

# IMMUNITIES AND PRIVILEGES OF THE STAFF OF DM AND THEIR FAMILY

24 October 2018

Part 3

# Family members of diplomatic agents

- ▶ The members of the family of a diplomatic agent forming part of his household, unless they are nationals of the receiving State, enjoy the entire range of diplomatic privileges and immunities. If they are nationals of the receiving State they have no direct entitlement to personal privileges or immunities at all: part 1 of Art 37 of the VCDR
- ▶ The expression ‘member of the family forming part of the household’
- ▶ Members of the family of a diplomatic agent are not barred by the VCDR from exercising professional or commercial activities in the receiving State, and in exercising such activities they are not entitled to immunity from civil or administrative jurisdiction

# Administrative and technical staff of diplomatic mission

- ▶ Part 2 of Art 37 of the VCDR: Members of the administrative and technical staff and members of their families forming part of their households, unless they are nationals or permanent residents of the receiving State, enjoy the same privileges and immunities as diplomatic agents, with two important exceptions.
  - First, they do not enjoy immunity from civil and administrative jurisdiction in regard to acts performed ‘outside the course of their duties’
  - Second, they enjoy exemption from customs duty only in regard to those articles which they import when they arrive to take up their post. They cannot later import items free of duty.

## Service staff

- ▶ Part 3 of Art 37 of the VCDR: Service staff receive under the VCDR only immunity in respect of the acts performed in the course of their duties; exemption from tax on their wages and exemption from social security provisions. They are entitled to no immunities or privileges of a purely personal character. Service staff who are local nationals or permanent residents receive nothing.
- ▶ Limited privileges and immunities under the VCDR may be supplemented by more generous provisions under local law or practice, or by bilateral agreement between sending and receiving States.

# Nationals and permanent residents of the receiving state

- ▶ Part 1 of Art 38 of the VCDR: Diplomatic agents who are nationals or permanent residents of the receiving State enjoy only immunity from jurisdiction and inviolability, *in respect of official acts* performed in the exercise of their functions (with regard to the acts *done on behalf of the sending State*)
- ▶ Part 2 of Art 38 of the VCDR: Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State

# Diplomatic agents in the third State

- ▶ Article 40 of the VCDR: if a diplomatic agent is passing through a third State to or from his post - the third State is obliged to accord him/her 'inviolability and such other immunities as may be required to ensure his transit or return.
- ▶ The same inviolability and immunities are required in case of members of diplomatic agent's family enjoying privileges or immunities who are accompanying him or travelling separately to join him or return to their country
- ▶ A diplomatic agent is entitled to these limited immunities irrespective of the relations between his sending and receiving State on the one hand and the third State on the other.
- ▶ To enjoy these immunities, the diplomat should be appointed by a government which is recognized as such by the third State and accredited to a specific receiving State
- ▶ Under the VCDR a diplomat who is in a third State for private purposes (e.g. for a prolonged private holiday) is entitled to no immunity in the third State.

# Other staff members in the third State

- ▶ Third States are obliged not to ‘hinder the passage’ through their territories of members of the administrative and technical staff of a diplomatic mission and members of their families proceeding to or from their posts. Such persons do not have immunity but the third State must not inconvenience or delay them without good cause.
- ▶ Service staff and private servants are not entitled to any special treatment

# Official correspondence in the third State

- ▶ Official correspondence and other official communications, diplomatic courriers, and diplomatic bags in transit through third States are entitled under Art 40 of the VCDR to the same inviolability and protection as the receiving State is to give under Art 27 of the VCDR