

EXPLANATORY REPORT

Adopted by the General Assembly in Strasbourg on 23 March 1977

By virtue of rules or custom, a document issued by a foreign authority often cannot be used by a public authority unless it has been legalised, this being an administrative procedure the effect of which is to certify the capacity of the signatory and the authenticity of his or her signature or, where appropriate, the identity of the seal or stamp of the issuing authority.

Continued improvements in administration have made the guarantee offered by legalisation superfluous in many cases, and this has enabled it to be abolished gradually for certain official documents and in particular for civil status records. Numerous international conventions, both bilateral and multilateral, exempt from legalisation either a given category of documents, regardless of their intended use, or all documents drawn up for a specific purpose, e.g. concerning judicial proceedings or social security.

The International Commission on Civil Status has drawn up several conventions providing for the exemption from legalisation of certain civil status records: Convention on the issue of certain extracts from civil status records for use abroad, signed at Paris on 27 September 1956; Convention on the issue free of charge and the exemption from legalisation of copies of civil status records, signed at Luxembourg on 26 September 1957; Convention extending the competence of authorities empowered to receive declarations acknowledging natural children, signed at Rome on 14 September 1961; Convention on the issue of multilingual extracts from civil status records, signed at Vienna on 8 September 1976; and a convention providing inter alia for such exemption for notices of legitimation and the supporting documents attached thereto (Convention on legitimation by marriage, signed at Rome on 10 September 1970).

Furthermore, a convention abolishing the requirement of legalisation for foreign public documents was signed at The Hague on 5 October 1961, enabling traditional legalisation to be replaced by an ad hoc certificate (apostille), while a European Convention on the abolition of legalisation of documents executed by diplomatic agents or consular officers was concluded at Strasbourg on 7 June 1968.

Despite the existence of these various multilateral instruments and numerous bilateral agreements, it has come to light that many documents, although used frequently, are still subject to legalisation or an equivalent formality. Such is the case of certain records or documents relating to the civil status, capacity, family situation, domicile, residence and nationality of natural persons. Such is equally the case of administrative, court and notarial documents produced with a view to the celebration of a marriage or the establishment of a civil status record.

The aim of this Convention is to eliminate those loopholes and, in the cases envisaged, to simplify and facilitate the administrative procedures to be followed by individuals who have to produce records and documents abroad.

First of all, **Article 1** explains what is to be understood by "legalisation". This definition, taken from the aforementioned Conventions of 5 October 1961 and 7 June 1968, is generally accepted in international circles. As stated above, legalisation consists solely of certifying the authenticity of the signature on a record or document, the capacity in which the signatory was acting and, where appropriate, the identity of the seal or stamp borne by the record or document. In practice, the seal or stamp is certified only where it is materially impossible to certify the authenticity of the signature, either because the document is very old or because the signature thereon cannot be identified.

Legalisation does not certify either the accuracy of the information contained in the document or that the issuing authority was acting within the limits of its powers; neither does it have any effect on the evidential value of the document.

Article 2 abolishes, in the Contracting States, the need for legalisation or any formality such as the ad hoc certificate (apostille) provided for by the Hague Convention of 5 October 1961, on the one hand, for records and documents relating to the civil status, capacity or family situation of natural persons or their nationality, domicile or residence, regardless of their intended use (1) and, on the other hand, for all other documents produced with a view to the celebration of a marriage or the establishment of a civil status record (2). However, the record or document must meet certain conditions considered essential in order to justify abandonment of the guarantee constituted by legalisation as defined in Article 1. First, the record or document must have been issued by an authority of one of the Contracting States; secondly, it must bear that authority's signature and its seal or stamp; and finally, it must bear the date of issue.

The meaning of the word "record"(acte), when used in matters of civil status, is known to vary from State to State: in some States it means the original record entered in the registers, which elsewhere is called an entry (inscription); in others, a record (acte) is a copy of or even an extract from the original. The Convention uses the word "record" (acte) in this second meaning and therefore covers both copies or literal copies of and extracts from the entries in the registers.

In the Convention the word "document" refers to any other official document such as a certificate, judgment or order, decree, decision, instrument of authorisation, exemption or consent, power of attorney or attestation.

Exemption from legalisation applies equally to translations of those records or documents provided that they are issued by an authority qualified to undertake such translations.

However, the record or document should concern essentially (and not merely in an incidental or secondary way) civil status, capacity, family situation, nationality, domicile or residence.

The records and documents must emanate from an "authority" of a Contracting State, whether it be administrative, judicial or other. Although notaries and bailiffs are not generally considered to be "authorities", their official documents fall within the scope of Article 2 of the Convention and must equally be exempted from legalisation. This is because these public officers are empowered to draw up powers of attorney, documents recording matters of common knowledge (*actes de notoriété*) and instruments of consent and to serve official records or judgments, in particular in matters of status and capacity.

Article 3 enables a check to be made in a case where serious doubts exist either as to the authenticity of a signature or the identity of a seal or stamp, or as to the capacity of the signatory. However, recourse should be had to such verification only in exceptional cases and in principle not where the document has been transmitted through diplomatic or consular channels or where the issuing authority has sent it to the foreign authority through another official channel. Should it be necessary to request the checking or verification of other points (the competence of the authority or the accuracy of the document's contents, for example), recourse should be had to existing practice and not to the special procedure provided for in Article 3.

In order to facilitate and accelerate direct correspondence between the two authorities concerned, Article 4 provides that a verification request may be made by means of a multilingual form, a model of which is appended to the Convention. This form, accompanied by the document at issue, is to be sent to the issuing authority. This procedure is optional and does not prevent verification being requested in the traditional manner (letters rogatory, procedure through consular channels, direct correspondence).

Under **Article 5**, verification, whether or not requested by means of the form referred to in Article 4, is to be effected free of charge and the reply by the requested authority is to be returned as soon as possible, accompanied by the record or document submitted for verification.

The Convention does not make any provision for free postage with regard to correspondence between the authorities concerned. The requesting authority may enclose an international reply coupon with its verification request, thereby pre-paying the postage costs of the reply; otherwise, the reply can always be transmitted through diplomatic or consular channels.