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**The Contribution of the European Convention
on Consular Functions to the Development of International Law**

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Abstract: In this paper we have analyzed issues concerning the contribution of the Council of Europe to the codification of consular law by adopting the European Convention on Consular Functions of 1967 and the Protocols to this Convention, in order to standardize the experience and European cooperation in this matter. We have highlighted the regional regulatory nature of this international act and the complementarity and compatibility with the 1963 Vienna Convention on Consular Relations, to the extent that the latter includes only a summary regulation of the consular functions. For the elaboration of the paper we have used as research methods the analysis of problems generated by the mentioned subject with reference to doctrinal views expressed in treaties and papers, the documentary research, the interpretation of legal norms in the matter.

Keywords: consular functions; international law; Council of Europe

1. Introduction

The topic on consular protection occupies an important place in specialized literature, and consular responsibilities developed along with the challenges generated by the increase of demand for consular services and the interest of states to materialize into international agreements, multilateral and bilateral cooperation to meet concrete needs of beneficiaries of consular assistance.

Consular functions represent all the attributions that their consulates and consular staff have and they represent the contents of consular relations. They have generated the appearance of consular institution and they have been the basis for its further development. Maresca believed that consular functions' system is able to reveal multiple and complex relationships created by the consular law (Maresca, 1972, p. 135).

The responsibilities of consular representatives were established by customs, treaties and multilateral and bilateral consular conventions, depending on the interests of the states (Malita, 1975, p. 258; Oppenheim, 1920, p. 837). Ion M. Anghel believes that the consular officer "focuses on his own person" within the consular circumspection where he has the right to act, "all the skills of the authorities who are in charge to solve various situations that may arise concerning the interests of the sending State and its citizens" (Anghel, 2011, p. 594), which makes them difficult to inventory

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(Bonciog, 2000, p. 39), but also difficult to determine the precise scope of duties and consular functions (Sen, 1965, p. 227).

If the establishment of the international framework for regulating consular relations and, consequently, for the exercise of consular functions was performed by the *Vienna Convention on Consular Relations* of 1963 (VCCR), which represents at the same time the common law for the non-signatory countries, the European experience in this matter has been codified by the *European Convention on Consular Functions* 1967 (ECCF), a document which highlights the Vienna Convention on Consular Relations limits since 1963 on the consul's attributions, but it reveals new challenges and opportunities for developing international cooperation.

2. European Convention on Consular Functions – General Presentation

The European Convention on Consular Functions represents a regional coding, it does not cover all countries, but it is applicable only to the states in this geographical area and we appreciate that it is a partial and complementary coding (in relation to Vienna Convention on Consular Relations of 1963), covered matters being limited themselves to consular functions (Anghel, 2011, p. 529; Maftai, 2010, p. 30).

The European Convention on Consular Functions and its protocols are the result of activity of a committee of governmental experts who have worked under the supervision of the European Committee on Legal Co-operation (CDCJ), a body under the authority of the Council of Europe Committee of Ministers. The decision for drafting a regional treaty to regulate consular relations between the member countries of the organization was made in 1961, and the activity of the of the Committee of Experts to draft a European Consular Convention, led by the French expert M. Heumann was conducted over five years and it required approximately 120 days of assembly. The adoption in 1963 of the VCCR within the UN had effects over the activity of the Expert Group, which decided to limit to regulate only consular functions, renouncing at approximately 100 articles already drafted (Wiebringhaus 1968, pp. 770-771).

ECCF and its protocols have been opened for signature to the member states of the Council of Europe and for accession by European States which are not member States on December 11, 1967.

The entry into force of this Convention is regulated in art. 50, paragraph 2 and it is subject to serving a period of three months from the date of deposit of the fifth instrument of ratification or acceptance: *The present Convention shall enter into force three months after the date of the deposit of the fifth instrument of ratification or acceptance.*” As a result, although signed in 1967, ECCF began to take effect only after 44 years, i.e. on 9 June 2011, three months after the date of deposit by Georgia of instruments of ratification (March 8, 2011), the fifth state to ratify it (the other four countries are, in chronological order of ratification of the Convention, Norway - November 29, 1976, Greece - 25 august 1983, Portugal - January 11, 1985 and Spain - July 16, 1987, which also formulated reservations about art. 6 and 13).

From a structural viewpoint, the ECCF includes: preamble, six chapters, two annexes and two protocols: : Chapter I – Definitions (1 article), Chapter II – General consular functions (15 articles), Chapter III – Estates (11 articles), Chapter IV – Shipping (14 articles), Chapter V – General provisions (7 articles), Chapter VI – Final provisions (9 articles), Annex I - specifies the 4 reservations which may be made, Annex II states that it cannot be applied Austria “*the provisions of Chapter IV of the present Convention relating to shipping*”, Protocol to the European Convention on Consular Functions concerning the Protection of Refugees (ETS No. 061A). Protocol to the European Convention on

Consular Functions relating to Consular Functions in respect of Civil Aircraft (ETS No. 061B) (Europe, Details of Treaty No.061, European Convention on Consular Functions).

3. The Consular Functions Regulated by the European Convention on Consular Functions

Although it was initially desired for the convention to regulate all areas of consular law, the committee entrusted with its elaboration decided that under the effect ruling of the Convention to regard only the consular functions, as other issues such as “consular privileges, immunities and relationships” were already included in the Vienna Convention on consular relations 1963 (Council of Europe, Details of Treaty No. 061, Explanatory Report to the European Convention on consular Functions).

As a result, the final decision on this issue has concerned the insertion in the Preamble of a reference to the Vienna Convention of 1963: *Taking note of the fact that consular relations, privileges and immunities are dealt with in the Vienna Convention on Consular Relations signed on 24th April 1963, and in other conventions*”. The Committee considered that this statement and the one related to the fact that *“the rules of customary international law continue to govern matters not regulated by the present Convention”* are sufficient and comprehensive in this matter.

The reason for developing the European Convention on Consular Functions is stated in its preamble: *“the conclusion of a European Convention on Consular Functions will further the process of European unification and co-operation”* and it is integrated into the overall objective of the Council of Europe, that of achieving a greater unity between Member States in order to protect and promote common ideals and principles and to facilitate their economic and social progress, a goal which can be achieved by the conclusion of international agreements.

While the 1963 Vienna Convention enlists the consular function in article 5, letter a-m, the European Convention on Consular Functions details them in its structure divided into six chapters and 57 articles. In line with the 1963 Vienna Convention, the European Convention on consular functions reiterates consular functions already specified in article 5, letter a-l of the Convention, which is the common law in the matters of consular law, but added other functions, compatible with the regulations of the latter according to letter m, article 5, which grants to consuls the ability *“to exercise any other functions entrusted to a consular post of the sending State, which are not prohibited by the laws and regulations of the receiving State or to which the State of residence does not preclude, or which are listed in the international agreements in force between the sending State and the receiving State.”* The list is not, however, exhaustive, art. 44, paragraph 1 allowing the consul *“to exercise any other consular functions entrusted to him by the sending State which are not prohibited by the law of the receiving State or to which no objection is taken by that State.”*

Considering the contemporary requirements and multilateral and bilateral conventions of the time, the committee that drafted the text EECF stated in the *Explanatory Report to the European Convention on Consular Functions* that the expression *“shall be entitled”* should be understood as conferring consuls the power to serve the protection function and not that where it would constitute an obligation for them.

Article 2, paragraph 2 of EECF regulates one of the important functions of the consul, a political function, namely *to maintain and develop the friendly relations* between the two states, maintain consular relations, the sending State and the receiving State, a function that expresses a clear political feature: *“...to promote and develop co-operation between the sending and the receiving States...”* The

collaboration concerns, according to the rule mentioned above, different areas of bilateral relations: commercial, economic, social, professional, touristic, artistic, scientific, educational and maritime matters and civil aviation and the listing is not exhaustive, the words “*in these and other fields*” leaving for the Member states to broaden the scope of activities. We note that this provision entitles the consul to perform acts in connection with any matter arising from the conduct of consular relations (of course, except diplomatic documents). It is obvious the correlation between the provision in article 2, paragraph 2 of ECCF and that of art. 5, letter b of VCCR “*furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention*”

The task of the consul in terms of ***cultural and scientific activity*** is regulated in Article 2, item 2 of ECCF and it entitles the right to favor the interests of the sending State in the artistic, scientific, education domain, to promote these areas, to develop cooperation between the State and the sending State. Basically, this activity may result either in the participation of the consul in the preparation, negotiation, conclusion and application of treaties on the cultural-scientific domain or to create associations, institutions to conduct activities in this area or to organize events for his countrymen, etc. And VCCR indicates this function in art. 5, letter (b) “*furthering the development of commercial, economic, **cultural and scientific relations** between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention*”.

Consular function in passports and visas matters is clearly and precisely regulated in art. 7 of ECCF, providing the consul the following tasks:

“*b) issue and renew to nationals of the sending State and to any other persons entitled to receive them:*

i. identity documents;

ii. Passports or other travel documents;

c) grant and renew visas for entry into the sending State.”

This competence of the consul is an administrative one and the provision has the character of principle, the corresponding activity in this field is an attribute of the sending State, that it is exercised by specialized bodies, according to national regulations. By the national law there are set concrete tasks of consuls in this matter, which of course must be in accordance with the international provisions.

Less concise coding is the coding convention of consular relations, which mentions in article 5, letter d mentions: “*(d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State*”.

Functions in jurisdictional matters and transmission of documents. Article 5, letter j of VCCR establishes the right of consular officer for “*transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State*” This task must be consistent with the existing international agreements. In their absence, the achievement of this task should be according to the laws and regulations of the receiving State.

The ECCF 1967 regulates this function in Article 9, and the more clear provision refers to the attributions of the council in civil and commercial matters:

- to serve judicial documents;
- to transmit extra-judicial documents;

- to take evidence on behalf of the courts of the sending State.

And article 9 of the ECCF refers to the existence of compliance “*with international agreements in force or, in the absence of such agreements, if no objection is raised by the receiving State*”.

Functions in matters of civil status. If the 1963 VCCR establishes in article 5, letter f, all with the value of principle, that among the duties of the consul is also that of acting as an officer of civil status and to exercise similar functions to the extent where the laws and regulations of the residence state do not object it, the 1967 ECCR regulates this function in more detail in article 13 and it authorizes the consul to: “*a) draw up or record documents on the birth or death of nationals of the sending State or any other documents concerning the civil status of such nationals; b) celebrate a marriage, provided that at least one of the parties is a national of the sending State, that neither of them is a national of the receiving State and that there is nothing in the law of the receiving State which would prevent the celebration of the marriage by the consular officer*”. The provision is the result of codifying the international practice according to which, as the consular officer, the consul keeps civil records (births, marriages, deaths), under the laws of the sending State. We consider it necessary to make some remarks about the possibility for the consul to solemnize marriage. If the provision of VCCR may be interpreted in the sense of including the marriage ceremony by the consular officer, in the performance by him of the civil status documents (Matscher, 1986, p. 259), to the extent that the laws and regulations of the receiving State do not oppose it, thereby making it “a finding of the previous practice of coding” (Anghel, 2011, p. 613), the ECCF expressly mention this attribution in article 13, letter b, empowering the consul to officiate a marriage “*that at least one of the parties is a national of the sending State, that neither of them is a national of the receiving State*”. We should highlight that it should be considered also the final thesis “*there is nothing in the law of the receiving State which would prevent the celebration of the marriage by the consular officer*”.

In VCCR, **the consular matters of succession** are set out in brief in article 5, letter g *safeguarding the interests of nationals, both individuals and bodies corporate, of the sending States in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State*”. The ECCR determines the contents of consular function in matters of succession extensively in the wording of 11 articles (art. 17-27) in Chapter **Estates**. There are regulated, for example, the obligation of the receiving State’s authorities to inform consular officers “*of the death within his district of any national of the sending State*”, and similarly, if the consular officer “*... is the first to have knowledge of such a death or the existence of such an estate*”, he „*shall inform the competent authorities of the receiving State*” (article 17); the right of the consular officer to take immediate custody amounts of the money and personal effects of the *de cuius* in order to protect them (article 18); the permission granted to the consular officer to receive and distribute an estate of small value without power of representation (article 19); the right of the consular officer to represent a citizen of the sending State “*who is not resident in the receiving State and is not legally represented there has or may have an interest*” in connection with the ownership of a building that belonged to the *de cuius*, or when it although resident in the receiving State “*is incapable of exercising his rights*” (article 20); the power granted to consular officer to intervene *to the protection and preservation of the interests of the person whom he is entitled to represent*” (article 21); the possibility to send “*money or other property*” by a national of the sending State, who is not resident in the receiving State “*as a consequence of the death of any person*” (article 26), etc.

Functions related to citizenship. Perhaps one of the most important tasks (in fact the citizen of the sending State is the main recipient of the consular activity), this function encompasses a range of responsibilities of the official consular, activities conducted for his countrymen. ECCF expressly

refers to citizenship in article 12, paragraph 1: “A consular officer shall be entitled to receive such declarations as may be required by the law of the sending State, particularly as regards nationality” (S. N.). Although it is not expressly mentioned, the consular functions regarding citizenship, but by reference to customary law in the Preamble, there are used formulas which show that it is addressed to nationals of the sending State, and VCCR covers this matter as well. (Anghel, 2011, p. 619)

This consular function involves the performance of duties such as: setting a record of its own citizens who have domicile or are occasionally in the State of residence, within the consular circumscription, reflected in the consular record, an activity which is directly related to that of issuing and renewing identity documents; granting assistance and consular protection, consular representation, etc. Achieving this function is closely linked to the right / freedom of communication, which the VCCR expressly mentions in article 36, paragraph 1, letter a “consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State”. The ECCF noted in article 5 the right of citizens of the sending State to have at any time the possibility to communicate “the appropriate consular officer... and ... to have access to him at his consular post” and in article 4, letter a) - the right of consular officers to communicate with their citizens: *a consular officer shall be entitled to have access to, communicate with, interview and advise, any such national*. The problem of consular representation is regulated in article 5, letter 1 of the VCCR, as being specified the situations where we can call him (“because of absence or any other reason, such nationals are unable at the proper time to assume the defense of their rights and interests”), the limits of exercising this power *representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining ... provisional measures for the preservation of the rights and interests of these nationals*”) and the obligation to observe practices, procedures, laws and regulations of the receiving State. The ECCF mentions representation in article 4, letter d: “to assist him, provided that there is nothing contrary thereto in the law of the receiving State, in proceedings before the judicial authorities referred”, and Article 4, letter e, in which case the consular officer consular shall be entitled “to arrange legal representation for him if necessary”. The two conventions contain special provisions relating to protecting the interests of minors and incapable persons, with full capacity of being citizens of the sending State. If in the VCCR the function is specified briefly in article 5, letter h, supplemented by art. 37 b, protecting the interests of minors and other incapable persons who are nationals of the sending State is explained in detail in the contents of article 14 of the ECCF.

Consular function in civil navigation matter is regulated by ECCF in Chapter IV - Shipping, art. 28-41 much more detailed than in the VCCR (Article 5, letter l), which provides a very general way that competence. The complexity of the shipping issue requires an explicit way for solving issues concerning the attribution of the consul in this matter and we intend to look at how this was achieved through ECCF regulations, and other attributions within the jurisdiction of the consul, which we will include into a future paper.

4. Conclusions

The question is: has the Convention contributed to the development of international? Undoubtedly, the text of the Convention provides an added value in this matter, being obvious “the clear superiority of the Strasbourg text” (Green, 1972, p. 182). ECCF reflects the position of European states on the exercise of consular functions and it produces effects for the states that have ratified it, compared to

the states with which they maintain consular relations. It is true that only a small number of states have ratified it, unlike the 1963 VCCR agreed by 179 countries (Nations). The motivation might count on the fact that the higher degree of generality of 1963 VCCR provides more possibilities to adapt to the changing circumstances in the field of consular activity, a greater flexibility in the development of new areas within the consular relations framework.

If States Parties will consider a future amendment to VCCR “to clarify some of the issues left open in 1963” (Buys 2013, p. 72), to bring it to the current development level of the international society, for making its provisions more precise, it could consider and develop the European experience regarding the consular functions, as it was recorded in 1967 ECCF.

Given that in 1963 VCCR the consular functions were given a summary, perennially regulation, given that Romania has committed to develop the relations with the European member countries of the European Union, up to integration, including in the consular domain, maybe our country should ratify the 1967 ECCF.

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