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PRIVILEGES AND IMMUNITIES OF REPRESENTATIVE OFFICES OF INTERNATIONAL ORGANIZATIONS IN MEMBER STATES

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ABSTRACT

This article examines the application of privileges and immunities of representative offices of international organizations in member states. It contains a detailed analysis and deliberation of the legal basis of privileges and immunities of representative offices of international organizations in Member States. The most problematic issues of the application of privileges and immunities of representative offices of international organizations in member states are highlighted, Based on the study, it is proposed to take a number of practical measures.

KEYWORDS

International organizations, representative offices of international organizations, diplomatic law of international organizations, convention, immunities and privileges, freedom of movement, freedom of relations, SCO, EU, Uzbekistan.

INTRODUCTION

International organizations can be attributed to the most diverse and developed mechanisms of the system of international relations. A significant increase in international organizations, as well as a noticeable

increase in their activity, is a remarkable phenomenon of modern international development.

Conceptually, we note that the interaction of the international organization, its member states, and other actors of international relations is carried out

both within the organization itself and with the help of representative offices - representative offices of member states attached to an international organization and representative offices of international organizations with member states. Such a complex activity in turn gives rise to the action of several legal systems at once. As rightly indicated in the author's abstract of thesis I.A.Chistodovoya, "in the case of an international intergovernmental organization, the representation is subject to its internal legal order, while the staff of the representative office, with the exception of those hired from local citizens, have the legal status of international employees. In addition, each office is subject to international law, defining its status, rights and obligations. And, finally, each mission and its personnel are subject to the internal law and order of the host country within its territorial jurisdiction" [1, p.22].

Thus, the representations of international organizations are subordinated to several legal systems at once — the diplomatic law of international organizations, the internal law of the international organization, and the legislation of the receiving state, i.e. "Triangles" - constituent documents and special acts on immunities and privileges of an international organization, agreements on the seat of an international organization, and, finally, the national legislation of the host state [2, p.20].

THE MAIN FINDINGS AND RESULTS

By fair statement of H.Vakhabov, "one of the means of ensuring the impartial activity of international organizations and their representative offices is undoubtedly privileges and immunities. International organizations and their representative offices, along with and on an equal footing with diplomatic missions

and consular institutions of states, have corresponding privileges and immunities" [2, p.19]. We note in particular that representative offices of international organizations need even more privileges and immunities than the organization itself, since the organization resides in the territory of one or a maximum of several states, and the representation on the territory of all Member States. For example, the UN has more than 160 representative offices and offices. All this causes the fact that the offices of international organizations, residing in the territory of the Member States, are subjected to pressure from them, not only political but also legal, in connection with which arises the question of the privileges and immunities of the offices of international organizations on the territory of Member State.

Privileges and immunities of international organizations and their representative offices are granted in order for international organizations, being the collective bodies of the subjects of international law that created them and by their nature becoming derivative subjects, freely perform their functions [2, p.19].

E.Shibaeva and M.Potochny adhere to the same approach, noting that "the privilege and immunities of international organizations and their representative offices are of a functional nature, i.e. are provided for the organization to achieve its goals and for the unhindered performance of its functions by its officials [3]. This widespread conclusion is justified by the provisions of the Charter of the United Nations, where in Art. 105 it is established that "The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes" [4]. It should be noted that a similar provision is contained in Art. 8 Charter of the Shanghai Cooperation Organization, (SCO) where it is

noted that “As a subject of international law, SCO shall have international legal capacity. It shall have such a legal capacity in the territory of each Member State, which is required to achieve its goals and objectives” [5].

In this regard, we note that the charters and other constituent acts of international organizations contain provisions on general legal personality, as well as the legal capacity of the organization in the field of privileges and immunities. However, they do not contain similar provisions in relation to representations of an international organization. However, we can conclude that the representation, being a logical continuation of an international organization on the territory of a Member State, as well as entering its system, enjoys a similar legal personality, as well as legal capacity in the field of privileges and immunities. Our conclusion follows from the principle of granting privileges and immunities to diplomatic missions, to which privileges and immunities are granted by virtue of the fact that they are a logical continuation of a sovereign state, and also are the foreign policy bodies of a sovereign state [6].

At the same time, we note that the statutes and other constituent acts, although they establish the principle of granting privileges and immunities, however, their specific scope and content is not reflected.

With regard to the international organizations themselves, the specific scope of privileges and immunities is expressed in special treaty acts on the privileges and immunities of an international organization.

There are three types of such agreements:

1. International treaties of a general nature on the privileges and immunities of international

organizations (eg, the Convention on the Privileges and Immunities of the Specialized Agencies of November 21, 1947);

2. Special international treaties on the privileges and immunities of a particular international organization (eg, Convention on the Privileges and Immunities of the United Nations of February 1946, Convention on the Privileges and Immunities of the Danube Commission of May 15, 1963, Convention on privileges and immunities of the Shanghai Cooperation Organization of June 17, 2004, and others);

3. Special international treaties on privileges and immunities or on the status of a specific body of an international organization (eg, SCO bodies: Regulations on the Council of Heads of States of the Shanghai Cooperation Organization of May 29, 2003, Regulations on the Council of Heads of Governments of the Shanghai Cooperation Organization from 29 May 2003, Regulations on the Council of National Coordinators of the Shanghai Cooperation Organization on May 29, 2003 and Regulations on the Regulations of the Executive Committee of the Regional Anti-Terrorist Structure of the SCO on May 29, 2003.

As we can see, none of the treaties specifically stipulate the privileges and immunities of the representations of international organizations. At the same time, we note that the contracts of the second group disclose the privileges and immunities of the organization’s employees during a business trip stay in a Member State, etc.

Therefore, we note that the privileges and immunities of representative offices of international organizations receive primary and basic consolidation in bilateral treaties and memorandums on the opening of a

representative office and its status between a particular international organization and a member state. An absolute majority of states, including the Republic of Uzbekistan, adhere to this practice.

We note that the privileges and immunities of representative offices of international organizations are established in bilateral agreements between the international organization and the host state. Based on bilateral agreements and memorandums, international organizations were opened in the Republic of Uzbekistan such as the UN, the OSCE, the EU Mission, FAO and others. However, these agreements and memorandums contain a minimum of provisions (all of a general and reference character) on privileges and immunities, which raises many questions related to the status, and finally, the privileges and immunities of these representations. In this connection, we believe that there is an urgent need to develop and adopt a Convention on the status, privileges and immunities of representative offices of international organizations.

We also note that the privileges and immunities of representative offices of international organizations, as well as their legal consolidation, are similar to those of international organizations. For example, the privilege and immunities of the SCO Regional Antiterrorist Structure (SCO RATS) are defined in the Agreement between the member states of the Shanghai Cooperation Organization on the Regional Antiterrorist Structure of June 7, 2002, in the Protocol on Amendments to the Agreement between the Member States of the Shanghai Cooperation Organization on the Regional Anti-Terrorism Structure, signed on June 7, 2002, as well as in the Agreement between the Government Uzbekistan and the Shanghai Cooperation Organization on the conditions of stay of the Regional Anti-Terrorist Structure of the

Shanghai Cooperation Organization in the Republic of Uzbekistan on June 17, 2004).

The privileges and immunities of the RATS SCO are identical to the privileges and immunities of the SCO itself and come down to the following groups: administrative and judicial immunity of property, inviolability of premises and vehicles, the right to protection of premises, tax and customs privileges, the right to use ciphers, courier and other types of communication, receiving and sending correspondence, placing a flag, emblem and other symbols on the premises and on vehicles [7].

Thus, we note that the privileges and immunities of both the SCO itself and its body - the RATS SCO are identical. If even in some aspect of the SCO will have a larger range and scope of privileges and immunities, then the RATS SCO as an organ of the SCO will have the same amount of privileges and immunities, since bodies of international organizations enjoy the same amount of rights and obligations as the international organization itself has. However, the above is not applicable in relation to representative offices of international organizations, since The bodies of international organizations are considered as a whole, and, accordingly, enjoy the same minimum amount of privileges and immunities, and representative offices are not considered as such, and therefore cannot count on such a volume of privileges and immunities. In addition, as mentioned above, the case is complicated by the lack of international legal regulation of the granting of privileges and immunities to representatives of international organizations, which fully depends on the national legislation of the host state and the agreement on opening a representative office in a Member State.

Thus, it can be concluded that there is not only international, but also national legislation regulating the scope and procedure for granting privileges and immunities to representatives of international organizations, since the latter has headquarters and operates through its representative offices in the territory of the host state.

Now let's take a closer look at the immunities and privileges of international organizations.

Inviolability of office space of international organizations. Inviolability of office premises is primary among privileges and immunities of representations of international organizations, as well as among privileges and immunities of diplomatic missions, meaning that the host country's authorities can be admitted to office premises of an international organization to perform official duties only with the consent of (or at the request of) Head of Representative Office.

This immunity is clearly reflected in all bilateral agreements and memorandums on the opening of the representative office of an international organization.

Judicial immunity. The next series of immunities, which all international organizations are indisputably possessed, are judicial immunity.

In our opinion, with regard to judicial immunity, the wording applied in Art. 5 of Additional protocol according to privileges and immunities of the Organization of the Black Sea Economic Cooperation (BSEC) of April 30, 1999. The BSEC of 1999 is the most complete. Art. 5 reads: "... Its property and assets, whosoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of interference whether by executive, administrative, judicial or

legislative action. For comparison, we present the wording of Sec. 1 tbsp. II of the Convention on the Privileges and Immunities of the United Nations dated February 13, 1946, which states: "The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution" [8].

Judicial immunity is expressed in both general and special international treaties on the privileges and immunities of international organizations, and in bilateral agreements and memorandums on the opening of an international organization's representation. This immunity is clearly reflected.

Fiscal immunity. This group of immunities includes exemption from direct taxes and customs duties, as well as exemptions for currency. Article 3 of the Convention on the Privileges and Immunities of the Shanghai Cooperation Organization of June 17, 2004 states that "SCO, its property and assets use immunity from any form of administrative or judicial intervention, except as specified, when the Organization itself refuses immunity. No refusal of immunity extends to judicial and executive measures" [9].

However, a truly complete list of fiscal immunities is established in the Additional Protocol on the Privileges and Immunities of the Organization of the Black Sea Economic Cooperation of April 30, 1999. Art. 8-10 of the 1999 BSEC Additional Protocol establishes fiscal benefits, namely: "Without being restricted by financial controls, regulations or moratoria of any kind: a) the BSEC may hold funds, gold or currency of any kind, and hold and operate bank accounts in any

currency for fulfilling its objectives; b) the BSEC may freely transfer its funds from one country to another or within any country and to convert any currency held by it into any other currency”.

The BSEC, its assets, income and other property shall be exempt: a) from all direct taxes; it is understood, however, that the BSEC will not claim exemption from rates, taxes or dues which are no more than charges for public utility services; b) from all customs duties and additional financial obligations, prohibitions and restrictions on imports and exports in respect of articles imported or exported by the BSEC for its official use, except the charges for storing, customs clearance of goods outside the places specified for this purpose and above the working hours of customs authorities. It is understood that articles imported under such exemption will not be sold in the country into which they are imported, except under conditions agreed to with the Member State concerned; c) from all customs duties and prohibitions and restrictions on imports and exports of its publications, except the charges for storing, customs clearance of goods outside the places specified for this purpose and above the working hours of customs authorities” [8].

Such a full approach to fiscal benefits within the framework of the BSEC can ensure the actual financially independent functioning of the international organization.

Conceptually, the privileges and immunities of representative offices of international organizations are governed by constituent acts of international organizations, general and special multilateral agreements on the privileges and immunities of international organizations, bilateral agreements and memorandums on the opening of representative

offices of international organizations, and finally, by national laws.

However, the privileges and immunities of representative offices of international organizations receive the primary and basic fixation in bilateral treaties and memorandums on the opening of a representative office and their status between a particular international organization and a Member State. An absolute majority of states, including the Republic of Uzbekistan, adhere to this practice.

The main difference between privileges and immunities of representative offices of international organizations from diplomatic is the limited nature of the inviolability of the premises of the mission, the absence of additional privileges and privileges for the staff of the mission of the international organization, although on the basis of bilateral agreements, the host state can provide the representative office of the international organization with full diplomatic privileges.

The analysis made allows us to conclude that it is necessary to raise the value and enhance the effectiveness of the activities of The United Nations Committee on Relations with the Host Country.

Created back in 1971 by General Assembly Resolution 2819 [10], it currently does not play the role it was intended to play. At present, the Committee is composed of 19 member states: Bulgaria, Canada, China, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, France, Honduras, Hungary, Iraq, Libya, Malaysia, Mali, Russian Federation, Senegal, Spain, United Kingdom, and the United States. Chaired since 1971 by successive Permanent Representatives of Cyprus, the Committee meets every two months, although emergency meetings can be requested by any UN member state at

any time. All states may participate in the work of the Committee as observers, but only Committee members may vote. The Committee deals with the full range of issues concerning the relationship between the host country and the United Nations community: 1) the security of the missions and their personnel; 2) visas, immigration and customs procedures, and taxation; 3) diplomatic indebtedness; 4) housing, transportation and parking; 5) insurance, education, and health matters; and 6) public relations issues with the host city [11].

CONCLUSION

In our opinion, procedural changes should be made in the committee so that its decisions are binding. In our opinion, the decisions of the Committee must be approved by the General Assembly or the UN Security Council.

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