

LEGAL SAFEGUARDS OF PROFESSIONAL INDEPENDENCE OF INTERNATIONAL CIVIL SERVANTS –EXTERNAL AND INTERNAL DIMENSION

Abstract

This article explores legal safeguards of professional independence of international civil servants. The author identifies two dimensions of this issue – external and internal. The external dimension appears in the relation between the officials and the international organisation's secretariat and the national authorities of member States of an international organisation, whilst the internal dimension is related to the relations within the secretariat of the international organisation, particularly between an official and his hierarchical superiors. Following the analysis of relevant legal texts, establishing treaties and headquarters arrangements and staff regulations of some international organisations, the author concludes that legal safeguards to ensure independence of officials from the intrusion of national authorities are sufficiently well developed, on the one hand, whilst there is room for improvement of legal instruments protecting the international civil servants in relation to their hierarchical superiors within the secretariat of an international organisation, on the other hand.

Keywords: *international civil service, international organisation, professional independence, headquarters arrangements, functional necessity.*

1. Introduction

Any international organisation represents an independent entity of international law.² By the constituting treaty, the member States confer

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The views expressed in this article are the personal views of the author and not necessarily those of the organisation by which the author is employed.

² J. Klabers, *Introduction to International Institutional Law*, Cambridge University Press, Cambridge 2005, 46-47.

certain powers to the international organisation and define its objectives, competencies, means of functioning and operations.³ The functioning of an international organisation is based on three factors. The first factor consists of the member states of an international organisation, who are masters of its constituent legal instrument and govern the organisation through the decision-making process. The international organisation itself, as an institutional framework and entity of the international law, appears as the second factor, offering the forum for intergovernmental co-operation and decision-making. And, last but not least, the third factor is officials employed by the international organisation, who represent its human resources working, in their professional capacity, for a given organisation.⁴

The officials compose a permanent professional body of an international organisation, most commonly referred to as a secretariat, which ensures administrative support to the governments' representatives and conducts professional, administrative and technical activities necessary for the discharge of the international organisation's functions, in the interest of the organisation and not in the interest of any particular Member State.⁵ Therefore, independence and professionalism of the international civil service are among its most important characteristics. This quality is ensured by certain legal safeguards enshrined in the legal documents governing the status of officials in many international organisations. This article explores two dimensions of this type of independence and professionalism: the external one - towards the national authorities and internal one - protection against the abusive hierarchy within the organisation.

Several topics relevant to the main theme are analysed below. At the first place, the concept of professional independence of the international civil servants will be presented. Secondly, the relevant legal framework establishing safeguards of professional independence will be elaborated. Thirdly, prerequisites for the professionalism of international civil service are examined. Finally, two dimensions of safeguards will be demonstrated from a substantive point of view.

2. Professional independence of international civil service

The main responsibility of the secretariat is to ensure the continuity of the organisation's functioning and to enable the manifestation of its independent personality. The officials of international organisations are referred to as international civil servants in the relevant texts, albeit,

³ I. Brownlie, *Principles of Public International Law*, Oxford University Press, Oxford, 281.

⁴ U.E. Udom, "The International Civil Service: Historical Development and Potential for the 21st Century," *Public Personnel Management*, Vol. 32, 1/2003, 100.

⁵ M. Díez de Velasco Vallejo, *Les organisations internationales*, Economica, Paris 2002, 80- 81.

their status, employment terms and conditions, might significantly vary, given the differences existing among various international organisations.⁶ Despite those differences, it is possible to find a general definition of the term of an international civil servant. An international civil servant might be defined as an individual appointed, by an international organisation's body, in accordance with an international legal act, to discharge functions in general interest of the organisation in a continued and exclusive manner.⁷

The issue of legal status of officials acquired certain attention during the establishment and institutionalisation of the first modern universal international organisations,⁸ particularly the League of Nations and the International Labour Organisation.⁹ The further development of international organisations has created certain basic rules and principles that defined the scope of rights, duties and privileges associated with the status of international civil servants. One of the main layers of their status is their professionalism and independence. The independence of international civil service is an old concept, born in the foundation days of the League of Nations. At that time, it was established that the officials should be exclusively responsible to the hierarchical superiors within their organisation and not to the national governments given the paramount importance of professionalism while discharging duties of officials.¹⁰ In the same manner, the official that is free from the influence by any national authority should be also protected from any abusive attitude or requirement by his hierarchical superiors in order to ensure full independence in the performance of tasks related to his appointment within an international organisation.

None the less, the acceptance of the principle of independence was not that straightforward. Since the establishment of the first modern international organisations, two different attitudes related to the preferable connection between officials of an international organisation and their countries were displayed. One attitude was based on assumption that the officials, although working for international secretariats, owed allegiance and loyalty to their nation-states. On the contrary, the other attitude argued that the officials should be strictly independent from any sort of

⁶ P. Daillier, M. Forteau, A. Pellet, *Droit International Public*, LGDI, Paris, 2009, 696.

⁷ M. Diez de Velasco Vallejo, 90.

⁸ This statement does not mean that those are the first international organisations in general; it is well known that administrative unions were established as of the mid XIX century. However, the purpose of this statement is that a separate body of law started being developed with the establishment of the modern type of political universal organisations.

⁹ C.F. Amerasinghe, *Principles of the Institutional Law of International Organizations*, Cambridge University Press, Cambridge 2005, 272-273.

¹⁰ H. Reymond, "Some Unresolved Problems of the International Civil Service," *Public Administration Review*, May/June 1970, 225.

national influence and their loyalty should be owed to their employer – the international organisation. The second type of attitude prevailed and is still the main principle governing the concept of international civil service and its independence.¹¹

There are certain grounds justifying the independence of officials. This is due to the evolution of competences and mandates conferred to international organisations. Namely, when the first international organisations were established, the role of their secretariats would have been rather simple, the officials would be tasked to prepare minutes and documents for the meetings among States' delegations. However, over time, their assignments have been significantly upgraded and became more complex. The officials of many international organisations are nowadays expected to develop policies and propose solutions related to legal harmonisation, standards' elaboration, including occasionally also the exercise of administrative and even political powers over territories under international regime and many other tasks requiring high level of professionalism, technical and diplomatic competencies, but also professional attitude and independence from external political actors.¹² Therefore, the independence of international civil service becomes even more important in the times when the international legal order is expected to provide the framework for the governance-related responses by both nation states and international organisations to the challenges of contemporary global systems.¹³

The professionalism and independence would mean for the officials to be guided by the technical reasons and expertise when discharging their duties on behalf of an international organisation and representing the best interests of the international organisation. In order to give effect to this principle, relevant legal documents devoted significant attention to legal safeguards of both aspects of independence and protection of international officials.

3. Legal instruments protecting the independence of international civil servants

The thorough analysis of the legal status of officials requires the examination of all types of documents establishing their rights and

¹¹ R.S. Jordan, "The Fluctuating Fortunes of the United Nations International Civil Service: Hostage to Politics or Undeservedly Criticised?", *Public Administration Review*, July/August 1991, 51, No. 4, 353.

¹² Y. Kryvoi, "The Law Applied by International Administrative Tribunals: from Autonomy to Hierarchy," *George Washington International Law Review*, 47/2015, 269.

¹³ J.A.R. Nafziger, "The Future of International Law in Its Administrative Mode," *Denver Journal of International Law and Policy*, Vol. 40:1-3, 65-66.

duties pertaining to the conditions of the exercise of their functions. These issues are regulated by the international administrative law, which, being a branch of public international law, “*determines the rights and obligations of international civil servants in their dealings with public bodies, primarily intergovernmental organisations. The international administrative law imposes restraints on the exercise of power by international organisations vis-à-vis international civil servants providing accountability and legitimacy for the exercise of public power.*”¹⁴

Given the structural characteristics of international organisations, it is possible to identify two sets of instruments that lay down rules guarantying safeguard of independence of officials of international organisations. The constituent treaty and headquarters’ arrangements represent the first group of instruments, whilst the internal regulations of the international organisation itself are the second set of legal documents.¹⁵

3.1. Constituent treaties and headquarters’ arrangements

The primary source defining the basics of employment of international organisation’s officials is the constituent treaty. The constituent treaty is a multilateral international agreement concluded by the founding members of an international organisation.¹⁶ This instrument lays down main principles regarding the recruitment, appointment and status of officials of one organisation. Such provisions define the basic rules related to the employment and empower certain institutions within the international organisation to enact secondary legislation regulating the employment relations of officials. They also define the exclusively international character of service provided to the international organisation in question.¹⁷

¹⁴ Y. Kryvoi, 271-272.

¹⁵ M. Diez de Velasco Vallejo, 92.

¹⁶ M. Shaw, *International Law*, Cambridge University Press, Cambridge 2003, 1193.

¹⁷ Refer to Article 101(1) of the UN Charter which reads as follows: “The staff shall be appointed by the Secretary-General under regulations established by the General Assembly”. M. Shaw, 1093. Also refer to Article 36.e-f of the Statute of the Council of Europe, European Treaty Series - No. 1, which similarly defines that “Every member of the staff of the Secretariat shall make a solemn declaration affirming that his duty is to the Council of Europe and that he will perform his duties conscientiously, uninfluenced by any national considerations, and that he will not seek or receive instructions in connexion with the performance of his duties from any government or any authority external to the Council and will refrain from any action which might reflect on his position as an international official responsible only to the Council. In the case of the Secretary General and the Deputy Secretary General this declaration shall be made before the Committee, and in the case of all other members of the staff, before the Secretary General. Every member shall respect the exclusively international character of the responsibilities of the Secretary General and the staff of the Secretariat and not seek to influence them in the discharge of their responsibilities.”

The general principle of independence of the international organisation and its officials from any national authorities becomes even more interesting when it comes to the possible interference by the host State. The host State may *via facti* exercise the highest level of pressure, influence or interference with the work of an international organisation due to the reason that the seat of the secretariat is located in its territory. In order to ensure the independence of officials from any intrusion by the host State authorities, the headquarters' arrangements envisage certain facilities, privileges and immunities in favour of the organisation and its officials.¹⁸ The immunities that are usually envisaged by this type of agreements relate to the following situations: the immunity from legal process of any kind in respect to the official acts, the immunity from seizure of personal and official baggage, the immunity from inspection of official baggage and personal baggage for some categories of officials. Furthermore, the officials enjoy a range of tax exemptions related to their income from the salaries and emoluments paid by the international organisation. There are also some facilities for the import of goods for personal use, VAT exemptions, exemption from the visa regime for officials and members of their households, etc.¹⁹ As for the heads of international organisations and their deputies, the headquarters' arrangements envisage that these highest officials shall be accorded immunities, exemptions and facilities accorded to diplomatic envoys of comparable rank in accordance with international law.²⁰ The majority of the headquarters' arrangements contain similar provisions and establish similar regime regarding the status of an international organisation in a host State.

A prevailing standpoint is that the immunities accorded to the officials are not established for their personal benefits, but in the interest of their organisation. Some authors point out that "*the reason for the granting of immunities to international organisations was to enable them to pursue their functions more effectively and in particular to permit organisations*

¹⁸ J. Klabbers, 133.

¹⁹ Refer to: Section 37, Agreement between the Republic of Austria and United Nations regarding the Seat of the United Nations in Vienna of 29 November 1995, UN Treaty Series, Vol. 2023; Article 18, General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949, European Treaty Series, No. 2; Section 38(a), Article VI, Agreement between the International Atomic Energy Agency and the Republic of Austria regarding the Headquarters of the International Atomic Energy Agency of 11 December 1957, INFCIRC/15, 1959; Article 17 and 18, Headquarters Agreement between the International Criminal Court and the Host State of 7 June 2007, <https://www.icc-cpi.int/NR/rdonlyres/99A82721-ED93-4088-B84D-7B8ADA4DD062/280775/ICCBD040108ENG1.pdf>, 10.5.2017.

²⁰ Article 16, General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949, European Treaty Series, No. 2; Section 38, Agreement between the Republic of Austria and United Nations regarding the Seat of the United Nations in Vienna of 29 November 1995, UN Treaty Series, Vol. 2023.

to operate free from unilateral control by a member State over their activities within its territory."²¹ Therefore, due to the prevailing interest of the international organisation, as the basis of the immunities accorded to the officials, it is clear that the immunities are of functional nature and are justified by the theory of functional necessity.²²

Although this theory seems logical, the practice may bring some questions as to what are the limits of immunities. The character of an act as official, i.e. being committed to the accomplishment of official duties, is something which is important for decision if certain act or behaviour is covered by the immunity. However, the practical difficulties related to the establishment of real nature of the act whose legality may be questioned may put in jeopardy the granted immunities if the national authorities initiate certain procedures. In this respect, Klabbers underlines that "*the point is that the determination of the legality of behaviour should not come before the courts of the host state because that might obstruct the organisation's work.*"²³ Exceptionally, if the interest of justice requires so, the competent institution of the international organisation may decide to waive the immunity of any official.²⁴

3.2. Internal regulations of international organisations governing officials' employment

The secondary sources, which in more details define terms and conditions of employment of international civil servants, are being adopted by the relevant legislative body of an international organisation and are further developing the status of employees pursuant to the basic principles set out by the founding treaty. Such documents are most often denoted as the staff regulations.²⁵

The secondary or derivative sources "*are made under powers assigned by the basic constitutional texts*".²⁶ The international practice has

²¹ M. Shaw, 1207; Refer to: United States Court of Appeals, *Susana Mendaro, Appellant, v. The World Bank, a.k.a. International Bank for Reconstruction and Development*, 717 F.2d 610 (1983).

²² In this vein Klabbers explains that "The idea ... is that organisations enjoy such immunities as are necessary for their effective functioning: international organisations enjoy what is necessary for the exercise of their functions in the fulfilment of their purposes." J. Klabbers, 132.

²³ J. Klabbers, 135. Refer to Article 105(2) of the UN Charter which reads as follows: "Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization."

²⁴ See for instance: Article 19, General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949, European Treaty Series, No. 2.

²⁵ C.F. Amerasinghe, 286; M. Diez de Velasco Vallejo, 113.

²⁶ C.F. Amerasinghe, 24.

confirmed the basic principle according to which the employment relations of officials should not be regulated by the national labour legislation but they should rather be governed by the internal acts of international organisations.²⁷ Notably, since the establishment of modern universal organisations, it was clearly assumed that the corps of officials employed within their secretariats, should not be subject to any set of national rules. Consequently, it has been practice since then, to regulate the employment relations by the acts adopted by the international organisation itself.²⁸ It is worth mentioning that certain aspects of the status of officials may also be further regulated by the tertiary acts enacted by the head of the secretariat of the organisation. These acts naturally have to be fully aligned with the staff regulations and not to override the delegated powers by the latter.²⁹

The secondary and tertiary acts compose the internal law of international organisation. As Shaw emphasises, the internal law “*may, in reality, be seen as a specialised and particularised part of international law, since it is founded upon agreements that draw their validity and applicability from the principles of international law.*”³⁰ This body of law also referred as the international administrative law, establishes legal relations that are directly binding officials, as private entities, and the international organisations, as their employer and an intergovernmental body, at the same time.³¹

As for the nature of legal regime governing the appointment and employment conditions of international civil servants, two different approaches have been identified. The first one, which is similar to the system of national civil service, is the statutory system. According to this system, the applicable terms and conditions of their employment are of the statutory nature.³² The other possible regime is the contractual system where an employment contract is concluded between the international organisation and its official. These contracts stipulate terms and conditions of the employment and, as any contract, has two constituting moments – an offer for employment and an acceptance by the employee.³³ It is not possible to state that one of the two systems prevail, it is rather a combined system consisting of both contractual and statutory elements. Any employment contract has to be in line with the general staff rules and regulations, on the one hand, and the employment relations is covered by

²⁷ *Ibid.*, 280.

²⁸ Y. Kryvoi, 268; C.F. Amerasinghe, 276-277.

²⁹ C.F. Amerasinghe, 286-287.

³⁰ M. Shaw, 1199.

³¹ Y. Kryvoi, 273.

³² C.F. Amerasinghe, 280-281; M. Diez de Velasco Vallejo, 91 – 94.

³³ M. Diez de Velasco Vallejo, 91; C.F. Amerasinghe, 280-281.

all relevant provisions even though there are not explicitly stipulated in the employment contract.³⁴

The staff regulations and connected rules establish the status of international civil servants. The employment rules, although internal to international organisations, are adopted by the intergovernmental bodies and some international character.³⁵

4. Prerequisites for professionalism of international civil service

Although there are significant similarities among rules of different international organisations when it comes to the rules applicable to their officials, it would not be easy to uphold that there is a common set of rules that are applicable to any international organisation.³⁶ Over decades, a solid body of principles has been established and it is possible now to detect certain common principles governing the status and employment conditions of officials of international organisations, particularly those that are intended to ensure their professionalism and independence. Those principles relate to recruitment and remuneration of officials, international and professional character and exclusivity of their service.

Since the international organisations both embody and enable the international co-operation,³⁷ the necessary international character of their secretariats is ensured by the employees coming from different Member

³⁴ Y. Kryvoi, 281; C.F. Amerasinghe, 282. Regarding the legal nature of regime applicable to the relation between an official, as employee, and an international organisation, as employer, the United Nations Administrative Tribunal has maintained that: “[R]elations between staff members and the United Nations involve various elements and are consequently not solely contractual in nature. Article 101 of the Charter gives the General Assembly the right to establish regulations for the appointment of the staff, and consequently the right to change them. ... notwithstanding the existence of contracts between the United Nations and staff members, the legal regulations governing the staff are established by the General Assembly. In determining the legal position of staff members a distinction should be made between contractual elements and statutory elements ... while the contractual elements cannot be changed without the agreement of the two parties, the statutory elements on the other hand may always be changed at any time through regulations established by the General Assembly, and these changes are binding on staff members.” United Nations Administrative Tribunal, Case No. 36, *Wallach v. The Secretary General of the United Nations*, Judgement No. 53 of 29 May 1954, § 3.

³⁵ Refer to: Staff Regulations and Rules of the United Nations, Secretary-General’s bulletin, ST/SGB/2017/1; Staff Regulations and Staff Rules of the Organization for Security and Co-operation in Europe, <https://jobs.osce.org/resources/document/osce-staff-regulations-and-staff-rules>, 10.10.2017.; The Council of Europe Staff Regulations, https://www.coe.int/T/AdministrativeTribunal/WCD/staff_en.asp, 10.10.2017.

³⁶ O. Elias, M. Thomas, “Administrative Tribunals of International Organisations,” in: *The Rules, Practice, and Jurisprudence of International Courts and Tribunals* (ed. Chiara Giorgetti), Martinus Nijhoff Publishers, Leiden 2012, 175.

³⁷ M. Kreća, *Međunarodno javno pravo*, Pravni fakultet u Beogradu, Beograd 2010, 487.

States. In addition, it should be composed of the best qualified candidates that would be offered employment at the secretariat.³⁸ Therefore, recruitment and appointment of officials represent the central instrument to ensure and preserve the international character of professional corps composing the secretariat. The specific rules should enable the recruitment of qualified individuals with the adequate representation of all nationals of the organisation within its secretariat. The further guarantee of international nature of the service is the appointing authority which should be allocated to the head of the secretariat and not to any intergovernmental body of the organisation.³⁹

The international civil servants are expected to meet the highest standards of efficiency, integrity and skills and knowledge while performing their duties. In other terms, the international civil service is supposed to attract and recruit autonomous and first-class employees who would be exclusively devoted to their service and not subject to any national authority when discharging the official duties.⁴⁰ Their international allegiance and loyalty to the international organisation are enshrined in the core provisions of any staff regulations.⁴¹ Some international organisations require their officials to sign a solemn declaration confirming their allegiance to the organisation and its core values.⁴²

The quality of candidates is to be ensured by the merit-based recruitment. The merit-based recruitment is complemented by the principle of geographical distribution in order to ensure a truly international service. However, the principle of geographical distribution is supposed to remain a subordinate criterion to the professional qualities of candidates for positions within the international organisation's

³⁸ U.E. Udom, 100-102. It is worth citing that "the time has long passed for the world verdict on whether or not there should be an independent international civil service. There must be a multinational body of men and woman to play the parts in the international drama drawing together the purposes of all mankind" J.W. Macy, "Towards an International Civil Service," *Public Administration Review*, May/ June 1970, 258.

³⁹ H. Reymond, 227.

⁴⁰ T.G. Weiss, "The John W. Holmes Lecture: Reinvigorating the International Civil Service," *Global Governance*, 16/2010, 40.

⁴¹ Refer to Article I, Regulation 1.1(a) of the Staff Regulations and Rules of the United Nations which reads as follows: "Staff members are international civil servants. Their responsibilities as staff members are not national but exclusively international."

⁴² For instance, Article I, Regulation 1.1(b) of the Staff Regulations and Rules of the United Nations envisages that Staff members shall make the following written declaration: "I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization."

secretariat.⁴³ To this effect, recruitment procedure and selection of officials lays at the core of formation of a professional corps enabling normal functioning of one organisation. The selection process should ensure that the most qualified candidate will obtain position, on the one hand, and the appointing authority has to ensure that the principle of equal geographical representation is respected, which means that nationals of all members have access to the employment at the organisation and are represented within the corps of professionals, on the other hand.⁴⁴

It is not sufficient to open employment to candidates who are nationals of all member States of an organisation. Since the professional engagement at one international organisation regularly implies the reallocation from the country of origin, it is important to offer significantly attractive remuneration package to the candidates, who are supposedly highly qualified and educated. This issue is usually resolved in accordance with the *Noblemaire Principle* which means that the amount of salaries paid to officials working for international organisations should be at the level of the highest paid civil service which is comparative with the concrete organisation. If it is applied to the United Nations, it would mean that the highest paid civil service of the world would be taken as a comparative basis, at the given moment, when the salary scales are being elaborated. This principle offers guarantees that the most qualified candidates might be interested to apply for and eventually accept positions at the international organisation.⁴⁵

Besides the above mentioned concepts, the exclusivity of engagement of officials remains also a core element of their professional character of status. This exclusivity would mean that an official would not engage in any other profession except the one within the secretariat of the international organisation, or such an outside engagement would be subject to strict conditions laid down by the applicable staff regulations. This concept is justified by the need to ensure that the loyalty towards the international organisation would not be jeopardised by any external professional interests of officials having an outside engagement. However, this is not an absolute principle since, under strict conditions; an outside

⁴³ J.W. Macy, 260. Cf. Article 101(3) of the Charter of the United Nations: "The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

⁴⁴ Article I, Regulation 1.1(d) of the Staff Regulations and Rules of the United Nations, Secretary-General's bulletin, ST/SGB/2017/1; Regulation 7, OECD Staff Regulations, Rules and Instructions Applicable to Officials of the Organisation, July 2017, http://www.oecd.org/careers/Staff_Rules_July_2017_to_print.pdf, 01.10.2017.

⁴⁵ U.E. Udom, 100-102; J.W. Macy, 261-262.

engagement of officials may be allowed by the administrative head of the international organisation.⁴⁶

5. Independence *vis-à-vis* national authorities of the Member States

Independence towards national authorities has been identified as one of the essential characteristics of international civil service since the establishment of the League of Nations. The only authority to which the officials should be responsible is the administrative head of the organisation. This type of independence may be summarised as the prohibition for the head of the secretariat and officials to seek and to receive instructions from the Member States authorities, on the one hand, and as the obligation for the Member States authorities to respect the exclusive international character of the officials' responsibilities and refrain from any form of influence and intrusion, on the other hand.⁴⁷ In other words, explained, "*for individual staff members, independence means that they fully accept and practice primary loyalty to their organisation and its purposes.*"⁴⁸

The principle of independence and loyalty, from a theoretical perspective, may seem slightly difficult to be fully respected because one may assume that any individual, even though he/she is an international official, may be significantly attached to pursue what is in the best interest of its country of origin. People tend to seem closely attached to the

⁴⁶ Article I, Regulation 1.2(o) – (p), Staff Regulations and Rules of the United Nations, Secretary-General's bulletin, ST/SGB/2017/1;

⁴⁷ H. Reymond, 225. Refer to Article 100(1) of the Charter of the United Nations: "In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization." and Article 100(2) of the Charter of the United Nations: "Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities." For this issues, the provision of Article I, Regulation 1.1(d) of the Staff Regulations and Rules of the United Nations, Secretary-General's bulletin, ST/SGB/2017/1, seems also pertinent. Although these wording contains a clear provision protecting the independent character of UN officials, the practice has shown some examples when this principle was severely breached, such as the request by the USA authorities to conduct the security investigations for all its nationals serving the UN Secretariat, the attitude of some former communist countries who were opposing to independent recruitment system for their nationals, favouring nationals of some new member States in the recruitment process and thus undermining the principle of high professional standards to be met by candidates, etc. See further at R.S. Jordan, "The Fluctuating Fortunes of the United Nations International Civil Service: Hostage to Politics or Undeservedly Criticised?", *Public Administration Review*, July/August 1991, Vol. 51, No. 4, 353-354.

⁴⁸ H. Reymond, S. Mailick, "The International Civil Service Revisited," *Public Administration Review*, March/April 1986, 137.

preservation of the national sovereignty of their countries. Nevertheless, if this problem is perceived from a practical level, then it may be concluded that in their actual work and discharge of official duties, the international civil servants do not face the issues that may challenge their national loyalty. Namely, they mostly accomplish administrative tasks stemming from their job descriptions and their practical involvement into the processes that may have an impact on the interest of their home country may occur quite rarely, if not ever. This may be explained by the way in which the international organisations operate. The decisions sensible to have an impact on national interests are taken by the intergovernmental body, very often by unanimity or consensus, and decision-making procedures give enough room to the national representatives to rely on different tools for protection of their national interests. Consequently, there is no need for international civil servants to assume the role of keeper of national interests and to put into jeopardy its duty to be loyal to the employing organisation.⁴⁹

The bottom line of this concept are exclusive responsibility and accountability of an official to the hierarchical head of the administrative body, but not to any single member State or its government. The practice of relevant international tribunals has demonstrated their readiness to protect the principle of independence of international civil servants from national authorities and legislation when it comes to the performance of official functions of the former.⁵⁰

6. Protection of officials within hierarchical system of international organisations

The status of officials, their independence and professionalism are not only ensured by their protection from the national authorities, but also by the principle that the international civil servant should be also protected against any abuse that might be imposed by his hierarchical superiors.⁵¹ Normally, the officials are supposed to the directions and instructions properly issued by the head of the secretariat and by their supervisors.⁵²

This type of protection is ensured by existence of effective legal remedies at disposal of officials. These remedies represent the right to challenge decisions affecting their employment conditions, terms of appointment and career management.⁵³ Due to the immunity that the

⁴⁹ *Ibid.*, 137.

⁵⁰ C.F. Amerasinghe, 277 – 278.

⁵¹ *Ibid.*, 278.

⁵² Chapter I, Rule 1.2(a) of the Staff Regulations and Rules of the United Nations, Secretary-General's bulletin, ST/SGB/2017/1.

⁵³ M. Díez de Velasco Vallejo, 699.

international organisations enjoy, the officials are prevented from filing complaints against their international organisations as their employer or under national law. The officials consequently may use only those remedies that are available under the rules of the international organisation by which they are employed and can appeal or complain before the administrative tribunals of appellate bodies that are competent to take cognizance of their cases.⁵⁴ The international law does not know the unified system of appeals and judicial protection for officials as there is a number of different administrative tribunals established by international organisations to hear cases related to their employees. Despite different purposes and responsibilities of different organisations, the administrative tribunals, although not formally obliged, tend to look at each other's case law and ensure the respect of some common principles related to the international civil service.⁵⁵

The protection from abusive administrative power within the organisation may be triggered in the cases when there is abuse of discretionary power of superiors, the most notably of the head of the secretariat of international organisation, then when it comes to the exercise of disciplinary powers and other managerial decisions within the scope of responsibility of the administrative superiors that were taken through the substantive or procedural irregularity.⁵⁶ In the case of discretionary power, the tribunals have clearly defined no-substitution principle. This principle basically means that they would not try to substitute its own decisions and judgments for those of the internal administrative instances responsible to decide on the matter. However, the tribunal would exercise the review over procedural and relevant substantive aspects of the discretionary decision, such as discrimination committed by hierarchy, breach of procedure etc.⁵⁷

To conclude, the quality of legal regime protecting officials seems to be questionable, if it is compared with national legislation and existing remedies and adjudicating systems. The isolated international administrative legal systems cannot dispose of some established review mechanisms that exist in the national administrative systems.⁵⁸ One additional difficulty that may appear in this context is due to the lack of applicable law that would be outside the scope of influence of the political power within the organisation. This remains quite difficult to be achieved

⁵⁴ Y. Kryvoi, 272.

⁵⁵ B.M. de Vuyst, "The World Bank Administrative Tribunal," *Revue belge de droit international* 1/1981-1982, 82.

⁵⁶ C.F. Amerasinghe, 299 – 307; M. Diez de Velasco Vallejo, 702.

⁵⁷ C.F. Amerasinghe, 300-303.

⁵⁸ Y. Kryvoi, 276.

given the fact that the appellate bodies and administrative tribunals are established and their members appointed by the organisation's authorities. Therefore, the writings by scholars demonstrate that there is significant problem with the assurance of legitimacy and accountability.⁵⁹ The key paradox that has appeared in the practice is the fact that the international standards of employees' protection, including the International Labour Organisation conventions, may not be applied to the officials since these documents are not binding upon international organisations. Despite the fact that the international organisations are not parties to this type of conventions, it could be still upheld that the rules contained therein could be treated "*as evidence of general principles of law recognised by most countries in the world*" and thus become applied to the cases involving the rights and duties of international civil servants.⁶⁰

The other facet of protection of officials is related to the amendments and alteration of their employment terms and conditions by the authorities of the international organisation. Those amendments may be brought both by deliberative organs or administrative head of the organisation. Generally, it is an established principle that the organisation may amend the staff regulations and other rules, based on the needs of the organisation, its economy and structural and functional needs.⁶¹ However, it is also understood that those amendments cannot embrace the essential elements of appointments, i.e. those employment conditions that induced somebody to accept the employment within the organisation. Furthermore, the acquired rights and those rights of employees that accrued during the performance of the duty must not be suppressed by the amendments of internal rules.⁶²

7. Concluding remarks

It is possible to conclude that the international civil servants enjoy two dimensions of professional independence and its protection – externally and internally. Firstly, they are protected from the interference

⁵⁹ *Ibid.*, 278.

⁶⁰ *Ibid.*, 290-291.

⁶¹ "The reference in the Applicant's contract to the Service Code has the effect of subjecting the Applicant himself to rules which might be adopted by the Council in pursuance of the Chicago Convention; this power to adopt general provisions implies in principle the right to amend the rules established. But the Council itself can regulate its right of amendment and has in fact done so in several provisions. As long as these provisions concerning amendments are in force, they must be respected by the Council." United Nations Administrative Tribunal, Case No. 83, *Puvrez v. The Secretary General of the International Civil Aviation Organisation*, Judgement No. 82 of 4 December 1960, § 5.V.

⁶² World Bank Administrative Tribunal, *De Merode et Alii v. The World Bank*, Decision No. 1(1981), § 20.

of representatives of national governments of member States and from the authorities of the host State. This type of protection from external powers is solidly enshrined in the constituent treaties of one organisation, on the one hand, and the headquarters' arrangements/agreements concluded between the international organisation and its host State, on the other hand. The international character of the corps of officials, their exclusive international loyalty, functional immunity and protection from the judicial prosecution for the acts committed in their official capacity, are grounded in the international law.

Secondly, when it comes to the internal dimension of protection, the assurance for their professional independence and protection for their rights stemming from the employment relations with the international organisation, this article has found that this type of safeguards is defined by the international administrative law, mostly contained in the internal regulations of the international organisation. These rules, although having significant legal force within the legal system of any particular international organisation, are not as developed as comparable rules related to national civil service existing at national levels. Namely, the system that should ensure the protection of officials in the cases against their hierarchical power, does not seem to be sufficiently developed nor complying with the standards and principles established in most of the national jurisdictions. Therefore, it is possible to conclude that the international law has developed effective safeguards when it comes to the professional independence of officials and their protection against national authorities of member States. On the contrary, there is enough room for improvement of internal dimension of protection of officials and improvement of existing legal safeguards and applicable rules.

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MERE PRAVNE ZAŠTITE PROFESIONALNE NEZAVISNOSTI MEĐUNARODNIH SLUŽBENIKA – SPOLJNA I UNUTRAŠNJA DIMENZIJA

Rezime

U članku se razmatraju mere pravne zaštite profesionalne nezavisnosti međunarodnih službenika. Autor je uočio dvije dimenzije ovog pitanja – spoljnu i unutrašnju. Spoljna dimenzija se manifestuje u odnosima između vlasti država članica jedne međunarodne organizacije i njenog sekretarijata, dok se unutrašnja dimenzija tiče odnosa u okviru sekretarijata, posebno u pogledu hijerarhijskog odnosa između međunarodnih službenika i njihovih nadređenih. Na osnovu analize relevantnih pravnih akata – osnivačkih sporazuma, sporazuma sa državom sedišta i uredba o radnim odnosima, autor zaključuje da su solidno razvijene mere pravne zaštite kojima se obezbeđuje nezavisnost službenih lica u odnosu na uplitanje državnih vlasti država članica, s jedne strane, te da je potrebno dodatno unaprediti one odredbe koje regulišu status i mogućnost zaštite međunarodnih službenika u odnosu na lica koja su im hijerarhijski nadređena unutar sekretarijata, s druge strane.

Ključne reči: međunarodna služba, međunarodne organizacije, profesionalna nezavisnost, sporazum sa državom sedišta, funkcionalna neophodnost.