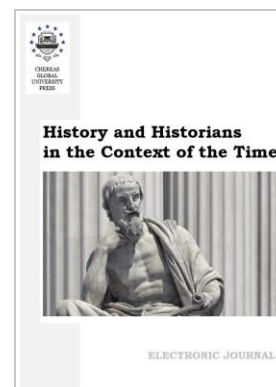


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The Origin and Development of the Institute of the Honorary Consul in the Ukraine's Diplomatic and Consular Service

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Abstract

The article is devoted to studying the processes of origin and development of the institute of the honorary consul in the system of Ukraine's diplomatic and consular service. Until the 17th and 18th centuries, the Ukrainian consular service was born in the orbit of the European diplomatic relations system. Protecting fellow citizens abroad was mainly carried out by private individuals – merchants, ship owners, and wealthy citizens. In 1649, Bohdan Khmelnytsky signed the Treaty between the Sultan of Turkey and the Zaporizhzhya Army and the Russian people, which provided for the introduction of particular positions of residents of the Zaporizhzhya Army, called to protect the rights of Ukrainians and represent them before the authorities of the Ottoman Empire.

The suppression of the seeds of the Ukrainian state by the Moscow regime led to the liquidation of the Ukrainian diplomatic and consular service. A short surge in the development of Ukrainian diplomacy in 1917–1921 was also suppressed by the Soviet authorities.

After the declaration of Ukraine's independence in 1991, the revived Ukrainian diplomacy faced an acute shortage of personnel and material resources by deploying a vast network of diplomatic and consular services. One of the ways out of this situation is the active use of the honorary consul institute.

An analysis of the activities of honorary consuls of Ukraine and foreign honorary consuls in Ukraine shows that representatives of big businesses or owners of large capital are often appointed to these positions, to whom the status of honorary consul provides additional authority, privileges, and immunities. In most cases, such honorary consuls avoid the direct performance of consular functions and do not provide the necessary consular protection to citizens. Not the least of these is the Ukrainian legislation, according to which honorary consuls of Ukraine directly perform consular functions provided for in Art. 5 of the Vienna Convention on Consular Relations 1963, which is possible only in exceptional cases.

At the same time, the practice of European states has developed new approaches to the institution of the honorary consul. Qualified specialists (lawyers, notaries) capable of providing assistance and professional protection of citizens of the accrediting state before the authorities of the host state are appointed to such positions.

The authors concluded that in the conditions of a sharp increase in the number of Ukraine citizens who are abroad due to the military invasion of Russia, the need to modernize approaches to understanding the functional purpose of honorary consuls and harmonize this institution with the European experience becomes urgent.

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1. Introduction

Consular protection of citizens abroad is commonly carried out by two groups of officials – full-time consuls who are in the diplomatic service of the accrediting state and honorary (non-staff) consuls, as a rule, residents of the receiving state. Honorary consuls do not receive remuneration from the accrediting state for their activities and combine the implementation consular functions with commercial or other paid activities.

Many European states have an extensive network of honorary consuls, which allows them to quickly provide the necessary legal, organizational, or consulting assistance to their citizens who are in a difficult situation abroad. The Ukrainian consular service, including the institute of honorary consuls, was born in pan-European diplomacy. However, due to the Russian government's permanent suppression of the attempts of the Ukrainian people to build their statehood, the foreign experience of creating and operating a network of full-time and honorary consular institutions carrying out consular protection of their citizens abroad is underutilized.

As a result of Russia's aggression against Ukraine, millions of Ukrainian citizens are forced to seek refuge abroad, primarily within the European Union. According to various estimates, about 5-7 million Ukrainian citizens had now found refuge or received temporary protection in Europe. Considering the number of Ukrainians who left Ukraine before the war began, this figure may reach 10 million.

The existing network of Ukrainian consular institutions abroad cannot appropriately perform the functions assigned to them with such a large number of citizens. The problem can be solved by increasing the number of honorary consuls of Ukraine abroad, which requires both a change in approaches to their appointment and a rethinking of the paradigm of the honorary consul institute in the domestic foreign policy service.

2. Materials and methods

Due to the relatively recent revival of the diplomatic and consular service of independent Ukraine, the issue of effective organization of the activities of honorary consuls of Ukraine abroad, as well as foreign honorary consuls in Ukraine, was not given sufficient attention either in legal science, or in acts of national legislation, or the practical activities of the Ukrainian Foreign Ministry.

The analysis of the evolution of the institution of the honorary consul in the Ukrainian diplomatic and consular service made it possible to identify the main trends of its development and the principal modern challenges facing it.

The theoretical basis of this study was the publications of Ukrainian authors who studied the essence and legal institution of the honorary consul, its origins in the Ukrainian diplomatic and consular system and the current state of development, as well as the primary forms of implementation of consular functions (Aznakaiev, 2003; Dela, 2015; Hrachevska, 2019; Hrinenko, 2005; Lozinska, 2002; Matiash, 2016; Miroshnychenko, 2010). The Final document of the Congress of Vienna (Final..., 1815), Vienna Convention on Consular Relations of 1963 (Convention..., 1963) and normative documents (current and historical) of the Ukrainian legislation formed the empirical framework of the study.

3. Discussion

During their stay abroad, citizens often face various problems, the timely solution of which may depend on their safety and integrity or property well-being. Due to various economic, cultural, political, and legal circumstances, such citizens may not receive adequate assistance from the host country's authorities. In such cases, the only form of practical assistance is providing these citizens with protection, consultations, or patronage by the consular institutions of the state of their citizenship (the accrediting state).

Usually, consular functions can be performed by two categories of officials – full-time consuls (consuls general, consuls, vice-consuls, and consular agents), as well as honorary (non-staff) consuls.

In Ukrainian science, a small number of works are devoted to the organization and activity of consular institutions, and even fewer to the problems of the legal status and functioning of honorary consuls. At the same time, as a rule, the author's attention is paid to the historical aspects

of the activities of Ukrainian honorary consuls or foreign honorary consuls in Ukraine in the context of the development of the domestic diplomatic and consular service (Balabanov, Trofymenko, 2012; Lozinska, 2002; Matiash, 2016). Another direction of domestic research of the honorary consul institute is devoted to the role of honorary consuls in functioning the current diplomatic and consular service of Ukraine. At the same time, the authors' attention is mainly paid to the general political aspects of the activities of honorary consuls, the order of appointment, and the content and features of the implementation of their privileges and immunities. Only in some cases are the problems that prevent consuls and honorary consuls from effectively carrying out their assigned functions in the field of protecting the rights of fellow citizens abroad, for example, the issue of the possibility of granting foreign consuls and honorary consuls in Ukraine the right to perform separate notarial acts is being considered (Hrinenko, 2005).

In general, in Ukrainian studies, as a rule, the authors ignore that the post-Soviet understanding of the legal nature of the honorary consul and the tasks he faces needs to be updated and correspond to the modern practice of European states. Therefore, the legal framework requires modernization at the level of rethinking the very paradigms of the honorary consul institute.

4. Results

The institution of the honorary consul was formally established only in the Vienna Convention on Consular Relations of 1963. However, this institution is much older and originated in the depths of ancient international law. Traditionally, the ancient Greek proxenia and the Roman patronage are considered the prototype of the modern position of consul. Noteworthy that the Greek proxenia was most often carried out by private individuals, usually merchants, and the Roman patronage – by officials (master's degrees), who acted as private individuals in patronage relations. Both proxenia and patronage were exercised freely in addition to the leading merchant or political (magisterial) activity.

During the Renaissance, marked by the rapid development of international trade and increased population migration between European countries, consular functions continued to be performed mainly by wealthy private individuals – merchants or shipowners.

In the 16th and 17th centuries, Ukrainian lands were in European diplomatic relations, and the organization of consular activity fully reflected the European experience of that time. As a general rule, diplomatic activity on behalf of the Commonwealth was carried out by ambassadors of the Polish king, the Polish and Lithuanian Diets. In contrast, consular functions were carried out by Polish, Lithuanian, and Russian (Ukrainian) magnates and representatives of the Crown Hetman.

In parallel with them, Zaporozhian Sich (Wild Field) actively participated in trade relations with the Ottoman Empire, the Crimean Khanate, Wallachia, and other countries of the Black Sea region. Zaporozhian Sich recognized formal subjection to the Polish crown but took an independent part in such relations.

Merchants founded their factories in the Ottoman Empire, particularly in the Crimean Khanate; Zaporozhian Cossacks often ended up in Crimean or Turkish captivity due to border skirmishes. All this required the implementation of consular functions to protect one's compatriots and represent their interests before the power of the Crimean Khan or the Turkish Sultan. Most often, such functions were carried out by Russian owners of local factories or emissaries of Zaporozhian Sich, who were independent of the authorities of the Polish-Lithuanian Commonwealth.

The liberation war of Hetman Bohdan Khmelnytskyi in 1648-1657 formalized the diplomatic independence of Zaporozhian Sich (Zaporozhian Host).

In 1649, Bohdan Khmelnytskyi signed a treaty between the Sultan of Turkey, the Zaporozhian Host, and the Ukrainian people. This agreement consisted of 13 articles and was of particular importance for regulating the development of the Ukrainian Zaporozhian statehood and protecting its economic interests. Thus, in clauses two and four of the contract, it was assumed that the resident of the Zaporozhian Host and its land would live in Istanbul with due respect and safety. This resident can seek justice for aggrieved Cossack merchants. The Zaporozhian Host also receives a resident Sultan in its port city. Ukrainian merchants were given the right for one hundred years to build their warehouses in various ports and cities of Turkey for the storage and packaging of goods and to conduct warehouse trade without paying any taxes. Also, to protect the interests of Turkish merchants, a Turkish governor was permanently stationed in one of the ports of Zaporozhian statehood (Lozinska, 2002: 157-158).

The genealogy of the independent Ukrainian diplomatic and consular service originates precisely from the Turkish – Zaporozhian Host treaty of 1649. No reliable information has been preserved about the nature of the activities of Zaporozhian residents in the Ottoman Empire. However, there are reasons to believe that their legal status differed little from the representatives of European states at the Ottoman court. The most famous in this regard is Andrea Gritti, the 77th Doge of the Republic of Venice, whose career began as a merchant in Istanbul. At the same time, Gritti actively promoted the interests of European monarchs and protected their subjects.

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Zaporozhian Sich in 1775 led to the gradual winding down and final termination of the diplomatic and consular service of the Zaporozhian Host. Another attempt to develop the Ukrainian diplomatic and consular service took place only at the beginning of the 20th century during the Liberation Struggle (Ukrainian Revolution) of 1917-1921. At that time, the European states had already formed a regular practice of the activities of consular institutions in general and honorary consuls in particular. Therefore, the foreign policy service of the Ukrainian People's Republic actively tried to be included in the system of diplomatic relations of that time and introduced all possible institutions at that time, including the widespread 19th-century institute of honorary consuls.

Under the influence of the Congress of Vienna, European countries and other regions began to adopt legal acts that established the organizational foundations of the consular service and fined the legal status of consuls, the nature of their activities, rights, and privileges. Bilateral consular agreements are concluded between the states. At the same time, the process of formation of the system of consular ranks is taking place: consul general, consul, vice consul, and consular agent. Consulates have almost wholly come under the control of foreign affairs departments. The rapid growth in the number of consular missions and their staff necessitated the reform of the consular service. Such reforms took place in Russia (1820), England (1825), France (1883), and other countries. During the reform, states mostly adopted Consular Statutes. The adoption of a significant number of agreements on consular matters at the beginning of the XX century accompanied the development of consular relations. there were 150 (Bobylev, Zubkov, 1986).

Austria was the first country to legislate the institution of honorary consuls. In 1825, the imperial decree on the consular service was adopted. Later, the institution of the honorary (non-staff) consul appeared in the USA (1856) and Belgium (1857) (Balabanov, Trofymenko, 2012: 9-10). At the beginning of the 20th century, appointing one's own honorary consuls and granting consular patents to honorary consuls of foreign countries became a common diplomatic practice.

The establishment of the institute of honorary consuls in the Ukrainian consular service fell on the day of the Directorate of the Ukrainian People's Republic. However, the idea of the need to introduce the positions of honorary consuls in foreign countries was discussed even during the development of normative documents based on Hetman's Ministry of Foreign Affairs. During the days of the Central Rada, the draft normative documents related to establishing the consular service as a state institution did not mention the positions of honorary consuls enshrined in the consular statutes of various countries. In reality, the Ministry of Foreign Affairs of the Ukrainian People's Republic started introducing honorary consul's positions in January 1921. As an honorary consul, he started working at the honorary consul of the Ukrainian People's Republic in Berlin, to whom the rights of the consul general were delegated. In addition to Germany, honorary consulates were established in Sweden, the Netherlands, Switzerland, and Denmark. Heads of honorary consulates were sought among the local business elite. Information about the applicant was carefully studied before deciding on the appointment (Matiash, 2016: 22).

After the fall of the Ukrainian People's Republic and the installation of Soviet power, the existence of the honorary consul institution has been periodically questioned. Thus, the Decree of the Council of People's Commissars of the RSFSR dated October 18, 1918, "On the organization

of consulates,” allowed the appointment of non-staff (honorary) consuls recruited from local citizens. However, subsequent agreements with Poland, Czechoslovakia, Germany, etc., provided for the creation of only full-time consulates. However, soon the attitude of the Soviet government towards the institution of the honorary consul changed dramatically. Thus, the general provision on Soviet bodies abroad, adopted in 1921, did not provide for the appointment of honorary consuls, although there was no refusal of such a possibility. The Consular Statute of the USSR of 1926 already contained a direct refusal to appoint honorary consuls. A similar requirement was contained in the international agreements concluded by the Soviet Union. The consular statute of 1976 allowed the possibility of performing some consular functions by non-regular or honorary consuls. In the Regulation on non-status consul, which was adopted as an addition to the Consular Statute of the USSR of April 17, 1988, the appointment of honorary consuls became possible again (Balabanov, Trofymenko, 2012: 9-10).

At the international level, a pivotal moment in the evolution of the honorary consul institution was the Vienna Convention on Consular Relations adoption in 1963. During the development of the text of the Convention, there was an extremely sharp struggle between the positions of different states, specifically regarding the legal status of honorary consuls. Many European states, in particular, Switzerland, Belgium, the Netherlands, and the Scandinavian countries, which had a wide network of honorary consuls, actively promoted the idea of granting honorary consuls the same privileges and immunities as full-time consuls. On the other hand, some countries in Asia and Africa denied granting honorary consuls such privileges and immunities and also defended their right to strictly control the commercial and other not related to the performance of consular functions, and activities of honorary consuls on their territory (Miroshnychenko, 2010: 303).

In the end, the final version of the Convention on Consular Communications became a compromise in Art. 68 of the Convention established the provision according to which Each State is free to decide whether it will appoint or receive honorary consular officers (Convention..., 1963).

After Ukraine gained independence in 1991, the development of its diplomatic and consular services began. The application of the so-called "zero option" of legal succession resulted in Ukraine losing any rights to the property of the former USSR abroad, including the premises and equipment of former Soviet diplomatic missions and consular institutions. In such conditions, the active use of the institution of the honorary consul became one of the most important forms of activity of the Ukrainian foreign policy service.

At the national level, the framework for the honorary consul institute is determined by three main normative legal acts: the Consular Statute of Ukraine, approved by the Decree of the President of Ukraine dated 04/02/1994 No. 127/94 (Consular Statute, 1994); the Procedure for the appointment, activity, and termination of the powers of non-standing (honorary) consuls of Ukraine abroad and establishment, functioning and termination of consular institutions headed by non-status (honorary) consuls of Ukraine, approved by order of the Ministry of Foreign Affairs of Ukraine dated 04.08.2014 No. 332 (Poriadok pryznachennia..., 2014); the Regulation on honorary consuls of foreign countries in Ukraine and consular institutions headed by such consuls, approved by order of the Ministry of Foreign Affairs of Ukraine dated 17.12.2021 No. 591 (Polozhennia..., 2021).

The analysis of the above acts allows us to conclude that the legal regulation of the activities of honorary consuls of foreign countries in Ukraine and honorary consuls of Ukraine abroad is inconsistent and asymmetric. It does not allow to reveal of the potential of the institute of honorary consuls, especially in matters related to their performance of consular duties functions.

According to Art. 5 of the Vienna Convention on Consular Relations 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;

(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;

(c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;

(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;

(e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

(f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;

(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;

(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;

(i) subject to the practices and procedures obtaining in the receiving State, 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, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;

(j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

(l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the sending State;

(m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State ([Convention..., 1963](#)).

Paragraph 1 of Chapter IV of the Regulations on Honorary Consuls of Foreign States in Ukraine and Consular Institutions Headed by Such Consuls stipulates that an honorary consul performs consular functions defined by Article 5 of the Vienna Convention and the list of which is given in the patent ([Polozhennia..., 2021](#)).

Thus, honorary consuls of foreign countries in Ukraine can theoretically perform the entire range of consular functions provided for by the 1963 Convention.

However, the practice of foreign honorary consuls in Ukraine and Ukrainian honorary consuls abroad often suggests the opposite.

In the mass media, there are often publications about the participation of honorary consuls in various unscrupulous economic transactions or political activities, and in some places, even in connection with organized crime or money laundering ([Orphanides, 2016](#); [Lindsay, 2022](#)). The reason for this is that the overwhelming majority of honorary consuls are appointed by big business owners, for whom the status of the honorary consul is an additional indicator of authority, and consular privileges and immunities are used as an additional cover for dubious or outright illegal activities. There is no question of such persons directly performing consular functions.

The procedure for appointing, operating, and terminating the powers of non-staff (honorary) consuls of Ukraine abroad and establishing, functioning, and terminating the activities of consular institutions headed by non-staff (honorary) consuls of Ukraine is even less consistent in this regard.

According to paragraph 1 of Chapter III of this Procedure, honorary consuls:

- protect the interests of Ukraine, its citizens, and its legal entities in the host country within limits allowed by international law;
- promote the development of trade, economic, cultural, and scientific relations between Ukraine and the host state, the development of friendly relations between them in other ways under the provisions of the Vienna Convention on Consular Relations of April 24, 1963;
- find out by all legal means conditions and events in the trade, economic, cultural, and scientific life of the host country, and report on them following the Regulations on non-statutory (honorary) consuls of Ukraine, approved by Decree of the President of Ukraine No. 150 of February 17, 1997, Cabinet order Ministers of Ukraine represented by the Minister, and also provide information to interested persons;
- provide assistance and support to citizens of Ukraine and its legal entities.

At the same time, by paragraph 2 of the same section of the procedure, if necessary, honorary consuls perform other functions on behalf of the Ministry of Foreign Affairs of Ukraine or the head of a foreign diplomatic institution and in cooperation with a foreign diplomatic institution, which does not contradict the legislation of Ukraine, the host country and international law, based on the provisions of the Vienna Convention on Consular Relations of April 24, 1963, and following the Consular Statute of Ukraine, approved by the Decree of the President of Ukraine No. 127 of April 2, 1994, in agreement with the host state ([Poriadok pryznachennia..., 2014](#)).

The direct performance by honorary consuls of Ukraine abroad of the bulk of consular functions provided in Art. 5 of the 1963 Convention can be exercised only as an exception.

At the same time, European states are demonstrating a new approach to honorary consuls' posts, appointing specialists capable of performing consular functions to provide the necessary assistance to their citizens abroad competently and professionally. For example, a private notary has been appointed as the honorary consul of the Federal Republic of Germany in Lviv, which ensures the adequate provision of legal assistance and notarial services to German citizens ([Hrinenko, 2005: 78](#)).

It illustrates the beginning of a new stage in the development of the institute of honorary consuls. The framework of this stage is a gradual shift in the emphasis of the activities of honorary consuls, first of all, to the applicable provision of the necessary assistance (legal, notarial, consulting, etc.) to citizens of the accrediting state abroad. At the same time, the activities of honorary consuls will gradually become less egalitarian and acquire more signs of professional activity.

5. Conclusion

The historical source of the birth of consular service and consular protection in Medieval Europe was mainly the activity of merchants, shipowners, or wealthy citizens aimed to support and protect their compatriots abroad. Gradually, this activity of private individuals was combined with the official diplomatic service, and two independent institutions were established – the consul and the honorary consul.

Until the 17th and 18th centuries, the Ukrainian consular service was born in the orbit of the European system of diplomatic relations and was represented mainly by the residents of the Zaporozhian Host in Turkey. The suppression of the seeds of the Ukrainian state by the Moscow regime led to the liquidation of the Ukrainian diplomatic and consular service. A short surge in the development of Ukrainian diplomacy in 1917-1921 was also suppressed by the Soviet authorities.

After the declaration of Ukraine's independence in 1991, the revived Ukrainian diplomacy faced an acute shortage of personnel and material resources by deploying a vast network of diplomatic and consular services. One of the ways out of this situation is the active use of the honorary consul institute. However, representatives of big businesses and owners of significant capital are most often appointed to honorary consuls, who remove themselves from the direct performance of consular functions. At the same time, there is a tendency in European countries to appoint honorary consuls capable of practically performing the functions of representation and protection of citizens of the accrediting state abroad – notaries, lawyers, consultants, etc. A sharp increase in the number of Ukraine citizens who, as a result of Russian aggression, are looking for refuge abroad necessitates the need for a quick restructuring of the activity model of Ukrainian honorary consuls abroad according to the European model.

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