Circulation of Foreign Public Documents in the Digital Age from a Croatian Legal Perspective [****]

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Abstract

This paper examines the legalization of foreign public documents from the perspective of Croatian law. It places particular emphasis on the modern context shaped by the integration of information and communication technologies in civil justice. The proliferation of electronic public documents raises critical issues regarding the applicability of existing norms to the full or partial legalization of such documents and their printouts, whether intended for use in Croatia

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or abroad. From a methodological perspective, this contribution is based on qualitative research within international civil procedural law. It employs standard legal research methods, including doctrinal analysis, formal-logical reasoning, historical analysis, and comparative approaches, focusing on European and selected national legal systems. Regarding the qualification and use of foreign electronic documents as public documents in Croatia, the paper advocates that documents created in electronic form should be regarded as public documents. The lex loci actus should determine the status of their printouts, i.e., whether they also qualify as public documents. A contribution of this paper lies in its analysis of the challenges associated with using Croatian electronic public documents abroad. The Republic of Croatia does not issue paper apostilles for electronic public documents signed or certified with a qualified electronic signature or seal. Nor does it issue apostilles for printouts of electronic public documents, as such printouts are deemed mere copies rather than certified duplicates eligible for apostilles. To ensure legal certainty, the paper recommends that individuals intending to use Croatian public documents abroad obtain them in paper form, bearing a handwritten signature and the issuing authority's mechanical seal. Given that an apostille should ideally be physically attached to the document it certifies, the paper underscores the importance of integrating e-Apostilles with electronic public documents. Adding an apostille to a printout of an electronic document undermines the document's digital certification and added value. Furthermore, scanning such printouts results in a non-machine-readable format, a practice not supported by the Hague Conference on Private International Law. The paper concludes by advocating for Croatia's accession to the e-Apostille Program for domestic public documents intended for international use.

Keywords

Apostille Convention, digitalization, e-Apostille, Electronic Public Documents, Foreign Public Documents, International Civil Procedural Law, Legalization

1. Introduction

Public documents are practically used for various purposes in everyday life. Through national regulations, each country regulates the procedure for issuing and the form of individual types of documents. In national legal traffic, there are no significant difficulties regarding the formal validity and authenticity of public documents. Namely, if a public document is issued by the body of the state in which it is used, there are no particularly challenging legal problems. However, if a public document issued by an authorised body of one state needs to be used in another state for the purpose of exercising a right or fulfilling an obligation, there are a number of legal questions and dilemmas. The number of questions has been increasing in recent times due to the use of information and communication technologies and the digitalisation of national, European, and international civil adjudication.

This paper provides a detailed legal framework for legal traffic of foreign public documents. At the same time, theoretical models of full legalisation, certification by an Apostille, and the exemption from legalisation are delineated. Although each model follows a specific legal path, some doctrinal and practical questions arise in all of them. For example, the question of the conceptual definition and scope of the concept of a public document subject to verification in cross-border legal traffic arises in each of the models.

Therefore, the paper initially examines the conceptual definition of public documents, both domestic and foreign, in Croatian law, and considers their evidentiary value in that regard. National, international, and European legal regimes governing the circulation of public documents in international or cross-border legal traffic is analysed in the third part of the paper, while the provisions of Croatian law in the context of the need for the legalisation of foreign court decisions as public documents in the process of recognising foreign court decisions based on the Private International Law Act (hereinafter referred to as 'the PIL Act') are analysed in the fourth part of the paper. Finally, certain conclusions are offered in the fifth part of the paper regarding the questions raised or discussed in the paper.

2. Public documents in Croatian law

Before providing a substantive definition of public documents in Croatian law, it is necessary to generally define the concept of a document as a higher generic term. According to *Triva* and *Dika,* '*a document is any object on which some thought is recorded in writing*', regardless of the medium and means by which the document is written, or the language or type of script used.[1] Within the given definition of a document, it is possible to differentiate types of documents based on a number of criteria. The first criterion for a classification of documents is based on their content, and it is thus possible to distinguish between dispositive (constitutive) and evidentiary documents.[2] Dispositive documents are considered to be all those documents that contain a legal act (a contract, an offer, termination, a will, etc.), as well as individual acts of state bodies, because they express legally relevant intent.[3] To avoid misconceptions, it should be emphasised that in terms of judicial and administrative decisions as proof,

1 Siniša Triva and Mihajlo Dika, *Građansko parnično procesno pravo* (Narodne novine 2004) 511.

2 Borivoje Poznić, *Građansko procesno pravo* (Savremena administracija, 1989) 263.

3 ibid.

the concept of a constitutive document, which is a synonym for a dispositive document, is by no means limited exclusively to constitutive decisions but it also includes declaratory and condemnation decisions.[4] The constitutive nature of a document is evident solely in the fact that it contains an expression of legally relevant intent and thereby has the significance of a legal act it embodies.[5] On the other hand, only those documents whose purpose is to confirm that a specific legal relationship has arisen, regardless of the document itself (eg state registry, land registry, and court register extracts, etc.), are considered evidentiary documents.[6]

In the context of the topic of this contribution, but also generally, the most important classification of documents is the one dividing them into public and non-public (private) documents, which is based on an issuer's authority and the form of such document.[7] The Civil Procedure Act[8] (hereinafter referred to as 'the CPA') lays down a general definition of a public document, which is defined as 'a document that has been issued in the prescribed form by a state authority within the limits of its competence, and a document issued in such form by a legal or natural person in the course of executing its public authority, assigned to it by law or a regulation based on the law'.[9] In this regard, the constitutive elements of a public document are comprised of the authorised body or person as a document issuer, compliance with the prescribed form of the document, and document issuance within the scope of the issuer's jurisdiction or public authority.[10] The lack of any of the aforementioned elements deprives the document of its status of public document, and such a document should be considered a non-public (private) document.[11]

A similar definition of public documents, albeit somewhat narrower in scope, is also regulated by the General Administrative Procedure Act[12] (hereinafter referred to as 'the GAP Act'). According to the GAP Act, a public document is considered to be a document issued by the competent court or an administrative body within the limits of their competence and in a prescribed form.[13] The concept of a public document under the GAP Act is narrower in

4 Mihajlo Dika, *Građansko parnično pravo: Utvrđivanje činjenica* (Narodne novine 2018) 511.

5 ibid.

6 Poznić (n 2) 263; Dika (n 4) 511.

7 Dika (n 4) 510.

8 Civil Procedure Act, Official Gazette of the Socialist Federal Republic of Yugoslavia, Nos 4/77, 36/77, 6/80, 36/80, 43/82, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91, and Official Gazette, Nos 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, 80/22, 114/22, 155/23.

9 CPA, art 230(1).

10 Triva and Dika (n 1) 513.

11 Đuro Vuković, *Međunarodno građansko procesno pravo* (Informator 1987) 77.

12 General Administrative Procedure Act, Official Gazette, Nos 47/09, 110/21.

13 GAP Act, art 60(2).

scope because it exclusively covers documents issued by competent courts and public authorities (state administration bodies and other state bodies, bodies of local and regional self-government units, and legal entities with public authorities),[14] while documents issued by individuals exercising public authority, such as notaries public, are outside the scope of the aforementioned provision of the GAP Act.[15] In addition to the general definitions of public documents according to the CPA and the GAP Act, specific acts attribute *expressis verbis* the status of public document to certain documents. For example, the Notaries Public Act attributes the status of public document to notarial documents (notarial acts, notarial records, and notarial certificates) and their certified copies, while the Act on Higher Education and Scientific Activity prescribes that diplomas, certificates, and diploma supplements issued by a higher education institution based on public authority are public documents.[16] Furthermore, the State Registries Act stipulates that state registry books, extracts from registry books, and certificates issued based on registry books are also public documents.[17] Certificates of facts that other public authorities maintain official records of are also considered public documents.[18]

Furthermore, with respect to the place of issue or the issuer itself, documents can be domestic or foreign.[19] The foreign character of a document is determined according to the *lex fori*, unless otherwise specified by international treaties or legally binding EU acts.[20] In this regard, the foreign character of a document, as well as the classification of foreign documents as public documents, will be examined separately in this paper within the framework of specific legal sources, ie from the perspective of autonomous Croatian law, international treaties, and European secondary law.

2.1 Evidentiary value of foreign public documents

The fundamental classification of documents into public and private is important from the perspective of the evidentiary value enjoyed by public documents in legal traffic, thus simplifying the establishment of facts in certain legal protection procedures, thereby also achieving efficiency and effectiveness in proceedings. The evidentiary value of a public document lies in its ability to prove the authenticity of what is confirmed or determined by such a

14 ibid art 1.

15 cf CPA, art 230(1) and GAP Act, art 60(2).

16 Notaries Public Act, Official Gazette, Nos 78/93, 29/94, 162/98, 16/07, 75/09, 120/16, 57/22 (hereinafter referred to as: 'the NP Act'), art 3(1)(2); Act on Higher Education and Scientific Activity, Official Gazette, No 119/22, art 73(3).

17 State Registries Act, Official Gazette, Nos 96/93, 76/13, 98/19, 133/22 (hereinafter referred to as 'the SR Act'), art 2(2).

18 GAP Act, art 159(1)(2).

19 Triva and Dika (n 1) 513.

20 Vuković (n 11) 77.

document.[21] It is about a rebuttable presumption of authenticity of a public document, which is based on the maxim *acta probant sese ipsa*, recognised by most legal systems within the continental legal system.[22] Two further presumptions are derived from the general presumption of authenticity of public documents, ie that in terms of authenticity, a document emanates from the body indicated on the document as the issuer, and that the content of the document established within the issuer's jurisdiction is authentic.[23] These presumptions, as well as the evidentiary value of a public document itself, together with such a status granted on the basis of regulations, derive their specific evidentiary value from the public authority of the document issuer and the procedure preceding the issue of the public document, ie that the issuer issued the document within its jurisdiction.[24] These are constitutive elements from which the specific status of public document is drawn, which originate in Roman law and have essentially remained unchanged to this day.[25] Therefore, within the evidentiary proceeding of a specific lawsuit in which a particular public document was used, a party that disputes the authenticity of a public document can submit counter-evidence to rebut the presumption of authenticity of the public document.[26] Moreover, it is possible to initiate a separate lawsuit by an action for a declaratory judgment, the main issue of which will be to determine whether the document is authentic or fake.[27] In this regard, it should be emphasised that the given formal rule of evidence referring to the presumption of authenticity of public documents is an exception to the principle of free evaluation of evidence, because the law prescribes the evidentiary value of such documents.[28] However, this presumption does not apply in all protective legal proceedings. In this context, an exception is a criminal procedure in which the presumption of authenticity of public documents does not apply, hence in terms of the evidentiary value, public documents are equated with private documents.[29] Due to their importance in legal traffic, or the presumption of authenticity, public documents also receive

21 Poznić (n 2) 265.

22 Christian Hertel, 'Legalization of public documents' in Jürgen Basedow and others (eds), *Encyclopedia of Private International Law* (Edward Elgar Publishing, 2017) 1094 –1095.

23 Triva and Dika (n 1) 514.

24 European Law Institute, International Institute for the Unification of Private Law, *ELI - UNIDROIT Model European Rules of Civil Procedure* (OUP 2021) 159.

25 Ivan Milotić, 'Pravno uređenje položaja sastavljača isprava te povjerenja u privatne isprave u rimskom pravu' in Alan Uzelac and others (eds), *Djelotvorna pravna zaštita u pravičnom postupku - Izazovi pravosudnih transformacija na jugu Europe* (Pravni fakultet Sveučilišta u Zagrebu 2013) 721.

26 CPA, art 230(3).

27 ibid art 187(1).

28 Triva and Dika (n 1) 511.

29 Davor Krapac, *Kazneno procesno pravo, Prva knjiga: Institucije* (7th edn, Narodne novine 2015) 508.

special protection at the criminal law level through the qualified form of the criminal offense of document forgery.[30]

Since the question of the evidentiary value falls within the realm of procedural law, the evidentiary value of a foreign public document will generally always be assessed in the receiving country according to the *lex fori*, which ultimately can also result in the foreign public document not enjoying the same strength in the issuing country and the receiving country.[31] Therefore, comparatively speaking, there are examples where the evidentiary value of a foreign public document is assessed according to the *lex loci actus*.[32] The relevance of the *lex fori* is also accepted by Croatian civil procedural law, and it is thus prescribed that foreign public documents enjoy the same evidentiary value as domestic public documents, under the condition of reciprocity and provided that they are duly certified, unless otherwise specified by an international treaty.[33] From this, it follows that the Croatian legislator has opted for a stricter approach in this regard, pursuant to which, under cogent assumptions, foreign public documents can enjoy the same evidentiary value as domestic public documents. From a comparative perspective, German civil procedural law is considerably more flexible in this regard. A German court is authorised by discretionary judgment to assess whether a foreign public document is authentic or true, without the need for specific additional evidence, such as certification, to support the authenticity of the foreign public document.[34] However, in cases where the court exercises discretion to deny the authenticity of the foreign public document, this can be remedied by legalisation of a foreign public document by the German consul or federal minister.[35]

Following all of the above, in order to achieve equivalence in the evidentiary value of foreign public documents with domestic public documents, three legal regimes are differentiated with respect to the country issuing the foreign public document. The first category encompasses certain categories of public documents originating from EU Member States, which fall within the scope of application of EU secondary law; the second category of foreign public documents consists of documents originating from countries with which the Republic of Croatia has concluded binding bilateral or multilateral treaties that define the legal status of public documents between the contracting states; and finally, the third category of foreign public documents includes all those documents whose

30 Criminal Code, Official Gazette, Nos 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, art 278.

31 Hertel (n 22) 1103.

32 Vuković (n 11) 79.

33 CPA, art 231.

34 Code of Civil Procedure (Zivilprozessordnung) (Germany) <https://www.gesetze-im-internet.de/englisch_zpo/index.html> accessed on 14 January 2024 (hereinafter referred to as 'ZPO'), §438(1).

35 ibid § 438(2).

status is not defined in accordance with the aforementioned legal regimes, and in such cases, their legal status is governed solely by autonomous Croatian law.[36]

3. Fundamental considerations of the circulation of foreign public documents

The issue of foreign document verification is not of recent origin; on the contrary, it has been a challenge for cross-border legal traffic for decades. The basic model of legalisation, ie legalisation of documents for their use abroad, is today just one of the legal ways, but also the most complex one, of using foreign public documents. Namely, models of cooperation between states are being developed that are aimed at faster, simpler, and more secure use of public documents abroad. In addition to national rules on the legalisation of foreign documents, several additional tracks have been developed for the circulation of foreign documents. In principle, we distinguish four groups of legal sources dealing with the issue of the circulation of foreign public documents, depending on whether they are based on national regulations, multilateral cooperation, bilateral cooperation, or European Union common law. Within these four groups, we can also distinguish several different models by which the circulation of foreign public documents is carried out. What poses an equally big challenge for each of these possible paths is digitalisation, which is discussed within each of the following chapters.

3.1 Full legalisation

Cross-border legal traffic also includes the use of foreign public documents. Lawyers encountered this problem as early as the 17*th* century, within the framework of the then legal traffic. They sought legal solutions with great caution, partly because of their lack of knowledge of foreign legal systems and related documents, and partly because of fear of possible falsification of documents or other illegal actions. Then the model was introduced aimed at verifying document authenticity through its legalisation, which precedes its use on the territory of another country. The document authentication method is based on a certification made by a consular agent of the country in the territory of the country of origin of the document. Consular authentication or legalisation is the authentication of a document by a diplomatic or consular agent of the country receiving the public document, who is at the time of authentication in the country issuing the document.[37] Namely, it is considered that the diplomatic mission or consulate of the country receiving the document, which is located in the country issuing the public document, has more detailed information

36 Dika (n 4) 536 –537.

37 Hertel (n 22) 1098.

about the competent authorities of the issuing country, as well as the prescribed procedures for issuing the document.[38] Since the middle of the 19*th* century, most countries have opted for an authentication chain. This model is based on a series of certifications that follow one after another,[39] whereby the one that follows in the certification process can verify with certainty the identity of the previous signer or seal. The last certification in the series is granted by the consulate, which certifies legalisation of the document with its authentication.[40]

With respect to the implementation of the foreign public document legalisation procedure, autonomous Croatian law, as a separate legal regime, includes all public documents whose status is not defined in accordance with legally binding EU acts, ie binding bilateral or multilateral international treaties.[41] The autonomous Croatian legal source, which regulates the matter in question, is the Act on the Legalisation of Public Documents in International Legal Traffic[42] (hereinafter referred to as 'the LPD Act'). First of all, it is necessary to determine when a certain document is considered a foreign document from the aspect of Croatian law, ie when there is an element of foreignness in relation to an individual foreign document. In this sense, the LPD Act is committed to the territoriality principle, meaning that a foreign public document is considered to be a document 'issued abroad'.[43] Therefore, *Dika* justifiably objects that the place of drafting the document should not be relevant, and argues that the criterion of legal order on the basis of which a certain state body or other person acquired public powers should be taken as relevant, since the bodies of one state, for example diplomatic missions and consulates, can draw up public documents on the territory of another country.[44]

In terms of the qualification of a certain foreign document as a public document, the LPD Act considers a public document to be a document that is considered a public document in the country in which it was issued and that was issued in the form and manner prescribed by the law of that country.[45] Or simply put, the law applicable to the qualification of a foreign document as a public document is the *lex loci actus*.[46] In this regard, from the perspective of the

38 ibid.

39 *The International Legalization Handbook* (Chancellor Publications 1996) 7.

40 Peter Zablud, 'The 1991 Apostille Convention – authenticating documents for international use' in Thomas John, Rishi Gulati, Ben Kohler (eds), *The Elgar Companion to the Hague Conference on Private International Law* (Edward Elgar Publishing 2020) 278-279.

41 LPD Act, art 1.

42 Act on the Legalisation of Public Documents in International Legal Traffic, Official Gazette, Nos 06/73, 53/91.

43 ibid art 3(1).

44 Dika (n 4) 516.

45 LPD Act, art 3(3).

46 Đuro Vuković and Eduard Kunštek, *Međunarodno građansko postupovno pravo* (Zgombić & Partneri 2005) 201.

Croatian authorities that may be presented with a foreign document, the question arises of the possibility of determining the content of the law of the issuing country on whether a specific document is considered a public document pursuant to the law of that country. Given that the LPD Act does not provide for the method of determining the content of the law of the country issuing the document, the rules of the Private International Law Act[47] (hereinafter referred to as 'the PIL Act') on determining the content of the law of a foreign state should be applied in the aforementioned case. Namely, the court, as well as other bodies of the Republic of Croatia, is obliged to determine the content of the law of a foreign state *ex officio*, and the maxim *iura novit curia* is applied with regard to foreign law.[48] However, given the possible difficulties in determining the content of foreign law, the PIL Act makes a kind of exception to the general rule according to which the content of abstract legal norms cannot be the subject of proof.[49] Thus, the court is authorised to request notification of the content of foreign law from the ministry responsible for judicial affairs or any other body, as well as from experts or specialised institutions, but the parties themselves are also authorised to submit public and private documents to the court about the content of foreign law.[50] The possibility of the parties to submit documents on the content of foreign law is their authority, but not their duty. Therefore, the parties cannot bear the negative consequences of not submitting a document on the content of foreign law. This is because the determination of the content of foreign law is a legal, not a factual issue, hence the burden to prove the content of foreign law does not lie with the parties, nor can the maxim *da mihi factum, dabo tibi ius* be applied.[51] However, it should be borne in mind that the procedure for determining the content of foreign law can sometimes take an unreasonably long time, especially in relation to the content of the law of countries with which the Republic of Croatia does not maintain frequent legal traffic and diplomatic relations are not significantly developed. Therefore, it would not be opportune to ultimately persist in determining the content of foreign law if it would significantly affect the duration of the entire legal protection procedure with a legal question of the public character of a foreign document. This is because lengthy procedures for determining the content of foreign law could represent a violation of the right to a trial within a reasonable time as a component of the right to a fair trial guaranteed by the Convention

47 Private International Law Act, Official Gazette, Nos 101/17, 67/23.

48 Mirela Župan, 'The New Croatian Private International Law Act – Something Old, Something New and much Borrowed' [2020/2021] Yearbook of Private International Law 388; PIL Act, art 8(1).

49 Triva and Dika (n 1) 183.

50 PIL Act, art 8(3)(4).

51 Triva and Dika (n 1) 184.

for the Protection of Human Rights and Fundamental Freedoms.[52] In that case, if determining the content of foreign law took an unreasonably long time, but also if the *lex loci actus* could not be applied for any reason, the *lex fori* would exceptionally be applicable to determining the public character of a foreign document, ie from the point of view of national implementation bodies - the Croatian law.[53]

In terms of the LPD Act, legalisation or certification of the document verifies the authenticity of the signature of the person who signed the document and the authenticity of the seal printed on the document.[54] A *stricto sensu* interpretation of LPD Act leads to the conclusion that legalisation does not verify the capacity of the person who signed a public document. However, there is an opinion that by legalising the signature of the person who signed the document, the capacity in which a certain person signed a certain public document is also confirmed (a judge, a notary public, a court official, a state administration body official, a dean, a director, etc.).[55] This understanding is not without support. Namely, the mere verification of a person's signature, without confirming the capacity of the signer, does not yield the desired legalisation effects, ie it does not provide evidence that a certain person at a certain time when the public document was drawn up really acted in a certain capacity, which plays a decisive role in assessing both the very nature and the content of the document that is to be legalised. Comparatively speaking, it is possible to differentiate between legalisation in the narrower sense, which includes only the verification of the authenticity of a signature, the signer's capacity and the seal on the public document, and legalisation in the broader sense, which includes everything encompassed by legalisation in the narrower sense, plus confirmation that the public document issuer acted within its jurisdiction and that the procedure for issuing the document in question was carried out pursuant to the law of the country of origin of the document.[56] Autonomous German consular law, which governs the legalisation procedure of foreign public documents, recognises both previously explained types of legalisations.[57] Namely, upon request, and provided that there is no doubt about the legal situation, a German consul is authorised to confirm in a note on the document that the document issuer was authorised to issue the document and that the document was drawn up in accordance with

52 Župan (n 48) 389; the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette - International Treaties, Nos 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10, 13/17, art 6(1).

53 Vuković and Kunštek (n 46) 201; PIL Act, art 8(5).

54 LPD Act, art 3.

55 Dika (n 4) 538.

56 Hertel (n 22) 1095.

57 Consular Act (Konsulargesetz) (Germany) <https://www.gesetze-im-internet.de/konsg/> accessed on 14 January 2024, §13.

the law of the document's place of issue.[58] On the other hand, autonomous Croatian law has exclusively applied legalisation in the narrower sense.[59]

The public document legalisation process consists, as a rule, of two stages, ie the process of internal and international legalisation, whereby the implementation of one or both processes depends on the national laws of the country issuing the document and the country receiving the document.[60] From the perspective of Croatian public documents, which are intended to be used abroad, depending on the law of the country receiving the Croatian public document, it is possible that it will be necessary to carry out an internal legalisation procedure before the Croatian authorities.[61] Accordingly, in the first step, the judge or municipal court president certifies the signature and seal of the public document issuer, after which there follows the legalisation procedure, which consists in the Ministry of Justice and Administration legalising the seal and signature of the judge or court president, and only then, in the third step, the Ministry of Foreign and European Affairs or the diplomatic and consular representations of the Republic of Croatia certify a public document intended for use abroad.[62] However, in order for the public document thus ultimately certified by the Croatian Ministry of Foreign and European Affairs or the diplomatic and consular representations to be used abroad, it is possible that it will be necessary to carry out an additional procedure of international legalisation of the Croatian public document, which is carried out before the state authorities in which the Croatian public document is to be used. In the opposite situation, when a foreign public document is to be used before the authorities of the Republic of Croatia, then the Croatian Ministry of Foreign and European Affairs or a diplomatic and consular representation abroad carries out the international legalisation procedure, ie they confirm the authenticity of the signature and seal on the foreign public document.[63]

Internal legalisation of Croatian public documents, which is carried out by municipal courts, does not fall within the scope of any specific legal protection procedure, such as a non-contentious procedure, but certification of documents intended for use abroad is covered by court administration.[64] This applies equally to the addition of an Apostille based on the Apostille Convention, as well as the implementation of the internal legalisation procedure based on the LPD Act.

58 ibid § 13(4).

59 LPD Act, art 2.

60 Vuković and Kunštek (n 46) 203–204.

61 Vuković and Kunštek (n 46) 203–204; LPD Act, art 5.

62 LPD Act, arts 6 and 7(1).

63 ibid arts 2 and 3(1).

64 Judiciary Act, Official Gazette, Nos 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22, 16/23, art 29(1).

With regard to the use of digital public documents, which originally exist exclusively in electronic form, it should be considered that, regardless of a qualified electronic signature/seal, they fall within the scope of the LPD Act and should be properly legalised in accordance with that act when the Republic of Croatia is the document receiving country. Namely, the LPD Act imperatively stipulates that foreign public documents can be used in the Republic of Croatia only if they are certified by the Ministry of Foreign and European Affairs or a diplomatic and consular representation of the Republic of Croatia abroad. Accordingly, in addition to the aforementioned international legalisation of electronic public documents when the Republic of Croatia is the document receiving country, it would be appropriate to certify Croatian electronic public documents through internal legalisation when they are intended for use abroad. This is because the purpose of legalisation is, *inter alia*, to confirm the capacity of the signer of a certain public document, ie that a certain person really acted in the capacity indicated on the document at the time of drawing up that public document.[65] The sole purpose of the provisions on the recognition of qualified electronic signatures in electronic legal traffic is to recognise the equivalence between handwritten signatures and qualified signatures by legal effect, while data integrity and the accuracy of data sources with which the qualified electronic seal is associated are assumed for qualified electronic seals.[66] Special attention should also be paid to public documents that originally existed in electronic form, but were subsequently printed on paper. Namely, in each individual case, whether a document written in this way still has a public character will depend on the *lex loci actus*, because the aforementioned rule refers to the law of the country where the document was drawn up, even in terms of the form of a document.[67] From the aspect of Croatian public documents, electronic records generated from the official records of public sector bodies have the status of public documents, and they have that status even when they are printed on paper, provided that the documents (records) printed in this way contain data for verifying the credibility of the electronic record via a website.[68] However, it should be emphasised that electronic records printed in this way, eg public documents obtained through the e-Citizens system, have a limited legal life. Namely, after the expiration of a three-month period, the generated electronic record for verification is deleted from the system, and it is no longer possible to check the authenticity of the printed electronic record. Consequently, an

65 See n 55.

66 Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC [2014] OJ L257, arts 25(2) and 35(2).

67 LPD Act, art 3(3).

68 Regulation on Organisational and Technical Standards for Connecting to the National Information Infrastructure, Official Gazette, No 60/17, art 15(1)–(3).

electronic record printed on paper loses its status as a public document, ie it is no longer legally valid.[69]

For comparison purposes, on the basis of autonomous Slovenian law, the Republic of Slovenia also subjects public documents drawn up in electronic form to legalisation. For this purpose, Slovenian state bodies and other public authority entities are obliged to notify the competent court, for the purpose of judicial certification in the internal legalisation process, *inter alia*, of electronic signature certificates with which their employees electronically sign public documents issued in electronic form in order to verify the authenticity of the electronic signature on the original electronic public document during the authentication procedure.[70] Notaries public are obliged to notify the ministry responsible for justice of the electronic signature certificates.[71]

3.2 Bilateral regimes

By taking over previous bilateral treaties on legal assistance by succession or by concluding new treaties after 1991, the Republic of Croatia has continued to facilitate the circulation of public documents. Thus, bilateral regimes regulating this issue can be found in treaties concluded with many countries in the wider region, ie Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Montenegro, the Czech Republic, France, Greece, Italy, Hungary, North Macedonia, Poland, Romania, Slovenia, Slovakia, Serbia, the Russian Federation, and Turkey.[72] As a rule, full exemption from legalisation is defined with reference to the types of documents. For example, in relation to the Kingdom of Belgium, there are two bilateral treaties in force, one regulating the circulation of public documents originating from courts,[73] and the other from registry offices.[74] Documents not

69 ibid, art 15(1)–(4).

70 Act on the Authentication of Documents in International Legal Traffic, Official Gazette of the Republic of Slovenia, No 9/17, arts 4(1) and 6(4).

71 ibid, art 4(2).

72 See the Ministry of Foreign and European Affairs of the Republic of Croatia, 'Overview of Bilateral International Treaties of the Republic of Croatia by Country' <https://mvep.gov.hr/vanjska-politika/bilateralni-odnosi/pregled-dvostranih-medjunarodnih-ugovora-republike-hrvatske-po-drzavama/21905> accessed 10 January 2024.

73 'In order for documents or instruments drafted, issued, or authenticated by the courts of one of two states to be utilized in judicial proceedings within the territory of the other state, it is not necessary to legalize them or subject them to any similar formality if they are authenticated by the court seal. This also applies to documents or instruments signed by an authorized court official, if their signature suffices under the law of the state to which the court belongs'; Agreement on Legal Cooperation in Civil and Commercial Matters (Socialist Federal Republic of Yugoslavia–Kingdom of Belgium) (24 September 1971), Official Gazette of the Socialist Federal Republic of Yugoslavia - Annex, No 7/74, art 10.

74 Convention on the Issuance of Extracts from Civil Status Registers and Exemption from Legalisation, (Socialist Federal Republic of Yugoslavia–Kingdom of Belgium) (24 September 1971), Official Gazette of the Socialist Federal Republic of Yugoslavia, No 55/72.

covered by these treaties are subject to the Hague Apostille Convention or the Regulation on Public Documents. This issue is regulated somewhat differently in the treaty concluded with Italy, which, through its arts 19 and 20, actually covers all certified copies of civil status documents, certified copies of decisions, orders, judgments, rulings, and other legal documents, written statements and court documents registered or deposited with these bodies, notarial acts, as well as transcripts and translations of these documents.[75] An even narrower exemption from legalisation applies to the regime with Slovakia. Here, exemption from legalisation applies only to documents issued by judicial authorities dealing with civil, family, and criminal matters. Documents outside of this scope are subject to other regimes, typically the Hague Apostille Convention or the Regulation on Public Documents.[76] The circulation of public documents between states through bilateral treaties occurs commonly because this generally eliminates all obstacles in the mutual circulation of public documents.[77] In addition to the issue of legalisation of public documents, some bilateral treaties go a step further and directly stipulate that documents considered public documents in one contracting state have the evidentiary value as public documents in the territory of the other contracting state.[78]

As to electronic public documents, it should be noted that in the context of a bilateral treaty between contracting states, these documents could be used before the authorities of the other contracting state provided that the *lex fori* recognises such documents. On the other hand, when it comes to the printouts of electronic public documents and the use of such printed documents, consideration should be given to the *lex loci actus*, ie whether the printed electronic document continues to be considered a public document according to the law of the issuing country. All of this, of course, applies if the subject matter is not otherwise regulated by international treaties.

75 Convention on Mutual Legal Assistance in Civil and Administrative Matters (Federal People's Republic of Yugoslavia–Italian Republic) (3 December 1960), Official Gazette of the Federal People's Republic of Yugoslavia - Annex, No 5/63.

76 Treaty Regulating Legal Relations in Civil, Family and Criminal Matter (Socialist Federal Republic of Yugoslavia–Czechoslovakia) (20 January 1964), Official Gazette of the Socialist Federal Republic of Yugoslavia - Annex - International Treaties and Other Agreements, No 13/64; Official Gazette - International Treaties, No 11/97. By Note of 29 April 2013, reference number 25336/2013/81-40620, the application of art 15 of the Treaty has been narrowed.

77 Jonathan Fitchen, 'Authentic Instruments and European Private International Law in Civil and Commercial Matters: Is Now the Time to Break New Ground?' (2011) 7(1) Journal of Private International Law 33, 50.

78 Agreement on Legal Assistance in Civil, Family and Criminal Matters (Yugoslavia–USSR) (24 February 1962), Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties and Other Agreements, No 5/63, art 15(2).

3.3 Multilateral regime of the Hague Convention on the elimination of the requirement of legalisation for foreign public documents of 5 October 1961

Multilateral regimes of exemption from legalisation were characteristic of the early activities of the Hague Conference on Private International Law (hereinafter referred to as 'the HCCH' or 'the Hague Conference') and the International Commission on Civil Status.[79] The need for exemption from legalisation is also foreseen in some other multilateral international treaties, such as the Convention Providing a Uniform Law on the Form of an International Will of 1973.[80] In the mid-20*th* century, the international community became aware that the lengthy and complex process of full legalisation was hindering cross-border legal traffic. The first step in simplifying full legalisation was taken with the Convention on Civil Procedure of 1954, adopted within the framework of the Hague Conference, which stipulated that the documents necessary for marriage can be legalised only by the diplomatic or consular agents of the contracting state.[81] Furthermore, a more specific move to simplify legalisation was made in the following year, ie 1955, when a multilateral treaty was proposed within the Council of Europe that would achieve the same effects with more certain and simpler legalisation procedures.[82] The Apostille Convention was adopted on 5 October 1961, and it came into effect on 21 January 1965. Together with other conventions adopted from the 1950s to the 1980s, the Apostille Convention forms the backbone of modern Hague conventions that simplify international judicial cooperation, and enable the fourth dimension of private international law.[83] The Convention has been applied in the Republic of Croatia since 1991, based on the notification of succession.[84] Today, more

79 In particular Convention No 17 on the exemption from legalization of certain records and documents, Athens, 15 September 1977. The Republic of Croatia is not a contracting party to the Convention.

80 Convention Providing a Uniform Law on the Form of an International Will, with an annex, Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties, No 3/77, art VI. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

81 Convention on Civil Procedure, Official Gazette of the Federal People's Republic of Yugoslavia - International Treaties and Other Agreements, No 6/62, and Official Gazette - International Treaties, No 4/94, art 25.

82 The International Legalization Handbook (n 39) 9.

83 Lukas Rass-Masson, 'The HCCH and legal co-operation – shaping the fourth dimension of private international law' in Thomas John and others (eds), *The Elgar Companion to the Hague Conference on Private International Law* (Edward Elgar Publishing 2020) 150.

84 Decision on the Publication of Multilateral International Treaties to which the Republic of Croatia is a Party based on Notifications of Succession, Official Gazette - International

than 60 years after its adoption, the Convention has 126 contracting states, with their number increasing year by year.[85] The Convention consists of a total of 15 articles and one annex.

The structure of the Apostille Convention is traditional, with its first provision defining the substantive scope of application and the concept of 'public document'. The Apostille Convention opts for the territoriality principle, meaning that a foreign document is considered to be only the document drawn up within the territorial jurisdiction of one contracting state and used within the territorial jurisdiction of another contracting state, while documents issued by diplomatic or consular agents of contracting states are excluded from the scope of the Convention.[86] The territorial scope of application between contracting states means that an Apostille is neither issued nor recognised in legal traffic with non-contracting states or among contracting states that have made the reservation, and in national legal traffic.[87]

New contracting states may accede to the Apostille Convention; however, their accession will have effect only regarding the relations between the acceding state and contracting states that have not raised an objection to its accession within six months after the receipt of the notification. The Republic of Croatia has not made any reservations regarding new accessions, nor has any other contracting state done so with respect to us.[88]

In terms of its relation with other legal sources, the Apostille Convention gives preference to other regimes of exemption from legalisation between contracting states if such regimes are in force.[89] Therefore, contracting states will not be obliged to apply the Apostille Convention if the document has been abolished or simplified, or if such document has been exempted from legalisation by the autonomous law of the document receiving country or by a treaty between the contracting states. Additionally, the Convention between contracting

Treaties, No 4/94.

85 Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (concluded 5 October 1961), Official Gazette - International Treaties, Nos 4/94, 11/11; Full list of contracting parties available at HCCH, 'Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents - Status table' (2024) <https://www.hcch.net/en/instruments/conventions/status-table/?cid=41> accessed 18 January 2024.

86 Apostille Convention, art 1.

87 *Apostille Handbook: Practical Handbook on the Operation of the Apostille Convention* (The Hague Conference on Private International Law - Permanent Bureau 2023) 45 (hereinafter 'Apostille Handbook').

88 For reservations see HCCH, 'Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents - Status table' (2024) <https://www.hcch.net/en/instruments/conventions/status-table/?cid=41> accessed 18 January 2024.

89 Jonathan Fitchen, *The Private International Law of Authentic Instruments* (Hart Publishing 2020) 94.

states overrides all treaties whose formalities are more rigorous with respect to the addition of an Apostille in the sense of the Convention.[90]

The Apostille Convention was adopted with the aim of simplifying the circulation of public documents and is based on the mutual recognition of public documents issued by the contracting states.[91] The Convention abolishes the traditional model of legalising foreign public documents and substitutes it with a single certification ('Apostille') issued by the competent authority of the state in which the document was originally issued.[92] The Convention defines legalisation as a formality by which diplomatic or consular agents of the contracting state in which the document is to be presented certify the authenticity of the signature, the capacity in which the person signing the document acted and, where appropriate, the identity of the seal or stamp which it bears (art 2). By issuing the Apostille certificate, the competent authority certifies the authenticity of the signature on the public document, the capacity in which the person signing the document acted, and the identity of the seal or stamp which the document bears. The Apostille certificate does not guarantee the accuracy of the content of the public document, it does not confirm that all national requirements have been fulfilled for the proper issuance of the public document, nor does it affect the acceptance, admissibility, or evidentiary value of public documents.[93]

Some contracting states exempt from legalisation the documents to which the Convention applies and that need to be presented within their territory. The only formality that may be required is the addition of an Apostille issued by the competent authority of the state in which the document was issued (art 3(1)). An Apostille is a certificate placed directly on the document itself or attached to the public document, following the model annexed to the Convention. The Apostille can be drawn up in English, French, or the official language of the issuing authority, and the use of multilingual forms is encouraged.[94]

The procedure for issuing the certificate is regulated by arts 5-7 of the Convention. The certificate is issued at the request of the person who has signed the document or of any bearer of the document. In practice, contracting states use several models for submitting requests, including in person, by mail, or by e-mail.[95] Contracting states may develop a standard request form for this purpose. In a 2003 resolution, the Special Commission stated that failure to strictly adhere to the specific form of the Apostille alone cannot be grounds for rejecting a document. It is mentioned that the Apostille issued by the

90 Apostille Convention, art 8.

91 Gajanan S. Phunde and Sachin S. Tarate, *Lectures on the Law of Evidence* (Rudra Publications 2020) 97–98.

92 Apostille Handbook (n 87) 27.

93 ibid 31.

94 ibid 75.

95 ibid 38.

competent authority should follow as closely as possible the model annexed to the Convention. However, variations in size and shape of the Apostille, which occur among different contracting states whose competent authorities issue the certificate, should not be valid grounds for rejecting an Apostille as long as the Apostille can be clearly identified as the one issued under the Convention.[96]

States themselves develop internal procedures applied by competent authorities when issuing Apostilles. The authorities may introduce mechanisms to reliably verify the authenticity of public documents that need to be certified. Competent authorities usually have a database of seals or stamps and verify the authenticity by comparison. This process is changing due to the increasing use of ICT, making the visual comparison less important as signatures and seals or stamps can be authenticated electronically and often automatically. In this regard, for states that exclusively use electronic public documents, it is no longer necessary to maintain a database because a digital signature carries a certificate which confirms the origin and authenticity of the signer. A digital signature can be easily and reliably verified with the certificate that accompanies it; however, competent authorities will still need to verify whether the authority or person has the capacity to issue that type of public document. In general, this will be verified by scanning the QR code. Therefore, the Permanent Bureau recommends to contracting states digital certificates accredited to an institution or organisation, rather than a person in charge.[97] If the authenticity cannot be established, the competent authority issuing the Apostille may make additional efforts to verify it, and ultimately, the Apostille may not be issued. A 2009 resolution by the Special Commission stipulates that the Apostille may not be refused in a state in which it is to be used solely on the grounds that it does not comply with all the formalities required for its issuance in that state. Such actions would be considered a double standard.[98]

Depending on whether a public document is in paper (physical) or electronic form, there are several models for its certification. Traditionally, a paper Apostille was accompanied by a paper public document. More recently, in systems that have fully digitalised their justice systems, an e-document is certified with an e-Apostille. However, in partially digitalised systems, there are certain dilemmas regarding the certification of electronic documents, specifically the Apostille certifying them. Since the Apostille should ideally be physically attached to the public document it certifies, an optimal solution would be to link

96 Special Commission Conclusions and Recommendations, 'The Practical Operation of the Hague Apostille, Evidence and Service Conventions' (28 October - 4 November 2003) 5 <http://www.hcch.net/uploadwop/lseconcl_e.pdf> accessed 18 January 2024.

97 Apostille Handbook (n 87) 69–73.

98 Special Commission Conclusions and Recommendations, 'The Practical Operation of the Hague Apostille, Service and Access to Justice Conventions' (2–12 February 2009) 14 <https://www.hcch.net/> accessed 18 January 2024.

e-documents to an e-Apostille. In contracting states that have not introduced an e-Apostille system, including the Republic of Croatia, it is common practice to print electronic public documents on paper and then certify them with an Apostille. In this way, specific elements of the certificate of that document are lost. The Hague Conference encourages all states that issue electronic public documents in national legal traffic to adopt the e-Apostille system instead of the current practice.[99]

If a public document exists in paper form, and the contracting state has fully transitioned to an e-Apostille system, the usual procedure would be to scan the paper public document and convert it into an electronic format. The competent authority would then issue an e-Apostille for this electronic document. This process is valid provided that pursuant to the law of that state, the scanned copy has the same legal power as the original. Since such a scanned copy does not have a certificate attached to the signature or seal or stamp, the competent authority must verify the authenticity of the signature or seal or stamp in a traditional way, typically by comparison.

The annex to the Convention contains a model Apostille certificate with ten integral parts. The Apostille includes the following informational items: 1) the document issuing country, 2) the person that signed the underlying document, 3) the capacity in which the person signing the document acted, 4) the identity of the seal or stamp which the document bears, and in relation to the certificate: 5) the place, 6) the date, 7) the person issuing the certificate, 8) the serial number, 9) the seal or stamp, and 10) the signature of the person issuing the certificate. The purpose of this model Apostille is to ensure comparability among other contracting states. No authority should reject an Apostille issued with additional text outside the designated area.[100]

The competent authority will refuse to issue an Apostille in the following situations: when the public document is intended for legal use in a non-contracting state, when it is a public document excluded from the scope of the Convention according to art 1(3), when the document is not considered a public document by the country of origin, if the competent authority is not authorised to certify a particular type of document, or if the competent authority has failed to verify the origin of the public document for which the Apostille is requested. The competent authority will issue an Apostille if it is convinced of the authenticity of the public document. It will then record it in a register, which can be either a traditional paper or electronic register for internal use, or an e-register. An e-register is a publicly accessible database, allowing parties to

99 Apostille Handbook (n 87) 73.

100 Special Commission Conclusions and Recommendations, 'The Practical Operation of the Hague Apostille, Service and Access to Justice Conventions' (2 - 12 February 2009) 14 <https://www.hcch.net/> accessed 18 January 2024.

verify issued Apostilles. Contracting states can enter both paper Apostilles and e-Apostilles into the e-register.[101]

The authorities responsible for issuing Apostilles are determined by each contracting state,[102] and they must notify the Ministry of Foreign Affairs of the Netherlands of these authorities or of any changes thereto. The three fundamental functions of these national authorities are as follows: to verify the authenticity (origin) of the public document, to issue the Apostille, and to maintain a register of the issued Apostilles.[103] It is recommended that certification be carried out in a single procedure, exclusively before the competent authority.[104] However, some states have introduced additional formalities and a multi-step process for issuing Apostilles.

Since the purpose of this system is to enable the use of foreign public documents within the territory of other contracting states, by becoming a party to the Convention, each state has committed to giving legal effect to certified documents from other contracting states. However, the receiving country may still refuse to accept the Apostille if it was issued by a non-contracting state, if the document to which the Apostille is attached is not considered a public document in the country of origin, if the Apostille was issued by the authority not competent to issue an Apostille or by a competent authority outside the scope of jurisdiction, if the Apostille does not contain the ten essential informational items, if it is not attached to the public document it certifies, or if it is a forged or subsequently altered Apostille.[105] The Convention does not specify a limited period of validity of the Apostille, but it also does not prevent contracting states from establishing such time limits if they choose to do so.[106]

When it comes to the application of the Apostille Convention to electronic documents and their printouts, there are various comparative approaches that can be found. Austria consistently applies a dual approach when adding Apostilles to public documents. A physical (paper) Apostille is exclusively attached to physical public documents, while only an e-Apostille is issued on electronic public documents.[107] Similarly to Austria, Slovenia adds an e-Apostille to electronic public documents, but it is also possible to add an e-Apostille to a scanned copy of a public document in paper form, provided that the scanning

101 Apostille Handbook (n 87) 85

102 Yvon Loussouarn, *Explanatory Report on the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (HCCH 1961), paras 42–45.

103 Apostille Handbook (n 87) 37.

104 Loussouarn (n 102), paras 1–6.

105 Apostille Handbook (n 87) 89–-90.

106 ibid 32.

107 HCCH, 'Austria - Apostille Questionnaire 2021' (2021) 5 <https://assets.hcch.net/docs/c1d754e7-0fec-41a6-b203-f93c2a688c26.pdf> accessed 20 January 2024.

was done by an authorised official.[108] On the other hand, countries like the Czech Republic and Portugal (none of which issue e-Apostilles) attach a traditional physical (paper) Apostille to printouts of electronic public documents.[109] In principle, according to the views of the Hague Conference, it is possible to add an Apostille to a printout of an electronic public document. However, the Hague Conference does not endorse this practice because the entire added value associated with the electronic form of the document is lost by printing an electronic public document on paper.[110] In other words, an electronic document printed in this way, to which an Apostille has been added, will not have a machine-readable form after rescanning.[111]

The Republic of Croatia does not issue a physical (paper) Apostille for Croatian electronic public documents because they are signed electronically. In addition, Croatia does not issue an Apostille for printouts of electronic public documents either because according to the opinion of the Croatian authority that filled out the Hague Conference questionnaire, such printouts are considered ordinary copies of the documents, not certified copies for which an Apostille would typically be issued.[112] From the perspective of the current normative situation, the argumentation provided by the Republic of Croatia in the Hague Conference questionnaire for 2021 is not sustainable. A printed electronic notarial document, without any additional certification, has the power of a certified copy of a notarial document, provided that such a printout contains a barcode or QR code, a control number and a website for verifying the authenticity of the document and downloading the original document.[113] The legal equivalence of the printed electronic notarial document and a certified copy enables printed documents to replace the original notarial documents in legal circulation.[114] In this context, certified copies of notarial documents *ex*

108 HCCH, 'Republic of Slovenia - Apostille Questionnaire 2021' (2021) 5 <https://assets.hcch.net/docs/0b00bffe-82b8-4f0d-a833-e082837351f0.pdf> accessed 20 January 2024.

109 HCCH, 'Implementation Chart of the e-APP' <https://assets.hcch.net/docs/b697a1f1-13be-47a0-ab7e-96fcb750ed29.pdf> accessed 20 January 2024; HCCH, 'Portugal - Apostille Questionnaire 2021' (2021) 4 <https://assets.hcch.net/docs/f0f19d49-6a11-4263-bed9-7f4128d8927c.pdf> accessed 20 January 2024; HCCH, 'Czech Republic - Apostille Questionnaire 2021' (2021) 6 <https://assets.hcch.net/docs/eeeb3b9a-6a30-483d-a91d-ea3b420d3a3f.pdf> accessed 20 January 2024.

110 Apostille Handbook (n 87) 73.

111 According to art 5(10) of the Act on the Right to Access Information, Official Gazette, Nos 25/13, 85/15, 69/22, a machine-readable format is defined as a file format structured in a manner that enables a software application to easily identify, recognize, and extract specific data from it, including individual data and their internal structure.

112 HCCH, 'Republic of Croatia - Apostille Questionnaire 2021' (2021) 6 <https://assets.hcch.net/docs/a6f93f23-8074-4aaa-8cdf-64260107ef96.pdf> accessed 20 January 2024.

113 NP Act, art 50a(2).

114 ibid art 95(2).

lege have the status of public documents.[115] The aforementioned argumentation is not sustainable even in relation to the printed electronic court document (a judgment, a decision, etc.), which is signed/certified by a qualified electronic signature/seal and which contains a barcode or QR code, a control number and a website for verifying the authenticity of the document and downloading the original document, since it also has the meaning of a certified copy in legal traffic, which is, within the meaning of art 230 of the CPA, a public document *per se*.[116] Printed electronic public administration records obtained eg through the e-Citizens system also have the status of public documents, provided that they contain a record number and a control number in order to check the authenticity of the record by checking the original electronic record via the website.[117] However, in relation to the latter, ie printed electronic public administration records, it should be borne in mind that they have a limited legal lifespan.[118] After a period of three months, an electronic record generated for verification is deleted from the system, and it is no longer possible to verify the authenticity of the printed electronic record.[119] Consequently, an electronic record printed on paper loses its status of public document, ie it is no longer legally valid.[120] Therefore, it is to be assumed that even an Apostille on such a document would lose its legal effect because it would be on a document that does not have the status of public document or that has lost its legal effect. In that case, for people who intend to use a Croatian public document abroad, for the sake of legal certainty, it would still be advisable to obtain a public document in paper form with a handwritten signature of an authorised person and a printed physical seal of the public document issuer. In that case, by the mere passage of time, a public document would not cease to exist, ie it would not lose its legal effect, nor could it be considered that an Apostille was added to a document that is not a public document.

Furthermore, any justification that the receiving country's authority can verify the authenticity of a Croatian public document by entering control numbers or scanning QR codes on the printed electronic public document would represent a transfer of responsibility for authenticity verification to the document receiving country. This, in turn, contradicts the Apostille Convention, as it is the duty of the issuing country to verify the authenticity of a public document,

115 ibid art 3(2).

116 Court Rules of Procedure, Official Gazette, Nos 37/14, 49/14, 8/15, 35/15, 123/15, 45/16, 29/17, 33/17, 34/17, 57/17, 101/18, 119/18, 81/19, 128/19, 39/20, 47/20, 138/20, 147/20, 70/21, 99/21, 145/21, 23/22, 12/23, 122/23, arts 1a(2) and 65(3)(4).

117 Regulation on Organisational and Technical Standards for Connecting to the National Information Infrastructure, Official Gazette, No 60/17, art 15(1)-(3).

118 See n 69.

119 Regulation on Organisational and Technical Standards for Connecting to the National Information Infrastructure, Official Gazette, No 60/17, art 15(4).

120 ibid art 15(1)–(4).

unless according to the law of the receiving country or based on an international treaty, the public document of the issuing country is exempt from legalisation or similar formality.[121] It is also important to note that, in addition to verifying the authenticity of the signature and seal or stamp, the Apostille also confirms the capacity in which the person signing the document acted (a judge, a government official, etc.).[122]

Namely, according to the eIDAS Regulation,[123] a qualified electronic signature has the same legal effect as a handwritten signature.[124] It follows from the above that the legal effects are such that the existence of a signature on a document could not be contested simply because the document contains a qualified electronic signature. In relation to the qualified electronic seal, the Regulation introduces the presumption of data integrity and of correctness of the origin of that data to which the qualified electronic seal is linked.[125] No less important, it should also be borne in mind that the territorial application of the eIDAS Regulation is limited to EU Member States, hence the Regulation is not applicable to all parties to the Apostille Convention, of which there are significantly more.[126]

On the other hand, there is the question of the use of foreign electronic public documents before Croatian courts. Pursuant to the CPA, all documents attached to the submission, regardless of whether they are public or private, shall be submitted in the original or as a copy.[127] With regard to electronic documents, a public document should certainly be considered in the first place a document originally drawn up in electronic form, while a printout of an electronic public document, ie whether such printout is also considered a public document, will be judged according to the *lex loci actus*.[128] In German civil procedural law, the presumption of authenticity is attached to electronic public documents signed with a qualified electronic signature, as well as to documents in paper (physical) form. [129] However, according to the prevailing opinion, this presumption in German law does not apply to foreign electronic public documents.[130] The understanding of German civil procedural law is comparable to

121 Apostille Convention, arts 1(1), 3, 5 and 6.

122 Apostille Handbook (n 87) 31.

123 Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC [2014] OJ L257 (hereinafter referred to as 'the eIDAS Regulation').

124 eIDAS Regulation, art 25(2).

125 ibid art 35(2).

126 ibid art 52.

127 CPA, art 108(1).

128 Apostille Handbook (n 87) 58.

129 Nazrin Hasanova, 'The Electronic Apostille in Worldwide Circulation of Public Documents' (2023) 9(1) Baku State University Law Review 23, 34.

130 ibid 34–35.

Croatian civil procedural law. Although the CPA does not contain an explicit norm in terms of the presumption of authenticity of electronic public documents, a comparable situation is reached in a different way. Namely, the Croatian legislator decided to explicitly attribute the status of public document to certain electronic documents, which consequently encompasses all legal consequences of the status of such a document within the meaning of the CPA. Thus, the authenticity of foreign electronic public documents could not be presumed even according to Croatian civil procedural law, and this is because the CPA, as a general assumption of the use of foreign public documents, requires proper certification in any case, unless otherwise stipulated by international treaties, and in doing so, the CPA makes no distinction regarding the form of foreign public documents.[131]

Of all the Hague Conventions, the Apostille Convention appears most often in practice. It is precisely this frequency of application and the constantly growing number of contracting parties that impose the question of adapting this regime to the modern digitalised national judicial apparatus and digitalised cross-border judicial cooperation. Since the Convention was drafted half a century ago in a technology-neutral way, it can continue to operate even in changed circumstances. At the same time, new technologies can improve and increase efficiency and legal security in the legalisation of foreign public documents.

Guided by this, the Hague Conference on Private International Law and the National Notary Association of the USA initiated the e-APP programme in 2006.[132] The e-APP has two components, e-Apostilles and e-Registers. Although the full effect would be best achieved by the comparative application of both components, a greater number of contracting parties to this Convention have only accessed the e-Register. There are numerous advantages of the electronic version of the Apostille. The use of modern technology introduces a fast and secure way of working, with many tools to combat fraud and Apostille abuse. At the same time, it also standardises the working methods of competent authorities and leads to greater accessibility for users. According to the latest data, approximately 10% of all Apostilles are e-Apostilles, with this figure constantly growing.[133] Numerous advantages are also associated with the e-Register. Storing Apostilles in the e-Register reduces the need for official intervention since verification of issued Apostilles is available at any time in the system.

131 CPA, art 231.

132 Hans Van Loon, 'The Hague Conference on Private International Law: Work in Progress (2003-2004)' [2005] Yearbook of Private International Law 237, 245.

133 HCCH, '12th International Forum on the electronic Apostille Program (e-APP)' (2021) 12 <https://www.hcch.net/en/instruments/specialised-sections/apostille/international-forum-eapp/> accessed 21 January 2024.

An e-Apostille is a certificate referred to in art 3(1) of the Apostille Convention, which is issued in electronic form and signed with a digital signature. An e-Apostille supports both electronic public documents and paper public documents that have been scanned into electronic form or digitised.[134] All formal requirements defined by the Convention for an Apostille must also be met when it comes to an e-Apostille. In order to issue an e-Apostille, the contracting party must have appropriate technology and software for creating an e-Apostille and an electronic transmission mechanism. The competent authority must also have access to digital signature certificates.

In order for the competent authority of the country issuing the public document to digitally sign and attach the e-Apostille, that authority shall possess a digital certificate issued by a reliable trust service provider.[135] Namely, any mark, symbol or name that appears on a document in electronic form and is authenticated by means of a digital certificate to evidence the signing of that document can be considered a digital signature.[136] In this case, the certificate acts as an electronic credential that links the identity of the signature to an individual or authority through public key infrastructure.[137]

In respect of e-Apostille transmission, we distinguish between dynamic transmission, where the competent authority sends an e-Apostille electronically, and static transmission, where an e-Apostille is stored in an e-Register that is accessible to users. The rules laid down in art 7 of the Convention apply to the e-Register, as in the case of the classic register.

The contracting states should organise the use of the e-Apostille system in accordance with the basic principles adopted by the Special Commission in 2021. Accordingly, 1) e-Apostille and related services should be accessible to all users, 2) the competent authority should maintain the integrity of the e-Apostille and the public document it certifies, 3) e-Registers speed up the procedure and increase legal certainty in terms of the database of Apostilles that have been issued, 4) contracting parties should develop mechanisms to facilitate the acceptance of e-Apostilles, and 5) the competent authority systematically updates and upgrades its Apostille related practices as well as the e-Apostille infrastructure.[138]

134 Apostille Handbook (n 87) 97.
135 ibid 332.
136 ibid 17.
137 ibid.
138 HCCH, 'The e-APP: Key Principles and Good Practices' (2021) <https://assets.hcch.net/docs/ff855998-d234-485c-a6c9-f705c8c692e6.pdf> accessed 21 January 2024.

3.4 EU regimes for the circulation of public documents

The status of certain public documents originating from EU Member States is defined by the Regulation on Public Documents.[139] The purpose of the Regulation on Public Documents is to simplify the circulation of public documents between the Member States and certified copies thereof within the EU, which are issued by the authorities of one Member State and are to be used before the authorities of another Member State in such a way that certain documents are exempt from all forms of legalisation and similar formality, ie an Apostille is added in terms of the Apostille Convention.[140] The Regulation contributes to the further strengthening of freedom of movement within the EU by facilitating the use of public documents issued in one Member State, which prove certain facts before the authorities of other Member States.[141] Public documents issued by the third-country authorities, as well as certified copies thereof certified by the authority of a Member State, are excluded from the scope of the Regulation on Public Documents.[142]

In terms of the Regulation on Public Documents, public documents are considered to be documents issued by an authority or court official of a Member State (including documents issued by the state attorney's office, the head of the court register office or a bailiff), administrative documents, notarial documents, official certificates placed on private documents (official certificates recording the registration of a document or the fact that it was in existence on a certain date, and official and notarial authentications of signatures), and documents drawn up by the diplomatic or consular agents of a Member State in the territory of any state, where such documents have to be presented in the territory of another Member State or to the diplomatic or consular agents of another Member State acting in the territory of a third state.[143] The Regulation on Public Documents opts for the criterion of the legal order based on which the issuer acquired public powers, and within the scope of the Regulation, a public document is considered to be a document issued by the authority of a Member State in accordance with its national law, which needs to be presented to the authorities of another Member State, and this also includes the documents of the diplomatic or consular agents of Member States.[144] It is clear from the above that the definition of public documents within the meaning of the

139 Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 [2016] OJ L200 (hereinafter referred to as 'the Regulation on Public Documents').

140 Regulation on Public Documents, arts 1(1) and 4.

141 Stefan Schlauß, 'The EU Regulation on Public Documents: A first step towards the abolition of the Apostille in the EU' (2020) 21 ERA Forum 117, 118.

142 Regulation on Public Documents, art 2(3).

143 ibid art 3(1).

144 ibid arts 2(1) and 3(1).

Regulation on Public Documents has a wider scope compared to the definition of public documents pursuant to the Apostille Convention due to the fact that the Regulation on Public Documents also includes documents executed by diplomatic or consular agents of Member States, while the Apostille Convention does not apply to documents executed by diplomatic or consular agents.[145]

However, the Regulation on Public Documents applies exclusively to those public documents of Member States that establish one or more of the following facts: birth; that a person is alive; death; name; marriage, including capacity to marry and marital status; divorce, legal separation or marriage annulment; registered partnership, including capacity to enter into a registered partnership and registered partnership status; dissolution of a registered partnership, legal separation or annulment of a registered partnership; parenthood; adoption; domicile and/or residence; nationality; absence of a criminal record, provided that public documents establishing this fact are issued for an EU citizen by the authority of that citizen's Member State of nationality, and to public documents, the presentation of which may be required of EU citizens residing in a Member State of which they are not nationals when they wish to vote or stand as candidates in local elections or elections to the European Parliament.[146]

Although the Regulation on Public Documents introduces a liberal approach in terms of exemption from legalisation or the addition of an Apostille to certain public documents that prove certain facts, the Regulation also prescribes protective mechanisms due to doubts as to the authenticity of a public document issued by the authority of another Member State. Thus, the Regulation relies on the already existing Internal Market Information System (hereinafter referred to as 'IMI'), which is used as a communication platform between Member States in the field of administrative cross-border cooperation.[147] Through the IMI system, the Member State authorities can compare presented public documents or certified copies thereof with models of document that are normally issued in the issuing Member State, and they can also communicate with the authorities or the central authority of the issuing state.[148] Direct communication with the issuing country is recommended in any case whenever there is doubt as to the authenticity of the signature or seal, the capacity in which the person signing the document has acted, and forgery or subsequent unauthorised alteration of the document.[149]

In addition, the Regulation on Public Documents also simplifies other formalities in the circulation of public documents, which fall within the scope

145 cf Regulation on Public Documents, art 3(1) and Apostille Convention, art 1(3).

146 Regulation on Public Documents, art 2(1)(2).

147 Schlauß (n 141) 125.

148 Cristina Campiglio, 'Circulation of Public Documents and Recognition of Civil Status Situations – Lights and Shadows' [2021/2022] Yearbook of Private International Law 1, 9.

149 Regulation on Public Documents, art 14(1)(2); Schlauß (n 141) 125.

of the Regulation. Thus, it is prescribed that certified copies of public documents made in one Member State are accepted in another Member State if that Member State otherwise accepts certified copies of public documents according to its law.[150] Likewise, if a Member State requires the presentation of the original of a public document issued by the authorities of another Member State, the authorities of the Member State where the public document is presented do not also require the presentation of a certified copy thereof.[151] In addition to the aforementioned, the Regulation additionally facilitates the use of public documents from the aspect of linguistic pluralism within the EU. Thus, the Regulation introduces the possibility of using multilingual standard forms that have no autonomous legal value and are attached to public documents as aids, at the request of a person, to avoid the need to translate public documents and the associated costs.[152] However, the use of multilingual forms is limited such that the forms exist only for documents that prove specific facts and not all facts that fall within the scope of the Regulation, so ultimately it will still be necessary to provide a translation for certain types of documents.[153] In view of the advanced digitalisation, templates of multilingual standard forms are available on the European e-Justice Portal in electronic form for each Member State to enable the online filling of forms or their download to a personal computer.[154] In this regard, it should be emphasised that the Regulation also applies to electronic public documents; however, it will ultimately depend on the national procedural autonomy whether such an electronic public document will be accepted, ie whether it can be used as electronic evidence according to the *lex fori*.[155] Although the Regulation on Public Documents undoubtedly contributes to a simpler circulation of public documents within the EU, the aforementioned could be facilitated further, provided that Member States digitise civil status data on persons by connecting the interoperable national civil status records of all Member State, which would create an interconnected network state registries within the EU.[156]

Following the above, it should be noted that a simplified circulation of certain public documents within the EU based on the Regulation on Public Documents does not in any way affect the recognition of legal effects related to the content of public documents in the Member State in which a certain public document is to be used.[157] From the perspective of Croatian law, the afore-

150 Regulation on Public Documents, art 5(2).
151 ibid art 5(1).
152 ibid arts 6(1), 7(1) and 8(1).
153 Schlauß (n 141) 122.
154 Regulation on Public Documents, art 12; Schlauß (n 141) 123.
155 ibid recital n 9.
156 Campiglio (n 148) 10.
157 Regulation on Public Documents, art 2(4).

mentioned means that certain public documents issued by authorities of other Member States will be exempted from legalisation and addition of an Apostille before Croatian authorities, and will have evidentiary value in accordance with domestic procedural regulations. Specifically, from the aspect of civil procedural law, in terms of evidentiary value, they will be equivalent to domestic public documents.[158] Given that the Regulation on Public Documents does not impose a duty on the Member State receiving the document to recognise the public document of another Member State in the substantive sense, their recognition will depend on the national law of individual Member States, unless otherwise stipulated by international treaties.[159] Thus, in the Republic of Croatia, the facts of birth, marriage or death of Croatian citizens born abroad are registered on the basis of a state registry extract of a foreign authority.[160] Specifically, if we bring the previous national law provision into connection with the Regulation on Public Documents, it follows from the above that according to Croatian law, state registry extracts, which prove the facts of birth, marriage or death of Croatian citizens established in another Member State, which were issued by the authorities of the Member States within the framework of the Regulation on Public Documents, without the need for legalisation or the addition of an Apostille, ultimately result in legal effects in the Republic of Croatia, ie registration in a specific state registry such as a civil register. In relation to the application of public civil status documents issued within the framework of the Regulation on Public Documents, it should be emphasised that it in no way limits citizens, but moreover, citizens have the right to use other public documents that prove certain civil status, which are issued within the framework of the International Commission on Civil Status conventions if the Member States issuing and receiving the public document are parties to a certain convention.[161]

When it comes to the importance of the Regulation on Public Documents in terms of the simplified circulation of public documents within the EU, it should be noted that in 2023 the European Commission published a Proposal for a Directive to further expand and upgrade the use of digital tools and processes in company law.[162] The Directive, *inter alia*, requires Member States to abolish legalisation or similar formality (Apostille) for copies and extracts of documents, including certified translations, of the court registers in Member States, but also for electronic copies and extracts of documents and translations

158 CPA, art 231.

159 Fitchen (n 89) 96.

160 SR Act, art 40(1).

161 Schlauß (n 141) 122.

162 Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law' COM (2023) 177 final (hereinafter referred to as 'the Proposal for a Directive on the Digitalisation of Company Law').

if they are authenticated by trust services within the meaning of the eIDAS Regulation.[163] Exemption from legalisation or the addition of an Apostille is also proposed for paper copies if they include the date of issuance as well as the seal or stamp of the register and have a feature that enables electronic verification of the authenticity of the document, such as a unique protocol or identification number.[164] It is important to point out that Member States have already been obliged to ensure that electronic copies and extracts of court register documents are authenticated by trust services in accordance with the eIDAS Regulation.[165] However, apparently the existing proposal of the Directive aims to further exempt authenticated documents from legalisation and obtaining an Apostille.

Additionally, this exemption from legalisation or the addition of an Apostille is proposed for notarial and administrative documents, their certified copies and translations in terms of cross-border procedures related to commercial companies, and it also applies to electronic notarial and administrative documents, their certified copies and translations if they are authenticated within the meaning of the eIDAS Regulation, and to those in paper form if they have a feature that enables electronic verification of the authenticity of the document.[166] Furthermore, the Directive introduces a digital EU power of attorney, for which it also prescribes exemption from legalisation or similar formalities such as the adding of an Apostille.[167] In order to carry out procedures in another Member State, companies will be able to use a standard model of the digital EU power of attorney to authorise a person to represent the company, and consequently it shall be accepted as evidence of the authorised person's entitlement to represent the company as specified in the power of attorney.[168] The condition for applying the digital power of attorney is that it is authenticated by trust services within the meaning of the eIDAS Regulation, ie that it is signed with an electronic qualified signature.[169]

As regards the Proposal for a Directive on the digitalisation of company law, it is significant that legalisation or the addition of an Apostille is abolished only for certain documents in the context of cross-border procedures related to companies, provided that the electronic document is signed with a qualified electronic signature within the meaning of the eIDAS Regulation. A principle conclusion that emerges from the above, which is in general applicable to

163 ibid art 16d(1).

164 ibid.

165 Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) [2017] OJ L169, art 16(4).

166 Proposal for a Directive on the Digitalisation of Company Law, art 16d(3).

167 ibid art 16d(2).

168 ibid art 16c(1)(2).

169 ibid art 16c(1).

cross-border legal traffic within the EU, is that the application of a qualified electronic signature or seal *per se* does not imply exemption of public documents from legalisation or the addition of an Apostille, but is an additional assumption that certain categories of public documents are exempt from legalisation or the addition of an Apostille by European norms. Namely, the eIDAS Regulation contains no general norm on the basis of which all types of public documents signed/certified with a qualified electronic signature/seal would be exempt from legalisation or the addition of an Apostille in cross-border legal traffic, but rather, as in the example of the Directive on the digitalisation of company law or the Regulation on Public Documents, exemption from legalisation or the addition of an Apostille is laid down for certain categories of public documents.

In terms of the registration in the state registries of the Republic of Croatia of the fact of divorce or marriage annulment, which was decided by the court of another Member State, it should be noted that even for this, no special procedure for updating the state registry will be necessary since under the Brussels II ter Regulation,[170] the decision res judicata of the court of one Member State, as a public document, directly produces effects in another Member State without the need for a special recognition procedure, and without the need for legalisation or similar formality of the court decision in question.[171] However, as already mentioned, such legal effects of the decision in the matrimonial dispute arise on the basis of the Brussels II ter Regulation, and not on the basis of the Regulation on Public Documents. Namely, with regard to the relationship between the instruments of the European Private International Law (hereinafter referred to as 'EU-PIL') and the Regulation on Public Documents, it was clarified that the Regulation is a horizontal instrument complementary to EU-PIL instruments (such as the Brussels II ter Regulation), while some of them, which eg specifically regulate the issues of the recognition of professional qualifications, will even have an advantage in terms of the application in relation thereto.[172]

170 Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) [2019] OJ L178 (hereinafter referred to as 'the Brussels II ter Regulation').

171 Ilaria Pretelli, 'Article 30 – Recognition of a Decision' in Cristina González Beilfuss and others (eds), *Jurisdiction, Recognition and Enforcement in Matrimonial and Parental Responsibility Matters - A Commentary on Regulation 2019/1111 (Brussels IIb)* (Edward Elgar Publishing 2023) 328; Brussels II ter Regulation, arts 30(1)(2) and 90.

172 HCCH, 'EU answers to the questionnaire on the practical operation of the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Documents (Apostille Convention)' (2021) <https://assets.hcch.net/docs/799b6765-4d4f-44b9-900f-45ce637edb81.pdf> accessed 20 January 2024.

Further to the above, it is generally necessary to consider the use of foreign court decisions as public documents of one Member State before the authorities of another Member State. Namely, based on EU-PIL instruments, the decision of a court of a Member State in certain matters is recognised in another Member State, with no special procedure for the recognition and enforcement of the decision in question.[173] Or simply put, it is a system of mutual automatic recognition of decisions of EU Member States, based on the principle of mutual recognition, whose legal basis relies on the founding treaties of the EU, and whose purpose is to ensure the smooth circulation of court decisions in civil and commercial matters between EU Member States.[174] As regards decisions made by applying specific instruments, which are to be used in another Member State, EU-PIL instruments provide for exemption from legalisation or other formalities.[175]

At the same time, it is necessary to understand that such recognition of decisions of Member States in the regime of EU-PIL instruments refers to their specific effect as legal acts, which are equal in effect to the decisions of domestic courts.

However, we should distinguish from that situations in which the decisions made by applying EU-PIL instruments will be used exclusively for the purpose of proving a certain fact, ie as a means of proof, within the framework of a certain legal protection procedure before the authorities of another Member State different from the country of origin of the decision. Is it considered that such a decision represents a means of proof without the need to certify it with an Apostille?

Pursuant to the Brussels I bis Regulation, if for any reason, a party wishes to invoke the effects of a court decision given in another Member State before the authorities of another Member State, the decision in question should be accompanied by a 'Certificate concerning a judgment in civil and commercial matters', which is, based on the Regulation, issued by the court of origin that has given the judgment at the request of the interested party.[176] Additionally, the

173 See, eg, Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L351 (hereinafter referred to as 'the Brussels I bis Regulation'), art 36(1); Brussels II ter Regulation, art 30(1); Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession [2012] OJ L201, art 39(1).

174 Mirela Župan, '50 godina europske pravosudne suradnje u građanskim stvarima – 5 godina hrvatske primjene' (2019) 10(1) Godišnjak Akademije pravnih znanosti Hrvatske 469, 473; Ines Medić, 'Priznanje i ovrha na području EU' (2017) 54(1) Zbornik radova Pravnog fakulteta u Splitu 283, 291–292.

175 See Brussels I bis Regulation, art 61 and Brussels II ter Regulation, art 90.

176 Brussels I bis Regulation, arts 37(1) and 53.

Brussels I bis Regulation stipulates that legalisation or other similar formality is not required for documents issued in a Member State under the Regulation.[177] Therefore, such documents are entirely exempt from both legalisation and the addition of an Apostille. However, the question arises as to the meaning of the wording '*document ... issued within the framework of this Regulation*', or more precisely, if the above wording refers to all types of documents, including judgments, or only to documents whose issuance is prescribed by the Regulation, such as the aforementioned certificate concerning a judgment and a certificate concerning an authentic instrument/court settlement, whose forms are attached to the Regulation and form an integral part thereof.[178] Relevant legal theory does not provide unequivocal answers since in relation to the provision of art 61 of the Brussels I bis Regulation it underlines the importance of the certificates provided for in annexes I and II, and merely states that no additional review or special formality of anything issued under that regulation is necessary.[179]

On the other hand, the Brussels II ter Regulation uses a somewhat broader wording and stipulates that '*no legalisation or any other similar formality is required in the context of this Regulation*'.[180] In terms of the Brussels II ter Regulation, the above applies equally to judgments and other court decisions, but also to all other documents issued under the Brussels II ter Regulation.[181] The Brussels II ter Regulation also stipulates that, in addition to the decision in question, a party who wishes to invoke the effects of a decision given in the Member State of origin before the authorities of another Member State must also attach certain certificates, depending on the specific legal matter (Certificate concerning decisions in matrimonial matters, Certificate concerning decisions in matters of parental responsibility, Certificate concerning decisions ordering the return of a child to another Member State, etc.).[182]

Although the certificates in question, which are attached to the Brussels I bis Regulation and the Brussels II ter Regulation, have different functions, their common purpose is to ensure that the authority of the Member State receiving the decision assures that the court decision of the Member State of origin is true, ie authentic.[183] However, exemption from legalisation or the addition of an Apostille should not be taken without reservation. Namely, as the Brussels I bis

177 ibid art 61.

178 ibid annexes I and II.

179 Martin George and others, 'General Provisions' in Andrew Dickinson and Eva Lein (eds), *The Brussels I Regulation Recast* (OUP 2015) 542.

180 Brussels II ter Regulation, art 90.

181 Thalia Kruger, 'Article 90 – Legalisation or other similar formality' in Cristina González Beilfuss and others (eds), *Jurisdiction, Recognition and Enforcement in Matrimonial and Parental Responsibility Matters - A Commentary on Regulation 2019/1111 (Brussels IIb)* (Edward Elgar Publishing 2023) 629.

182 Brussels II ter Regulation, arts 31(1) and 36(1). See annexes to the Brussels II ter Regulation.

183 Kruger (n 181) 632.

Regulation and the Brussels II ter Regulation exempt only decisions and other documents within the framework of these regulations from legalisation or similar formality, it should be noted that such exemption applies only within the scope of application of these regulations.[184] In other words, it should be understood that such exemption from legalisation or similar formality is applied only for the purpose of the recognition and enforcement in cross-border matters.[185] EU-PIL instruments, such as the Brussels I bis Regulation, provide exclusively a legal framework for mutual automatic recognition and enforcement of Member State decisions, ie the recognition of legal effects in another Member State, but EU-PIL instruments do not imply or have any effect on the evidentiary value of a court decision of one Member State before the court of another Member State when the decision is used as proof of fact, and the evidentiary proceeding issues, including the assumptions about the use of certain means of proof, should be evaluated according to the *lex fori*.[186] From the perspective of Croatian civil procedural law, a court decision given by another Member State, if used exclusively as a means of proof, should have an Apostille, given that all EU Member States are also parties to the Apostille Convention, unless total exemption from certification of public documents between the Republic of Croatia and the Member State of origin of the document is stipulated by some other international treaty.[187]

Hence, it is necessary to distinguish between two legal situations. The first one would refer to the need of a party to raise an objection *res judicata* within the framework of the proceedings before the court of a Member State that is different from the Member State of origin of the decision. Here, one should start from the effect of a foreign decision to which certain legal presumptions of different effect are attached. Specifically, in terms of the objection *res judicata*, one should start from the fact that the wording of the decision res judicata represents a legal disposition of the court, and as such, it expresses a certain legal situation, and in no way is this about using the decision as a means of proof in the sense of the usual understanding.[188] Therefore, in order to emphasise the objection *res judicata*, the decision should be accompanied by an adequate certificate in terms of the Brussels I bis Regulation and the Brussels II ter Regulation. However, this obligation to attach a certificate does not apply to those cases when a court decision is used as a means of proof in the

184 Xandra Kramer, 'Article 61' in Ulrich Magnus and Peter Mankowski (eds), *Brussels I bis Regulation* (Verlag Dr. Otto Schmidt 2023) 956.

185 George (n 179) 541–542.

186 Pietro Franzina and others, 'The Recognition and Enforcement of Member State Judgments' in Andrew Dickinson and Eva Lein (eds), *The Brussels I Regulation Recast* (OUP 2015) 376.

187 HCCH, 'Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents - Status table' (2024) <https://www.hcch.net/en/instruments/conventions/status-table/?cid=41> accessed 18 January 2024.

188 Franzina (n 186) 376.

evidentiary proceeding to prove the facts.[189] Nevertheless, in accordance with the understanding of the prevailing procedural law theory, if a foreign decision is treated as an 'ordinary' public document, ie if it is not recognised, it would have to be at least legalised in order to attach the presumption of authenticity thereto. Otherwise, by resorting to the principle of free evaluation of evidence, an unrecognised and non-legalised decision could be recognised to have a greater effect than it actually has, assuming it is a decision made between parties, possibly of a certain content, but from the perspective of the Croatian legal system, it is non-existent.[190]

In this regard, if the decision of the court of a Member State before the court of another Member State is used exclusively as a means of proof, from the aspect of efficiency and effectiveness in proceedings, it would be opportune to make an exception in relation to those decisions of the court of other Member States with prescribed certificates within the meaning of EU-PIL regulations. Namely, if they are automatically recognised as having legal effects, it should be considered that they can also be taken as duly authenticated foreign public documents within the meaning of the CPA, without the need for adding an Apostille.

In terms of comparative arrangements, it should be stressed that the German legal system does not provide for special rules regulating the status of public documents exempt from legalisation under EU law, but general national rules apply. Accordingly, as regards the admissibility of this evidentiary value, German law equates foreign public documents under the regime of either the Apostille Convention, bilateral treaties or EU-PIL instruments with documents issued in Germany.

As regards non-legalised public documents, § 438(1) of the Code of Civil Procedure (hereinafter referred to as 'the CCP') leaves this matter at the discretion of the court to assess whether a foreign public document can be considered authentic without additional evidence thereof. This excludes situations in which foreign public documents are exempt from legalisation under the regime of EU-PIL instruments. In all other situations, the court will require the necessary information on the authenticity of the foreign public document to be delivered by the competent authorities (German embassies, consulates, Landesarbeitsgericht Hamm). If under § 438(1) of the CCP the court assesses that such a foreign document is authentic, such a document is recognised under §§ 415 et seq. of the CCP as having the same evidentiary value as German public documents (see the decision of the Bundesverwaltungsgericht, NJW 1987, p. 1159, and the decision of the Bundesgerichtshof, BGH LM § 418 of the CCP

189 ibid 393.

190 Dika (n 4) 543.

No. 3). However, the assessment of the authenticity of the content of a foreign public document in that case is at the discretion of the court.

In respect of court decisions of other Member States that are accompanied by prescribed certificates within the meaning of EU-PIL regulations as foreign public documents, the prevailing German legal theory also agrees with liberalisation in terms of the necessity of the addition of an Apostille or legalisation. However, it also warns that such a step should be accompanied by the resolution of doubts in relation to the interpretation of the court decision as a public document.[191]

Finally, in terms of the aforementioned regarding the absence of the rules of evidence in relation to certain EU-PIL instruments, attention should also be drawn to the opposite normative solutions. The Succession Regulation,[192] which also provides for exemption from legalisation and other formalities (an Apostille) for documents of Member States, additionally explicitly regulates rules of evidence in respect of individual documents.[193] This refers to public documents and the European Certificate of Succession. Thus, for a public document drawn up in one Member State, it is prescribed that it has the same evidentiary value in another Member State as in the Member State of origin, or the most similar effect, provided that this is not obviously contrary to the public policy of the Member State in which the document is presented.[194] An important difference follows from the above in relation to the principle use of foreign public documents before the authorities of another state. Namely, a represented rule is that the evidentiary value of a foreign public document is assessed according to the *lex fori*; however, in the context of public documents, in accordance with the Succession Regulation, the court of a Member State will assess the evidentiary value of a public document according to the law of the issuing Member State, ie according to the *lex loci actus*.[195] Furthermore, with regard to the European Certificate of Succession, the authenticity of the Certificate is presumed. Consequently, it is assumed that the Certificate accurately proves the elements established by the law applicable to succession or by any other law applicable to certain elements, and that the person named in the Certificate

191 Burkhard Hess and others, *Legalisation of Public Documents within the EU Member States* (BIICL 2006).

192 Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession [2012] OJ L201 (hereinafter referred to as 'the Succession Regulation').

193 ibid recs 61 and 71; art 74.

194 ibid art 59(1).

195 Vuković and Kunštek (n 46) 203–204.

as the heir, legatee, executor of the will or administrator of the estate, has the status specified in the Certificate.[196]

4. Court decision as a public document in the procedure of recognition of a foreign court decision on the basis of the PIL Act

Through a recent *ad hoc* legislative intervention, the PIL Act was amended in such a way that, *inter alia*, additional prerequisites have been prescribed for the recognition of a foreign court decision on the adoption of a child from a country that is not a party to the international treaty governing international adoption.[197]

In this context, the provision of art 71a(1) of the PIL Act stipulates that such a foreign court decision on adoption will be recognised after the court verifies the authenticity of that decision through diplomatic channels, and if the applicant has provided proof of res judicata of the decision, and has also submitted proof of the legalisation of the adoption decision in accordance with the law governing the legalisation of documents in international legal traffic.[198] It follows from the above that the provision of art 71a(1) of the PIL Act applies to those foreign court decisions on adoption of a child from a country that is not a party to the international adoption treaty, and with which the Republic of Croatia has not concluded a bilateral or multilateral treaty regulating the circulation of public documents in a different way. Otherwise, if international legalisation of foreign documents were insisted upon according to the LPD Act, it would be contrary to the provisions of the Constitution of the Republic of Croatia on the legal force of international treaties, and it would also cause a violation of the international obligations of the Republic of Croatia.[199] Legislative intervention, as implemented by art 71a(1) of the PIL Act, is redundant for several reasons.

First, the legislator unnecessarily refers to mandatory verification of the authenticity of the decision on adoption through diplomatic channels, ie through the Croatian Ministry of Foreign and European Affairs, given that further in the provision of art 71a(1) of the PIL Act it prescribes the obligation to submit proof of the legalisation of a foreign court decision. However, regardless of that, the possibility of diplomatic verification of the authenticity of a foreign public document has already existed on the basis of the LPD Act such that if

196 Succession Regulation, art 69(2).

197 Act Amending the Private International Law Act, Official Gazette, No 67/23, art 1.

198 PIL Act, art 71a(1).

199 Constitution of the Republic of Croatia, Official Gazette, Nos 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14, art 134.

the authority to which a foreign public document is submitted has doubts as to the authenticity of the document, it can request the Ministry of Foreign and European Affairs to check whether the document was issued by the authority indicated therein.[200] It can be assumed that the use of unauthentic documents is an exception, not the rule. However, the legislator has obviously decided on a different approach and introduced the assumption that obviously every foreign decision on the adoption of a child, which falls within the scope of art 71a(1) of the CPA, is by nature *iudicium suspecta* and should therefore be checked through diplomatic channels. At the same time, this also renders the procedure of international legalisation, which is supposed to be conducted by the Ministry of Foreign and European Affairs, or diplomatic and consular representations of the Republic of Croatia abroad, meaningless for foreign public documents intended for use before the authorities of the Republic of Croatia.[201]

Second, an intervention is redundant since proof of res judicata of a foreign court decision is obligatorily attached to the proposal for recognition in terms of the provisions of the PIL Act that have been in force.[202] Therefore, it was unnecessary in the provision of art 71a(1) of the PIL Act to emphasise the obligation to attach proof of res judicata of a foreign court decision on adoption because it must be attached whenever it comes to the recognition of a foreign court decision based on the PIL Act, regardless of the specific legal matter in the proceeding from which the foreign decision originates (adoption, divorce, payment of a monetary claim, etc.).[203] From the provision of art 67(1) of the PIL Act before the legislative amendment in question, it was not clear that the applicant in the process of recognising a foreign court decision on adoption of a child would be exempt from the obligation to submit proof of res judicata of a foreign court decision. However, since the legislator has already decided to standardise in detail the procedure for the recognition of a foreign court decision on adoption of a child in the manner prescribed, it should be noted that addressees were not additionally instructed to pay attention to proof of res judicata of a foreign court decision. Namely, as a presumption of the recognition of a foreign court decision, the PIL Act prescribes the duty of the proposer, along with that decision, to submit proof of res judicata of that decision under the law of the country in which it was made.[204] Although the earlier Act on the Resolution of Conflict of Laws with Regulations of Other Countries provides for the obligation to attach proof of res judicata as a formal act, the PIL Act is more flexible in certain cases and provides for the obligation to attach proof

200 LPD Act, art 4.
201 ibid art 3(1).
202 PIL Act, art 67(1).
203 See art 67(1) of the PIL Act.
204 PIL Act, art 67(1).

of res judicata of a foreign court decision.[205] However, proof of res judicata of a foreign court decision is usually issued in the form of a clause printed on the decision itself, in the form of a special certificate or in the form of some other formal document.[206]

Namely, a certificate of res judicata of a foreign court decision could also be a public document *per se*, and since it originates from a foreign country, such an act could be considered a foreign public document.[207] The authority issuing a certificate of res judicata may or may not be the same authority that made the specific court decision, and this depends on the law of the country of origin of the decision.[208] Hence, the stamp and/or signature do not necessarily have to be the same as those found on the foreign court decision itself, ie placed at the time it was issued. The foregoing justifies that when recognising a foreign court decision, the status of a certificate of res judicata should also be considered according to the *lex loci actus*, and secondly Croatian law, or whether such an act is considered a separate foreign public document. Therefore, if the *lex loci actus* and in any case the subordinate Croatian law qualify the formal certificate of res judicata as a public document, it will be necessary to legalise it beforehand in terms of the LPD Act, unless otherwise stipulated by an international treaty.[209] The PIL Act provides for the obligation to attach 'proof of res judicata issued by the law of the court', so the PIL Act qualifies as evidence any means whose purpose is to confirm the res judicata effect of a foreign court decision, regardless of whether it is a formal act or something else. All the more, if it is a formal act, then as evidence, such a public document should fulfil the general assumption about the use of a foreign public document as a means of proof within the meaning of the CPA and the LPD Act, ie that it is duly certified (legalised), unless otherwise stipulated by an international treaty.[210]

However, in the event that a certificate of res judicata really has the status of foreign public document, there are certain limitations regarding the possibility of rebutting the presumption of authenticity, depending on the legal nature of a certificate of res judicata according to the law of the country of decision. This is because if a certificate of res judicata is treated as a separate court decision under the law of the country of decision, then in the recognition process, the legal dispositions of a foreign court in the act of the formality cannot be contradicted by applying the provision of art 230(3) of the CPA, ie it would not

205 cf Act on the Resolution of Conflict of Laws with Regulations of Other Countries, Official Gazette, Nos 53/91, 88/01, art 87 and PIL Act, art 67(1).

206 Vuković and Kunštek (n 46) 461.

207 ibid 461.

208 Mihajlo Dika, Gašo Knežević and Srđan Stojanović, *Komentar Zakona o međunarodnom privatnom pravu i procesnom pravu* (Nomos 1991) 286.

209 LPD Act, art 3; PIL Act, art 8(5).

210 CPA, art 231; LPD Act, art 3(1).

be allowed to prove falsehood of the act as a document in the direction that the presumption of res judicata were not fulfilled according to the law of the country of decision.[211] This is because such a certificate could be challenged exclusively by legal means before the court of the decision, as is the case in Croatian civil proceedings, in which only the court that issued the domestic certificate of res judicata is authorised *ex officio* or at the request of the party to revoke it, provided that legal conditions for its issuance were not met.[212] Thus, it can be concluded that a certificate of res judicata, as a specific court decision, can possibly be linked with a rebuttable presumption that a certificate of res judicata legally exists even after the adoption of a certificate of res judicata itself, ie that the court decision by its *lex fori* did not invalidate a certificate of res judicata.[213] In the event that a certificate of res judicata has in the meantime lost its legal effects, the opposing party could propose counter-evidence, ie prove that a certificate of res judicata does not exist as evidence. On the other hand, if a certificate of res judicata is considered exclusively a public document confirming the existence of a certain fact under the law of the country of decision, then a rebuttable presumption of authenticity would apply to such a document, and before the Croatian court it would be admissible to prove that the facts stated in the document are false, ie even to prove that the presumption of res judicata was not met according to the law of the country of decision.[214]

Finally, thirdly, the reference from art 71a(1) of the PIL Act to the need to submit evidence of the legalisation of the decision on adoption is redundant since even before the legislative intervention in question, the aforementioned was a prerequisite for the recognition of each foreign court decision, including a decision on adopting a child, unless otherwise stipulated by an international treaty or European law.[215] Although the public nature of a foreign document in each individual case will still depend on the *lex loci actus* (art 3(3) of the LPD Act), and only secondarily on Croatian law, it should be assumed that, considering the legal force and authority of the state that stands behind a court decision, in the majority of legal systems they have the status of public documents. Consequently, a foreign public document can be used in the Republic of Croatia only if it is certified by the Ministry of Foreign and European Affairs, ie a diplomatic or consular representation of the Republic of Croatia abroad.[216] Given that the LPD Act uses the wording that public documents issued abroad '*can be used in the Republic of Croatia only if they are authenticated* ...', this leads to the conclusion that the above applies to every use, without specifying whether

211 Dika, Knežević and Stojanović (n 208) 286.

212 Dika, Knežević and Stojanović (n 208) 286.; CPA, art 333a.

213 *Argumentum per analogiam* cf Dika (n 4) 532.

214 Dika, Knežević and Stojanović (n 208) 286.; CPA, arts 230(3) and 231.

215 Dika (n 4) 538.

216 LPD Act, art 3(1).

a foreign public document is used as a means of proof, as a mandatory attachment to the proposal for the recognition of a foreign court decision or for some other purpose. However, it must be concluded that the provision of the LPD Act primarily refers to the use of foreign public documents before the competent authorities of the Republic of Croatia and other persons with public power.

Furthermore, the provision of art 71a(1) of the PIL Act introduced legal uncertainty into the process of recognising foreign court decisions from a principle point of view. Namely, given that the PIL Act emphasises the need for legalisation exclusively in procedures for the recognition of a foreign court decision on adopting a child, ie when the country of origin of the decision is not a party to the international treaty regulating international adoption, *argumentum a contrario* points to the conclusion that for all other parties to court decisions whose recognition is carried out on the basis of the PIL Act, regardless of the legal matter, proof of legalisation in terms of the LPD Act does not have to be submitted. In particular, the question arises as to whether the provision of art 71a(1) of the PIL Act can be interpreted as a kind of derogation from the LPD Act in relation to all other foreign court decisions originating from countries with which the Republic of Croatia has not concluded a valid international treaty on the basis of which certification of foreign public documents, including court decisions, would be regulated in a different way. Thus, the provision of art 71a(1) of the PIL Act concerning the prescription of the obligation to legalise a foreign court decision on adoption caused a logical inconsistency between the provisions of the PIL Act and the LPD Act, which is against the requirement for the coherence of the legal system.[217] In terms of the use of foreign court decisions as public documents, impaired coherence of the domestic legal system applies equally to the procedures for deciding on recognition as the main matter and on recognition that is decided as a preliminary (prejudicial) issue. The aforementioned legislative intervention may also lead to the conclusion that by court decisions before the amendment of the PIL Act, the legislator renounced the status of public documents, both according to the *lex loci actus*, and secondarily according to the relevant Croatian law, so they did not even come within the scope of the provisions of the LPD Act. However, such an argument is not tenable. It should be taken into account that the Supreme Court of the Republic of Croatia, albeit from the criminal law level, took the position that court decisions are public documents.[218] Croatian substantive criminal law does not define an autonomous concept of public documents, while the criminal law doctrine reaches for normative determinations of public documents

217 Duško Vrban, *Država i pravo* (Golden marketing 2003) 425.

218 Supreme Court of the Republic of Croatia, judgment I Kž-904/05-8 of 13 June 2006.

in terms of the CPA and the GAP Act.[219] Thus, in any case, if the *lex loci actus* cannot be applied, at least from the aspect of Croatian law, (foreign) court decisions enjoy the status of public document.

As a result of the above, it should be assumed that in recognition procedures, regardless of the legal matter, foreign court decisions should continue to be subject to the provisions of the LPD Act, both in the application of the provision on the qualification of a foreign document as public, and consequently in legalisation, unless otherwise specified by international treaties. Namely, it is not logical for foreign court decisions to have legal effects in the Republic of Croatia after they have been recognised on the basis of the PIL Act, without having previously been subjected to the verification of the authenticity through the legalisation procedure, while on the other hand, within the meaning of art 231 of the CPA, foreign public documents that are intended to serve exclusively and solely as a means of proof would be subject to stricter control in terms of the verification of the authenticity in the legalisation procedure, unless otherwise specified by international or European law.[220] In this sense, it is necessary to distinguish between the legal and evidentiary value of foreign public documents, including foreign court decisions. Foreign court decisions acquire their legal force by recognition, and in that case, they are equivalent in effect to decisions of domestic courts, while foreign court decisions acquire their evidentiary value after they have been duly certified (legalised), unless otherwise stipulated by international treaties or European law, and in that case, they are bound by the presumption of authenticity of the document, just like domestic public documents.[221] However, despite the presumption of authenticity of public documents as a formal rule of evidence within the meaning of the CPA, it should be kept in mind that it is possible to prove that a public document is false.[222] On the other hand, if a foreign court decision, as a public document, is used before the court as a means of proof, then its wording in a refutable manner proves exclusively that what was established or produced by it exists even after the moment to which its formality refers, and as a public document, it proves the content of the explanation as such, but not the authenticity of the claims stated in the explanation of the decision.[223] The regularity of the wording or legal dispositions in a public document, including a court decision, cannot be refuted within the evidentiary proceeding, but the aforementioned can be refuted exclusively in accordance with the procedural rules of the proceeding within

219 See: Maja Munivrana Vajda, 'Krivotvorenje isprave' in Davor Derenčinović (ed), *Posebni dio kaznenog prava*, prvo izdanje (Pravni fakultet Sveučilišta u Zagrebu 2013) 225.

220 PIL Act, art 66(1).

221 Dika (n 4) 542.; CPA, arts 230 and 231; LPD Act, art 1.

222 CPA, art 230(3).

223 Dika (n 4) 532–533.

the framework of which the public document was issued.[224] Moreover, it is very likely that a foreign public document, as a means of proof in the proceedings, will not be the only and exclusive evidence, therefore the court will not necessarily make a decision in the proceedings only on the basis of the rule on the presumption of authenticity of the public document as a formal rule of evidence, but also by evaluating other evidence separately and all the evidence together, but also based on the results of the entire proceeding.[225] Consequently, it should be considered that the legal force of a certain document still has a higher degree of effectiveness than the evidentiary value, and this points to a reasonable conclusion that, as a result, all foreign court decisions in the recognition process based on the PIL Act should all the more be previously legalised in terms of the LPD Act, unless otherwise stipulated by international treaties.

Finally, it should be concluded that in addition to satisfying the then-current political needs, the legislative intervention, expressed through art 71a(1) of the PIL Act, clearly had the purpose to educate the addressees, 'step by step', how to act in connection with the proposal for the recognition of a foreign court decision on adoption, although the aforementioned was already regulated by the PIL Act and the LPD Act. The educational character of art 71a(1) of the PIL Act can also be inferred from the explanation of the Proposal of the Act Amending the Private International Law Act, which the Government of the Republic of Croatia, as an authorised proposer, submitted to the Croatian Parliament. Thus, the Government states that the goal of the proposed act is, *inter alia*, to ensure that in the recognition process, a foreign court decision on adoption is delivered to domestic courts legalised '*in accordance with existing regulations*'.[226]

5. Conclusion

In legal theory, issues related to the application of a public document issued by the authorised body of one country in order to exercise a right or fulfill an obligation in another country, have caused numerous dilemmas and have been the impetus for legislative interventions at the national and supranational level. The development of information and communication technologies and the digitalisation of national, European and international adjudication in civil matters require a review of the functionality of the existing legal framework and its application, which is the subject of discussion in this contribution.

224 Triva and Dika (n 1) 514.

225 CPA, art 8.

226 Proposal of the Act Amending the Private International Law Act, 2, <https://sabor.hr/sites/default/files/uploads/sabor/2023-05-19/135803/PZ_498.pdf> accessed 17 January 2024.

Unanswered questions related to the application of paper public documents are further complicated when an attempt is made to answer them in the context of the application of digitised public documents. Namely, the differences in the rules of national legal systems, such as the refusal to issue an Apostille on certified copies of public documents for the purpose of legal order protection due to frequent fraudulent practices with certified copies, can be an additional problem when it comes to dealing with electronic documents. Furthermore, the absence of uniform rules on the authenticity of an electronic public document, especially if the national system limits its time validity, gives rise to doubts as to the validity of the issued Apostille. In the context of the Republic of Croatia and the legal certainty of entities when presenting Croatian electronic public documents to the authorities of other countries, it would be opportune to propose, as the most optimal solution, that the Republic of Croatia joins the e-APP programme, and consequently consistently applies dualism regarding the addition of Apostilles, depending on the form of the public document. In this case, a paper (physical) Apostille should be attached to public documents that originally exist in a paper (physical) form, while an e-Apostille should be attached exclusively to electronic public documents.

Certain questions also arise regarding the status of court decisions as public documents in the regime of the Brussels I bis Regulation and the Brussels II ter Regulation. There is a fundamental doubt as to whether the wording '*documents ... issued under this Regulation*' refers to all types of documents, including judgments, or only to documents whose issuance is prescribed by the Regulation. In this regard, it is not entirely clear how the provisions of national procedural law should treat a court decision of another Member State if it were to be used exclusively as a means of proof. Should it necessarily have an Apostille? In the same way, with regard to asserting the objection *res judicata*, which is declared in the context of litigation before the court of a Member State that is different from the Member State of origin of the decision, will it be necessary for the decision to be accompanied by an adequate certificate in terms of the Brussels I bis Regulation and the Brussels II ter Regulation because the wording of the decision res judicata represents a legal disposition of the court and as such expresses a certain legal situation, not a fact, so it is not even a question of using the decision as a means of proof in the sense of the usual understanding?

It is precisely the criticism expressed regarding the *ad hoc* legislative intervention that amended the PIL Act in such a way that, *inter alia*, additional prerequisites are prescribed for the recognition of a foreign court decision on adopting a child from a country that is not a party to the international treaty governing international adoption, illustrates the difficulties in seeking solutions to these open questions. Therefore, this contribution is an incentive for their deeper consideration and search for comprehensive answers before formulating unequivocal conclusions and solutions.