

# Diplomatic immunity in cases of abuse

Life



An incident occurred in New York in 1983 as the son of a Saudi Arabian diplomat, together with a World Bank official's son, sexually harassed a sixteen-year-old girl in a home party. Subsequently, both of the offenders left the US to avoid publicity. However, shortly afterwards, the Arabian son, with his diplomatic immunity, returned to the country to commit the same crime to the victim again. Only after being lifted his passport did he fly back to Saudi Arab, being reported to have shown an obscene gesture to the policemen who came to see him off at the airport (Ben-Asher, 2000). The parity in this case which disgusted the public was that after committing serious crimes, the perpetrators both showed no signs of regret. To make it worse, they did not only provide the victims with no appropriate apology and compensation, but also blatantly repeated their crimes. It was certain that the culprits were adequately aware of their diplomatic immunity for being immediate family members and made full use of it as a shield for their despicable offences. In other words, given special exemption from prosecution and execution of judgement, they brutally challenged the receiving state's legal system and abused innocent people's human rights.

The question which most people wonder is that, were there be no diplomatic immunity, would these perpetrators have the courage to violate the laws from the first place? Were they to know that there would be severe punishments awaiting them, would they still be so ruthless and violent? Most importantly, was the privilege of diplomatic immunity to partly blame for the deterioration of their dignity? From my point of view, the diplomatic immunity should be somehow responsible. It is human's natural instinct to react to sanctions – we are motivated by rewards and demotivated by

penalties. However, with immunity, since the punishments are generally lifted, the perpetrators do not have enough reasons to be afraid of the law. Instead, diplomatic immunity can even consider as motivation for committing crimes. The offenders know that they are placed beyond the law of the receiving state, and the ultimate sanctions from the sending one are often not as severe. No “ functional necessity” should justify these acts because if there is any factor hindering the diplomatic missions, it should be the family members themselves, not any other external elements. The outrageous acts that they committed have triggered a group of people advocating equality and justice. Politically, if these cases of abuse were not satisfactorily resolved, it might cause social unrest, even worsening the diplomatic relations between states.

Moreover, from these empirical examples, another issue is highlighted. Should we continue this practice of offering a group privileges that come at the expense of others? Should the offenders be left free from the law just for being related to diplomats while the innocent victims must suffer for doing nothing wrong? For most people, it is terribly unfair. From this aspect, immunity can be seen as a breach from human rights as violating cases are rarely resolved with adequate care and justice. Unless the sending state waives immunity to the culprits, the latter hardly have to suffer from any serious punishments in their home countries. Even though the empirical evidences demonstrated in this paper can not cover all the cases, they do raise the rationality issue of the extended immunity to family members. To enhance the situation, the reasonable amendment should be restricting immunity to diplomatic mission staff only. It is advisable that family

members are subject to the same set of rules like any ordinary expatriates, although greater attention should be paid to the former. For the purpose of functional necessity, the family members should be treated with respect and care when allegedly involved in illegal acts. In their daily life, the receiving state should provide this group with fitting forms of protection such as security guards and consultants. Furthermore, even when diplomatic immunity is lifted, diplomatic agents' families are still considered a privileged group, so their scope should be clearly defined. "Family" and "household" are broad concepts which vary in each nation.

In Western countries, a household generally comprises a nuclear family with parents and children under the age of 18. Meanwhile, in the Eastern countries, families are often larger with three or even four generations living together. To date, with the legalization of homosexual marriage in many countries, there has been a dramatic change in the dynamics of families: the family elements are even more diverse than ever before. The VCDR of 1961 should also be updated with these changes so that it can be applied better to the global context. In conclusion, although the principle of extending immunity to diplomatic agents' family members has been in practice for a long period of time, it is not necessarily a justifiable act. Theoretical and empirical evidences have shown that there have been cases of abuses where people took advantage of this privilege to do vicious harm to others. The alteration should be limiting the immunity of the family members, enhancing other forms of protection when needed, and providing a more coherent definition of family in the convention. Particularly, no matter how advanced and progressive the VCDR can become in the future, it is states, the ultimate

actors, that should be under obligations to comply with the convention and secure the rights of its citizens, regardless of their age, gender or background.