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## **Consular fees as a source of state revenue in the Republic of Poland**

### **Oplaty konsularne jako źródło dochodów budżetu państwa w Rzeczypospolitej Polskiej**

**Abstract.** The study presents the legal status, and principles for the calculation and collection of consular fees which constitute a source of state revenue in Poland. Consular fees are a special type of public charges charged for the performance of official activities by a consul. The legal basis for the calculation and collection of these fees is primarily the provisions of the Consular Law and executive acts issued thereto. Occasional regulations on consular fees have also been included in other legal acts, i.e. the Maritime Code, the Act on the Polish Card, the Passport Act, and the Stamp Duty Act. The hypothesis that the proceeds from consular fees are of marginal importance among the state budget revenue has been verified and confirmed.

**Keywords:** public charge; consular fee; consular activities; state budget.

**Streszczenie.** W opracowaniu przedstawiono status prawny, zasady wymiaru oraz poboru opłat konsularnych, które stanowią źródło dochodów budżetu państwa w Polsce. Opłaty konsularne są szczególnym rodzajem opłat publicznych pobieranych za wykonywanie czynności urzędowych przez konsula. Podstawę prawną wymiaru i poboru tych opłat stanowią przede wszystkim przepisy ustawy Prawo konsularne i wydanych do niej aktów wykonawczych. Epizodyczne regulacje dotyczące opłat konsularnych zawarto także w innych aktach prawnych, tzn. w Kodeksie morskim, ustawie o Karcie Polaka, ustawie o dokumentach paszportowych oraz ustawie o opłacie skarbowej. Pozytywnie zweryfikowano hipotezę, że wpływy z opłat konsularnych mają marginalne znaczenie wśród dochodów budżetu państwa.

**Słowa kluczowe:** opłata publiczna; opłata konsularna; czynności konsularne; budżet państwa.

## 1. Introduction

The catalogue of state revenue sources is extensive and internally diversified. It includes sources of revenue with public and private law status. Public law sources are mostly taxes, although government levies also play an important role in this respect. According to Article 111 of the Act of 27 August 2009 on public finance<sup>1</sup>, the sources of state revenue include fees, on condition that a separate act does not provide for supporting the budget of a local government unit, an account of state earmarked fund or another unit of the public finance sector with the proceeds from a particular fee. From the content of Article 111 of the aforementioned Act it follows that lack of such a reservation in a separate act, and thus the silence of the legislator, creates a presumption according to which a particular type of fee constitutes a source of the state budget's own revenue. This presumption is unnecessary with regard to consular fees, because the Article 105(5) of the Act of 25 June 2015, Consular Law<sup>2</sup> explicitly specifies that

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<sup>1</sup> Consolidated version, Dz.U. [Polish Journal of Laws] of 2017, item 2077 with subsequent amendments, hereinafter: PFA.

<sup>2</sup> Consolidated version, Dz.U. of 2017, item 1545 with subsequent amendments, hereinafter: CLA.

consular fees charged by the consul constitute state revenue. In the doctrine, consular fees are included in the category of “non-tax budgetary receivables”<sup>3</sup>.

Within the meaning of the PFA, fees have been classified as government duties, which in turn are included in a broader category of public revenue. The classification of fees, including consular fees, as government duties means that they are subject to constitutional standards, in particular Article 84 and Article 217 of the Constitution of the Republic of Poland, which introduce the principle of statutory regulation of basic elements of the legal construct of public burdens and services, including taxes. In the doctrine it is aptly assessed that, in practice, taxes within the constitutional meaning are many of the levies defined by the legislator as fees. Often, they do not involve consideration on the part of public authorities, while it is the payment which distinguishes a tax from a classic fee. The blurring of the clear boundary between taxes and fees from the perspective of constitutional norms, however, only matters in the terminological aspect of the issue<sup>4</sup>.

Until the provisions of the currently applicable CLA came into force, the issue of consular fees had been regulated at the level of a legislative act lower in rank than the Act, which led to critical evaluations in terms of their conformity with the Constitution of the Republic of Poland. Regulations on consular fees are part of so-called consular matter, which also includes: organizational issues of consular offices, consular functions, proceedings before the consul, and the subject of honorary consuls. All these issues had been normalised in one legislative act, which was given the name of CLA. In accordance with the adopted legislative practice which standardises the nomenclature of acts, the CLA regulates consular matters as a whole, while being a separate area of law<sup>5</sup>.

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<sup>3</sup> J. Glumińska-Pawlic, *Ogólna charakterystyka danin niepodatkowych* [in:] L. Etel (ed.), *System prawa finansowego*, vol. 3, *Prawo daninowe*, Warszawa 2010, p. 865.

<sup>4</sup> A. Krzywoń, *Podatki i inne daniny publiczne – podstawowe pojęcia konstytucyjne*, „Zeszyty Naukowe Sądownictwa Administracyjnego” 2011, No 2, p. 56.

<sup>5</sup> Justification of the draft of the Act on Consular Law, document 3290 of the Sejm of the Republic of Poland, seventh term of office.

Regulations regarding consular fees are related to citizens' rights and obligations and should therefore constitute statutory matter. The CLA contains provisions referring to the basic structural elements of these fees affecting the final amount of the liability (i.e. the subject matter of the fee, the entity obliged to pay it, and exclusions and exemptions from the obligation to pay the fee) arising therefrom. However, the postulated intent of conducting a comprehensive regulation of consular fees within the provisions of one act, as well as regulation of all the elements of legal construct of fees affecting the amount of the liability, has not been achieved. The amount of these fees for particular activities, expressed in EUR, has finally been settled in the regulation of the minister competent for foreign affairs regarding consular fees<sup>6</sup>, which regulation was initially intended to regulate technical issues only (e.g. the method for collection and payment of fees and reimbursement thereof, the method for conversion of consular fees expressed in euros into the currency in which the consular fees are collected).

The occasional provisions concerning consular fees have also been left in separate acts, thus consolidating the dispersion of provisions regulating the amount and exaction of this public levy. Such provisions are included in: the Act of 18 September 2001 – Maritime Code<sup>7</sup> (concerning fees charged for lodging maritime protests abroad in a Polish consular office), the Act of 7 September 2007 on the Polish Card<sup>8</sup> (concerning the exemption of applications for a national visa, granting Polish citizenship, granting or extending the Polish Card from consular fees), the Act of 16 November 2006 on Stamp Duty<sup>9</sup> (concerning exemptions from stamp duty collection in the case of a prior collection of a consular fee), and the Act of 13 July 2006 on passport documents<sup>10</sup> (concerning the collection of fees for passports and temporary passports issued by the consul).

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<sup>6</sup> Regulation of the Minister of Foreign Affairs of 18 December 2015 on consular fees (Dz.U. item 2237).

<sup>7</sup> Consolidated version, Dz.U. of 2016, item 66 with subsequent amendments.

<sup>8</sup> Consolidated version, Dz.U. of 2018, item 1272.

<sup>9</sup> Consolidated version, Dz.U. of 2018, item 1044 with subsequent amendments.

<sup>10</sup> Consolidated version, Dz.U. of 2016, item 758 with subsequent amendments.

The aim of this study is to analyse and evaluate the normative material and acquis of the legal doctrine regarding the legal status and basis for calculation of consular fees, as well as to assess the fiscal effectiveness of this source of state revenue. The study verifies a hypothesis according to which consular fees are a special type of administrative fees charged for official activities performed by authorised state bodies equipped with certain powers, intervening in the sphere of the rights and obligations of an individual (a natural person) who has Polish citizenship or is only recently endeavouring to obtain it. The proceeds from consular fees are a source of the state budget's own revenue and, as in the case of other public charges, they primarily serve a fiscal function<sup>11</sup>. However, the relatively low fiscal effectiveness of consular fees is determined by numerous exemptions or reliefs introduced by the legislator, as well as the possibility for the consul to reduce the rates of fees. The main method used in the paper is the legal-dogmatic one, supported by the empirical-analytical method (in particular with reference to statistical data representing revenue from consular fees in individual years).

## **2. The object and subjects of consular fees**

The object of each public duty, and therefore also the consular fee, is its constitutive and normative feature. The structure of the object of the public duty leads to the answer to the question of what it is paid for<sup>12</sup>. Article 105 of the CLA includes a special method of regulation defining the subject limits of consular fees. In the first place, the legislator formulated a general rule according to which “activities performed by the consul, including accepting and considering an application, are subject to consular fees”. Then it mentions types of cases of which the consul's resolution involves an obligation to pay the consular fee. The catalogue of these cases is exhaustive and covers the following types: matters concerning pass-

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<sup>11</sup> D. Antonów, *Cele opłat publicznych* [in:] W. Miemiec, K. Sawicka (eds), *Instytucje prawnofinansowe w warunkach kryzysu gospodarczego*, Warszawa 2014, p. 137.

<sup>12</sup> J. Gliniecka, *Opłaty publiczne w Polsce. Analiza prawna i funkcjonalna*, Bydgoszcz–Gdańsk 2007, p. 28.

ports; Polish citizenship; visas; granting of permits for foreigners to cross the border within local border traffic, and other matters concerning foreigners; issuance of certificates and permits; obtaining documents and handing them over; legalisation, notarial issues and those related to the production or certification of translations; marital status; the area of sea and inland sailing.

Consular fees are collected for certain official activities performed by a public law entity (consul). Their nature is similar to that of taxes, but they differ from taxes in that they constitute a form of partial reimbursement of public authority expenditure incurred in performing official activities<sup>13</sup>.

According to Article 105(4) of the CLA, the consul also collects consular fees for a particular manner of performing activities. However, the Act does not specify a “particular manner of performing activities” by the consul; nor does it introduce criteria for delimitation of the “ordinary” and “particular” manner of the consul’s performance of activities. The appendix to the regulation of the Minister of Foreign Affairs on consular fees establishes, among other things, the amount of consular fees for a particular manner of performing these activities. However, in this context, the manner of formulating the delegation of legislative powers contained in Article 118 of the CLA ought to be approached in a negatively critical manner because it does not explicitly authorise the minister to specify “a particular manner of performing activities by the consul” and the appropriate amounts of consular fees related to this manner. The legislator considers “particular manner of performing activities” as their being carried out at the request of a party, outside the premises of a consular office, for each commenced 8 hours, including the time allowed for travel and return to the office (the fee is 90 EUR), as well as the performance of the activities in an urgent mode (the fee is 30 EUR). Each of the consular activities may be performed in this particular manner, while the fee charged for the performance of the activities in a particular manner is independent of the fees for the consular activity performed. Fees for the performance of activities in a particular manner are therefore an additional

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<sup>13</sup> J. Gliniecka, *Oplaty publiczne* [in:] L. Etel (ed.), *System prawa finansowego*, vol. 3, *Prawo daninowe*, Warszawa 2010, p. 884.

economic burden for the party. The aforementioned rule was specified in the explanations to the consular fees tariff. As a form of additional public levy it should result directly from the provisions of the Act.

However, despite the aforementioned reservations, it is possible to assess positively the way the object of consular fees has been regulated, since the limits of this public levy have been set directly in the Act. Compared to the previous Act of 13 February 1984 on the functions of consuls of the Republic of Poland<sup>14</sup>, a significant qualitative improvement took place in this respect. In Article 32 of the Act on the functions of Polish consuls, it was only generally established that the consul charged fees for the consular activities performed. The Act did not contain one consistent catalogue of these activities; they were mentioned in various provisions of the Act, but they were not defined in the same way. Such activities were named directly as consular ones or other terms were used, such as “consul’s activities”, or the types of actions taken by the consul were mentioned in a general way. Determining the object of the consular fee in such a legal condition while maintaining constitutional standards was not possible, since the statutory regulations were not precise. On the basis of the delegation of duties/functions formulated in Article 32(2) of this Act, the minister competent for foreign affairs was authorized to specify, by way of a regulation, the amount, rules for the collection of consular fees and granting of reliefs and exemptions, as well as reimbursement of expenses incurred in connection with the performance of consular activities, including the components of fees and costs of consular activities and types of chargeable activities. It can therefore be concluded that the legislator gave its authority regarding the levies to the minister, resigning even from the establishment of statutory guidelines, which should be taken into account when issuing the executive act. Since the provisions of the Constitution of the Republic of Poland of 1997 entered into force, this way of regulating a public levy, which is what a consular charge is, has obviously been violating constitutional standards.

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<sup>14</sup> Consolidated version, Dz.U. of 2015, item 389 with subsequent amendments.

An entity obliged to bear the burden of consular fees, in terms of formal, legal, and economic aspects, is – pursuant to Article 106 of the CLA – the party who submits an application for the performance of a chargeable activity. The consular fee is made prior to the performance of the activity. Therefore, it is a regulation analogous to the one applicable to another public levy, i.e. a stamp duty. The obligation to pay stamp duty arises the moment one lodges an application for a certificate or permit, and therefore the stamp duty has to be paid before such documents are handed over.

A principle has been introduced, according to which the consular fee paid is not refundable, unless the performance of the activity has not yet begun and the party has requested that it be not performed. The moment of commencement of an activity should be regarded as the moment it has been moved forward, after which it is impossible to withdraw it from the IT systems operated by the consul, submit the application to the applicant's native country, or actually start the performance of the activity (e.g. in the case of translations). Reimbursement of a consular fee may take place only in the case of joint fulfilment of the aforementioned conditions, which results from the manner in which the content of Article 108(1), CLA has been worded. It should be emphasized that in such a case the consular fee paid by the party is refunded in its entirety. The reimbursement of the fee should take place in the same currency in which it was paid by the obligor. However, this rule has not been expressly stated in the provisions of the Act. Moreover, the Act does not specify the deadline for the reimbursement of the consular fee under the conditions specified in Article 108(1) CLA. The issue of the reimbursement method has been left to be standardized by way of a regulation of the Minister of Foreign Affairs on consular fees. Pursuant to Article 7 of this regulation, the reimbursement of the consular fee is made in cash at the cash desk of the consular office or diplomatic representation, by cheque, or by money transfer to a bank account indicated by the party or other entity in the currency in which the payment was made. Lack of regulations regarding the deadline for the reimbursement of a consular fee deprives the party of the opportunity to claim interest on that amount in the case where a long peri-



od of time passes between the occurrence of conditions specified in Article 108(1), CLA and the moment the consular fee is reimbursed. Pursuant to the provisions of Article 108(2) CLA, a consular fee for accepting and processing an application is not subject to reimbursement.

### **3. Exemptions, reliefs and reductions in the legal construct of consular fees**

In the legal construct of fees, as in the legal construct of taxes, various preferences are used that reduce the economic burden of the fee paid by the obliged entity. They are usually motivated by the circumstances which have a negative impact on the obligor's solvency<sup>15</sup>. The object and subject limits of consular fees are appropriately shaped by the statutory catalogue of exemptions, reliefs and reductions of rates of these charges. Such preferences, whether intended or unintended by the legislator, serve the non-fiscal functions of public fees, positively affecting the situation of obliged entities<sup>16</sup>. Activities which are not subject to consular fees (exemptions) are exhaustively listed in Article 112, CLA. This catalogue is internally diverse in the object and subject aspect, and includes consular activities performed:

- for Polish citizens (in matters related to the protection of their rights in the event of a serious violation thereof by the authorities of the host country or in connection with unfortunate accidents or other serious fortuitous events, which the Polish citizens have become the victims of; related to the confirmation or determination of benefits concerning the pension entitlement of employees and their families, war and military disabled persons, veterans and their families, social insurance or social assistance, claims related to persistent, discriminatory, or fraudulent violation of the rights of persons being gainfully employed or claims for redressing damages resulting from an acci-

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<sup>15</sup> I. Czaja-Hliniak, *Oplaty i dopłaty w Polsce międzywojennej*, Kraków 2013, p. 32.

<sup>16</sup> J. Gliniecka, *Fiskalna i pozafiskalne funkcje opłat jako władczej formy dochodów publicznych* [in:] W. Miemiec (ed.), *Księga Jubileuszowa Profesora Ryszarda Mastaliskiego. Stanowienie i stosowanie prawa podatkowego*, Wrocław 2009, p. 165.

dent at work or an occupational disease; related to applying for the status of a veteran of military acts conducted abroad or for the status of a veteran aggrieved in acts conducted abroad and making use of this status,

- for foreigners who have been granted protection by the Polish authorities in the scope of affairs related to their arrival in the territory of the Republic of Poland<sup>17</sup>,
- for public administration authorities in the Republic of Poland, as well as for courts and prosecutors offices,
- in relation to the occurrence of events which might pose a threat to the lives or safety of Polish citizens residing within the consular region,
- in relation to pursuing maintenance claims or claims for the custody of minors or completely incapacitated Polish citizens,
- on the basis of acts specified in this provision (i.e. the Act of 18 December 1998 on the Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation<sup>18</sup>, as well as in the cases of compensations and remedies for Nazi, Communist, and other offences being crimes against peace, humanity, or war crimes, and other political repressions; the Act of 9 November 2000 on Repatriation<sup>19</sup>, Act of 20 June 1992 on entitlements to concessionary travel using public means of transport<sup>20</sup>).

The catalogue of exemptions from the consular fee was created on the basis of several criteria, i.e. social, political, random, family, and economic. It is dominated by exemptions which could be justified by social and random arguments. The application of an exemption from a consular fee results in an effect analogous to the one in the case of exemption from taxation. The exemption is expressed in the wording of the Act's provi-

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<sup>17</sup> According to the provisions of the act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland, (consolidated version, Dz.U. of 2018, item 1109).

<sup>18</sup> Consolidated version, Dz.U. of 2016, item 1575 with subsequent amendments.

<sup>19</sup> Consolidated version, Dz.U. of 2018, item 609.

<sup>20</sup> Consolidated version, Dz.U. of 2018, item 295.

sion by the phrase “the following are not subject to fee (taxation)” and is an expression of the legislator’s complete lack of interest in specific categories of factual or legal circumstances, usually because they are covered by the object-subject scope of other public levies<sup>21</sup>. As an example, one can refer to Article 142(4) of the Act on granting protection to foreigners within the territory of the Republic of Poland, according to which the replacement of a residence card issued to a foreigner is made against payment.

The provisions of the CLA also introduce exemptions from consular fees which could be classified in two groups. The first group includes exemptions regulated directly in the CLA, while the second one consists of exemptions regulated in separate legal acts, which the CLA refers to. The essence of exemptions regulated by the CLA is that anyone who finds himself in circumstances regulated by this Act shall be covered by the exemption from the consular duty. Such exemptions are introduced in Article 113 CLA and the application thereof follows the fulfillment of certain conditions specified by law. No consular fee is charged for accepting and processing an application for a visa:

- from a family member of a European Union<sup>22</sup> citizen being a spouse of the EU citizen or a direct descendant of the EU citizen or his or her spouse, up to 21 years of age or dependent on the EU citizen or his or her spouse, or a direct ascendant of the EU citizen or his or her spouse, dependent on the EU citizen or his or her spouse,
- made by a spouse of a Polish citizen, his or her minor direct descendant or a minor direct descendant of his or her spouse, his or her direct ascendant or a direct ascendant of his or her spouse, if the ascendant or descendant is dependent on a Polish citizen or his or her spouse (in this case, a subsequent application with regard to this matter is also exempted from the fee).

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<sup>21</sup> B. Brzeziński, *Wstęp do nauki prawa podatkowego*, Toruń 2001, p. 57.

<sup>22</sup> The act of 14 July 2006 on the entry into, residence in and exit from the territory of the Republic of Poland of citizens of the European Union Member States and families thereof (consolidated version, Dz.U. of 2017, item 900 with subsequent amendments).

The introduction of these exemptions is the result of the implementation of the principle expressed in Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of EU citizens and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC<sup>23</sup>, according to which family members of European Union citizens are entitled to be exempted from payment for the acceptance and processing of visa applications.

The exemption regulated by Article 114 of the CLA, according to which a consular fee is not charged for the acceptance and processing of an application for a diplomatic or business visa is also subject to certain conditions. The diplomatic visa is issued in the case of the entry and residence of heads and members of the diplomatic staff of diplomatic missions, heads of consular offices and other consular officials of foreign countries and other persons equated with them pursuant to laws, agreements, or commonly established international customs, as well as members of their families. A business visa is issued in the case of the entry and residence of members of the administrative and technical staff, members of the service staff of diplomatic missions, consular employees, members of the service staff of foreign states' consular offices, and other persons assigned to work in the Republic of Poland and business travelers equated with them pursuant to laws, agreements or commonly established international customs, as well as members of their families<sup>24</sup>.

A reference to separate acts of national, EU or international law has been included in the CLA, thus creating a second group of exemptions from consular fees. According to Article 116 of the CLA, to the exemptions, reliefs, and rules for the reduction of consular fees for issuing a passport, as well as to the reimbursement of a consular fee for issuing

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<sup>23</sup> [2004] OJ L 158/77.

<sup>24</sup> Regulation of the Minister of Foreign Affairs of 8 April 2015 on visas and documents confirming the performance of functions of members of diplomatic missions and consular offices of foreign countries (Dz.U., item 535).

a passport in the case of a decision on cancellation thereof, the provisions of the Act of 13 July 2006 on passport documents shall apply accordingly. Concessions on fees, in the amount of 50% or 75%, are granted, among others, to pensioners, the disabled, veterans, and minors. Exemptions from fees are available to, among others, persons who, on the date of applying for a passport, are over 70 years old, and to those who have applied for a passport replacement because of a technical defect of their current passport. Reimbursement of the consular fee for the issuance of a passport in the event of a decision on cancellation thereof is made after the cancelled passport has been delivered to the consul.

According to Article 115 CLA, to matters related to the collection of consular fees for the acceptance and processing of an application for a uniform visa, and to matters concerning the category of persons exempted from the fee for the acceptance and processing of an application for a uniform visa, the provisions of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing the Community Code on Visas<sup>25</sup> and provisions of visa facilitation agreements concluded by the European Union with third countries shall apply. According to Article 2(3) of the Community Code on Visas, a “uniform visa” is a visa valid for the entire territory of the Member States.

Certain preferences in determining the amount of consular fees may also result from the provisions of international law referred to in Article 111 CLA. It stipulates that in a case when, with regard to certain activities, international agreements to which the Republic of Poland is a party, or recognized international customs in relations with other states provide charges other than those established in the executive regulations to the CLA or an exemption thereof, then the citizens of these states are charged fees provided for in these international agreements, or customary fees, or certain activities are carried out free of charge. If the host country or a third country charges Polish citizens fees higher than the fees set for activities in executive regulations to the CLA or charges fees for activities that are not provided against payment under the provisions of Polish law,

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<sup>25</sup> [2009] OJ L 243/1.

then consular fees in the same amount can be charged from citizens of such a state on a reciprocal basis. Fees can also be charged for activities which, according to the provisions of the Polish Act, are not subject to consular fees. In such cases collection of consular fees takes place upon the consent of the minister competent for foreign affairs. Hence, the application of the provision of Article 111 CLA leads to withdrawal from imposing of consular fees in the amount set in the consular fees tariff, constituting an appendix to the regulation of the Minister of Foreign Affairs. In such cases, two different solutions are possible, i.e. charging fees in a different amount or performing a particular activity for free.

A form of preferential treatment is also reductions in the rates of consular fees. According to Article 109 CLA the consul may, in special cases, at the request of the party, charge a consular fee in the amount of 25%, 50% or 75% of the due fee or withdraw from its collection. When considering an application, the consul takes into account the party's financial or personal situation. The consul's decision in this respect will be discretionary, while the rationale adopted in the quoted provision of the Act is fuzzy. It uses the phrase "in special cases", which should be understood as extraordinary, unusual and rare cases<sup>26</sup>. When assessing the full spectrum of circumstances surrounding a "special case", the consul will ultimately decide on the amount of the consular fee reduction. In this case, however, he or she cannot be completely free to decide, since the legislator allows for the use of one of four solutions (the reduction may amount to 25%, 50%, 75% or 100% of the amount). The use of other proportions in the fee reduction is not allowed. Directional guidelines which the consul should take into account when deciding whether to reduce the consular fee or withdraw from its collection (because of the financial or personal situation of the party) are also formulated in a very general way. The use of "fuzzy" terms in the provisions of the applicable levy law aims at creat-

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<sup>26</sup> M. Bańko (ed.), *Wielki Słownik wyrazów bliskoznacznych* PWN, Warszawa 2005, p. 912.

ing flexibility in the activities of the authorised public body and minimises the need to adopt unnecessarily detailed legal regulations<sup>27</sup>.

The reduction applied pursuant to Article 109 CLA is an exception to the principle of universality of charging the fees in question. It requires that the reasons why the consul forbears from part or all of the budget receivables are justified in exceptional situations related to events which the party had no influence on, and thus were objective reasons. The right to reduce the consular fee or withdraw from its collection is an instrument enabling the consul to take into account the individual situation of a given person, which in some cases may significantly help improve his or her position (e.g. obtaining a passport can enable a given person to solve specific problems, undertake employment, receive social benefits)<sup>28</sup>.

On the basis of Article 110(1) CLA the consul may withdraw from the collection of a consular fee from officials of international organizations and public figures of the receiving state, as well as members of diplomatic missions and consular offices of third countries, in accordance with a recognized international practice. The allowance specified in this footnote is conditional upon the status of the person from whom the consular fee should be charged (an officer of an international organisation, a public figure, a member of a diplomatic representation or a consular office of another state) and a justification arising from a recognised international practice. All of such conditions should be met. According to Article 110(2) CLA, the consul may, in individual cases, charge a consular fee in a reduced (by 25%, 50% or 75% respectively) amount or withdraw from its collection, if it is to promote the Polish language, Polish culture, economy, science, Polish sport, as well as to promote interests in the field of foreign policy, development cooperation, or in other areas important from the perspective of the public interest of the Republic of Poland, or if humanitarian reasons demand this. The estimation of the existence or non-

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<sup>27</sup> P. Borszowski, *Określenia nieostre i klauzule generalne w prawie podatkowym*, Warszawa 2017, pp. 66–67.

<sup>28</sup> Reply to the interpellation No 13730 on fees for the issuance of passports in Polish diplomatic posts, <http://www.sejm.gov.pl/sejm8.nsf/InterpelacjaTresc.xsp?key=3B329741> (access on-line: 26.07.2018).

existence of the above rationale in a particular (individual) situation lies within the scope of the consul's actions. His or her powers also include deciding on the amount of the consular fee reduction rate in a given case. One can only assume that the greater the "promoted" value, mentioned in the provision of the Act quoted above, the higher the reduction in the amount of the consular fee will be.

Pursuant to Article 119 CLA, the legislator authorised the minister competent for foreign affairs to reduce the rates of consular fees charged from a specific group of applicants of a consular office in the host country. The reduced consular fees can be charged for individual activities. In the regulation, the minister may specify:

- the host country and the group of applicants from whom the consular fees shall be charged at a reduced rate,
- the list of activities for the performance of which consular fees shall be charged at a reduced rate and the amount of these fees,
- the due date by which consular fees shall be charged at a reduced rate or the condition the occurrence of which shall result in the reinstatement of fees in their entirety<sup>29</sup>.

According to the legislator's guidelines, when issuing a regulation, the minister competent for foreign affairs should take into account the legitimate interests of the Republic of Poland resulting from the directions and objectives of Polish foreign policy and the need to avoid excessive depletion of state revenues. In the latter case, therefore, the fiscal function of consular fees has been emphasised. The current regulation lists 8 host countries (Belarus, Bulgaria, the Czech Republic, Mongolia, Germany, Russia, Slovakia and Hungary), while the indicated groups of applicants are the citizens of these countries (except Belarus) who lost their Polish citizenship on the basis of relevant bilateral conventions between the aforementioned country and Poland. A separate group of applicants are the citizens of the Republic of Belarus (without the reservation concerning the loss of Polish citizenship).

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<sup>29</sup> Regulation of the Minister of Foreign Affairs of 22 December 2015 on reduced consular fees (Dz.U., item 2274).



The activities for which consular fees are charged at a reduced rate concern the acceptance of the application and preparation of documentation in the case of granting Polish citizenship along with the delivery of the act of granting Polish citizenship or notification of refusal to grant the same (only with regard to the citizens of the Republic of Belarus, activities charged with reduced consular fees concern the acceptance and processing of the application for a national visa). The reduced fees are to apply until 31 December 2025 (only for citizens of the Republic of Belarus a shorter deadline for the application of reduced fees, i.e. until 31 December 2020, has been adopted).

#### **4. Description of rates of consular fees and payment terms**

The Act does not establish the maximum amount of the consular fee for the performance of any one activity by the consul. It should be emphasised, however, that it was originally planned to include such a regulation in Article 104 of the Act, yet in the course of legislative work this regulation was finally abandoned. The entity authorised to determine the amount of these fees is the minister competent for foreign affairs; Article 118 CLA imposes an obligation to take into account the differentiation in the amount of fees for the activities performed and the increased costs of performing them abroad and to create conditions for the effective collection of consular fees.

Consular fees are quota rates expressed in EUR. They have been significantly differentiated in terms of their amount. The lowest rate of the fee is 15 EUR and concerns the issuance of a temporary passport for the time of waiting for the delivery of a passport executed in the Republic of Poland to a person who was under 70 years of age on the day of submitting the application for a passport. The rate of 20 EUR concerns the acceptance and processing of an application for a permit to cross the border within the local border traffic, as well as the acceptance and reconsideration of such a request. The highest rate of payment is 500 EUR and refers to the preparation of documentation regarding a marriage solemn-

nised before the consul, acknowledgment of testimonies of having entered into marriage, and benefits in the matter of the surname assumed upon marriage and the surnames of children of this marriage, preparation of the protocol of acceptance of these testimonies and handing it over to the registry office in the country together with the delivery of a copy of the marriage certificate. Other activities performed by the consul are charged with fees usually not higher than 100 EUR (these are amounts of 30 EUR, 40 EUR, 50 EUR, 60 EUR, 70 EUR, 80 EUR, and 90 EUR). In several cases, the rates were set at 110 EUR, 200 EUR, 210 EUR, 240 EUR, 300 EUR, 330 EUR, and 360 EUR.

According to Article 107 CLA consular fees are charged in the currency of the host country. In justified cases, if the conditions in the host country support this, after the consent of the minister competent for foreign affairs has been obtained, the consular fee may be collected in a currency other than the currency of the receiving state. The rules of consular fees conversion and the payment mode in this respect are set out in the provisions of the regulation of the Ministry of Foreign Affairs regarding consular fees. The conversion of fees to a specific currency is made by the consul using the reference rate<sup>30</sup> of that currency in relation to euros, announced by the European Central Bank, applicable on the last day of the previous month. The converted fee is then rounded up to full units. The Consul adjusts the conversion if the difference between the reference exchange rate of the currency in which the fee is charged, applicable on the last day of the previous quarter and the exchange rate applicable on the last day of the quarter preceding the previous quarter amounts to at least 5%. The amount of consular fees converted into the currency in which they are collected is announced by the consul in the form of a table of consular fees, in a manner allowing all interested parties to become acquainted with the fees. The consular fee is paid at the cash desk of the consular office or diplomatic representation in cash or cheques confirmed

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<sup>30</sup> EBC announces referential rates for 32 currencies everyday (e.g. USD, JPY, AUD, NZD, CZK, RUB, CHF, GPB) on the basis of transactional rates from the main currency platforms – cf. Rules concerning referential rates of foreign currencies in relation to euro, [www.ecb.europa.eu](http://www.ecb.europa.eu) (access on-line: 26.07.2018).

by the bank, by money transfer, or otherwise to the bank account of the consular office or diplomatic representation, unless this entails additional costs of processing the individual payment.

A natural person residing in the Republic of Poland or another entity with its registered office in the Republic of Poland can pay a consular fee for extracting a document in the host country and sending it to the country in the amount equivalent to the fee specified in euros in the consular fees tariff. The amount of the fee paid in zlotys is determined with the use of the euro selling rate announced by the National Bank of Poland, applicable on the day the proceedings were initiated. The amount of the fee calculated in this way is paid to the bank account indicated by the consul, servicing the minister competent for foreign affairs.

## **5. Final remarks**

All consular fees, with the exception of those collected by honorary consuls, constitute a source of state revenue. The honorary consul performs activities within the scope entrusted to him or her by the minister competent for foreign affairs. They consist in: execution and certification of extracts, duplicates, excerpts and copies of documents; certification of signatures and other handwritten marks; certification of the date when documents were presented, the fact that a given person is still living or is residing in a specific place. The honorary consul performs the aforementioned activities at the request of a Polish citizen or a public administration body in the Republic of Poland. As a result, he or she collects consular fees which, pursuant to Article 135 CLA, do not constitute state revenue. The collected consular fees are applied by the consul towards expenses related to the performance of consular functions. The adoption of such a solution is justified both by long-standing tradition<sup>31</sup> and the need

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<sup>31</sup> Pursuant to Article 4 of the Act of 11 November 1924 on the organization of consulates and consuls' activities (Dz.U. No 103, item 944 with subsequent amendments), a honorary consul was not a government official, did not receive a regular salary and could use only the consular fees he had been granted. If, by way of exception, the hon-

to compensate the honorary consul for the costs that he or she incurs in connection with the performance of the activities (e.g. proper preparation of rooms for receiving applicants, maintenance of office equipment, making of a seal)<sup>32</sup>.

The proceeds from consular fees in subsequent financial years have been systematically increasing (except for a temporary decrease in revenue in 2015–2016). In the subsequent financial years revenues in the following amounts were obtained from this source: PLN 206,600,000 (in 2011), PLN 215,350,000 (in 2012), PLN 233,070,000 (in 2013), PLN 240,125,900 (in 2014), PLN 237,756,100 (in 2015), PLN 236,744,000 (in 2016), PLN 248,883,700 (in 2017)<sup>33</sup>. However, they do not exceed 0.8% of the total amount of the annual state revenue. Changes in the amount of budgetary proceeds from consular fees (i.e. increase or decrease in value) are the result of various reasons, including the varying number of applicants using consular services in every financial year, and changes in exchange rates adopted for the conversion of consular fees.

The study confirmed the hypothesis about the special legal status of consular fees. They differ from other public charges due to certain features, including the object of the fee and the subject entitled to determine the amount thereof and collect them or apply certain preferences (exemptions, reductions), which is the consul<sup>34</sup>. Differentiation of the consular fee in relation to other administrative fees, and in particular in relation to stamp duty<sup>35</sup>, is formally confirmed by the amendment to the Act on Stamp Duty, made on 26 July 2007, which included Article 3a, exempting

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orary consul received special remuneration for the costs related to the performance of official functions, then he lost the right to use consular fees.

<sup>32</sup> Justification for the draft of the Act on Consular Law, document 3290 of the Sejm of the Republic of Poland, seventh term of office.

<sup>33</sup> The figures have been presented on the basis of annual information of the Supreme Chamber of Control on the results of state budgetary control in the part 45 – Foreign affairs, [www.nik.gov.pl](http://www.nik.gov.pl) (access on-line: 28.07.2018).

<sup>34</sup> Z. Ofiarski, *Ogólne prawo podatkowe. Zagadnienia materialnoprawne i proceduralne*, Warszawa 2013, p. 25.

<sup>35</sup> Z. Ofiarski, *Ustawa o opłacie skarbowej. Ustawa o podatku od czynności cywilnoprawnych*, Warszawa 2018, pp. 137–138.

activities previously charged with a consular fee from the stamp duty<sup>36</sup>. Distinction of the consular fee is justified by the special position and manner of the work of the consul, who operates under three legal orders: Polish law, the law of the receiving state, and international law (which is sometimes of the nature of a custom). The special status of the consular fee also results from the comprehensive character of the consul's legal position, combining the functions of a public administration body (i.e. passport authority, authority competent to issue visas, authority acting as the head of the registry office, maritime administration body), a notary, and a sworn translator. The specificity and separateness of the law regarding consuls is confirmed by the basic structure of Polish administrative law, which excludes proceedings against the consul and the matter of consular fees from the scope of regulation of basic acts relating to proceedings before public administration authorities, such as the Act of 14 June 1960 – Code of Administrative Proceedings<sup>37</sup> and the Act on Stamp Duty<sup>38</sup>.

It was also shown that the proceeds from consular fees are a marginal source of the state budget's own revenues. The low fiscal effectiveness of this source is determined by numerous exemptions or reliefs from the payment obligation, introduced by the legislator, as well as the consul's authority to reduce the rates of consular fees. This means that apart from the fiscal function, consular fees also serve important non-fiscal functions (e.g. social ones). Owing to the fact that fixed quota rates of consular fees, expressed in euros have been set, the increase in state revenues in this respect may be determined only by the changes in the exchange rates accepted for conversion of the due amount of the fee.

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<sup>36</sup> The Act of 13 June 2007 on the amendment of the Act on Stamp Duty (Dz.U. No 128, item 883).

<sup>37</sup> Consolidated version, Dz.U. of 2017, item 1257 with subsequent amendments.

<sup>38</sup> Justification of the draft of the Act on Consular Law, document 3290 of the Sejm of the Republic of Poland, seventh term of office.

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