

Translation

LAW

ON CONSULAR OFFICERS, THEIR FUNCTIONS AND POWERS

(CONSULAR LAW)

OF 11 SEPTEMBER 1974

THE BUNDESTAG HAS, WITH THE APPROVAL OF THE BUNDESRAT,

ADOPTED THE FOLLOWING LAW:

Section 1

General Provisions

Article 1

Consular Functions in General

Consular officers, (career consular officers, or honorary consular officers, shall be required

- to assist in co-operation between the Federal Republic of Germany and the receiving State, especially in the spheres of foreign trade and development policy, transport, culture and the administration of law,
- to give Germans as well as national bodies corporate, advice and assistance according to their discretion.

Article 2

Assigned Consular Functions

Consular officers shall be required to perform the functions and exercise the powers Assigned to them by this Law or by other statutory instruments and administrative regulations, in particular as regards:

- matters of citizenship,
- passports and visas,
- matters of personal status,
- assistance in the settlement of cases of non-contentious litigation and succession mortis causa,
- authentication, legalization of official foreign documents and certification of the genuineness of official national documents,
- shipping and ships crews,
- execution or transmission of letters rogatory,
- service of documents,
- establishing whether agreements and treaties are being complied with.

Article 3 Performance of Consular Functions

- (1) The performance of consular functions shall be subject to the general provisions of law, except insofar as the present Law provides otherwise.
- (2) In the performance of their functions consular officers shall enhance the reputation and protect the interests of the Federal Republic of Germany to the best of their ability.
- (3) In the performance of their functions in legal matters, career consular officers may seek - as far as necessary - the advice and assistance of a licensed lawyer of their own choice in the receiving State

Article 4 Limits of Consular Activity

In the exercise of their official duties consular officers shall observe the limits imposed by the laws applicable in their consular district. In particular they shall observe the Vienna Convention on Consular Relations of 24 April 1963 (Bundesgesetzblatt II 1969 p. 1585) and other treaties to the extent of their being in force between the Federal Republic of Germany and the receiving State.

Section 2

Specific Consular Functions and Powers

Article 5 Assistance to Individuals

- (1) Consular officers shall help Germans in their consular district requiring assistance if no other source of assistance is open to them. This provision shall not apply to Germans or to their descendants habitually resident in a foreign State, if they at the same time hold the citizenship of that State and their father or mother likewise hold or held such citizenship; consular officers may, however, render assistance to such persons where it is deemed just and proper in the particular circumstances.
- (2) If it is deemed just and proper in the particular circumstances, consular officers may also render assistance to non-German members of a German citizen's

family if they share the same household with him or have done so for a considerable period of time.

- (3) The nature, form, and degree of assistance shall depend on the conditions prevailing in the receiving State, taking into consideration the vital needs of a German living there. The assistance may also consist of legal protection.
- (4) Whenever expedient, consular officers may render such assistance by enabling the person seeking it to travel to the place of his habitual residence or to another place.
- (5) The recipient shall be under obligation to refund the expenses thus incurred. This obligation shall also extend to his relations and spouse as part of their duty to provide for his maintenance. The obligation to refund shall extend to the heirs. The liability of the heirs shall not exceed the value of the estate.
- (6) Should the state of distress of a recipient of assistance who is habitually resident abroad or who is either remanded in custody pending trial or serving a prison sentence abroad, last longer than two months, assistance shall be given as from the commencement of the state of distress pursuant to the Bundessozialhilfegesetz (Federal Law on Social Assistance) or by appropriate application of that Law. Paragraph 4 shall remain unaffected.
- (7) Assistance may be refused if it has been established that the person seeking it has in the past abused such assistance, unless such refusal could place that person's life or health in danger.

Article 6 Assistance in Cases of Disaster

- (1) Consular officers shall, in the event of the consular district being struck or threatened by natural disasters, warlike or revolutionary complications or like events, causing or likely to cause harm to the population or to any section thereof, take the necessary steps to give assistance and protection to the injured or threatened insofar as they are Germans. This provision shall apply equally to descendants of Germans and to non-German members of their families if they share the same household with them or have done so for a considerable period of time.
- (2) Article 5, Paragraph 5, shall apply mutatis mutandis. Insofar as the development of the situation inside the consular district, the personal circumstances of the person in need of assistance or protection or other special circumstances so require, the claim for reimbursement in respect of expenses thus incurred, may be waived.

- (3) In order to be able to assist immediately and effectively in those cases specified in Paragraph 1, consular officers shall keep an up-to-date register of all Germans and other protected persons as well as the members of their families residing in their consular district.

Article 7 Assistance to Prisoners .

Consular officers shall care for Germans remanded in custody pending trial or serving a prison sentence within their consular district and especially provide them with legal protection if so required by such persons.

Article 8 Solemnization of Marriages Notification of Births and Deaths

- (1) Consular officers shall be authorized, within those consular districts specially designated by the Federal Foreign Office in consultation with the Federal Minister of the Interior, to solemnize and attest marriages where at least one of the engaged parties is German and neither is a citizen of the receiving State. They shall thus be considered Registrars within the meaning of the provisions of the Bürgerliches Gesetzbuch (Civil Code), the Personenstandsgesetz (Law on Personal Status) and the regulations based on these laws; they shall apply these laws and regulations as far as the Registration of Marriage, the Test of No Impediment, the Solemnization and Attestation of Marriages and the Issue of Certificates of Marital Status are concerned. The Federal Foreign Office shall act as Supervising Authority within the meaning of Article 45, Paragraph 1, of the Personenstandsgesetz; the seat of the Registrar within the meaning of Article 50, Paragraph 2, of the Personenstandsgesetz shall be deemed to be the seat of the Federal Government. The President of the Oberlandesgericht (Higher Regional Court) in the district in which the Federal Government has its seat shall be competent to exempt an alien engaged to a German from the requirement of a Certificate of No Impediment.
- (2) The marriage entry effected at the solemnization together with the documents presented by the engaged parties and the other documents relating to the solemnization of the marriage shall be forwarded without delay, the copy of the marriage entry intended for the Duplicate Record towards the end of the calendar year, to the Civil Registrar of Registry 1 in Berlin (West). Upon receipt of the marriage entry the same Civil Registrar shall be deemed to have solemnized the marriage.

- (3) Consular officers are authorized to draw up a statement about the birth or death of any German to be signed by themselves and by the informant. Such statement together with the documents submitted shall be forwarded to the Civil Registrar of Registry 1 in Berlin (West).

Article 9 Transfer of Deceased and Administration of Estates

- (1) If no other possibilities exist consular officers shall forthwith inform the relatives of any German who has died within their consular district and render assistance in having the body of the deceased transferred if such transfer is demanded.
- (2) Consular officers are called upon to attend to the estate of Germans situated within their consular district if their heirs are unknown or absent or if official involvement is necessary on other grounds. In particular they may affix seals, draw up a list of the assets composing the estate, and, if the circumstances so require, take chattels of the estate into custody or dispose of them by sale. They may further receive payments from the debtors of the estate and use funds from the estate to meet established liabilities as well as liabilities ensuing from the upkeep of the estate.
- (3) If the heirs or the other persons entitled to the estate cannot be ascertained the chattels or the proceeds from the sale thereof may be transferred to the court at the last place of residence of the deceased in the German Federal territory, or, if such residence cannot be ascertained, to the Amtsgericht Schöneberg (Local Court) in Berlin in its capacity as a probate court.

Article 10 Attestation in General

- (1) Consular officers are authorized to draw up statements and memoranda on facts and events witnessed by them in the performance of their duties, particularly
 1. attest statements and affidavits made before them,
 2. authenticate signatures, initials and copies or issue other plain certificates (e.g. an official confirmation that the person concerned is still living).
- (2) Documents executed before a consular officer rank equally with those executed before a domestic notary.
- (3) The provisions of the Beurkundungsgesetz (Law on Attestations) of 28 August 1969 (Bundesgesetzblatt I, p. 1513) shall apply to the procedure followed in respect of attestations with the following exceptions:

1. Documents may, upon request, be drawn up in any language other than German.
2. Translators do not have to be sworn.
3. The copy of a non-authenticated copy should not be authenticated.
4. The original of any record or statement shall be handed over to the parties thereto, unless one of them requests that it be taken into official custody. In such case the original shall be sent to the Amtsgericht Schöneberg in Berlin. If one of the parties has submitted to compulsory execution, the original of the record or statement shall be handed over to the creditor, unless the parties have provided otherwise and none of them have requested official custody of the document.
5. As long as the original has not been handed over or sent to the Local Court the consular officers, shall be authorized to issue duplicates thereof. Executable duplicates may only be issued by the Local Court holding the original in its custody.

Article 11 Special Provisions for Dispositions Mortis Causa

- (1) Consular officers shall attest wills and deeds of succession only if the makers thereof are German. Articles 2232, 2233 and 2276 of the Bürgerliches Gesetzbuch (German Civil Code) shall apply mutatis mutandis.
- (2) The Amtsgericht Schöneberg in Berlin shall be competent for cases of special official custody (Article 34 of the Beurkundungsgesetz, Article 2258a of the Bürgerliches Gesetzbuch). The testator may at any time demand that custody be exercised by a different Local Court.
- (3) If the testator dies before the will or the deed of succession is forwarded to the Local Court or if such disposition is delivered to the consular officer after the death of the testator, the former may cause the disposition to be opened. Articles 2260, 2261 second sentence, 2273 and 2300 of the Bürgerliches Gesetzbuch shall apply mutatis mutandis.

Article 12 Acceptance of Declarations

Consular officers are authorized

1. to execute conveyances,
2. to receive declarations on oath made for the purpose of obtaining a deed of succession, a will execution certificate, or a certificate on the continuation of joint ownership of property,
3. to receive an oath from a German upon his own application where such oath is required by the laws of a foreign State or the regulations of a foreign authority or otherwise necessary for the safeguarding of rights abroad.

Article 13 Legalization or Foreign Official Documents

- (1) Consular officers are authorized to legalize official documents issued within their district.
- (2) Such legalization confirms the genuineness of the signature, the capacity in which the signatory of the document has acted, and the genuineness of the seal, if any, affixed to such document (legalization in strictu sensu)
- (3) The legalization shall be executed by making an entry to that effect on the document. Such entry shall contain the name and the official title or function of the signatory of the document. It shall contain the place and date of issue and be signed and either coin-sealed or coloursealed.
- (4) Upon application and where no doubt as to the legal position arises the entry may confirm that the executor was duly authorized to execute the document in question and that the document is being executed in the manner prescribed by the law of the place of issue (legalization in latu sensu).
- (5) Documents which are exempted from legalization by virtue of bilateral or multilateral international agreements should not be legalized.

Article 14 Confirmation of Genuineness of Domestic Official Documents

- (1) Consular officers are authorized to confirm the genuineness of official documents issued in the Federal Republic of Germany for use within their consular district.
- (2) The confirmation shall only be issued if the consular officer entertains no doubt as to its genuine character. He may as a rule presume that the document is genuine if it has been passed on to him by the authority that has drawn it up.

Article 15 Interrogations and Hearings

- (1) Consular officers shall conduct Interrogations upon the request of German courts of law and authorities.
- (2) Requests for an interrogation in lieu of judicial interrogation may only come from a court of law or an authority authorized to request domestic judicial interrogations. If an interrogation under oath is requested the consular officer shall be authorized to administer such oath.
- (3) German rules of procedure for such in interrogations shall be applied mutatis mutandis. Interpreters do not have to be sworn. The consular officer conducting the interrogation may record the proceedings. He may not use coercive methods.
- (4) Such interrogations and oaths as well as records thereof shall be on a par with interrogations conducted by and oaths sworn before domestic courts of law and authorities, as well as with records thereof.
- (5) The provisions relating to interrogations shall apply to hearings mutatis mutandis.

Article 16 Service of Documents

Consular officers shall at the request of German courts of law and authorities serve documents of any kind on persons residing in their consular district. A written certificate to the effect that service has been duly performed shall be sent to the requesting Court or authority.

Article 17 Execution of maritime declarations

Consular officers are authorized to execute maritime declarations

Section 3

Career consular officers

Article 18

Definition of Career consular officers

- (1) Career consular officers within the meaning of this Law are those members of diplomatic missions or career consular posts of the Federal Republic of Germany abroad entrusted with the performance of consular functions within the meaning of Articles 1 and 2 above.
- (2) For appointment to such posts officers must have passed the examination for admission to the senior or higher intermediate branch of the foreign service or by virtue of their education and professional experience possess the qualifications necessary for the proper discharge of the duties assigned to them.
- (3) Career consular officers include officials within the meaning of Paragraphs 1 and 2 who are assigned by the Federal Foreign Office to serve under an honorary consular officer for the purpose of performing consular functions, without themselves being honorary consular officers.

Article 19

Requirement of Special Authorization

- (1) Career consular officers holding the qualifications for judicial office are ipso facto authorized to perform all consular functions.
- (2) other career consular officers should only
 1. attest declarations and affidavits,
 2. execute conveyances,
 3. receive affidavits,
 4. solemnize marriages,

if they have been specially authorized by the Federal Foreign Office. They may only

1. conduct interrogations and hearings in lieu of judicial interrogation,
2. execute maritime declarations,
3. administer oaths,

if they have been specially authorized by the Federal Foreign office.

- (3) Authorization pursuant to Paragraph 2, Sub-paragraph 2, may only be granted to career consular officers of the senior branch of the foreign service. Such authorization, in the same way as the authorization pursuant to Paragraph 2, Sub-paragraph 1, is based on the assumption that the career consular officer concerned possesses the qualifications required by virtue of his education and professional experience for the proper discharge of the duties assigned to him.
- (4) The authorization may be limited to the performance of certain of the duties specified in Paragraph 2.

Section 4

Honorary Consular Officers

Article 20

Definition of Honorary Consular Officers

Honorary consular officers are honorary officers within the meaning of the Civil Service Code entrusted with the performance of consular functions.

Article 21

Appointment

- (1) Germans as well as foreigners may be appointed honorary consular officers.
- (2) Prior to the appointment of an honorary consular officer it shall be established in particular whether the candidate's personality, his professional experience, his standing in the receiving State, his familiarity with conditions in the proposed consular district, and his linguistic knowledge, render him suitable for the post.

Should a foreigner be appointed he shall make the following vow:

"I vow to discharge my official, duties as honorary-consular officer of the Federal Republic of Germany faithfully and conscientiously according to the laws and directives applicable to my office".

Article 22 Special Duties

- (1) An honorary consular officer May leave his district for a short time, even without being granted a leave. Applications for longer periods of leave shall be made in good timr to allow for arrangements for a deputy.
- (2) Before taking up employment in the service of a foreign State, another government agency or a supra- or international organization an honorary consular officer shall notify the Federal Foreign Office accordingly. He shall also notify the Federal Foreign Office if he assumes another citizenship.

Article 23 Discharge

Honorary consular officers may be discharged at any time. They shall in any case be discharged if the conditions for the retirement of an officer exist.

Article 24 Requirement of Special Authorization

- (1) Article 19 shall apply mutatis mutandis to honorary consular officers; they may not, however, solemnize marriages. Honorary consular officers shall confirm the genuineness of domestic Official documents only upon being specially authorized to do so by the Federal Foreign office. Such authorization may only be granted subject to the conditions specified in Article 19, Paragraph 3, Subparagraph 2.
- (2) The Federal Foreign Office may subject the authority of an honorary consular officer to perform consular functions to further restrictions.

Section 5

Fees and Expenses

Article 25 Special Statutory Regulations

Costs (fees and expenses) according to special statutory regulations will be charged for the performance of consular functions.

Article 26

Fees and Expenses of Honorary Consular Officers

- (1) Honorary consular officers retain fees collected for their performance of official functions. They may only reduce or waive them in accordance with the general provisions applicable to fees of official missions and posts abroad.
- (2) If fees are insufficient to cover administrative expenses a lump sum may be granted to honorary consular officers in addition.
- (3) An honorary consular officer may claim special expenses incurred in the performance of an official mission if they were necessary under the prevailing circumstances.

Section 6

Transitory and Final Provisions

Article 27 Definitions

The term "German" has the meaning accorded thereto in Article 116, Paragraph 1, of the Basic Law (Constitution).

Article 28 Abrogation of Certain Legal Provisions

- (1) The following provisions are hereby cancelled
 1. the Law of 8 November 1867 on the organization of Federal Consulates, as well as the Rights and Duties of Federal Consuls (Bundesgesetzblatt des Norddeutschen Bundes p. 137), last amended by Article 57, Paragraph 1, of the Law on Attestations of 28 August 1969 (Bundesgesetzblatt I p. 1513);
 2. the Regulation of 8 July 1937 on the Legal Status of Honorary Consuls (Reichsgesetzblatt 1 p. 764);
 3. the Law of 4 May 1870 on the Contracting of Marriage by and the Attestation of the Personal Status of Citizens of the Federal Republic of Germany abroad (Bundesgesetzblatt des Norddeutschen Bundes p. 599),

last amended by the First Criminal Reform Law Of 25 June 1969 (Bundesgesetzblatt I p. 645).

- (2) Authorizations for the exercise of consular powers granted pursuant to Article 37 a of the Law mentioned in Paragraph 1, Sub-paragraph 1, above shall remain valid for a period of three years after the entry into force of the present Law, unless revoked by the Federal Foreign Office.

Article 29 Amendment of Laws

- (1) Article 2, Paragraph 1 of the Law on Ships' Companies of 26 July 1957 (Bundesgesetzblatt II p. 713), last amended by article 26 of the Law amending the Authority to Levy Costs of 23 June 1970 (Bundesgesetzblatt I p. 805) shall read as follows:

"(1) The master is the person placed in charge of the ship by the shipowner."

- (2) The Law of 8 February 1951 on the Law of the Flag of Ocean-going Vessels and amended to include the following provision:

"Article 22 b

Check on Observance of Flag Provisions

Consular officers shall check whether the provisions in force concerning the Law of the Flag of Ocean-going Vessels and the Flying of the Flag by inland Shipping outside the limits of jurisdiction of the Basic Law are being observed. "

Article 30 Berlin Clause

This Law shall, in accordance with the provisions of Article 13, Paragraph 1 of the Transition Law of 4 January 1952 (Bundesgesetzblatt 1 p. 1), equally apply to Land Berlin. Regulations enacted under this Law shall, in accordance with the provisions of Article 14 of the Third Transition Law, apply to Land Berlin.

Article 31
Entry into Force

This Law shall enter into force three months after the day of its promulgation with the exception of Article 8 and of Article 28, Paragraph 1, Sub-paragraph 3, which shall enter into force on 1 January 1975.

The above Law is hereby promulgated.

Bonn, 11 September 1974

The Federal President

Scheel

The Federal Chancellor

Schmidt

The Federal Minister for Foreign Affairs

Genscher

The Federal Minister of the Interior

Maihofer

The Federal Minister of Justice

Dr. Vogel