

Subsidiary Legislation made under s.72(8).

International Criminal Court (Immunities and Privileges) Regulations 2009

LN.2009/078

Commencement (LN.2009/091)

22.12.2009

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In exercise of the powers conferred by section 72(8) of the International Criminal Court Act 2007, the Governor has made the following Regulations:

Title and commencement.

1. These Regulations may be cited as the International Criminal Court (Immunities and Privileges) Regulations 2009 and come into operation on the day appointed by the Governor by Notice in the Gazette.

Interpretation.

2. In these Regulations—

“Assembly” means the Assembly of States Parties to the Rome Statute and its subsidiary organs;

“1961 Convention Articles” means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in the Schedule to the Diplomatic Privileges Act;

“Court” means the International Criminal Court established by the Rome Statute;

“Deputy Prosecutors” means the Deputy Prosecutors elected by the Assembly of States Parties to the Rome Statute in accordance with article 42, paragraph 4, of the Rome Statute;

“Deputy Registrar” means the Deputy Registrar elected by the Court in accordance with article 43, paragraph 4, of the Rome Statute;

“Presidency” means the organ of the Court composed of the President and the first and second Vice-Presidents of the Court elected in accordance with article 38, paragraph 1, of the Rome Statute;

“Prosecutor” means the Prosecutor elected by the Assembly of States Parties to the Rome Statute in accordance with article 42, paragraph 4, of the Rome Statute;

“Registrar” means the Registrar elected by the Court in accordance with article 43, paragraph 4, of the Rome Statute;

“representatives”—

- (a) in relation to intergovernmental organisations, means the executive heads of those organisations and any officials acting on their behalf; and
- (b) in relation to States, means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations;

“Rome Statute” means the Rome Statute of the International Criminal Court done at Rome on 17th July 1998;

“Rules” means the Rules of Procedure and Evidence adopted under article 51 of the Rome Statute;

“States Parties” means States Parties to the Rome Statute;

“victims” means victims participating in the proceedings of the Court in accordance with rules 89 to 91 of the Rules.

The Court.

3.(1) The Court shall have the legal capacities of a body corporate.

(2) The Court shall have the like inviolability of its official archives and premises as, in accordance with the 1961 Convention Articles, is accorded in respect of the official archives and premises of a diplomatic mission.

(3) The Court, and its property, funds and assets, wherever located and by whomsoever held, shall be immune from suit and legal process, except in so far as the Court has expressly waived such immunity in any particular case.

(4) The Court, its property and income shall have exemption from taxes on income and capital gains.

(5) The Court shall have the like relief from rates on its official premises as, in accordance with Article 23 of the 1961 Convention Articles, is accorded in respect of the premises of a diplomatic mission.

(6) The Court shall have exemption from duties (whether of customs or excise) and taxes on the importation of goods and publications of the Court imported by the Court for its official use, such exemption to be subject to compliance with such conditions as the Government may prescribe for the protection of the Revenue.

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(7) The Court shall have exemption from prohibitions and restrictions on importation or exportation of goods by the Court for its official use and in the case of any publications of the Court imported or exported by it.

(8) The Court shall have relief, under arrangements made by the Government, by way of refund of duty (whether of customs or excise) paid on imported hydrocarbon oil paid on the importation of such oil which is bought in Gibraltar by the Court and necessary for the exercise of its official activities, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

(9) The Court shall have relief, under arrangements made by the Government, by way of refund of any tax paid on any vehicles which are used for the official purposes of the Court, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

(10) The Court shall have relief, under arrangements made by the Government, by way of refund of Insurance Premium Tax and Air Passenger Duty paid by the Court in the exercise of its official activities.

Representatives of States participating in the Assembly and its subsidiary organs and representatives of intergovernmental organizations.

4.(1) Except in so far as in any particular case any privilege or immunity is waived by the State or intergovernmental organisation which they represent, representatives of States Parties attending meetings of the Assembly, representatives of other States attending meetings of the Assembly as observers in accordance with article 112, paragraph 1, of the Rome Statute, and representatives of States and of intergovernmental organisations invited to meetings of the Assembly shall, while exercising their official functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities—

- (a) the like immunity from personal arrest or detention and the like inviolability for all papers and documents as is accorded to a diplomatic agent;
- (b) immunity from suit and legal process (even after they have ceased to exercise their functions as representatives) in respect of acts, including words written or spoken, performed by them in the exercise of their official functions;
- (c) the like exemptions and privileges in respect of their personal baggage as in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent; and

- (d) exemption from income tax in respect of salaries and emoluments paid to them as representatives.

(2) Where the incidence of any form of taxation depends upon residence, a representative shall not be deemed to be resident in Gibraltar during any period when he is present in Gibraltar for the discharge of his duties.

(3) Sub-regulations (1) and (2) shall not operate so as to confer any privilege or immunity on any person as a representative of the United Kingdom or on any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, or a British National (Overseas).

Representatives of states participating in the proceedings of the court.

5.(1) Except in so far as in any particular case any privilege or immunity is waived by the State which they represent, representatives of States participating in the proceedings of the Court shall enjoy, while exercising their official functions and during their journeys to and from the place of the proceedings of the Court–

- (a) the like immunity from personal arrest or detention and the like inviolability for all papers and documents as is accorded to a diplomatic agent;
- (b) immunity from suit and legal process (even after they have ceased to exercise their functions as representatives) in respect of acts, including words written or spoken, performed by them in the exercise of their official functions;
- (c) the like exemptions and privileges in respect of their personal baggage as in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent; and
- (d) exemption from income tax in respect of salaries and emoluments paid to them as representatives.

(2) Where the incidence of any form of taxation depends upon residence, a representative shall not be deemed to be resident in Gibraltar during any period when he is present in Gibraltar for the discharge of his duties.

(3) Sub-regulations (1) and (2) shall not operate so as to confer any privilege or immunity on any person as the representative of the United Kingdom or on any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, or a British National (Overseas).

Judges, prosecutor, deputy prosecutors and registrar.

6.(1) Except in so far as in any particular case any privilege or immunity is waived as set out in subregulation (6), the judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall enjoy–

- (a) when engaged on or with respect to the business of the Court, the like privileges and immunities as in accordance with the 1961 Convention Articles are accorded to the head of a diplomatic mission;
- (b) exemption from income tax in respect of salaries and emoluments (excluding pensions and annuities) received by them from the Court as judges, Prosecutor, Deputy Prosecutors or Registrar;
- (c) when residing in Gibraltar for the purpose of holding themselves at the disposal of the Court the privileges and immunities accorded to a diplomatic agent in accordance with the 1961 Convention Articles;
- (d) on journeys in or through Gibraltar in connection with the exercise of their functions, the privileges and immunities accorded to a diplomatic agent in similar circumstances under the 1961 Convention Articles–

provided that the provisions of this paragraph shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in Gibraltar.

(2) Except in so far as in any particular case any privilege or immunity is waived as set out in subregulation (6), the judges, the Prosecutor, the Deputy Prosecutors and the Registrar after the expiry of their terms of office shall enjoy immunity from suit and legal process in respect of acts, including words written or spoken, performed by them in the exercise of their official functions for the Court, but the provisions of this subregulation shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in Gibraltar.

(3) Except in so far as in any particular case any privilege or immunity is waived as set out in subregulation (6), the judges of the Court shall enjoy the privileges and immunities in subregulation (1) after their term of office has expired if they continue to exercise their functions in accordance with article 36, paragraph 10 of the Rome Statute, but the provisions of this subregulation shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in Gibraltar.

(4) Except in so far as in any particular case any privilege or immunity is waived as set out in subregulation (6), the judges, the Prosecutor, the Deputy Prosecutors and the Registrar, if they are British citizens, British overseas territories citizens, British Overseas citizens, British Nationals (Overseas) or permanently resident in Gibraltar, shall enjoy to the extent necessary for the independent performance of their functions—

- (a) the like immunity from personal arrest or detention and the like inviolability for all papers and documents relating to the exercise of their functions for the Court as is accorded to a diplomatic agent;
- (b) immunity from suit and legal process (even after the expiry of their terms of office) in respect of all acts, including words spoken or written, performed by them in the exercise of their official functions for the Court;
- (c) exemption from income tax in respect of salaries and emoluments (excluding pensions and annuities) received by them from the Court as judges, Prosecutor, Deputy Prosecutor, or Registrar.

(5) Where the incidence of any form of taxation depends on residence, any period during which the judges, the Prosecutor, the Deputy Prosecutors or the Registrar are present in Gibraltar for the discharge of their functions for the Court shall not be considered as periods of residence in Gibraltar.

(6) Privileges and immunities may be waived—

- (a) in the case of a judge or the Prosecutor, by an absolute majority of the judges;
- (b) in the case of a Deputy Prosecutor, by the Prosecutor; and
- (c) in the case of the Registrar, by the Presidency.

Deputy Registrar, Staff of the office of the Prosecutor and Staff of the Registry.

7.(1) Except in so far as in any particular case any privilege or immunity is waived as set out in sub-regulation (3), the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry, as necessary for the independent performance of their functions, shall enjoy—

- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent;

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- (b) immunity from suit and legal process (even after they have left the service of the Court) in respect of acts, including words spoken or written, performed by them in the exercise of their official functions for the Court;
- (c) the like inviolability for all official papers, documents and materials as is accorded to a diplomatic agent;
- (d) exemption from income tax in respect of the salaries and emoluments (excluding pensions and annuities) paid to them by the Court;
- (e) the like immunity from seizure of personal baggage as is accorded to a diplomatic agent;
- (f) exemption from inspection of personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by quarantine regulations in Gibraltar;
- (g) the like exemption from duties (whether of customs or excise) and taxes on the importation, and re-exportation to their country of permanent residence, of articles which—
 - (i) at or about the time when the Deputy Registrar, the member of staff of the Office of the Prosecutor or the member of staff of the Registry first entered Gibraltar to take up that post of employment for the Court in Gibraltar, are imported for his personal use, including articles intended for his establishment, and
 - (ii) are articles which were in his ownership or possession, or which he was under contract to purchase, immediately before he entered Gibraltar,

as in accordance with paragraph 1 of Article 36 of the 1961 Convention Articles is accorded to a diplomatic agent.

(2) Paragraphs (e), (f) and (g) of sub-regulation (1) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in Gibraltar.

(3) Privileges and immunities may be waived—

- (a) in the case of the Deputy Registrar and the staff of the Registry, by the Registrar;
- (b) in the case of the staff of the Office of the Prosecutor, by the Prosecutor.

Other locally recruited personnel.

8. Except in so far as in any particular case any privilege or immunity is waived by the head of the organ of the Court employing a member of such personnel, other personnel recruited by the Court locally shall enjoy immunity from suit and legal process (even after they have left the service of the Court) in respect of acts, including words spoken or written, performed by them in the exercise of their official functions for the Court.

Counsel and persons assisting defence counsel.

9.(1) Except in so far as in any particular case any privilege or immunity is waived by the Presidency and subject to production of the required certificate, counsel and persons assisting defence counsel in accordance with rule 22 of the Rules, to the extent necessary for the independent performance of their functions (including the time spent on journeys in that connection), shall enjoy—

- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent;
- (b) immunity from suit and legal process (even after they have ceased to exercise their functions) in respect of acts, including words spoken or written, performed by them in their official capacity;
- (c) the like inviolability for all papers, documents and materials relating to the exercise of their functions as is accorded to a diplomatic agent;
- (d) the like immunity from seizure of personal baggage as is accorded to a diplomatic agent;
- (e) exemption from inspection of personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by quarantine regulations in Gibraltar.

(2) For the purposes of this Article, the “required certificate” means the certificate under the signature of the Registrar provided to counsel and persons assisting defence counsel upon appointment, for the period required for the exercise of his functions, in accordance with the Rome Statute, the Rules of Procedure and Evidence and the Regulations of the Court.

(3) Where the incidence of any form of taxation depends upon residence, counsel and persons assisting defence counsel shall not be deemed to be resident in Gibraltar during any period when they are present in Gibraltar for the discharge of their functions.

(4) Paragraphs (d) and (e) of sub-regulation (1) and sub-regulation (3) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in Gibraltar.

Witnesses.

10.(1) Except in so far as in any particular case any privilege or immunity is waived by the Presidency and subject to the production of the required document, witnesses, to the extent necessary for their appearance before the Court for the purposes of giving evidence (including the time spent on journeys in that connection), shall enjoy–

- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent;
- (b) immunity from suit and legal process (even after their appearance and testimony before the Court) in respect of acts, including words spoken or written, performed by them in the course of their appearance and testimony before the Court;
- (c) the like inviolability for all papers, documents and materials relating to their appearance and testimony before the Court as is accorded to a diplomatic agent;
- (d) immunity from seizure of personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by quarantine regulations in Gibraltar.

(2) For the purposes of this Article, the “required document” means a document provided by the Court certifying that appearance before the Court by the witness is required by the Court, and specifying a time period during which such appearance is necessary.

(3) Paragraph (d) of subregulation (1) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in Gibraltar.

Victims participating in the proceedings of the court.

11.(1) Except in so far as in any particular case any privilege or immunity is waived by the Presidency and subject to production of the required document, victims, to the extent necessary for their appearance before the Court (including the time spent on journeys in that connection), shall enjoy–

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- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent;
 - (b) immunity from suit and legal process (even after their appearance before the Court) in respect of acts, including words spoken or written, performed by them in the course of their appearance before the Court;
 - (c) immunity from seizure of their personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by quarantine regulations in Gibraltar.

(2) For the purposes of this Article, the “required document” means a document provided by the Court certifying the participation of the victim in the proceedings of the Court and specifying a time period for that participation.

(3) Paragraph (c) of sub-regulation (1) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in Gibraltar.

Experts.

12.(1) Except in so far as in any particular case any privilege or immunity is waived by the head of the organ of the Court appointing the expert and subject to production of the required document, experts performing functions for the Court, to the extent necessary for the independent exercise of their functions (including the time spent on journeys in that connection), shall enjoy—

- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent;
- (b) immunity from suit and legal process (even after the termination of their functions) in respect of acts, including words spoken or written, performed by them in the course of the performance of their functions for the Court;
- (c) the like inviolability for all papers, documents and materials relating to their functions for the Court as is accorded to a diplomatic agent;
- (d) the like immunity from seizure of personal baggage as is accorded to a diplomatic agent;

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- (e) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by quarantine regulations in Gibraltar.

(2) For the purposes of this Article, the “required document” means a document provided by the Court certifying that the expert is performing functions for the Court and specifying a time period during which those functions will last.

(3) Paragraphs (d) and (e) of sub-regulation (1) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in Gibraltar.

Other persons required to be present at the seat of the court.

13.(1) Except in so far as in any particular case any privilege or immunity is waived by the Presidency and subject to production of the required document, other persons required to be present at the seat of the Court, to the extent necessary for their presence at the seat of the Court (including the time spent on journeys in that connection), shall enjoy–

- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent;
- (b) immunity from suit and legal process (even after their presence at the seat of the Court) in respect of acts, including words spoken or written, performed by them in connection with their presence at the seat of the Court;
- (c) immunity from seizure of their personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by quarantine regulations in Gibraltar.

(2) For the purposes of this Article, the “required document” means a document provided by the Court certifying that the presence of the person is required at the seat of the Court and specifying a time period during which such presence is necessary.

(3) Paragraph (c) of sub-regulation (1) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in Gibraltar.