

## **DIPLOMATIC RANK ACCORDING TO VIENNA CONVENTION ON DIPLOMATIC RELATIONS AND THE LAW ON FOREIGN AFFAIRS OF THE REPUBLIC OF NORTH MACEDONIA**

**Nail ISUFI <sup>1</sup>**

<sup>1</sup> *PhD. Candidate, University of Tetova, Faculty of Law, North Macedonia*  
*\*Corresponding author e-mail: nail87@hotmail.com*

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### **Abstract**

This paper aims to clarify the importance of diplomatic rank according to international acts i.e. Vienna Convention on Diplomatic Relations 1961, and domestic law more precisely the Law on Foreign Affairs of the Republic of North Macedonia.

Through this paper, we have used the comparative method which consists in comparing diplomatic rank depending on time periods.

In most cases the order of diplomatic rank has different or incorrect interpretations by the public opinion. However, this separation itself content rights and obligations which depend from the position of diplomats.

The importance of this paper is characterized in the performance of ambassador activities during his mission. The general rule of them is to represent the sending state in the receiving state. This means giving the opportunity for diplomatic affairs to be performed by the ambassador, which implies with the consent of the receiving state.

It is important also to mention the conditions that the diplomats have to fulfill with the aim to be nominated in that position. These conditions are known in the international law literature, also in the internal law of states, which are regulated by current law in this field.

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*Keywords:* Ambassador, Diplomatic rank, Law, Vienna Convention on Diplomatic Relations

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### **1. Introduction**

The appointment of diplomatic representatives is more than necessary in performance of diplomatic functions. Historically, the role and importance of diplomatic missions have changed almost every time in terms of the length of time that certain task has been carried out. On the other hand, it can be said that what remains the same is related to their appointment with aim to represent the state in relation to other states, namely their appointment from the sending state to the receiving state. Depending on this, for the appointment of diplomatic representatives the sending state decides based on its internal rules, but it is important that before deciding on the particular person, certain rules must be observed which are important and at the same time are known in the international law and diplomatic law, or otherwise the essential conditions that a diplomat should fulfil.

Ranking of diplomats has been known since the earliest times, but has made clear what is the normative regulation envisaged by international acts as the main sources of law. Respecting the principles of the legal system of states, there is also a need for domestic laws take into account the harmonization of legal acts with international acts such as international conventions, which are part of domestic legislation of the states, after their ratification.

Even with the Law on Foreign Affairs of North Macedonia, the ranking of diplomats has also been made in certain categories which its self contains rights and obligations.

## **2. General overview of the diplomatic rank and the Vienna Convention on Diplomatic Relations**

Diplomatic representatives are empowered to represent the state in relations with other states. Sending diplomatic representatives from one to another country has been known for a long time ago. Since that time, they have enjoyed a special protection and privileges and have been considered sacred. Representatives of the states have been sent to a task and their mission has ended. Introduction of permanent diplomatic representatives begins in the middle period, first among Italian cities. Diplomatic representatives are divided into regular and extraordinary representatives, who are sent on certain missions in the world. They most often represent the state at various international congresses and conferences, various ceremonies, escorts etc. (Gruda, 2003: 213).

During the nineteenth century the practice of seeking confidential approval from the receiving State of an individual who the sending State proposed to appoint the head of diplomatic mission began to harden from a general practice into a customary rule (Denza, 2016: 38). The Havana Convention on Diplomatic Officers provides that “No State may accredit its diplomatic officers to other States without previous agreement with the latter” (Havana Convention on Diplomatic Officers, art. 8). From here it can be understood that the states parties were not obliged to give reasons for their decision on agreement.

Since the Congress of Vienna, 1815 the heads of diplomatic missions are divided into different classes. Until then, there were no rules on the presence of diplomatic representatives sent to any royal palace. This has caused many problems, because each representative has sought a better and higher position by relying on the superior status of the head of state that is sent to family ties that existed between royal families, such as “Extraordinary Ambassador” instead of “Regular Ambassador”. In the Vienna Congress were adopted the Regulation on the Rank of Diplomatic Representatives, according to which all diplomatic representatives were divided into three classes: (a) ambassadors, legates and nuncios; (b) representatives, ministers and other envoy of heads of state; (c) Chief of mission (Gruda, 2009: 131). At the Congress of Aachen, 1818 there was added to these three classes a class of diplomatic representatives, the so-called resident ministers, who were listed as third class, after the ministers and before Chief in mission. The representatives of the states that belong to the first three classes of diplomatic representatives are accredited by the heads of state, while the representatives of the fourth class are accredited from the ministers for foreign affairs. Only the first class representatives were represented in the sense that they represented not only the state but also the head of state. This order has been adhered for nearly a century and a half, namely, until 1961 when the Vienna Convention on Diplomatic Relations was adopted and strictly adhered except in rare cases. For example, the UK with the commonwealth member exchanges diplomatic representatives which are called “High Commissioners”, while the Soviet Union, after 1918, abolished the class divisions of its representatives and established a unique rank of “Full Power Representatives”. However, after the first disagreements started from 1922, in the letters of credentials of their representatives, in addition to the unique title they had adopted, they put their class of representatives in three classes, as they are generally accepted in international relations (Gruda: 132).

The heads of diplomatic missions under the Vienna Convention are divided into three classes, namely: (a) ambassadors or nuncios accredited to heads of state, and other heads of mission of equivalent rank; (b) ministers and envoys accredited by the head of state; (c) Chief in mission accredited to ministers for foreign affairs (Vienna Convention on Diplomatic Relations, 1961, art. 14).

The convention expressly provides that no distinction can be made between class chiefs of missions. Of course, this does not preclude any practice accepted by states regarding the priority of the representatives of the Holy See (Gruda, 2009: 133). On the basis of the Lateran Treaty of 1929, the Holy See refuses to accept any ambassador also accredited to Italy or amalgamation of mission premises (Denza, 2016: 24).

According to the general rules, each state decides on its own what the diplomatic representative will send to the other state. However, the exchange of diplomatic representatives is done on the basis of reciprocity, and often the states by agreement specify the level of diplomatic representatives that they will exchange.

The representatives of the first two classes are appointed by the president of the state and accredited to the heads of state. The *nuncios* and *internuncios* are representatives of the Holy See of the Vatican. The third class of diplomatic representatives is appointed by the minister for foreign affairs and accredited to the ministers for foreign affairs.

This rule should have been taken into account by the legislators of Kosovo when in the Law on the Status, Immunity and Privileges of Diplomatic, Consular and Mission Personnel of Kosovo and the International Military Presence and its Personnel, it is contrary with general rules of diplomatic law and general practice, which means that the minister for foreign affairs can also appoint ambassadors (Gruda, 2009: 133). The aforementioned law stipulates that: "The ambassadors will be accredited by the President of the Republic of Kosovo or by the minister for foreign affairs..." (Law on the Status, Immunity and Privileges of Diplomatic, Consular and Personnel of Kosovo and International Military Presence and its Personnel, No. 03/L-033, art. 4). This article must be corrected because the appointment of ambassadors is the exclusive competence of the head of state and no one else (Gruda, 2009: 134). According to our law: "The head of the state appoints and dismisses ambassadors and parliamentarians in foreign territories..", but always having into consideration the proposal of the minister and the proposal of the government (Law on Foreign Affairs of RM, No. 103/2015, art. 5).

The Vienna Convention on Diplomatic Relations, provides that in exceptional cases when the post of head of mission is vacant or if the head of mission cannot exercise his functions, when he is on leave, when he is ill, when he is invited for consultations, or when the ambassador has not yet been appointed, an ad interim in charge acts provisionally as head of mission. This post is regularly entrusted to the person who is in the highest rank after the head of mission, to the second man in the mission and who is temporarily serving as the head of mission. This type of representatives is not accredited to the minister for foreign affairs. The name of this person is communicated to the receiving state by the head of the mission, (when the diplomatic relations were previously held), by the chief in mission (preferably) or by the ministry of foreign affairs to ministry of foreign affairs of the receiving state (Gruda, 2009: 134).

The rank of diplomatic representatives is determined by the classes. Thus, the higher-class mission chief is older in rank than any lower-class mission chief. This also applies to the permanent *charge d'affaire* that is older than the temporary *charge d'affaire*. The rank of heads of mission, which belongs to the same class shall be determined by the date of notification of achievement (Vienna Convention on Diplomatic Relations, 1961, art. 4), but today is determined by the date and time on which he assumed the function (Article 16). This is considered to have occurred when the head of mission submits credentials to the head of receiving state, or when he has announced his arrivals and has submitted the copies of credentials to the minister for foreign affairs (Gruda, 2009: 134)

### 3. Diplomatic rank according to the Law on Foreign Affairs of North Macedonia

According to foreign affairs law the diplomat can be obtained by one of the following diplomatic ranks: highest diplomatic rank and secretarial rank. Highest diplomatic rank is divided: (a) ambassador of the ministry; (b) plenipotentiary minister; (c) minister counsellor and; (d) counsellor.

The Secretarial rank is divided: (a) first secretary; (b) second secretary; (c) third secretary and; (d) attaché.

The position of ambassador of the ministry is different from the rank of ambassador acquired by decree of the president. A diplomat with the rank of ambassador of the ministry or plenipotentiary minister may be referred by decision of the minister on a permanent mission at international organization, where which has already been sent to the extraordinary ambassador and plenipotentiary ambassador, who is the head of mission, with the rank of ambassador for performing specific tasks within the mission's competence, if according to the practice of international organization these tasks are usually performed by a diplomat -ambassador (Law on Foreign Affairs of RM, art. 64 b).

In the exercise of their function, ambassadors usually begin their work by highlighting daily activities and then reading daily magazines with a particular emphasis on the tasks that are part of his activity, which they shared with the attaché for magazines. Also, following the operational part of the organization of the work of the diplomatic staff, with regard to communications relating to telegrams, mail and replies to the same (Марковски, 2016: 95).

The plenipotentiary minister is the second person in the diplomatic mission, and often are so-called "Deputy Chief of Mission", or "Deputy Head of Mission". He replaces the ambassador in his absence from the country of reception and acts as interim affairs. Typically, after completing their mission these diplomats who have passed the previous steps in the diplomatic service are promoted to ambassadors. In international diplomatic practice, the rank of plenipotentiary minister is unlike that of minister counsellor. Diplomats with this rank are promoted and sent on a diplomatic mission in cases where the embassies have a large number of diplomats, to strengthen the diplomatic staff of the embassy in cases where its activities are to monitor or participate in an international gathering, summit etc. In the practice of some countries, the plenipotentiary minister is awarded to diplomats who for some reason have not been promoted or are awaiting an appointment to head of the state (Марковски: 97).

The Vienna Convention on Diplomatic Relations, 1961 lists the minister among the heads of a second-class diplomatic mission, together with the parliamentarians and *internuncios*. In diplomatic missions whose head is ambassador or nuncio, namely, in embassies, he may also act as a member of the diplomatic staff of the relevant embassy in the capacity of minister, who in the absence of the ambassador temporary performs the duties within the embassy. In large and important embassies, it is possible to have several ministers, whose order in the diplomatic list is determined by the sending state. It is usually the first of them, for which in the absence of the ambassador, he acts as interim minister, the minister counsellor who performs political affairs. Others may be in charge of certain sectors, for example: economic, scientific and technical etc. The term minister counsellor also means a diplomatic rank between the counsellor or first counsellor and ambassador.

The counsellor is also highly diplomatic rank in the mission and belongs to the rank of "Senior Diplomats". They are in charge of specific areas such as political, economic, consular and more. Depending on the size of the embassy or the extent of the relationship developed, several counsellors may be appointed. In states with more than one counsellor, some state grad, naming them as first, second, or third counsellors. In embassies where there is no minister counselor, the counsellor plays the role of "Second Person" in the mission (Марковски: 98).

The first secretary is immediately after the counsellor, and he is a diplomat with long diplomatic experience, namely, a diplomatic agent who can be entrusted with most complex diplomatic tasks and who has autonomy in their performance. Often, the first secretariat is also seen as a second diplomat in embassy with a small diplomatic staff.

Second and third secretaries are usually in charge of special issues of the diplomatic mission, namely, involved in the process of working in its special departments, for example: political, economic, consular, etc. They are diplomatic agents with less diplomatic experience.

The lowest rank of diplomatic rank is the attaché. These are diplomatic agents which are at the beginning of diplomatic career. In practice, certain countries also assign the rank of attaché to persons in charge of handling the encrypted text namely, interrogating and receiving encrypted texts. However, the same term is used for senior diplomat with the rank of counsellor or other diplomatic rank. Thus, there are: military attaché, cultural attaché, press, scientific, technical cooperation, trade attaché etc. In addition to economic affairs counsellors, there are attachés in charge of specific areas, such as: culture, scientific-technical cooperation, health, religious affairs and others (Марковски: 99). Military attachés usually have the rank of lieutenant colonel or brigadier general, while other attachés are usually with diplomatic advisor rank (Jazbec, 2008: 123). However, it is important to note, that these members of the mission, notwithstanding their diplomatic immunity and privileges, do not have a rule of representative of the state in their overall relations with the territorial state, but their function of representation is limited to the matters in which they are entrusted. In absence of the head of mission, the post of temporary perform of activities is entrusted to the diplomat, who deals with political affairs, regardless of his rank, which may be lower than the attaché's rank on specific issues. In this category, it is very important to have an agreement between the sending and the receiving state on the basis of which the diplomatic status will be determined in advance, thus will be avoided any problems regarding their privileges (Марковски, 2016: 99-100).

#### **4. Regular transition to immediate higher diplomatic rank**

The foreign affairs law foresees that the person employed in the ministry with a good work experience at B3 takes counsellor exam no later than six months after the date of employment and has obtained the diplomatic rank of a counsellor who has successfully passed counsellor exam. If he fails to pass the counsellor exam within the prescribed period, his employment in the ministry shall cease. Regular transition to the immediate higher diplomatic rank is made after the expiry of a certain term of office, positive assessments of work during that period, successfully passed training that the ministry organizes for its employees: (a) diplomat, after spending one year in the rank of attaché, has obtained the rank of third secretary; (b) diplomat, after spending two years in the position of the third secretary, acquires the rank of the second secretary; (c) diplomat, after spending three years in the position of second secretary, acquires the rank of first secretary; (d) diplomat after spending three years in the position of first secretary and passed the counsellor exam, acquires the rank of advisor; (e) diplomat after spending four years in the position of advisor, he has obtained the rank of minister counsellor; (f) diplomat after five years in the position of minister counsellor and defence minister, acquires, holds the rank of plenipotentiary minister; (g) diplomat after spending six years in the position of plenipotentiary minister and defence ambassador, acquires the rank of ambassador in the ministry. The program for taking the counsellor exam, including as well as a defence of the papers shall be determined by the act of minister. The decision to move to the immediate higher rank shall be adopted by the minister (Law on Foreign Affairs of RM, art. 64 d). A diplomat, who, during the course of his work in a diplomatic or consular mission, will fulfil the conditions to move to an immediate higher diplomatic rank, acquires the rank upon returning to the country (Article 64 e). The time spent in a previous position shall also include

the time spent in an international organization if the diplomat was officially supported by the ministry (Article 64 f).

## **5. Extraordinary transition to an immediate higher diplomatic rank**

A diplomat can move into immediately higher rank and before the necessary period if: (a) the diplomat by decision of the Government of the Republic of North Macedonia or by decision of the minister is designated for a national coordinator for a particular area or problems; (b) the diplomat contributed to significant improvement bilateral cooperation with a particular country; (c) the diplomat has contributed to increasing foreign investment in the country; (d) the diplomat participated in conducting successfully completed negotiations for the strategic interest of the state; (e) the diplomat has successfully applied to a representative of the state in international organizations or; (f) the diplomat obtains the recognition of “The best diplomat of the year” or “The best young diplomat of the year”. The assessment of the fulfilment of the conditions for extraordinary transition to immediate higher diplomatic rank is given by the secretary of state. The minister adopts the decision for the extraordinary transition to the higher diplomatic rank basis of the assessment (Article 64 g).

## **6. Transition to the immediate lower diplomatic rank - removal of diplomatic rank**

Once gained diplomatic rank is not lost except in cases where the diplomat has been disqualified disciplinary measure for disciplinary offence: (a) damage the reputation of the diplomatic service; (b) performing an action which is contrary with diplomatic function and; (c) unlawful disposal of material assets.

The decision for establishing in lower diplomatic rank is adopted by the minister after the final decision for disciplinary measure (Article 64 h).

## **7. Conclusion**

The issue of diplomatic representatives, starting from their nomination, their categorization into different rank, certainly starting from the highest rank to the lowest rank is regulated by the internal laws of each state, and differs from the point of view of their appointment from one country to another. In this regard, it is worth noting that as a function, regardless of its position, it contains rights and obligations that must be respected and fulfilled. The same has happened with diplomatic representatives as a high rank, who always enjoy the immunities and privileges no matter in which country they are accredited. It should be noted that this does not apply to all diplomatic ranks, which are exempt from extraterritoriality.

If we look at our law, i.e. Law on Foreign Affairs of the Republic of North Macedonia, we will understand that there are also some diplomatic ranks, which are enjoyed by certain persons, and it is clear that the ambassadors are appointed by the head of state, which it means that the appointee is only within his competences, without alternative options, such as in the Republic of Kosovo, where the minister for foreign affairs also can appoint ambassadors. Of course, this article requires intervention by lawmakers in order to change this legal provision

What remains important is that the diplomatic representatives are appointed to represent the sending state in the receiving state, namely in diplomatic relations between states.

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