SECURITY DIMENSIONS
NO. 36; 2021 (156–171)
DOI 10.5604/01.3001.0015.0491

A Short Excursus into the Issue of Consular Law with an Emphasis on the National Legislation of the Czech Republic

Aleš Zpěvák*
Jiří Víšek**

ABSTRACT

Consular law is a set of norms governing the establishment of consular relations and opening consular offices of another state. This is a branch of law that is not unambiguously classified, falling both under international law and national law. It is a highly consolidated, incorporated, and also a recently codified branch of public international law in which the international element undoubtedly dominates. Under the surface, however, one can find more or less highly developed national legislation (German consular law, Italian consular law) which is not a mere concession to international legal norms (especially the Vienna Convention on Consular Relations)

* JUDr. Aleš Zpěvák, Ph.D., University of Jan Amos Komenský Prague, Department of Law; Prague, Czech Republic; correspondence address: Roháčova 63, Prague 3 – Žižkov, Postcode 130 00, Czech Republic; email: zpevak.ales@ujak.cz

** Mgr. Jiří Víšek, Ph.D., Univesity of Jan Amos Komenský Prague, Department of International Affairs and Diplomacy; Prague, Czech Republic; correspondence address: Roháčova 63, Prague 3 – Žižkov, Postcode 130 00, Czech Republic; email: visek.jiri@ujak.cz

but are often separate sets of norms, collected into other directly related, linked to or even closely related national legislation. Given the functions performed by the consular post and the organisational integration of consular authorities into the system of state bodies, it is subsequently possible to classify national consular law into the branch of administrative law.

ARTICLE INFO

Article history
Received: 03.02.2021 Accepted: 25.06.2021
Keywords
consular law, public international law, Vienna Convention on Consular Relations, consular authority

Introduction

In terms of classification, it is unclear whether to place consular law as a set of norms governing the establishment of consular relations and the opening of consular offices of another state, under international or national law. *Prima facie*, it is certainly a very consolidated, incorporated, and more recently, a codified branch of public international law, in which the international element takes precedence. Under the surface, however, one can find more or less highly developed national legislation, which is not just a concession to international legal norms (especially the Vienna Convention on Consular Relations) but is very often separate sets of norms, grouped into laws with a direct relationship or link to other national laws or are even closely intertwined with them. Given the functions performed by the consular post and the organisational integration of consular authorities into the system of state bodies, it is subsequently possible to include national consular law in the field of administrative law.

1. Retrospective reflection on consular law

The term consular law can be defined as a comprehensive set of legal norms that regulate the establishment of consular relations and the establishment of consular posts. An *argumentum a contrario* in relation to diplomatic law is used for the aforementioned and correct definition of consular law. While diplomacy focuses on promoting the interests of the state as a whole, consular activity is characterised by the protection of the rights and protected interests of citizens and other private entities of the sending state in the

receiving state. The field of consular law regulates the activities of consular offices and their staff, including defining their functions, rights, and obligations. The authors Pavel Bureš and Ondřej Svaček characterise consular law as "ambivalent law, having the nature of both national and international law. As is typical for this established subbranch of international law, the international element is dominant".[1]

For a closer understanding of the issue of consular law, it is necessary to provide a brief history stretching back to the period of ancient Greece. In the ancient city-states on the Peloponnesian island, there were people who now can be described as the precursors of diplomats and consuls, the so-called *proxenoi*.[2] The fundamental task of the proxenoi was to take care of subjects of foreign states, protect their interests, and carry out the elementary registry and notarial procedures of recent consular posts.[3]

The first mentions of consuls as representatives of foreign states start to appear in the early Middle Ages. The activities of these consuls differed somewhat from their current conception. Consuls mainly served as *local arbitrators* whose main task was to resolve disputes among subjects of their sending state. Since the 11th century, when the Venetians sent a group of consuls to Constantinople to resolve civil and criminal disputes, the institution spread to other cities. In the 13th century, Constantinople had a large group of permanent diplomatic representatives – consuls from Marseilles, Montpellier, and other French, not to mention Italian and Spanish, commercial cities. The establishment of consulates at that time had a single objective – to promote international trade. Port cities played the most commercially important role, and it was within their confines that the so-called *consuls des marchands* – the consuls (originally merchants) who first decided in commercial disputes of members of their sending city – began to first appear.

[1] P. Bureš, O. Sváček, *Porovnání právní úpravy konzulárního práva ve vybraných zemích*, Výzkumný projekt RM, "Ministry of Foreign Affairs", January 6, 2008, https://www.mzv.cz/file/451868/Porovnani_pravni_upravy_konzularniho_prava_Ve_vybranych_zemich_EU___zkracena_verze.pdf (accessed: 21.01.2021).

[2] The proxenoi were selected from among the citizens of the host state, but the candidates most likely enjoyed a significant social status.

[3] On the issue see: Č. Čepelka., P. Šturma, *Mezinárodní právo veřejné*, Prague 2008, p. 840; M. Potočný, J. Ondřej, *Mezinárodní právo veřejné: zvláštní část*, 6. dopl. a rozš., Prague 2011, p. 560.

However, permanent diplomatic missions were also gradually established. The first of these was the Italian mission set up in 1455 by the Republic of Milan in Genoa. The most important institution preserved from the original diplomatic mission is the title for the head of the office – the ambassador. The establishment of diplomatic missions became a feature of international relations, and after Genoa, diplomatic missions began to appear in other strategically important cities.[4]

Substantial changes are directly connected with the emergence of modern states at the turn of the 16th and 17th centuries, when the character of consular relations began to lose its commercial form and all the powers of consuls passed to the state.[5] Independent consuls settling disputes between free traders slowly but surely became civil servants who began to perform diplomatic functions along with consular ones. The position of consuls was also strengthened by various privileges and immunities which are now connected with the function of members of diplomatic missions. Later, with the nascent recognition of states' territorial sovereignty within the international community, the traditional consular role as the so-called arbitrator of merchants ceased to conform to the idea of state power, so these competencies were taken away from consuls. In connection to the removal of traditional consular powers, the concept of economic diplomacy began to emerge, and later it assumed control of all foreign economic activities of the state. The final form of consular activities, grounded as we know it today in the protection of the rights and interests of citizens and other private entities of the sending state abroad, was not created until the first half of the 20th century.

2. Sources of consular law – crucial codification

According to the authors Šmihula, Lippay and Gondeková, "many forms of consular law can be found in the world, whether more or less detailed national legislation or norms of public international law contained in customary laws and conventions. If we disregard the international legal form of consular law, we can, given the nature of consular activities, place the norms of consular law under the branch of administrative law".[6]

[4] For more information: J. Kavan, Z. Matějka, A. Ort, *Diplomacie*, Plzeň 2008, p. 16.

[5] S. Gullová, *Mezinárodní obchodní a diplomatický protokol*, 3., dopl. a přeprac, Prague 2013, p. 335.

[6] D. Šmihula, B. Lippay, J. Gondeková, *Diplomatické a konzulárne právo*, Bratislava 2015, p. 83.

As in the case of norms, we divide legitimate sources of consular law into two categories: the first category covers sources in which the Vienna Convention on Consular Relations of 1963 (published in the Czech Republic under the Decree of the Minister of Foreign Affairs No. 32/1969 Coll.) exerts the strongest influence. This category also includes bilateral consular agreements and other international treaties and customary law. The second category includes the sources of national consular law, which take the form of laws especially regulating the functions and activities of consular posts. This category is divided into two classes according to the form of the standards of national consular law:

- Class 1) heterogeneous legislation, i.e. individual institutions of consular law are fragmented into many legal regulations.
- Class 2) represents a homogeneous regulation of national consular law. The individual norms and institutions are contained in one piece of legislation, which is authoritative for consular law.

The institution that plays the most important role in this area is undoubtedly the United Nations Commission on International Law (hereinafter referred to as the "Commission"). The Commission aims to ensure the development of international law and its codification. We cannot omit the fact that Jaroslav Žourek,[7] a prominent Czechoslovak expert on international law, was elected to the Commission in the 1960s. He was the author of the draft *Convention on Consular Relations* and thus made a significant contribution to the successful codification of consular law. In the position of the rapporteur of the special commission for a codification of consular law, Dr. Žourek provided unique knowledge from the process of creating the *Vienna Convention on Consular Relations*.

[7] As a prominent expert on international law, he remained at the Ministry of Foreign Affairs even after the communist coup, participated in the preparation of documentation for UN meetings and in 1949 was the first Czechoslovak to be elected to the UN-International Law Commission (ILC), subordinate to the UN Secretary-General. In the subsequent period, he played an active recurring part in meetings of various UN bodies, where at that time he promoted the positions of the Soviet Bloc (e.g. on the Chinese question). In 1955, he was elected as a member of the UN-ILC as rapporteur for a special commission set up for the codification of consular law and preparation of the consular convention, and although he had to leave the Ministry of Foreign Affairs in 1953 (transferring to the newly established Department for International Law at the Czechoslovak Academy of Sciences), in the following eight years he played a significant part in the proceedings of this body, culminating in the signing of the so-called Vienna Consular Convention and other documents in April 1963.

Between 2 March and 14 April 1961, a conference was held in Vienna's New Hofburg, attended by 81 states, including 75 member states, representatives of 6 UN professional organisations, and representatives of two intergovernmental organisations. Jaroslav Žourek was a critic of the wording of Article 74 of the *Vienna Convention*, which in his opinion directly contravened international law. According to him, the reason for this conflict lies in the fact that "international law confers on each state the right to participate in all conferences convened for the purpose of the codification of general international law".[8] According to Dr. Žourek, the text was created under pressure from Western delegations, which allowed the additional signing of the convention by only four categories of states: UN members, members of professional organisations, parties to the Statute of the International Court of Justice, and states invited to sign by the General Assembly (Article 74 of the *Vienna Convention*). An equal point of conflict at the conference was the legal status of consuls. Opinions emerged that consuls did not represent the state in the sense of international liaison bodies but rather were administrative bodies entrusted with the administrative and jurisdictional concerns in the territory of another state.

On 24th April 1963, the Commission in question unanimously approved the text of the *Vienna Convention on Consular Relations*. The text of the convention itself consists of a preamble and 79 articles divided into five chapters. These deal with *consular relations, consular privileges and immunities, and honorary consular officers*. The last two chapters are general and final provisions. A fundamental benefit of the Vienna Convention is the establishment of a legal framework for the creation of individual bilateral consular agreements, as well as guidelines for national law-making.

3. Consular law in national practice – recent legislation

The consular service is among the important segments of the foreign service, as it guarantees continued contact between the state administration and citizens abroad. It can be classified under the branch of administrative law similar to the activities of other administrative bodies. Consular service and diplomatic service have gone through customary stages of development, which we will try to outline below. For the sake of clarity and consistency,

[8] D. Šmihula, B. Lippay, J. Gondeková, *Diplomatické a konzulárne právo*, Bratislava 2015, p. 112.

the term *foreign service* will be used in the article, as it covers both consular and diplomatic services.

After the establishment of an independent Czechoslovakia, all the then existing diet and imperial laws and regulations of Austria-Hungary underwent a transformation. Until 1950, the work of the civil service was regulated by the Imperial Act No. 15/1914 Coll., *on the Employment of State Officials and Civil Servants*, also known as *service pragmatics*, which is considered a kind of predecessor to the Civil Service Act. Service pragmatics was replaced only by Act No. 66/1950 Coll., *on Employment and Salaries of Civil Servants*. This act was followed in 1966 by Act No. 65/1965 Coll., *The Labour Code*, which established uniform employment conditions for civil servants with specific exceptions. More significant provisions on foreign service can only later be found within the definition of the agenda of the Ministry of Foreign Affairs in Sec. 6 article b) and c) of Act no. 2/1969 Coll., *on the Establishment of Ministries and Other Central Bodies of the State Administration of the Czech Socialist Republic* (hereinafter the "*Powers Act*"), which states that: "The Ministry of Foreign Affairs shall in particular: ensure the protection of the rights and interests of the Czech Republic and its citizens abroad and manages foreign missions abroad".

Martin Smolek states that "it is absurd that all the above regulations were concerned with the performance of the civil service, the Powers Act only granted powers to perform the foreign service of the Ministry of Foreign Affairs, but none of the laws covered the specifics of the civil service abroad, although shortly after the founding of Czechoslovakia, foreign missions were established all over the world and staffing was provided by MFA employees".[9]

The beginnings of the foreign missions of former Czechoslovakia cannot be neglected. The first embassy of the newly formed state, the so-called First Republic, was established in Brussels on 21 September 1919, when Karel Mečíř[10] became an ambassador after submitting his diplomatic credentials. Shortly afterward, the King of Belgium appointed to the then newly formed Czechoslovakia his first envoy, Michotte de Welle, who took

[9] M. Smolek, *Význam a dopady nového zákona o zahraniční službě*, "Správní parvo", 2018, no. 3, p. 156.

[10] He was a Czech and Czechoslovak journalist, writer, diplomat, and politician, member of the Revolutionary National Assembly for the Republican Party of the Czechoslovak countryside (agrarians).

office on 31 December 1919. Another foreign mission was established on 15 August 1920 in Sydney, headed by the Consul General Prof Jiří Daneš.[11]

After the breakup of Czechoslovakia, the foreign service was regulated by Government Decree No. 62/1992 Coll., on the Provision of Compensation for Certain Expenses to Employees of Budgetary and Contributory Organisations with Regular Work Abroad. The stated regulation can be considered the first Czech legal norm that regulates the conditions of employees posted at foreign missions abroad.

A more significant piece of legislation came with the passing of Act No. 218/2002 Coll., *the Service Act*, which contains provisions on foreign service. It was by this law that persons working at foreign missions were first granted the authority to perform foreign service. However, this act never entered into force, and on 6 November 2014 it was superseded by the new Act No. 234/2014 Coll., *on the Civil Service* (hereinafter referred to as the *Civil Service Act*).

The above-mentioned Civil Service Act amended the specifics of the performance of the foreign service in a manner similar to the previous Civil Service Act, which had not entered into force and was replaced. The newer act came into force on 1 January 2015. However, it later turned out that the regulation of the foreign service is insufficiently detailed in this law for the effective functioning of foreign missions. The legislator responded to these imperfections with a technical amendment under Act No. 26/2016 Coll. The amendment regulated the issue of employee rotation between headquarters and abroad and also contributed to the tools for balancing family life with the performance of foreign service. The amendment also enshrined the possibility of appointing persons in a fixed-term employment relationship to positions in embassies. This rule was inserted in the provisions of Sec. 178 article 3 as follows: "A service body may fill a position in a foreign mission, with the exception of the position of head of the department, by a person employed for a definite period according to labour law regulations, if required in the interest of the Czech Republic". According to Martin

[11] On the issue see: J. Dejmek, J. Němeček S. Michálek, *Diplomacie Československa. Díl II. Biografický slovník československých diplomatů (1918–1992)*, Prague 2013, p. 802.

Professor Jiří V. Daneš was a Czech geomorphologist, diplomat, traveller, and writer, the world's leading expert in the field of karst regions. At the end of 1919, the Czechoslovak government appointed him the first Czechoslovak consul general in Sydney, Australia. At the beginning of his Australian posting, i.e. in the second half of 1920, he was fully occupied with official duties and lecture promotion of Czechoslovakia.

Smolek, this rule has been introduced into the legal system for cases where the President of the Republic appoints a person outside the service as the head of a foreign mission. The wording of the provision is already amended.

Despite the above-mentioned provisions of the Civil Service Act taking into account the peculiarities of the foreign service, the Ministry of Foreign Affairs has constantly proposed the need for the adoption of a separate law. One of the reasonable comments was that there was no legal framework for consular protection. Křepelka pointed this out: "There may be a reluctance to create more precise rules, including, among others, the area of diplomacy". More and more matters are being reviewed in court. For the consular service, judicial supervision would be an unpleasant innovation, especially if the courts did not understand the nature and possibilities of the protection provided to it".[12]

Act No. 150/2017 Coll., *on Foreign Service and Amendments to Certain Acts*, including four statutory decrees, entered into force on 22 May 2017 and had an effective date as of 1 July 2017. According to the explanatory memorandum, the act aims to provide a legal framework for the foreign service, consular service, and other administrative and similar activities of foreign missions, as well as legal certainty in the provision of consular protection abroad and a guarantee of equal quality consular protection to citizens of the other Member States of the European Union that does not have a foreign mission in the given territory. The purpose of this law is to provide rules for the proper functioning of the foreign service, taking into account all its specifics, especially in the context of the so-called rotation system of employees of the Ministry.

The most significant reason for the creation of this law was the obligation to implement the European Union directive, for which there had not been a suitable platform. And since the legislation governing the foreign service is already in place in most EU countries, the initiative to create the law (whatever it may be) can be seen as a positive. The main text is enshrined in the first part and is structured into five chapters. The first four chapters deal with the issue of the organisation of the foreign service and the last chapter deals with the service and employment of foreign service workers. The second, third, and fourth parts contain repealing provisions following the changes brought by the law, and the fifth part stipulates

[12] F. Křepelka, *Dvacet let spolupráce členských států při konzulární (nikoli ale diplomatické) ochraně občanů Evropské unie ve světě*, "Právník", 2014, no. 8, p. 644.

the effect of the law. In the introductory provisions, the law regulates the subject matter, scope and also recognises the fulfilment of the obligation to transpose the directive regulating the rules for providing consular protection to unrepresented citizens of the other Member States of the European Union (hereinafter referred to as the "*unrepresented citizen*"). The text of the law continues with the definition of basic terms. These terms include, for example: foreign service,[13] service abroad,[14] service at headquarters,[15] consular service,[16] consular officer,[17] and honorary consular officer.[18]

All foreign service activities should take place in the shadow of the principles of loyalty to the Czech Republic, the principles of professionalism and indivisibility, and the principle of the Czech Republic's compliance, with obligations under international and European Union law. The principle of professionalism should be reflected not only in the performance of the service which emphasises high professionalism, but also in the selection of staff (primarily) from among professional diplomats, or administrative and technical staff with appropriate qualifications. The law does not forget the specifics of the foreign service and, in principle, also references the principle of rotation of MFA employees between headquarters and abroad, compliance with which must be supervised by the state secretary of the ministry.

The definition of the foreign mission is set in Chapter II. Sec. 4 para. 1, and it reads as follows: "A foreign mission is an organisational unit of the Ministry established for the purpose of performing tasks of service abroad". It thus follows from the aforementioned definition one important matter that a foreign mission is a department of the ministry and thus not

[13] "[F]oreign service [means] activities aimed at establishing, maintaining and developing relations with foreign states and other subjects of international law, as well as the protection of the interests of the Czech Republic and its citizens abroad, carried out in the Ministry of Foreign Affairs".

[14] "[S]ervice abroad [means] a foreign service performed by a diplomatic or administrative official in a service abroad".

[15] "[S]ervice at headquarters [means] a foreign service performed by a diplomatic staff member at a service in the Czech Republic".

[16] "[C]onsular service [means] a foreign service having as its object the activities referred to in Chapter IV".

[17] "[C]onsular officer [means] a diplomatic or administrative officer carrying out activities under Chapter IV".

[18] "Honorary consular officer [means] a natural person, not in a professional, employment or other similar relationship with the Ministry, entrusted with the exercise of certain consular activities under Chapter IV".

an administrative body in the sense of the provisions of Sec.1 para. 1 of the Administrative Procedure Code. The same conclusion was repeated by the Supreme Court of the Czech Republic (hereinafter referred to as the "SCCR") before the creation of the law in question, which stated in its decision: "therefore, it is necessary in the given case where there are shortcomings in the explicit legislation to determine the local jurisdiction of the court with regard to the fact that, although the foreign mission is an independent administrative body to a limited extent in terms of jurisdiction, it forms part of a broader structure in institutional terms, namely of the Ministry of Foreign Affairs".[19]

A representative authority can be classified as a basic organisational unit representing the state abroad over the long term. However, this term is not used in international law. Instead, it uses the terms *diplomatic mission* and *consular post* among others.[20] However, these concepts are too specific, and a general concept that would cover all representative authorities, as is the case in Czech and English, though not in international law, is missing. One can only speculate as to how the Czech term *representative authority* came into national law when it does not appear anywhere in international law. The legislators probably used it because it was "deep-rooted" in the Czech language.[21] The law goes on to list the various forms of foreign missions which include embassies, permanent missions to international organisations, consulates, special missions, and liaison offices or offices. It also sets out the rules for the establishment and closure of foreign missions by the Minister of Foreign Affairs of the Czech Republic.

Chapter III enshrines provisions aimed at the actual work of the foreign service. The law differentiates between service abroad and service at headquarters and provides for both a demonstrative list of activities performed. For possible cooperation between the ministry, other state bodies, and legal entities, the law provides a general legal framework and authorises the ministry to conclude agreements to provide mutual cooperation. It is an expression of the principle of indivisibility of foreign service, according to which the subject of international law in the state as a whole, not its individual components.

[19] The ruling of the Supreme Court of the Czech Republic, file no. 10 Azs 153/2016.

[20] For more information author recommends to: M. Faix, P. Bureš, O. Svaček, *Rukověť ke studiu mezinárodního práva veřejného. Díl I. Dokumenty*, Prague 2017, p. 429.

[21] On the issue se:e J. Malenovský, *Mezinárodní právo veřejné: obecná část a poměr k jiným právním systémům*, 6. upr. a dopl., Brno 2014, p. 500.

The provisions of Sec. 13 are specified in the context of Sec.14. Together they form an elementary legal framework specialised for entities established by the ministry as a contributory organisation to "create conditions for comprehensive development of relations between the Czech Republic and the receiving state, including economic, cultural and scientific relations and development cooperation", known as Czech centres, the Czech Development Agency or, for example, the agencies Czechtrade and CzechInvest.

The area of foreign service that probably lacked comprehensive legal regulation the most is the consular service. Through the consular service, which ensures the contact of the state administration with citizens abroad, a number of administrative activities are performed, which are handled by administrative bodies in the Czech Republic. Until now, many activities of the consular service have been done without legal authorisation, but only on the basis of international legal sources, i.e. the *Vienna Convention on Consular Relations* and bilateral consular agreements. Until now, national rules on the exercise of consular services have been fragmented into many pieces of legislation.

The legal regulation of consular law *stricto sensu* can be found in Chapter IV of the act in question (specifically Sec.16–31) and is divided into two parts. Part 1 deals with the issue of consular activities, and part 2 is concerned with consular protection. The act empowered consular offices to perform twelve activities, which are listed below: *consular protection, verification activities, notarial activities, birth/death/marriage registry procedures, citizenship procedures, travel paperwork, electoral authority activities, weapons and ammunition activities, legal assistance in contact with foreign countries, delivery of documents abroad and giving evidence, inheritance procedures and activities in matters of issuing visas and permitting residence of foreigners*. Although no uniform, all-encompassing legal authorisation for all these activities was in place during the period before the law came into force, they were still done, either on the basis of authorisation by special regulations or without it. Now, thanks to the new legislation, there is a duplication of standards of national regulations governing individual activities. We rate this solution positively because, with the exception of the provisions on consular protection and verification activities, other consular activities are legislated very briefly, so the rules contained in the law would not be sufficient. In our opinion, the legislator intended only to inform about other activities, not to regulate them. In addition, the connection of the

law with the "real" normative provisions was resolved by the legislator in the form of references.

A significant part of the law is legislation covering consular protection, which became law in the form of a European Union directive. Prior to the adoption of the law, consular protection at the national level was enshrined only in the internal regulations of the ministry. In fact, the Union's legislative enshrinement of consular protection existed for many years, for example in Article 23 of the Treaty on the Functioning of the European Union, Article 46 of the Charter of Fundamental Rights of the European Union, and Article 35 of the Treaty on European Union. The detailed rules on consular protection have so far been governed by Council Decision 95/553 / EC of 19 December 1995 on the protection of citizens of the European Union through diplomatic missions and consular posts. According to the law, consular protection is provided to citizens of the Czech Republic and also to unrepresented citizens of another Member State of the European Union, i.e. citizens of a state that does not have a representative office in a given place (a third country).

According to the provisions of article. 17 of the act, assistance is possible in the following circumstances: in case of restriction of personal liberty; victims of crime; in case of emergency; in connection with death; unaccompanied minors abroad, and in the event of emergencies caused by human activities or natural disasters where a large number of people are affected. However, the list of situations in which consular protection assistance may be provided is merely illustrative. The following paragraphs indicate the manner in which assistance is provided, including the conditions for providing financial or other material assistance. The specific procedure for providing assistance is at the discretion of each foreign mission.

From a practical point of view (taking into account the different conditions and facilities of individual offices), the authorities' broad discretionary powers seem to be a reasonable solution, although from the point of view of law it runs up against the principles of legal certainty, predictability, and legitimate expectations. Concerning consular protection, we would recommend unifying the ways in which assistance is provided, but especially for consulates general and honorary consulates in particular, as their technical background is diametrically different. The legislator is probably aware of these differences when he stated in the provision of Sec. 24 para. 2: "Consular protection for unrepresented citizens is not provided by a consular post headed by an honorary consular officer". However, apart

from the cited provision, the law does not comment on the performance of other consular activities by honorary consulates.

An important area of consular practice is verification activities regulated in the Czech Republic by Act No. 21/2006 Coll., *on the Verification of the Conformity of the Transcript or Copy with the Document and on the Verification of the Authenticity of the Signature and on the Amendment of Certain Acts*. This activity is entrusted primarily to the Ministry of the Interior, local government units, postal licence holders, or the Economic Chamber of the Czech Republic. Further regulation can be found in Act No. 358/1992 Coll., *on Notaries and their Activities (the Notarial Code), as amended*. With the establishment of the Civil Service Act, foreign missions are also legally entitled to perform *vidimus*, legalization, and other verification activities.

Chapter V (Sections 32 to 57), which enshrines the service and employment conditions of employees working in the foreign service, is in a special relationship (*lex specialis*) thanks to specific rules concerning Act No. 262/2006 Coll., The Labour Code and the Civil Service Act. The relations of civil servants in the foreign service will continue to be governed by the Civil Service Act (or the Labour Code) except for deviations reflecting the peculiarities of foreign service, contained in a special law, which is the Civil Service Act. The wording of the rules contained in Chapter V ensures that the filling of vacancies in the context of the rotation system is done as efficiently as possible, bearing in mind the situations of filling vacancies without a tender process, the placement of staff in bridging jobs before and after secondment, changes in the employment relationship, duties of the State Secretary of the Ministry of Foreign Affairs in the organisation of service relations, also the establishment of an HR board and authorisation of a special agent for an extraordinary task. In addition to the aforementioned law, it allows citizens of the Czech Republic living permanently abroad to fill a vacancy of an administrative or technical nature at a foreign mission.

A matter of interest is the provision on the use of employment within the foreign service, the content of which is very similar to the provisions of Section 178, Paragraph 2 of the Technical Amendment under No. 26/2016 Coll., The Civil Service Act. Both provisions aim at coordinating personal and family life when working in the service abroad, by employment in accordance with the labour law regulations of a person who is the spouse or partner of a civil servant posted to work in the foreign service. Part 3

of the same chapter contains a set of rights and obligations of employees in the foreign service. The set of obligations is clearly based on the principles of loyalty to the Czech Republic, professionalism, and compliance with international obligations. Examples include compliance with the protocol customs of the receiving state, a ban on harming the reputation of the Czech Republic abroad, and a ban on the abuse of privileges and immunities arising from international treaties. Chapters VI and VII contain common, transitional, and final provisions. As mentioned at the beginning of the chapter, parts two, three, and four list changes to related laws and part five the effectiveness of the law.

Conclusion

For the first time in history, Czech consular law has received its legal form. With the establishment of Act No. 150/2017 Coll on Foreign Service and the Amendment of Certain Acts, citizens are provided with a greater degree of legal certainty in the performance of consular services. The aim of the article is to point out the elementary fragments of recent legislation before and after the creation of the Civil Service Act.

References

1. Bureš P., Sváček O., *Porovnání právní úpravy konzulárního práva ve vybraných zemích*, Výzkumný projekt RM, "Ministry of Foreign Affairs", January 6, 2008, https://www.mzv.cz/file/451868/Porovnani_pravni_upravy_konzularniho_prava_Ve_vybranych_zemich_EU___zkracena_verze.pdf (accessed: 21.01.2021).
2. Čepelka Č., Šturma P., *Mezinárodní právo veřejné*, Prague 2008.
3. Dejmek J., Němeček J., Michálek S., *Diplomacie Československa. Díl II. Biografický slovník československých diplomatů (1918–1992)*, Prague 2013.
4. Faix M., Bureš P., Svaček O., *Rukověť ke studiu mezinárodního práva veřejného. Díl I. Dokumenty*, Prague 2017.
5. Gullová S., *Mezinárodní obchodní a diplomatický protokol,* 3. dopl. a přeprac, Prague 2013.
6. Kavan J., Matějka Z., Ort A., *Diplomacie*, Plzeň 2008.
7. Malenovský J., *Mezinárodní právo veřejné: obecná část a poměr k jiným právním systémům*, 6. upr. a dopl., Brno 2014.
8. Potočný M., Ondřej J., *Mezinárodní právo veřejné: zvláštní část*, 6. dopl. a rozš., Prague 2011.

9. Šmihula D., Lippay B., Gondeková J., *Diplomatické a konzulárne právo*, Bratislava 2015.
10. Smolek M., *Význam a dopady nového zákona o zahraniční službě*, "Správní parvo", 2018, no. 3, p. 156.

Cite this article as:
A. Zpěvák, J. Víšek, *A short excursus into the issue of consular law with an emphasis on the national legislation of the Czech Republic*, "Security Dimensions", 2021, no. 36, pp. 156–171, DOI 10.5604/01.3001.0015.0491.