

**August 2011**

**Privileges and Immunities of International Civil Servants**

**UNDT and UNAT introduce eFiling**

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The widely publicised case of alleged sexual assault by the former Managing Director of the IMF on an employee of a Hotel in New York shed some light on the exercise of a principle, which is often commonly referred to as ‘diplomatic immunity’ and which can be of importance for any staff during his career as an international civil servant. In this case, despite the fact that the host country of the IMF has not ratified the “UN Convention on the Privileges and Immunities of the Specialized Agencies” of 1947, which would have given the head of the IMF the broader status-based immunity usually granted to heads of diplomatic missions and most senior officials of international organisations, he nevertheless enjoyed some immunity, albeit restricted, as any other international civil servant does.

Indeed, the “IMF Articles of Agreement”, binding upon the United States, provides that officers of the IMF “*shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity.*” Thus, this so called functional immunity, which is also to be found in other agreements between international organizations and host countries, protects an international civil servant from arrest or being put on trial by the host country or any other country as long as she or he is performing an official act.

Of course, the crucial question is, when does an act qualify as such and who decides about it? In the case of the former Managing Director of the IMF, as the facts obviously seemed to point to criminal behavior unrelated to any official business, the US-authorities rejected his immunity without further ado. This course of action seems common sense and borne out of the necessity to prevent a potential suspect to abscond. But this is nevertheless a dangerous precedent, that might in future put in jeopardy the independence of international organizations and their officials: a member-state, which is displeased for any reason, might in retaliation arbitrarily arrest an official under false pretence.

In the case of the former Managing Director of the IMF, the US-authorities never submitted an application for waiver to the Executive Board of the IMF before or after arresting him. The IMF could therefore not independently decide if the allegations were well founded and if its interests were put at stake, although it should have been foreseeable that these dramatic events would eventually lead to the untimely resignation of its Managing Director. It is interesting to recall that in one of its recent judgments, the Administrative Tribunal of the ILO had found that “the political decision” taken under pressure from the United States to dismiss the head of the Organisation for the Prohibition of Chemical Weapons (OPCW) was irregular, by which it reaffirmed that the independence of international civil servants is an essential guarantee, not only for the civil servants themselves, but also for the proper functioning of international

organizations (ILOAT Judgment No. 2232, in *re* Bustani).

During the same period, the ILOAT developed a clear jurisprudence on how to deal with the immunity of staff in case of sexual harassment/assault against non-staff and criminal allegations in general. Thus, although the Tribunal considers that it has no jurisdiction to assess if the lifting of the immunity is actually appropriate, it can nevertheless examine the circumstances in which the immunity was waived. In the course of that examination it can *inter alia* determine whether the application was a properly submitted official request, in particular if the request has been addressed by the competent authority. Finally, the risk that the suspect leaves the country hurriedly does not relieve the authorities from the obligation to request the waiver of his immunity (ILOAT Judgment Nos. 2222 and 2302, considerations 6-8). Incidentally, the Administrative Tribunal of the IMF generally recognizes the principles developed by the ILOAT and would probably come to the same conclusion, especially in light of the fact that the IMF statutory provisions do foresee a strict procedure for the lifting of the functional immunity.

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### **UNDT and UNAT introduce eFiling**

In July 2011 the Office of Administration of Justice of the new UN Internal Justice System introduced a groundbreaking innovation. Any party to a procedure before the UN Dispute Tribunal or the UN Appeals Tribunal can now use a new electronic system, which facilitates the filing of submissions to the Courts.

The eFiling portal is a web interface that allows parties to file their submissions with Internet, ensuring that the application is directed to the appropriate Registry. It also allows parties to receive notifications and have easy access to the documents relating to their case (communications, submissions, orders by the Tribunal, etc.).

This electronic system greatly simplifies and speeds up the filing of documents of parties, an important issue for staff members who might be stationed in remote Field Offices and for whom the compliance to the various time-limits at every single step of the procedure can become a real nightmare, especially when the postal infrastructure of the country of their duty station is not reliable.

So far no such electronic system exists at the ILO Administrative Tribunal in Geneva, although parties to this Tribunal might sometimes face the same issues of geographical distance and lack of proper infrastructure.

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