

# International legal analysis of privileges and immunities of the Eurasian Economic Union (selected customs aspects)

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International treaties on both general and special issues, adopted at the universal, regional and bilateral levels, provide a variety of legal mechanisms for the cooperation of States in one of the branches of international law — international customs law. Here there is a very specific set of international legal norms, of course, corresponding to general international law and at the same time introducing its own characteristics. The article provides an analysis of the privileges and immunities that are within the competence of customs administrations. In particular, the author considers the so-called “customs privileges” provided to a certain category of persons in the Eurasian Economic Union (hereinafter referred to as EAEU or Union). The article analyzes the customs aspect of the EAEU law and the relevant provisions of the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963 regarding the procedure for granting privileges and immunities to certain categories of people, the movement of diplomatic mail and the consular bag. In addition, the practice of the Russian Federation on the above-mentioned issues is described. The relevance of the research topic is due to the adoption of the new EAEU Customs Code in 2017, which has undergone significant changes in terms of customs regulation of the provision of immunities and privileges for a certain category of persons, the legal analysis of which requires correlation with international standards in this field adopted earlier. The peculiarities of customs regulation within the framework of the EAEU, regarding the granting of immunities and privileges to certain categories of persons, are pointed out and adherence to their norms of international law is noted.

*Keywords:* Eurasian space, diplomatic mail, consular bag, customs law, immunities and privileges, customs privileges, customs administration, special customs procedure.

## 1. Introduction

The legal personality of the Eurasian Economic Union (hereinafter referred to as the EAEU) which includes Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia, as any international organization, is based on the provisions of international treaties establishing it (Vorontsova 2004). The constant development of the legal framework of the EAEU, the large amount of authority delegated by the member states, actualizes the need to analyze the compliance of the EAEU law with international standards. At the same time, the author analyzes a little-studied part of the so-called “customs” privileges and immunities granted to certain categories of persons.

The study was conducted on the basis of the analysis of texts of the Vienna Convention on Diplomatic Relations of 04.18.1961<sup>1</sup>, the Vienna Convention on Consular Relations of 04.24.1963, the Treaty on the Eurasian Economic Union of 2014, and the Customs Code of the Eurasian Economic Union of 2017 (hereinafter referred to as the EAEU Customs Code). The main research methods are formal logic methods, including analysis, synthesis, analogy, as well as systemic, comparative legal and interpretation methods.

In the scientific literature since the adoption of the Vienna Conventions on Diplomatic Relations (hereinafter referred to as the Vienna Convention of 1961) and on Consular Relations (hereinafter referred to as the Vienna Convention of 1963), there have been numerous studies on the privileges and immunities granted by international legal acts (Chistokhodova 2005). In Russian literature, diplomatic and consular privileges are also given significant attention (Bobylev, Nagieva 2012). The works of I. P. Blishchenko, G. V. Bobylev, Yu. G. Demin, Yu. D. Ilyin, D. B. Levin and a number of other authors made a significant contribution to the development and theoretical justification of the institution of diplomatic immunities and privileges (Blishchenko, Durdenevsky 1962; Bobylev, Nagieva 2012; Demin 1995; Jerotievich, Jerotievich 2018; Ilyin 1969; Levin 1949).

At the same time, states conclude new treaties under which privileges and immunities are granted to diplomatic agents and consular officials and their families. It should be noted that, in general, the continuity of the above agreements remains. Nevertheless, their list is changing. This does not contradict the preambles of the two conventions under consideration, which enshrined the provision that “the rules of customary international law will continue to regulate issues not expressly provided for in the provisions” of the convention.

While the scope of immunities and privileges granted to international organizations and their officials differs to some extent from the scope of immunities and privileges of diplomatic missions and their diplomatic agents, the theoretical justification for granting these immunities and privileges to both diplomatic missions and international organizations has one and the same legal nature. It can be argued that this is a holistic system with a single history of appearance and development (Nagieva 2012).

Thus, by creating an international organization — the EAEU, member states established the privileges and immunities of the Union and granted them to members of the Board of the Commission, judges of the Court of the Union, officials and employees, and representatives of member states (Kadyrkulov, Mozer 2018). This article partially addresses the issue of granting immunities and privileges to this category of persons.

In the course of the study, the author reveals the presence of features in customs regulation within the EAEU in relation to the granting of immunities and privileges to certain categories of persons. At the same time, it is noted that, in general, the norms of international law established in the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963 are respected.

As a result of the analysis, the following conclusions are formulated. The EAEU law regarding the granting of immunities and privileges to certain categories of persons, as well as movement through the customs border of diplomatic mail and consular bag, is consistent with international standards in general. However, there are a number of differences:

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<sup>1</sup> Hereinafter all Russian and international laws, statutory instruments, and court rulings are given in connection with the inquiry system “ConsultantPlus”. Accessed July 12, 2021. <http://www.consultant.ru>.

- the EAEU Customs Code does not address the issue of the possibility of transferring the consular bag through the commander of the vessel heading to port, the arrival of which is allowed;
- the EAEU Customs Code has narrowed the provisions established in the Vienna Conventions in relation to the inspection of personal bags of diplomatic agents and consular officials, who must comply not only with quarantine laws and host country rules specified in the Vienna Conventions, but also with radiation requirements. Moreover, the very concept of “quarantine laws” has been transformed into “sanitary, veterinary-sanitary, quarantine phytosanitary measures”. In addition, a permit procedure may be applied to such goods, if it is established by law;
- unlike the Vienna Convention on Consular Relations, the EAEU law does not establish restrictions on the number of consumer goods for personal use imported by consular officials;
- Contracting Parties to the EAEU separately emphasized the possibility of importing into the customs territory of the Union with exemption from payment of possible duties, taxes, — vehicles, of which the Vienna Conventions of 1961 and 1963 do not address;
- when goods are exported for personal use by a diplomatic agent or consular officer and their families in unaccompanied bag, as well as by shipment in international mail or otherwise, they are exempted from customs duties. This privilege is granted only in the EAEU Customs Code, while the Vienna Conventions only deal with the import of these items, and with the export — only in relation to the personal bag that is transported across the customs border at the actual entry or exit of an individual;
- the question arises of how justified the provision to representatives of EAEU member states is in regard to extended privileges when moving luggage and hand luggage, in contrast to diplomatic agents and their families, as well as consular officers and their families;
- the author notes that despite the fact that in acts relating to Union law the concepts of “privileges”, “immunities”, “benefits” are used, an official concept of these categories is not presented. While noting that until 2017 the concept of “customs privileges” was used, it is proposed to nevertheless make the necessary changes to the Agreement on the EAEU Customs Code taking into account the special status of privileges in customs regulation.

## 2. Basic research

The term “diplomatic immunity”, also called exterritoriality or extraterritoriality, in international law, refers to “immunities enjoyed by foreign states or international organizations and their official representatives from the jurisdiction of the country in which they are present. Extraterritoriality extends to foreign states or international organizations as entities and to their heads, legations, troops in passage, war vessels, mission premises, and other assets. It exempts them, while within the territory of a foreign sovereign, from local judicial process, police interference, and other measures of constraint (Elgavish 2000). There is little distinction between diplomatic privileges and immunity, which have in many cases been applied interchangeably. Although there has not been unanimity in

conceptual approaches, “privileges” mainly pertain to the right to commit certain activities and engage in relationships that others are not entitled to, whereas “immunities” relate to the exemption from local jurisdiction (Zabyelina 2013). It should be also noted that for diplomatic and consular immunities, there is inevitably the element of reciprocity, which is a derivative of the equality of sovereign States (Sucharitkul 2005).

In the Middle Ages, the list of diplomatic immunities did not include any customs aspects and was limited by jurists to the following: 1) the ambassador was not obliged to pay taxes in the country in which he was carrying out his duties, with regard to all goods connected with the fulfilment of his mission; 2) he enjoyed the privilege of full restitution (*restitutio in integrum*) provided by Roman law in favour of all those who were away from home on public service (*reipublicae causa*); 3) during the mission he could neither be accused of, nor punished for, any crime committed before he took office (Fedele 2016). The law of diplomatic privileges and immunities have developed over many centuries and some elements, such as the principle of diplomatic inviolability, can be traced back many centuries. Although diplomatic law was not fully codified until the Vienna Convention of 1961, the vast majority of rules contained therein were well established in 1944 (Barker 2012).

Undoubtedly, not only the number of international organizations is growing in the modern world, but also the importance of “supranational collective decision-making bodies” (Degtarev 2014).

Considering that the customs regulation in the EAEU has been transferred to a supranational level, a new structure for all five countries included in this organization has been adopted — the EAEU Customs Code, which was approved by the EAEU Customs Code Agreement of April 11, 2017. This Agreement was organically included in the law of the Union, which consists of the following:

- Treaty on the EAEU;
- international treaties within the Union;
- international treaties of the Union with a third party;
- decisions and orders of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council and the Eurasian Economic Commission, adopted within the framework of their powers provided for by this Treaty and international treaties within the Union (Vorontsova 2014).

The EAEU Customs Code has established a procedure for resolving issues related to the conditions for the movement of goods across the customs border by certain categories of persons, and Article 266 of the EAEU Customs Code provides a list of such persons.

Considering the “customs privileges” in the EAEU that are granted to persons indicated in the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, we will not find an explanation of the concepts of “immunities”, “privileges”, “advantages”, and “customs privileges”.

In the scientific literature regarding customs aspects, studies are being conducted. Giving the definition of “customs exemption”, one can proceed from the general definition of exemption as “the preemptive rule, the relief provided to someone as an exception to the general rules” (Ozhegov, Shvedova 1999, 335). In the EAEU law, the phrase “customs privileges” has not been used since the adoption of the new EAEU Customs Code in 2017, although in the author’s opinion, the concept of “customs privilege” was retained as an

exception to the general rules (including on the basis of international treaties). It would be more logical to emphasize the special status of benefits related to customs regulation. Here we are talking about “benefits”, in particular in Chapter 42 of the EAEU Customs Code, in relation to the movement of goods by certain categories of foreign persons (diplomatic missions, consular posts and other officials, including their employees), that is, the category of persons referred to in this article. Such benefits include — exemption from customs duties and taxes; customs declaration of goods by submitting a written statement (instead of a goods declaration); exemption from customs inspection.

However, for example, S. V. Khalipov considers that “institutionally, customs privileges cover customs payments, non-tariff regulation measures, customs operations and customs control. In the industrial respect, customs privileges are found in such areas of legal (including international legal) regulation as customs regulation, customs and tariff regulation, non-tariff regulation, tax regulation”. At the same time, Khalipov comes to the conclusion that “benefits” and “advantages” are different concepts (Khalipov 2017, 108).

Of course, the list of people with the right to use the benefits in the form of privileges when moving across the customs border is much wider than what is considered in the current article. This is, for example, individuals moving goods for personal use. However, the purpose of the article is to investigate precisely the benefits for certain categories of foreign persons.

Of course, we can talk about the competence of customs administrations in relation to goods, but we are talking precisely about moving diplomatic mail and a consular bag as well as examining individual officials.

In the EAEU Customs Code, in chapter 42, this issue is resolved through provisions governing the specifics of the procedure and conditions for the movement of goods across the customs border by certain categories of persons, diplomatic mail and consular bag.

It should be noted that the specifics of the procedure and conditions for the movement of goods across the customs border by certain categories of people are classified by the EAEU Customs Code as customs procedures, which are understood as a set of rules that determine the conditions and procedure for using goods on the customs territory of the Union or outside its borders for the purposes of customs regulation. In the development of this definition, in chapter 36 of the EAEU Customs Code, a list of categories of goods that should be placed under a special procedure is established. Thus, the EAEU member states emphasized the special status of such goods. These provisions will be examined in detail below.

It is worthwhile considering the benefits that, in the author’s opinion, belong to the category of “customs” and are established in the Vienna Conventions of 1961 and 1963.

Articles 36–37 of the 1961 Vienna Convention are directly related to customs procedures. In particular, it is ordered by the host states to allow the import of items intended both for official use of the mission and for personal use of the diplomatic agent or members of his family living with him, including items intended for his acquisition without customs duties, taxes and related fees. However, this requirement should be opposed not on the articles of the Vienna Convention of 1961, but on laws and regulations adopted in the host state. These conditions are usually prescribed in the customs codes or customs regulations of states. It should be noted that, as stated in the American judicial practice, the traditional policy of the USA is that diplomatic immunity will not be applicable unless the person has both diplomatic status (for example, a diplomatic position in the state

of his nationality) and “an intimate association with the work of a permanent diplomatic mission” (Ashman 1979, 1850).

Separately, a provision is set for exemption from bag inspection of a diplomatic agent, if there is no serious reason to assume that it contains items that are not subject to seizure, such as items that are intended for the official use of the mission and for the personal use of the diplomatic agent or members of his family. At the same time, it is possible that in the presence of the indicated grounds, an inspection can still be carried out in the presence of a diplomatic agent or his authorized representative.

In addition, the import or export of goods may be prohibited by the law of the host state or regulated by quarantine rules. Considering the provisions of this article, it can be concluded that the immunity granted in Article 36 of the 1961 Vienna Convention is not so unconditional. And this will be confirmed when considering immunities granted within the framework of the EAEU.

Separately, it should be noted that if a diplomatic agent passes through the territory of a third state, then he should be guaranteed immunity and immunities, including diplomatic mail, following transit, which were also considered in the article above (Chistokhodova 2005). The historical example from the 6th century Greece can be provided, where ambassadors were inviolable and extraterritorial, that is, removed from the jurisdiction of the city where they temporarily stayed (Rostovtsev 2013).

Considering, at first glance, similar benefits in the Vienna Convention of 1963, their features can be highlighted (Milhaupt 1988). In general, the volume of consular benefits is determined on the basis of a functional approach, proceeding mainly from a generalization of current practice (Safronova, Lavrishcheva 2015).

So, in particular, a separate chapter is singled out and designated in the convention under consideration, which spells out all the advantages, privileges and immunities of both consular posts and regular consular officers and employees of consular posts (Shagapova 2016).

Considering the customs aspect of chapter II of the Vienna Convention of 1963, it can be noted that a number of provisions relating to immunities and privileges are identical both in relation to diplomatic agents, and to consular officials, and institutions. For example, the official correspondence of a consular post is inviolable, as well as diplomatic mail. Both diplomatic couriers and consular couriers are granted immunity when moving diplomatic mail and the consular bag, respectively (Iskevich, Belov 2015). The positions regarding the possibility of transferring such mail through the commander of a civilian vessel do not differ.

However, there are some nuances. The consular bag, like the diplomatic post, should have external signs indicating its nature. The Russian Federation also adheres to this wording: “A diplomatic bag with diplomatic mail must have visible external signs indicating the official nature of its contents — the inscription ‘Diplomatic mail’ and ‘Expedition officielle’ and be sealed with a wax seal and seals of the Russian Foreign Ministry or the corresponding foreign office”<sup>2</sup>.

In addition, the bag should contain only “official correspondence and documents or objects intended exclusively for official use” (Article 35 (4) of the Vienna Convention

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<sup>2</sup> Regulation on the diplomatic mail of the Russian Federation and diplomatic and courier communications of the Ministry of Foreign Affairs of the Russian Federation, approved by Decree of the President of the Russian Federation of July 5, 2018 No. 404, paragraph 8.



of 1963). Moreover, the Vienna Convention of 1963 emphasizes that “official correspondence means all correspondence relating to the consular post and its functions” (Article 35 (2)). In the Vienna Convention of 1961, there is a reference only to diplomatic documents and objects intended for official use. Does this mean that when developing the Convention, states had in mind some differences between the concepts of “official correspondence” and “documents”? And how fundamental is this difference to the provision of immunity?

The Vienna Convention of 1961 established the unconditional impossibility of opening and detaining diplomatic mail. In the Russian Federation, in relation to a diplomatic bag during transport, in addition, it is also prohibited to examine it by technical or other special means, with the exception of cases provided for by the legislation of the Russian Federation and international treaties of the Russian Federation.

However, in regard to the consular bag, in accordance with the Vienna Convention of 1963, a different provision was adopted. If the authorities of the receiving state have good reason to believe that the valise contains something other than official documents, they may require that the valise be opened. If the authorities of the sending state refuse to comply with this requirement, the bag will be returned to the place of departure. The question arises whether there are differences in the status of official correspondence of a consular post and diplomatic mail.

In the Russian Federation, the contents of diplomatic mail are official correspondence packed in diplomatic bags; diplomatic documents; items intended exclusively for official use, which, in order to protect the information contained therein, constituting state or other secrets protected by law, or information referred to restricted information in accordance with the legislation of the Russian Federation, cannot be delivered in any other way. In addition, the following basic concepts are used in the same document: a) diplomatic bag — a bag, envelope, suitcase, other packaging intended for the transportation of diplomatic mail; <...> e) courier list — an official document drawn up in Russian and French or English, issued in the name of the official who delivers the diplomatic mail and contains information about the number of places that make up the diplomatic mail and the route for its delivery<sup>3</sup>.

The 1963 Vienna Convention also contains an addition when not only the commander of a civilian aircraft, but also the commander of a vessel, as it follows from the following explanation, heading for port, the arrival of which is allowed, can be used to transfer the consular bag.

In the Russian Federation, diplomatic mail can also be entrusted to the crew commander of a civil aircraft of the Russian Federation. In this case, it is supplied with a courier sheet indicating the number of seats comprising the diplomatic mail, but it is not considered a diplomatic courier (diplomatic courier ad hoc). The issue of the possibility of transferring diplomatic mail via the commander of the ship bound for port, the arrival of which is allowed, is not reflected in the Russian legislation and the law of the EAEU.

The requirements regarding the movement of diplomatic mail and consular bag are regulated in Article 301 of the EAEU Customs Code and, in general, comply with the

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<sup>3</sup> Regulations on the diplomatic mail of the Russian Federation and diplomatic and courier communications of the Ministry of Foreign Affairs of the Russian Federation, approved. By decree of the President of the Russian Federation dated July 5, 2018 No. 404.

standards established in Article 27 of the Vienna Convention of 1961 and Article 35 of the Vienna Convention of 1963.

However, in the EAEU Customs Code the procedure for customs clearance of the bag has been expanded. Thus, it has been established that diplomatic and consular couriers need courier sheets or other official documents indicating their status and the number of places that make up the diplomatic mail and the consular bag. A signature and seal of the institution sending the diplomatic mail and consular bag is also required. The permission of the customs authority to move diplomatic mail and consular valise through the customs border of the Union of is issued by affixing the appropriate marks of the customs authority on these documents.

The diplomatic mail and consular bag, entrusted to the commander of a crew of a civil aircraft, must be accompanied by an official document indicating the number of seats making up the diplomatic mail and consular bag.

Diplomatic and consular couriers can transport goods for personal use across the customs border of the Union on the basis of reciprocity with respect to each individual state with exemption from customs inspection and without payment of customs duties and taxes in accordance with the laws of the Member States.

Consider the example of the Treaty on the EAEU and the Treaty on the EAEU Customs Code and other “customs” privileges.

The EAEU Agreement stipulates that in the territory of each of the Member States of the Union, members of the Council of the Eurasian Economic Commission (hereinafter referred to as the EEC), members of the EEC Board, judges of the EAEU Court, as well as officials and employees of the EEC and the EAEU Court enjoy social guarantees, privileges and immunities necessary for the exercise of their powers and official duties (Balytnikov, Boklan 2015). The scope of such privileges is established in the appendix to the Treaty on the EAEU in the form of a separate Regulation on social guarantees, privileges and immunities in the EAEU (hereinafter referred to as the Regulation)<sup>4</sup>. Only a few points enshrined in the Regulation are highlighted because, to a greater extent, they deal with privileges and immunities that are not related to customs regulation and therefore are not considered in detail in this article.

In Section III of the Regulation, there is a reference, regarding the application of privileges and immunities under the 1961 Convention, to members of the EEC Board and judges of the EAEU Court if they are not citizens of the host country. In terms of customs regulation, there are the following arrangements: 1) with regard to the privileges and immunities of the Union, objects and other property intended for official use by the bodies of the Union are exempted from customs duties, taxes and customs duties in the territories of the Member States; 2) with regard to privileges and immunities to representatives of states (fulfilling official functions)<sup>5</sup>, it is envisaged that the bag and hand luggage be exempted from customs inspection while traveling to the venue organized by the bodies of the Union on the territories of the Member States. At the same time, the same requirement is contained in the Vienna conventions: if there is no serious reason to suppose that they contain objects and other property not intended for official or personal use, or the

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<sup>4</sup> EAEU Treaty. Appendix 32. Regulation on social guarantees, privileges and immunities in the Eurasian Economic Union of 05.29.2014 as amended from 04.11.2017.

<sup>5</sup> “Representatives of member states” — heads and members of delegations sent by member states to meetings of bodies of the Union and to events held within the Union.



import or export of objects and other property which is prohibited or limited by law of the Member State in whose territory the event takes place. However, there are no references to “quarantine laws and regulations” (Article 36 of the Vienna Convention of 1961, Article 50 of the Vienna Convention of 1963), “to the permitting procedure for importing and/or exporting... goods to which sanitary, veterinary and sanitary and quarantine phytosanitary measures, and radiation requirements” (Article 298 of the EAEU Customs Code) are applicable. The question arises, how justified is the provision to the above representatives of the EAEU member states with more freedom or broad privileges when transporting luggage and hand luggage in comparison with diplomatic agents and their families, as well as consular officers and their families?

Using the example of the EAEU Customs Code, the specific rules are analyzed that, as indicated earlier, host countries can apply when importing/exporting items by diplomatic agents and their families, as well as consular officers and members of their families. They may be prohibited from import/export or subject to quarantine laws and regulations, as indicated in Article 36 of the Vienna Convention of 1961 and Article 50 of the Vienna Convention of 1963.

The EAEU Customs Code, which entered into force on January 1, 2018, establishes provisions regarding benefits in relation to the movement of goods by certain categories of citizens. Chapter 42 of the EAEU Customs Code is devoted to these issues.

Based on the fact that the territories of the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation, who are members of the EAEU, constitute a single customs territory, we emphasize once again that the EAEU TC is the same for all states included in this international economic integration organization having international legal personality (Alimbekov, Madumarov, Pech 2017).

The EAEU Customs Code establishes a list of categories of persons with respect to whom a special procedure is provided for the movement of goods across the customs border of the Union:

- for official use by diplomatic missions and consular posts;
- representations of states at international organizations;
- international organizations or their representative offices enjoying privileges and/or immunities in accordance with international treaties of member states with a third party and international treaties between member states;
- other organizations or their representative offices located in the customs territory of the Union.

In addition, rules are established for goods for personal use by certain categories of individuals enjoying privileges and/or immunities in accordance with international treaties of member states with a third party and international treaties between member states.

In order to arrange goods intended for official use by diplomatic missions and consular posts, international organizations or their missions, missions of states to international organizations, other organizations or their missions located in the customs territory of the Union, it is necessary to use the appropriate special customs procedure. It applies to certain categories of foreign goods and goods of the Union that, according to which such goods move across the customs border of the Union, are and/or are used in the customs territory of the Union or outside it without paying customs duties, taxes, special, anti-dumping,

compensation duties subject to the conditions for placing goods under this customs procedure and/or their use in accordance with such a customs procedure (Bricheva 2017). As you can see, this is not only customs duties, taxes and related charges, which are discussed in the Vienna conventions of 1961 and 1963, but also their types and subspecies.

A special customs procedure is applied to certain categories of goods and coincides with the list enshrined in Article 62 of the Vienna Convention of 1963.

The EAEU Customs Code establishes the conditions for the movement of goods across the customs border of the Union by the heads of diplomatic missions, consular posts, members of the diplomatic staff of diplomatic missions, consular officials of consular posts, as well as members of their families.

At the same time, tax exemptions and customs exemptions apply only to those officials and members of their families who are not citizens of the host state. This is quite justified, because the host state is not interested in providing special privileges to its citizens (Nagieva 2012).

There are a number of differences in the articles related to exemption from customs duties and inspection.

Thus, the heads of diplomatic missions and consular posts, members of the diplomatic staff of diplomatic missions and consular officials of consular posts, if they do not reside permanently in a member state that is a receiving state and are not citizens of such a member state, as well as those living with them or members of their families, if they are not citizens of a Member State that is a host State, shall have the right: 1) to import vehicles for personal use on the customs territory of the Union with exemption from customs duties and taxes for the period of granting privileges to such persons in the receiving state, as well as other goods for personal use, including goods for initial acquisition; 2) to export goods for personal use from the customs territory of the Union without paying customs duties.

As can be seen from the list, legislators separately emphasized the possibility of import/export of vehicles, which are described in the Vienna Conventions of 1961 and 1963.

The Vienna Convention of 1963 indicates the possibility of duty-free importation of items intended for personal use by a consular officer or members of his family living with him, including items intended for his acquisition. It is noted that the quantity of consumer goods should not exceed the quantity necessary for direct consumption by relevant persons. From the point of view of customs regulation, this means that goods imported without payment of customs duties should be consumed by persons themselves following protection of diplomatic immunity, and not be intended as goods for possible resale or transfer to other persons.

In addition, the 1963 Vienna Convention separately discusses the privileges of consular employees, to whom they are granted only in respect of items imported during their initial acquisition.

There are no restrictions or separate conditions on the quantity of such goods in the EAEU Customs Code. Thus, Union law provides a more preferential procedure for the movement of goods by this category of persons than the 1963 Vienna Convention.

These privileges do not apply to the following persons when moving goods across the customs border of the Union: 1) honorary consular officers and members of their families; 2) consular officers working in consular posts headed by honorary consular officers and members of their families.

Issues of exemption from customs duties in relation to consular posts headed by honorary consular officials are regulated in Article 62 of the Vienna Convention of 1963 and allow the import items for official use with exemption from customs payments, such as emblems, flags, signs, seals and stamps, books, official printed matter, office furniture, office equipment and other similar items received by the consular post from the represented state (Khachaturian 2014).

It is important to also address the inspection of a personal bag. While the Vienna Convention of 1961 mentions a diplomatic agent, and his family in a separate article, being exempt from bag inspection, the Vienna Convention of 1963 refers to the personal bag of consular officers and members of their families living with them, those who accompany these individuals. There is no such phrase as “accompanying these persons” in the 1961 Vienna Convention.

In accordance with the provisions of Article 36 of the Vienna Convention of 1961 and Article 50 of the Vienna Convention of 1963, the EAEU Customs Code establishes that goods for personal use transported across the customs border of the Union in accompanied and/or unaccompanied bag by heads of diplomatic missions, members of diplomatic staff of diplomatic missions, if they do not reside permanently in a Member State that is the receiving State and are not citizens of such a Member State, as well as members of their family living with them if they are not citizens of the Member State that is the receiving state are exempted from customs inspection in the absence of serious reasons to assume that such bag contains goods in respect of which import and/or export bans are introduced or the import authorization procedure is applied and/or the export of such goods, as well as to which sanitary, veterinary, sanitary and quarantine phytosanitary measures (Balytnikov, Boklan 2015; Shumilov, Boklan, Lifshits 2015) and radiation requirements are applied. Customs inspection of such goods should be carried out only in the presence of these persons or their representatives.

It should be noted that the EAEU Customs Code specifies that the goods transported should comply not only with the “quarantine laws and rules” of the host country, but with “sanitary, veterinary, sanitary, quarantine phytosanitary measures”. In addition, a requirement was made for the conformity of imported goods with radiation requirements, which are not found in the Vienna Conventions of 1961 and 1963. It is also emphasized that a number of goods (for example, specific) may not be prohibited from import/export, but may require permission from the competent authorities.

Since a single customs regulation is carried out on the territory of the EAEU, the prohibition or restriction on the import and export of goods is regulated at the supranational level — within decisions of the Eurasian Economic Commission (Vorontsova 2014). For example, the Board of the Eurasian Economic Commission determined goods prohibited or restricted from moving across the customs border of the Eurasian Economic Union in terms of compliance with non-tariff regulation measures, which contains 23 appendices. One of them contains a list of goods in respect of which there is a ban on the import into the customs territory of the EAEU and/or export from the customs territory of the EAEU<sup>6</sup>.

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<sup>6</sup> Appendix No. 1 to the Decision of the Board of the Eurasian Economic Commission dated April 21, 2015 No. 30, as amended by Decisions of the Board of the Eurasian Economic Commission dated 06.10.2015 No. 131, dated 08.30.2016 No. 99, dated 11.15.2016 No. 145, dated January 16, 2017 No. 2, dated June 13, 2018 No. 100.

Similar customs privileges and requirements are contained in relation to goods for personal use, transported across the customs border of the Union in an accompanied and/or unaccompanied bag by the heads of consular posts and other consular officials of consular posts.

Members of the administrative and technical personnel of diplomatic missions and members of their families living with them, consular officers of consular posts and members of their families, if they do not reside permanently in a Member State that is a receiving State and are not citizens of such a Member State, are entitled to:

- import into the customs territory of the Union for the initial acquisition with exemption from customs duties and taxes: vehicles for personal use for the period of granting such persons privileges in the host country, confirmed in accordance with the laws of that state; other goods for personal use;
- to export goods for personal use from the customs territory of the Union without paying customs duties.

Employees of the consular staff, as well as members of their families, if they do not reside permanently in the Member State that is the receiving state, are entitled to import vehicles for personal use into the customs territory of the Union for the period of granting such persons privileges in the receiving state, confirmed in accordance with the legislation of this state, and other goods for personal use with exemption from customs duties and taxes if this is provided for by international treaties of the Member States with the third party or international agreements between the Member States.

Thus, Article 299 of the EAEU Customs Code fully complies with the provisions enshrined in Article 37 of the Vienna Convention of 1961 and Article 50 of the Vienna Convention of 1963.

The EAEU Customs Code notes that if the international treaties of the Member States provide for a greater amount of privileges and immunities than that provided for in the EAEU Customs Code, then such persons are granted the amount of privileges and immunities provided for by such international treaties of the states with respect to goods moving across the customs border of the Union — Members with a third party and international treaties between Member States.

An interesting feature of the EAEU law is the provision of “customs” privileges to a number of officials, representatives of precisely the EAEU member states. Moreover, such benefits are not registered in the EAEU Customs Code, but are regulated by a decision of the Council of the Eurasian Economic Commission (the decisions of the ECE Council are included in the law of the Union). These benefits relate to the head of the diplomatic mission of a member state of the EAEU located outside the customs territory of the Union, a member of the diplomatic and administrative and technical staff of the diplomatic mission of a member state located outside the customs territory of the Union, the head of the consular post and other consular officer of the consular post of the state a member located outside the customs territory of the Union, a consular employee of a consular post Member State located outside the customs territory of the Union, an employee of a representative of a Member State at an international organization located outside the customs territory of the Union (hereinafter referred to as employees, a foreign institution), as well as family members accompanying the employee outside the customs territory of the Union. They can import into the customs territory of the Union independently by any means

with exemption from customs duties and taxes, regardless of the cost and weight of goods for personal use (except vehicles for personal use and bodies of vehicles for personal use) or for an employee or a member of his family. Such goods may be imported by another person acting on behalf of the employee or member of his family, in an accompanied and/or unaccompanied bag. In this case, a number of conditions must be observed.

Firstly, goods for personal use (with the exception of vehicles for personal use and bodies of vehicles for personal use) are imported no more than 1 time per calendar year within the period of an employee's work in an overseas institution upon presentation: by an employee or a member of his family — issued in accordance with the legislation of the member state of a document certifying the status of such an employee or a member of his family and confirming that during the current calendar year, such an employee or a member of his family did not import goods for personal use into the customs territory of the Union with exemption from customs duties and taxes. These actions can be performed by another person acting on behalf of an employee or a member of his family if the following documents are available: a document issued in accordance with the legislation of the Member State certifying the status of such an employee or member of his family and confirming that during the current calendar years, such an employee or a member of his family did not import goods for personal use into the customs territory of the Union with exemption from customs duties and taxes; a notarized inventory of goods for personal use, compiled by an employee or member of his family; a notarized power of attorney for import and customs operations related to the customs declaration of goods for personal use belonging to an employee or a member of his family.

Secondly, goods for personal use (with the exception of vehicles for personal use and bodies of vehicles for personal use) are imported in connection with the termination of the employee's work in an overseas institution, including a transfer for work in another state or early recall, upon presentation: by an employee or a member of his family require a document issued in accordance with the legislation of a Member State certifying the status of such an employee or a member of his family and confirming the termination of work of such an employee at a previous institution; by another person acting on behalf of an employee or a member of his family require the following documents: a document issued in accordance with the laws of the Member State certifying the status of such an employee or a member of his family and confirming the termination of the work of such an employee in a foreign institution; notarized inventory of goods for personal use, compiled by an employee or member of his family; a notarized power of attorney for import and customs operations related to the customs declaration of goods for personal use belonging to an employee or a member of his family.

Goods belonging to the employee for personal use (with the exception of vehicles for personal use and bodies of vehicles for personal use) may be brought by the carrier to a family member of such an employee if such importation cannot be carried out by the employee on his own because of his death, serious illness or for another objective reason, subject to the submission of the following documents:

- a document certifying the statute issued in accordance with the laws of the Member State with staff confirming the death, serious illness or other objective reason;
- an inventory of goods for personal use, signed by the head of the overseas office.

An individual of a Member State who is sent to work (for service) in a foreign state by the state bodies of the Member States may bring into the customs territory of the Union in an accompanied and/or unaccompanied bag with exemption from customs duties and taxes, goods for personal use (with the exception of vehicles for personal use and bodies of vehicles for personal use), subject to the following conditions:

- the duration of stay in a foreign city of the state lasted at least 11 months;
- the import of such goods is carried out no more than 1 time per calendar year during the period of stay in such a foreign country, including upon return to a Member State in connection with the termination of work (service);
- documents issued in accordance with the legislation of the Member State confirming, in accordance with the legislation of the Member State, the fact and duration of work (service) in a foreign state are presented.

### 3. Conclusions

Thus, completing the legal analysis of the provisions of international legal acts regarding privileges and immunities (regarding customs regulation) to certain categories of people, and when moving diplomatic mail and the consular bag as well as the ratio of their provisions with the EAEU law, the author comes to the following conclusions.

In general, the rules of international law apply in the framework of the EAEU, in particular, the provisions of the Vienna Convention of 1961 and the Vienna Convention of 1963. However, the rules of the EAEU related to customs regulation have a number of the following features.

The author notes that despite the fact that in acts relating to Union law the concepts of “privileges”, “immunities”, “privileges” are used, an official concept of these categories is not presented. Noting that until 2017 the concept of “customs privileges” was used, it is proposed to nevertheless make the necessary changes to the Agreement on the EAEU Customs Code, taking into account the special status of privileges in customs regulation.

For the clearance of goods in relation to certain categories of foreign goods and goods of the Union, in accordance with which such goods move across the customs border of the Union, they are located or used on the customs territory of the Union or outside it without paying customs duties, taxes, special, anti-dumping, countervailing duties (subject to the conditions for placing goods under this customs procedure), a special customs procedure is applied.

Unlike the Vienna Convention of 1961 (Article 36) and the Vienna Convention of 1963 (Article 50), a diplomatic agent and consular officials and their families may be brought into the Union territory with exemption from customs duties on the territory of the Union, taxes, items intended for official use as well as vehicles for personal use for the period of granting such privileges in the host state confirmed in accordance with the laws of that state.

Article 298 of the EAEU Customs Code contains another advantage over the 1963 Vienna Convention. The EAEU Customs Code does not establish restrictions on the amount of duty-free import of items intended for personal use by a consular officer or members of his family living with him, including items intended for his acquisition.



In addition, there is a difference in the provision of immunity from customs inspection of the luggage of these persons in the absence of serious grounds for assuming that such luggage contains goods for which import/export bans are introduced or these goods are subject to quarantine laws and regulations. This list in the EAEU Customs Code has been expanded and provides for the possibility of restricting the import/export of such goods if a permissive procedure for their import/export has been established with respect to them. In addition, the concept of “quarantine laws and regulations” is used in a somewhat expanded wording as “sanitary, veterinary and sanitary and quarantine phytosanitary measures, and radiation requirements”.

There is also a situation that is not apparent at first glance in the EAEU Customs Code, but which is important for customs regulation. This is the possibility of duty-free export of goods for personal use from the customs territory of the Union. The Vienna Convention of 1961 and the Vienna Convention of 1963 refer to the import of these items, and export only to the personal bag of a diplomatic agent or consular officials and their families. In customs terms, personal bag, and according to the terminology of the EAEU Customs Code “goods for personal use”, includes hand luggage moved across the customs border of the Union upon the actual entry of an individual into the customs territory of the Union or his departure from the customs territory of the Union. As for the export of goods for personal use by the indicated persons, but not physically by the persons themselves, but in unaccompanied bag (i. e., actually separately), as well as by shipment in international mail or in any other way, this option is provided without paying customs duties namely in the EAEU Customs Code.

The EAEU member states provided greater freedom and extended privileges to state representatives in carrying out official functions when moving luggage and hand luggage, practically without any conditions, unlike diplomatic agents and their families as well as consular officers and their families. Whereas Article 36 of the Vienna Convention of 1961 and Article 50 of the Vienna Convention of 1963, when moving such items, the requirement was established that they should not be prohibited for import or export or regulated by quarantine laws and regulations. The EAEU Customs Code complements this list in relation to other categories of persons falling under a similar special procedure with the possibility of having a permit order for the import and/or export of goods to which sanitary, veterinary and sanitary and quarantine phytosanitary measures are applied, and radiation requirements.

Thus, noting the partially extensive use of the provisions of the Vienna Convention of 1961 and the Vienna Convention of 1963 in the Treaty on the EAEU Customs Code, with regard to “customs privileges” for diplomatic agents and consular officials and members of their families, it can be concluded that they do not infringe upon the privileges of these persons by providing wider benefits.

The author confirms that the data presented does not contain a conflict of interest.

## References

- Alimbekov, Aidos, Eldar Madumarov, Gerald Pech. 2017. “Sequencing in Customs Union formation: Theory and application to the Eurasian Economic Union”. *Journal of Economic Integration* 32 (1): 65–89.
- Ashman, Allan. 1979. “International law... diplomatic immunity”. *American Bar Association Journal* 65 (12):

1849–1850.

- Balytnikov, Vadim V., Daria S. Boklan. 2015. "Eurasian Economic Union: Prerequisites for creation, problems of formation, development prospects". *Sravnitel'noe konstitutsionnoe obozrenie* 3: 69–81. (In Russian)
- Barker, Craig J. 2012. "The function of diplomatic missions in times of armed conflict or foreign armed intervention". *Nordic Journal of International Law* 81 (4): 387–406.
- Blishchenko, Igor P., Vsevolod N. Durdenevsky. 1962. "The concept of diplomatic immunity". *Jurisprudentsiia* 4: 120–127. (In Russian)
- Bobylev, Gennady V., Amina A. Nagieva. 2012. "On the theoretical basis of diplomatic immunities and privileges". *Sootnoshenie norm mezhdunarodnogo prava i norm natsional'nogo zakonodatel'stva: Aktual'nye problemy mezhdunarodnogo prava: Mezhdunarodnyi sbornik nauchnykh trudov*, 106–115. Ekaterinburg, Ural State Law Academy Publ. (In Russian)
- Bricheva, Elena N. 2017. "Tasks of the EEC at a new stage". *Tamozhennoe regulirovanie. Tamozhennyi kontrol'* 3: 3–9. (In Russian)
- Chistokhodova, Irina A. 2005. "Theoretical grounds for the justification of diplomatic privileges and immunities". *Vestnik RUDN* 1: 116–123. (In Russian)
- Degterev, Denis A. 2014. "Decision-making mechanisms in international organizations and collective supranational bodies". *Vestnik of Saint Petersburg University. Law* 1: 88–96. (In Russian)
- Demin, Yuri G. 1995. *Status of diplomatic missions and their personnel*. Moscow, Mezhdunarodnye otnosheniia Publ. (In Russian)
- Elgavish, David. 2000. "Did diplomatic immunity exist in the Ancient Near East?" *Journal of the History of International Law* 2 (1): 73–90.
- Fedele, Dante. 2016. "The renewal of early-modern scholarship on the ambassador: Pierre Ayrault on diplomatic immunity". *Journal of the History of International Law* 18 (4): 449–468.
- Ilyin, Yuri D. 1969. *The main trends in the development of consular law*. Moscow, Iuridicheskaiia literatura Publ. (In Russian)
- Iskevich, Irina S., Belov, Andrey S. 2015. "Legal analysis of the institution of consular privileges and immunities". *Voprosy sovremennoi iurisprudentsii: Sbornik statei po materialam XLVII mezhdunarodnoi nauchno-prakticheskoi konferentsii*, 52–56. Novosibirsk, Sibac Publ. (In Russian)
- Jerotievich, Dushan, Zoran Jerotievich. 2018. "Privileges, privileges and immunities of representatives of international organizations and international officials." *Iuridicheskii vestnik Samarskogo universiteta* 1: 47–53. (In Russian)
- Kadyrkulov, Mukai A., Sergei V. Mozer. 2018. *Improvement of instruments of customs administration: International and legal aspect (The Revised Kyoto Convention Management Committee)*. Moscow, Rossiiskaia tamozhennaia akademiia Publ. (In Russian)
- Khachatryan, V.S. 2014. "Comparative legal analysis of the status of honorary consular institutions of states". *Transportnoe delo Rossii* 3: 88–89. (In Russian)
- Khalipov, Sergey V. 2017. "Customs incentives in the law of the Eurasian Economic Union and in the legislation of the Russian Federation". *Rossiiskii ekonomicheskii vestnik* 4: 107–113. (In Russian)
- Levin, David B. 1949. *Diplomatic immunity*. Moscow, Leningrad, Akademiia Nauk SSSR Publ. (In Russian)
- Milhaupt, Curtis. 1988. "The scope of consular immunity under the Vienna Convention on consular relations: Towards a principled interpretation". *Columbia Law Review* 88 (4): 841–862.
- Nagieva, Amina A. 2012. "The legal status of international regional organizations in the territory of the CIS member states". PhD diss., Moscow State Institute of International Relations (MGIMO University). (In Russian)
- Ozhegov, Sergei I., Nataliia Iu. Shvedova. 1999. *Explanatory dictionary of the Russian language*. Moscow, Azbukovnik Publ.
- Rostovtsev, Mikhail. 2013. "International relations and international law in the ancient world". *Vestnik of Saint Petersburg University. Law* 4: 67–84. (In Russian)
- Safronova, Elena V., Olga A. Lavrishcheva. 2015. "The birth of the Russian doctrine of consular immunities and privileges". *Izvestiia Iugo-zapadnogo universiteta* 5 (66): 14–20. (In Russian)
- Shagapova, Chulpan I. 2016. "Some questions about consular institutions, their immunities and privileges". *Science time* 12 (36): 749–755. (In Russian)
- Shumilov, Vladimir M., Daria S. Boklan, Ilya M. Lifshits. 2015. "Legal novels of the Treaty on the Eurasian

- Economic Union”. *Rossiiskii vneshneekonomicheskii vestnik* 3 (106): 69–82. (In Russian)
- Sucharitkul, Sompong. 2005. “Jurisdictional immunities in contemporary international law from Asian perspectives”. *Chinese Journal of International Law* 4 (1): 1–43.
- Vorontsova, Natalya A. 2004. “The Eurasian Economic Community as an international organization”. *Vneshneekonomicheskii biulleten’* 6: 3–11. (In Russian)
- Vorontsova, Natalya A. 2014. “Legal analysis of the provisions of the Treaty on the Eurasian Economic Union”. *Moskovskii zhurnal mezhdunarodnogo prava* 4: 78–87. (In Russian)
- Zabyelina, Yuliya. 2013. “The untouchables: Transnational organized crime behind diplomatic privileges and immunities”. *Trends in Organized Crime* 16 (3): 343–357.

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