

OPINION

By Daniela Sevdalinova Doncheva, PhD -
Department of Criminal Justice, Faculty of Law,
Paisii Hilendarski University of Plovdiv

Regarding: dissertation work for obtaining the educational and scientific degree "Doctor",
professional direction: 3.6. Law, Field of higher education 3. Social, economic and legal sciences

Author of the dissertation: Anisa Haxhi Giu

Topic of the dissertation: "Immunity in the international and constitutional law of the Republic of Bulgaria and the Republic of Albania"

Reason for presenting the opinion: participation in the composition of the scientific jury for the defense of a dissertation according to Order No. RD-38-344/02.07.2024 of the Rector of SU "St. Kliment Ohridski".

The dissertation student was trained in the doctoral program "Criminal Law" at the Faculty of Law of the University of St. Kliment Ohridski".

The topic of Anisa Giu dissertation is "Immunity in the international and constitutional law of the Republic of Bulgaria and the Republic of Albania".

The author has three publications on the subject of the dissertation:

"IMMUNITY OF THE PEOPLE'S REPRESENTATIVES IN THE REPUBLIC OF ALBANIA AND IN THE REPUBLIC OF BULGARIA" - magazine "De jure" no. 1/2022; "IMMUNITY IN THE LAW OF THE EUROPEAN UNION" in "De jure" magazine No. 1/2023 and "LEGAL REGULATION ON THE IMMUNITY OF MAGISTRATES IN THE REPUBLIC OF BULGARIA" - "De jure" magazine no. 2/2023

The dissertation has a volume of 199 pages. The content is structured properly in an introduction, an exposition which is divided into three chapters and a conclusion. Each of the chapters contains subtopics separated into separate paragraphs. The bibliography used by the author includes 156 titles of legal literature, of which 71 are in Bulgarian, the rest are foreign, the legal acts studied and included in the content of the work are 77 in number. The judicial practice that the author has researched is 57 cases, and information on the topic of the dissertation was sought from 6 internet sources.

The topic of the dissertation is interesting and multi-layered, because, apart from the fact that it includes the examination of immunity in the international and domestic law of the Republic of Bulgaria and the Republic of Albania, it also implies a comparison between the regulation of the institute in international law on the one hand and the domestic law of the two countries on the one hand another, as well as between the legislations of the Republic of Bulgaria and Albania regarding

immunity. In fact, exactly within these frameworks are the set author's goals, which were achieved with the conducted research, reflected in the dissertation work. Categorically, this should also be assessed as a scientific novelty, which also has practical significance. On the topic of immunity, there are many scientific developments - basic and on separate issues, international and Bulgarian, the dissertation student steps on them and strives to fully cover and develop the concept of immunity, the varieties of the institute of immunity and their specifics, especially its applicability in modern social relations.

The work is distinguished by the extremely conscientious research and reference to numerous domestic and international sources - literature, normative acts and judicial practice. The reader gets the impression that there is no normative act - domestic or international - that has been omitted by the author, and all relevant sources of norms concerning the topic have been discussed independently, but also in connection and comparison with others - domestic norm with international or domestic a norm of Bulgarian law with an internal norm of Albanian law, as well as two internal norms regulating the same issue in correlation with international ones. It is important to note that the comparative analysis done is not for its own sake, but with the idea of pointing out weak points, gaps in a system in order to improve it.

I positively appreciate the comprehensive indication of the international instruments regulating immunities, which have been ratified by the Republic of Bulgaria and the Republic of Albania. But I believe that the main merit of the dissertation work is the detailed analysis of the content of the immunity, distinguishing and analyzing the types of immunity, the differentiation of the immunities in view of their carriers - diplomats, consuls, international organizations, immunity of special missions, immunity in EU law.

Interest and discussions are also aroused by the topic of the immunity and equality of citizens set in the dissertation. Attention has been drawn to the reason for granting immunities to the Parliamentary Assembly of the CE and the Members of the European Parliament and their scope. The question of whether the existence of immunities does not violate the principle of equality of citizens and equality before the law is very adequately posed. The dissertation indicates international universal and regional acts that are of fundamental importance, including the Universal Declaration of Human Rights, promulgated in 1948, the International Covenant on Civil and Political Rights of 1966, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 d. It is expressly stated that the ECHR does not regulate parliamentary immunity and places few restrictions on the application of such rules at the national level. However, the exercise of immunity may in some specific cases come into conflict with the rights protected by the Convention, usually with the right of access to a court under Article 6 of the ECHR. Examples of this and decisions of the Strasbourg Court are given, which are in the direction that "national rules on immunities are not exempt from the Convention and must be applied in a way that is proportionate and necessary in a democratic society".

I appreciate the theoretical analysis and the citation of examples relevant to the abuse of immunity. I agree with a large part of the conclusions drawn in this regard and the indicated possibilities for its prevention. For example, that an evaluation of the effectiveness of the current legal framework at the international and European level is necessary with a view to systematizing the gaps and imperfections that allow abuses of immunity. I fully support the author's opinion that the formulation of concrete decisions on this issue should be the subject of a broad discussion in which all interested legal entities participate: representatives of individual countries, international organizations, doctrine and civil society.

As I have already noted in my dissertation, the author thoroughly researches the theoretical and practical problems of the subject under consideration, presenting his opinion with great decisiveness, which I generally admire, regardless of whether it coincides with mine or not. But for some of the conclusions there is a lack of sufficient argumentation of the expressed opinion, the work would have won if the author presented grounds in support of two opposing theses and advocated the better grounded one. This would result in an interesting polemic, which would strengthen the dignity of labor. The author has expressed a firm opinion on the abolition of certain types of immunities for some persons, because according to him, the granting of immunity, for example, from civil liability to diplomatic and consular officials, puts them in a privileged position compared to other legal entities, which situation is contrary to the principle of equality. A similar conclusion is reached for fiscal and administrative immunity, as well as for consular immunity, all of which are recommended to be abolished. In order to justify the stated opinions, the same arguments are presented in the direction of limiting the abuse of immunity. However, the development of a counter-thesis that analyzes what would be the possible adverse consequences of removing immunity is lacking. Also, whether they are comparable to the target results and whether the positive effects of the change will manage to overcome, prevail over the negative ones of it.

As an alternative to the removal of immunities, the author suggests limiting them, but does not indicate how, in what direction this should be done. If the exposition were supplemented and developed with such reasoning, it would gain.

Conclusion:

The requirements stipulated in Art. 6, para. 3 of the Law on the Development of the Academic Staff in the Republic of Bulgaria and on the basis of Art. 10, para. 1 of the same, I give my categorical positive conclusion for awarding Anisa Hadji Giu the scientific and educational degree "Doctor" in the field of higher education 3. Social, economic and legal sciences", professional direction 3.6 Law, doctoral program "Criminal Law".

Date / place
August 2024

Daniela Doncheva