

## POLITOLOGY

### Diplomatic institutions methods in the process of providing intelligence services

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**Abstract.** The analysis of the legal aspects of ensuring intelligence activity under the diplomatic cover in the host country is conducted; a set of methods that diplomatic institutions use in the process of providing intelligence activity is determined, it is established that they represent a mechanism guaranteed by the norms of both national and international law allowing legitimate achievement of the goal of implementing foreign policy.

**Keywords:** *diplomatic institutions, diplomatic cover, intelligence activity.*

When considering the methods of diplomatic institutions that allow to provide intelligence activity in the host country, it is worth noting that "traditionally diplomacy was mainly connected with the transition from the state of the world to the state of war and vice versa" [1] and when "the decisive role to play that kind of means, which is provided by diplomatic immunity" [2]. It is diplomatic immunity that is such a means that allows diplomatic institutions to provide illegal activities, the purpose of which is not only to obtain strategic nature information, but also to conduct subversive operations aimed at violating the political stability and economic power of the host country.

**The purpose of the article** is to analyze the legal aspects of providing intelligence services under diplomatic cover in the host country.

However, before preceding the methods study for ensuring such activities, it is necessary to identify the legal essence of diplomatic institutions and their representatives, the procedure for granting and depriving them of diplomatic immunity within the framework of international law.

The following types of diplomatic missions are established by international law:

- 1) embassies, headed by the extraordinary and plenipotentiary ambassador;
- 2) missions, headed by extraordinary and plenipotentiary envoys;
- 3) other official representations, having a specific status.

The structure, composition and nature of diplomatic missions in different countries is varied and determined by the traditions and specifics by relations with the host country. All diplomatic missions, regardless of the species, have equal official legal status, the same privileges and immunities. The personnel of diplomatic missions are subdivided into diplomatic, administrative-technical, servicing. The internal structure of the diplomatic mission and the diplomatic personnel composition are the prerogative of the accrediting State, but the Vienna Convention allows the possibility of proposals from the host State regarding the reduction of the foreign missions staff [3].

The most embassies usually have the following posts: ambassador, advisors of various ranks, secretaries, attachés. In addition to diplomatic attachés, the diplomatic representation may include an attaché for defense, mili-

tary, air and naval affairs, as well as an attaché for science, culture, agriculture and industry. In the embassies there are, as a rule, a press attache (press attaché).

Trade missions, headed by sales representatives or advisers, are part of the embassy and they are subject to diplomatic immunities and privileges.

The missions haven a necessary amount of administrative and technical staff (senior referent, referent, manager of the office, accountant, manager, technician, etc.) and maintenance personnel (chauffeur, cook, garbage collector, etc.) that ensure the normal functioning of the institution. The ambassador is solely responsible for the full responsibility for the work of the embassy staff.

On the modern diplomatic law, there is no fundamental difference between the embassy and the diplomatic mission with regard to rights, privileges, and immunities.

The Vienna Convention on Diplomatic Relations of 1961 pays much attention to diplomatic privileges and immunities. In the international doctrine, there are the following basic principles for granting diplomatic privileges and immunities:

- the principle of reciprocity, which is based on the understanding that the granting of diplomatic privileges and immunities is carried out on a reciprocal basis;

- the principle of functional necessity, which is based on the recognition that adequate conditions for effective activity should be created in the host State of a diplomatic mission of a foreign state. It is on this basis that the Vienna Convention on Diplomatic Relations of 1961 is based.

Diplomatic immunities are understood as the withdrawal of a representative office and its employees from jurisdiction and coercive actions from the host State. According to the international law, the privileges and immunities of diplomatic representations and the privileges and immunities of their employees (personal privileges and immunities) are distinguished.

The privileges and immunities of diplomatic missions include:

- 1) The inviolability of the mission premises, which means that the authorities of the receiving State can not enter this premises without the consent of the head of the mission, moreover, the host State is under an obligation to take all appropriate measures to protect the mission premises from causing any harm and intrusion, including preventing any violation of tranquility or insult to his dignity; premises of representative offices, objects of their situa-

tion and other property that is in them, as well as means of transportation enjoy immunity from searches, arrest, requisition and other executive actions; the term "dwelling" is understood broadly and encompasses all buildings or parts of buildings used for representation, regardless of who owns the ownership of them, including the land parcel serving this building or a part of it; but this does not in any way mean that the premises of the diplomatic mission is a sovereign part of the territory of the accrediting state, those the territory of the diplomatic mission is under the sovereignty of the host State, but it is accorded, according to international law, a special legal regime (extraterritoriality regime) for the successful performance of functions determined by international law;

2) The inviolability of archives and documents of representation, which means that these objects are inviolable at any time and irrespective of their location, in addition it also means that the correspondence of the mission is inviolable, and the diplomatic mail is not subject to opening or delay;

3) Freedom of communication, which means that the diplomatic mission has freedom of communication with its government, other representatives and consulates of the accrediting state, wherever they are; this means that diplomatic missions have the right to use all appropriate means, including diplomatic couriers, coded or encrypted dispatches, while diplomatic couriers enjoy personal inviolability and are subject to special protection from the host State. The accrediting state or its representative office may be appointed as a diplomatic courier (for example, commander of a civil air or sea vessel). In this case, the immunities of these individuals cease at the time of delivery of the diplomatic pouches for the intended purpose. Diplomatic missions are entitled to establish a radio station and use it, but only with the consent of the host country, and also have the extraordinary right to use civil telecommunications facilities of the host country or other countries. It is of great importance that the host State, for the proper and effective performance of the diplomatic missions functions, is obliged to facilitate their work, ensure freedom of movement and communications, and provide all opportunities for performing the functions of diplomatic missions;

Among the personal privileges and immunities of diplomatic employee are:

1) The inviolability of the personality of the diplomat, which means that the diplomatic agent is inviolable, he is not subject to arrest or detention in any other form. The receiving State is obliged to treat it with due respect and take appropriate measures to prevent any infringement of his personality, freedom, dignity;

2) The inviolability of the home, which consists in the fact that the private residence of the diplomatic employee enjoys the same inviolability and protection as the premises of the diplomatic mission (the private residence of the diplomatic agent includes any premises in which the diplomat can live: an apartment, a hotel room, house). The documents of the diplomatic employee, his correspondence, except for a number of cases related to the civil jurisdiction of the receiving state, are inviolable;

3) Immunity from jurisdiction - a diplomatic employee enjoys immunity from the criminal, civil and administra-

tive jurisdiction of the host State. He has absolute immunity from criminal jurisdiction.

As a general rule, a diplomat must not violate the laws of the host state, but in the case of a criminal offense, a criminal case against him is not instituted because of diplomatic immunity. Such a person is declared *persona non grata* and he is invited to leave the territory of the host State. At the same time, the host country can petition the government of the accrediting state to refuse immunity to the diplomat who committed the crime. Upon receipt of the refusal, the reason must be clearly and precisely expressed.

Diplomats also enjoy immunity from civil jurisdiction, except in the following cases:

a) real lawsuits relating to private immovable property in the territory of the host country, if it is not used for diplomatic purposes;

b) claims relating to inheritance: a diplomatic employee can not invoke diplomatic immunity as a basis for refusing appearance when considering a claim or other case belonging to inheritance;

c) claims relating to any professional or commercial activity of a diplomat outside of his official functions.

Diplomats also enjoy immunity from the administrative jurisdiction of the host State and therefore no fines or other administrative penalties may be imposed on them.

In addition to diplomatic staff, immunities and privileges extend to members of their families. This fact can be used for the purposes of illegal intelligence activity in the host country. His wife (husband) and minor children belong to the family of the diplomat, and, according to the international order, adult unmarried daughters of the diplomat who live with him and are dependent on him.

Diplomacy, acting as a means of implementing the foreign policy of the state, pursuing the goals of the national interests of the state, should, in the first place, be effective. In this regard, as an effective diplomacy, it is possible to consider such activities carried out in the sphere of external relations, "which, in the conditions available to the state authorities of limited resources, helps to achieve the maximum possible results" [4].

Intelligence activity is one of the options for practical implementation of effective diplomacy, since it can be used to achieve the goals of the special services that provide national interests in a specific political environment, using the means and capabilities of diplomatic institutions

Thus, there is a need to define methods that diplomatic institutions use in the process of providing intelligence activity and which, referring to national and international legal norms, can be used in practice.

One of the oldest methods of providing intelligence, which includes the transfer of information containing official or official secrets, is the diplomatic mail, which since its inception has become a means of communication, which has been and continues to be given increased attention in terms of ensuring the security of transmitted information.

The next method that allows diplomatic institutions located abroad to provide intelligence activity in the interests of the state is service communication, which, based on the technical capabilities of modern equipment, adequately meets both the needs of those using the capabilities of the diplomatic institutions of the departments, and

the security requirements of the transmitted information, arising in the process of processing and transferring to secret government agencies secret information.

The method that emerged as one of the first and which largely predetermined the future possibilities of diplomatic institutions in the process of providing intelligence activity is diplomatic inviolability, which is guaranteed by international norms that have formed the whole branch of law, such as the law of external relations, and which implies extraction from the host country jurisdiction the diplomatic staff, which allows such staff to act in the events, which are conditioned by the tasks of intelligence activity.

Another method that allows diplomatic institutions to provide intelligence is the method of voluntary information transfer. Consular offices or diplomatic missions in the host country in accordance with international law have the right to receive on a voluntary basis explanations, things, documents from their citizens and also hand over documents to such persons.

This opportunity allows diplomatic institutions on a legal basis to receive intelligence information, as well as technical devices and other material of interest to the accrediting state in terms of technical and scientific intelligence.

It should be noted that, despite the fact that the method of voluntary information transmission is one of the traditional methods, there is no possibility of considering it in the framework of studying international legal norms regulating the activity of diplomatic missions, for the reason that cooperation with diplomatic representatives of a foreign state, on which the legal norms of the host country apply without restrictions, entails consequences in ac-

cordance with the legislation of the host country. Thus, in respect of persons who have committed state crimes by receiving and transmitting information containing a state or other state-protected secret to the diplomatic mission of another country, the legal norms of the country in which it committed the crime will apply, since the perpetrator has citizenship in the country of commission crime.

The final and most common method of providing intelligence services with the participation of diplomatic institutions is the granting of extraterritorial status to the diplomatic missions of the accredited state in the host country, since the territory occupied by the diplomatic mission in accordance with the rules of foreign relations is deemed to belong to the country whose flag is raised by building of a diplomatic institution, which largely determines the use of the above-described methods for ensuring intelligence activity and allows us to conclude that the method of granting extraterritorial status is independent, which, among other things, allows us to hide from the jurisdiction of the host country on the territory of the diplomatic mission to those persons whose presence on its territory corresponds to the objectives of national interests protected by the state in a particular host country.

#### **Conclusions and prospects for further research.**

Thus, the totality of methods used by diplomatic institutions in the process of providing intelligence services, such as diplomatic mail, service communication, diplomatic immunity, voluntary transmission of information and the granting of extraterritorial status, is a mechanism guaranteed by the norms of both national and international law, allowing legitimately to achieve the goal of implementing the foreign policy of the state and protecting national interests in the country and abroad.

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