

# RIGHTS AND OBLIGATIONS OF DIPLOMATIC STAFF

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## Abstract

Consular law is defined as a part of international law, which represents all the rules and norms governing the consular relations, organization, operation and legal status of the consular posts and their staff. The literature analyses in detail both the concept of consular law and consular practice at international level. Consular relations mean relations established between two countries as a result of the exercise of consular functions by the bodies of one of them in the territory of the other.

**Key words:** consular law, consular practice, diplomatic staff

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The Vienna Convention on Consular Relations concluded in 1963 states that consular immunities and privileges aim to create optimal conditions for efficient performance of functions by consular posts on behalf of their states, so that the way in which the Convention governs consular privileges and immunities gets this status closer to the one provided for by diplomatic law.

## MATERIAL AND METHOD

Under the Vienna Convention of 1963, consular immunities and privileges are divided into two categories, namely facilities, privileges and immunities of a consular post (use of the flag and national emblem, exemption of consular posts from tax charges, inviolability of consular premises, archives and documents, mail, courier and consular bags) and facilities, privileges and immunities of consular officials (personal inviolability, except for consular officials who might be put under arrest or detention in case of a serious crime and pursuant to a court judgement, exemption from customs duties for personal items and customs control).

For the performance of consular duties, the consular post enjoys privileges and immunities. There are two categories of consular officials, namely career and honorary officers.

## RESULTS AND DISCUSSION

The Vienna Convention distinguishes between acts committed by the consular officer in the exercise of their official duties and those

committed outside these duties, recognizing immunity only for official acts.

From this point of view, the consular official differs from the diplomatic agent, who enjoys absolute immunity. With regard to personal acts, they are subject entirely to the jurisdiction of the receiving State.

With regard to immunity from civil jurisdiction, according to the draft of the International Law Commission, the legal basis for not exercising civil local jurisdiction on consuls was not specifically stated, but it was deducted from the general immunity from jurisdiction in relation to acts performed in the exercise of consular functions; it should be considered whether a functional offence is covered by immunity from jurisdiction. Since the activity is in accordance with the Convention or an agreement under which a consul carries out their activity, by definition its illegal character is excluded and there can be no question of any offence, being necessary to distinguish between functional offence and common law offence.

Consular officials, consular employees and members of the service staff are not subject to the criminal, civil and administrative jurisdiction of the state of residence for any act performed in the exercise of official duties. Consular officials and consular employees cannot be brought before judicial and administrative authorities of the State of residence for acts committed in the exercise of consular functions. Exceptionally, these provisions do not apply to civil action arising from a contract concluded by a consular official or consular employee which was entered into expressly or implicitly in their capacity as agent of the sending

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state or when the action is brought by a third party for damage resulting from an accident caused in the receiving State by a vehicle, vessel or aircraft. The head of a consular post is not subject to the criminal, civil and administrative jurisdiction of the receiving state, unless the civil action arising from a contract which the head of the consular post did not conclude expressly or impliedly on behalf of the sending State or when the action was brought by a third party for damage resulting from an accident caused in the receiving State by a vehicle, vessel or aircraft.

They cannot claim immunity from jurisdiction against a counter-claim directly connected to the main civil or administrative application submitted by consular officials. A controversial issue both in doctrine and in the practice of States is the personal inviolability of the consular officer. The concept of inviolability has a double meaning: first, from a broad positive perspective, inviolability means the obligation of the State concerned to protect the consul's person against any offence from anyone, secondly, from a narrow negative perspective, the State concerned must refrain from subjecting the consul's person to measures restricting liberty.

A difference is observed also with regard to how to determine the nature of offences for which personal inviolability is not recognized. The main reason for this regulation comes from the fact that consuls and other members of the consular post are only granted immunity from jurisdiction for acts committed in the exercise of consular functions; if there is an absolute immunity from jurisdiction, the need to ensure personal immunity and inviolability disappears, given that, since there is no criminal, civil or administrative liability because the act does not fall under the jurisdiction of the receiving State, it is clear that the measures arising from such liability cannot be taken. Consular officials can be imprisoned or subject to a limitation of their personal freedom only based on a final judgement, and by exception, they can be placed in custody or preventive detention only in cases of serious crime and following a ruling of competent judicial authorities. The receiving State is obliged to inform the head of the consular post whenever a measure of deprivation of liberty or prosecution is taken against a member of the consular post, and if the person concerned is the head of the consular post, the sending State shall be informed through diplomatic channels. In case of breaking diplomatic relations, consular premises and archives shall enjoy special protection. Consular archives and documents are also inviolable, wherever they are located. Consular bags are inviolable. Members of the consular post enjoy

freedom of movement and freedom to travel in the territory of the receiving State, subject to the laws and regulations concerning the areas where access is prohibited for reasons of national security.

Unlike members of diplomatic missions, consular officials and the other members of a consular post are not exempted from the obligation to attend as witnesses in the course of judicial or administrative proceedings, an obligation that is commonly stated in national laws of England, Brazil etc. Consular conventions contain general provisions, without providing details on the methods of obtaining a testimony.

Consular officials do not testify in court, but at the headquarters of the consular post or their residence. Members of the consular post who are nationals of the receiving State may refuse to testify only in connection with their duties or to submit correspondence and official documents of the consular post.

The Vienna Convention on Consular Relations stipulates the liability to give evidence in Article 44. Consular officials are exempted from the obligation to take the oath.

Both consular and diplomatic immunity are not to be understood as being *intuitu personae*, as it is granted in favour of the sending State. A consular officer or a consular employee cannot claim immunity from jurisdiction against a counter-claim directly connected to the main civil or administrative application submitted by consular officials or employees.

Members of the consular post are granted exemptions such as exemption from registration and obtaining residence permits in the territory of the receiving State (Article 46), exemption from obtaining work permits (Article 47), exemption from payment of social security (Article 48), tax and customs exemptions (Articles 49 and 50 of the Vienna Convention). Exemption from personal services envisages a series of civilian tasks such as military service, police service, juror duty, secular judge duty, personal labour ordered by municipalities on road maintenance or during a public calamity, military obligations related to requisition, military contributions. This issue is a part of customary international law, being also reflected in the Vienna Convention. According to a generalized practice, items intended for use by a consular post shall be exempted from customs duties and it can be considered that this practice is evidence of international custom in this area.

The right of a consular officer to communicate with the citizens of the State or with those residing in the consular district, and the right of the citizens of the sending State to communicate with consular officers about any deprivation of

liberty against a national of the sending State are provided by the Vienna Convention and in many bilateral conventions. A member of the consular post benefits from consular privileges and immunities since their entry in the territory of the receiving State, and if already in that territory, upon taking office at the consular post. Termination of privileges and immunities occurs when the beneficiary permanently leaves the territory of the receiving State or upon expiry of a reasonable period granted for this purpose. In case of death of members of the consular post on the territory of the receiving State, their family members, who lived with them, enjoy privileges and immunities until leaving the territory of the receiving State. The career consular official and other members of the consular post cannot engage in any professional or commercial activity for personal gains. Those who exercise a particular gainful activity in the receiving State shall not enjoy consular immunities and privileges.

Persons enjoying consular immunities and privileges are required to respect the laws and regulations of the receiving State. If the Convention does not provide an answer to a problem, customary law applies.

## CONCLUSIONS

Diplomatic relations are governed more by public international law, as they are relations of general and political representation between states, compared to consular relations, that are of a specialized and localized nature, and diplomatic agents act as international relations bodies, while consular posts, by their acts, impact the domestic order of the sending State, a third State or even the State of residence.

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- \*\*\* - *The packages constituting the consular bag must bear visible external marks of their nature and may only contain official correspondence and documents or articles intended exclusively for official use; the consular courier must bear an official document attesting his quality and specifying the number of packages constituting the consular bag.*
- \*\*\* - *It is the space in which the consular post has the power to exercise the functions entrusted and the respective demarcation of the territory in which the consular post has the power to operate; it has an exclusive character; it means the territory of the receiving State, assigned to the consular office for the exercise of consular functions.*