European Scholar Journal (ESJ)
Available Online at: https://www.scholarzest.com
Vol. 3 No.3, March 2022
ISSN: 2660-5562

THE PRACTICE OF LAW ENFORCEMENT OF THE INSTITUTE OF CONSULAR PROTECTION AND THE PECULIARITIES OF ITS IMPROVEMENT

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Article history:

Received: 20th January 2022
Accepted: 17th February 2022
Published: 30th March 2022

Abstract:

This article discusses the practice of law enforcement, in general, the application of the necessary legal norm to the internal components of an event. The application of law in the exercise of consular protection is the mobilization of interconnected elements in the process of legal relations that form a completely dynamic system. A person outside his own state is far not only from the geographical territory of his country, but also from his rights and privileges. Appropriate legal institutions - consular posts needed to ensure its protection. The article argues that the consular protection of the rights and interests of citizens abroad is an important legal mechanism for ensuring human rights in general.

Keywords: Law enforcement practice, legal norm, consular protection, legal relations, law and privilege, legal institution, consular post, legal mechanism.

Protecting the rights of citizens in foreign countries is an important task for the state. The urgency of the theoretical study of the mechanism of protection of the constitutional rights of citizens of the Republic of Uzbekistan in foreign countries stems from the fact that the implementation of constitutional and legal protection of citizens is a strategic task for the state and society. In addition, the most difficult process in legal practice is the mechanism of implementation of the norms established by this legislation.

Scientific research has given different interpretations of the concepts of "protection" and "protection mechanism". Protection of citizens of the Republic of Uzbekistan in foreign countries is an official legal action of government agencies and public organizations aimed at protecting the rights of citizens abroad. The protection of civil rights in foreign countries is a matter of international law.

The practice of applying the law, in a general sense, is the application of the necessary legal norm to the internal components of an event. The application of law in the exercise of consular protection is the mobilization of interconnected elements in the process of legal relations that form a whole dynamic system.

Consular protection, by its very nature, begins when consular officials take any action for the protection of citizens. Such actions may include appeals of a citizen and / or state bodies, assignments of higher state bodies, initiatives of a consular officer, official diplomatic actions.

In our view, consular protection is an important practical tool in protecting the rights and freedoms of legal entities and individuals of the sending state in other states. In international law, the state protects its citizens by any means that do not contradict the law and the norms of international law.

At this point, let us cite foreign experience. Within the European Union, norm-setting and law-enforcement practices are mainly areas of the indirect administrative system of the European Administration, requiring horizontal and / or vertical cooperation of bodies and authorities. EU norms in the field of consular protection are important in terms of administrative and procedural aspects and the rule of law[1].

There is a lot of color in the legislation of European countries. At a glance, one can find perfect national legislation (German consular law, Italian consular law) that does not simply give preference to international legal norms (especially the Vienna Convention on Consular Relations). On the other hand, one can see legislation that directly incorporates the norms of international law.

At every stage of the development of statehood, the need to protect the rights and legitimate interests of citizens outside its borders is the most important task in the social, legal, political and economic spheres.

A person outside his own state is far not only from the geographical territory of his country, but also from his rights and privileges. Appropriate legal institutions - consular posts - are needed to ensure its protection. Consular

[1] Csatlós Erzsébet. Rule of Law and the European Administration of Consular Protection // rule-of-law-csatlos.pdf Aticle. E-Journal. 2021.

protection of the rights and interests of citizens abroad is an important legal mechanism for ensuring human rights in general. The development of any state and society, lifestyle, first of all, requires the achievement of the most important goals in the full realization of the rights and interests of every individual.

The effectiveness of the stages and methods of implementing consular protection depends on the weight of law enforcement experience. It should be noted that any appeals of diplomatic missions and consular posts to the local authorities of the receiving state in the interests of the rights and interests of its citizens should be in the form of legal assistance provided by the consul and free from any objections and / or charges against the host country. expedient.

Information in the form of information to the receiving state authorities, clear and reasonable statements, prompt and skillful consular assistance will prevent any diplomatic and political conflicts. It is clear that consular protection is also an important factor in ensuring interstate security.

In its activities to protect the rights of citizens abroad, the consul plays an important role in establishing the grounds for the formation of complaints on the grounds of violation of international standards for the rights of citizens of foreign countries by the receiving state agencies on behalf of the sending foreign relations agencies.

In order to implement consular protection, it is necessary to form a system of consular protection measures to address the problematic situation. Consequently, consular protection is primarily aimed at preventing tensions in international relations. The situation with any citizen should not escalate to the level of an interstate problem, and the use of common but drastic methods of resolving international disputes should be avoided.

The form of implementation of consular protection is a set of processes and measures regulated by law, which is formed and implemented by external communications agencies. The form of consular protection arises from the nature of the legal situation, including the substantive nature of the claims for protection, the competence of the authorities of the receiving State on which the consul must apply, the specific legal conditions, etc. This underscores the complexity of the practical and legal aspects of the issue.

It should be noted that the issue of the form of consular protection depends on bilateral relations. The relations between the parties, the measures to be taken, the bilateral documents and the relations between government agencies are very important both theoretically and practically.

Ensuring the protection of the rights of citizens by the state should be carried out regularly, whether the citizen is inside or outside the state. It should be noted that the consular activity is expanding and enriching in the implementation of large-scale projects, including the improvement of the regulatory framework of consular activities, participation in migration and related areas, as well as strategically important tasks.

According to the general theory, "the institution of law is a separate group of legal norms that regulates a particular type of social relations."[2]. So, if the legal norm is the primary element of the legal system, the institution of law is its primary legal unit.

In our opinion, the coordinating role of consular offices in recognizing and protecting the interests of Uzbekistan, especially in the economic and humanitarian spheres, should be emphasized and legally strengthened. At the same time, the issues of improving the legal and methodological framework of the institute of consular protection are important.

The current state of the science of consular law requires in-depth scientific research in the areas necessary for the effective implementation of consular protection. In particular, legal institutions that are relatively new to legal practice should first study in detail the scientific aspects of areas such as readmission, consular lists, honorary consul, consular protection, and develop the necessary scientific concepts and doctrines; secondly, it is necessary to improve their regulatory framework.

At present, the subject of consular law is traditionally studied on such topics as its history, sources, organizational foundations of the consular service, privileges and immunities of consuls, honorary consuls. The notarial actions of the consul are superficially limited to the functions of civil registration. However, the consular legal assistance and legal protection functions are very important issues and an in-depth scientific approach to these issues is needed.

The practice of law enforcement in consular activities depends in many respects on the national law of the receiving State. Research in this area has been conducted mainly in the system of law enforcement in criminal cases, which shows the importance of the norms established for foreign nationals in the system of domestic criminal law of foreign countries.[3].

In turn, the application of any rule of law by diplomatic missions and consular posts should be regularly regulated. Systematic study of current problems of criminal procedural jurisdiction of states in their foreign missions, including the legal regulation of the practice of legislation and law enforcement, as well as the grounds and procedures for investigations and other proceedings in foreign countries, foreign institutions, including consular assistance It is appropriate to develop scientific and theoretical proposals on

In general, it should be noted that the practice of law enforcement, in turn, is a criterion for the assessment of the current norms. If the rule of law is applied consistently and effectively, it means that it is a document that responds appropriately to the issues that arise in a well-developed practice.

[2] http://www.lex.uz/dictionary

[3] Электрон манба: https://msal.ru/common/upload/Litvishko-Dis..pdf Сўнгги мурожаат: 02.02.2022й.

The application of law in consular practice, unlike other law institutions, is characterized by the application of customary norms.

According to the interpretation of the theory of international law, the norms of customary law are formed from the interaction of two elements: the established, widespread, consistent practice of states; and a subjective element called the concept of juris sive necessitatis (abbreviated as juris)[4]. It is therefore more difficult to determine the content of a customary rule of international law than the content of a treaty rule. Unlike the rule of treaty, the customary norm of international law is not uniformly formed. The customary norms of international law are largely created by states; The peculiarity of the formation of such norms is that their emergence and application outweigh the "chronological legal competence". The practice of states does not immediately become an international custom. First of all, at a certain stage of development it is formed as an international legal habit (usage).

For the emergence of a customary norm of international law, the process of habit formation must be orderly and stable, that is, there must be no significant obstacles to such formation, so that existing resistance to it, including individual protests of states, is overcome.

The two components of international tradition - general practice and commentary juris - are interrelated. In very few states is the practice observed. However, the fact that a number of states take into account the existence of such a norm implies the existence of a customary norm in international law[5].

It is well known that in order to determine the existence of an international tradition, it is necessary to determine the elements that confirm its existence, that is, the practice of states and the fact that this practice must be recognized as mandatory by states. Various actions to search for evidence of international customary discio juris, such as unilateral actions of states, conclusion of international agreements, domestic law, as well as the practice of law enforcement of the state, and so on. Based on scientific research, we can say that bilateral and multilateral agreements are one of the strongest proofs of the existence of a commentary jury. The UN International Court of Justice has acknowledged that treaties may be evidence of this, even if they do not in themselves create international custom. The nature of international custom as a source of international law has its legal basis in Article 38 of the Statute of the Court. In particular, according to him, international tradition is "proof of a common practice adopted as law"[6].

Custom has legal significance as a result of the same or identical actions of states and their intention to give such actions a certain normative meaning. Long-term duplication, i.e., sustainable practice, is the traditional basis for recognizing customs as a source of law (e.g., the emergence of states as a source of custom in relation to historical bays). However, the birth of custom as a source of law can also occur in a short period of time (e.g., this occurred with almost instantaneous recognition of the freedom of use of space by states, which were later sealed by these treaties).

Thus, they may reflect the will of the ratifying States to implement this law in their national legal system. The assumption of the existence of a jury in a particular international agreement depends on a number of additional features. In this regard, first of all, the text of the agreement, as well as the preparatory materials, should be carefully studied to determine the seriousness of the desire of the states to introduce this norm and make it mandatory for the parties. In general, it is important to keep in mind that multilateral agreements have a more general status than bilateral agreements, as states accept the universality of the norms set out in multilateral agreements. An agreement codifying an existing rule more clearly confirms the existence of a jurisdiction than a contract establishing a new rule. Agreements that incorporate basic principles are essentially more important than others[7].

Summarizing the above, it can be noted that in the use of customary law, including the rule of law, in international consular legal relations, first of all, the usual norms of international law, including their historical legal basis, as well as bilateral legal aid agreements and consular conventions it is expedient to act on the basis of an agreed will[8].

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[5] *Батафсил қаранг:* William S Dodge, A Modest Approach to the Customary International Law of Jurisdiction, European Journal of International Law, Volume 32, Issue 4, November 2021, Pages 1471–1481, https://doi.org/10.1093/ejil/chab093; Elisabeth J. Brennen, Rejecting Customary Regression: Unilateral Humanitarian Intervention & the Evolution of Customary International Law, 43 MICH. J. INT'L L. 241 (2022). Available at: https://repository.law.umich.edu/mjil/vol43/iss1/6; Ryngaert C. The Restatement and the Law of Jurisdiction: A Commentary //European Journal of International Law. – 2022.

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[8] *Батафсил қаранг:* Dodge W. S. A Modest Approach to the Customary International Law of Jurisdiction //European Journal of International Law. – 2022.; Johnston K. A. The Nature and Context of Rules and the Identification of Customary International Law //European Journal of International Law. – 2021.

The modern role of international custom is that it remains the main source of international law, along with international conventions. Its main functions are provided in the interaction and complementarity of these two main sources of international law. Modern international law has no grounds for establishing subordination between these sources of international law. They are interdependent. Also, due to the general guiding nature of international customary law, it becomes more important and more effectively expresses the basic principles of international law, concentrates some of the obligations of conduct and prevents its abuse through formalization of the treaty norm.

Of course, any legal institution has its strengths and weaknesses, and the primary task of lawyers has always been to improve existing legislation, to seek solutions to problems that arise in law enforcement practice, and will remain so. At the same time, the effectiveness of international legal norms is ensured by the common interests of the international community in adhering to such norms formed by them. The effectiveness of international customary law is ensured by the consistent implementation of its norms. Conscientious implementation is both an obligation of states and a criterion of their proper conduct. Any state interested in the supremacy of international law must give priority to the role of international custom as the international legal basis for the protection of its national interests.