

*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

1975

Part Three. Judicial decisions on questions relating to the United Nations and related  
intergovernmental organizations

Chapter VIII. Decisions of national tribunals



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## CONTENTS (*continued*)

Page

### CHAPTER VIII. DECISIONS OF NATIONAL TRIBUNALS

#### 1. *Austria*

Administrative Court of Vienna (Verwaltungsgerichtshof)

X. v. Vienna Federal Police Board: Decision of 11 April 1975

Scope of the immunity from legal process enjoyed by officials of the International Atomic Energy Agency in Austria under the Agency's Headquarters Agreement ..... 214

#### 2. *Switzerland*

Cantonal Tribunal of the Canton of Vaud, Civil Court

X. v. Y.: Judgement of 14 March 1975

Suit against an official of the World Health Organization enjoying immunity from legal process in Switzerland under the WHO Headquarters Agreement—Cross-petition by the defendant designed in particular to have the original suit declared inadmissible by reason of the incompetence of the Tribunal—Object of the privileges and immunities granted to WHO officials under the above-mentioned Headquarters Agreement—Granting of time for the opposing party to take the steps necessary for the waiving of the immunity ..... 215

### Part Four. Bibliography

#### LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

##### A. INTERNATIONAL ORGANIZATIONS IN GENERAL

1. *General* ..... 220

2. *Particular questions* ..... 220

##### B. UNITED NATIONS

1. *General* ..... 221

##### 2. *Particular organs*

Administrative Tribunal ..... 223

General Assembly ..... 223

International Court of Justice ..... 224

Regional economic commissions ..... 226

Secretariat ..... 226

Security Council ..... 227

United Nations Forces ..... 227

United Nations Industrial Development Organization ..... 227

##### 3. *Particular questions or activities*

Charter revision ..... 227

## Chapter VIII

### DECISIONS OF NATIONAL TRIBUNALS

#### I. Austria

##### ADMINISTRATIVE COURT OF VIENNA (VERWALTUNGSGERICHTSHOF)

X. v. VIENNA FEDERAL POLICE BOARD: DECISION OF 11 APRIL 1975

*Scope of the immunity from legal process enjoyed by officials of International Atomic Energy Agency in Austria under the Agency's Headquarters Agreement*

The plaintiff, from whom the respondent authority demanded payment of a fine of 5,000 schillings for drunken driving, maintained before the Court that at the time of the automobile accident as a result of which the fine had been levied on him he had been "carrying out his duties as an employee of the International Atomic Energy Agency" and could therefore claim immunity *ad hoc*.

The Court noted that the plaintiff was evidently referring to article XV, section 38 (a), of the Headquarters Agreement between Austria and IAEA,<sup>1</sup> which reads as follows:

"Officials of the IAEA shall enjoy within . . . the Republic of Austria the following privileges and immunities:

"(a) Immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them, in their official capacity; such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of the IAEA."

The Administrative Court stated that it shared the opinion of the respondent authority that the plaintiff's travel at the time of the infraction was of a purely private nature and in no way arose from the exercise of his official duties on behalf of the Agency; the plaintiff was not, therefore, exempt from the jurisdiction of Austrian tribunals. His allegations that the respondent authority had not studied the question of his immunity and had not permitted him to see an allegedly essential document setting out the position of the Ministry of Foreign Affairs were therefore immaterial.

Since the Administrative Court was unable to establish that the respondent authority had acted illegally, the appeal was rejected as being without foundation.

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<sup>1</sup> United Nations, *Treaty Series*, vol. 339, p. 110.

## 2. Switzerland

### CANTONAL TRIBUNAL OF THE CANTON OF VAUD, CIVIL COURT

X. v. Y.: JUDGEMENT OF 14 MARCH 1975

*Suit against an official of the World Health Organization enjoying immunity from legal process in Switzerland under the WHO Headquarters Agreement—Cross-petition by the defendant designed in particular to have the original suit declared inadmissible by reason of the incompetence of the Tribunal—Object of the privileges and immunities granted to WHO officials under the above-mentioned Headquarters Agreement—Granting of time for the opposing party to take the steps necessary for the waiving of the immunity*

The plaintiff brought suit with a view to securing payment by the defendant of a certain sum which the latter had, according to the plaintiff, retained as security for the purpose of executing a contract for the sale of immovable property. The defendant then submitted a cross-petition designed in particular to have the original suit declared inadmissible on the grounds that she was an international official of the World Health Organization and therefore enjoyed complete immunity from legal process in Switzerland. The respondent in the cross-petition, noting that the petitioner was taking the course of a cross-petition, concluded therefrom that she was renouncing her claim to immunity from legal process at least in the cross-petition and that the question of the Tribunal's competence to rule on the cross-petition therefore did not arise.

The judge stressed, however, that in procedural matters he was not bound by the agreement of the parties. In studying the admissibility of the cross-petition, he noted that the petitioner held an identity card issued by the Federal Political Department, which proved her status as a high official; she thus came within the category of officials defined in article 16 of the Agreement between the Federal Council and WHO concerning the Legal Status of that Organization in Switzerland<sup>2</sup> and therefore enjoyed the immunities granted to diplomatic agents by the Vienna Convention on Diplomatic Relations.<sup>3</sup> The substance of the case being of a pecuniary nature, it followed from article 31, paragraph 1, of the Vienna Convention interpreted *a contrario* that the petitioner enjoyed immunity from civil jurisdiction and that the respondent could

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<sup>2</sup> United Nations, *Treaty Series*, vol. 26, p. 331. Article 16 reads as follows:

**"DIPLOMATIC IMMUNITIES OF THE DIRECTOR-GENERAL  
AND CERTAIN OFFICIALS**

"The Director-General of the World Health Organization and certain officials of the categories designated by him and agreed to by the Swiss Federal Council shall enjoy the privileges, immunities, exemptions and facilities granted to diplomatic agents in accordance with international law and custom."

<sup>3</sup> United Nations, *Treaty Series*, vol. 500, p. 95. Article 31, para. 1, reads as follows:

"1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

"(a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

"(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

"(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions."

secure the waiving of such immunity only through the diplomatic channel (articles 25 and 26 of the above-mentioned Headquarters Agreement).

The judge pointed out, however, that, while certain WHO officials enjoyed diplomatic immunities *in abstracto*, the object of those immunities, under the terms of articles 21 and 22 of the Headquarters Agreement, was solely to ensure the free functioning of that organization; the immunity enjoyed by the petitioner could therefore be waived, and it would have been unduly formalistic to declare the Court incompetent without giving the respondent an opportunity to take steps aimed at securing the waiving of the immunity.

The judge continued as follows:

“The principle is that, when an official of an international organization invokes the benefit of immunity from legal process on the basis of the provisions of a headquarters agreement which permits the Federal Political Department to request the said organization to waive the immunity, the opposing party should be granted time to take the steps necessary for the waiving of the immunity, since the invalidation of the suit must be expressly provided for in order to be declared. The grounds of immunity from legal process is an exception which does not always have an absolute and definitive character, at least so long as an authority may be called upon to rule on a request that the immunity should be waived and so long as the competent authority has not refused to waive it.”

The judge also noted that, instead of warning the respondent of the privilege she enjoyed, the petitioner had always concealed from him her status as a WHO official and had, on the contrary, taken steps with a view to a trial before the judicial authorities. He observed that negotiations prior to the commencement of a trial established a relationship between the parties which was sanctioned by objective law. Of course, each party was in principle the defender of his own interests and should acquaint himself with the chances and perils of the acts which he was contemplating, but negotiations sometimes called for a certain degree of co-operation. Fairness and dispatch required that everyone should respect certain rules in the exercise of his rights, even if he exercised them through judicial proceedings. It would therefore have been inequitable that the petitioner should have gained any benefit by acting contrary to good faith.

The judge consequently granted the respondent a period of one month to secure the waiving of the petitioner's immunity from legal process.