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Резюме

Кочубей Л. О. Ознаки правової системи України як соціальної системи.

Стаття присвячена дослідженню ознак правової системи України як соціальної системи. Проаналізовано основні підходи до розуміння ознак соціальних систем та систем взагалі, які існують у вітчизняній і зарубіжній літературі. На підставі проведеного дослідження визначено основні ознаки, які властиві правовій системі України як соціальній системі.

Ключові слова: правова система, ознаки правової системи, Україна, цілісність, ієрархічність, інтегративність, функціональність, цілеспрямованість.

Резюме

Кочубей Л. О. Признаки правовой системы Украины как социальной системы.

Статья посвящена исследованию признаков правовой системы Украины как социальной системы. Проанализированы основные подходы к пониманию признаков социальных систем и систем вообще, существующих в отечественной и зарубежной литературе. На основании проведенного исследования определены основные признаки, присущие правовой системе Украины как социальной системе.

Ключевые слова: правовая система, признаки правовой системы, Украина, целостность, иерархичность, интегративность, функциональность, целеустремленность.

Summary

Kochubei L. Signs of the legal system of Ukraine as a social system.

The article investigates the features of the legal system of Ukraine, as a social system. Analyzed main approaches to understanding the signs of social systems and all existing in the domestic and foreign literature. Based on the study identified the main features inherent in the legal system of Ukraine as a social system.

Key words: the legal system, the legal system of signs, Ukraine, integrity, hierarchy, of integrity, functionality and purpose.

УДК 347.1

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A ROLE OF THE PUBLIC AUTHORITIES IN THE PROCEDURE FOR APOSTILIZATION OR CONSULAR LEGALIZATION

Actuality. Globalization which covers today all processes in the society leads to active migration of persons, businesses. Formation of public, business and personal relations with an international element causes a necessity of existence of a clear mechanism for confirmation of the validity of documents issued in the territory of one state in order to be valid in the territory of other states.

In the present-day life the issues arise quite often that concern the validity of official documents of Ukraine in the territory of foreign states and, on the contrary, the divergences arise more often that concern confirmation of the validity of different documents in the corresponding states. In practice it is difficult enough to find out whether a document issued in one state is valid in the other, or whether it has been signed by an authorized person or issued by an appropriate state body.

A purpose of the research is to determine a mechanism of consular legalization and apostilization of documents, and a role of public authorities in these procedures.

Basic contents. That the document has acquired the right to exist in international circulation, i.e. for its use in other countries, it is necessary to legalize it – in other words, to confirm the validity of the document, and also the validity of signatures and seals attached unless otherwise provided by international treaties. So, legalization of documents is required for giving validity to the document in the territory of another state.

Today two ways of legalization of documents are the most widespread:

1. consular legalization;
2. putting down a stamp “Apostille” or apostilization.

The procedure for consular legalization in the territory of Ukraine and by foreign diplomatic representations of Ukraine in the territory of foreign states is regulated by the Consular Charter of Ukraine approved by the Decree No. 127/94 of 02.04.1994 of the President of Ukraine (hereinafter referred to as the Consular Charter of Ukraine) and the Regulations on the Procedure for Consular Legalization of Public Documents in Ukraine and Abroad approved by the order No. 113 of 04.06.2002 of the Ministry of Foreign Affairs of Ukraine (hereinafter referred to as the Regulations on the Procedure for Consular Legalization of Public Documents in Ukraine and Abroad).

The procedure of consular legalization of documents is quite complex and multilevel.

Consular legalization according to Article 54 of the Consular Charter of Ukraine consists in determination and certification of authenticity of the signature, powers of the official who has signed a document or an act or has certified a previous signature on them, authenticity of a stamp, a seal, samples of which have been received officially by a consul from competent authorities of the receiving country¹. A consul legalizes documents and acts made up with the participation of the authorities of the consular district, or those issued by these authorities.

The bodies of Ukraine accept such documents and acts for consideration only if consular legalization is available unless otherwise provided by the legislation of Ukraine or the international treaty, the participants of which are Ukraine and a receiving state.

According to item 1.2 of the Regulations on the Procedure for Consular Legalization of Public Documents in Ukraine and Abroad consular legalization of public documents is a procedure of confirmation of the validity of originals of public documents or certification of authenticity of signatures of the officials authorized to certify signatures on documents, and also the validity of stamps, seals attached on the document. Hereby a consul does not bear responsibility for contents of the document. Consular legalization is carried out by an authorized official of the Consular Service Department of the Ministry of Foreign Affairs of Ukraine, the Representations of the Ministry of Foreign Affairs in the territory of Ukraine or a consular official of the foreign diplomatic establishment of Ukraine.

The procedure of consular legalization of public documents is established by the Vienna Convention On Consular Relations 1963², international treaties and the current legislation of Ukraine, and also the Regulations on the Procedure for Consular Legalization of Public Documents in Ukraine and Abroad.

With the purpose of process simplification in 1961 within the Hague Conference on International Private Law, the Convention was developed in order to abolish a requirement for legalization of foreign public documents. Legalization deems only a formal procedure to be required for certification of authenticity of the signature, capacity in which a person, who signed the document, has acted and authenticity of seal or stamp attached on the document – putting down an apostille by the competent authority of the state in which the corresponding document has been made up.

This Convention simplifies the process of legalization of public documents to a considerable degree and modifies it in a definite way. Such a way of legalization is called ‘simplified legalization’.

The Hague Convention that abolishes the requirement of legalization of foreign public documents of October 5, 1961 (hereinafter referred to as the Hague Convention)³ establishes a special sign (stamp) that is put down on public documents issued in one state and to be transferred to another state replacing a procedure for consular legalization – an apostille.

According to Article 1 of the above Convention its action involves public documents issued in the territory of one of the participating states and shall be presented in the territory of another participating state. The following documents are considered to be public documents: documents issued by an authority or an official and act in the sphere of court jurisdiction of a state, including documents issued by public prosecution bodies, a clerk of court or a legal executive; administrative documents; notarial acts; official certificates executed on documents signed by persons in their private capacity such as official certificates of document or fact registration existed on a certain date and official and notarial certifications of signatures. Each of the participating states exempts documents from legalization covered by this Convention and to be presented in its territory⁴.

Determination of an official character of a document depends on the applicable right and is connected with the issue of qualification. The Convention has no indication to the law which will determine an official character of a document, nevertheless the Special Commission on practical application of the Hague Conventions (hereinafter referred to as the Commission) stated that an official character of the document should be determined by the legislation of the state of its origin, and proposed participating states to interpret a category of official documents extensively.

Ukraine joined the Hague Convention on January 10, 2002. The Convention came into force in Ukraine on December 22, 2003. Then 98 participating states of the Convention refused in relations with Ukraine the requirement of full consular legalization of public documents and it passed to a simplified procedure of apostilization.

‘Apostille’ is of French origin and designates a special stamp of apostilization that certifies the validity of signatures, a status of persons, seals; confirmation of signatures and seals on public documents by means of an apostille makes these documents effective in all participating countries of the Hague Convention.

Apostille except for certification of authenticity of the signature and competence of a person, who has signed (issued) a public document, also in some cases, certifies the validity of a stamp attached on the document.

Apostille is put down on demand of a person who has signed a document, or any bearer of a document.

Apostilization is one of legal regimes of recognition of a legal effect of documents to be used abroad. Apostille has arisen as an alternative and universal procedure of confirmation of validity of foreign documents. Unlike consular legalization, apostilization takes less time, and documents with an apostille can be used in the different countries, but not in one.

Today in Ukraine an apostille on public documents intended for the use in the territory of other states is put down according to the Rules approved by the joint order No.237/803/151/5 of December 5, 2003 of the Ministry of Foreign Affairs, the Ministry of Education and Sciences and the Ministry of Justice and registered in the Ministry of Justice on December 12, 2003 under No.1151/8472⁵.

According to the current legislation of Ukraine an apostille is put down by:

1. The Ministry of Education and Sciences, Youth and Sports of Ukraine – on public documents issued by educational institutions, public authorities, enterprises, establishments and organizations related to the sphere of education and science. Such documents include: diplomas of education, certificates of academic ranks, school leaving certificates, certificates from educational institutions, curricula and others;

2. The Ministry of Justice of Ukraine – on documents issued by institutions of justice and courts, and also on documents issued by notaries of Ukraine. Such documents include: certificates issued by state civil registration bodies, extracts from the State Civil Register, documents certificated by notaries, judgements and certificates.

3. The State Registration Service of the Ministry of Justice of Ukraine – on documents issued by this Service and structural subdivisions of territorial bodies of the Ministry of Justice which provide exercise of powers of the State Registration Service (certificates of civil registration, extracts from the register etc.);

4. The Ministry of Foreign Affairs of Ukraine – on all other kinds of documents.

Apostille is not put down on documents issued by foreign diplomatic establishments of Ukraine, on administrative documents directly connected with commercial or customs operations, on documents of a correspondence character. According to the order of the Ministry of Foreign Affairs of Ukraine, the Ministry of Education and Science of Ukraine and the Ministry of Justice of Ukraine of August 13, 2014 On Amendments to the Rules of Placing Apostille on Public Documents Intended for the Use in the Territory of Other States⁶ it is permitted to place an apostille on copies (photocopies) certified according to the notarial procedure: passport documents, military service books, work record cards, licenses to carry a firearm, certificates of vehicle registration (technical passports), identification cards. In this case it is necessary to pay attention to certain contradictions. So, the current legislation of Ukraine does not provide notarial certification of copies of a passport of a citizen of Ukraine as there is a corresponding prohibition in item 3 of the Decree of the Presidium of the Verkhovna Rada of the USSR On the Procedure for Issue and Certification of Copies of Documents by Enterprises, Establishments and Organizations concerning the Rights of Citizens.

It should be noted that activity and function of the authorities putting down an apostille remind notary's activity and function in many respects. For example, when certifying the agreement by putting a seal on a notarial act, a notary certifies authenticity of the signature of parties, their legal capacity, presence of powers to conclude the agreement. In future when presenting a notarial act in any law enforcing body (for example, in court) a notary's seal and other essential elements of a notarial act (a special form, etc.) carry out a function of apostille: they confirm the validity of signatures, a legal capacity and competence of parties of such an act. Similarity of two functions helps to overcome an essential drawback in a legal mechanism of the Convention that consists in limitation of the subject of its regulation solely to public documents. Meanwhile within international circulation of documents the establishment of signature authenticity and document signer's legal capacity and competence is required not only for public documents, but also for private legal documents. Notaries help to fill this gap of the Convention. The impossibility of apostilization of a private legal document is overcome by means of notary's participation: as within the notarial action a notary is authorized to certify authenticity of a person's signature and also to establish his powers, for legalization of the stated document it is enough to give him a form of notarial act. In their turn notarial acts are subject to apostilization.

Conclusions. So, both consular legalization and apostilization are forms of confirmation of the validity of an official document to be used outside the country of origin. Both stated procedures provide confirmation of such validity by competent authorities of the country of document origin (apostilization), or joint actions of competent authorities of the country of origin and the country of destination (consular legalization).

¹ On the Consular Charter of Ukraine: the Decree No. 127/94 of 02.04.1994 of the President of Ukraine.

² Vienna Convention on Consular Relations of 24.04.1963 // http://zakon3.rada.gov.ua/laws/show/995_047

³ The Convention which abolishes the Requirement of Legalization of Foreign Public Documents of 05.10.1961 // http://zakon3.rada.gov.ua/laws/show/995_082

⁴ The Convention which abolishes the Requirement of Legalization of Foreign Public Documents of 05.10.1961 // http://zakon3.rada.gov.ua/laws/show/995_082

⁵ On Approval of the Rules for Placing Apostille on Public Documents Intended for the Use in the Territory of Other States: the Order No. 237/803/151/5 of 05.12.2003 of the Ministry for Foreign Affairs of Ukraine, the Ministry of Education of Ukraine, the Ministry of Justice of Ukraine // Official Bulletin of Ukraine of 02.01.2004, 51, volume 2, p. 397, Article 2708, act code 27100/2003.

Резюме

Приходько О. Е. Роль державних органів в здійсненні процедури проставлення апостилю або здійснення консульської легалізації.

У статті досліджено, що і консульська легалізація, і апостилювання є формами підтвердження достовірності офіційного документу для використання його за межами країни походження. Автором проаналізовані вищевказані процедури, які передбачають підтвердження достовірності компетентними державними органами країни походження документу (апостилювання), або спільними діями компетентних органів країни походження і країни призначення (консульська легалізація).

Ключові слова: легалізація, консульська легалізація, апостиль.

Резюме

Приходько А. Э. Роль государственных органов в осуществлении процедуры апостилизации или осуществления консульской легализации.

В статье исследованы, что и консульская легализация и апостилирование являются формами подтверждения достоверности официального документа для использования его за пределами страны происхождения. Автором проанализированы вышеуказанные процедуры, которые предусматривают подтверждение достоверности компетентными государственными органами страны происхождения документа (апостилирование), совместными действиями компетентных органов страны происхождения и страны назначения (консульская легализация).

Ключевые слова: легализация, консульская легализация, апостиль.

Summary

Prakhodko O. A role of the public authorities in the procedure for apostilization or consular legalization.

The article deals, both consular legalization and apostilization are forms of confirmation of the validity of an official document to be used outside the country of origin. The author analyzed the above procedure, both stated procedures provide confirmation of such validity by competent authorities of the country of document origin (apostilization), or joint actions of competent authorities of the country of origin and the country of destination (consular legalization).

Key words: legalization, consular legalization, apostille.