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DIPLOMATIC CUSTOMS IN THE PERSPECTIVE OF FORMAL SOURCES OF LAW

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Abstract

Custom is considered a formal source of law, but this interpretation and qualification varies from one national system to another, depending on the national system's membership of the major legal systems.

In public international law, custom has been maintained as the source of this branch of law, especially in the field of diplomatic law, an aspect that is also the object of this study.

Key words: *custom; source of law; diplomatic law.*

INTRODUCTION

In legal doctrine, international custom represents "the tacit expression of states' consent regarding the recognition of a determined rule as a mandatory norm of conduct in relations between them" (*D. Popescu, 2005, p. 32*). We can understand that it gives expression to the custom, accepted by the states as a legal norm, through a long, generalized (Case concerning the Anglo-Norwegian Fisheries), uniform and constant (*Case concerning the right of asylum, Judgment of 20 November 1950, ICJ Report, 1950, p. 266*) application.

Custom is a main source of international law, along with the treaty and the general principles of law, since most of the norms of classical international law were formed by custom and later, benefited from incorporation in treaties or general codification (*PM Dupuy, 2000, p. 302*).

Relations between states are carried out both on the basis of legal norms and on the basis of customs, which contribute to the evolution and progress of international law, especially by the fact that they can turn into customary norms. Thus, over time, in diplomatic and consular practice, a system of customs was formed applicable to diplomatic ceremonial or diplomatic and consular means of action, whose general acceptance allowed them to be transformed into imperative legal norms of diplomatic and consular law.

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Although not every custom can become law, the transformation of a non-legal custom into a legal one is possible through its recognition by the state (*M.-I. Grigore-Rădulescu, 2019, p. 120*). Consequently, in diplomatic and consular law, at least two states must express their consent for a custom to become a rule of law.

One of the first customary rules in diplomatic law refers to the inviolability of the diplomatic agent, arguing in this regard with the refusal of the Swiss state to assume responsibility for the assassination of a participant in a conference held in Lausanne in 1923, on the grounds that protection is provided only to participants in an international conference, and that person did not have this status (*IM Anghel, 2011, p. 38*).

Through the conventional regulation represented by the Convention on Diplomatic Relations of 1961 and the Convention on Consular Relations of 1963 (*I. Brownlie, 2009, p.162 et seq.*), both concluded in Vienna, the field of diplomatic and consular law was codified, however, the preamble of these conventions state that the application of the rules of customary international law in the areas not expressly regulated in the provisions of the Convention (*G. Schwarzenberger, pp. 98-99*), provisions also existing in the European Convention on consular functions concluded in 1967, the purpose of which was the transposition, at the level of European practice, of the provisions contained in the Vienna Convention regarding customs.

1. CUSTOMARY RULES OF DIPLOMATIC PROTOCOL

Evolution of the diplomatic ceremonial started from rituals invoking goodwill and the protection of supernatural forces to religious rituals, to profane activities and the expression of respect in relation to some of the community members who were braver or who became leaders.

As a result of the variety and multiplicity of the existing diplomatic ceremonials, it was necessary to establish some rules for their conduct, a fact that determined the appearance of the institution of the protocol, with the aim of grouping and allowing knowledge of the set of rules based on which the ceremonials are carried out and to ensure compliance them, in the process of moving from the practice of sending messengers or temporary diplomatic missions to the establishment of permanent diplomatic representations (*A. Quondam, 1997, p.148*).

The diplomatic protocol includes all the rules of conduct regarding the relations between diplomats and the authorities of the accredited strata, as well as those between diplomatic missions and their personnel, unanimously accepted by the international community (*IM Anghel, 2011, p. 30*).

By virtue of the rules of protocol, international relations are governed by the principle of equal rights of all nations and, in direct correlation with this principle, there is the order of precedence of state representatives. If, initially, the order of precedence was established according to the seniority of the states

represented by the ambassadors, in 1815, at the Vienna Congress of the European powers, a regulation was adopted establishing the order of precedence of the heads of diplomatic missions, according from the date of presentation of the letters of accreditation, and in 1818, it was established, by the Protocol of Aix-la-Chapelle, that the signing of treaties should be done in alphabetical order of the signatory strata (*D. Mazilu, 2010, p. 121*).

Likewise, the protocol norms also establish international courtesy, which includes a set of non-legal rules, but which contribute to maintaining good relations between states (Nouveau Larousse, p. 799) and to "creating a favorable climate for the development of bilateral or multilateral ties between them" (*IM Anghel, 2011, p. 30*).

Another extremely old customary rule (*B Sen, 1965, p. 80*) refers to the granting of privileges and immunities to the personnel of diplomatic missions, the observance of which is particularly important for the entire international community, benefiting from the regulation of the Vienna Conventions of 1961 and 1963, but also of other international legal documents adopted as a result of their serious violation in Iran in 1979 and in Lima in 1996 (*CF Popescu, MI. Grigore-Rădulescu, 2015, p. 74 et seq.*).

In Romania, by virtue of respecting the customary rules, the Protocol Guide was developed for diplomatic missions, consular posts and representative offices of international organizations.

According to the mentioned guide, when they arrive at the post, the heads of diplomatic missions are expected, at the airport or at the train station, by the director of the Protocol Directorate or by his deputy or by another official from the mentioned department, if the arrival takes place on public holidays, on Saturday, Sunday or after 10:00 p.m. or before 8:00 a.m.

On the occasion of the visit that the head of the diplomatic mission makes to the Ministry of Foreign Affairs, he is informed about the local customs observed when presenting letters of accreditation, the rules of protocol imposed on the heads of diplomatic missions in Romania and, at the same time, the details of the audience with the Minister of Foreign Affairs are established (*P. Tănăsie, G. Marin, D. Dumitrescu 2000, pp. 25-30*).

Respecting the day and time set, the head of the diplomatic mission presents himself at the ministry, where he is presented to the relevant minister by the director of the Protocol Directorate.

The procedure for presenting the letters of accreditation begins with the departure of the head of the diplomatic mission from his residence to the Cotroceni Palace, in a protocol car of the Presidency, accompanied by the director of the protocol department within the ministry.

Once there, he passes through the military guard of honor and, accompanied by the director of the Protocol Directorate and his collaborators, enters the Union Hall, stopping 4-5 steps in front of the President of Romania.

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The ceremony is attended by the foreign minister or, in his absence, a secretary of state, as well as a presidential adviser.

The letters of accreditation, as well as those of recall of the predecessor, if applicable, are handed, with both hands, by the head of the diplomatic mission to the President of Romania from a distance of approximately 1 m, there is a handshake and mutual introduction of the participants at the ceremony.

After the official photo, next to the Romanian flag, there is a meeting between the President and the head of the diplomatic mission for about 15 minutes, in the presence of the participants in the ceremony of submitting the letters of accreditation (*P. Tănăsie, G. Marin, D. Dumitrescu 2000, p. 39*).

At the end of the meeting, a glass of champagne is offered, then the President says goodbye to the head of the diplomatic mission, who, accompanied by his collaborators, leaves the palace and heads for the car.

Upon departure, the head of the diplomatic mission is led to his residence also by the director of the Protocol Directorate or by his deputy, and the official car has the national flag of the respective country flying on the right wing.

Pursuant to the provisions of Law no. 269/2003 regarding the Statute of the Diplomatic and Consular Corps of Romania, with subsequent amendments and additions, the order of precedence of the heads of diplomatic missions will be determined by the day and time of presentation of the letters of accreditation to the President of Romania, for ambassadors, or by the date of notification to the Ministry of Foreign Affairs of taking over the management of the diplomatic mission, for those charged with business (*P. Tănăsie, G. Marin, D. Dumitrescu, 2000, p.40*).

The day and time of the presentation of the letters of accreditation by the heads of diplomatic missions are determined according to the day and time of presentation of the copies of the letters of accreditation to the Minister of Foreign Affairs or a Secretary of State, and the day and time of the presentation of the copies of the letters of accreditation are determined in relation to the day and arrival time in Bucharest. In the case of the arrival of several heads of mission on the same day and at the same time, by the same plane, train or sea ship, the order of submission of copies of letters of accreditation is established according to the alphabetical criterion of the name of the country or by drawing lots, if there is no other solution.

In the case of the absence of the head of the diplomatic mission, a verbal note is sent to the Protocol Directorate, specifying the name of the collaborator who replaces the head of the diplomatic mission during his absence. The same procedure is followed on the return and resumption of his functions by the head of the diplomatic mission.

In the case of the permanent or temporary departure from Romania of a charge d'affaires, the minister of foreign affairs of the respective country will

notify his replacement, through a letter or telegram addressed to the Romanian minister of foreign affairs.

2. DOES VIOLATING THE RULES OF DIPLOMATIC PROTOCOL ATTRACT SANCTIONS?

The rules of diplomatic protocol are strict and they cannot be subdued interpretation, in the sense that they must be respected again their violation expresses the will to the one who does not apply them to evade obligations consented in the interest to everyone.

Anything offense deliberate It is considered as a manifestation of disregard towards the victim, fact what the will have repercussions on relations from respective states.

At the same time, anything favor agreement of a missions diplomatic it will be right away sought and by other missions of similar rank, which either cancels preferential gesture, either create a category privileged, both situations being likely to generate tension protocols.

We appreciate that rules general protocol are applied and respected in the consideration the need to solve the fundamental problems and common interests, capitalizing benevolence one state against another. On the way consequence, only in front of a violations systematic protocol, emanating from an authority state qualified, is case to protest and to be adopted any response measures.

In this context of sanctions applicable in the case abuse protocol rules, it appears as a matter of course the question if these rules are of origin customary, considering that it is not characterized through uniformity, what which leads to lack a unique protocol code accepted by the whole community international of the strata .

On the other hand party, however, to be in the presence of a rules common law must met the two elements, respectively objective elemental and subjective element or psychologically. If, in what what the concerns the objective element of protocol norms, represented by practices long, generalized and constantly applied do not exist none doubt, the element subjective it is May hard to prove.

It is possible hire liability legally international of the state in the case abuse protocol rules by the officials its? Of course that sanction applicable in this case is not the may engrave possibly, being able consist only in the affectation or deterioration relations mutual between states.

At the same time, however, the conduct and activity diplomatic staff are regulated by the provisions Convention looking relations diplomatic from 1961 and Convention looking relations consular from 1963, as well as the Statute The Diplomatic and Consular Corps of each state, which what the creates in pregnancy this categories of personnel the obligation to promote policy external of the represented state and to respect the assignments what the him I return, in virtue quality owned.

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CONCLUSIONS

Considering that rules of ceremony and protocol apply inclusive in the case of negotiation, closure or entry into force of the treaties international, the answer to this question leads to the conclusion that protocol rules are binding in practice relations between states in insurance good development of relationships between states.

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