

OFFICIAL DOCUMENT AS A LEGAL ACT: ESSENTIAL ASPECTS

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ABSTRACT

Description: The purpose of the article is to study essential aspects of an official document. The subject of the article is essential aspects of an official document, its features and admissibility requirements. Methodology: During the research general scientific and special methods were used. Thus, the analysis and synthesis method as well as the logical method were used to formulate a holistic view on a document as whole and an official document in particular. The logical-semantic method was used to establish the meaning of the term “document” and “official document”. The comparative method was used when analyzing different forms of European and Ukrainian regulations, enshrining the signs of an official document, as well as scientific categories, definitions and approaches. The system-structural method was applied to determine the elements of an official document. The results of the study: The results of the study made it possible to define the terms “a document” and “an official document”, as well as to determine the criteria for classification of the documents. Practical implications: As a result of the research it has been proven that the legal document is a material medium of legal information. The essence and the content of an official document have been determined. Value / originality: The essential aspects of legal document and official document as legal categories have been characterized.

Keywords: Document, Legal Document, Legal Document, Official Legal Document, Legal Act.

INTRODUCTION

Modern law-enforcement practice confirms the importance of legal acts in the mechanism of legal regulation of social relations. A legal act as a means or instrument of legal regulation is used by subjects of social relations in the process of implementation of law: execution, use, compliance or application of the rules of law. At the same time, the definition of the essence, content and form of a legal act becomes significantly important in the law-enforcement process. The practice of the judicial authorities, as well as other public authorities authorized to adopt or apply various forms of legal acts, indicates the need to deepen the

theoretical concepts and scientific knowledge in this area, including the possible improvement of the relevant legislation in force.

MATERIALS AND METHODS

During the research general scientific and special methods were used. Thus, the analysis and synthesis method as well as the logical method were used to formulate a holistic view on a document as whole and an official document in particular. The logical-semantic method was used to establish the meaning of the term “*document*” and “*official document*”. The comparative method was used when analyzing different forms of European and Ukrainian regulations, enshrining the signs of an official document, as well as scientific categories, definitions and approaches. The system-structural method was applied to determine the elements of an official document.

In the theory of law the clarification of issues of legal nature, content, characteristics, properties, classification of legal acts, clarification of their specific characteristics and relations with related concepts is not a new one. Separate aspects in varying degrees in different periods were the subject of research by Alekseev, Boshno, Voplenko, Gurova, Zivs, Kosovich, Leger, L. Lutz, Marchenko, Murashina, Tikhomirova and others. Despite the permanent appeals of the lawmakers to improve the current legislation in this area, the legal forms of individual legal acts remain imperfect, which causes problems of their application. Accordingly, a thorough study requires clarification of the legal nature and the essential features of law enforcement acts that would allow them to be considered as official documents that cause the emergence or change of legal relations.

RESULTS AND DISCUSION

Firstly, it should be noted that the basis of this study is the fundamental principles enshrined in Articles 8, 19, 57, 58 of the Constitution of Ukraine, namely:

1. The principle of the rule of law is recognized and is in force in Ukraine. The Constitution of Ukraine has the highest legal force. Laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and should comply with it.
2. The State and local authorities, their officials are supposed to act only on the basis, within the limits of their authority and in the manner provided by the Constitution and laws of Ukraine.
3. The laws and other normative legal acts defining the rights and duties of citizens must be brought to attention of the population in accordance with the procedure established by the law. Laws and other normative legal acts defining the rights and duties of citizens which are not brought to attention of the population in accordance with the procedure established by law, will not be considered as valid ones.
4. Laws and other normative-legal acts have no reverse effect in time, except when they reduce or cancel the responsibility of the person.

Determining the essence and the content of the concept of “*official document*” requires clarifying the concept of “*document*”. In translation, the word “*document*” means a certificate, a validating document, evidence, and a source. According to the Law of Ukraine “*On Information*”, a document is a material carrier containing information whose main functions are its preservation and transfer in time and space.

In the encyclopedic legal dictionary, a document is interpreted as the material form of displaying, disseminating, using and storing information that gives it legal force (Shemshuchenko, 2007).

In our opinion, the document is a material form of obtaining, storing, using and disseminating information by fixing it on paper, magnetic, cinema, video, film or other media.

Documents can be classified according to a determined criterion, namely:

1. On the criterion of the scope-of administrative, reference, information, contract, procedural and legal matters;
2. On the criterion of the specialization-general and specialized ones;
3. On the criterion of the origin: internal (not beyond the limits of a certain organization) and external (business correspondence between legal entities, individuals and legal entities);
4. On the criterion of the direction-incoming and outgoing;
5. On the criterion of the form-standard and individual;
6. On the criterion of the technique of reproduction-handwritten and reproduced by the means of certain devices;
7. On the criterion of the release-urgent and ordinary;
8. On the criterion of the secrecy-top secret, restricted, for official use;
9. On the criterion of the storage-documents of temporary storage, long-term and permanent storage;
10. On the criterion of the authority of the subjects, which issue documents-public and private (Shemshuchenko, 2007).

In addition to this classification, one can distinguish the following criterion: by origin-primary and secondary documents. The primary document is a document containing the primary information. Secondary document constitutes a document that is the outcome of analytical, synthetic and other processing of one or more documents. At the same time, the division of documents according to such a criterion as the nature of documents, according to which they are divided into are official and unofficial ones, deserves special attention. Official documents, in contrast to unofficial ones, have a certain form of expression and meaningful content, are adopted by the relevant subjects in a certain area of societal relations.

In the theory of law, the term "*legal document*" is often used. According to foreign scholars, a legal document is interpreted as a form that captures the objectification of legally meaningful information, and a material carrier of the latter. Sharing this view, a number of scholars emphasize that the legal document is a material carrier of legal information (Srykh, 2008) through which the certainty of legal regulation is achieved, as well as independence from the arbitrariness of certain individuals, stability of social relations, and stability of the position of the individual in society. All legal documents can be divided into five groups: normative; those that contain decisions of an individual nature; those who record the legal facts; money and securities; proofs (Marchenko, 1998). The classification criterion for this division is a kind of legal information. Regulatory documents are based on the rule of law. As an example, among their varieties, one can set out normative legal acts, interpretative acts, etc.

Normally, the problems arise in relation to legal documents that are of an individual nature and contain official information. The significance of the official document is due to its form, the subject, which issued it and its content. The legal act is usually mandatory in a "*formal-documentary*" form. This aspect of the problem is extremely important and should dominate when analyzing forms of expression of legal requirements.

Foreign scientists classify legal documents by the nature, distinguishing the following types:

1. The facts determining the legal status of the entities
2. The facts, on which the legal regime of objects of law depends;
3. The facts—the will of the subjects of law;
4. The facts on events;
5. The facts on inventory and other values transactions;
6. securities—the documents fixing the property rights of their owners;
7. The documents fixing facts-evidence used to justify (prove) the facts of legal significance (protocols, court records etc.) (Srykh, 2008).

Along with the category of legal document, the term “*official document*” is quite often used in the legal literature. A logical analysis of the data of terminology makes it possible to state that they are identical in terms of their content. So, national scientists point out that an official document is an object on which legal information is fixed and is specifically designed for its capture, storage, use and distribution in time and space (Petryshyn, 2017). Focusing on this definition, one should agree with the idea that a legal act fixes certain information, which must be substantiated, authentic, timely and meaningful. The fixation process is carried out by using different fixing methods.

The term “*official document*” is of Latin origin and in translation means “*service*”, “*position*”. The Legal Encyclopedia stipulates that an official document is an information or data recorded on paper, photographic film, magnetic disk and other material carriers having legislative, normative, legislative or informational character. Accepted and distributed (published, issued, or sent) in the established manner by the competent state authorities or an appropriate official (Shemshuchenko, 2002).

Official document is a document drawn up, issued, certified by an authorized person, who has been granted legal right arising from his (her) professional activity to draw up, issue, certify certain types of documents confirming or certifying certain events, phenomena or facts and which contains the requisites and information provided by the legislation in accordance with the rules prescribed by law (Law of Ukraine, 2014)

Recommendation Rec (2002)2 of the Committee of Ministers to Member States on access to official documents (adopted by the Committee of Ministers on February 21, 2002 at the 784th meeting of the Ministers’ Deputies) states that “*official documents*” shall mean all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation (Council of Europe, 2002). Later, in 2008, the Council of Europe Committee adopted the Convention on Access to Official Documents (Council of Europe, 2009). Article 1 of the Convention gives a broad understanding of the concept of “*official document*” it means all information recorded in any form, drawn up or received and held by public authorities.

According to the footnote to Article 358 of the Criminal Code of Ukraine (2001), the official document in criminal law means a document containing information recorded on all types of material carriers, which confirms or certifies certain events, phenomena or facts that have caused or are capable of causing legal consequences, can be used as a document-evidence in the law-enforcement activity, which is drawn up, issued or certified by the authorized (competent) persons of State authorities, local government, associations of citizens, legal entities, regardless of the form of ownership and organizational-legal form, as well as individual citizens,

including self-employed persons, who have been granted legal right arising from their professional activity to draw up, issue or certify certain types of documents, which are drafted in accordance with the prescribed legal forms and contain the requisites provided by law.

The same definition of an official document is also used in judicial practice, according to which, when establishing the features of an official document, the following criteria should be used as the subject of a crime:

1. The document must be drawn up, issued or certified by the relevant person within the scope of his or her professional or service competence in a form prescribed by law and with appropriate details. According to clause 4.4 of the National Standard of Ukraine DSTU 4163-2003 “*Unified system of organizational and administrative documentation. Requirements for paperwork*”, the documents that are made in an organization must contain the required details: the name of the organization, the name of the type of the document (not indicated on the letters), the date, the index register of the document, the heading of the text of the document, the text of the document, the signature (Law of Ukraine, 2003);
2. The information contained in such a document should be of legally nature—the concrete events, phenomena or facts, confirmed or certified by it, should cause or be capable of causing legal consequences in the form of the occurrence (realization), change or termination of certain rights and/or duties. The discrepancy of at least one of the above mentioned criteria prevents the official status of the document.

Earlier, the Supreme Court of Ukraine has already expressed its legal position regarding the signs of the subject of official counterfeiting (Law of Ukraine, 2018), which is reduced to the fact that the normative definition of official forgery is recognized as official documents by those which are drawn up and issued by officials on behalf of state authorities, bodies of local self-government, associations of citizens, enterprises, institutions and organizations, regardless of the form of ownership, which certify certain facts and events of legal significance. The information contained in the official document is the basis for decision making, serves as a proof of their execution and a source for generalization, as well as material for conducting reference and search work. In addition, the main features of an official document are the signature of an official and/or his/her registration in the established manner (Palekha, 2009).

The explanation of the Ministry of Justice of Ukraine of January 12, 2011 concerning the consular legalization of official documents stipulates that the official document is a written confirmation of facts and events of legal significance or with which the current legislation associates the emergence, change or termination of rights and duties of physical persons and legal entities.

The study and analysis of the Constitution of Ukraine, as well as the abovementioned legislative acts, special legal literature on the problems of record keeping, the theory of State and Law, constitutional, administrative, criminal law, as well as the application of generally accepted methods and principles of doctrinal interpretation of legal acts and legal standards provided an opportunity to make the following conclusions:

1. An official document must contain certain information (data, etc.);
2. This information must be recorded in one or another form (written, digital, signed) and contain certain details (requisites, stamp, seal);
3. The information must be placed on the appropriate material carrier (paper, floppy disk, compact disk, magnetic band, video, film, etc.) for the purpose of its subsequent storage, use or distribution;
4. The document must be executed in full, certified, issued or otherwise distributed by an authorized person;

5. Must cause or be capable of causing legal effects or may be used as documentary evidence in law enforcement practice.

CONCLUSION

Thus, an official document is a legally binding document. Government documents, materials, resolutions, decrees, statements, communiqués, transcripts of official meetings, data of state and departmental statistics, archives and current documents of various institutions, organizations, business correspondence, court records, prosecutorial acts, notarial acts, etc. are considered to be official documents. The main attributes of an official document are the signature of an official and/or registration in due course.

Most often, the term “*official document*” is interpreted as information or data recorded on paper, photographic film, magnetic disk and other material media of legislative, regulatory, policy or informational nature. It is accepted and disseminated (published, issued and distributed) in due course by competent State authorities or responsible. It is addressed to an indefinite circle of persons or to an individual, authority, institution, organization, etc.

Official document is characterized by the following features:

1. It must contain certain information (data, etc.);
2. This information must be recorded in one or another form (written, digital, signed) and contain certain details (requisites, stamp, seal);
3. The information must be placed on the appropriate material carrier (paper, floppy disk, compact disk, magnetic band, video, film, etc.) for the purpose of its subsequent storage, use or distribution;
4. The document must be executed in full, certified, issued or otherwise distributed by an authorized person;
5. Must cause or be capable of causing legal effects or may be used as documentary evidence in law enforcement practice.

A document’s inconsistency with at least one of the following criteria hinders its recognition as official.

Only a document certifying the facts of legal significance may be considered as official one. Besides, the official nature of the document is confirmed by the subject to pass it, that is, the person who draws up, signs and issues the document. As a rule, it is a servant or an official who, on behalf of the public authority or local government, has certain powers or has the right to perform organizational or administrative functions.

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