

THE IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION

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Summary: The author deals with the development of rules of criminal immunity of the highest representatives of the state at the international level. The criminal immunity of state representatives has emerged from the rules on equality of States and is associated with the maxim *par in parem non habet imperium*. Special attention is given to the practice of the International Court of Justice, and the work of the International Law Commission, which deals with this issue for several years. The author has presented the resolution of the Institute of International Law, which deals with the immunity of the official representatives of the state. As one of the important indicators is the practice of States which shows that there is a clear consensus on the need for the highest state representatives are exempt from the jurisdiction of other States. The paper discusses the similarities and differences in terms of criminal immunity of diplomatic representatives and high state representatives. Underlines the customary character of such rules, a new practice of the International Court of Justice, as well as national judges, indicating that the increased number of disputes concerning the application of state immunity internally. The pointed on exemptions from the application of this rule, especially in the case of international crimes where justified calling to account. The author has analyzed the institute came to the conclusion that it is procedural legal nature, but that it was necessary to introduce precise criteria in terms of *ratione personae* of the reach of criminal immunity. The author has attempted to establish clear criteria in terms of differentiating the state representatives who have full criminal immunity of senior officials who have only functional immunity. The author concluded that the issue of the immunity of a State official from foreign criminal jurisdiction should, in principle, be considered at an early stage of the judicial proceedings, or earlier still, at the pretrial stage, when a State exercising jurisdiction takes a decision on adopting criminal procedure measures precluded by immunity against an official. The author also concluded that it is generally accepted that the authority to waive a State official's immunity lies with the State and not with the state official. With respect to the withdrawal of immunity of state representatives there is a complete correspondence with the withdrawal of immunity of diplomatic representatives. A general conclusion about the waiver of immunity of State officials from foreign criminal jurisdiction could be phrased approximately as follows: when applied to a serving Head of State, Head of Government or minister for foreign affairs, a waiver of immunity should be explicitly stated. The author concludes that the issue of criminal immunity of state representatives does not affect the question of state responsibility. State responsibility is established at the international level, and immunity operates in internal order.

Keywords: criminal law immunity of state representatives, the International Court of Justice, the International Law Commission.