

Annex 15

Act of 31 October 2002 containing provisions concerning the legal
personality, privileges and immunities of the High Commissioner on
National Minorities

(Unofficial translation of the HCNM Wet of 31 October 2002, as published in the Staatsblad 2002, 580)

Act of 31 October 2002 containing provisions concerning the legal personality, privileges and immunities of the High Commissioner on National Minorities (HCNM Act)

We Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that it is desirable to invest the High Commissioner on National Minorities, being an agency of the Organisation for Security and Cooperation in Europe, with legal personality, and to confer on this agency and its officials privileges and immunities to further their independence in the performance of their duties, and that it is necessary to establish statutory provisions to this end;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Section 1
Definitions

1. The following definitions shall apply in this Act:

- a) HCNM: the High Commissioner on National Minorities in The Hague, in its capacity as an agency operating under the auspices of the Organisation for Security and Cooperation in Europe;
- b) OSCE: the Organisation for Security and Cooperation in Europe;
- c) High Commissioner: the High Commissioner on National Minorities in his capacity as head of the HCNM;
- d) officials of the HCNM: persons in the service of the OSCE who are responsible for carrying out activities for the HCNM within the framework of fulfilling the HCNM's official

functions, including the High Commissioner, with the exception of personal servants, staff hired locally and paid on the basis of an hourly rate, experts and interns;

e) official functions: the tasks and activities deriving from the HCNM's mandate as laid down by the OSCE;

f) experts: persons other than HCNM or OSCE officials, agency staff, or interns, who perform work for the HCNM, or for the OSCE at the HCNM, as instructed by the OSCE or HCNM;

g) Officials of the OSCE: persons in the service of the OSCE who are not officials of the HCNM, agency staff, or interns;

h) buildings: building or part of a building used by the HCNM in the exercise of its official functions;

i) premises: premises or part of premises used by the HCNM in the exercise of its official functions;

j) records: all files, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings and other information carriers owned by or in the possession of the HCNM or one of its officials in connection with the exercise of its official functions;

k) family members: the spouse or registered partner of an official of the HCNM, the official's children aged under eighteen, and his/her children aged eighteen and older provided they formed part of the official's family prior to his/her first entry into the Netherlands and still form part of this family, and that they are unmarried, financially dependent on the HCNM official, and attending education in the Netherlands;

l) Our Minister: our Minister of Foreign Affairs;

2. Our Minister may designate as family members, for the purposes of this Act, persons other than those referred to in subsection 1 (k), if the application of this clause as it stands would result in a substantial injustice.

Section 2

Legal Personality

1. The HCNM shall possess legal personality.

2. For the purposes of this Act, the OSCE shall be regarded as an organisation constituted under international law of which the HCNM is part. The privileges and immunities included in this Act shall be applied in the same way as the privileges and immunities conferred on other organisations constituted under international law that have their seat in the Netherlands or on parts of such organisations.

Section 3

Inviolability of buildings and premises

1. Buildings and premises shall be inviolable.
2. It shall be forbidden to enter the buildings or premises without the consent of the High Commissioner.
3. The provisions of subsections 1 and 2 of this section shall not apply in the event that:
 - a) immediate action is required to extinguish a fire; or
 - b) there is an acute danger to a person's life or to property such that consent cannot be obtained in time.
4. Jurisdiction shall be exercised within the buildings or on the premises only with the High Commissioner's prior consent and with due observance of the provisions he has formulated in this regard.
5. The High Commissioner shall ensure that the buildings and premises belonging to the HCNM are not used to offer protection to anyone who:
 - a) is evading arrest on the basis of a Dutch law;
 - b) is attempting to escape from the exercise of jurisdiction; or
 - c) is wanted by the Dutch authorities for extradition or deportation to another state.

Section 4

Communication

1. The HCNM may communicate freely and without the need for special consent for all

official purposes.

2. The HCNM is entitled to use codes and to send and receive official correspondence and other official communications by courier or in sealed bags, in respect of which the same privileges and immunities apply as in the case of diplomatic couriers and bags, as referred to in the Vienna Convention on Diplomatic Relations and the attached Protocols (Dutch Treaty Series 1962, 101 and 159).

3. Where communication for official purposes is concerned, the HCNM shall enjoy no less favourable treatment than that accorded by the Kingdom of the Netherlands to other international organisations.

4. All communications sent to or by the HCNM, regardless of the medium used, shall be inviolable.

Section 5

Goods

All goods to which the HCNM has lawful title in the framework of the exercise of its official functions, wherever these may be and whoever may have custody of them, shall be immune from search, revendication, criminal or civil attachment, confiscation, expropriation and requisition.

Section 6

Records

The records shall be inviolable.

Section 7

Immunity from jurisdiction

Within the framework of the exercise of its official functions, the HCNM shall enjoy

immunity from all forms of jurisdiction, with the exception of:

- a) special cases in which the OSCE Chairman-in-Office has expressly waived this immunity;
- b) a civil action brought by a third party for damage resulting from an accident caused by a vehicle that is the property of, or was being driven on behalf of, the HCNM, if the damage is not recoverable under the terms of an insurance policy;
- c) a civil action relating to a death or personal injury caused by an act or omission on the part of the HCNM or one of its officials.

Section 8

Exemption from taxes and dues

1. Within the framework of the exercise of its official functions, the HCNM and its property shall be exempt from all direct taxation levied at national, provincial or local level;
2. Within the framework of the exercise of its official functions, the HCNM shall be exempt from:
 - a) import duties;
 - b) motor vehicle tax;
 - c) car and motorcycle tax;
 - d) value added tax imposed on goods and services involving considerable expenditure or a continuous effort;
 - e) excise duties incorporated into the price of alcoholic beverages and motor fuel;
 - f) energy tax;
 - g) conveyance duty;
 - h) insurance premium tax.
3. The exemptions listed in subsections 2d, 2e, 2f, 2g and 2h may be awarded in the form of a tax refund, in accordance with or pursuant to statutory regulations.
4. Goods that have been acquired or imported tax-free pursuant to this section may not be sold, presented as gifts or disposed of in any other way, other than by duly observing the conditions and restrictions laid down by Our Minister of Finance.

Section 9

Exemption from restrictions on financial assets

The HCNM shall not be liable to financial inspection, regulations, notification requirements regarding financial transactions, or moratoria of any kind, and may freely, in the exercise of its official functions:

- a) purchase, possess and dispose of all currencies through the proper channels;
- b) maintain bank accounts in any foreign currency whatsoever;
- c) purchase, possess and dispose of funds, securities and gold through the proper channels;
- d) transfer its funds, securities, gold and foreign currencies to or from the Netherlands, and change foreign currencies in its possession into any other currency;
- e) raise funds in any manner it sees fit, on the understanding that the consent of Our Minister of Finance shall be required for fundraising in the Netherlands.

Section 10

Privileges and immunities of HCNM officials, OSCE officials, and experts

1. HCNM officials shall enjoy, with a view to the independent exercise of their official functions, the following privileges and immunities:

- a) immunity from arrest or detention, and from the inspection or seizure of their official luggage, unless there are serious grounds for suspecting that a criminal offence has been committed for which pre-trial detention may be imposed. In the event of a situation of this kind, the High Commissioner shall immediately be informed of the matter by or on behalf of Our Minister. No investigation shall be conducted other than in the presence of the HCNM official concerned or of a person authorised to represent him;
- b) immunity from all jurisdiction in relation to the words spoken or written by them, and actions committed by them, in the exercise of their official functions;
- c) exemption from salaries and income tax on salaries and emoluments paid to them directly or indirectly on the basis of their employment by the OSCE; the income thus exempted shall be left out of consideration in determining the tax payable on income from other sources;

- d) exemption from all entry restrictions and alien registration requirements relating to themselves and their dependent family members;
- e) the same protection and repatriation activities in relation to themselves and their dependent family members as apply to similarly ranking staff of diplomatic missions in the Netherlands in international crises;
- f) the tax-free import of one passenger car for private use, provided that less than ten years have elapsed since the official's first appointment in the Netherlands; the exemption shall not apply to officials who possess Dutch nationality or who are permanent residents of the Netherlands.

2. The High Commissioner shall enjoy the same privileges and immunities as those awarded to the head of a diplomatic mission in accordance with the Vienna Convention on Diplomatic Relations concluded on 18 April 1961 and the attached Protocols (Treaty Series 1962, 101 and 159).

3. HCNM officials on grade P5 or above shall enjoy the same privileges and immunities as those awarded to diplomatic staff in accordance with the Vienna Convention on Diplomatic Relations concluded on 18 April 1961 and the attached Protocols.

4. Officials of the OSCE and experts shall enjoy the following privileges and immunities, inasmuch as necessary for the effective exercise of their official duties, including journeys undertaken in that framework and their presence in the buildings or on the premises of the HCNM:

- a) immunity from all jurisdiction in relation to the words spoken or written by them, and actions committed by them, in the exercise of their official functions, which immunity shall continue to apply when the officials of the OSCE or experts are no longer working as such, when they are travelling in the exercise of their official duties, or are present in the buildings or on the premises of the HCNM;
- b) inviolability of all papers, documents and other official material;
- c) immunity from arrest or detention, and from the inspection or seizure of their official luggage, unless there are serious grounds for suspecting that a criminal offence has been committed for which pre-trial detention may be imposed;
- d) the right to use codes for all communications with the HCNM or OSCE and to send and

receive official correspondence and other official communications by courier or in sealed bags;

e) the same protection and repatriation activities as apply to similarly ranking staff of diplomatic missions in the Netherlands in international crises;

f) exemption from all entry restrictions and alien registration requirements, and the provision of visas, where required, free of charge.

5. Immunity from all jurisdiction shall not extend to:

a) road traffic offences committed by an HCNM official, an OSCE official, or an expert;

b) a civil action brought by a third party because of damage resulting from an accident caused by a vehicle that is the property of, or was being driven by or on behalf of an HCNM official, an OSCE official, or an expert.

Section 11

Supplementary provisions relating to privileges and immunities

1. The Secretary General of the OSCE shall waive the immunity of the relevant HCNM and OSCE officials and of experts in circumstances in which he is of the opinion that this immunity would obstruct the course of justice, and in all cases in which it is possible to waive this immunity without undermining the purpose for which it was granted.

2. In the case of the High Commissioner, the decision to waive immunity as referred to in subsection 1 of this article shall be made by the Chairman-in-Office of the OSCE.

3. The HCNM and OSCE shall cooperate at all times with the competent Dutch authorities to facilitate the proper administration of justice and to prevent any abuse by HCNM or OSCE officials of the privileges and immunities granted under the provisions of this Act.

Section 12

Social security

1. In the event that the OSCE has a social security system of its own, comparable to the Dutch system, or participates in a social security scheme comparable to the Dutch system,

the HCNM, its officials and other employees covered by the said system shall be exempt from Dutch social security provisions, unless the officials and other employees covered by the said system perform paid employment in the Netherlands other than that arising from their aforementioned position.

2. Subsection 1 shall apply *mutatis mutandis* to family members who are part of the household of persons referred to in subsection 1, unless they are employed, in the Netherlands, by an employer other than the OSCE, work in a self-employed capacity, or receive benefit under the terms of the Dutch social security system.

Section 13

Employment of family members

1. Family members forming part of the household of an HCNM official shall be permitted to take salaried employment during the term of office of the HCNM official concerned.

2. Persons in salaried employment as referred to in subsection 1 shall not enjoy any immunity from criminal, civil or administrative jurisdiction in the framework of these activities.

3. Dutch law shall be applicable to persons in employment within the meaning of subsection 1. These persons shall likewise be governed by Dutch social security legislation.

Section 14

Notification

The HCNM shall immediately notify Our Minister of:

- a) the appointment of a High Commissioner or of any other HCNM official, of their arrival and final departure, and of the termination of their positions at the HCNM;
- b) the arrival and final departure of family members forming part of the household of the persons referred to in point (a), and, where applicable, of the fact that a person no longer forms part of the household;
- c) the arrival and final departure of private servants of the persons referred to in point (a)

and, where applicable, the termination of the employment relationship between them and the persons referred to in point (a).

Section 15
Identity papers

Our Minister shall provide identity cards displaying the holder's photograph to:

- a) the High Commissioner;
- b) other HCNM officials;
- c) the family members of HCNM officials who form part of their household, with the exception of family members who possess Dutch nationality or who are permanent residents of the Netherlands;
- d) the private servants of HCNM officials.

This identity card shall serve to establish the holder's identity to all competent Dutch authorities.

Section 16
Supplementary privileges and immunities

By order in council, privileges and immunities may be conferred, supplemental to this Act, on the HCNM and the persons mentioned in sections 10 to 13 inclusive, if there is good reason to do so in order to guarantee treatment comparable to that of other organisations constituted under international law, or branches of such organisations, that have their seat in the Netherlands.

Section 17
Entry into force

This Act shall enter into force on a date to be determined by royal decree.

Section 18
Title

This Act may be cited as the HCNM Act.

We order and command that this Act shall be published in the Bulletin of Acts and Decrees and that all ministries, authorities, bodies and officials whom it may concern shall diligently implement it.

The Minister of Foreign Affairs