

LEGAL STATUS AND FEATURES OF APPLICATION OF ELECTRONIC LEGAL DOCUMENTS

ПРАВОВИЙ СТАТУС ТА ОСОБЛИВОСТІ ЗАСТОСУВАННЯ ЕЛЕКТРОННИХ ЮРИДИЧНИХ ДОКУМЕНТІВ

Gilyaka O.S.,

Applicant at the Department of Theory of State and Law
Yaroslav Mudryi National Law University,
Head of Department planning and analysis of legal research
National Academy of Law Sciences of Ukraine

In today's conditions of development of Ukraine as a democratic, legal, social state and the tasks of implementing e-governance, there is a need for legal regulation of electronic document circulation as the main mechanism for organizing interaction between public authorities and local self-government bodies, citizens and business entities. Problems of introduction of e-governance technologies in the activities of state authorities and local self-government bodies are connected, in particular, with the lack of clear regulatory regulation of electronic document circulation processes.

The rapid development of information technology leads to the transformation of social, social and economic relations. As a result of the introduction of scientific advances, new legal phenomena and phenomena, such as electronic document and electronic digital signature, are emerging. The institutes of the electronic document and electronic digital signature are tools for ensuring the dynamics of civilian circulation and the means of protecting the subjective rights and interests of the parties to the legal relationship.

The mandatory requisite for an electronic document is data in an electronic document, without which it cannot be the basis for registration, and will not be legally valid. An electronic copy of an electronic document is certified in accordance with the procedure established by law. A copy of the document on paper for an electronic document is a visual representation, which is certified in accordance with the procedure established by law.

The legal validity of an electronic document cannot be denied solely because it has an electronic form. The admissibility of an electronic document as evidence can't be denied solely on the grounds that it has an electronic form.

Thus, the analysis of the above-mentioned provisions allows us to consider the electronic document as a set of data recorded on a physical electronic medium or transmitted through electronic channels of communication with the requisites that allow identification of this information and its author. An electronic document may be created on the basis of a document on paper, on the basis of another electronic document or generated in the process of information interaction of the parties without any pre-images. The question of the use of the electronic document and its mandatory requisites is more than debatable, but quite relevant in modern jurisprudence

Key words: legal document, electronic document, electronic digital signature, electronic document circulation.

Стаття присвячена розгляду питання правового статусу та особливостей використання електронного юридичного документа. Розкриваються основні сучасні підходи до визначення поняття «електронний юридичний документ». Дається визначення електронного документа як сукупності даних, зафіксованих на матеріальному електронному носії або передаваних електронними каналами зв'язку з реквізитами, що дозволяють ідентифікувати цю інформацію та її автора. Проводиться аналіз чинного законодавства, яке регулює оборот електронних документів в Україні, а також міжнародна практика використання електронного документа в правових відносинах.

Ключові слова: юридичний документ, електронний документ, електронний цифровий підпис, електронний документообіг.

Статья посвящена изучению вопроса правового статуса и особенностей использования электронного юридического документа. Раскрываются основные современные подходы к определению понятия «электронный юридический документ». Дается определение электронного документа как совокупности данных, зафиксированных на материальном электронном носителе или передаваемых по электронным каналам связи с реквизитами, позволяющими идентифицировать эту информацию и её автора. Проводится анализ действующего законодательства, регулирующего оборот электронных документов в Украине, а также международной практики использования электронного документа в правовых отношениях.

Ключевые слова: юридический документ, электронный документ, электронная цифровая подпись, электронный документооборот.

Formulation of the problem. In today's conditions of development of Ukraine as a democratic, legal, social state and the tasks of introducing e-governance, there is a need for legal regulation of electronic document circulation as the main mechanism for organizing interaction between public authorities and local self-government bodies, citizens and business entities. Problems of introduction of e-governance technologies in the activities of state authorities and local self-government bodies are connected, in particular, with the lack of clear regulatory regulation of electronic document circulation processes.

Relevance of research topic. The rapid development of information technology leads to the transformation of social, social and economic relations. As a result of scientific advances, new legal phenomena and phenomena, such as electronic document and electronic digital signature, are emerging. Institutes of electronic document and electronic digital signature are tools for ensuring the dynamics of civilian circulation and a means of protecting the subjective rights and interests of the parties to the relationship.

State of research. This problem was partly the subject of research by some scholars in the field of information law.

In particular, in Ukraine, the questions of an electronic document in their works were the following scientists, such as M.M. Dutov, V.S. Tsimbalyuk, V.M. Bryzhko, I.V. Klymenko, A.A. Baranov, N.Ya. Shvets, R.A. Kalyuzhny. More specifically, the problem is considered in the works of such scholars as: I.L. Bachilo, V.A. Kopylov, S.I. Semiletov.

The purpose and tasks of the article is to study the concept of an electronic legal document and its features, as well as study the problems that arise when using an electronic digital signature.

Presenting main material. The emergence of electronic documentation has become the main feature of the development of the information society and e-democracy in all countries of the world. A significant array of modern documentation is increasingly moving into a "digital" form. Understanding the essence of the document is transferred from the material component to the information. Effective "e-government" in many countries of the world becomes the main criterion for the development of democracy, the successful interaction of power with a society that becomes contactless, "online" communication, which is impossible without electronic document

circulation. The organization of legal relations related to the creation, sending, transfer, receipt, storage, processing, use and destruction of information enshrined in electronic documents in the organs of state power of Ukraine, has become particularly relevant in the development of new social relations – information [1, p. 134].

Before defining an electronic document, it is necessary to find out what constitutes a document at all, since an electronic document is one of its varieties.

In the process of development of mankind, information in the form of knowledge has always been fixed on those or other carriers, which in today's conditions of development of information relations, the current legislation treats as a document. The word "document" (from the Latin word "documentum" – sample, evidence, certificate) comes from the word "docere" (lat.) – to teach. The root of this word reaches the Indo-European language, where it meant the receipt, transmission or reception of anything [2, p. 25].

The doctrinal definition of the term "document" can be found, for example, in V.Ya. Dorokhov, who defines this category as a written act of an established or generally accepted form, compiled by certain and competent institutions, enterprises, organizations, officials, as well as citizens, for the disclosure of information about Facts or evidence of facts of legal significance, or for the confirmation of rights and obligations [3, p. 55].

Definition of the term "document" is given in a number of legal acts. In accordance with the Law of Ukraine "On mandatory copy of documents" the document is defined as the material form of obtaining, storing, using and disseminating information recorded on paper, magnetic, film, photographic film, optical disk or other media [4]. In DSTU 2732:2004 "Sewing and archival affairs. Terms and definitions" is given to define a document as information recorded on a physical medium whose main function is to store and transmit it in time and space [2, p. 56]. The similar interpretation of this term is also given in DSTU 3017-95 "Edition. The main types. Terms and Definitions" [5, p. 23]. Chuchkovskaya A.V. notes the requirements for the document: 1) the document must contain information of a certain nature, recorded on the material carrier; 2) the document must have the requisite details; 3) the competence of the source of the document must be confirmed [6, p. 88].

Separately, one should dwell on the definition of the notion of "legal document", which in its content is narrower than the concept of "document". The study of a legal document is constantly in the field of scientific jurists. According to A. B. Vengerov, a legal document is created and formed by authorized organizations and individuals in accordance with the procedure specified by regulatory acts or other rules that have legal value; The document testifies (directly or in the system of other media) about the presence of facts, events, processes; The document provides for the possibility of repeated access to information that is recorded therein; The document is the basis for the implementation of the relevant activities [7, p. 18].

V.K. Babayev believes that the legal document is any document related to legal regulation, in particular, the regulation of social relations, legal relations and the effect of legal norms [8, p. 144].

Thus, the presence of a variety of definitions of the term "document" complicates its understanding and use.

Rapid informatization of the society, distribution of computer technologies and the need for legal regulation of these processes led to the development and adoption of the Law of Ukraine "On Electronic Documents and Electronic Document Management" [9], which regulates the basic organizational and legal basis of electronic document circulation and the procedure for the use of electronic documents. Similar in terms of content and direction of regulatory acts are still adopted and operate in virtually all developed countries, become elements of the "electronic control system", contribute to the reduction

of document circulation. Therefore, Ukraine is no exception in this case. This law applies to relations arising in the process of creating, sending, transmitting, receiving, storing, processing, using and destroying electronic documents.

Article 5 of the Law of Ukraine "On electronic documents and electronic document circulation" [9] gives the following definition: "electronic document is a document, the information is recorded in the form of electronic data, including the required details of the document". It can be argued that there are certain features of an electronic document, namely: an electronic document must contain the requisite details, without which it cannot be the basis for its registration and cannot be legally enforceable, that is, there should be a clearly defined composition and procedure for placing electronic details documents.

An electronic copy of the document with mandatory requisites, including the electronic digital signature of the author, shall be considered as the original of the electronic document in accordance with the said law. When sending an electronic document to several recipients or storing it on several electronic media, each of the electronic copies is considered the original of the electronic document. If the author creates an identical documentary and electronic document and document on paper, each of them is original and has the same legal validity. The original of the electronic document must prove its integrity and authenticity in the manner prescribed by law. In cases determined by law, it can be presented in a visual form of reflection, including in a paper copy.

The mandatory requisite for an electronic document is data in an electronic document, without which it cannot be the basis for accounting, and will not be legally valid. An electronic copy of an electronic document is certified in accordance with the procedure established by law. A copy of the document on paper for an electronic document is a visual representation, which is certified in accordance with the procedure established by the legislation.

The legal validity of an electronic document cannot be denied solely because it has an electronic form. The admissibility of an electronic document as evidence cannot be denied solely on the grounds that it has an electronic form.

An electronic document cannot be used as an original if this document is: 1) Certificate of the right to inheritance; 2) a document which according to the law can be created only in one original copy, except for cases of existence of a centralized repository of originals of electronic documents; 3) in other cases stipulated by law. Notarization of a civil agreement entered into by the creation of an electronic document (electronic documents) is carried out in accordance with the procedure established by law.

The difference between an electronic document and a paper is that the electronic signature is the mandatory requisite for the first one, which allows identification of the compiler of the document and guarantees the immutability of the document when it is transmitted. Electronic signature is a mandatory requisite for an electronic document used to identify the author and / or electronic document signer by other subjects of electronic document circulation. An electronic signature overlay completes the creation of an electronic document.

It should be noted that the Law of Ukraine "On Electronic Digital Signature" [10] operates two similar content concepts – "electronic signature" and "electronic digital signature". Yes, electronic signature is data in electronic form, attached to or logically related to other electronic data, and is intended to identify the subscriber of this data. An electronic digital signature is the type of electronic signature obtained by the cryptographic transformation of the electronic data set that is added to or combines with the set and can confirm its integrity and identify the subscriber. An electronic digital signature is superimposed with a private key and verified using a public key. Thus, the concept of "electronic signature" is wider.

It is advisable to draw attention to the fact that in legal practice, an important feature of a document is the ability to

create copies. The ability to create copies and a clear division of the legal status into the original and a copy of the document is very important when working with electronic documents, as well as when considering disputes in court. For example, according to Part 2 of Art. 36 of the Commercial Procedural Code of Ukraine [11] written evidence is filed in the original or duly certified copy. Also, according to the Law of Ukraine "On electronic documents and electronic document circulation" [9], an electronic document may be "created, transmitted, stored and converted electronically in a visual form. The visual form of submission of an electronic document is to display the data it contains, electronically or on paper, in a form suitable for perceiving its contents by a person". This means that the electronic document can be converted, if necessary, into a copy in paper form.

Moreover, to date, the increasingly frequent use of electronic documents in legal regulation is at the level with paper analogues. Thus, according to the Decree of the Cabinet of Ministers of Ukraine dated March 18, 2015 № 289-r "Some issues of ensuring the functioning of the electronic service system in the field of state registration of legal entities and individuals – entrepreneurs" in order to ensure the implementation of the electronic service system in the field of state registration of legal entities and individuals – entrepreneurs and simplifying the mechanism for providing information from the Unified State Register of Legal Entities and Individuals – Entrepreneurs to support the proposal of the Ministry of Justice on a one-time basis use according to the laws of extracts, certificates and extracts from the register in electronic form and in the form of paper records, which according to the Law of Ukraine "On electronic documents and electronic document" equal legal force [12].

The legal force of an electronic document is linked to three aspects: first, the presence of mandatory requisites in it and compliance with the rules of displaying these details. Secondly, the competence of the source, that is, the author's right to create and sign documents of this kind. Thirdly, the guarantee of integrity and authenticity. The current legislation of Ukraine formulates not only the concept of electronic document and electronic digital signature, but also defines the basic principles on the basis of which the electronic document circulation and use of electronic documents should be carried out:

1. An electronic document and an identical "paper" document are recognized as originals and have the same legal validity.
2. The legal validity of the electronic document and its admissibility as evidence cannot be challenged solely on the grounds that the document has an electronic form.
3. The law may restrict the use of an electronic document.
4. To provide the electronic document with legal force, it must be present in all mandatory requisites provided by law.
5. An obligatory final requisite for an electronic document is an electronic digital signature.
6. If the signature, in accordance with the law, must also be stamped, the electronic document shall be supplemented by another electronic digital signature of the legal entity specifically designated for these purposes [13, p. 14].

At present, current Ukrainian legislation allows the development of contractual constructions, taking into account and in the context of the exchange of information by e-mail.

Thus, according to the Civil Code of Ukraine [14], a contract is considered concluded in writing, if its content is fixed

in one or several documents, in letters, telegrams exchanged by the parties. The contract is considered concluded in writing, if the will of the parties is expressed by teletype, electronic or other technical means of communication. Use at signing contracts of facsimile reproduction of a signature by means of mechanical or other copying, electronic signature or other analogue of a personal signature is allowed in cases established by law, other acts of civil law, or by written agreement of the parties, which should contain samples of the corresponding analogue of their own signature signatures.

From the analysis of the above-mentioned provisions of Ukrainian legislation, it follows that the parties may use an electronic signature or other analogue when entering into an agreement. Thus, the current legislation allows the parties to the contract to establish in the contract (on a contractual basis) the type of electronic signature. Subsequently, the letters signed by electronic signature, set out in the contract, sent by e-mail, will be of an official nature and can be used as a written proof in resolving disputed situations [15].

The foreign experience of electronic document circulation and its peculiarities is of interest. Thus, the "Electronic Signature" and "E-Commerce" legislation, created by international organizations, in particular the United Nations Commission on International Trade Law (UNCITRAL) and the European Union, are fundamental for the development of national laws.

Particular attention is paid to the legislative initiatives of the United States, as it is the largest group of sources in a single country (virtually every state has its own legal base for electronic documents and digital signatures). There are also federal laws on this issue in the country. For example, the widely-known federal law of 2000, Electronic Signatures in the Global and National Commerce Act, and the Uniform Electronic Transactions Act, based on the laws of individual states.

In countries of Western Europe, since 1997, a number of laws have been adopted that regulate the use of electronic signatures and electronic documents in various areas of activity. Appropriate laws were passed in Italy, Germany, Austria, Great Britain, Ireland, Finland, France and other states.

Asian countries also have a well-developed legislative base on this issue today. Hong Kong, India, Malaysia, Singapore, the Philippines and Japan, which have already adopted national laws on e-commerce, on digital signature, on electronic agreements, and others that in one way or another affect the use of electronic documents and electronic signatures.

Conclusion. Thus, the analysis of the above-mentioned provisions allows us to consider an electronic document as a collection of data recorded on a physical electronic medium or transmitted through electronic channels of communication with requisites that allow identification of this information and its author. An electronic document may be created on the basis of a document on paper, on the basis of another electronic document or generated in the process of information interaction of the parties without any pre-images. The question of the use of the electronic document and its mandatory requisites is more than debatable, but rather relevant in modern general theoretical jurisprudence.

Today, one of the priorities of Ukraine is the development of an information society, which is impossible without the use of electronic documents, and therefore the improvement of legal regulation of electronic document circulation is of particular importance.

REFERENCES

1. Чекотовська О.Е. Основні підходи до розуміння категорії «електронний документ» / О.Е. Чекотовська // Часопис Київського університету права. – 2012. – № 2. – С. 134–137
2. Кушнаренко Н.Н. Документоведение : [учебник] / Н.Н. Кушнаренко. – 8-е изд. – К. : Знання, 2008. – 456 с.
3. Дорохов В.Я. Понятие документа в советском праве / В.Я. Дорохов // Правоведение. – 1982. – № 2. – С. 50–57
4. Про обов'язковий примірник документів : Закон України від 9 квітня 1999 р. № 595–XIV // Відомості Верховної Ради України. – 1999. – № 22. – Ст. 199
5. ДСТУ 3017–95 Видання. Основні види. Терміни та визначення. – К. : Держстандарт України, 1996. – 47 с.
6. Чучковська А.В. Правове регулювання електронної комерції в Україні : [навч. посіб.] / А.В. Чучковська. – Київ : Центр учбової літератури, 2007. – 224 с.

7. Венгеров А.Б. Право и информация в условиях автоматизации управления (теоретические вопросы) / А.Б. Венгеров ; ВНИИ совет. законодательства. – М. : Юрид. лит., 1978. – 114 с.
8. Бабаев В.К. Теория государства и права в схемах и определениях / В.К. Бабаев, В.М. Баранов, В.А. Толстин. – М. : Юристъ, 2003. – 256 с.
9. Про електронні документи та електронний документообіг : Закон України від 22 травня 2003 р. № 851-IV // Відомості Верховної Ради України. – 2003. – № 36. – Ст. 275
10. Про електронний цифровий підпис : Закон України від 22 травня 2003 р. № 852-IV // Відомості Верховної Ради України. – 2003. – № 36. – Ст. 276
11. Господарський процесуальний кодекс України : Закон України від 06 листопада 1991 р. № 1798-XII // Відомості Верховної Ради України. – 1992. – № 6. – Ст. 56
12. Деякі питання забезпечення функціонування системи електронного сервісу у сфері державної реєстрації юридичних осіб та фізичних осіб-підприємців : Розпорядження Кабінету Міністрів України від 18 травня 2015 р. № 289-р // Офіційний вісник України. – 2015. – № 28. – С. 132. – Ст. 814
13. Манько Д.Г. Віртуальне буття електронного документу: питання теорії та практики : [зб. наук. пр.] / Д.Г. Манько // Науковий вісник Міжнародного гуманітарного університету. Серія «Юриспруденція». – Міжнародний гуманітарний університет. – Одеса : Фенікс, 2012. – Вип. 4. – С. 13–17
14. Цивільний кодекс України : Закон України від 16 січня 2003 р. № 435-IV // Відомості Верховної Ради України. – 2003. – № 40. – Ст. 356.
15. Рогачёв Ю. Юридические аспекты использования электронных документов : Ліга. Блоги [Електронний ресурс] – Режим доступу : <http://blog.liga.net/user/yrogachev/article/14607.aspx>.

УДК 342.5:321.01

ДОСВІД ТРАНСФОРМАЦІЇ МЕХАНІЗМУ ДЕРЖАВИ ЗАРУБІЖНИХ КРАЇН В УМОВАХ ГЛОБАЛІЗАЦІЇ

EXPERIENCE OF TRANSFORMATION OF THE MECHANISM OF THE STATE OF FOREIGN COUNTRIES IN THE CONDITIONS OF GLOBALIZATION

Клопков С.М.,
аспірант кафедри історії і теорії держави та права
Запорізький національний університет

У науковій публікації досліджується досвід трансформації механізму держави зарубіжних країн під впливом глобалізації. Зазначається, що для України найбільш важливим є позитивний досвід євроінтеграції як однієї з форм глобалізації таких країн, як Польща, Румунія, Болгарія, а також країн Прибалтики. Серед прикладів позитивного досвіду євроінтеграції виділяються такі: створення спеціальних органів державної влади, які відповідають за євроінтеграцію; реальне виконання всіх заходів, ретельне дотримання всіх умов, прагнення до відповідності всім економічним і політичним критеріям, необхідним для набуття повноправного членства в Європейському Союзі, з активним відстоюванням водночас національних інтересів; активна дипломатична робота, налагодження постійних і різновекторних контактів з усіма державами-членами Європейського Союзу.

Ключові слова: трансформація, механізм держави, органи державної влади, глобалізація, євроінтеграція, позитивний досвід, імплементація, зарубіжні країни, запозичення.

В научной публикации исследуется опыт трансформации механизма государства зарубежных стран под влиянием глобализации. Отмечается, что для Украины наиболее важным является позитивный опыт евроинтеграции, как одной из форм глобализации таких стран, как Польша, Румыния, Болгария, а также стран Прибалтики. Среди примеров позитивного опыта евроинтеграции выделяются следующие: создание специальных органов государственной власти, которые отвечают за евроинтеграцию; реальное принятие всех мер, тщательное соблюдение всех условий, стремление к соответствию всем экономическим и политическим критериям, необходимым для полноправного членства в Европейском Союзе, с активным отстаиванием при этом национальных интересов; активная дипломатическая работа, обеспечение постоянных и разновекторных контактов со всеми государствами-членами Европейского Союза.

Ключевые слова: трансформация, механизм государства, органы государственной власти, глобализация, евроинтеграция, позитивный опыт, имплементация, зарубежные страны, заимствование.

The scientific publication examines the experience of transforming the mechanism of the state of foreign countries under the influence of globalization. It is noted that for Ukraine the most important is the positive experience of European integration, as one of the forms of globalization, such countries as Poland, Romania, Bulgaria, and also the Baltic countries.

To borrow positive experience of transformation of the mechanism of the state of foreign countries in the conditions of globalization should be carefully and substantiated, because “blind” borrowing of allegedly “positive” experience can lead to unpredictable consequences. Each country has its own peculiarities of formation, development, peculiarities of mentality and customs, including legal traditions and customs, that what “worked” in one country in the other could lead to the opposite result. This is especially true of the economic and legal spheres of social relations, since the impact of globalization processes on these spheres depends on the level of economic development of the country, the maturity of the legal system, the level of legal culture of society, etc.

The experience of the transformation of the mechanism of the state of foreign countries in the context of globalization shows that the most positive is the concentration of efforts of all state institutions on the real implementation of all program activities and compliance with the conditions for accession to the EU (the experience of Poland, Bulgaria, and Romania). Equally important is the creation of special government bodies directly responsible for European integration and coordinate in this direction the activities of other public authorities, state institutions and enterprises. So, in Ukraine this role is fulfilled: the Cabinet of Ministers of Ukraine, which approves the Action Plan for the implementation of the Association Agreement between Ukraine and the EU, and controls its implementation; Governmental Committee on European Integration; Government Office for European and Euro-Atlantic Integration; Ministry of Justice of Ukraine and Ministry of Economic Development and Trade of Ukraine. In addition, a post of Deputy Minister for European Integration has been created in each ministry. In Poland, in particular, for the euro-integration, there was a separate ministry – this experience may well be borrowed by Ukraine. And, as the positive experience of Estonia shows, the maximum diplomatic activity of the Ministry of Foreign Affairs in establishing contacts with EU member states, opening diplomatic missions in all capitals of the EU states, constant dialogue with representatives of relevant ministries of other EU members is extremely important.

The urgency of further research on this topic is due to the fact that within the framework of one publication it is impossible to consider the experience of transforming the mechanism of the state of all the leading countries of the world in the conditions of globalization and European integration.

Key words: transformation, state mechanism, public authorities, globalization, eurointegration, positive experience, implementation, foreign countries, borrowing.