Дәріс 9

Rights and duties of states as they send and receive consular representatives is the subject matter of the field of consular relations. The law relating to consular relations governs the process for accreditation of consular representatives, the obligations of the receiving state to facilitate consular functions, immunities enjoyed by the sending state for the premises it uses and the functions in which it engages, and immunities enjoyed by consular representatives. This body of law also relates to individual nationals of sending states because consuls perform functions relating to the activities of their nationals in the territory of the receiving state; for example, marriage, the administration of estates, and criminal arrest and prosecution. The law on consular relations is found in customary international law, based on practice extending back a number of centuries. To a large extent, that customary law has been codified in a multilateral treaty that enjoys wide adherence, the Vienna Convention on Consular Relations (1963). In addition, many states conclude treaties bilaterally with other states to provide for the specifics of the consular relations they desire. In Europe the states of the European Union (EU) have consolidated their consular efforts to a certain degree. Consular law is given mention in many general treatises on international law. While much helpful information can be found in such general treatises, they are too numerous for inclusion here.

"Consular functions consist in (a) Protecting in the receiving state the interests of the sending state and of its nationals, both individuals and bodies corporate, within the limits permitted by international law."

The Convention provides that "consular officers shall be free to communicate with nationals of the sending State and to have access to them." Foreign nationals who are arrested or detained be given notice "without delay" of their right to have their embassy or consulate notified of that arrest, and "consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation."

**Consular immunity**

The Convention (Article 43)[[2]](https://en.wikipedia.org/wiki/Vienna_Convention_on_Consular_Relations%22%20%5Cl%20%22cite_note-untreaty-2) provides for [consular immunity](https://en.wikipedia.org/wiki/Consular_immunity%22%20%5Co%20%22Consular%20immunity). Some but not all provisions in the Convention regarding this immunity reflect [customary international law](https://en.wikipedia.org/wiki/Customary_international_law%22%20%5Co%20%22Customary%20international%20law). Consular immunity is a lesser form of [diplomatic immunity](https://en.wikipedia.org/wiki/Diplomatic_immunity%22%20%5Co%20%22Diplomatic%20immunity). Consular officers and consular employees have "functional immunity" (i.e., immunity from the jurisdiction of the receiving state "in respect of acts performed in exercise of consular function"), but do not enjoy the broader "personal immunity" accorded to diplomats.

Diplomatic relations are established between the two nations (States) when both these states recognize formally or through practice each other as in dependent sovereign states. Also the two states may prefer not to establish diplomatic relations due to other reasons also: war etc. On the other hand Consular relations are established between the two nations when they are not able to establish fill diplomatic relations for any reason. Usually the main reason is that at least one of them has not recognized other as a sovereign state and the two states do not share diplomatic relations.

 1) consular institution of the Republic of Kazakhstan (hereinafter-consular institution) - a foreign institution of the Republic of Kazakhstan performing consular functions on behalf of the Republic of Kazakhstan within a certain consular district;

      2) class of consular institution - the status of a consular institution determined by the Republic of Kazakhstan in agreement with the host state depending on socio-economic, political significance and its location in the receiving state;

      3) head of a consular institution - an employee of the diplomatic service of the Republic of Kazakhstan, heading a consular institution;
4) consular official of the Republic of Kazakhstan (hereinafter- the consul) - an employee of the diplomatic service of the Republic of Kazakhstan, performing consular functions on behalf of the Republic of Kazakhstan within the consular district;

      5) honorary (non-staff) consul of the Republic of Kazakhstan (hereinafter - the honorary consul) – a person, heading the honorary consulate of the Republic of Kazakhstan (hereinafter - the honorary consulate), not on the public service of the Republic of Kazakhstan, who is entrusted to perform certain consular functions on behalf of the Republic of Kazakhstan on the territory of a foreign state within a consular district;

      6) consular district – territory, allocated for consular establishment for performance of consular functions;

      7) consular archive - documents, correspondence, audio and video materials, electronic media, books, magazines, registers, files, ciphers, codes, seals, stamps and other items designed to perform consular functions;

      8) host state - a foreign state on the territory of which the foreign office of the Republic of Kazakhstan is located.

      2. The Consular Service of the Republic of Kazakhstan is a part of the diplomatic service, whose activities are aimed at ensuring the protection of the rights and interests of the state, citizens and legal entities of the Republic of Kazakhstan within the limits permitted by international law, as well as to promote the development of friendly relations of the Republic of Kazakhstan with other states and the expansion of economic, trade, scientific, technical, humanitarian and cultural relations and cooperation in the field of tourism.

Consular functions on behalf of the Republic of Kazakhstan shall be performed:

      1) on the territory of the Republic of Kazakhstan - by the Ministry;

      2) outside the Republic of Kazakhstan:

      by foreign institutions of the Republic of Kazakhstan;

      by other states with which the relevant international treaty of the Republic of Kazakhstan has been concluded, with the consent of the host state.

The head of the consular institution shall perform the functions assigned to him/her personally.

      Performance of certain consular functions may be assigned to another consul in a consular institution on the basis of an order of the head of consular institution, in a diplomatic representation – of the head of diplomatic representation.

Personal responsibility for observance of legality in performing of consular functions in a consular institution shall be assigned on the head of a consular institution, in a diplomatic representation on the head of diplomatic representation and the head of a consular department.

Consular functions shall be performed by the consul within the consular district. Performance of consular functions outside the consular district shall be carried out in exceptional cases on behalf of the Ministry with the consent of the host state.

Performance of consular functions by a consul on behalf of another state may be carried out by agreement with that state and with the consent of the host state.

The consul at least once a year shall make a detour of his/her consular district.

  The consul shall take measures to ensure the inviolability of the consular archive.

     The consul shall have the right to apply to the authorities of the host state within his/her consular district on all matters related to the activities of the consular institution.

The consul shall accept written and oral applications from individuals and legal entities of the Republic of Kazakhstan, as well as foreign individuals and legal entities on the matters relating to his/her consular activities.

Complaints against actions (inaction) of persons carrying out consular functions shall be considered by the head of the consular institution, the head of the diplomatic representation or the Ministry, as well as by other persons and organizations in accordance with the legislation of the Republic of Kazakhstan.

Consular functions shall include:

      1) adoption of measures on protection the rights and legitimate interests of individuals and legal entities of the Republic of Kazakhstan;

      2) consular registration of citizens of the Republic of Kazakhstan;

      3) consideration the issues of citizenship of the Republic of Kazakhstan;

      4) issuance, restoration, cancellation, extension and reduction of validity of visas of the Republic of Kazakhstan;

      5) issuance and withdrawal of identity documents;

      6) registration of acts of civil state of the Republic of Kazakhstan;

      7) adoption, guardianship and trusteeship over the citizens of the Republic of Kazakhstan staying abroad;

      8) registration of a permit for permanent residence of citizens of the Republic of Kazakhstan abroad;

      9) legalization of documents;

      10) performance of notarial acts;

      11) reclamation of documents;

      12) implementation of electoral rights of citizens of the Republic of Kazakhstan;

      13) adoption of measures in the field of sanitary, phytosanitary and veterinary protection;

      14) assistance to aircraft, ships of sea and river fleet, means of road and rail transport of the Republic of Kazakhstan;

      15) adoption of measures concerning protection of property of citizens of the Republic of Kazakhstan;

      16) protection of the rights and interests of citizens of the Republic of Kazakhstan in a difficult situation, including due to force majeure, as well as taking measures in respect of deceased citizens of the Republic of Kazakhstan in the host state;

      16-1) issuance of other documents (certificates) of legal significance;

      17) taking measures against the citizens of the Republic of Kazakhstan who are under arrest, imprisoned, taken into custody or detained, as well as searching for citizens of the Republic of Kazakhstan who are missing in the territory of the consular district.