



Analysis o Consular Affairs under the Vienna Convention (1963)

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Abstract: Consular relations are based on the Vienna Convention on Consular Relations, signed on 24 April 1963 and entered into force four years later, in March of 1967. The preamble of the Convention on Consular Relations as content as well as form is very similar to Diplomatic Convention as part stems from it. This Convention is very detailed. It is divided into three chapters: the first chapter deals with consular relations in general and in two other chapters regulate the consular offices are headed respectively by career consuls (chapter two) and they honor (chapter three). This topic will treat the appointment of consuls and the end of their functions, the consular functions and the consular immunity. The method used for the realization of this topic is that of the analysis and case studies.

Keywords: consular relations; convention; immunity; functions; sending state

1. Introduction

Consular relations are based on the Vienna Convention on Consular Relations, signed on 24 April 1963 and entered into force four years later, in March of 1967. The decision for the adoption of the Convention was taken by the General Assembly of the United Nations which in 1961 he decided to be held two years later in Vienna, a codification conference which will continue its work based on the Convention of 1961 on diplomatic relations.

The preamble of the Convention on Consular Relations as content as well as form is very similar to diplomatic convention as part stems from it. It stipulates that the rules of customary international law will regulate matters that are not explicitly rejected by the provisions of this Convention.

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The Vienna Convention of 1963 as it of diplomatic relations establishes bases and consular relations ruining in the principle of mutual consent, which stated in its Article 2. In paragraph 2 of this Article is determined that the agreement on establishing diplomatic relations that includes establishing consular relations, unless otherwise specified in the relevant agreement between the states. While the section 3 of the same article, provided that the termination of diplomatic relations does not have ipso facto result in the termination of consular relations.

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2. The Appointment of Consuls and the end of their Functions

2.1. The Appointment of Heads of Consular Post

Chiefs or heads of consular post, appointed by the sending state, while performing the function is done with the consent of the receiving state. Apart reserves the provisions contained in the convention consular appointment and acceptance formalities chief consular post are determined by the laws, regulations and relevant practice of the sending State and the receiving. General criteria for the appointment of consuls of consular conventions are determined by the nationality of the person, and then the consul should have the nationality of the sending state. However, in its Article 22 stipulates that he may have the citizenship of the receiving state, but only with the consent of the state.

Consular posts may be opened in the territory of the receiving state only with his consent. Between their countries enter into agreements for the establishment of a consulate. Unlike embassies, which just opened in the capital of a state, consular offices can be established in the capitals of provinces or different regions within the state.

Besides approval for opening consular posts in its territory, the receiving State may provide *the agrement*, or to announce a candidate for consul as persona non grata. Sending State after the final appointment, the Consul provides a separate document called a consular patent, or paper patent. This document confirmed the quality of the consular post chief, determined his first and last name, category and class, the consular territory and seat of a consular post. Consul submits patent Foreign

Ministry of the host country, which in turn gives him a special other document, *the ekzekuatura*. This document expresses consent for the performance of functions by the consul. If the state refuses to issue *the ekzekuatura*, he is not obliged to give reasons for its refusal.

With the consent of the receiving State, two or more States may appoint the same person in charge of some consular offices (Claude, 2007, pp. 133-136).

2.2. End of Consular Functions

End of the functions of members of the consular post is also subject to regulation by the Vienna Convention, Article 25 of each, are expressly provided when complete the following functions:

- with the announcement that the sending state makes the receiving state, that these functions have finished;
- the withdrawal of exequatur;
- with notification that the receiving country makes the sending state, that he does not consider the person concerned as a member of the consular staff.

In the first case the sending State can notify the receiving state that has expired the exercise of the functions of the head of a consular post.

The second and the third case refers to the law that the host state at any time and without explanation inform the sending state that certain consular official or any other member of the consular staff is *persona non grata*. This request can be made if the official makes serious violations such as break the laws, interfere in the internal affairs of the state etc. In this case the state accreditation is obliged to revoke it. In case of refusal by the sending State to revoke the person concerned within a reasonable time, the receiving State may withdraw *the ekzekuatura* for the person concerned or not to consider it more as a member of the consular staff.

Receiving country in the event of termination of consular functions due to armed conflict, it should provide time and opportunities to the members of the consulate to leave its territory (Claude, 2007, pp. 139-140).

All that was said above about the termination of diplomatic functions are valid for the completion of those consular.

3. Consular Functions

3.1. Characteristics of Consular Functions

Consular functions envisaged by the Vienna Convention so much detail. However, compared with diplomatic functions they constitute a much narrower circle of tasks. Consuls, being that they are simply its state employees, perform functions only an economic, administrative and notary. When we spoke about the diplomatic representation said that diplomatic representative represents his country in the political, legal and symbolic. Exactly, consul cannot represent the State (Daillier, Pellet, Dihn, 1987, p. 671). Consular representative can conduct diplomatic action only after the consent of the receiving country and mainly in special cases. A case in point is provided in Article 17 of the consular convention which stipulates that if a state has no diplomatic representation in another country, in accordance to this he may impose performing diplomatic functionary to the consular functionary. Consul status in this case is not affected by the performance of these operations. They do not provide to the consular functionary any diplomatic privilege and immunity.

Protecting the interests of the sending state and its nationals in the receiving state, be they natural or legal persons, within the limits permitted by international law, is without doubt the main function of consuls: he protects interests of minors and other persons unable to work, within the limits prescribed by the laws of the receiving state, in particular when to these persons should be appointed guardian or custodian; he must take represent measures or representation of its citizens before the courts and other organs of the receiving state, respecting the practices and procedures in force in this country, when these for various reasons cannot protect their rights; he must help and protect its citizens in case of difficulty, especially when these rights are violated by the host country. In this case consul within its functions he is obliged to tell the person concerned what to do to put in place the violated rights. Also in case of death of its citizens, consul intervenes for the preservation of its assets or to give assistance to the family of this person, if it needs protection.

Great importances have the functions of an administrative nature and notarized. Such functions are performed only if they are not contrary to the laws of the receiving state. So in many cases consulates authorized to issue passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons seeking to travel to the sending state. Also they are authorized to perform marriages, acts adoption; they will preserve their state

citizens etc. In some cases, it is understood when it is expressly provided in the consular convention between the two respective countries, consuls may question witnesses and compile relevant evidence.

The consular offices, as well as diplomatic offices, will care for the development of commercial, economic, cultural and scientific relations between the two countries and in particular will look to preserve friendly relations between them. In connection with the development of these relations, the consul has a duty to inform the government of the sending State and to issue statements to the persons concerned.

In the framework of consular functions we should also mention that consul has the right to control the sea and river vessels that are owned by the sending state, aircraft registered in that State and their crews in accordance with the laws of the State addressed. Consul should also assist ships, planes and their crews in case of accident; to check their documents, and without affecting the competencies of the receiving state, can conduct investigations in the event of an incident occurring during travel to and resolve conflicts arising between the captain and crew, or between them and passengers. All these can be done only with the authorization of the State addressed (Claude, 2007, pp. 140-151).

3.2. Performance of Consular Functions

Consular functions are not performed only by consular posts, but also by the diplomatic mission in accordance with the provisions of the consular convention. For this purpose are created special sections, the so-called consular sections, which consist of employees who perform consular functions in place of the diplomatic or other points where the host country has no special consuls. However, building such sections do not exclude the right of the state to have consulates in other points of the receiving state. It always realized within bilateral agreements (Agostini, 2006, p. 125).

Vienna Convention on Consular Relations provides three separate cases of performing consular functions. These cases are:

1. The performance of consular functions outside the consular (Article 6);
2. The performance of consular functions in a third country (Article 7);
3. The performance of consular functions on behalf of a third State (Article 8);

In the first case the Convention provides that only in certain circumstances and with the consent of the receiving state a consular official can perform its functions outside the consulate.

Sending State after having informed the respective states and have received their consent, authorize its consular office to undertake the performance of consular functions in another state. This is the second case involving the performance of consular functions in a third country.

As for the last case the consular convention provides that after receiving the relevant state registration and only in that it does not object, the consular office of the State addressed may perform consular functions in the receiving State on behalf of a third country (Claude, 2007, pp. 152-155).

4. Consular Immunity

4.1 Understanding the Consular Immunity and its Report with Diplomatic Immunity

Consular Immunity is a set of special rights which are recognized to consuls in order to successfully perform his duties. Vienna Convention on Consular Relations despite that treats the consular immunity in particular in the second chapter and its third chapter, also in its preamble says: *“the purpose of privileges and immunities is not the creation of the privileged status of a person, but ensuring efficient performance of the functions of consular posts on behalf of their respective countries”*.

Consular immunity is similar to diplomatic immunity, which was recognized to diplomatic representatives, as both follow the same order, so that the exercise as efficiently to diplomatic and consular functions. At their base lies the principle of functionality.

Also consular immunities as diplomatic immunities will be enjoyed by every member of the consulate since the moment of arrival in the territory of the host state in order to start the service, or if there is, from the start of the function at the consulate. When user functions of consular end, even privileges and immunities of it end. However, between consular and diplomatic immunity there are significant changes related mainly to the content. In this sense diplomatic immunity involves a

broader category of rights in comparison with consular immunity, and this because of the different nature of their functions (Claude, 2007, p. 165).

4.2. Contents of Consular Immunity

Consular immunity consists of:

- a) personal integrity;
- b) exemption from the jurisdiction;
- c) inviolability of the premises;
- d) inviolability of documents and official correspondence.

Below we will make their detailed treatment.

a. Personal inviolability (Article 40, 41, 42)

The right to personal inviolability is granted also to the consuls, but not absolutely (Luzzatto, 2003, p. 215). Consular Convention provides that:

1. consular functionaries cannot be arrested or detained, unless they commit a serious offense and only by decision of the competent judicial body;
2. in addition to the above case, consular officials cannot be imprisoned and subjected to any form of restriction of personal freedom, but with a final decision;
3. if it starts criminal proceedings against him, he must be submitted to the competent authorities;
4. in the event of his arrest or detention, the receiving State is obliged to notify the head of the consular office or the State addressed.

Members of the consulate may be called to testify in a judicial or administrative process. As a rule they are forced to testify in this case the competent authority must show respect to them and not to hinder the exercise of functions. This means that when it is possible the statement can also be obtained at the residence of the consul, in his office or can accept a written statement. However consul is not obliged to testify on facts relating to its functions or show official correspondence or documents relating to it.

b. Exclusion of jurisdiction (Article 43)

Consular officials are not subject to civil jurisdiction, criminal and administrative courts of the receiving state for acts committed in the exercise of consular

functions. This means that unlike diplomatic representatives, they enjoy functional immunity consular and not personal (Luzzatto, 2003, p. 216).

Immunity from civil judiciary about a consular functionary ruled in two cases:

- 1- if the lawsuit has begun under a contract that has been done by a consular official, not expressly state as his envoy;
- 2- if the claim is filed by a third person for compensation for damage caused by a vehicle, vessel or aircraft of the sending State in the receiving state.

c. The inviolability of premises (Article 31)

Building and consular premises are inviolable. This means that local authorities cannot enter there without permission of consular representation. However, unlike diplomatic immunity provided that in case of fire or other disaster requiring urgent measures consent of consular office holder is presumed.

d. Inviolability of documents and official correspondence (Article 33, Article 35)

Consular archives and documents shall be inviolable at any time and wherever they may be. Also the official correspondence is immune. These documents include consular relations with its government, local authorities and the diplomatic representative of his country and the citizens of his country.

From all that was said above, the building's integrity and that of official correspondence and documents, form the core of consular immunity.

In the case of immunity from the judiciary and personal integrity, the sending State may waive its immunity to consular representatives. Immunity in this case is final and the decision should be communicated in writing to the receiving state.

For performing consular functions, particular importance has consular office communication with the host country authorities and the citizens of the sending state. For these purpose, to the consuls is recognized the freedom of communication. Article 36 of the Consular Convention provides that consular officials should have the freedom of communication with the citizens of their own country. Also, the competent authorities of the receiving State shall immediately notify the consular post of the sending State for the arrest, detention or imprisonment of its citizens if it is in the territory consular and requires. The person concerned has the right to give the competent authority of the state receiving a report that the latter submit to the consular office. On this basis consular officials can come to help these citizens, by visiting them and keeping

correspondence, taking appropriate measures for the person to be legally represented, etc. All these actions must be carried out within the limits of the laws of the receiving state.

That having been said above has to do with the very essence of the implementation of consular functions, namely the protection of the interests of citizens of the sending State in the receiving state. Even most of consular practice has to do precisely with these cases envisaged by Article 36 (Jazbec, 2008, pp. 135-138).

Concrete example of the practice is the decision of the International Court of Justice, which accepted the request of the German state about violations by the US official, Article 36 of the Convention on Consular Relations. As a result of the violation of this article, based on a decision of the death penalty, they were executed two German nationals. Procedures against them were conducted without informing that they had the right to consular assistance. The International Court of Justice affirmed the coherent character of Article 36 of the Vienna Convention of relations consular fees (Luzzatto, 2003, p. 345).

5. Conclusion

At the conclusion of this subject we can conclude that:

The diplomatic and consular rights have evolved with the development of diplomatic and consular relations, since their early appearance until today. One such development is affected by the international situation, integrating multiple processes and the state as the international community's fundamental actor.

Despite the postmodern characteristics that present consular relations today, their fundamentals remain “Vienna Convention on Consular Relations” of 1963. Here it is pertinent to highlight the need for renewal of this convention, in order to have the proportion between the consular relations with their legal basis.

Consular organizations characterized by a complex organization, bureaucratic and often repeated therefore we think it is necessary to simplify the consular apparatus in order to simplify all those formalities and procedures for the establishment of consulates on its own. The ideal solution in this case would be the consular sections.

The category of honorary consuls should be given a more important role in relations between states.

Consular activities reflect and represent government's performance and comprehensive reform.

Functions consulate deal mainly with legal and administrative matters related to natural and legal persons. Given that the latter have no representative character, cannot perform negotiation.

Diplomatic and consular protection it should not be confused with each other. Among them there are differences as to the nature, structure and the launch of the procedure. Consular protection is mandatory, while diplomatic protection is an act with discretionary character.

Given that the trend today is to combine diplomatic with consular functions, we think that narrowing the differences between the diplomatic and the consular immunity would be important and right.

In the case of commission of a crime or other serious offense as by consular representatives, immunity must be removed in any case and procedures must take place in the country where the violation is done.

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