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ACCESS VERSUS SHIELD: NAVIGATING INTERNATIONAL ORGANISATIONS’ IMMUNITIES AND THE RIGHT OF ACCESS TO A COURT – A CASE IN HUNGARY

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This article examines how Hungary addresses the tension between the functional immunity of international organisations and the fundamental right of access to a court. While international organisations traditionally enjoy broad, often absolute, immunity grounded in functionality rather than sovereignty, recent constitutional court and ECtHR case law has introduced human-rights based limits, particularly in labour disputes. Focusing on Hungarian headquarters agreements, the study shows how international obligations interact with domestic constitutional requirements. The Constitutional Court of Hungary, following ECtHR jurisprudence (e.g. Waite and Kennedy; Beer and Regan), accepts functional immunity only where “reasonable alternative” dispute-settlement mechanisms exist, ensuring that access to justice is not illusory. Hungary has therefore systematically included clauses making immunity in labour disputes conditional on the availability of such procedures.

KEYWORDS

access to court, ECtHR, headquarters agreements, immunity, International Investment Bank, international law, international organisations, labour disputes

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The immunity of international organisations is not a new concept in international law, yet it continues to be a topic of interest from time to time, either because an official has committed an act that violates the law, or because it has been suggested that this type of immunity is not necessarily consistent with certain human rights requirements, such as the right of access to a court. Although international law has not changed and continues to grant absolute immunity to international organisations, constitutional court decisions and cases pending before the European Court of Human Rights (hereinafter: ECtHR) have added nuance to the picture.

All of this raises the question of whether international law will change. Although it is currently not possible to answer this question satisfactorily, it is worth exploring how the Hungarian legal system treats the immunity of international organisations and how it seeks to harmonise international legal rules with the decisions of the Constitutional Court of Hungary (hereinafter: Constitutional Court) and the ECtHR. It is also instructive to consider how this framework can be enforced in practice, with particular regard to labour disputes; and under what constitutional rights restrictions – above all, the right of access to a court – these immunities can be maintained.

IMMUNITIES OF INTERNATIONAL ORGANISATIONS UNDER INTERNATIONAL LAW

The immunities enjoyed by international organisations rest on entirely different principles than the immunities of states or diplomats/state officials. While the fundamental principle underlying state immunity is sovereignty, i.e. that one sovereign cannot have jurisdiction over another, international organisations do not possess sovereignty, so conceptually, such a dogmatic foundation cannot exist. International organisations are relatively new in international relations – at least compared to states. Accordingly, the immunity of international organisations cannot be based on well-established customary law rules like state immunity. The immunity of international organisations rests on a so-called functional basis: its purpose is to ensure that the organisation can perform its tasks independently of the particular legal system operating in the host country, which might otherwise be jeopardised by unwarranted interference from the host state.² International law therefore approaches the immunity of international organisations on a functional basis,³ i.e. it recognises such immunities as are necessary for the performance of the organisations' tasks. Therefore – with the increasing role of international organisations – international law establishes several types of immunity that may apply to international organisations, albeit on a different basis, but similar to that enjoyed by the diplomats of states.

² DE BRABANDERE 2019: 328.

³ This is likewise noted in Decision 3284/2020 (VII. 17.) of the Constitutional Court of Hungary, Reasoning [64].

There is no generally applicable multilateral convention governing the immunity of international organisations and their officials, such as the 1961 Vienna Convention⁴ – which established the immunities of members of states’ diplomatic missions. The concepts involved are also different: the status of international organisations does not involve sending state – receiving state relations, but rather international organisation – receiving state/host state relations. Furthermore, reciprocity, which is one of the fundamental principles of relations between states, does not apply here, since an international organisation logically cannot grant immunity itself.

As previously stated, there is no overarching international agreement pertaining to the immunity of international organisations. However, the UN Charter⁵ is frequently cited as a relevant analogue on this matter. It stipulates that “the Organisation shall enjoy in the territory of each of its Members such privileges and immunities *as are necessary for the fulfilment of its purposes*”.⁶ However, it should be noted that this provision is applicable only to the UN, and not to all international organisations in general. Nevertheless, the emergence of functionality as a principle provides an important reference point.

Another pertinent reference point is the Convention on the Privileges and Immunities of the United Nations⁷ (hereinafter: CPIUN), which also applies exclusively to UN bodies. This convention has a slightly different formulation from the UN Charter in that it grants immunity to the UN without qualification, i.e. without reference to the *purpose* for which it is intended. The CPIUN declares that the United Nations, including its assets and property, wherever they are located and whoever they are held by, shall enjoy immunity from all local jurisdiction, except where expressly waived in a specific case. However, it is important to note that the waiver of immunity does not extend to immunity from execution.⁸

In the absence of a generally applicable code establishing immunities, the immunity of international organisations in international relations is usually regulated in two ways: 1. in the international treaty establishing the international organisation; and 2. in so-called headquarters agreements concluded by the international organisation with the host state of the territory where, for example, it has its headquarters or representation.⁹ The first binds the states parties to the international treaty, while the second regulates the state serving as host state. The headquarters agreement may not grant a degree of immunity that is more limited than that established by the member states in the founding treaty for the international organisation. Beyond that, it is up to the host state to decide how extensive the immunity granted to the

⁴ Vienna Convention on Diplomatic Relations, signed 18 April 1961. 500 UNTS 95.

⁵ Charter of the United Nations, signed 26 June 1945.

⁶ UN Charter, Article 105, para. 1 (highlighted by the author).

⁷ Convention on the Privileges and Immunities of the United Nations (CPIUN). Signed 13 February 1946. 1 UNTS 15; corrigendum 90 UNTS 327.

⁸ CPIUN Article II, Section 2. The CPIUN also stipulates that appropriate rules must be established for the settlement of private law disputes, which is why the United Nations Appeals Tribunal (UNAT) and the International Labour Organization Administrative Tribunal (ILOAT) were established. The ILOAT Statute has also been accepted by non-UN organisations and applies to them as well.

⁹ VAN ALEBEEK – NOLLKAEMPER 2012: 12.

organisation in question should be. In general, it can be stated that the immunity granted to international organisations resembles the privileges granted to members of the diplomatic corps between states, e.g. the immunity of officials of the organisation.

Thus, a host state typically defines the immunities of international organisations in a headquarters agreement (which is also an international treaty), with the host state deciding on the extent of the immunity granted – within the limits of the founding international treaty. In the case of UN bodies, the scope of the immunities granted cannot, of course, be narrower than that set out in the CPIUN, as this is already an existing international legal obligation for states.

As with diplomatic bodies between states, in the case of international organisations, a distinction is drawn between the immunity of the international organisation itself and the immunity of its officials. The issue of state immunity is covered by the Convention on Jurisdictional Immunities of States and Their Property (hereinafter: CJISTP).¹⁰ Although the Convention is not yet in force,¹¹ certain parts of it reflect customary international law. On this basis, the immunity of states applies only with certain exceptions: for example, the immunity of states does not apply in labour disputes or in relation to commercial transactions. In Hungary, these rules were implemented by the Private International Law Act,¹² which essentially established the same exceptions.¹³

Given that there is no multilateral agreement on the immunity of international organisations, and that the CPIUN and the underlying customary international law only refer to state immunity, and that the founding documents of international treaties do not usually establish exceptions to immunity, in most cases, the immunity of international organisations does not recognise exceptions. In this respect, therefore, the immunity of international organisations is broader than that of states, while at the same time, as we shall see below, the immunity of officials of international organisations is, in principle, narrower than the immunity of diplomatic representatives in diplomatic relations between states.

The example of the cholera outbreak in Haiti starkly illustrates how immunity may be controversial when it comes to the responsibility of international organisations, even in cases of grave harm. In 2010 Nepalese peacekeepers serving in the United Nations Stabilization Mission in Haiti (MINUSTAH)¹⁴ were widely considered to have introduced the disease, which led to the death of some 8,000 people and infected around 600,000 more.¹⁵ However,

¹⁰ United Nations Convention on Jurisdictional Immunities of States and Their Property, signed in New York, 2 December 2004.

¹¹ Pursuant to Article 30 (1) of the CJISTP, it shall enter into force on the thirtieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. According to the UN website, as of October 2025, 25 States have expressed their consent to be bound by the CJISTP. Current data sheet on the UN website: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-13&chapter=3&clang=_en

¹² Act XXVIII of 2017 on private international law. In English: <https://njt.hu/jogszabaly/en/2017-28-00-00>

¹³ BORECZKI 2014: 79.

¹⁴ On 30 April 2004, acting on the recommendations of the Secretary-General, the Security Council adopted resolution 1542 of 30 April 2004, establishing the United Nations Stabilization Mission in Haiti (MINUSTAH), which took over the tasks from the MIF on 1 June 2004. See: [https://docs.un.org/en/res/1542\(2004\)](https://docs.un.org/en/res/1542(2004))

¹⁵ PARK 2019.

the claims brought on behalf of the victims were declared “not receivable” by the United Nations on the grounds that they raised political and policy issues, thereby excluding them from the UN’s internal dispute-settlement mechanisms. Despite Article VIII, Section 29 of the CPIUN¹⁶ the UN has been able to rely on its immunity and to reject requests for compensation without any legal consequences for the validity of that immunity. This has prompted sustained criticism in both scholarly circles and the wider public opinion, not only because it appears to leave victims without an effective remedy, but also because it exposes the tension between the UN’s broad functional immunities and its professed commitment to human rights, accountability and the rule of law.¹⁷

COMPARATIVE ANALYSIS OF HEADQUARTERS AGREEMENTS CONCLUDED BY HUNGARY

One of the strategic goals of Hungarian foreign policy is to attract as many international organisations as possible to Hungary. This policy forms part of the Government’s broader objective of enhancing Hungary’s international visibility and playing an active role in international cooperation by supporting the country’s development into a regional hub for the service offices (Global Service Centres) of institutions operating under the aegis of international organisations, in particular by hosting their administrative units.¹⁸ Within this framework, a number of headquarters agreements have been concluded between Hungary and international organisations in recent years, which follow roughly the same pattern in terms of immunities. As it is also evident from the reasoning to the chapters of the 2025 Hungarian Budget, this objective continues to be pursued unwaveringly by the Hungarian government.¹⁹

An important distinction between international organisations is whether they are UN bodies, specialised agencies (WHO, ILO, FAO), institutionalised formations operating within the framework of the UN or associated with it (UNICEF, UNHCR, UNOCT, IOM), or other international organisations. In the case of the former, the CPIUN and the Multilateral Agreement on the Privileges and Immunities of the Specialized Agencies of the United Nations (hereinafter: CPISA)²⁰ impose conditions that are more favourable to UN bodies than to non-UN bodies. This dual framework – the general strategic goal of attracting

¹⁶ Section 29 of the CPIUN obliges the organisation to provide “appropriate modes of settlement” for certain disputes.

¹⁷ SHAW 2021: 1167–1168.

¹⁸ See the MFAT-UN 2025 (only in Hungarian).

¹⁹ T/9894. sz. törvényjavaslat Magyarország 2025. évi költségvetéséről [Reasoning of Draft Law No. T/9894 on Hungary’s budget for 2025] 2024: 8. “Hungary, in addition to its national efforts, plays an active role in all relevant international organisations (the EU, the UN, the OSCE, the Council of Europe and NATO). Hungary remains committed to supporting the work of international organisations and enhancing their efficiency, and thus hosts the professional and service centres of several international organisations.” (translated from Hungarian by the Author).

²⁰ Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations. Signed in New York, 21 November 1947. 33 UNTS. 261.

international organisations and the specific treaty-based obligations under the CPIUN and CPISA – explains why Hungarian headquarters agreements tend to converge around a relatively uniform standard of privileges and immunities, while at the same time remaining sensitive to the specific institutional characteristics and legal status of the organisations concerned.

In Hungary, headquarters agreements usually provide comparable immunities to international organisations – this is how most states treat them, in order to ensure uniform treatment of international organisations in the host state. In order to ensure that no organisation is treated less favourably than others, many headquarters agreements stipulate that the scope of immunities granted to a given organisation cannot be narrower than that granted by the host state to other international organisations.²¹ UN agencies are an exception because, due to the terms of the relevant UN conventions and the outstanding importance of the world organisation, host states tend to grant them somewhat broader exemptions – as is also the case in Hungary. One such additional exemption is the taxation of local employees. In the case of non-UN bodies, local employees are typically not exempt from the tax rules of the host state, while in the case of UN bodies, local employees do not pay tax either.

Non-UN international organisations therefore enjoy somewhat narrower immunities than UN bodies, but this is not always the case. An example is the International Council for Game and Wildlife Conservation (hereinafter: CIC), to whose institutions and senior officials the Hungarian Parliament has extended the privileges, exemptions, and facilities provided for in the aforementioned UN Convention.²² In Hungary, therefore, the CIC enjoys the same privileges and immunities as UN bodies.²³

With regard to the *officials* of most international organisations based in Hungary, there are no exceptions to their immunity from jurisdiction. With the exception of Hungarian citizens and residents, in order to perform their duties properly, officials of international organisations are exempt from arrest and detention, enjoy immunity from jurisdiction with respect to their statements made orally or in writing and all other acts performed in their

²¹ See, for example, Article II, para. 1 of the Agreement between the Government of Hungary and the United Nations Children's Fund on the Establishment of the United Nations Children's Fund Global Service Center, promulgated by Act CXXII of 2015. "The Government assures UNICEF that the Center, as well as the UNICEF personnel assigned to it and all other UNICEF personnel, will enjoy treatment not less favourable than that accorded by the Government to any other intergovernmental or international organizations or other United Nations agencies, funds or programmes present in the Country and their respective personnel."

²² Act LII of 2012 on the privileges and immunities of the United Nations in New York, extension of the privileges, immunities and facilities provided for in the international agreement dated 13 February 1946, to the institutions and senior officials of the International Council for Game and Wildlife Conservation operating in Hungary.

²³ Headquarters agreements are international treaties and must therefore, as a general rule, be promulgated by law. Promulgation by government decree is generally possible if the international treaty regulates a subject matter that does not fall within the scope of the Parliament's tasks and powers. However, headquarters agreements concluded with international organisations also provide for immunities for their officials. In accordance with Article I (3) of the Fundamental Law of Hungary, fundamental rights and obligations, and consequently exemptions from fundamental rights and obligations, may only be established by law. However, not all headquarters agreements in force are promulgated by law. An example of this is the headquarters agreement with the International Labour Organization (ILO) [promulgated by Government Decree 171/1993 (XII. 8.)] and the Food and Agriculture Organization of the United Nations (FAO) [promulgated by Government Decree 203/2007 (VII. 31.)].

official capacity, and this immunity continues after the termination of their employment. The phrase “with respect to their statements made orally or in writing and all other acts performed in their official capacity” suggests that the scope of immunity is not absolute, but merely functional. In practice, however, international organisations certify all questionable cases as acts performed in the course of official duties, and the host state has little opportunity to dispute this in practice. Thus, although the immunity of officials of international organisations is based on the proper performance of their duties, i.e. on functionality, in practice it is often difficult to distinguish between functional and complete immunity.

However, the headquarters agreements of the International Investment Bank (hereinafter: IIB)²⁴ and the European Institute of Innovation and Technology²⁵ contain an exception that is similar. The immunity of their staff from judicial and administrative proceedings does not extend to traffic offences or their civil liability in compensation proceedings arising from road accidents. Hungarian courts and authorities may therefore take action against officials of these two named organisations if a third party is entitled to compensation from them for a road accident.²⁶

AN EXAMPLE: THE FRAMEWORK OF THE IIB’S HEADQUARTERS AGREEMENT

The relocation of the IIB to Hungary, the related national security concerns, and the scope of immunities granted to the IIB have previously been the focus of attention from a political rather than a legal perspective, particularly given that, despite the renewal of Hungary’s membership of the IIB in 2015, the Government initiated the process of withdrawing from the organisation in 2023.²⁷

As is usually the case with headquarters agreements, the Headquarters Agreement of the IIB (hereinafter: IIB Headquarters Agreement)²⁸ is based on the international treaty establishing

²⁴ The International Investment Bank (IIB) was founded on 10 July 1970, by the Council for Mutual Economic Assistance (CMEA) as a multilateral development bank with the aim of promoting economic development and cooperation among member states. Hungary deposited its instrument of ratification of the IIB Agreement on 19 January 1971, see Legislative Decree 7 of 1971 on its promulgation.

²⁵ Act CLXVI of 2010 on the promulgation of the Headquarters Agreement between the European Institute of Innovation and Technology and the Government of the Republic of Hungary.

²⁶ The European Institute of Innovation and Technology is a European Union body, so its situation is not entirely comparable to that of other non-EU international organisations.

²⁷ In the 1st point of Government Decision 1139/2023 (IV. 13.) on Hungary’s representation in the Board of Governors of the International Investment Bank, the Government agreed that Hungary should resign from its membership of the IIB. Subsequently, in an emergency government decree, Government Decree 38/2023 (IV. 20.) on emergency measures relating to the headquarters of an international organisation, the Government provided for the suspension of exemptions and the implementation of measures necessary to change the headquarters in Budapest, in deviation from the IIC Charter.

²⁸ Agreement between the International Investment Bank and the Government of Hungary on the headquarters of the International Investment Bank in Hungary, signed in Budapest on 5 February 2019, promulgated by Act XI of 2019.

the international organisation, the Agreement on the Establishment of the International Investment Bank, signed in Moscow on 10 July 1970, and amended on 20 December 1990; and the attached IIB Statutes (hereinafter: IIB Agreement).²⁹ This international treaty already established certain immunities for the IIB and its officials. Hungary, as a signatory state, was therefore already obliged by this international treaty, concluded in 1970, to grant certain immunities to the IIB. It is always a matter of political choice, and thus political debate, whether it is beneficial for the host state to relocate/host an international organisation (or to terminate the agreement). However, as is clear from the above, in the case of the IIB, the headquarters agreement did not grant any extended privileges in this sense, apart from a few privileges and immunities enjoyed by all international organisations and their staff in Hungary.³⁰

It is interesting to note that although the process of Hungary's withdrawal from the IIB has been initiated under domestic law, the legal completion of the withdrawal of the IIB Agreement is uncertain.³¹

IMMUNITIES GRANTED TO THE IIB AND THE POSITION OF THE CONSTITUTIONAL COURT

The Constitutional Court began proceedings based on a motion by members of parliament who claimed that the law promulgating the IIB Headquarters Agreement was unconstitutional. The motion contained several elements. On the one hand, it raised concerns primarily related to the bank's financial activities and its immunities: it objected that, according to the petitioners, the IIB enjoys financial institution rights that go far beyond its investment banking functions, that under the agreement the bank can provide a very wide range of financial services, and that it can carry out its activities without having to comply with Hungarian accounting standards. On the other hand, the motion objected that the exemptions granted to the Bank prevent the effective enforcement of claims against the IIB. In this analysis, I will examine the second set of issues, in particular the right to appeal to the courts and the related opinion of the Constitutional Court.

In the above case, the Constitutional Court, in its Decision 3284/2020 (VII. 17.) AB, considered the motion that the headquarters agreement was contrary to the right of access to a court and the right to legal remedy to be unfounded, contrary to the opinion of the

²⁹ Promulgated by Act XLI of 2015 on the establishment of the International Investment Bank, Moscow, signed on 10 July 1970, and amended on 20 December 1990, and the Articles of Agreement attached to the Agreement, as well as the Protocol amending them, and the promulgation of notifications issued to become a party to the Protocol.

³⁰ E.g. additional concessions for establishment, state assistance with visas (Article 13 of the IIB Headquarters Agreement), diplomatic license plates (Article 18 of the IIB Headquarters Agreement).

³¹ This fact also has an impact on the diplomatic privileges and immunities granted to the IIB. In its decision of 13 April 2023, the Government agreed that Hungary should withdraw its membership in the IIB and revoked its previous authorisation to represent Hungary before the IIB bodies. See Government Decision 1139/2023 (IV. 13.) on Hungary's representation in the Board of Governors of the International Investment Bank.

petitioners, who claimed that “these [rights] are completely negated by the fact that the IIB does not provide an effective legal remedy for persons in a legal relationship with it”.³²

The IIB’s immunities should also be examined in light of the above international and domestic regulatory framework. The IIB’s immunities are (were) primarily governed by the IIB Agreement under which Hungary as a state party undertook to grant the immunities set out therein to IIB officials. This agreement therefore provided the minimum framework for the headquarters agreement: since it is a binding international agreement to which Hungary was already a party, more favourable conditions could be granted, but less favourable ones could not. The framework is therefore provided by the Fundamental Law of Hungary and its international legal obligations, which are interpreted and clarified by the relevant decisions of the Constitutional Court and the ECtHR. It is worth noting here that, as has been the case in many other instances, the decisions of the Constitutional Court and the ECtHR often examine an issue from a different perspective, namely that of fundamental rights, and their starting point is also different, which may result in them reaching a conclusion that is not entirely consistent with a particular international legal obligation. Thus, a state may face conflicting obligations: on the one hand, a constitutional court and/or ECtHR decision, and on the other hand, an international legal obligation.³³ Applying all this to the IIB, the following international frameworks are available:³⁴ the IIB Agreement and IIB Headquarters Agreement, the customary rules on the immunity of international organisations, the European Convention on Human Rights (hereinafter: ECHR), which serves as the basis for ECtHR decisions, and of course the Fundamental Law as the general framework.

In the IIB’s headquarters agreement, the immunity rules basically grant the exemptions set out in the founding treaty, which mostly resemble the exemptions granted by Hungary to other international organisations.

The issue of the privileges and immunities of international organisations had already appeared in the case law of the Constitutional Court prior to the IIB case. In 2014, the Constitutional Court examined a case concerning the immunity of the Regional Environmental Center for Central and Eastern Europe (hereinafter: REC), which had been based in Hungary for nearly 20 years at that time. Decision 36/2014 (XII. 18.) of the Constitutional Court of Hungary was based on a legal dispute concerning the termination of the employment of a REC employee, in which the international organisation invoked immunity from the jurisdiction of Hungarian courts during the associated court proceedings. The Constitutional Court, relying on the practice of the ECtHR, stated that the internal autonomy of international organisations is a legitimate goal, and therefore the principle of functional immunity may apply in labour law cases. However, even in cases where such immunity applies, restrictions on fair proceedings must meet the requirements of necessity and proportionality and must

³² Decision 3284/2020 (VII. 17.) of the Constitutional Court of Hungary, Reasoning [8].

³³ Typical examples of this are the ECtHR decisions on UN sanctions, in which the ECtHR considers certain binding UN sanctions to be contrary to the ECHR.

³⁴ Since the IIB is considered a special legal entity and is not covered by the CPIUN and CPISA, the rules relating to these conventions do not apply here.

not result in the employee being unable to enforce his or her labour law claims in any way. A forum for legal redress must therefore actually be available to the employee. The national courts would generally exclude jurisdiction, and in the absence of such a forum, this would mean, unacceptably, that the employee would have no right to legal protection at all. This decision therefore established a human rights condition for immunity. The obligation to respect human rights is also an obligation under international law. It follows, therefore, argued the Constitutional Court, that if the international organisation does not apply an alternative mechanism, the state must ensure access to the courts.³⁵

While the Constitutional Court's decision in the REC case is in line with the human rights standards, it does not necessarily reflect existing international law, which interprets immunity in an absolute manner.³⁶ This conflict between the human rights aspect and the international law governing immunity has also been raised in other international and national forums.

On another occasion, the ECtHR reached a similar conclusion to the Constitutional Court of Hungary. In *Beer and Regan* and *Waite and Kennedy*, the Court examined whether the German courts' recognition of the European Space Agency's (ESA) jurisdictional immunity violated Article 6 para. (1) of the ECHR (right of access to a court). In both cases, employees or contractors linked to ESA operations in Germany had been blocked from suing in its own courts because of the ESA's treaty-based immunity. The Court accepted that granting international organisations immunity pursues the legitimate aim of safeguarding their independent and effective functioning. It articulated a common proportionality standard: restrictions on access to national courts are compatible with Article 6 if they do not impair the very essence of the right and if "reasonable alternative means" exist to protect the applicants' civil claims. Because ESA provided an independent internal dispute-resolution system (Appeals Board/Administrative Tribunal) with a genuine capacity to afford redress, the applicants retained sufficient procedural protection. Consequently, in both cases, no violation was found. Together, the judgments established a leading test for reconciling international organisation immunity with access to justice.³⁷

This raises the question of the relationship between the functional immunities of international organisations and the jurisdictional regime in civil and commercial matters under the Brussels Ia Regulation.³⁸ In his comprehensive analysis of *C-186/19 Supreme Site Services* judgments,³⁹ Nemessányi confirmed that the Court did not question the existence of immunity under public international law, but argued that an international organisation's reliance on jurisdictional or enforcement immunity does not, as such, exclude the application of the Brussels Ia Regulation. National courts must first determine, on a *prima facie* basis, whether

³⁵ Decision 36/2014 (XII. 18.) of the Constitutional Court of Hungary, Reasoning [51]–[52].

³⁶ DE BRABANDERE 2019: 7.

³⁷ See *Waite and Kennedy v. Germany* [ECtHR (GC) 26083/94, February 18, 1999] and *Beer and Regan v. Germany* [ECtHR (GC) 28934/95, February 18, 1999].

³⁸ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

³⁹ ECLI:EU:C: 2020:638.

the dispute falls within the notion of “civil and commercial matters” and only in a second step can they examine whether, in the concrete case, the organisation may successfully invoke immunity so as to bar the exercise of jurisdiction or the adoption of enforcement measures. In Nemessányi’s view, this two-step approach confirms the functional character of the immunities of international organisations and accommodates them within a framework that is sensitive to access-to-court considerations, aligning the Court of Justice’s case law more closely to the human-rights-oriented reasoning developed by the ECtHR and by constitutional courts.⁴⁰

At the same time, comparative practice shows that, unlike the restrictive trend in state immunity under the CJISTP, many national courts have long recognised a broad immunity of international organisations precisely in employment disputes. French and Italian courts, early on (Lamborot, Profili case),⁴¹ denied jurisdiction even without explicit treaty clauses, and more recent U.S. and German case law (e.g. Broadbent, Mendaro)⁴² has likewise upheld organisational immunity vis-à-vis claims by their staff. Only a few decisions (such as X v. International Centre for Superior Mediterranean Agricultural Studies⁴³ or the Margot Rendall Speranza case⁴⁴) have cautiously departed from this line, signalling judicial impatience but no consistent restrictive doctrine.⁴⁵ Dutch courts, in contrast, have reached a mixed conclusion: the Dutch Court of Appeal ruled that Article 6 of the ECHR overrides the immunity of the UN, a decision that was overturned by the Dutch Supreme Court, which ruled that the immunity of the UN is absolute.⁴⁶ The criticism of the Court of Appeal’s finding aligns with the Supreme Court’s finding that immunity is absolute and that the result of the ECtHR’s decision is that the state is torn between two conflicting obligations.⁴⁷

In any event, after the adoption of the Hungarian Constitutional Court’s decision on REC, a provision⁴⁸ was included in all headquarters agreements concluded by Hungary, stating

⁴⁰ NEMESSÁNYI 2021.

⁴¹ *Lamborot, Conseil d’Etat*, 1928; Recueil des Arrêts du Conseil d’Etat and *International Institute of Agriculture v. Profili*, Corte di Cassazione, 1931, cited by AMERASINGHE 2005: 232.

⁴² Cited by AMERASINGHE 2005: 71, note 14.

⁴³ *X v. International Centre for Superior Mediterranean Agricultural Studies*, Greek Court of First Instance, decision cited in REINISCH 2000: 191, note 3.

⁴⁴ *Margot Rendall Speranza v. International Finance Corporation*, [U.S. Federal Court], 942 Federal Supplement p. 621 (DDC 1996) and 932 Federal Supplement p. 19 (DDC 1996).

⁴⁵ For a detailed discussion, see AMERASINGHE 2005: 322–328.

⁴⁶ Appeal Court of The Hague 2010: para. 4.3.5.

⁴⁷ VAN ALEBEEK – NOLLAEMPER 2012: 26.

⁴⁸ See Article 10 (5) of the Agreement between the Government of Hungary and the International Federation of Red Cross and Red Crescent Societies (IFRC) on the legal status of the International Federation’s Budapest Regional Office and Global Service Center, promulgated by Act VIII of 2017; Article 14 of the Headquarters Agreement between the Government of Hungary and the Secretariat of the Cooperation Council of Turkic-speaking States on the Representative Office of the Cooperation Council of Turkic-speaking States in Hungary, promulgated by Act XCIII of 2019. However, there are agreements that were not included even after 2014, for example: Act VII of 2016 on the promulgation of the agreement between the Government of Hungary and the Global Green Growth Institute on the privileges and immunities of the Global Green Growth Institute.

that the immunity of the international organisation in labour disputes can only be enforced if an alternative form of dispute resolution is available.⁴⁹

This was also the case with the IIB headquarters agreement. Article 12 (2) of the IIB Headquarters Agreement stated that

“[i]n the event of a dispute between the Bank and a member of the Staff concerning a labour claim, the Bank shall ensure that an appropriate procedure is available for the settlement of the dispute with the Staff member concerned. In the absence of such a procedure, disputes shall be settled in accordance with the applicable Hungarian laws and regulations”.

The motion submitted to the Constitutional Court, in contrast, did not consider the right to a fair trial, or more precisely, access to justice, to be guaranteed in the case of the IIB Headquarters Agreement.

WHERE ARE WE HEADED?

In the absence of a general international convention, the immunity of international organisations is based on fundamental principles, customary international law, international conventions, and the discretionary powers of the host states. There is no general treaty obligation in international law to grant immunity to international organisations and their officials, but the UN Charter provides a kind of benchmark in that it sets out the principle of functionality. In many cases, the international agreement establishing the international organisation itself determines the immunity to be granted to the organisation and its officials, which sets a minimum obligation for the member states of the international organisation. A member state may grant more favourable conditions, but not less favourable ones than those set out in the founding agreement. It is often considered (albeit not mandatorily, but for reasons of courtesy and fairness) that the host state should grant similar immunities to all the international organisations operating on its territory. The UN institutions are usually exempt from this, however, as they are granted special immunities under the CPIUN and the CPISA. The case of the International Investment Bank was no exception: under international law, the headquarters agreement did not go beyond the mandatory and customary framework.

When examining certain fundamental aspects of headquarters agreements, some national courts, constitutional courts, and the ECtHR came to similar conclusions: the right of access to courts cannot be restricted by a headquarters agreement. At the same time, international law continues to regard the absolute immunity of international organisations as the norm – yet several international organisations have concluded headquarters agreements which

⁴⁹ It can be considered fortunate that the relevant international organisations accepted this. They might have objected to the limitation of immunity based on international law, such as customary law and the treaties establishing them. If so, their objections could have been justified in an international forum.

include the above restriction. Whether this will have an impact on the general framework of international law remains to be seen.

Given that similar decisions have been made in several countries, it will be interesting to see whether international law, and thus the founding treaties of new international organisations, will follow this restriction of the degree of immunity granted them from a human rights perspective, or whether they will continue to uphold full immunity. On the one hand, it should be noted that limiting immunity to ensure access to courts is a completely legitimate human rights requirement, which does not impose impossible conditions on international organisations. Several international organisations have joined the ILO, for example, which can provide an effective alternative means of dispute resolution.

At the same time, in case of founding treaties and headquarters agreements that have already been concluded, it would be difficult to retrospectively justify the restriction of immunity on the basis of international law, given the principle of *pacta sunt servanda*. If international law does not follow the growing case law and insists on full immunity, states will be forced to manoeuvre between conflicting international legal obligations, which obviously does not serve legal certainty.

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