

**VINCZE, Zoltán<sup>1</sup>:**

**Honorary Consuls in Hungary:  
Their Legal Standing and Applicable Benefits**

**1. INTRODUCTION**

The title is somewhat purposely misleading, thus trying to be eye-catching, in its wording when mentioning “benefits”, although we are obviously talking about the facilities, privileges and immunities, as expressions used in the text of the 1963 Vienna Convention on Consular Relations (“the Convention”). As it will be detailed hereunder, the relevant practice of the Hungarian authorities with respect to such facilities, privileges and immunities to be accorded to honorary consuls under international and domestic law, is so confused and imprecise, that we might not be sure that they are fully aware of the exact legal nature of these expressions, as they seem to sometimes look at these systems as simple discretionary “benefits” to be randomly granted to honorary consuls and to the consular posts headed by them, to the extent and at a time as and when authorities wish.

The relevant, precisely worded rules and regulations of international and Hungarian domestic law currently in force, make me to believe firmly that neither the existence, nor the extent of these facilities, privileges and immunities can depend on the wish of certain ministries and other bodies of the administration, even if the representatives of such bodies are not in full consent with this view. Therefore, the real meaning of the expression “applicable” used in the title hereof, is the exact question I wish to further analyse, while taking this opportunity to wish success in their currently ongoing similar work of the joint working committee of the Ministry of Foreign Affairs and of the Corps of the Honorary Consuls.

It might look strange at the first sight that we are just at this stage of the clarification process here in this country, although the institution, which lives its second golden age nowadays, is itself centuries old (and known to and used in and by Hungary for several decades), and even the codification of the relevant rules of international law took place more than 40 years ago. The answer lies with the socialist decades of this country, during which the institution was at a standstill, and despite being revived in 1988, the current high profile attention paid to it by several governmental and administrative bodies is unfortunately due to nothing but a major brokerage-crime which lead to a political scandal.

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## 2. HONORARY CONSULS AND THEIR “SPECIAL TREATMENT”

Who are the honorary consuls?

The definition is given by the Convention, in its point 2. of Article 1, which reads as follows:

*“Consular officers are of two categories, namely career consular officers and honorary consular officers”.*

In practical terms, the difference between a career consular officer and a honorary one is that the latter does not belong to the official diplomatic and consular staff of the sending state, i.e., not a state-employee, and usually is a well-known and respectful citizen or permanent resident of the receiving state. Furthermore, service as a honorary consul is usually not his or her main source of income - if the honorary consul is remunerated at all by the sending state for the services rendered.

The “rules for special treatment”, i.e. the facilities, privileges and immunities of consular posts and consular officers are based upon the old customary rules of international law (*“Recalling that consular relations have been established between peoples since ancient times”* – see the Preamble of the Convention), codified and further developed by the Convention, while their purpose is defined as a widely accepted combination of the functional and of the representative theories, set forth by the Preamble of the Convention as follows: *“that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective State”.*

## 3. BRIEF HISTORY OF THE INSTITUTION AND ITS CODIFICATION

Scholars widely agree, that the predecessors of honorary consuls were the proxenoi of the ancient Greek city-states, who were chosen from the well-known citizens of the “receiving state” and during the exercise of their function of protecting and representing the interests of the citizens of the sending state, they were personally protected with several immunities and privileges, and their assets were inviolable even in war-time<sup>2</sup>. As one of them, Polydamas, the Spartan proxenos in Thessaly wrote in 374, their duties included the transmission of useful information to their appointing state. Unfortunately, sometimes their immunities were not enough to protect them: on several occasions punishment or even death were the price paid by them for serving the interests of other “states”, even though in several instances their positions were created during the settlement of previous political disputes between the states involved, i.e. in the framework of peace-treaties (i.e. the Athenian decree regarding the peace-treaty concluded with Selymbria created a new proxenia, while at the same time confirming the appointment of Apollodorus to the already existing proxenos-position previously held by his father)<sup>3</sup>.

The similar institution of the ancient Rome was the position of the patrone. Probably the most famous of them was Cicero, who represented the interests of the citizens of Syracuse in Rome, and, similarly to a Greek proxenos, received no financial remuneration from Syracuse for his services rendered.

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<sup>2</sup> Endre USTOR: *A diplomáciai kapcsolatok joga* (The Law of Diplomatic Relations), Budapest, 1965, Közgazdasági és Jogi Könyvkiadó, pp. 67

<sup>3</sup> Ambassador Andres MAVROMATTIS: *The Proxenoi: the Origin of Consuls in Ancient Greece* (International Consular Congress of F.I.C.A.C, 26 May, 1995)

Although the city-states of the renaissance Italy has used an institution very similar to nowadays honorary consulates, the first golden age of honorary consuls arrived with international trade relations reaching a world-wide scale. Hungary, as most of the European nations, has intensively used this institution before World War II., although a lengthy interregnum followed during the communist rule, as the communist national security bureau was very suspicious with respect to honorary consuls who represented foreign states in Hungary (they were simply considered as spies), while Hungarians abroad were unreliable dissidents in their view.

The idea of codification was first raised by the committee of experts of the League of Nations, in their second series of questionnaires issued during their session in 1927, but the answers, which arrived from the member-states did not provide enough support for the commencement of the codification works.<sup>4</sup> Finally, in its 1961 report, the International Law Commission has presented the final draft of the Convention on Consular Relations, on the basis of which the Convention was signed at the end of the special UN-conference in Vienna in 1963. Nevertheless, many states, including Hungary, still maintains the practice of entering into bilateral consular agreements with each other. Hungary has bilateral consular agreements in place with more than 30 states, the most recent ones are with the Russian Federation and with Kazakhstan, although the one signed in 1938 with Turkey is still in force.

#### 4. THE INSTITUTION IN OUR DAYS

The decades since the Convention was executed has brought the second golden age for the institution of honorary consuls, which is due to several factors. Although Article 70 of the Convention talks about it only as an alternative, modern state-practice shows, that consular functions are usually carried out by the diplomatic missions of the sending state, i.e. the consular departments of the embassies. This solution, besides being cost-effective due to the usual practice of housing the two institutions in the same premises, means that consuls, i.e. the diplomats exercising consular functions, fall under the provisions of the 1961 Convention of Diplomatic Relations, which helps personal hierarchy problems between diplomats and consuls disappear within the foreign service (providing the level of diplomatic immunities and privileges to consuls is one of the ideas behind the popularity of the bilateral consular agreements). Attention to the tendency of using diplomatic missions for consular functions was already raised by the report prepared by the Secretariat of the United Nations on the basis of Resolution No. 175 (II) of the General Assembly in 1946, which report mentioned, that due attention was to be paid to the wild-scale practice by the member-states of merging diplomatic and consular services<sup>5</sup>

With the process of decolonisation, several new states appeared in the international scene, most of them with tight financial resources, usually unable to finance the costs of maintaining a large network of professional foreign representation. Even for states with greater financial capabilities, the increase of cultural, touristic, economic and trade relations with distant places of the world (just to mention world-wide tourism) rendered the performance of consular functions only through diplomatic missions virtually impossible, due to the very nature of

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<sup>4</sup>USTOR: *op. cit.* pp. 31

<sup>5</sup> UNGA Resolution No. 175 (II), USTOR: *op. cit.* pp. 37-38.

embassies being located where they are, i.e. the capitols of the receiving state, while even the richest states could not afford setting up consulates in every important city of a country as big as the United States. Due to this, the number of honorary consuls just in the United States exceeds 1.000, which is more than double of the number of career consuls, and big countries have several honorary consuls in the USA, i.e. France has more than 40<sup>6</sup>.

The above should be sufficient enough to understand while the institution of honorary consuls became so popular again: consular services can be provided in several places through these individuals, who usually do not receive any remuneration from the sending state, and the level of their service is professional, or even better in certain circumstances (i.e. in case of the necessity of meeting a local police officer regarding the detention of a foreign citizen, a well-known businessman of that particular city has an easier time than the career consul who flew in from the distant capitol). Simultaneously, the acceptance of honorary consuls by members of the foreign service also grew together with their growing number and importance. The diplomatic and consular corps are more and more willing to invite the honorary consuls to their receptions, and start to admit them to the “club”<sup>7</sup>.

These changes, and the growth in numbers obviously brought certain personal problems and abuses, and governments, just like our one, had to deal with these questions.

## **5. THE BRIEF HUNGARIAN HISTORY OF THE INSTITUTION**

The Austro-Hungarian Monarchy has built a very wide consular network, using honorary consulates also: in 1903 out of the total 487 consular posts, 392 was honorary. After the break-up of the Monarchy, Hungary also used the institution alone, although on a smaller scale, nevertheless, in 1942 we still had 59 honorary consuls world-wide<sup>8</sup>. The already mentioned Hungarian-Turkish Consular agreement also dealt with honorary consuls<sup>9</sup>. Our socialist regime followed the Soviet example (where the new consular regulations of 1926 abolished the institution), and a short, only 4 article-long Decree of the Presidential Council No. 8. of 1950. has erased the institution of honorary consuls from Hungarian law and practice.

The accession of Hungary to the Convention entered into force as of 19 June, 1987. Decree of the Presidential Council No. 13. of 1987 enacted the Convention, and at the same time hatályon kívül the above mentioned decree from 1950. Another year was needed for the birth of the Decree of the Minister of Foreign Affairs No. 2/1988 (VIII.1) “On the institution of honorary consuls”, which reinstated the institution again (which was quite late, as the Soviets have done it already in 1976). This decree contained certain limitations, i.e. prohibited the sending and receiving of consular bags. The period between 1988 and 2003 was basically without major problems, although, as we will see hereunder, our regulators and officials were unable to keep up with the increased importance and widespread use of the institution of honorary consuls both by Hungary abroad and by other states in Hungarian territory.

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<sup>6</sup> Source: US Department of State, Office for Foreign Missions (OFM)

<sup>7</sup> Consultations, 2002/3. issue, published by OFM

<sup>8</sup> Pál ÉLIÁS: Egy klasszikus jogintézmény: a tiszteletbeli konzul ( A classical institution of law. The honorary consul), in: Külpolitika (Foreign Policy), 1986/3, pp 107-121

<sup>9</sup> Enacted with Act XXV. of 1940

## 6. THE CURRENT HUNGARIAN LEGISLATION

Besides the Convention itself, the most important regulation is the Decree of the Minister of Foreign Affairs No. 5/1995 (III.24) “On the sending and receiving of honorary consuls” (“the Decree”), the issuance of which was based upon Government Decree No. 152/1994 (XI.17) “Concerning the Duties and Sphere of Authority of The Minister of Foreign Affairs”, which entrusted the minister of Foreign Affairs with the decision to nominate honorary consuls and to issue the exequatur for the honorary consuls nominated by other states. From the bilateral consular agreements the two fresh ones, the Hungarian-Russian and the Hungarian-Kazakh mentions explicitly honorary consuls.<sup>10</sup>

The Decree (which is basically one of the regulations implementing the Convention) lists the facilities, immunities and privileges with referring to the particular articles of the Convention, and as a general rule, sets forth the following:

*“consulates headed by honorary consuls can be established in accordance with the provisions of the Convention, honorary consular officers can be received in accordance with the provisions of the Convention”*

From the list, I will further deal with one particular issue, the obligation of the receiving state to render all facilities necessary, with special attention to the “right” of use of special number-plates.

## 7. RECENT EVENTS IN HUNGARY

Before proceeding further, it is worth examining certain events which took place in Hungary recently, and undeniably caused a major break-up in the previously excellent relations of the Hungarian Ministry of Foreign Affairs and the consular posts in Hungary which are headed by honorary consular officers. What happened exactly? The director for EU-affairs of one of the leading Hungarian brokerage-firms has crossed the Hungarian-Austrian border while sitting in the car of one of the consular posts headed by a honorary consular officer, which car had a special “HC” number-plate. The gentleman had in his possession a special identity card issued by the Ministry of Foreign Affairs in accordance with the Decree (Article 18 of the Decree read as follows: *“the status of a honorary consul, and of an employee of the consular post headed by a honorary consular officer, is evidenced by an identity card issued by the Ministry of Foreign Affairs”*). The gentleman was called Attila Kulcsár. For Hungarian readers this is enough, for the non-Hungarians it is enough to say, that the gentleman is being investigated concerning the biggest financial fraud in the modern history of Hungary, totalling to several tens of millions of dollars, which caused a certain political scandal also.

What happened legally? The answer is simple: nothing. Kulcsár, as the driver employed by the consular post, was lawfully sitting in the car bearing a HC special number-plate, the identity card was issued to him duly by the officer of the Ministry of Foreign Affairs on the basis of the Decree, and he crossed the border with a valid Hungarian passport (not with using the identity card, which he could not do anyway, as it was not a valid travel document).

This paper is not intended to further investigate the question why the honorary consul employed exactly Mr. Kulcsár for the position of a driver (although certainly everybody feels, that this was not in conformity with the purpose of the immunities and privileges as mentioned in the Preamble of the Convention, as probably Kulcsár has never really worked as

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<sup>10</sup> Act VI of 2000 and Act X of 2003, respectively

a driver for the consular post), but it is clear, that the Convention provides adequate means for a state to smoothly express its dissent with an action of a honorary consul. On the basis of Article 23 of the Convention, “the receiving state may at any time notify the sending state that a consular officer is *persona non grata*, and further “the receiving state is not obliged to give to the sending state reasons for its decision” This article, which was codifying international custom already existent before the Convention, sets forth a widely accepted method – although grammatically it might mean indeed, that a state can act against all consular officers in its territory at the same time, still without an obligation to provide adequate reasoning to the sending states.

Nothing happened with the consular officer who employed Kulcsár – instead, the Minister of Foreign Affairs ordered an immediate general overview of the institution of the honorary consuls in Hungary, in which overview even the National Security Agency was involved. Soon the Ministry of Foreign Affairs, in a circular note sent to the consular posts headed by honorary consular officers, ordered that they give back all HC number-plates. The Honorary consuls protested, but, naturally (???) they obeyed the instructions (??).

## 8. THE WITHDRAWAL OF THE NUMBER-PLATES AND LEGISLATION IN FORCE AT THAT TIME

Article 28 of the Convention, which is undoubtedly applicable also to consular posts headed by honorary consular officers reads as follows:

**“The receiving State shall accord full facilities for the performance of the functions of the consular post”**

The logical question can be raised: is the use of a special number-plate a facility? I am of the opinion, that yes, it is, as for example, cars with a “normal” number-plate can not excess certain restricted areas of the airport where diplomatic and consular bags are sent and delivered. And if it is not, why we are giving special “DT” number-plates to even the private cars of the family members of diplomatic posts?

Even if the exact meaning and interpretation of “facilities” mentioned by the Convention can be subject to a debate, one thing is for sure: The Ministry of Foreign Affairs does not have authority to decide in questions of number-plates (as these are to be handled by the traffic regulation authority on the basis of the applicable decree mentioned hereunder), therefore the circular note ordering the honorary consuls to give back their number-plates was not the proper legal instrument to be used in this matter, as a circular note is not a valid legal instrument in Hungarian law at all.

The situation legally was clear: Decree of the Minister of Interior No. 35/2000 8XI.31.) (“MI Decree”) deals with the question of issuance of special number-plates. Paragraph (1) of Article 50. of the MI Decree, still in force, sets forth the general rule as follows:

“(1) The special number-plate, in accordance with the provisions of the present decree, shows the status of the operation of the vehicle, or the status of the operator thereof”

At the date of the issuance of the circular note by the Ministry of Foreign Affairs, the subsequent paragraph, Paragraph (2) of Article 50. had a point c, in force, which read as follows:

“The traffic regulation authority issues a special number-plate with the letter HC for the vehicles used by the honorary consuls working in Hungary”

It is unquestionable, that the wording of the decree (“issues”) does not leave discretionary rights to the traffic regulation authority (which is, by the way, definitely not the Department of Protocol of the Ministry of Foreign Affairs) to issue the special number-plates, therefore the ordering of the withdrawal thereof with the issuance a circular note was illegal, was completely against applicable Hungarian law.

After a more than a year-long “ex-lex” situation, a new Decree of the Minister of Interior No 34/2004 issued on the 28<sup>th</sup> of June, 2004 has repealed the above referred point c, of Paragraph (2) of Article 50. of the MI Decree, therefore the phenomenon of the HC special number-plate disappeared from Hungarian law. It is very disappointing to see, that with this simple deletion of a particular part of the decree, our authorities thought that they have sold the issue – without reading what the other, undeleted point a, of the same article sets forth, which remained, and is still, in full force:

“Special number-plates with the letters “DT” must be issued to the vehicles of the diplomatic and consular posts, and of international organisations, and of the members and their family members thereof enjoying immunities on the basis of any international agreement, working in Hungary.”

*With respect to the fact, that the Convention (which, besides being an international agreement binding Hungary, is enacted in Hungary, therefore its provisions are binding on the authorities), does define consular posts headed by honorary consular officers as consular posts (as the distinction is given only between consular officers being career or honorary ones, not between consular posts), as of today, the traffic regulation authority is obliged, without the right of discretion, to issue special number- plates with the letters DT to the consular posts, even if they are headed by a honorary consular officer.*

*On the basis of Hungarian law in force, one of the consular posts applied for a DT number-plate: the traffic regulation authority refused the application, referring to an opinion of the Ministry of Foreign Affairs. At the writing of this paper, the appeal is still pending: by the time of the conference in August, I hopefully will be able to report, that our authorities are acting in accordance with the rule of law, irrespective of the illegal interference of the Ministry of Foreign Affairs into issues clearly not following into the sphere of activity thereof.*