

The Consul and the Hungarian Diaspora: Legal Background and Practical Considerations

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Abstract: The study reviews the legislation governing the relationship between the consul and the Hungarian diaspora. In doing so, we have referred to the historical background, when the consul, who basically had other tasks, was given official tasks already after the Compromise of 1867. We then saw how the Vienna Consular Convention of 1963 established a new and uniform catalogue of tasks for consuls, which, because of its acceptance, gradually became a basic standard. Hungary ratified this treaty in 1987, and initially consuls did indeed exercise their administrative and other – cultural, scientific and economic – duties as provided for in Article 5 of the VCC. Later, however, after 2010, the administrative tasks of the consuls became primary, while the other tasks, including general liaison with the diaspora, were taken over by other levels of the emerging national diaspora policy institutions. All this means that although the consul will continue to be in contact with Hungarian communities abroad and their members, and this relationship will be fundamentally shaped by the legal framework, the consul will no longer participate in this role primarily as a diplomat, but as a public administration professional.

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1. Introduction

When you read about diplomatic missions, there are two staff members who are most often mentioned: the ambassador and the consul. One of them – by ancient customs and, in more recent times, by international treaties – represents the sending state, while the other tries to sort out the ins and outs of the sending state's citizens. The tasks of the consul are listed at length in the 1963 Vienna Consular Convention, yet little is said about the relationship between these tasks, their content and how they have changed. This paper will review the duties of the consul, based on the Hungarian legislation, while also focusing on the changes in the role of the consul and the relationship between the duties.

2. History

2.1. The Consul's Past Status and Duties

Although many people associate the title with ancient Rome, the predecessors of today's consuls date back to the Middle Ages, around a thousand years ago. Their main task was to settle commercial disputes, because commercial "traffic should be dealt with more freely and more quickly."¹ In these cases, because of the movement of persons and goods, there was a frequent element of foreign law and, therefore, of conflict of laws. Consuls should, therefore, initially be looked to as experts in the practice of what later became known as private international law, who at one time acted for merchants in "all commercial, shipping and civil litigation."² They were primarily adjudicators, but their work also, arguably, involved the development of law, which made trade in the Mediterranean regions of Europe smoother. The consuls first appeared in the central and western Mediterranean and then, during the crusades of the 11th and 13th centuries, in the Levant in the East. Here, in the border areas between Christian and Muslim religions and legal systems, they played an even greater role in securing trade flows, as their decisions had to bridge the marked differences in legal systems. The legal institution itself – the commercial judge – also appeared in other trading

¹ Dezső Márkus, *Magyar Jogi Lexikon*, vol. 5 (Budapest: Pallas, 1899), 647.

² Ibid.

towns, for example, many Hanseatic towns had an official (usually called alderman) with similar responsibilities.³

The powers of consuls have increased considerably over time. “In addition to commercial matters, they were later entrusted with the handling of civil and even criminal cases. Then they also exercised police power and administrative authority and finally acted as representatives and protectors of the interests of the colony in all respects.”⁴ In other words, consuls were already in the 13th century increasingly transformed from judges into leaders of commercial colonies in the eastern Mediterranean basin. These colonies were included as a separate point (*caput*) in later international treaties, and thus the capitulation system later became synonymous with consular jurisdiction.

From the 16th century onwards, more and more countries began to “nationalize” the administration of justice, and as part of this process, elected consuls were replaced by state officials.⁵ At the same time, the former diplomatic functions of consuls (such as fostering good relations between states) were transferred to diplomatic missions in a kind of profiling, while the tasks of trade promotion became more important.

Hungary was then already part of the Habsburg Empire, but it was primarily interested in domestic trade, so the decisions of successive Austrian emperors (who were kings of Hungary at the same time), Charles VI and Maria Theresa, to stimulate international trade, including the opening of consulates, did not directly affect it. From a Hungarian point of view, the operation of consulates became interesting after the Austro-Hungarian Compromise of 1867. Although the consulates were also subject to a common (Austro-Hungarian) foreign minister under the terms of the 1867 Reconciliation Act,⁶ the most important consular functions and powers –

³ In fact, according to earlier scientific research, in some major trading cities, such as Byzantium, Hungarian merchants had a consul-like superior in the 11th–12th centuries. See: Márkus, *Magyar Jogi Lexikon*, 647.

⁴ Ibid.

⁵ See also: Paweł Czubik, “Sovereignty in International Law,” in *International Law from a Central European Perspective*, ed. Anikó Raisz (Budapest: CEA Publishing, 2022), 95–116.

⁶ Article 8 of Act No. 12 of 1867. In Central Europe, we prefer to use the term of “Compromise” in scientific studies referring that two equal parties consensually made an agreement. But if we see the terminology used in the English-speaking countries, the Compromise made between Austrians and Hungarians could also be labelled as a “reconciliation” because, by this

the enforcement of national trade interests and consular jurisdiction – were left to the Hungarian government and the individual ministries concerned to exercise their own room for maneuver under Hungarian law.⁷ In the Hungarian foreign affairs network established after the dismemberment of the Austro-Hungarian Monarchy at the end of 1918, the primary task of the Hungarian consulates became the representation of Hungarian commercial interests.⁸ Although the official functions of the consuls had already appeared in the second half of the 19th century,⁹ they became significant only in the second half of the 20th century, when at the same time a larger number of Hungarians and former Hungarian citizens left the Carpathian Basin, in many cases opening up legal situations (movable, immovable property, inheritance, gifts, personal status matters, etc.). These could only be partially dealt with by legislative or administrative decisions, and more and more often the declarations of the persons concerned were required, which were of course most easily obtained by the Hungarian consul abroad, who was also visited by members of the Hungarian community concerned for other matters (birth certificates, passports, citizenship, visas).

As can be seen from the above, the consul is an old institution dating back to the Middle Ages, which primarily performed commercial judicial and administrative functions. Towards the end of the Middle Ages, consuls began to evolve from elected to state officials, but their functions remained largely unchanged until the early 20th century: they adjudicated and dealt with trade policy. In Hungary, interest in this legal institution grew after the Compromise of 1867. Despite the public perception that until 1918 they were seen as the representative of Austrian interests,¹⁰ Hungarian legislation gave them more and more responsibilities and also granted them a certain degree of leeway in Hungarian trade policy.¹¹ Within the Hungar-

process, a large number of indigenous minority (the Hungarians) of the Habsburg Empire was put into their previous legal state back.

⁷ Cf. Section IX of Act No. 20 of 1878, and Section IX of Act No. 31 of 1891.

⁸ Article 6, People Act [Néptörvény] No. 5. of 1918 (on another name: Foreign Affairs Act 1918).

⁹ Cf. Endre Domaniczky, “New Challenges in Consular Work: Changes in the Legal Framework and the Opportunities Provided by EU Membership from a Hungarian Perspective” (book chapter, Central European Academy’s Publishing, forthcoming).

¹⁰ Cf. Jenő Cholnoky, *Utazásaim, élményeim, kalandjaim* (Budapest: Pantheon, 1942), 246–7.

¹¹ Cf. Endre Domaniczky, *Előszó, Határterületeken II* (Budapest: MFI, 2024), 12–3.

ian foreign affairs network established by the Foreign Affairs Act of 1918, commercial policy remained the primary and almost sole task of the consuls, while at the same time they had to perform an increasing number of official duties in the ever-growing Hungarian diaspora. Although the origins of these official tasks date back to the period of dualism, their importance only increased after World War II, when, on the one hand, large numbers of Hungarians or former Hungarian citizens emigrated from the Carpathian Basin and, on the other hand, the worldwide development of the Hungarian diplomatic and consular network began, which enabled the consuls to become involved in the life of local Hungarian communities in more and more places. To see where and what tasks they had to perform, we need to sketch the history of the emergence of the Hungarian diaspora.

2.2. The Emergence and Characteristics of the Hungarian Diaspora

2.2.1. The Hungarian Diaspora in a Nutshell

Throughout the turbulent centuries of Hungarian history, Hungarian communities have been established beyond the Hungarian borders on several occasions. The most notable of these communities were the Moldavian Csángós, who settled on the eastern side of the Carpathians from the 12th century onwards, and some of their villages still exist in what is now Romania. Although initially settled by the Hungarian king, they later arrived of their own accord. The two important characteristics of a diaspora: (1) cross-border, (2) long-standing ethnic community would, therefore, stop at this point, and even the migratory nature of the migration can be discerned. However, it does not stand still in the case of Hungarian emigrants after the fall of the War of Independence in 1711, and the defeat of the Hungarian War of Independence in 1849, as these communities were created by political necessity, the end of which led those who could, to move back to Hungary.

In the cases above, it would, therefore, be more appropriate to speak of early forms (predecessors), while the formation of the Hungarian diaspora should be placed in the second half of the 19th century. This is the beginning of the wave of emigration from Central and Eastern Europe, which lasted for several decades and included hundreds of thousands of emigrants from Hungary. As a Hungarian foreign affairs report put it in 1946: “Before the First World War, the main route of Hungarian emigration through

Western Europe led almost exclusively to North America, and even in the period between the two wars only South America attracted a larger number of emigrants.”¹² However, the second half of the 19th century also saw the first initiatives of the Hungarian diaspora in Western European countries and Oceania.¹³

The next important moment in the development of the concept emerged after the collapse of the Austro-Hungarian Monarchy.¹⁴ The dismemberment of historical Hungary brought significant Hungarian communities under foreign rule. Although after 1918 they were considered as cross-border communities, these people did not go anywhere. In their case, therefore, there was no intention to migrate, they had, in fact, been transformed from a state-forming nation into indigenous minorities of other countries – but the exact terms were not yet known at the time.

In any case, the Hungarian diaspora concept was split in 1918:¹⁵ into (1) Hungarians living in the Carpathian Basin who had previously lived inside the borders of Hungary (“Hungarians living beyond the borders”), and (2) those who settled and formed permanent communities outside the Carpathian Basin (“Hungarian diaspora”).¹⁶ Between 1918 and 1989, Hungary concentrated mainly on the former, mainly due to the scarcity of resources and the limited room for maneuver on its own on the field of foreign affairs.

¹² Quoted in Endre Domaniczky, *Ausztrália magyar szemmel a fegyenceleptől a jogállamig* (Kecskemét: Fakultás, 2018), 315. The original report is available in the Hungarian National Archives (MNL XIX-j-1-k ADM 1945–1963 [Australia] bundle 5j).

¹³ For Australia and New Zealand, see in detail: Endre Domaniczky, “Trianon menekültjei Ausztráliában és Új-Zélandon,” in *Határterületeken*, ed. Endre Domaniczky (Budapest: MFI, 2021), 389–413.

¹⁴ For the legal history of this period, see: Lóránt Csink and László Trócsányi, eds., *Comparative Constitutionalism in Central Europe. Analysis on Certain Central and Eastern European Countries* (Miskolc: CEA Publishing, 2022), and especially: István Szabó, “The Legacy of the Habsburg Empire in the Constitutional Traditions of Successor States,” in *Comparative Constitutionalism in Central Europe*, 21–36.

¹⁵ See also: Dániel Gazsó, “Egy definíció a diaszpórákutatók margójára,” *Kisebbségkutatás* 24, no. 2 (2015): 7–33.

¹⁶ The conceptual split can be illustrated by the situation of Hungarians in Romania. Within the pre-1918 borders of Romania – especially in Bucharest – there was already a significant Hungarian community before 1918. They were still members of the Hungarian diaspora in Romania, while those living in the newly annexed territories (those who remained in the Carpathian Basin) were considered Hungarians living beyond the borders.

The existence of diasporas in this period came to the fore mainly at historic turning points, such as after the Second World War or in 1956, when masses of Hungarians were once again leaving the Carpathian Basin in search of a new life, and countries with an existing Hungarian community seemed more advantageous for settlement. Although for a while after 1956 there was no talk of a diaspora, from the 1960s until 1989 there was continuous emigration, mainly to countries with an established Hungarian community. Although there was a general emigration back to Hungary, which became independent in 1989, the assimilation effect was more significant, reaching all communities of the Hungarian diaspora by the end of the 20th century. Second- and third-generation Hungarians are naturally more strongly connected to the new homeland, and belonging to the Hungarian nation has become rather a cultural (or culinary) experience.

The transformation of the diaspora – with the biggest waves of newcomers and first-generation migrants disappearing in all communities – has itself required a different approach. On the one hand, from the academic side, which since the 1980s has taken a growing interest in the past and customs of this community.¹⁷ On the other hand, the Hungarian government, which in 1990 for the first time in a long time was able to express its interest in this other community of Hungarians living outside the Carpathian Basin. This long-awaited openness was already expressed in an early speech of Prime Minister József Antall,¹⁸ but the development of long-term solutions (institutional framework and support policy), the implementation of Hungarian citizenship for all Hungarian citizens¹⁹ (which eventually abolished

¹⁷ For examples of studies of the largest diaspora of Hungarian communities in North America, see: Julianna Puskás, *Kivándorló magyarok az Egyesült Államokban (1880–1940)* (Budapest: Akadémiai Kiadó, 1982); Ferenc Bakó, *Magyarok Kanadában* (Budapest: Gondolat, 1988); Zoltán Fejős, *A chicagói magyarok két nemzedéke 1890–1940* (Teleki Foundation, 1992).

¹⁸ “In the legal sense, on the basis of Hungarian common law, I wish to be the Prime Minister of all Hungarian citizens, as the head of government of this country of ten million people – in spirit and in feeling, of fifteen million Hungarians” (József Antall, 1990). For the background, see: Endre Marinovich, *1315 nap – Antall József naplója* (Budapest: Éghajlat Könyvkiadó, 2003), 100–1.

¹⁹ The basic idea of this was formulated in 2003 by the internationally renowned Hungarian law scholar, Ferenc Mádl (1931–2011), in his capacity as President of the Republic. See: A köztársasági elnök állásfoglalása a kettős állampolgárság könnyített megszerzéséről, A Köztársasági Elnöki Hivatal Évkönyve [A statement of the President of the Republic of Hungary on the facilitated acquisition of dual citizenship], 2003 (KEH, 2004), 324–7.

the concept of Hungarian expatriates), were not implemented until 2010. Since 2018, it has, in fact, become clear that the Hungarian diaspora has ceased to exist as an independent political factor or concept, because its members have become part of the Hungarian nation – despite the fact that they have remained in the country and have not moved back home.

2.2.2. Changes in the Tasks of the Hungarian Consul Related to the Diaspora (From the Beginning until 1989)

In the above, we have reviewed the characteristics of the diaspora, while pointing out that the Hungarian diaspora has become part of the Hungarian nation again – in legal terms – after about one hundred and fifty years. This did not happen in the literal sense of the word, with the return of descendants, but by means of the law. The legislator faced up to the vicissitudes of Hungarian history²⁰ and made it possible for everyone to become a member of the Hungarian nation again, on the basis of his or her own decision. In this work, the Hungarian consuls played a key role in relation to the Hungarian diaspora, and in 2010 they were assigned the task not only because they were skilled in administration, but also because they traditionally had the closest links with the Hungarian diaspora.

Where does this relationship date from and is there a legal basis for it? Perhaps it is most correct to say that the consul's diaspora responsibilities are roughly contemporaneous with the Hungarian diaspora, dating back to the second half of the 19th century. The tasks were partly generated by the large numbers of Hungarian expatriates who emigrated, leaving open, interrelated legal issues in both places: the new and the old homeland (for example, the birth of a child, which could change the succession order, or a will, which could affect Hungarian relations). On the other hand, the consul's duties in relation to citizens living abroad were a consequence of the need to build a rule of law in Hungary because the administrative powers regarding the Hungarian expats had to be delegated in the legal rules and the consul seemed to be ideal to be the main recipient of these responsibilities. It was self-evident, especially in the wake of the travel boom of the early 20th century, that citizens abroad should not be disadvantaged simply because they could not travel home. This is why, initially, they wanted to ensure passport renewal (which was also important for the maintenance

²⁰ The Fundamental Law of Hungary, National Creed.

of citizenship) and birth registration. It was also clear that the local consul had the greatest expertise in obtaining and handling the necessary documents for such official acts. A law on consular translation fees had already been enacted in 1901 (Act 26 of 1901). Although the main functions of the consul at that time were still related to trade (and in some countries to the administration of justice), their official powers had already appeared at the end of the 19th century and were maintained after 1918. Although the events of 1918–1920 led to several waves of emigration from Hungary (and from the Carpathian Basin), this did not lead to a significant increase in the number of tasks, mainly due to the rudimentary nature of the Hungarian consular network.

Significant changes in this area occurred after World War II. On the one hand, the diaspora experienced a significant increase in numbers in three major waves (those who left in 1944–1945, those who left between 1945–1951 and those who left in 1956). The Hungarian state, therefore, had to take over administrative tasks, so that the consuls continued to deal with inheritances, birth registrations, passports and citizenship. From the second half of the 1960s onwards, as the number of expatriates began to gradually travel back to visit the old country, the importance of visas began to increase. The administrative tasks of consuls, thus, began to increase after 1945, and consular services began to reach more and more people, especially as the consular network grew.

On the other hand, the Hungarian state from the very beginning regarded those who left after 1944 as a security issue. It wanted to know – especially in the larger Hungarian communities – what organizations were plotting against the existing Hungarian system. From the very beginning, consuls were assigned (or instructed) to keep an eye on Hungarian organizations in the local communities, to prepare “mood reports” of sorts, since they were the ones in closest contact with Hungarian emigrants at the foreign missions. Anyway, they handled their cases and could gather information without attracting attention. Their tasks did not necessarily stop at information gathering, as they also took further action against certain individuals based on their reports.

So, after 1945, not only did the administrative burden of the consul increase, but a new task was added: reporting on the diaspora. This could, of course, be exercised in two directions: on the basis of party interests and

instructions, but also in the classical sense, to assess the composition of the diaspora and to find out about its needs. Based on the Australian-related materials in the Hungarian foreign ministry's archives that I have reviewed, it can also be said that while political requirements dominated in the beginning, consular reports became more and more professional from the late 1970s onwards, with political tasks being increasingly taken over by the political departments of embassies. There was also an internal profiling process which, at least in Australia and New Zealand, saw the administrative functions of consuls re-dominate before the change of regime. This is not due to ideological changes, but primarily to professional reasons. On the one hand, the increasingly free travel habits of Hungarian citizens, which in the second half of the 1980s led to a number of people visiting foreign countries that was almost equal to the country's population at the time.²¹ The tasks of providing consular protection for them (replenishing passports, representing people in distress, repatriation loans and insurance) simply filled the available capacity. On the other hand, the Vienna Convention on Consular Relations,²² ratified in the late 1980s, reinforced this professional approach by listing the tasks of consuls, most of which were official tasks. The status of the consul and his or her duties and powers were, thus, in fact protected internationally before 1989.

3. The Legislation in Force

The ratification of the 1963 Vienna Consular Convention – which Hungarian officials had been pushing for since the mid-1980s – was important primarily because of its basic nature. Because of its broad international acceptance, the Convention provided a solid reference point in the consular system, which had previously been based mainly on customary law, and thus had a stabilizing effect on international relations. This – the return to the international system – was also symbolized by the reappearance of the honorary consuls in Hungarian law, which – at the dawn of the regime change – was of symbolic importance.²³ The real significance of the Vienna Consular Convention, however, can be seen – looking back – in the fact that

²¹ See: Domaniczky, "New Challenges in Consular Work."

²² Inacted into the Hungarian law by Decree-Law No. 13 of 1987.

²³ For more information, see: Domaniczky, "New Challenges in Consular Work."

it provided the basis for the development of a completely new conception of the consular role.

3.1. The Consul's Duties in the Vienna Conventions

Consular functions are listed in detail in Article 5 of the Vienna Consular Convention (hereinafter: VCC). At first reading, it is striking that the section consists of a single long list of thirteen items, but below we will only touch on the points of particular relevance for relations with the diaspora.²⁴

On closer examination, the text of the VCC can be divided into three major parts with regard to consular functions:

- (1) general terms of reference;
- (2) specific terms of reference;
- (3) general authorization to update consular tasks.

The general terms of reference aim to define the scope of consular competence. To this end, Article 5(a) to (c):

- states that the consul's basic duty is to protect the interests of natural and legal persons belonging to the sending state (consular protection);
- states that the consul may be active in other areas of cooperation in addition to his or her advocacy duties, in particular “promoting the development of commercial, economic, cultural and scientific relations”;
- has a fundamental right to freedom of information and disclosure (right to report) in relation to all these activities.

The specific terms of reference contain new types of duties and powers for consuls (which were new at the time of the adoption of the Vienna Consular Convention (1963), but have now (2024) become commonplace. These include, for example, the preparation of passports (Article 5(d) of the VCC), the issuing of visas (Article 5(d) of the VCC), the administration of citizenship²⁵ (Article 5(d) of the VCC) and applications for birth/marriage/divorce/death registration (Article 5(f) of the VCC), the performance of

²⁴ For a detailed analysis, see: *ibid.*

²⁵ Passport matters implicitly include the handling of citizenship applications, as a passport can only be issued to a citizen by default. Therefore, Article 5(d) of the Vienna Consular Convention (VCC), in fact, also applies to this type of case, but in case of doubt, Article 5(f) of the VCC could also be invoked, since in the registration procedures, the nationality of the applicant must also be examined as a prerequisite. As a last resort, reference could also

notarial duties (Article 5(f) of the VCC). These tasks enable the consul to establish close contacts with members of the diaspora, since they are clearly the person authorized to deal with such matters at the diplomatic mission under the VCC.

In relation to the diaspora, it is also important to mention the general mandate at the end of Article 5 of the VCC. According to this, consular functions include

performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.²⁶

Although the provision was originally included in the list to allow for any extension of consular tasks and adaptation of the text of the Convention to modern times, in the Hungarian context it allows for flexibility in the tasks of the consul in relation to the diaspora to change according to needs.

Given the structure of the legislation, let's look at how this section helps the consul to carry out his or her duties in relation to the diaspora. The three points of the general terms of reference place consular functions not only on a firm (normative) basis, but on a new basis. In fact, Article 5(a) of the VCC states that the primary task of the consul is to ensure the protection of consular interests: to assist, within the limits provided by law, the nationals of the sending State. In addition, however, says Article 5(b) of the VCC, the consul may also be active in other areas of relations between the two countries (the sending and the receiving states), in particular in the field of "development of commercial, economic, cultural and scientific relations."²⁷ In fact, this section opens up another channel for the consul towards the local Hungarian community, since he or she can refer to it not only in the case of need, in connection with a legal matter, but also proactively, looking ahead, to seek contact with the diaspora. The VCC gives him/her a completely free

be made to the general authorization (Article 5(m) of VCC), which covers all administrative matters not prohibited by the law of the host State or not opposed by the host State.

²⁶ Article 5(m) of VCC.

²⁷ Article 5(b) of VCC.

hand: in addition to an individual – who does not even have to be a citizen of the sending state (!) – he/she can contact groups, such as associations or communities without legal personality (traditionally many of these exist in the diaspora!). You can also link them with each other or even with the home country, individuals, groups or institutions. But it is also possible to establish closer links within the host country, between members of minority and majority societies. There is no legal limitation, only the laws and will of the receiving state and the decision of the superiors within the Hungarian organizational system, primarily the local leader, the ambassador or the head of the consular department at home.

Article 5(a) and (b) of the VCC, therefore, gives the consul a free hand in maintaining and building relations with the diaspora. The third point of the general terms of reference also provides for a blank sheet of paper and the right to fill it in as the consul sees fit. However, this right to report is also a duty, which most consuls are not aware of. Under the VCC, the consul would have the right and the duty to investigate the diaspora in depth, if his/her skills and experience allow him or her to do so. In practice, however, this possibility is limited to a summary of a few sentences in the annual embassy reports on consular work. This is particularly thought-provoking because consular reports, which at one time (in the early 20th century) were mainly about commercial opportunities in the receiving country, were even published in newspapers. Later, they became secret, but their professional character – for example, at the Hungarian missions in the English-speaking countries – remained until the change of regime. The recent centralization and personalization of international relations can, of course, partly explain this hollowing out: the importance of top managers and their entourages has increased in a unipolar world (aided by the new wave of the communications revolution), rather than local endpoints. What used to be acquired locally, through years of slow work, can now be achieved through a short video conference between headquarters.

3.2. The Consul's Duties under the National Consular Laws

We have seen that at the level of international conventions, the consul has been given a stable framework and broad powers to engage with the diaspora. Given the international standard of the VCC, it is not an exaggeration to say that the consul has become the primary contact point between the

mainland and the diaspora. But how far does the domestic legislation take this into account? In what areas does the Hungarian law rely on the work of the consul?

Although provisions on certain elements of consular work can be found at the top of the Hungarian legal hierarchy, in the Fundamental Law,²⁸ the key elements of the regulation are contained in laws, and within them in the so-called sectoral laws. From a consular point of view, the laws that regulate the basic areas of consular protection and the fields of consular administrative work are considered to be regulated by sectoral laws. These are the areas covered by the specific terms of reference of the VCC. These include, *inter alia*, the laws governing citizenship, visas, residence, consular notarial services, and probate proceedings. To turn the argument around: at the statutory level, as expanded by subordinate regulations and “bundles of regulations,” the only rules are those that ensure the consul’s protective and official functions. The primary reason for this is that the Consular Protection Act (Act XLVI of 2001), which contains the basic regulations on consular work, also approaches the essence of consular work from this (consular protection) perspective. The Consular Protection Act, which was adopted relatively late, about a decade after the change of regime, focused primarily on the country’s accession to the EU and its compliance with EU law – as the reader is reminded of in the final provisions.²⁹ In 2001, the legislator’s aim was to codify the rules of consular protection in a way that would be as flexible as possible and easily adaptable to the sometimes very different local circumstances, while covering, among other areas, the issues that were then covered by EU law: the basic rules on the EU temporary passport (ETD) and consular protection in the Member States.³⁰

²⁸ Cf. Article XXVII of the Fundamental Law, which stipulates the right of Hungarian citizens to consular protection (although the explanatory notes to the draft Fundamental Law allow for a broader interpretation, which, in this case, may mean the provision of diplomatic protection). For diplomatic protection, see: József Hargitai, *Nemzetközi jog a gyakorlatban* (Budapest: Magyar Közlöny, 2008), 198–206.

²⁹ Article 24 of Act XLVI of 2001.

³⁰ The legislator had two EU documents in particular in mind as models: (1) Decision 95/553/EC of 19 December 1995 on the protection of citizens of the European Union by diplomatic missions and consular posts, and (2) Decision 96/409/CFSP establishing a European temporary travel document.

The detailed rules were mainly laid down in an implementing regulation,³¹ which could be more easily amended in-house.

The backbone of consular legislation is, thus, built on, elaborated and detailed from the outset, through various legal (laws and regulations) and non-legal (normative instructions) protective tasks. However, in the field of liaison and networking, which is another of the consul's main tasks, the basic legislation remains in the VCC (Article 5(b) and (c) of the VCC). This makes the rules on consular work "one-sided" and cumbersome – but only in appearance. However, since the VCC was incorporated into the Hungarian legal system by the Hungarian Act No. 17 of 1987, it is more appropriate to regard this regulation not as a shortcoming, but as an advantage. Thanks to the VCC and the absence of detailed Hungarian legislation, the consul can continue to act freely in relation to the diaspora in accordance with the interests of the state. At least, he or she has the possibility to do so, as provided for in all legislation, and the actual scope of his/her powers is determined – beyond the consul's own decision – only by the decisions of his/her superiors (which may be verbal or in writing, in the form of so-called consular instructions). Although the legal framework is, as we have seen, sufficiently flexible to allow the consul to take the initiative in relation to the diaspora, the state has only made use of the possibilities offered by this for about two decades (1987–2010), and then only in relation to certain relations. The explanation for this is simple: the VCC was only promulgated in Hungary in the autumn of 1987,³² so it could only be referred to as a law from that time. The closing date is linked to a change of government, as the new government that took office in 2010 made it clear that it wanted to bring the period of regime change since 1989 to a close by making new constitution and law.

3.3. Are There Any Differences between the International and Hungarian Regulations Regarding the Consul's Responsibility for the Diaspora?

In the process of drafting the new constitution, an answer had to be found to the question – implicit in the title – whether there is a difference between international and Hungarian legislation in this area. The new constitution,

³¹ See: 17/2001 (XI.15.) Foreign Minister's Regulation.

³² September 15, 1987.

the Fundamental Law of 2011, speaks of a united Hungarian nation and declares its responsibility towards Hungarians living beyond its borders.³³ The Fundamental Law, while stating Hungary's responsibility for the diaspora in general,³⁴ also lists the areas of responsibility, thereby identifying concrete measures affecting both individuals and groups. Hungary (1) "facilitates the survival and development of their communities," (2) "supports their efforts to preserve their Hungarian identity," (3) supports "the effective use of their individual and collective rights," (4) supports "the establishment of their community self-governments," (5) supports "their prosperity in their native lands," and (6) "promotes their cooperation with each other and with Hungary."

Point D of the Fundamental Law, therefore, focuses on two things: (1) it abolishes the previous ethnic and historical and legal borders within the Hungarian diaspora, and creates a non-discriminatory concept, the "one single Hungarian nation." Henceforth, "the category of Hungarian beyond the border will be a definition of current residence, not a concept used to distinguish between Hungarian citizens and non-Hungarian citizen ethnic Hungarians."³⁵ (2) Building on the above point, Hungary will develop and implement an entirely new national policy, including both public and private elements. This will no longer require measures radically different from those taken domestically, as the new national policy will be reflected in all measures affecting Hungarians, with respect to the concept of a unified Hungarian nation. Thus, there is no need to exploit the potential of consular contacts, because local needs and opinions are also channeled into decisions at the highest level in Budapest through the newly established contact forums.³⁶

It took longer to build up the institutional framework provided for in the Constitution, but the foundations were laid by 2014. Knowing the

³³ Fundamental Law, point D.

³⁴ "Hungary (...) bears responsibility for the fate of Hungarians living beyond its borders (...)" (Fundamental Law, point D.)

³⁵ Bálint Ablonczy, *Az Alkotmány nyomában. Beszélgetések Szájer Józseffel és Gulyás Gergellyel* (Budapest: Elektromédia, 2011), 115.

³⁶ For example, the Diaspora Council, which was established in 2011. See also: the founding declaration of the Hungarian Diaspora Council 2011 (www.kulhonimagyarok.hu, accessed December 28, 2024).

main features of the Hungarian legislation, it is now possible to say clearly whether and how it differs from international solutions. In light of the most relevant international examples and the practice in Central and Eastern Europe,³⁷ the Hungarian system differs in two important respects. On the one hand, it ensures full citizenship rights for all those who acquire Hungarian citizenship (in this area, it eliminates the differences between those living inside and outside the border and between certain groups of people living beyond the border by extending the law, which is a consequence of Hungarian tradition),³⁸ and on the other hand, it dissolves and extends the concept of nation, which was previously limited to the territory of the state, by creating the concept of a single Hungarian nation. The Hungarian nation has, thus, become a world nation in the public law sense, of which the diaspora is now also a part, based on an individual decision. The Hungarian solution has, thus, made maximum use of the room for maneuver provided by international law³⁹ and has resolved a situation that arose as a result of historical vicissitudes. From this point of view, although it is based on international examples, it is a completely unique solution that guarantees the full enjoyment of rights.

4. The Consul and the Hungarian Diaspora

The relationship between the consul and the Hungarian diaspora is easier to understand in the light of Hungarian diaspora policy after 2011. After 2011, the consul has changed from being a contact person of high status in terms of diaspora policy to one of the experts dealing with expatriates. As required by Hungarian law, his/her primary task is to ensure consular protection of interests and to deal with official matters. Despite the above-mentioned room for maneuver provided by the VCC, his/her role in the field of

³⁷ For a detailed description of international practice, see: Eszter Kovács, “Klasszikus és kelet-európai diaszpórapolitikák,” *Regio* 26, no. 3 (2018): 155–234.

³⁸ On this, see the speeches of Zsolt Semjén and Zsolt Németh, Members of Parliament, in connection with the 2010 amendment to the Citizenship Act (May 20, 2010, speeches of Zsolt Semjén and Zsolt Németh in connection with the T/29 bill (www.parlament.hu, accessed December 28, 2024)). See also: Zsolt Körtvélyesi, “Az ‘egységes magyar nemzet’ és az állampolgárság,” *Fundamentum* 15, no. 2 (2011): 49–55.

³⁹ In connection with the 2010 amendment of the Citizenship Act 1993, the speakers also explained in detail how international examples and solutions were used in the drafting of the Hungarian bill.

diaspora policy is limited primarily to attending events organized by Hungarians abroad and organizing or coordinating certain meetings. Its reporting rights are also limited to these tasks. To give you an overview of the current legislation, let's look at the most important tasks.

4.1. Statutory Tasks

The basic rules of consular work are laid down in the Consular Protection Act (Act XLVI of 2001). As we have seen above, it sets out in detail the rules of consular protection laid down in the Constitution (Fundamental Law) (and in line with European legislation). On the other hand, it contains the rules in areas which are not specifically regulated by law (e.g. notarial duties of the consul, over-certification, transport of corpses). The detailed rules of the Consular Protection Act are laid down in the implementing regulation.⁴⁰ A comparison between the Act and the Regulation reveals the depth of the tasks related to consular protection (for example, what is meant by information, what to do in the event of evacuation, or what and how long a citizen whose personal freedom is restricted can be assisted). The Act is also accompanied by a Regulation on consular fees.⁴¹

Although there are some areas where consular law overlaps with consular sectoral laws,⁴² while the most common consular tasks are regulated by separate laws and related regulations.

The most common official tasks (so-called classic consular duties) are:

- the administration of citizenship applications (Citizenship Act 1993/ Act No. LV of 1993),
- passport applications (Act on Travelling Abroad 1998/Act No. XII of 1998),
- birth/marriage/death registrations and related matters (e.g. paternity acknowledgements, name changes),
- applications for identity cards,

⁴⁰ See: 17/2001 (XI.15.) Foreign Minister's Regulation.

⁴¹ See: 5/2010 (XII.31.) Foreign Minister's Regulation.

⁴² A typical example is passport management, where the rules for ETD are covered by the Consular Protection Act and the rules for temporary passports are covered by the Law on Travelling Abroad 1998. The situation is similar for the tasks of consular notaries, where the specific rules are contained in the Consular Act, but the Notaries Act 1991 is always applicable as background legislation.

- address matters,
- issuing and re-issuance of certificates,
- consular protection issues,
- legal aid matters.

A frequent but separate category for regulatory⁴³ purposes is the administration of visas and residence.

Finally, it is worth noting that there are other consular tasks, the scope of which may vary from region to region (either in terms of content or type). These include, for example, tasks related to the issuance of police clearance certificates, consular loans and consular certificates.

4.2. The Role of Consular Instructions

Consular work is a teamwork based on hierarchy. This also means that individual decisions play a relatively small role in resolving issues not covered by legislation. When legislation is consulted, the rules are usually filled in by so-called consular instructions. There are two types of these non-legislative norms: (1) explanatory and (2) normative instructions. The former is intended to explain the application of a legal provision or to lay down the rules of procedure in the event of legal gaps. A normative instruction may be addressed to one or more persons (for example, all the consuls in one, more or each region). It may contain either an active action (“issue...!”) or an abstention (“do not issue...!”), either for an individual or for a group. The important elements of a consular instruction are the case number (to which it may refer), the name of the addressee, the name and other particulars of the person concerned, the normative instruction, the time limit and the name, capacity and signature of the issuer. The role of consular instructions in Hungarian practice started to decrease after 2010, but is still significant. They are mainly used in the field of classic consular and visa matters, but they are also excellent for regulating relations with the diaspora of a given country or region – where, as we have seen, only the framework of consular work is defined by law (see above).

⁴³ In these cases, not only national, but also EU legislation is of particular importance.

4.3. The Content of the Consular Report and the Importance of the Consular Role

While the consular instructions usually impose an obligation on the consul, a report prepared by the consul and submitted to the Headquarters in Budapest is called a consular report. There are several types of consular report. Currently, one consular report is required annually and forms part of the annual ambassadorial report. The compulsory elements of this annual consular report are: (1) a presentation of the Hungarian community in the receiving country, (2) a description of the consular activities in the period under review, and (3) a presentation of trends (what changes are expected in consular administration). As we have seen above, this mandatory report has now become largely formalized and is mainly for use within the Ministry of Foreign Affairs, as the now well-established Hungarian diaspora policy institutions are able to obtain and synthesize much more data than the consul directly and through several channels.⁴⁴ The other type of consular report is the *ad hoc* consular report, which is either produced on the basis of a request from the Centre, expressed in the form of a consular instruction, or on the basis of the consul's own decision. Its subject matters are usually significant events from a consular aspect of view (e.g. a rapid increase in the number of temporary passport applicants) or a major change in the diaspora (e.g. the start of a new wave of immigration). Although the importance of the *ad hoc* consular reports has also declined in recent years, their purpose and role has remained unchanged: to inform the management of the Ministry of Foreign Affairs and to facilitate the strategic planning work of the Ministry.

Although the content of consular reports is largely determined by custom, the consul has a relatively wide margin of maneuver in this area. In the case of mandatory reports, the ambassadorial requirement can adversely affect the content and length of the report, whereas, in *ad hoc* consular reports, the consul can, if he or she is proactive in his or her role, explore or

⁴⁴ However, prior to the establishment of the diaspora policy system in 2014, consular reports often reached the highest political levels, for example when dealing with a priority issue and a particularly sensitive region. One such example from the author's own practice is his 2011–2013 reports on the interest of Hungarians in Australia and New Zealand in acquiring dual citizenship. The data collected in connection with these reports have been used to produce a book on the Hungarian diaspora in Australia (in English and Hungarian). Endre Domaniczky, *Australia through Hungarian Eyes: From Penal Settlement to a Multicultural Commonwealth* (Budapest: Fakultás, 2020), 554.

analyze several issues of local relevance. Primarily in relation to the composition of the diaspora, although since 2014 there has often been a dedicated diaspora policy liaison diplomat in the outposts with a larger Hungarian community who is also primarily responsible for the preparation of diaspora reports. However, even in addition to a national diaspora report, *ad hoc* consular reports may still have a reason to exist, as the consular aspects of data related to the composition of the diaspora can be most easily assessed primarily in a general consular report.

5. What Does the Future Hold?

After reviewing the legislation governing the consul's diaspora responsibilities, it is worth briefly considering the changes that are expected in the future. The future changes will not only affect the tasks of the consul, because the infrastructure itself (the consular network as a whole) is also changing. Naturally, the Hungarian diaspora itself will also change, which will also have an impact on the consul's diaspora-related tasks.

5.1. Changes in the Role and Status of Consuls

The changes affecting the consul are mainly in two areas: the role of the consul and his or her legal status. The role of the consul, as defined by the 1961 and 1963 Vienna Conventions, can be understood as the person who defends the interests of the nationals of the sending state in the receiving state.⁴⁵ In addition, he or she may also be concerned with the development of commercial, economic, cultural and scientific relations. Although the Vienna Convention generally includes this among the duties of the consul, there is no obstacle to a state employing separate diplomats for each category of duties, whether consuls or other specialized diplomats.

In Hungarian practice, between 1989 and 2014, the former model was used, and after 2014 the latter. Today, the consul is primarily responsible for administrative tasks, scientific tasks are performed by scientific attachés, cultural tasks by cultural attachés, and economic tasks by foreign economic attachés. In some posts with a large Hungarian community, the consul's

⁴⁵ Vienna Convention of 1961, Article 3, point 1(b) and Vienna Convention of 1963, Article 5(a)–(b) (enacted in Hungary by Decree No. 22 of 1965 and Decree No. 11 of 1987, respectively).

diaspora-related tasks are carried out by diplomats specialized in diaspora policy. In other words, in the current model, the consul is increasingly identified as an administrative official from whom most of the professional matters requiring diplomatic⁴⁶ negotiations have been detached. Although profiling could also be seen as a political decision, it is in fact more a question of a worldwide trend spreading to Hungary, which entails a change in the legal status of the consul.

To explain this, it is necessary to go back to the time when the Vienna Conventions were drawn up. In the early 1960s, the definition of consular functions was new and forward-looking, and had a significant impact on the definition of consular functions at a national level. In the meantime, already from the late 1960s, there was an explosion in travel patterns. International tourism grew even larger following the fall of the Iron Curtain and the unification of Europe, which led to the development of consular networks in each country and the formalization of consular procedures. The formalization of procedures in this area meant that consular matters increasingly lost their diplomatic character and became more administrative. The more cases had to be dealt with, the simpler and faster they were dealt with, and this work increasingly required administrative specialists rather than diplomats, who were the masters of form. The advent of the internet and the possibility of electronic administration accelerated these changes. After 2010, the Hungarian consular network started to catch up with these changes at an accelerated pace and, by the end of the 2010s, the back-office institutions and information platforms for electronic administration had been set up. The Hungarian changes were also stimulated by the waves of emigration following EU accession, as many citizens moved to different parts of the world, leaving many open cases in Hungary, which only the consul could help them to deal with.

The transformation of the consul into an administrative specialist was, therefore, primarily driven by the needs of citizens on the Hungarian side. In the future, therefore, the administrative tasks of consuls will be further increased and simplified. The aim is to help them deal with as many cases

⁴⁶ The profile-cleansed consul also had some cases that required diplomatic consultations, such as the acceptance of certain documents in the case of reciprocity or legal aid cases that also required continuous consultations.

as possible in as simple a way as possible, preferably in a single meeting with the client. This does not require diplomatic qualifications or cultural, scientific or economic expertise, and these tasks, which were previously carried out by the consul, have been taken over by specialized diplomats or specialized consuls.

5.2. The Size of the Consular Network and the Evolution of Consular Tasks

The consul has, thus, gradually – over the past decade – evolved from a diplomat to an administrative worker, doing essentially the same job abroad as his or her colleagues in domestic client centers (at government offices or document offices). Consular offices have also been transformed through various developments, from being a department of the embassy to being *de facto* document offices abroad. This is partly due to the strengthening of the consular network, which Hungary has sought to make available to expatriates in more places than in the past.⁴⁷

The Hungarian legislation on consuls has essentially reinforced these changes: the consul has been given all the powers necessary to deal with official matters as quickly as possible. However, the legal changes did not become radical, did not infringe or override the tasks defined in the Vienna Consular Convention, but only improved those that were necessary for the work of the administration.

Therefore, the consul remained in contact with the Hungarian communities of the receiving state, but primarily as a contact person for the Hungarian citizens living in the diaspora. All other liaison tasks were transferred to the appropriate levels of the different institutions of diaspora policy, and to the relevant specialized diplomats and consuls.

The question may arise as to whether this process has come to an end, or whether it is a completed change or a temporary one, which may one day return to its starting point. At present, the changes seem to be moving towards further profiling, with more types of cases, and a more electronic and simplified administration. In other words, the administrative nature of consular work will continue to grow, and, along the way, consuls may be given more and more administrative tasks. These include, for example,

⁴⁷ On the changes in the size of the consular network, see: Domaniczky, “New Challenges in Consular Work.”

tasks related to the preparation of national elections, most of which have been assigned to consuls for practical reasons (and are likely to remain with them in the long term).⁴⁸ Whether the former status and tasks of the consul will return can be partly answered in the affirmative. Some tasks, which are now mainly carried out by specialized diplomats and specialized consuls, may return to the consuls, especially in the smaller missions. But the change of status (from consul to bureaucrat) will remain as long as so many citizens move outside national borders.

5.3. Changes in the Hungarian Diaspora

Finally, there are some important changes affecting the Hungarian diaspora. We have seen that the number of Hungarians abroad peaked in the mid-1960s. At that time, even those who had emigrated from Hungary before the First World War were still alive. Thereafter, over the past 60 years, assimilation (in the second and third generations growing up) has caused significant losses. In the post-1989 period, when freedom of movement became a fundamental constitutional right in Hungary, the number of emigrants increased for the first time after accession to the European Union. This was partly due to the ease of movement within the EU and partly to the economic crisis unfolding in the Central European region. The emigration rate peaked in the first half of 2010, before rising again after 2020. The scale of emigration after 1989 is comparable to that of the 1956 wave, but – and this is also a significant change – it is much more concentrated in terms of area than before. Whereas in the 20th century the main destinations were America and certain countries of Western Europe, Hungary, which has become an EU Member State, has had new favorite destinations, mainly other EU Member States (and the United Kingdom). As a result, the main purpose of emigration has also changed: whereas in the past it was often permanent, nowadays it is more of a temporary settlement until a new life is established. And, as the majority of emigrants move within the European Union, it is easier for them to return – even for a few years – to Hungary, where they

⁴⁸ For details, see: Endre Domaniczky, “Voting at the Missions Abroad. The Current Hungarian Regulations, with Special Regard to the Duties of the Consuls” (article, Central European Academy’s Publishing, forthcoming).

will again have new administrative issues that they may later wish to resolve with consular assistance, again from abroad.

In other words, the changes in the diaspora are also working towards strengthening the administrative role of the consul. Hungarians living abroad today no longer need a diplomat who understands the diaspora and its composition, but a specialist in administrative matters who can assist them to solve their cases.

6. Summary

In the above, I have reviewed the legislation governing the relationship between the consul and the Hungarian diaspora. In doing so, I have referred to the historical background, when the consul, who basically had other tasks, was given official tasks already after the Compromise of 1867. We then saw how the Vienna Consular Convention of 1963 established a new and uniform catalogue of tasks for consuls, which, because of its acceptance, gradually became a basic standard. Hungary ratified this treaty in 1987, and initially consuls did indeed exercise their administrative and other – cultural, scientific, and economic – duties as provided for in Article 5 of the VCC. Later, however, after 2010, the administrative tasks of the consuls became primary, while the other tasks, including general liaison with the diaspora, were taken over by other levels of the emerging national diaspora policy institutions. However, the consul did not only transform from a diplomat into a bureaucrat as a result of the new diaspora policy based on the concept of a unified Hungarian nation. He or she was pushed in this direction by the change in people's travel habits, which produced a significant increase in business in a short time. In the Hungarian context, this was compounded by changes affecting the Hungarian diaspora: most new emigrants – who have the strongest ties to the motherland – often prefer temporary residence to long-term settlement, and the change in travel patterns has also led to more frequent temporary or permanent return to Hungary. All this has the effect of further strengthening the administrative tasks of the consul, which indicates that although the scope of consular tasks may change several times in the future, the transformation of the consul from a diplomat to an administrative specialist can be considered a completed change in the long term – as long as the willingness to engage in mass migration remains high. This means that, while the consul

will remain in contact with the Hungarian communities abroad and their members, and this contact will be shaped largely by the legal framework, the consul will no longer be primarily a diplomat in this role, but an administrative professional.

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