). It contains both substantive and procedural rules that are specific for each international organisation (Ago, 2020, p. 99).[10]

Autonomous regulating by the international organisations of the status of their officials is necessary for ensuring independence of the international organisations vis-à-vis the member states. Namely, some issues, such as the internal structure, functioning and employment of officials should remain outside the jurisdiction of any national legal system. Furthermore, due to the composition of the staff of different nationalities, it is not possible to apply their respective national legal systems, as they should be subject to the single legal system of the employing organisation. Thus, the constituent treaties allow the organisations' relevant institutions to enact staff regulations and other rules regulating the rights and duties of the officials (Amerasinghe, 2005, pp. 272-274; Glodić, 2020, pp. 47-48). From a value perspective, the staff rules are supposed to provide legal certainty by defining adequate procedures in staff matters and ensure that the international organisations be accountable and subject to the rule of law in respect of the position of their employees (Kryvoi, 2015, p. 276). The staff rules, enacted by the international organisation pursuant to its constituent treaty, create the obligations applicable between the international organisation and its officials, and these are not directly regulating the interstate relations (Kryvoi, 2015, pp. 280-284).

3. Framework of Analysis: Selected Legal Concepts Defining the International Civil Service

The paragraphs below will explain the framework of analysis, built upon the international practice and the legal framework of some international organisations regarding the above specified legal concepts. This framework will be applied after assessing that the relevant rules of the selected regional organisations incorporate these concepts.

[10] Ago describes the content of the law applicable to the employment of international officials as involving: "*(i) substantive rules, such as employment contracts, staff regulations, staff rules, administrative orders; and (ii) procedural and interpretative rules, such as statutes of tribunals, general principles of law (such as estoppel, good faith, equity, non-abuse of rights, due process), customary international law (including certain human rights principles, such as non-discrimination)*" (Ago, 2020, p. 99). Some authors (Ago, 2020, p. 100) suggest using the term 'international civil service law' considering it to be more descriptive of its content than the widely spread notion of 'international administrative law.'

3.1. International Practice Regarding Professional Independence of Officials and Exclusivity of International Service

The international organisations act as entities with their own will and autonomously from their member states (Krivokapić, 2017, p. 352). Therefore, when discharging their services, the international officials should be perceived as neutral and impartial and led by the technical reasons based on their expertise, as well as protected from any national pressure (Klabbers, 2015, p. 56). Their neutrality actually reinforces legitimacy of joint actions undertaken by the organisation (Abbott & Snidal, 1998, p. 16). In this respect, Liese *et al.* (2021, p. 360) highlight that "*since the League of Nations, international bureaucracies have been designed to represent the opinions of all nations […] impartiality signals an international bureaucracy's independence and generates credibility*". Therefore, it is essential for the officials of the international organisation to enjoy legal safeguards of their professional independence that should provide for their impartial behaviour when exercising the conferred tasks.[11] In other words, the international officials should perform their functions in the best interest of the international organisation and not in the interest of an individual state or a group of states. The international officials must not follow any instructions coming from a government, but they should rather obey the instructions issued by their superiors (Amerasinghe, 2005, p. 158; Plantey & Loriot, 2005, p. 14). Additionally, competitive remuneration is also considered as one of the factors enabling impartiality of public servants in general (see Rabrenović, 2014, pp. 25-27).

This professional independence is primarily manifested towards the political decision-makers and national governments. The viability of this concept is practically determined by the powers assigned to the secretariat, available resources and the balanced level of political oversight by the member states (Bauer & Ege, 2018, p. 9). It is guaranteed by the constituent treaties and staff regulations of

[11] This professional independence is rooted in a somewhat wider concept of '*bureaucratic autonomy of administration*' that includes "the capacity of the administration to develop autonomous preferences … [and] its ability to translate these preferences into action" (Bauer & Ege, 2018, p. 9). This is corollary to the imperative of political independence and legal autonomy of international organisation's administration (Plantey & Loriot, 2005, p. 13). Although neutrality, professional independence and impartiality of international organisation's staff are values by themselves, these are not arguable omnipresent in the intergovernmental practice. Liese *et al.* (2021, p. 361) point out that "more recent literature has demonstrated that neutrality is more of a claim, a contested and changing norm, or even a myth than it is an inherent feature of international bureaucracies. Instead, it might vary and therefore might also account for variations in expert authority […] Several studies have found that organisational outputs are not free from interference by member states."

the concerned international organisation. For instance, the UN Charter (Art. 100) stipulates that in the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organisation. It further defines the obligation of the member states to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.[12] Similar provisions are contained in the constituent instruments of other international organisations, both universal and regional.[13]

This concept is practically implemented by prescribing that the international officials shall be only accountable to their hierarchical superiors and not to any government, and their service shall be exclusively international. The relevant legal texts forbid the international officials to seek and accept any directive or instruction from the national governments (Reymond, 1970, p. 225). Amerasinghe (2005, pp. 277-278) underlines that the international practice, particularly of some of the administrative tribunals of international organisations, affirmed the principle of professional independence thus protecting the international officials and establishing a shield from undue interference by the national authorities. It is therefore important to ensure through the relevant legal texts that the officials be allowed to exercise their duties protected from any national or external interference, and to serve to the international organisation on an exclusive manner.[14] To conclude, this concept is put in place provided that a twofold obligation is ensured: a duty of international officials not to seek and receive instructions by the national governments, on the one hand, and the obligation of the member states to avoid any influence over these officials, on the other hand.

[12] UN Staff Regulations affirm that its staff members are international civil servants and their responsibilities as staff members are not national but exclusively international (Art. I, Regulation 1.1.(a)).

[13] See, e.g.: Art. 36 of the Statute of the Council of Europe; Article VI of the Constitution of the United Nations Educational, Scientific and Cultural Organisation; Article 11 of the Convention on the Organisation for Economic Co-operation and Development.

[14] Nonetheless, some authors warn that, despite the legal framework establishing the concept of professional independence and exclusive international character of service, there is always a threat of exercising more or less subtle pressure on the officials of one international organisation. Namely, the governments may put the officials in the situation to balance between their allegiance to their own state and the duty towards the international organisation. The literature has identified few ways of such influence, seconding the staff, limiting duration of employment, and national influence in appointing the senior officials (Quayle, 2020, pp. 7-8). Some career progress related interests may also instigate the officials to follow the lines of their governments or other external stakeholders (see Krivokapić, 2017, pp. 362-363).

3.2. International Practice Regarding the Recruitment Standards for Safeguarding International Character of Service

Based on the comparative practice of international organisations, there are two major standards of defining the recruitment rules of international civil servants. The first one is related to their personal qualities, *i.e.* possessing certain professional competences and integrity, whilst the second one requires ensuring the equal geographical representation (Krećа, 2010, p. 518). The rules should ensure that the composition of the secretariat's staff is genuinely representative of its diverse membership. It should be envisaged that the qualified individuals, nationals of different member states, be recruited and appointed for the service in the secretariat. Additionally, these appointments should not be made by the national governments or their representatives to the organisation's bodies, but it should rather be done by the administrative head of the secretariat (Reymond, 1970, p. 227), thus ensuring the international character of appointment.

The geographical represenation should not be understood as the excuse for undermining merit-based recruitment. Quite opposite, the selection rules should be designed as to ensure adequate testing of qualified candidates for the job positions of international officials by providing the balance with the principle of equal geographical representation (Macy, 1970, pp. 260-261). In this sense, the major criteria for their employment is their professional competence and skills that may be combined with the requirement of ensuring the adequate geographical representation of the nationals of all the Member States (Vallejo, 2002, p. 77).

For example, Art. 101(3) of the UN Charter sets the standard that is further followed by other organisations stipulating that the employment shall ensure "the highest standards of efficiency, competence, and integrity" and that "due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."[15] In a similar manner, the OECD rules and Council of Europe rules define that the recruitment of officials shall enable selecting the staff of the highest standards of competence and integrity and equitable allocations among the nationals of the OECD members (OECD, 2024; Council of Europe Staff Regulations and Staff Rules, Article IV; EU Staff Regulations, Art. 27) and the implementation of these principles is in more details elaborated. The safeguards for preventing the national influence to the appointment of the staff of the international organisations is provided by designating the administrative head of the organisation as the appointing authority that makes final decision upon the conduct of the prescribed recruitment process.[16]

[15] See also Art. I, Regulation 1.1(d) of the UN Staff Regulations and Staff Rules including Provisional Staff Rules;

[16] See Regulation 4.1. of the UN Staff Regulations and Staff Rules including Provisional Staff

3.3. International Practice Regarding the Legal Remedies for Protecting the Status of Officials

The international organisations perform their authority over their officials by adopting different individual administrative decisions. Sometimes, the addressee of such decision may consider them ill-founded and want to challenge them before an authoritative instance. Hence, an important aspect of the administrative international law is the issue of appeals system and judicial review of staff related administrative decisions (Amerasinghe, 2005, pp. 299-303). Using the remedy provided by the administrative appeals, resolved by staff appellate bodies formed within the organisation, or any other mediation procedure, that may be envisaged in the relevant staff rules, usually are preconditions for initiating the judicial procedure. For instance, the UN rules envisage informal resolution facilitated by the Ombudsman that offers mediation between the UN officials and the employer (Rule 11.1 of the UN Staff Regulations and Staff Rules including Provisional Staff Rules), while the OECD rules define the procedure to be conducted by an Advisory body that should consider any dispute brought by an official, this also being a precondition for initiating the procedure before the organisation's Administrative tribunal (OECD, 2024). The UNESCO system provides for the Appeals Board deciding in the second instance on staff matters (UNESCO, 2021). As for the European Union officials, they may submit to the appointing authority a complaint against an act affecting him adversely, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed (The EU Staff Regulations, Art. 90.2).

While the officials enjoy the right to appeal, mediation procedure or complaint procedure to be decided by an internal body, it is also well established that they have right to challenge the administrative decisions before the international administrative tribunals that are competent to settle labour disputes emerging from the employment by an international organisation (Kryvoi, 2015, p. 272). Due to the independent personality of international organisations, including the immunity from domestic jurisdiction, the widely accepted standard is that the disputes between the organisation and its officials are to be resolved by special international administrative tribunals that apply staff regulations and other rules applicable to the officials, and not before the domestic judicial bodies (Kryvoi,

Rules; Art. IV/4.1. of the Council of Europe Staff Regulations and Staff Rules; Regulation 7a) of the OECD Staff Regulations, Rules and Instructions applicable to Officials of the Organisation; Regulation 4.1. of the UNESCO Staff Regulations and Staff Rules. In the case of the EU, Staff Regulations define that each institution shall determine who within it shall exercise the powers conferred on the appointing authority (Art. 2.1).

2015, p. 269). This practice is supposed to ensure the protection of the international organisation from the interference in its operations by the states (Cassese, 2005, p. 138). These tribunals, usually established within the institutional set up of international organisations, are basically judicial bodies, with the mandate to ensure the application of the law governing employment of international officials (Ago, 2020, p. 90).

The contemporary international law is characterised by the development of a number of international tribunals that effectively decide on different legal matters for which they were seized (Bederman, 2002, pp. 218-220), including those that are specialized in solving staff matters (Rosenne, 2004, pp. 438-439; Krivokapić, 2013, p. 46).[17] If the organisation does not create a specific administrative tribunal, it can recognise the jurisdiction of an already existing administrative tribunal, more notably of the Administrative Tribunal of the International Labour Organisation[18] whose competence was recognised by more than 50 international organisations, both universal and regional (Daillier, Forteau, & Pellet, 2010, p. 699).

The issue of judicial protection is important since the international organisations enjoy immunity from national jurisdiction in the staff matters of their officials, and, in the absence of judicial remedy before administrative tribunals

[17] For example, the UN system envisages a two-tier formal system of administration of justice: the UN Dispute Tribunal that hears and renders judgment on an application from a staff member alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules; and the second instance ensured by the UN Appeals Tribunal that exercises appellate jurisdiction over an appeal of a judgment rendered by the UN Dispute Tribunal submitted by either party (Regulation 11.1 of the UN Staff Regulations, Staff Rules and Provisional Staff Rules). Chapter XI of the UNESCO Staff Regulations and Staff Rules envisages the appeals procedure before the Appeals Board and the judicial review by an Administrative Tribunal. Regulation 22 of the OECD Staff Regulations, Rules and Instructions envisages the appeals procedure and judicial review before the administrative tribunal. Art. XIV of the Council of Europe Staff Regulations and Staff Rules defines the staff grievance procedure, including also the remedies that may be used before the organisation's Administrative Tribunal.

[18] Art. II(5) of the Statute of the Administrative Tribunal of the International Labour Organization reads: "The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex hereto which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules, and which is approved by the Governing Body. Any such organization may withdraw its declaration recognizing the jurisdiction of the Tribunal under the procedure set out in the Annex." In the case of the EU officials, the EU Court of Justice shall have jurisdiction in any dispute between the EU and any person to whom its Staff Regulations apply regarding the legality of an act affecting such person adversely. In disputes of a financial character the Court of Justice shall have unlimited jurisdiction (EU Staff Regulations, Art. 91).

of international organisations, their officials would be deprived of adequate legal remedy (Klabbers, 2015, p. 56). The European Court of Human Rights established that the right to judicial remedy of the employees of international organisations falls under Art. 6(1) of the European Convention on the Protection of Human Rights and Fundamental Freedoms. Although recognising the judicial immunity which precludes the employees to initiate dispute before the domestic courts, as a legitimate restriction of the right to effective legal remedy, the Court found that this restriction is proportionate only if there is an alternative judicial forum for protecting the rights guaranteed by the European Convention (Quayle, 2020, p. 15; See: ECtHR, 1999). Thus, pursuant to the case law of this court, the international organisations whose members are parties to the European Convention, should ensure an alternative judicial remedy for the officials to the one existing under national law.

Based on the above, one may conclude that the concept of legal remedy for protecting the rights of the officials of the international organisations, although different modalities are in place, requires the existence of the internal appeals or any other similar procedure, as well as the access to judicial body for challenging the final decisions adopted within the internal procedures.

4. Assessment of Legal and Institutional Safeguards of the Examined Regional Organisations Guaranteeing the Selected International Civil Service Concepts

Based on the above explanations of the current practice, as well as standards that are applied by different international organisations, the paper analyses the rules of the three selected regional organisations and assesses if they have incorporated these concepts and, to which extent they follow the international practices.

4.1. Ensuring Professional Independence and Exclusivity of International Service

As demonstrated above, the concept of professional independence and exclusivity of international service is ensured if the relevant rules of the international organisation provide for a duty of international officials not to seek and receive instructions by the national governments and, at the same time impose the obligation to the member states to avoid any influence over the international officials in the exercise of their tasks. The institutional safeguards are defined by regulating that the officials are exclusively responsible to the administrative head

of the organisation, and their professional tasks should be performed in the interest of the organisation.

After combined reading of the constituent instruments and the staff regulations of the three organisations, the following can be concluded. There are explicit provisions defining that the officials' professional tasks have to be performed in the best interest of the employing organisation and impartially, thus asserting that they are to be guided by the professional reasons. There are also rules determining the status of officials as international civil servants and ensuring that the officials are solely accountable to the director/administrative head of the secretariat while forbidding receiving the instruction from any national government, thus confirming their service as exclusively international (EnC Treaty, Art. 70; EnC Staff Regulations, Art. 3.1; TC Treaty, Art. 31; TC Staff Regulations, Art. 3.1; ReSPA Agreement, Art. 2; ReSPA Staff Regulations, Art. 4).[19]

Based on the above, it is possible to conclude that the examined rules follow the predominant international practice as they provide for such legal safeguards that ensure professional independence and preserve the international character of service exercised by their officials.

4.2. Defining the Recruitment Standards Safeguarding International Character of Service

As explained above, international practice has devised two major principles that should be observed: selecting high quality personnel in terms of qualifications and integrity, as well as ensuring the equal geographical representation. The institutional safeguard of this process is vesting the appointing authority for the officials has in the administrative head of the secretariat, and not to the representatives of the member states.

Regarding the selection standards, the staff regulations systematically require that the selected officials meet the high standards of competence, efficiency and integrity, while the recruitment procedures have to be conducted in line with the principles of transparency of the selection procedures; non-discrimination;

[19] Art. 70 of the EnC Treaty envisages: "in the performance of their duties the Director and the staff shall not seek or receive instructions from any Party to this Treaty. They shall act impartially and promote the interests of the Energy Community." Art. 31 of the TC Treaty stipulates: "In the performance of their duties the Director and the staff of the Permanent Secretariat shall act impartially and shall not seek nor receive instructions from any Contracting Party. They shall promote the interests of the Transport Community." Art. 21 of the ReSPA Agreement stipulates: "(1) The Director shall receive instructions only from the Governing Board. (2) The Director and staff of ReSPA shall not seek, receive or act on instructions from any individual Member of the Governing Board or from any third party."

competition and professionalism (EnC Staff Regulations, Art. 4.3.a); ReSPA Staff Regulations, Art. 20; TC Staff Regulations, Art. 4). The eligibility requirements for applicants to the officials' posts in the organisations are also defined with a view of ensuring that the prospective appointees meet certain professional standards.[20] More detailed recruitment rules have also been established with a view of determining the manner in which the basic provisions defined by the staff regulations shall be implemented Energy Community, 2024, Annex IV).

When it comes to ensuring the geographical equilibrium of the personnel, there are also general guiding rules requiring the appointing authority to respect that principle. In this manner, the EnC Secretariat's Director is required to ensure an equitable distribution of the posts among the nationals of the members (Energy Community, 2024; see TC Staff Regulations, Point I/I, Annex I), however without specifying the concrete measures for ensuring this equilibrium. While the ReSPA Staff Regulations also require ensuring equal geographical representation (Art. 14), it provides for a concrete indication on how to achieve by stipulating that "*exceptionally, if the assurance of geographical representation … may require so, the competition may be restricted to applicants who are nationals of a particular Member of ReSPA*" (Art. 14(1)). Thus, optional restricting of the applications to nationals of particular members is seen a modality for ensuring the geographical balance, but this should be applied in a manner not to detriment the requirement for recruiting sufficiently qualified staff.

As for the appointing authority, the relevant rules envisage that the staff shall be appointed by the director of the secretariat, whilst the latter shall be appointed by the representatives of the member states, which is in line with the practice of many other organisations (EnC Treaty, Arts. 68–69; ReSPA Agreement; Art. 20; TC Treaty, Art. 30).

In general, when the recruitment standards are concerned, the regional organisations follow the recruitment and staff selection principles that are aimed at ensuring the international character of service and high level of professional performance at the job. The appointing authority is conferred upon the administrative heads of the secretariats, which is another trait ensuring the international nature of engagement.

[20] For example Art. 4.3.b) of the EnC SR defines the following employment requirements: level of adequate education; duration of professional experience; nationality of the EnC Treaty Party or the EU Members State; fulfilment of any obligation related to the military service; appropriate character reference; and certification by a qualified medical practitioner that the appointee possessed the state of health needed for the post.

4.3. Providing for Legal Remedies for Protecting the Status of Officials: Administrative Appeals and judicial Protection

Based on the explanation on the concept of legal remedies available to officials of international organisations provided in the previous section, the international practice consists of introducing two types of remedies: an administrative appeal to be decided by an appellate body or any mediation mechanism, and the judicial remedy that will be considered by an international administrative tribunal, that may be used after the administrative appeal was consumed. The following lines will discuss the manner in which this concept is regulated in the rules of the three examined organisations.

The remedies established in the EnC and TC are very similar. Firstly, there is the right of the officials of the EnC[21] and TC to lodge an appeal to the Director or to the President and Vice President of the EnC Permanent High Level Group,[22] and the TC Steering Committee,[23] if the complaint concerns the Director, for the treatment inconsistent with the Staff Regulations (EnC Staff Regulations, Art. 13; TC Staff Regulations, Art. 13). It has to be noted that these provisions, although introducing the right to appeal, are not further elaborated as to providing procedural guaranties that the due process will be conducted, as well as to the legal validity of the decisions that may be taken as an outcome of these procedures. This remedy should be considered more as an informal means of addressing staff related matters to the relevant authority than providing the formal administrative appeals procedure. Given that the appeal is addressed to the Director or the indicated members of governing bodies, it remains questionable if these dignitaries may be considered as adequately qualified for deciding on the appeals in terms of their expertise in relevant substantive and procedural legal matters as they are not a typical appellate body.

The rules of these two organisations envisage additional legal remedies initiating the formal procedure of two-instances. The first instance procedure is conducted by the Arbitration Committee for the EnC staff, composed of the representatives of the presiding Contracting Party, of the incoming presiding

[21] The EnC SR defines the staff members as "all staff members of the Secretariat except those who are locally recruited and assigned to hourly rates and interns" (Art. 2.1.).

[22] The Permanent High Level Group shall consist of one representative of each Contracting Party and two representatives of the European Community (EnC Treaty, Art. 54).

[23] Art. 13 of the TC SR reads: "Staff members may notify in writing the Director – or the Presidency of the Steering Committee when the complaint concerns the Director – whenever they consider that they have been treated in a manner which is in breach of the provisions of these Staff Regulations, the rules on recruitment, working conditions and geographical equilibrium or other relevant rules or that they have been subject to unjustifiable or unfair treatment by a superior."

Contracting Party and of the European Commission, (EnC Staff Regulations, Art. 14) and the Conciliation Committee for the TC staff, composed of the current presidency of the Regional Steering Committee, next term presidency and preceding presidency of the Regional Steering Committee (TC Staff Regulations, Art. 14). Although this solution represents an attempt to have an independent oversight over the Secretariat when it comes to staff matters, the composition of such bodies and possible lack of expertise of their members, since there are no criteria defined, sheds some doubts on the adequacy of such solution. Additionally, involvement of the members' representatives in this process may undermine the needed independence of the organisation.

The second instance procedure is to be conducted by, in the case of the EnC, a single external arbiter, appointed by the Secretary General of the Permanent Court of Arbitration (Art. 15 of the EnC Staff Regulations).[24] This type of arbitration may seem to provide the high level of guarantees for the staff, but its effectiveness may be questionable when it comes to the available means, legal counsels, and other resources that may be needed for initiating such arbitration. Furthermore, although the arbitration is a legal tool for setting disputes, a better solution would be having this matter conferred upon an administrative international tribunal specialised for these matters. In the case of the TC, the second instance procedure will be conducted by the European Commission acting as the arbitrator (TC Staff Regulations, Art. 15). Designating the European Commission as the arbitrator for staff matters does not seem as an adequate solution due to the institutional unclarity on who would decide on behalf of the European Commission, if this would be the Collegium of the Commissioners or it will be any particular service of the European Commission. Furthermore, in connection to this institutional issue, there is uncertainty as to the level of expertise that should be possessed for adequately resolving the staff related disputes.

In the case of ReSPA, the Staff Regulations contain rules on the establishment of an independent Appeal Board, composed of five experts appointed by the Governing Board, that shall adjudicate on any appeal against a final decision taken pursuant to the Staff Regulations lodged by a staff member, former staff member or representative, or next-of-kin, of a deceased or incapacitated staff member (Art. 34). This provision, although without more details, seems an adequate basis for further regulating the appeals procedure conducted by a collective body composed of experts. What remains unresolved by the ReSPA Staff Regulations is the question of external judicial mechanism for setting staff related

[24] The sole arbiter shall conduct the procedure according to the Optional Rules for Arbitration involving international organisations and private parties, whilst the substantive source of law shall be the EnC Staff Regulations.

disputes in the second instance. Overall, although the relevant legal texts demonstrate intention to provide for certain legal remedies that may be used by the officials, they are not fully in line with the practice that are followed by the most international organisations. It remains unclear why the three regional organisations did not opt for a relatively simple, but adequate solution, by recognising the competence of the Administrative Tribunal of the International Labour Organisation as a number of other international organisations did.

5. Concluding Remarks

The article firstly analyses the international practice regarding three concepts of administrative international law that are usually applied by the international organisations with a view of defining the status of their officials, notably the concepts of professional independence and exclusive international service; recruitment standards and legal remedies for protecting the status of the officials. The article then examines the relevant legal rules of the selected three regional organisations (EnC, TC and ReSPA) and critically assesses the compliance of these rules with the legal concepts in question. The assessment framework, based on the international practice, was defined in respect of the rules of different international organisations and theoretical writings of publicists. The three legal concepts, as presented above, were selected due to their importance in defining international civil service. After setting this framework, the comparative analysis was used to detect the rules applicable in the three selected organisations and to determine if they are aligned with the practice applied by the international organisations.

It may be concluded that the analysed legal texts, notably the constituent instruments and staff regulations, provide for the guarantees of professional independence of the officials and establish their service as exclusively international. There are clear duties of the directors of the organisations' secretariats and the officials to be exclusively loyal to the organisation and not to follow any instruction that may come from the national governments. The officials are considered as international civil servants and they have to be guided, while discharging their duties, by the interests of the international organisation. The staff regulations and accompanying rules elaborate recruitment standards aiming at selecting qualified staff and ensuring the geographical equilibrium, as well as assigning the appointing authority to the administrative head of the secretariats. The application of these legal requirements should ensure that the officials will be a genuinely international corps of staff.

As for the legal remedies for protecting the rights of the officials, certain deficiencies of the legal framework were identified. The deficiencies in the rules of the EnC and TC are related to the composition of the first instance bodies, consisting of the members of the governing bodies of these organisations, and which do not necessarily possess the expertise for dealing with the staff related disputes. The external arbitration envisaged by the EnC Staff Regulations, i.e. appointing a sole arbitrator by the Permanent Court of Arbitration, can provide for the adequate legal solution offering a judicial type remedy, however, possible practicalities for engaging such an arbiter by an individual applicant, cast doubts as to the effectiveness of this legal remedy. The solution of having the European Commission as the arbitrator, as defined by the TC Staff Regulations, remains unclear in terms of the responsible body within the European Commission to decide on the concrete case as well as the adequate expertise that have to be possessed by the arbitrators. In the case of ReSPA, the creation of an internal independent Appeal Board, composed of experts, seems to adequately address the issue of administrative appeals procedure, but this organisation's rules are completely silent about the judicial protection. The current solutions could be improved by following other organisations that do not possess their own administrative tribunal and that recognise the Administrative Tribunal of the International Labour Organisation as a competent judicial forum for setting staff related disputes and this tribunal.

It is also noteworthy that the article is limited to analysing the normative framework of the examined organisations and this research should be complemented by the empirical research of the practice in implementing the staff regulations and relevant administrative decisions. However, the limiting factor is availability of data. Additionally, the further research in this area should include some other concepts such as the duration of appointment of officials; performance appraisal; privileges and immunities that are enjoyed by the officials; salaries, emoluments and other benefits, and compare the existing rules to the relevant practice of other international organisations.

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