

Court of the Tomsk Oblast  
Per. Makushin, 8  
634003 TOMSK  
Russian Federation

THE HAGUE, 16 February 2011

Your ref. :

Our ref. : 51076(11)CB/LJM

To the Court,

I am writing to the Court in my capacity as First Secretary of the Hague Conference on Private International Law with primary responsibility for the Hague Conference's work in relation to the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* ("Apostille Convention").

The Permanent Bureau has been informed that in recent adoption proceedings, issues have arisen concerning the acceptance of Apostilles issued by the Secretary of State of California in the United States of America. This is not the first time in which this issue has been brought to the attention of the Permanent Bureau (see my letter to the Court dated 21 January 2011, ref.: 50815(11)CB/MW).

Whilst the Permanent Bureau does not seek to intervene in the proceedings, it would like to convey to the Court its views on certain requirements of the Apostille Convention in respect of the acceptance of Apostilles.

### ***Form of the Apostille***

While an Apostille should conform as closely as possible to the Model Certificate annexed to the Convention, variations in the form of an Apostille (including its layout, colour and size) should not be a basis for rejection of the Apostille as long as it is clearly identifiable as an Apostille issued under the Convention. This view has been confirmed on two occasions by a "Special Commission" convened by the Hague Conference on Private International Law in 2003 and 2009, each of which was attended by experts representing Contracting States to the

2/...

Apostille Convention (including the Russian Federation).<sup>1</sup> It also reflects the background and purpose of the Model Certificate to ensure that Apostilles issued under the Convention by competent authorities in the various Contracting States are readily identifiable, thereby facilitating the international circulation of public documents.

### *Certifying the issuance of Apostilles*

Subjecting the acceptance of an Apostille to confirmation by a competent authority of its procedures for issuing Apostilles is *contrary* to the Apostille Convention. In this regard, the following points are relevant:

- the Russian Federation and United States of America are both Contracting States to the Apostille Convention;
- Article 3(1) of the Apostille Convention states that the *only* formality that may be required in order to authenticate a foreign public document is the addition of an Apostille;
- the Secretary of State of California has been duly designated by the United States of America pursuant to Article 6(1) of the Convention as an authority competent to issue Apostilles for public documents executed in the State of California; and
- Article 5(3) states that the Apostille is itself exempt from any further certification.

If an official in a Contracting State wishes to verify the issuance of an Apostille, Article 7(2) of the Apostille Convention establishes a procedure for contacting the issuing authority directly. In the case of Apostilles issued by the Secretary of State of California after 1 October 2006, this can be done simply by entering the Apostille number and issue date into the online register at < <http://www.sos.ca.gov/business/notary/apostille-search> >.

Finally, an Apostille may not be refused by a State on the grounds that it does not comply with the State's internal formalities and modes of issuance (see Conclusion and Recommendation No 92 of the 2009 Special Commission). In particular, it is up to the State that issued the Apostille to determine what documents are "public documents" within the meaning of the Apostille Convention, and therefore the types of documents for which an Apostille may be issued (see Conclusion and Recommendation No 72 of the 2009 Special Commission).

The Permanent Bureau remains at the disposal of the Court to discuss this matter further if required.

Yours sincerely,

Christophe Bernasconi  
First Secretary



<sup>1</sup> See Conclusion and Recommendation No 13 adopted by the Special Commission on the practical operation of the Hague Apostille, Evidence and Service Conventions (28 October to 4 November 2003), available at < [http://www.hcch.net/upload/wop/lse\\_concl\\_e.pdf](http://www.hcch.net/upload/wop/lse_concl_e.pdf) > and Conclusion and Recommendation No 92 of the Special Commission on the practical operation of the Hague Apostille, Service, Taking of Evidence and Access to Justice Conventions (2 to 12 February 2009), Permanent Bureau, available at < [http://www.hcch.net/upload/wop/jac\\_concl\\_e.pdf](http://www.hcch.net/upload/wop/jac_concl_e.pdf) >. A Russian translation of the text of the latter is available at < [http://www.hcch.net/upload/wop/jac\\_concl\\_ru.pdf](http://www.hcch.net/upload/wop/jac_concl_ru.pdf) >.