

Submitted: 2019-10-04
Published: 2019-12-18

UDK: 341.7/.8
341.462.1

doi:10.5937/nabepo24-23490

INTERNATIONAL-LEGAL REGULATION AS A DETERMINANT FOR MEASURES AND PROCEDURES OF THE COMPETENT STATE AUTHORITIES TOWARDS DIPLOMATIC- CONSULAR REPRESENTATIVES

Nemanja Marinković¹

University of Criminal Investigation and Police Studies, Belgrade

Abstract: In this paper, the rights and obligations of states under the 1961 Vienna Convention on Diplomatic Relations and diplomatic immunity are commented on, as well as that the state must respect them and provide additional protection and assurance to diplomats and their missions; the following heading discusses whether diplomats abuse their privileged position, including examples of how the most frequent abuses are committed, and that diplomats have a duty to obey the laws of the receiving state; and finally, dominantly, we discuss how the whole state can respond to the Convention and the laws through the diverse practice of the competent authorities, along with the examples.

The methodological approach in this paper is based on the analysis of the content of international-legal documents, and the analysis of the content of scientific material (textbooks, monographs, studies, PhD and master's theses, books of proceedings, journals, exercise books).

Keywords: diplomatic-consular right, diplomatic immunity, national safety, measures and procedures of state authorities.

INTRODUCTION

The privileges of a diplomatic representative have not been the subject of explicit legal regulation for a long time (Kreća, 2010: 278). The inviolability of diplomatic agents is one of the old principles and rules of courtesy in relations

between states. Even though one could not say that such practices have been strictly applied throughout diplomatic history, as there have been instances of deprivation of liberty of foreign representatives and even of their killings in

¹ nemanja.marinkovic@kpu.edu.rs

the event of war (Shiddo, 1977: 151), still, generally speaking one may say that the practice has been respected, especially because a compromise has been found in the application of the reciprocity principle. Diplomatic representatives' personal privileges and immunities, including immunities and privileges of diplomatic representatives, have been transformed from the old principles and courtesy under the Vienna Convention on Diplomatic Relations into the legal obligation of the receiving state (Kreća, 2010: 275-279).

Numerous attacks on diplomatic representatives have imposed the need to make supplementary regulations to protect diplomatic representatives as effectively as possible (Shiddo, 1977: 154).² Therefore, it can be concluded by the consent of general practice and theory that immunities are necessary for the purpose of the smooth running of international relations, whose smooth running is also of importance for states, peoples, citizens (Tepavac, 1981). The diplomats are provided full political, legal and criminal-legal protection (Zečević, 1985: 222).

The basic presuppositions being the subject matter of this paper are as follows:

– The diplomatic immunity as an international legal principle is a determinant, so regular measures cannot be implemented. The international legal norms imply an obligation for the receiving state and its authorities to respect, first and foremost, the immunities and privileges of the persons entitled to them and additionally to provide them with enhanced protection.

– Despite the obligation for persons enjoying privileges and immunities to abide by the laws and regulations of the receiving state, there are delicts committed by the diplomats, however, in proportion to the relatively small number of delicts perpetrated by the diplomats relative to the total number of delicts;

– Due to the diplomatic immunity, the measures and procedures of the competent state authorities towards diplomatic and consular missions are very limited and different from the regular ones.

– The aim of the paper is to give insight into the measures and procedure of the competent state authorities that can still be applied to diplomatic-consular representatives, and which do not represent a violation of the diplomatic immunity.

THE DIPLOMATIC IMMUNITIES

We will discuss here what represents the diplomatic immunity. "State jurisdiction means that the courts of each country should be able to convict all offenses committed in their territory. Diplomatic immunity is a well-regulated exception to this general legal principle of territorial jurisdiction" (Ben-Asher, 2000:5), and

so the measures that are usually applied to other citizens in the state in this case cannot be applied in the same manner (Shiddo, 1977: 85). However, there is a manner how to approach such and similar cases, which will be explained later, because diplomatic immunity should

² Convention on the Prevention and Punishment of Crimes against Persons Enjoying International Protection, including Diplomatic Representatives (1973) (Đorđević *et al.* 2000: 369-375)



not be understood as legal irresponsibility or a total exemption from responsibility.

Diplomatic immunities and privileges representing the protection set out in the provisions of the Vienna Convention on Diplomatic Relations in Art. 22-40, are the norms which the receiving state is to respect, which results from the general duty to respect the international legal obligations undertaken. In relation to the usual measures of the receiving state, diplomatic immunities and privileges constitute an exemption and, in principle, also cover, in respect of the types of diplomatic representatives, not only the exemption of persons with diplomatic capacity, i.e. in relation to the usual measures of the receiving state, other members of the staff of the diplomatic mission (with the importance of the position affecting the extent of the immunity), which may be divided into:

- privileges and immunities of diplomatic mission; privileges and immunities of diplomatic representatives and of family members of the diplomatic representative, privileges and immunities of administrative and technical staff and of their families, privileges and immunities of service personnel and of their families, and private servants.³

- The legal basis of diplomatic representatives' immunities and privileges can be seen in three theories: extraterritorial theory, representation theory and functional theory, and the applicable

law in diplomatic representatives' privileges and immunities recognizes the combined influence of representation theory and functional theory (Kreća, 2010: 279, 280). In contemporary theory, the prevailing view is that the diplomatic immunity of a diplomat⁴ should be absolute and apply to all acts without exception, which is shown in diplomatic history, since in the past these provisions were in the domestic legislation of many countries (Shiddo, 1977: 91).

We can compare the relationship between the two most important immunities, personal inviolability and diplomatic immunity from criminal jurisdiction. These immunities grant full protection to diplomatic representatives (Värk, 2003: 110).

The difference between the two immunities is the following: personal inviolability is a physical privilege (no diplomat can be arrested, detained, etc.), and diplomatic immunity from criminal jurisdiction is immunity from prosecution of the receiving state (procedural obstacle, meaning that whenever immunity is granted by the court, the court must suspend all proceedings against the diplomat) (Värk, 2003: 111-113), while criminal liability remains. "However, once the diplomatic status ends, that effect of losing the immunity would be to remove the procedural ban and allow the judicial authorities to prosecute the former diplomat" (Värk, 2003: 113). Diplomatic

3 For more specific immunities and privileges, see: (Tepavac, 1981; Đorđević *et al.* 2000: 100-131; Veljić, 2004: 173-189); and the Vienna Convention on Diplomatic Relations (VCDR), articles 22-40.

4 The basic difference between the immunity of diplomatic agents and consular agents is that in terms of personal inviolability, a diplomatic representative cannot be arrested, detained, while a consular representative can only be imprisoned or detained in the event of a serious crime, on the basis of a decision of a competent judicial authority, and with respect to criminal immunity against a diplomatic agent, the receiving state may not initiate criminal proceedings, both with regard to an act or omission in the exercise of official duty, or to acts and omissions outside the territory of the receiving state, while criminal proceedings may be instituted against the consular agent in respect of acts taken outside his office, whereas the jurisdiction of the receiving state for the acts of the consular representative exercised in the exercise of consular functions is limited by consular immunity (Kreća, 2010: 275-277, 292).



immunity does not exempt a diplomatic agent from the legal system of the transmitting state. In addition, privileges and immunities are valid from the moment when the foreign representative crosses the border of the home country until they leave it (Vajović, 2006: 301).

Considering that under the common law, too, the states are responsible for the international offenses of their authorities, the international legal norms imply an obligation on the receiving state and its authorities to respect, first and foremost, the immunities and privileges of the persons entitled to them, and additionally to provide them with enhanced protection from the actions of nationals as well as foreigners within its jurisdiction.⁵ Namely, the duty to respect diplomatic immunities stems from the general duty to respect the international legal obligations undertaken. The Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations and the Convention on the Prevention and Punishment of Crimes against Persons enjoying International Protection, including Diplomatic Representatives (Veljić, 2004: 237) are standards that create an obligation for the states to respect diplomatic immunities, as in art. 29 (The Vienna Convention on Diplomatic Relations), “The diplomatic agent’s personality is inviolable. They cannot be subjected to any type of arrest or detention. The accrediting state shall treat them with due respect and take all reasonable steps to prevent offending their persona, their freedom or their dignity”.

In addition, the receiving state has the obligation to prosecute and severely punish those persons who commit illicit activities against the persons protected by diplomatic immunity, compensation

for damages if the conditions are met, and the like. The receiving state should also act preventively, i.e. to take all steps to avoid such acts. The state should also take all legal measures in this regard, i.e. to prescribe adequate criminal offenses and sanctions (e.g., there is a criminal offense of exposing a foreign diplomatic representative, or violating the honour and reputation of foreign states, foreign heads of state or diplomatic representatives, etc.) (Tepavac, 1981: 38-51).

The security and protection of the diplomatic and consular representatives and the staff is an international multilateral and bilateral obligation of the receiving state and is classified as diplomatic immunity. In most countries, all issues related to the security and protection of the diplomatic and consular representatives and the staff go through the Protocol of the Ministry of Foreign Affairs (MFA), which, in cooperation with the competent special services and the police, takes care of the security of foreign diplomats and diplomatic missions (premises), security arrangements for foreign delegations and VIP visitors and the security of international conferences (Veljić, 2004: 183).

“On the whole, very few countries provide on-going protection for missions and staff, unless there are strong indications or evidence of a threat to the premises or staff, and even then only at the precise request of the head of mission” (Veljić, 2004: 239). “In most countries, protection applies only to the official premises of the mission (embassies, consulates) or the official residence of the ambassador/chief of mission. In other words, protection is limited to the workplace and the figure of the head of mission” (Veljić, 2004: 239). The state

⁵ This implies all protected subjects according to the international law, not only the diplomatic representatives (Tepavac, 1981: 38-51).



can provide protection via a permanent guard, as well as via mobile patrols (these can also be motorized pedestrian police patrols, environmental inspections, visits to the janitorial embassy), connec-

tion with the alarm system, the so-called “hot-lines” with a police station or a private agency, electronic surveillance, etc. (Veljić, 2004: 239, 240).

ABUSE OF THE PRIVILEGED AUTHORITY OF THE DIPLOMATS

Article 3 of the The Vienna Convention on Diplomatic Relations sets out the functions of a diplomatic mission, consisting in particular of: a) representing the country with the country of accreditation at another country of accreditation; b) protecting in the state in which the accreditation of the state of accreditation and its nationals are accredited, to the extent permitted by international law; c) negotiating with the government of the country of accreditation; d) informing with all permissible means the conditions and developments in the country of accreditation and submitting a report thereon to the government of the accrediting state; e) promoting friendly relations and developing economic, cultural and scientific relations between the accrediting country and the accredited country.

This is about the abuse of immunity and the prohibited types of diplomatic activity, i.e. the so-called “negative diplomatic functions” (Milašinović, 1985: 143).

Ben-Asher cites the data (figures) suggesting that a relatively small number of offenses are committed by diplomats in relation to the total number of offenses (misparking, drunk driving, theft, violence, and misdemeanours and criminal offenses) (Ben-Asher, 2000: 9, 10). “Overall, when illegal parking is neglected, the percentage of offenses involving

accredited staff does not seem particularly large” (Ben-Asher, 2000: 10).

In terms of the types of abuse of privilege and the committing prohibited forms of diplomatic activity, Ben Asher says, “Roughly speaking, there are two types of abuse:

- deliberate abuse of terrorist or political character; and
- the abuse of predominantly personal nature” (Ben-Asher, 2000: 8).

Abuse of diplomatic immunity from this first group includes espionage, too. In terms of this abuse, this form is most closely intertwined with the diplomatic intelligence function (Vajović, 2006a: 240; Mišović *et al.* 2003: 98, 99). The distinction between permitted and illicit actions is thin, and begins “from a legal standpoint, exceeding permissible interests is when a diplomatic representative attempts to obtain, through illicit means or manner, the information which is kept secret,” (Milašinović, 1985, p. 103), when attempting to obtain information that is secret and could be misused by the regulations of the receiving state which stipulates such activities as a criminal offense, etc. “This exceedance of the permissible level consists of the activities of diplomats to obtain information about the host country in a manner that is qualified as a crime of espionage in its criminal code” (Mišović *et al.* 2003: 99; Vajović, 2006a: 240).



This first group also includes various forms that could be classified as interference with internal affairs. International practice has given, and theory has recognized, a number of forms of activity that are considered to be interventions in internal affairs by diplomatic representatives. These are, first and foremost, espionage, criticism of government or social policy, supporting and assisting opposition forces to overthrow the legal regime, disrespecting domestic legal regulations, propaganda activity, granting diplomatic asylum, negotiating on behalf of a third country, posting correspondence with the government, etc.” (Bošković, 2006: 374-379). Since the functions of diplo-

matic representatives are in the domain of politics, through their basic function of representing the state, any step out of the function will not automatically lead to criminal responsibility but to political responsibility.

When talking about the abuses of a personal nature, the history of violations of diplomatic immunities has recorded a large number of criminal offenses committed by the persons protected by this immunity, e.g. shooting and severe wounding, rape, beatings, robbery, murder, exploitation, violence (Ben-Asher, 2000: 3), serious traffic, trafficking in narcotics, paedophilia, smuggling of weapons, etc. (Nwachukwu, 2005: 42-46).

MEASURES AND ACTIONS OF THE COMPETENT STATE AUTHORITIES TOWARDS THE PROHIBITED ACTIONS OF THE DIPLOMATIC REPRESENTATIVES

In this part we can discuss what measures may be taken by state authorities, primarily from the national security system, towards diplomats (persons with immunity).

A) According to the rules of international law, first, the state gives its *consent* so that these persons may enter its territory at all (and before that agrees to start diplomatic relations in general). Namely, the state may declare that a person is unwelcome (*persona non grata*) even before they enter the territory of the receiving state, and otherwise, according to the Vienna Convention, the state is protected because it is stated in Art. 9 that the state may “at any time, without obligation to state its decision, inform the transmitting state that the Head of Mission or any member of the mission is a *persona non grata*, or that any other of

its staff members is not welcome” (Tepavac, 1981: 69-74).⁶

When diplomats are already on the territory of the receiving state, although protected by immunities, a number of measures can be taken by the state authorities (primarily the national security system, when it comes to relations in this area).

B) Measures that can be classified as the most lenient, such as *asking someone to show their ID, stopping, identifying and detaining*, do not violate diplomatic immunity. Namely, “stopping diplomats *per se* in order to identify them is not a violation of immunity” (Bartoš, 2006: 341).

If a person is to be identified, and if that person shows a proper diplomatic ID, the executive authority is obliged to suspend any intervention. This does not mean that the executive authority should

⁶ See VCDR, Art. 9, p. 1



not politely warn a foreigner who enjoys diplomatic immunity for violating the regulations they have committed, because persons with diplomatic immunity are also required to comply with domestic regulations. This respect, however, cannot be coerced. Rather, in the event of contempt, the diplomatic channel may require a foreign diplomat's government to hold them accountable for having violated the regulations. Very often, incidents occur around the world exactly because the executive authority will not know or does not know about the diplomatic immunity (Bartoš, 2006: 340).

In terms of the retention and identification of an incident, the procedure is as follows: When a diplomat shows their ID, the state authority is obliged to fully respect the immunity. However, if they are unable to show their ID, or it is invalid, and an incident requires arrest or apprehension, then the state authority "may inform the suspect that they will be detained until their identity has been determined. The usual procedure is for the police officer to immediately notify their superior, who will check the identity of the suspect via the Ministry of Foreign Affairs hotline service and the Protocol (Veljić, 2004: 173-189).

C) With regard to *traffic measures, improper and speedy driving*, etc., diplomats "are obliged to obey all traffic regulations of the receiving state and all restrictions on speed, parking and alcoholic driving" (Veljić, 2004: 181). States mostly keep records of diplomatic traffic violations. In a number of countries, especially Anglo-Saxon, police can stop any vehicle and a motorist who has immunity and has committed a misdemeanour (speeding or other serious traffic offense) can be ruled an appropriate warning or punishment on the spot. On

such an interpretation the ruling of a mandatory sentence is not the violation of immunity. Namely, the patrol-officer will submit a written report to the superiors, who then, depending on the severity of the offense, notify the Protocol of the Ministry of Foreign Affairs (Veljić, 2004: 181).

D) This also implies *preventive measures* - The authorities of the home state have the right to take protective measures and to prevent acts aimed at undermining the foundations of state and social order, its security and independence, as well as the life and health of its citizens, but in doing so, they must ensure not to violate the diplomatic immunity of representatives of other states (Vajović, 2006: 297).

Preventive measures may also be applied in traffic. For example, our authorities have the right to stop diplomatic cars moving on the left side of the road since it is prescribed to drive on the right (Vajović, 2006: 296). In addition "preventive measures may be taken that will stop the crime from being committed, but they must not constitute a violation of diplomatic immunity". For example, "if a diplomatic agent recorded a prohibited object, they should be warned on the spot that it was prohibited and asked to surrender the footage" (Vajović, 2006: 296). In case they refuse to do so, the superiors should be notified immediately who will contact the Protocol of the Ministry of Foreign Affairs. However, in such situations, the state authority will seize the recording "prior to identifying the person who made the recording" (Vajović, 2006: 296).

Preventive measures may also include: "more rigorous notification procedures for deploying potential diplomatic mission staff, limiting the size of



missions, scanning and weighing diplomatic bags, limiting the size of mission assets, and announcing a greater willingness to declare a person accredited as a *persona non grata* even in cases of serious civil charges and constant failure to pay fines for misparking” (Ben-Asher, 2000: 38; Veljić, 2004: 235).

F) Although protected by immunity from the criminal, civil and administrative judiciary of a territorial state, it should be noted in particular for this criminal part that immunity eliminates its criminal liability, but only to the extent that they cannot (except under certain conditions) be brought before a court of a territorial state because of the crime, but the question is, who will then try them for that crime, and the answer is that *they fall under the jurisdiction of their state*, so that the competent courts of the state may judge them. It means that the state will ask their state to be tried (Zečević, 1985: 115, 116), because the Vienna Convention does not release them from responsibility before their own state.

G) *Identification and the courts of the receiving state*: A home state may bring a diplomatic representative to its trial only if their state waives the criminal immunity that protects them (Vajović, 2006: 297). A diplomatic representative cannot be ordered to give expert testimony or testimony before domestic courts (this also applies to civil disputes). They may only be asked to do so, and if they agree to do so, the competent authority should go to the representative office and take their testimony there (Vajović, 2006: 298). Nevertheless, the judgment cannot be enforced (Vajović, 2006: 298).

It is rare for states to accept the lifting of their diplomats’ immunity,⁷ because

in such cases they would be revoked first, and the very request for the lifting of the immunity usually indicates that it is a delict to such an extent that unless the sending state suspends the diplomat’s immunity, the receiving state will no longer be ready to accept the diplomat (Värk, 2003: 118). We could add here that if the sending state does not terminate diplomatic immunity to such a diplomat (who has violated the laws of the receiving state) or does not bring them to trial in their state, then the receiving state could refuse the admission of any other diplomat as well, and to terminate diplomatic relations, as the sending state makes it clear that its other diplomats may be in violation of the laws of the receiving state and therefore not held responsible.

H) Irrespective of the immunities, it would be a misinterpretation that the executive authorities have a passive attitude towards the illegal actions of diplomats. Although they cannot be arrested, “any violation or criminal offense committed by a foreign diplomat should be recorded, investigated and reported by the security authority, who must then obtain any evidence available” (Bartoš, 2006: 342, 343). These are then transmitted through the competent superiors to the protocol of the Ministry of Foreign Affairs. “On the basis of such reports, the Protocol Division can intervene not only by requiring the government of such a diplomat to be held accountable, but such a diplomat may also be denied acceptance (Bartoš, 2006: 343).

I) *The diplomatic mail is inspected* in accordance with a special procedure, whereby the courier has to be escorted to the Ministry of Foreign Affairs, where an

⁷ For example due to a huge public pressure the Georgian president abolished immunity of Makharadza (for the case of severe car accident) who was later sued and is serving his sentence in the USA (Värk, 2003: 118).



official of this institution will inspect the mail in the presence of the mission representative, i.e. the mail holder. In the case of a positive result, only those items which do not constitute correspondence can be seized (for example, the shipment contained gold, weapons or other items). The secrecy of diplomatic correspondence must not be violated even when the post is examined (no papers should be read). This may not be the only way to conduct a mail inspection. In practice, there are other ways, such as airport or border inspection, etc. (Vajović, 2006: 300).

J) *Measures against espionage include the declaration of the diplomat concerned as persona non grata.* Examples from this domain indicate that the host state does not easily decide to implement this measure. It is usually preceded by the patient obtaining of evidence of the non-diplomatic activities of a particular diplomat. The host state, in principle, applies two methods of cutting the aforementioned activities: 1) situational - at the moment when the offense of espionage is committed; and 2) subsequent (published evidence of espionage activities of a particular diplomat at the time they deem it most favourable to their international position) (Mišović *et al.* 2003: 102).

K) Diplomatic representatives are exempt from taxes, fees, duties and other financial charges. This does not imply that customs duties can be exempt from things intended for trade. Abuse of these privileges is very common in practice (Vajović, 2006: 298). No sanctions can be imposed on a diplomatic agent caught in smuggling, but they can be imposed on their accomplices, citizens of their home country or foreigners who do not enjoy diplomatic immunity (Vajović, 2006: 299). The very *search of diplomatic items*

and baggage should be approached with caution only when we have the information that the delivery contains, in addition to the items indicated, the items intended for trade or other items whose removal or entry is prohibited. In this case, the possessions that the diplomatic representative did not have the right to take out or bring in are seized in a special procedure, and the customs charges are paid for the possessions intended for trade (Vajović, 2006: 299). In a considerable number of states, the request of the customs authority to open the trunk of a motor vehicle is not considered a violation of immunity, but without the examination of personal luggage (Veljić, 2004: 186).

L) *In the event of a natural disaster*, despite the inviolability enjoyed by the mission's official premises, the courtyards of the buildings, the apartment and the carriage of diplomatic representatives (Vajović, 2006: 300), no conclusion should be drawn from this that the authorities of the home state cannot enter the premises of the mission or apartment rooms in the case of a natural disaster, to assist and prevent an accident. For example, if a fire broke out in one of the premises belonging to a diplomatic mission, it would be absurd not to allow the home state's authorities to enter the building and put the fire out. It is understandable that the privilege of inviolability of the archive must also be respected on this occasion (Vajović, 2006: 301).

M) *In the event of a criminal incident, if public security is in jeopardy and a serious crime is committed*, the police may intervene to the extent necessary to stop the criminal activity, inform the superior, and make a report (from a diplomatic ID card, participants, witnesses, too). The superior will order the arrest of all those who do not enjoy immunity, notify



their command centre as soon as possible, who will inform the duty service and the Protocol of the Ministry of Foreign Affairs and immediately send a detailed incident report (Veljić, 2004: 182).

N) *The diplomat in some cases may also be intervened. One case could relate to the situation if the diplomat would be caught* in that part of the national territory where that person does not have the right of residence and movement. In this case, local authorities have the right to establish such a fact and to ask the diplomatic representative to move from the prohibited to the prohibited zone as soon as possible, possibly accompanied by the authorities, too, no longer the subject of special measures. The authority can then escort the diplomat back to the border of the prohibited zone to the safe zone, and may even reach the state capital (Bartoš, 2006: 341).

Another type of intervention towards diplomats is to eliminate threats of the interests to other citizens. For example, it may happen that one member of the diplomatic corps uses firearms to carouse. It is considered that the domestic authorities may in this case intervene in order to disarm and render such a diplomat harmless, but that their intervention should cease as soon as this is achieved. In other words, the seized revolver should be returned diplomatically to the representative office where the diplomat belongs (Bartoš, 2006: 342).

O) The receiving state may invoke *self-defence* in the actions of state authorities towards diplomats. Self-defence does not imply a basis for trial and punishment, but rather an immediate and proportionate reaction to the delicts of diplomats who may endanger the lives of others or the state (Värk, 2003: 115).

One example of a self-defence measure is an example of a USA police officer executing a warrant for the arrest of a Danish diplomat, followed by a fight and several shootings, and the Court stated that "... if a representative attacks someone else, they may be killed in self-defence, though not through punishment" (Ben-Asher, 2000: 39). Self-defence is limited to eliminating the "... imminent threat posed by a diplomat" (Ben-Asher, 2000: 39).

P) *Persona non grata and the expulsion: a persona non grata* procedure may be implemented for purely political reasons. It is also used against persons who have committed a serious criminal offense in the territory of the receiving state or have shown serious disregard for the laws and regulations of the receiving State (Veljić, 2004: 178). For the declaration of *persona non grata*, the most common cases are when meddling in the internal affairs of the receiving state, espionage, insulting the receiving state or its officials, and often without any special reasons, as a measure of deterioration of relations between the two states (Đorđević *et al.* 2000: 95).

Q) *The disruption of diplomatic relations* - Another sanction and prevention measure for governments is the termination of diplomatic relations. In the case where the whole diplomatic mission serves the purposes of activities contrary to the aims of diplomatic missions in establishing and maintaining friendly relations, when it turns to its opposite, it serves subversive activities, organizing terrorism, etc., the most drastic measures are possible to happen, too, such as the ending of diplomatic relations. For example, the US closed the Libyan People's Bureau in Washington in 1981 with the aim of stopping the threat of



terrorism that stemmed from that mission (Ben-Asher, 2000: 38). A variety of reasons and causes for ending diplomatic relations are recorded in the history of diplomatic relations (Đorđević *et al.* 2000: 96-99).

Measures can also be taken for various offenses, because non-compliance with domestic regulations violates international law, and on this basis, the state can:

For example, expose to compromise the media, diplomacy, etc. in the international public, because of the acts done, thus damaging the reputation of the diplomacy of the respective state; or even,

In addition to the possibility of compromising the whole diplomatic mission, there is always the danger of a broader international compromise of the entire foreign policy of the given state (Milašinić, 1985: 108).

S) *The International Criminal Court* – Together with all the aforementioned possibilities, there is another one, namely that diplomats are subject to criminal proceedings before the International Criminal Court. It is about a Rome Statute that is equally applied to all persons without any privilege based on official capacity (to diplomats, as well, even when it comes to the state president, the president of the government or a member of parliament, a government official or any office held), meaning that it does not exclude anyone from criminal responsibility (Värk, 2003: 118).⁸ Article 27 of the Rome Statute of the International Criminal Court states: This Statute herein shall apply equally to all persons without distinguishing whether they are public officials or not. In particular, the public office of the President or Government, a member of the government or parliament, an elected representative

or a government official shall in no case constitute grounds for exclusion from criminal responsibility under this Statute, nor shall public office in itself constitute a basis to mitigate punishment. Namely, the immunity and other special rights deriving from public office, which they hold under either national or international law, do not constitute an obstacle for the Court to act in accordance with its jurisdiction over such persons (Dimitrijević *et al.* 2005: 151-165). As a result, a diplomat cannot hide behind their immunity to evade criminal proceedings before the International Criminal Court (Värk, 2003: 118).

T) *International Court of Justice* – The International Court of Justice may establish jurisdiction in respect of the Convention on Diplomatic Relations. The establishment of jurisdiction, however, is not stipulated by the Convention itself, and it remains for the states between which the dispute arises as to whether to bring the dispute to the jurisdiction of the International Court of Justice. In its work so far, this Court has considered disputes in several cases in the subject matter of diplomatic law. One of the cases concerned an incident that occurred in Iran in 1979 in breach of the provisions on the inviolability of diplomatic and consular premises and their personnel, as well as the duty of the receiving states to protect that inviolability. Namely, militant members of some domestic organizations then attacked and conquered the US embassy, held hostage detained members of hostages, and appropriated a part of the property and the archives. There was no protection of state authorities. Moreover, some members of the Iranian government supported this action. The US lawsuit

⁸ See Article 27 of the Statute of the International Criminal Court.



against the International Court of Justice followed (Dimitrijević *et al.* 2005: 162).

Namely, the fundamental norms defined by the Vienna Convention on Diplomatic Relations have been violated, that the diplomat's personality is inviolable, that the archives and mission documents are inviolable at all times, that the premises of the mission are inviolable (Art. 29, Art. 24, Art. 22 The Vienna Convention on the Diplomatic Relations), which brought forth the duty and obligation of respect from the receiving state. On May 24, 1980, the court issued a judgment in

which it ruled that the Government of Iran had breached its obligations under international conventions and the rules of general international law established by ancient times and that it therefore bore international responsibility (Dimitrijević *et al.* 2005: 162).

Finally, in connection with the further role of the UN Security Council, the shortcomings of this authority are shown, because success depends on the composition of the Council and the complex relations among the permanent members (Ben-Asher, 2000: 40).

CONCLUSION

The international legal norms imply an obligation for the receiving state and its authorities to respect above all the immunities and privileges of the persons entitled to them, and, on the other hand, to provide them with enhanced protection.

Here we can see why the way of dealing with diplomats is important, so a proposal can be made for special training and organization of all subjects of the state, first of all national security, who will be trained and educated to work with diplomats. Namely, even when diplomatic representatives do not obey the laws of the receiving state, they may ultimately be held accountable to international law, as well as disrespect or misconduct by the security authorities against diplomats in the receiving country, and even if they do not provide further protection for diplomats, may result in diplomatic or even greater problem before international law, because the state authorities are also obliged to respect diplomats and provide additional protection under international law. In

the case of wrongdoing, the state may also be held responsible because it is a signatory to the VCDR, and thus responsible for international law – i.e. before international institutions.

A diplomat has a duty to obey the laws of the receiving state,⁹ given that the legal regulations of a territorial state are considered not to have full legal character for diplomats, according to a functional theory for the exercise of their functions (because they are in fact another state and other legal regulations) (Shiddo, 1977: 86), a proposal can be made here to harmonize at the level of international law all major prohibited acts, and then to apply to all, if they occur, that the sanction is the same everywhere, etc., so that the territorial state can implement measures.

It may be suggested to form special units, police, intelligence, judicial, customs etc. in each state, which would be trained and would be able to treat diplomats in various situations, in order not to make mistakes in the work of state

⁹ See the VCDR, Article 41, p. 1



officials, because even the slightest mistake can cause intergovernmental problems later.

It has been said that even when a diplomat fails to comply with the regulations, immunity prevents the state from implementing regular measures. As it cannot implement these regular, the question arises as to what measures a state has at its disposal to protect its legit-

imate interests. This does not mean that the state cannot apply any sanctions, if it cannot apply the regular ones, because no one waives their own protection, not even the state (Tepavac, 1981: 69-74).

In this regard, the most common measures and procedures applied by state authorities (primarily the national security system) to the prohibited forms of action by diplomatic agents are outlined.

REFERENCES

1. Bartoš, M. (2006). Službenici resora unutrašnjih poslova i imunitet diplomatskih predstavnika. In Đ. Lopičić (Ed.), *Diplomatija: zbornik radova* (pp. 339-344). Beograd: Vaša knjiga.
2. Ben-Asher, D. (2000). *Human rights meets diplomatic immunities: Problems and possible solutions*. Cambridge, MA: Harvard Law School.
3. Bečka konvencija o diplomatskim odnosima. (2005). In V. Hadži-Vidanović, M. Milanović (Eds.), *Međunarodno javno pravo: zbirka dokumenata* (pp. 63-72). Beograd: Beogradski centar za ljudska prava.
4. Bečka konvencija o konzularnim odnosima. (2000). In S. Đorđević, M. Mitić, (Eds.), *Diplomatsko i konzularno pravo* (pp. 297-318). Beograd: Službeni list.
5. Bošković, M. (2006). Prava i dužnosti diplomatskih predstavnika i zabranjeni oblici diplomatske aktivnosti. In Đ. Lopičić (Ed.), *Diplomatija: zbornik radova* (pp. 369-381). Beograd: Vaša knjiga.
6. Dimitrijević, V., Račić, O., Đerić, V., Papić, T., Petrović, V., Obradović, S. (2005). *Osnovi međunarodnog javnog prava*. Beograd: Beogradski centar za ljudska prava.
7. Đorđević, S., Mitić, M. (2000). *Diplomatsko i konzularno pravo*. Beograd: Službeni list.
8. Konvencija o sprečavanju i kažnjavanju krivičnih dela protiv lica koja uživaju međunarodnu zaštitu, uključujući diplomatske predstavnike. (2000). In S. Đorđević, M. Mitić (Eds.), *Diplomatsko i konzularno pravo* (pp. 369-375). Beograd: Službeni list.
9. Kreća, M. (2010). *Međunarodno javno pravo*. Beograd: Pravni fakultet Univerziteta u Beogradu.
10. Milašinović, R. (1985). *Teror slobode: lice i naličje diplomatije*. Zagreb: Jugoart.
11. Mišović, S., Cvetković, M. (2003). *Diplomatska špijunaža* (pp. 91-107). Beograd: Fakultet civilne odbrane.
12. Nwachukwu, A. (2005). *A comparative study of state practices relating to diplomatic immunities and privileges*. Mild: University of Lagos.



13. Povelja Ujedinjenih nacija. (2005). In V. Hadži-Vidanović, M. Milanović (Eds.), *Međunarodno javno pravo: zbirka dokumenata* (pp. 46–62). Beograd: Beogradski centar za ljudska prava.
14. Protokol sa fakultativnim potpisivanjem koji se odnosi na obavezno rešavanje sporova. (2005). In V. Hadži-Vidanović, M. Milanović (Eds.), *Međunarodno javno pravo: zbirka dokumenata* (pp. 72–73). Beograd: Beogradski centar za ljudska prava.
15. Rimski statut Međunarodnog krivičnog suda. Available at: http://www.podaci.net/_z1/8126847/S-mksuda02v0105.html [Accessed 10.11.2019].
16. Tepavac, M. (1981). *Imuniteti i privilegije u međunarodnom pravu* (PhD thesis). Beograd: Pravni fakultet Univerziteta.
17. Shiddo, S. E. (1977). *Olakšice, privilegije i imuniteti diplomatskih predstavnika* (M.A. thesis). Beograd: Pravni fakultet Univerziteta.
18. Statut Međunarodnog suda pravde. (2005). In V. Hadži-Vidanović, M. Milanović (Eds.), *Međunarodno javno pravo: zbirka dokumenata* (pp. 189–197). Beograd: Beogradski centar za ljudska prava.
19. Vajović, P. (2006). Neka pitanja privilegija i imuniteta diplomatskih predstavnika i rad organa unutrašnjih poslova. In Đ. Lopičić (Ed.), *Diplomatija: zbornik radova* (pp. 293–302). Beograd: Vaša knjiga.
20. Vajović, P. (2006a). Obaveštavanje kao diplomatska funkcija. In Đ. Lopičić (Ed.), *Diplomatija: zbornik radova* (pp. 225–243). Beograd: Vaša knjiga.
21. Värk, R. (2003). Personal Inviolability and Diplomatic Immunity in Respect of Serious Crimes. *Juridica International*, 20(8), 110–119.
22. Veljić, Z. (2004). *Diplomatski protokol: praktikum*. Beograd: Diplomatska akademija.
23. Zečević, M. (1985). *Vojna diplomatska predstavništva u savremenim međunarodnim odnosima* (M.A. thesis). Beograd: Pravni fakultet Univerziteta.

