

International Law Commission

Report on the Work of its sixty-seventh Session

Chapter III on "Specific issues on which comments would be of particular interest to the Commission"

Written comments by Austria

ad para 24.:

In order to supplement Austria's comments on Chapter III on „Specific issues on which comments would be of particular interest to the Commission“ on the Report of the International Law Commission (ILC) on the Work of its sixty-sixth Session, submitted in 2015, Austria would like to provide the following additional information on Chapter **“C. Immunity of State officials from foreign criminal jurisdiction“**:

In 2000, the Austrian Administrative Court rendered a decision concerning the violation of certain traffic rules in Austria by a consular agent with Croatian citizenship, who was on his way from Croatia to Munich, Germany, where he was posted and accredited. The consular agent appealed against the decision of the administrative authority imposing a fine upon him. The Austrian Administrative Court referred to Article 54 of the Vienna Convention on Consular Relations, concerning obligations of third States and providing that "If a consular officer passes through or is in the territory of a third State, (...) while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other articles of the present Convention as may be required to ensure his transit or return (...)" and came to the conclusion that the granting of immunity to the consular agent was not necessary in this given case to ensure his transit. The decision imposing the fine did not impede the agent's transit through Austria, and therefore immunity had not to be accorded.

Furthermore, Austria would like to supplement information on its practice concerning information gathering during the examination of the existence of sufficient initial suspicion with regard to persons enjoying diplomatic immunity.

The introduction to the law amending the code of criminal procedure of 12 December 2014 clarifies, in the context of the definition of "initial suspicion", as follows: In cases of doubt of the existence of sufficient "initial suspicion" information may be gathered according to § 91 (2) last sentence of the Austrian Code of Criminal Procedure, which does not yet constitute the initiation of criminal proceedings. As far as persons enjoying diplomatic immunity are concerned it is specified that information gathering according to § 91 (2) last sentence of the Code is only possible as long as the existence of sufficient initial suspicion so requires.