



PERMANENT MISSION OF THE REPUBLIC
OF
B U L G A R I A
TO THE UNITED NATIONS

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The Permanent Mission of the Republic of Bulgaria to the United Nations presents its compliments to the United Nations Office for Legal Affairs and in response to its **Note LA/COD/50** dated 8th January 2010 relating to the implementation of GA Resolution 64/110 of 16 December 2009 entitled "*Criminal Accountability of UN Officials and Experts on missions*" has the honor to submit the information attached herewith.

The Permanent Mission of the Republic of Bulgaria to the United Nations avails itself of this opportunity to renew to the United Nations Office for Legal Affairs the assurances of its highest consideration. 82



UNITED NATIONS
OFFICE FOR LEGAL AFFAIRS

INFORMATION
CONCERNING THE IMPLEMENTATION BY THE REPUBLIC OF BULGARIA OF
GENERAL ASSEMBLY RESOLUTION 64/110 OF 16 DECEMBER 2009

According to Article 3 (2) of the Penal Code of the Republic of Bulgaria, the issue of the responsibility of aliens who enjoy immunity in respect of the criminal jurisdiction of the Republic of Bulgaria is decided in conformity with the rules of international law. Article 5 of the Bulgarian Penal Procedural Code expressly states that "procedural steps *vis-à-vis* any persons enjoying immunity in respect of the criminal jurisdiction of the Republic of Bulgaria shall be performed in accordance with the rules of international law." The provisions of the Penal Code and the Penal Procedural Code, cited above, do not specify expressly the range of persons to whom they apply, which makes it possible to include in their scope the staff of the international organizations, including officials of the United Nations and experts performing expert missions for the UN, who may be foreign or Bulgarian nationals.

This clearly illustrates the approach of the Bulgarian legislator to settle the issues related to immunity from criminal responsibility of the staff of international organizations through blanket norms which refer to sources of international law. In this case, the relevant provisions are those of the *Convention on the Privileges and Immunities of the United Nations of 13 February 1946* (ratified by Presidium of the National Assembly Decree No. 81 of 27 February 1960 and promulgated in the *State Gazette* No. 18 of 1 March 1960; in force for the Republic of Bulgaria as of 30 September 1960).

Under Article 5 (4) of the Constitution of the Republic of Bulgaria, any international treaty that has been ratified in accordance with the procedures provided by the Constitution, has been promulgated, and has entered into force for the Republic of Bulgaria, is part of the domestic law of Bulgaria. The Convention on the Privileges and Immunities of the United Nations meets all these constitutional requirements and, therefore, is applied by Bulgarian courts directly.

According to Article V of the Convention on the Privileges and Immunities of the United Nations, officials of the United Nations are immune from legal process in respect of all acts performed by them in their official capacity (including in respect of words spoken or written). This means that they can be detained and that criminal prosecution can be initiated against them only for criminal offences not related to their official status.

The same applies to experts performing expert missions for the UN. These experts are accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of the missions, including during the time of their journey. In particular, they are granted: immunity from personal arrest or detention and from seizure of their personal baggage; immunity from legal process of every kind in respect of acts done by them in the course of the performance of their mission (including in respect of words spoken or written); inviolability for all papers and documents etc.

According to the rules contained in Sections 20 and 23 of Article V of the Convention on the Privileges and Immunities of the United Nations, privileges and immunities are granted to officials and experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The wrongful use of the official status on the part of UN officials and experts for their personal benefit undermines the authority of the organization and creates a

wrong impression of its effectiveness. In this respect, in the cases where the officials of the United Nations and the experts performing expert missions for the UN commit a criminal offence within the territory of a particular State, they incur full criminal responsibility for the criminal trespass committed by them and are subject to the application of the national legislation of the State within whose territory the offence has been committed.

As evidenced from the above, it could be summed up that officials of the United Nations and experts performing expert missions for the UN enjoy only functional immunity. This immunity ensures the impartial and unobstructed exercise of their official functions in the interests of the organization for which they work, while allowing to effectively hold them criminally liable on an equal footing for all criminal acts committed by them outside their official functions. The need to guarantee all prerequisites for the impartial execution of the official duties of UN officials and experts justifies the fact that they enjoy immunity not only in respect of the criminal jurisdiction of the receiving State but also of the State of their nationality.

According to Section 20 of Article V and Section 23 of Article VI of the Convention on the Privileges and Immunities of the United Nations, the Secretary-General has the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and without prejudice to the interests of the United Nations. If such waiver is refused, the criminal prosecution could proceed only after the expiry or early termination of the credentials of the official or expert concerned.