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## **DIFFERENCES BETWEEN DIPLOMATIC PROTECTION AND CONSULAR ASSISTANCE**

**Introduction.** According to the state official statistics, more than 5 million Ukrainian citizens legally live abroad on the permanent bases. In addition, according to the International Labour Organization, approximately 700,000 of the Ukrainians migrate for temporary work. Furthermore, about 24 million nationals visit foreign countries as tourists each year. This means that a great amount of the Ukrainians crosses the state borders with various purposes and stay in foreign countries during some period. Being abroad they retain all rights provided by the Constitution, laws of Ukraine, and international conventions. At the same time possibility of rights violation is high and the citizens will need their state advocacy. It is a legal axiom that the right without protection is useless. So, diplomatic protection of citizens' rights abroad and consular assistance is a matter of the highest importance.

Many Ukrainian and foreign scientists have conducted researches on diplomatic protection. There are: O.V. Svyatun, A.M.H. Vermeer-Künzli, E. Borchard among them [1; 2; 3]. But only a few scientists draw a distinction between diplomatic protection and consular assistance. There are false assumptions that the words under discussion are basically similar notions, or protection of citizens' rights can be provided only by consular authorities, whereas diplomatic protection refers only to states. Relevance and topicality of the issue are obvious.

**The objective of the paper** is to draw a clear distinction between diplomatic protection and consular assistance of citizens abroad.

To achieve the aim of the current research, firstly, it is necessary to turn to the case of the International Court of Justice, namely the LaGrand case. In this case law the Court clearly distinguished between consular assistance and diplomatic protection, accepting that individual rights arising under a treaty on consular relations could be claimed by means of diplomatic protection [2, p. 85-86].

Secondly, it is important to consider three features that are particularly essential for making a distinction between diplomatic protection and consular assistance, namely: the level of representation, the means and the nature of protection.

The first distinguishing feature is the level of representation. Diplomatic protection should be provided by a diplomatic agent (the Ambassador), whereas a consular officer performs consular assistance. A fundamental difference is that the former is a political representative of a state, while the latter doesn't have this function. In addition, the Minister of Foreign Affairs or even the Head of State can be

involved in diplomatic protection [2, p. 67]. Furthermore, if in the certain country there is no consular authority, diplomatic staff carries out consular functions. It means that diplomatic protection is the highest international or inter-state level. This kind of protection relates to the state sovereignty and concerns not merely the interests of the citizen, but state interests as well [2, p. 81].

Next, the means that can be used by diplomatic agents and consular officers are completely different. The diplomatic mechanisms may range from diplomatic negotiations, the use of offices, mediation, arbitration to the suspension of diplomatic relations, demonstration of force and even a war. Of course, the usual case of protection seldom gets beyond the stage of diplomatic negotiation. In comparison, consuls play special roles in assisting citizens, for example, finding lawyers, visiting prisons and contacting local authorities [3, p. 167].

Finally, the preventive nature of consular assistance is opposed to the remedial nature of diplomatic protection. The former takes place before local remedies have been exhausted or before a violation of international law occurs. This allows for consular assistance to be less formal and simultaneously more acceptable to the host state. The latter requires that there has been a violation of international law, and the local remedies have been exhausted [1, p. 29].

**Conclusion.** This research shows that there are fundamental differences between consular assistance and diplomatic protection. These two kinds of protection citizens' rights abroad cannot be confused. It has been stated in the case law of the International Court of Justice. Key features of diplomatic protection and consular assistance are completely different.

### References

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