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## **THE IMMUNITY OF HEADS OF STATE AND INDIVIDUAL CRIMINAL RESPONSIBILITY**

The aim of the study is to research the question of the relationship between the immunity of heads of state and the principle of individual criminal responsibility which is one of the most debated issues in contemporary international law. On the one hand, the traditional concept of state sovereignty provides heads of state with broad immunity from the jurisdiction of foreign courts; on the other hand, the development of international criminal law in the second half of the twentieth and early twenty-first centuries has called into question the absolute nature of such immunity. This contradiction has become the central point of tension between the principles of sovereignty and accountability in the international legal order – and it is precisely the overcoming of this tension that defines the trajectory of modern international criminal justice.

The concept of immunity of heads of state is rooted in the principle of *par in parem non habet imperium* – an equal has no authority over an equal. Immunity is an inherent attribute of a state's international legal personality and is directly linked to the principle of sovereign equality of states [1]. Under customary international law, as reflected in particular in the Vienna Convention on Diplomatic Relations of 1961, persons who embody the state at the highest level traditionally enjoy *immunity ratione personae* – personal immunity covering all acts performed in both an official and private capacity during their tenure [2]. This immunity is absolute with respect to the criminal jurisdiction of foreign states and applies primarily to heads of state, heads of government, and ministers of foreign affairs.

At the same time, the development of the concept of individual criminal responsibility in international law has substantially altered the established paradigm. The Nuremberg Tribunal of 1945 – 1946 was the first to enshrine the principle that the official position of an individual, including the status of a head of state or government official, does not exempt that person from responsibility for international crimes. This principle was further normatively developed in the statutes of the International Tribunals for the former Yugoslavia and Rwanda, as well as in the Rome Statute of the International Criminal Court of 1998. Article 27 of the Rome Statute explicitly provides that the Statute applies equally to all persons without any distinction based on official capacity [3, Art. 27]. The official position of a person as a head of state or government does not constitute grounds for exemption from criminal responsibility under the Statute, nor does it in itself constitute grounds for a reduction of sentence. Thus, the ICC *de iure* does not recognize the immunity of heads of state from the Court's jurisdiction in cases involving genocide, crimes against humanity, war crimes, and the crime of aggression.

A landmark precedent in this field was the judgment of the International Court of Justice in the case *Democratic Republic of the Congo v. Belgium* of 2002 – the so-called "Arrest Warrant Case." The ICJ confirmed that incumbent ministers of foreign affairs enjoy absolute immunity from the criminal jurisdiction of foreign states, and that Belgium's issuance of an arrest warrant against the incumbent Congolese minister

violated norms of international law [4, para. 54]. However, the Court simultaneously noted that such immunity does not imply impunity: first, an official may be prosecuted before the courts of their own state; second, the state may waive immunity; third, after leaving office, a former official may be prosecuted by a foreign court for acts of a private character; and fourth, international criminal courts, where a state has authorized them to act, are not bound by rules on immunity [4, para. 61]. These four exceptions effectively delineate the boundaries beyond which the principle of accountability takes precedence over sovereign immunity.

The judgment in *Congo v. Belgium* reflects a critically important distinction between two types of immunity: *ratione personae* and *ratione materiae*. Whereas the former is temporary in nature and protects an official only during their tenure, the latter is permanent and covers exclusively official acts performed on behalf of the state [5, p. 219].

Particular attention deserves the case *Prosecutor v. Omar Al-Bashir* (ICC, 2009). The issuance of an arrest warrant against the incumbent President of Sudan was an unprecedented step in the practice of the ICC and brought sharply into focus the question of the relationship between the immunity of heads of state and the obligations of States Parties to the Rome Statute regarding cooperation with the Court [6]. The ICC Pre-Trial Chamber found that, since Sudan is not a party to the Rome Statute but the case had been referred to the ICC by the UN Security Council pursuant to Article 13(b) of the Statute, rules on immunity did not preclude the exercise of the ICC's jurisdiction [3]. At the same time, States Parties to the Rome Statute, bound by the obligation to cooperate with the ICC, long evaded arresting Al-Bashir, effectively demonstrating in their state practice the priority of immunity norms over treaty obligations.

In the context of Ukrainian legislation, it should be noted that the Constitution of Ukraine of 1996 enshrines the inviolability of the President: pursuant to Article 105, the President of Ukraine enjoys the right of inviolability during the exercise of his powers [7, Art. 105]. However, this provision regulates exclusively the domestic dimension of immunity and does not preclude the application of jurisdiction by international criminal tribunals. This is also pointed out by M. Hultai, a judge of the Constitutional Court of Ukraine, who notes that for the purpose of resolving legal disputes and clarifying the content of provisions of the Constitution and laws of Ukraine, the Court interprets universally recognized principles and norms of international law [8, p. 85].

In conclusion, the relationship between the immunity of heads of state and individual criminal responsibility reflects a deep-seated tension between two fundamental pillars of the international legal order – sovereignty and accountability. The evolution of international criminal law from the Nuremberg Tribunal to the Rome Statute testifies to the gradual, albeit inconsistent, consolidation of the principle of the inevitability of responsibility for international crimes regardless of the official status of the individual. At the same time, the Al-Bashir case vividly demonstrates that normative progress does not always translate into corresponding state practice. Bridging this gap between law and its application remains a central challenge for international criminal justice under contemporary conditions.

Furthermore, this tension is particularly evident in the context of contemporary conflicts, where heads of state are increasingly held accountable through international mechanisms. The establishment of specialized tribunals has demonstrated the feasibility of prosecuting high-level officials without undermining the core principles of sovereignty. Nevertheless, the inconsistent enforcement of arrest warrants and

cooperation obligations among states remains a significant obstacle. Addressing these issues requires concerted efforts from the international community to strengthen the rule of law on a global scale.

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