

Judicial immunity for diplomats in international law

Immunité judiciaire des diplomates en droit international

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Abstract:

The jurisprudential and international law have settled since the seventeenth century on the non-submission of diplomats to the local judiciary of the state accredited to it in its criminal, civil and administrative parts as well. She has a large jurisprudential and legal debate about the extent of that immunity, and through research we will review these jurisprudential views in detail.

Keywords: Diplomacy, Immunity, International Law.

Résumé :

Le droit jurisprudentiel et international se sont réglés depuis le XVIIe siècle sur la non-soumission des diplomates à la justice locale de l'État qui y est accrédité dans ses parties pénale, civile et administrative également. Elle a un vaste débat jurisprudentiel et juridique sur l'étendue de cette immunité et, grâce à des recherches, nous examinerons ces points de vue jurisprudentiels en détail.

Diplomatie, immunité, droit international.

1. INTRODUCTION

Some jurists view judicial immunity as the non-action of the local judiciary as a whole on cases in which defendants enjoy judicial immunity (653 والي 1972ص), (Wali, 1972, P653). and this is an exception or an exemption or in another words non-submission of the diplomatic envoy to the national jurisdiction of the receiving State, where he/she enjoys the judicial immunity in its three forms: civil, criminal and administrative.

Judicial immunity gives the diplomatic envoy special treatment that transcends normal persons, gives him/her due respect in his representative capacity and provides him/her with independence and freedom to perform his/her duties in the fullest possible extent in a climate of tranquility.

These immunities extend to encompass the actions of the diplomat. The point of demarcation is that the diplomat, at the time of filing a complaint, is entitled and qualified to resort and invoke immunity. In 1921, the French Court of Cassation confirmed this rule, stating that it does not matter whether the diplomat has committed himself to the post as a diplomat in the host State, but the important factor is that the diplomat holds a diplomatic post at the time of filing a complaint so that he/she can invoke and resort to the immunity(الصابريني, 2002, ص77), (Alsabareni, 2002, P77).

Moreover, judicial immunity does not mean escaping responsibility. Responsibility remains against him and the result of resorting to immunity is the difference of the courts that adjudicate the case, where the jurisdiction is transferred to the courts of the sending State. This is, in fact, confirmed in Article 31, paragraph 4, of the 1961 Vienna Convention on Diplomatic Relations. This article states that “the immunity of the diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State” (Article (31) of the Vienna Agreement on Diplomatic Relations of, 1961).

The reason for the diplomatic envoy’s enjoyment of such privileges under international law is that he performs his duties as required. And that these privileges and immunities are enjoyed in the receiving State and do not benefit him in the sending State(الفيتلاوي, 2006, ص196), (Al-Faitlawi, 2006, P196).

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To clarify the above mentioned points, this paper is divided into the following subjects:

1: Civil Judicial Immunity.

2: Criminal Judicial Immunity.

3: Administrative Judicial Immunity.

1.: Civil Judicial Immunity.

The judiciary is considered as one of the functions of the modern State and it is one of the acts of sovereignty that the State holds and exercises through relevant and competent judicial authority. The judiciary may be defined as the authority of ruling under the law in particular adversity (الفيتلاوي, 2006, ص178) - Al-Faitlawi, 2006, P178).

In some countries it was customarily recognized that envoys were subject to civil jurisdiction. Such a case happened in Spain where the diplomatic envoy was subjected to civil jurisdiction in the rule issued on 15th June 1737, on the basis that the law that grants immunities is contrary to justice and to natural law (عبد المنعم, 1963, ص55), (Abdel Moneim, 1963, P55).

This understanding has, however, changed by the issuance of the Vienna Convention on Diplomatic Relations in 1961 and stated that the diplomatic envoy shall enjoy civil judicial immunity.

1.1 Definition of the Civil Judicial Immunity.

Civil Judicial Immunity may be defined as the exemption of the diplomatic envoy from all civil lawsuits against him. The courts of all states in which he is accredited may not bring him to judiciary or trial for debt or to prevent him from travelling when he does not pay his debts or to seize his money. In this sense, he may not be compelled to appear before national courts (فوق العادة, 1960, ص. 91), (Fouq Al-adah 1960, p. 91)

The civil immunity of the diplomatic envoy prevents his appearance before the local civil courts in the territories of the receiving State because of violations carried out by the envoy in his private capacity. These violations may include practices related to the rights of individuals or groups and to personal commitments related to special actions that fall outside the official tasks of the envoy. The possession of immovable property, real estate, commercial and financial borrowing and the coverage of financial obligations imposed on the services provided to the envoy are examples of private, personal actions outside the official functions of the envoy ((الشيخ , 1999 , ص 352) , (Khaled Hassan Al-Sheikh 1999 , p. 352).

Envoys may not be prosecuted by courts of the receiving State for debts or be prevented from leaving his country for not paying debts or confiscation of property. Therefore, the diplomatic envoy may not be compelled to appear before local court((المغاريز , 2009 , ص 112) , (Al-Magharez, 2009 , p. 112).

Jurisprudence and international law did not agree on the civil immunity of the envoy. By the end of the 19th century, the diplomatic envoy remained to enjoy extensive diplomatic immunity relevant to official as well as non-official work. Jurisprudence and judiciary took another trend, differentiating between the official functions of the envoy where they are included under the umbrella of judicial immunity and the private personal functions to be considered outside the scope of the judicial immunity((ابو الهيف , 1967 , ص 114 - 115) , (Abul Haif, 1967 , pp. 114-115).

Opinion on the identification of the scope of the immunity before civil judiciary was divided to have two approaches.

The first approach indicates that the duration of residence in the receiving State is temporal and is controlled by the functions to be performed. Henceforth, it is considered that permanent residence of the envoy is his national country and his trial should be before the courts of his national State only ((سرحان , 1972 , ص 178) , (Sarhan, 1972 , p. 178).

It ought to be noted that the exemption is not final and absolute, but rather as no action is taken by the host State, a notice is transmitted to his national government to take necessary measures against him.

The second approach believes that the nature of the requirements of diplomatic work represented in independence to carry out his functions and to maintain the representative capacity does not agree with prosecution or

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even just filing a lawsuit against him as an ordinary person before the courts of the receiving State(183,184 ص, 1967 هيف أبو هيف), (Abu Haif, p. 183 , 184).

And because the personal immunity is not sufficient to maintain and secure safety of the political representative, civil immunity grants the diplomatic representative complete independence from the authority and from the judicial jurisdiction of the host country, in addition to personal immunity that grants him to perform his functions with freedom and without tightness or embarrassment. It seems apparent that the international trend is in favor of supporting the second approach.

The evidence to this trend is clear in Article 41, paragraph 1, of the Vienna Convention that indicates that the diplomatic envoy enjoys immunity against civil and administrative judiciary unless the issue is related to actions of the special envoy(160 ص. شكري, 2004) (Shukri, 2004,p. 160).

such as real estate and inheritance cases and to cases relevant to performing a free professional or a commercial activity. In my view, the second opinion seems more appropriate as it suits the requirements of the diplomatic work.

In this sense, the civil immunity is the result of freedom of action that must be guaranteed to the diplomatic envoy. However, the immunity should not become a license for the diplomatic envoy to violate the laws in force in the receiving State

(المغازير, 2009, ص 112), (Al-Magharez, 2009, p. 112).

Article 41, paragraph 1, stipulates that persons who benefit from these privileges and immunities must respect and comply with the laws and regulations of the State they are accredited to and have the duty of not to interfere in the internal affairs of this State, without prejudice to their privileges and immunities.

The exemption of the diplomatic envoy in a receiving State is supported by the exemption in the case of Magdalena Steam Navigation Company v. Martin in 1859. In this case Magdalena requested the court to rule on a special case of dues on the Guatemalan Minister in London and to execute the judgment when the Minister loses his diplomatic status, but the court rejected this request and recognized the privileges and immunities of the diplomat(159 ص, 2002, الصابريني), (Al-Sabrini, 2002 , p.159)

Moreover, the principle was established by the Seine Court of Cassation in Paris in 1891, in ruling on the Belgian Chancellor in absentia to pay for an apartment that he had occupied. But the court rejected of the Seine Court because the defendant is a member in the Belgian Diplomatic Mission (الصابريني, 2002, ص 160), (Al-Sabrini, 2002, p.160) .

Following the issuance of the Vienna Convention on Diplomatic Relation in 1961, the Vienna Convention of Consular Relations in 1963 and the Vienna Convention on Special Missions in 1969, the immunity of the diplomatic envoy became clear. The conventions did not differentiate between the private and official acts of the diplomatic envoy in the receiving State. A set of exemptions of certain acts were included to not be covered by the judicial immunity. In accordance with the Vienna Convention on Diplomatic Relations of 1961 and the Convention of the Special Missions of 1969, the basis of civil immunity of the diplomatic envoy differentiated the official works of the diplomat and the private works, which we will talk about in separate branches.

1.1.1 Official Actions and Functions.

The international law and custom recognize this immunity, which includes the diplomatic envoy, the official personnel of the mission and the military attaches. According to this, the mission enjoys, in terms of official actions, civil judicial immunity in cases where the source of obligation is a contract that is returned to the ownership of the property as a rent. The opinion of the court of cassation in Iraq has settled as that the diplomatic envoy enjoys the civil judicial immunity for cases related to rental of real estate allocated for the purposes of the mission (Court Decision No. 159 \ General Assembly \ 1974 \ dated 7 \ 12 \ 1974. Judicial Bulletin, Issue No. 4, Fifth Year 1978, p. 344).

As stated in the decision of legal codification number 203/673 dated 25/12/1973 that the judicial immunity enjoyed by foreign States on their owned assets in another State territories requires not to be sued before courts of States where the assets exist. This opinion was based on the provisions of the Vienna Convention on Diplomatic Relations of 1961 (مجلة عدالة العدد الثاني السنة الأولى 1975 صفحة 483), (Adalah Magazine, Issue 2, First Year 1975, page 483).

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1.1.2 Private Works and Actions.

As for the special and private work of the diplomatic envoy, the rule codified in the Vienna Convention of 1961 was that the diplomatic envoy enjoys immunity against civil jurisdiction of the receiving State, but, in contrast to official actions and functions, private works were restricted. In paragraph 3 of Article 31, the Vienna Convention provided three exceptions to the rule of civil judicial immunity relevant to his/her personal or private acts he/she performs on his own behalf and not on behalf of his State and that do not come within the scope the purposes of the mission and the workers therein. These acts were removed from immunity and were subject to the courts of the receiving State. The convention brought out some exceptions relevant to ownership of immovable property, cases relevant to inheritance, cases involving the exercise of free trade or commercial activity or when the diplomat resorts freely to the civil judiciary of the receiving State (صباريني, 2002, ص 160). (Sabarini, 2002 p. 160).

These cases will be discussed and clarified separately and independently.

1.1.3 Real Estate Lawsuits.

Many jurists of international public law, headed by Bralich, Fordei, Vatil and Oppenheim, have called for the prosecution of real estate owned by the diplomatic envoy in his/her personal capacity for the jurisdiction of the receiving State.

In paragraph 1 of Article 12 of the International Law Institute of 1929 states that judicial immunity cannot be invoked in cases of private possession of movable and immovable property situated in the territory of the receiving State.

Besides that, paragraph 1 of Article 31 of the Vienna Convention of 1961 stipulated exceptions stating that cases relevant to private movable and immovable property situated in the territory of the receiving State are excluded from judicial immunity, unless the diplomatic agent holds such property on behalf of the sending State for the purposes of the mission. The Convention of Special Missions also adopted this principle. It seems apparent that the Vienna Convention of 1961 distinguished between private relations that the diplomat has in lieu of his State to be used for the purposes of the mission and the property for his personal interest.

In addition, Lyons' Court of Appeal ruled in 1883 in case brought by a real estate contractor against the San Mariano envoy in relevance to facilities set up by his private property in France. (The distinction between the real estate owned by the envoy as an ordinary person and those owned by his official capacity is superfluous. Complete, full immunity against submission to territorial jurisdiction in civil matters remains in favor of all persons who formally function as a foreign State Government representatives.(160,161ص,2014,الشكري), (Al-Shukry,2014, pp. 160 - p. 161)

It is easy to justify this exception, since the description of the owner is contrary to the description of the envoy. Also, the real estate lawsuits do not affect the representative capacity of the envoy and do not contradict the freedom necessary for the envoy to carry out his/her job and obviously the diplomatic property cannot be subject to this exception. (راتب,1996,ص155),(Ratib, 1996, 155 p)

Some States do not permit the registration of a real estate on its territory in the name of a foreign States. In this case, the real estate property is registered in the name of their diplomatic envoys. In this regard, Professor Tonkin said(quoting Dr. Ghazi Al-Sabrini) that national law of some countries does not permit foreign countries to own real estate. In such a situation, real estate property should be registered in the name of the mission and it is for the formal work of the mission(161 ص, 2002, (الصابريني), (Al-Sabrini,2002 , p.161)

1.1.4 Inheritance Lawsuits

The diplomatic envoy is not entitled to invoke his civil judicial immunity particularly on grounds of inheritance in his/her personal capacity. This exception was referred to in paragraph 1 of Article 31 of the Vienna Convention of 1961, which states that cases of inheritance (in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State) are excluded from civil judicial immunity. This exception does not include his/her enjoyment of immunity in his/her capacity as a representative of his/her State and he/she has right to protest in his/her own state and is considered immune to civil judiciary in the State to which he/she is sent. From the point of view of Dr. Fuad Shabat, Article 31 pointed out to immunity of the sending State and this is considered beyond the scope of the Convention(225ص, 1996, (شباط), (Shabat, 1996, p. 225)

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However, the Committee of the International Law in the United Nations justifies this exception as it is necessary to disrupt the procedures relevant to inheritance. The diplomatic envoy may not invoke his/her immunity when present in courts for a matter or suit related to inheritance (International Law Commission Business Yearbook, 1958, p. 101,102)

1.1.5 Lawsuits Related to Free Trade or Commercial Activity.

This activity is rarely practiced by the diplomatic envoy and is highly practiced by consuls. Jurisprudence assumes that the diplomatic envoy waives(gives up) immunity in order to carry out private activities (156ص, 1996, الراتب) (al-Ratib,1996 , p. 156)

Article 16 of the 1985 decisions of the Institute of Public International Law provides that judicial immunity shall not be involved in the case of a prosecution based on obligations contracted by a person enjoying judicial immunity when exercising his/her functions therein. The Article also states that judicial immunity shall not arise in cases related to professional activity outside the formal functions.

Article 31, paragraph 1(c), of the Vienna Convention of 1961 states that (cases related to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions are permissible). In general, the governments of the sending States do not allow their diplomatic envoys to practice any profession other than their diplomatic functions. The Vienna Conventions prohibit the diplomatic envoy from practicing commercial activities. The diplomat must be fully dedicated to his/her work as a diplomat. Article 42 of the Vienna Convention of 1961 states that “A diplomatic agent shall not in the receiving State practice for personal profit any professional or commercial activity”

It shall be noted that in the case of enforcement of the judicial decisions relevant to these exceptions, such enforcement measures shall in no way affect the inviolability of the diplomatic agent in his/her person or in his/her residence as was provided in paragraph 3 of the Article 31 of the Vienna Convention.

Thus, the Convention has provided some exceptions with regard to civil judiciary and recognized submission of the diplomatic envoy to judiciary in some cases relating to his/her personal, private work, which he/she carries out on his/her own behalf, not on behalf of his/her own State and not for the purposes of the mission.

In this case, the Convention distinguished between the acts carried out by the envoy in his/her private and personal capacity, outside his/her official functions which is subject to civil judiciary and the work carried out on behalf his/her State, which is not subject to civil judiciary. In this case the diplomatic envoy enjoys absolute civil immunity if he/she carries out acts for the purposes of the mission through which he/she serves his/her State (الشامي 557 ص. 2009), (al-Shami 2009, p. 557).

2. Criminal Judicial Immunity.

Criminal Judicial Immunity involves immunity of the diplomatic agent against crimes committed against the public or individualistic interest in the receiving State. This includes all crimes that the law considers a felony such as conspiracy, smuggling, incitement to provoke violence, espionage, murder and other crimes punishable by law (348 ص - 1999 ، الشيخ), (Al-Sheikh, 1999, p. 348) .

Cecil Hearst states that the rule of exempting the diplomatic envoy from submission to the criminal jurisdiction of the receiving State is not only legitimate but dictated by considerations of what is being in civilized countries. (163 ص. 2002 ، الصابريني), (Al-Sabrini 2002, p. 163)

Non-submission of the diplomatic envoy to criminal jurisdiction in the receiving State is considered as the most important of the outcomes of judicial immunity, where legal immunity is considered as a manifestation of the personal sanctity of the diplomatic envoy (ص174 ، 1981 ، الملاح), (Al-Mallah, 1981 , p174)

The international custom, most of the domestic laws of state, government practices and international conventions have recognized this immunity. Article 16 of the Regulations on Diplomatic Immunities and Privileges, adopted by the Cambridge Meetings of 1895, states that judicial immunity shall continue even the case of serious breach of public order and public security and that it continues in the case of a felony against the security of the State without derogating the right of the receiving State to take

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preventive measures it considers appropriate (Article 16 from Vienna Convention for diplomatic relations).

Article 19 of the Havana Convention on Diplomatic Officers states that

(diplomatic officers are exempt from all civil and criminal jurisdiction of the State in which they are accredited and they may not be prosecuted or tried unless it be by the courts of their countries).

Finally, paragraph 1 of Article 31 of the 1961 Vienna Convention provided that (a diplomatic agent shall enjoy immunity from criminal jurisdiction of the receiving State).

It is noted in this regard that Article 31/1 has come absolute in exempting the diplomatic envoy from being prosecuted by the judicial authorities in the receiving State against any crimes he/she commits on its territory.
((سلامة: 1997 ، ص. 213) , (Salamah: 1997, p. 213)

And Article 41 of the 1961 Vienna Convention requires respect of the laws and regulations of the receiving State, stating that “without prejudice to their privileges and immunities, it is the duty of all persons enjoying their such privileges and immunities to respect the laws and regulations of the receiving State”.

And here arises the question of what option the State can take in the case of committing a crime in its territory at a time no judicial decision can be taken against him/her. To answer this question, we must first clarify that non-submission of the diplomatic envoy to criminal jurisdiction in the host State does not mean that he/she is not responsible for the crimes he/she commits on the territory of that State. The prosecution of the envoy is something and his/her responsibility is another thing((سلامة: 1997 ، ص. 213) , (Salamah 1997, p. 213)

when he/she breaches the law of the receiving State. In such a case, and when the offender is the head of the mission , the receiving State reports to the envoy’s government through the Ministry of Foreign Affairs.

However, if the offender is a member of the mission, the receiving State contacts the head of the mission and requests him/her to summon or withdraw him/her or to lift the diplomatic immunity from him. In this case, the affected right holder may file a complaint to the Ministry of Foreign Affairs of the receiving State to take the appropriate measures by diplomatic means. However, in the case a diplomatic agent commits a serious crime, the receiving State may expel him/her from its territory.

(العبيكان ، 2007 ، ص 252) , (Al-Obeikan, , 2007, p. 252)

and may consider him/her a persona non grata and the sending State pursuant to Article 9 of the Vienna Convention that considers him/her as a persona non grata. In this case, the sending State shall punish him/her for the crime committed in the receiving State. One of the real applications of this rule is the recall of the second secretary of the French Embassy in Angola by France in 19 November 1983, after killing the Embassy driver. The Embassy Secretary was arrested by French police when he returned to France and was brought to court (الجندي 1998، ص78) (Al-Jundi, 1998, p78, quoted from: Chronique de Charles ROUSSEAU.R.G.D.I.P, 1984, pp. 654-655)

The diplomatic envoy may not relinquish immunity because it is for the benefit of his/her State and not for his/her own benefit.),(Al-Haif ,1987, p. 275)أبو الهيف، 1987، ص275)

The sending State may therefore waive the judicial immunity enjoyed by the members of its mission, since such immunity has been determined for each of them as a representative of his/her State and has not been determined to him/her in person (بالي ، 2005 ، ص. 36) , (Bali, 2005, p. 36)

However, relinquish of diplomatic jurisdictional immunity to domestic courts does not entail a waiver of execution, since relinquish of judicial diplomatic immunity to execution involves a separate, independent concession(بالي ، 2005، ص. 37) , (Bali, 2005, p. 37)

Because judicial immunity is a matter of public order and linked to sovereignty and independence of foreign States, it is imperative for local judges to raise spontaneously, even if not called by the agent who enjoys it (Serie, The Quintet 1936-1940, pp. 38 - No. 1)) 2/1973 / French Criminal Cassation Date 26)

In any case, the defense based on diplomatic judicial immunity may be made for the first time before the Court of Appeal (See 1841-2-592 1841/8 / Judgment of the Royal Court of Paris - Chamber III - dated 21)

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Due to gravity of the effects of enjoying criminal immunity on the security of the receiving State, part of jurisprudence stressed the need to distinguish between acts of special nature and those related to the functions of the diplomatic envoy. Exemption is in fact restricted to the later. However, a few jurists supported this view due to difficulty of distinguishing between the fact that the act is of diplomatic nature or of special nature.

(الشكري, 2014, ص 157), (Al-Shukry, 2014, p. 157)

On the other hand, some of the work is partly of a diplomatic official nature and some are of special nature at the same time. And here rises the a question: is the diplomatic envoy exempted or considered submissive to foreign jurisdiction?

Another aspect of jurisprudence called for making a distinction between serious (grave) crimes and simple ones. Exemption was limited to serious crimes only on the basis that the receiving State should have a view in the first place. But this view was no accepted because what is considered serious in one state is simple (minor) according to laws and jurisprudence of another State. The nature of the crime may differ from one country to another, but this criterion gives the receiving State (enough) room for adopting the act in line with its interests, not to mention the caveats of investigation carried out by the receiving State to stop the elements of the crime and to identify whether the crime is serious or simple. This in fact leads to access of the mission's secrets and violation of its sanctity. (الشكري, 2014, ص 157, 158), (Al-Shukry, 2014, p. 157, 158)

In the opinion of Shark Rosoe, immunity plays a large role no matter how serious the crime is, but that must be taken.

The diplomatic envoy enjoys criminal immunity in the case of intentional murder, and here the receiving State has no choice but to ask the sending State to waive the immunity of its diplomatic envoys(agents) or to ask prosecution in the sendind State's courts. Rosoe's opinion is based on an incident that happened in 31 July 1987, where three of the staff of the Iraqi embassy intentionally shot young Arabs who were detained in the hands of French police, because of attacking the Embassy. One of the young men and one of the judicial police inspectors were killed. Two other policemen were

injured. On the basis of this incident, the French authorities expelled the three diplomatic officers on 2nd August 1978.

The immunity is lifted if the agent smuggles drugs and in cases of customs escaping attempts. The diplomatic envoy is expelled from the receiving State territory in the event of espionage and may be considered as *persona non grata*.

The criminal jurisdiction is raised in the case of committing a crime against humanity or committing a war crime by the diplomatic agent. Here Rosoe bases his argument on a judgment issued on 12th November 1984 by the International Tribunal for the Middle East against General Oshima, ambassador of Japan in Brussels, where the court refused the exemption raised by the suspect. And it is noted that the result of the judicial immunity is not to evade the General from his legal responsibility, but to exempt him from the duty of appearance before the criminal courts of the receiving State. Despite variation among jurisdiction views, all views united on the basis of legitimacy, namely, to give the diplomatic envoy independence and freedom that enables him/her to work perfectly, and this is taken from custom prevailing since the inception of human societies.

As for the practical reality, immunity has lost its absolute traditional character and some countries have already exercised their jurisprudence on diplomats. Beijing, for instance, condemned the Indian diplomat and expelled him from the country on charges of espionage by the Supreme People's Court of the Beijing District on June 13, 1967.
(269ص،2001،الجسور)(Al-Jusoor:2001, p. 269)

The Canadian Pison Venteh while ruling in the case of the Rebsir Theking said that (diplomatic immunity is relative and not absolute. A diplomat must commit himself to loyalty to his country and respect the sovereignty of the receiving State. In the event of a diplomatic breach of that confidence, the receiving State shall take all punitive measures to protect its security as long as the diplomat has relinquished immunity by violating the law of honesty.(111 ص ، 2009 ، المغازير،)(Al-Maghazir,2009, p. 111)

It is thus clear that there are international trends urging that the criminal envoy of the diplomat be narrowed. Judicial immunity is absolute in criminal

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justice as the diplomatic envoy is in his/her diplomatic mission, outside his/her own country.

It should be noted that non-submission of the diplomatic envoy to criminal jurisdiction in the receiving State does not exempt him/her from being subjected to his/her State jurisdiction. This understanding was affirmed in the Vienna Convention of the 1961 in Article 31/4 when it provides that the immunity of the diplomatic agent from the jurisdiction of the receiving State does not exempt him/her from the jurisdiction of the sending State, and that he/she and his/her State are responsible for all wrong and unlawful acts committed in the receiving State. Thus the receiving State is entitled to request the sending State to prosecute the envoy and to conduct the legal requirement, In the case of State's failure or negligence to prosecute its envoy, it shall be considered as accomplice and shall be considered internationally responsible. The receiving State shall be entitled to take measures deemed appropriate based on judicial and political positions (الشامي 2009، ص552), (Al-Shami, 2009, P. 552)

3.Administrative Judicial Immunity.

In addition to immunity against civil and legal jurisdiction, Article 31 of the Vienna Convention pointed out that the diplomatic envoy enjoys immunity against the administrative jurisdiction of the receiving State.

This means that the immunity of the envoy before the courts includes all regulations and measures dictated by the local authority within the receiving State. Administrative immunity involves all violations related to public safety, public health and traffic regulations. (الشيوخ: 1999، ص347)، (Al-Sheikh 1999: p. 347)

It may also include provisions related to construction that require certain conditions for building and demolition for public safety and for planning inside cities. Provisions for maintenance of public health facilities and measures imposed by the State in specific circumstances to ensure public safety and security such as curfews and visiting certain areas in certain time are all relevant to administrative immunity. (صباريني 2002 ، ص167)، (Sabarini, 2002p. 167)

The State imposes these provisions and constrains for the purpose of public interest and they are applied, without exception, to all on its territory. It is

important for the diplomatic envoy to comply with these regulations to preserve his inviolability and privileges. If the internal circumstances of the receiving State require imposing a system that prohibits travelling to certain places or imposing a curfew at certain times, the diplomatic envoy must comply and abide by these rules and not violate them. (المغازير، 2009 ، ص 112),(Al-Magharez,2009 , p. 112)

It is noted that violations of traffic rules and regulations have become a routine issue in the life of the diplomat. These violations are considered as the most serious and most risky to the lives of individuals. No one can tolerate these violations and sympathize with those who commit them, mainly when the perpetrators of such breaches are important people with special privileges. The diplomatic envoy must think that offences that look simple that look simple may lead him/her to serious criminal matters, such as accidents that may threaten the lives of others. In this context, a question is raised: does the administrative immunity of the diplomatic envoy mean loss of the right of the victim? In fact, this is contrary to the principles of justice and creates a state of indifference to the rights of others from the side of the diplomatic envoy. In addition, this leads to the conclusion that dealing with this category of people is questionable and this may ultimately lead to damaging the reputation of the sending State. In such case, how can balance between the immunity of the diplomatic envoy and the rights be achieved?

The 1961 Vienna Convention on Diplomatic Relations did not address the issue of offences committed by diplomats. However, the 1975 Vienna Conventions on Special Missions referred to the jurisdiction of courts of the host State in traffic offences committed by permanent diplomats of international organizations and diplomats of special missions.

(الجندي ، 1998 ، ص. 81)،(Al-Jundi, , 1998, p. 81)

Henceforth, no fixed rules can be derived from the Vienna conventions on matters of traffic violations committed by diplomats

(الجندي ، غسان ، 1998، ص. 81)،(Al-Jundi, 1998, Bilateral Diplomacy, p. 81)

However, individuals can address the head of the mission in the case of violating the laws and regulations of the receiving State. The offender may also submit a complaint to the Ministry of Foreign Affairs of that country requesting to instruct members of its mission to comply and not to depart from the traffic regulations. It should also be noted that many countries

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require the diplomatic envoy to obtain a driving license and to ensure his/her car to protect the rights of citizens.(255 ص. 2007، العبيكان , (Al-Obeikan,2007 p. 255)

The situation may be raised at the diplomatic level, where the Ministry of foreign Affairs calls the head of the mission to request a friendly resolution so as not to affect relations between two States. The victim can also resort to the national jurisdiction of the diplomatic envoy, demanding recovery of his rights.(215 ص. 1997، سلامة), (Salameh,1997 p. 215)

The receiving State's handling of these administrative irregularities varies, as most of them draws the attention of the envoys to these irregularities and calls on them to adhere to the rules and regulations in force before issuing a memorandum to their State. Other countries insist on applying the law, by imposing and releasing financial fines against drivers, without intending to implement them, the issue that would violate the immunity of the envoy himself. Besides that, the government of the host State reserves the full right traditional means of summoning the envoy or asking him/her to leave its territory if it considers the violation and its repetition harmful to the public interest.(347 ص. 1999، الشيخ), (Al-Sheikh p1999. 347)

From the practical point of view, different applications have appeared. Some countries are more strict in granting immunity to diplomatic envoys with reference to traffic violations committed in the receiving State. Other States, however, grant foreign diplomats the legal immunity against violations (غسان 81 ص. 1998، الجندي), (Al-Jundi,1998 , p. 81)

One of the examples of violating the traffic rules and regulations by a diplomat comes from the United States of America. The USA is one of the most strict states with relevance to traffic rules violations. In 1935, US authorities handled the Iranian Chancellor De'larte where he was driving at a very high speed. But he was quickly released after showing his diplomatic identity. The Iranian diplomat protested to the US Department of State and an apology was presented, adding that the diplomat must respect the traffic rules and regulations.

In another example, the Polish ambassador (Stephana Sta Nzki) in London stopped his car in a prohibited place. When he returned, he did not find the car. The policeman in the place informed him that his car has been pulled by police. The police spokesperson said that the driver of the car was warned several times but he was not deterred. In spite of the diplomatic label on the car, the traffic police carried out the order of pulling the car and it was not released until the fine of 25 sterling pound was paid by the ambassador.

(1984/11/4 جريدة الوطن الكويتية),(Al-Watan Newspaper, Kuwait 4/11/1984)

Another example for States that gave immunity to the diplomatic envoy for traffic rules violations is Austria. A provision was issued by the Austrian High Court of Justice on the 30 January 1979 against a Yugoslav diplomat, serving in the embassy in Austria. The diplomat was granted criminal immunity after harming others due to carelessness. (Ibid., P. 331)

To sum up, judicial immunity is of paramount importance for the independence of the diplomatic agent and may not be abandoned without the consent of his/her State. However, the agent is not immune from punishment and he/she can be held accountable before the courts of his/her State. Moreover, immunity does not protect him/her from taking preventive measures by the receiving State in cases of immunity abuse in the receiving State. In addition, it is possible for the victim or his family to obtain compensation, as right recovery, through diplomatic means.

Recommendations:

- 1- I recommend activating the principle of reciprocity between countries in the application of the judicial immunity of the diplomatic envoy, in order to apply the law more accurately and better.
- 2- Working to narrow the judicial and criminal immunity due to the seriousness of this type of immunity by imposing special penalties for felony crimes and repetition cases.
- 3- Adopting the compulsory traffic accident insurance system to ensure the rights of those affected by accidents that occur by members of the diplomatic mission and to withdraw the license in case of repeated violations.

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