

# REPRESENTATION OF THE PARTIES IN THE COURT

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## Abstract

*The parties are assured of the possibility to participate in all phases of the process. They can take cognizance of the contents of the file, propose evidence, defend themselves, present their support in writing and orally and exercise legal remedies, in compliance with the conditions provided by law.*

*The court may order the parties to appear in person, even when they are represented.*

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According to the provisions of art.13 of the Code of civil procedure, the right to defense is guaranteed.

The parties have the right, throughout the course of the process, to be represented or, as the case may be, assisted under the conditions of the law.

The parties are assured of the possibility to participate in all phases of the process. They can take cognizance of the contents of the file, propose evidence, defend themselves, present their support in writing and orally and exercise legal remedies, in compliance with the conditions provided by law.

The court may order the parties to appear in person, even when they are represented.

## ***Procedural capacity of use***

According to art.56 of the Code of Civil Procedure, any person who has the use of civil rights can be sued.

However, associations, companies or other entities without legal personality can be sued, if they are established according to the law.

The lack of procedural capacity for use can be invoked in any state of the process. The procedural documents performed by the person who has no capacity for use are struck by absolute nullity<sup>2</sup>.

## ***Procedural capacity for exercise***

The one who has the quality of a party may exercise his procedural rights in his own name or through a representative, unless the law provides otherwise.

The party that does not have the exercise of procedural rights can stand trial unless it is represented, assisted or authorized under the conditions provided by the laws or, as the case may be, by the statutes that regulate its capacity or the way of organization.

The lack of capacity to exercise procedural rights can be invoked in any state of the process.

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<sup>2</sup> Article 32 of the Code of Civil Procedure

Any request may be made and supported only if its author:

- a) has procedural capacity;
- b) has procedural quality;
- c) formulate a claim;
- d) justify an interest.

These provisions also apply to defenses.

Decision no.2 / 2016 of the JCCJ Appeal in the interest of the law.

In the interpretation and application of the provisions of art.32 paragraph.1 letter a) and art.56 paragraph.1 of the Code of civil procedure, respectively of art.80 of Law no.85 / 2014 regarding the procedures for the prevention of insolvency and insolvency, the employer terminated following the insolvency proceedings finalized with the deletion from the specific registers, cannot stand in court, having no procedural capacity of use, and the former liquidator, called in the court in his own name has no passive procedural quality. of the Code of Civil Procedure

The procedural documents performed by the person who does not have the exercise of the procedural rights are cancelable. However, his legal representative or guardian will be able to confirm all or only part of these documents.

When the court finds that the procedural document has been performed by a party lacking the capacity to exercise, it will grant a deadline for its confirmation. If the document is not confirmed, its cancellation will be ordered. These provisions also apply to persons with limited exercise capacity.

#### Forms of representation

According to Article 80 of the Code of Civil Procedure, the parties may exercise the procedural rights personally or through a representative. The representation may be legal, conventional or judicial.

Individuals without exercise capacity will be sued by a legal representative.

The parties may stand trial through an elected representative, under the conditions of the law, unless the law imposes their personal presence before the court.

When the law provides or when the circumstances of the case require it to ensure the right to a fair trial, the judge may appoint for any part of the trial a representative under the conditions of art.58 paragraph 3 of the Civil Procedure Code, showing at the end the limits and the duration of the representation<sup>1</sup>.

When the right of representation arises from the law or from a court decision, the assistance of the representative by a lawyer is not mandatory.

The limits of representation. Continue the trial of the trial

The renunciation of the judgment or the right deduced from the judgment, the payment of the judgment, the conclusion of a transaction, as well as any other procedural documents of disposition can be done by the representative only on the basis of a special mandate or with the prior approval of the competent court or administrative authority.

The procedural disposition documents made in any process by the representatives of the minors, of the persons placed under interdiction and of the missing persons, will not prevent the trial of the case, if the court considers that they are not in the interests of these persons.

According to art.315 of the Civil Code, if one of the spouses is unable to manifest his will, the other spouse may ask the guardianship court to represent him for the exercise of his rights under the matrimonial property regime. By the decision issued, the conditions, limits and validity period of this mandate are established.

Except for other cases provided by law, the term of office ceases when the represented spouse is no longer in the mentioned situation or when a guardian is appointed or, as the case may be, a guardian.<sup>2</sup>

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<sup>1</sup> Article 58

In case of emergency, if the natural person lacking the capacity to exercise civil rights does not have a legal representative, the court, at the request of the interested party, will appoint a special guardian, who will represent it until the legal representative is appointed, according to the law. Also, the court will appoint a special guardian in case of conflict of interests between the legal representative and the represented one or when a legal person or an entity mentioned in art. 56 paragraph (2), called to stand trial, has no representative.

The provisions of para. (1) also applies to persons with limited exercise capacity.

The appointment of these trustees will be made by the court that judges the trial, among the lawyers specifically appointed for this purpose of the bar for each court. The special guardian has all the rights and obligations provided by law for the legal representative.

The provisional remuneration of the so-called curator is fixed by the court, by the conclusion, and the payment method is also established. At the curator's request, with the termination of his quality, taking into account the activity carried out, the remuneration may be increased.

<sup>2</sup> Art.345 of the Civil Code

Conservation, use and administration documents

Each spouse has the right to use the common good without the express consent of the other spouse. However, the change of the destination of the common good can only be done through the agreement of the spouses.

Also, each spouse may conclude single acts of conservation, acts of administration regarding any of the common assets, as well as acts of acquisition of the common goods.

The provisions of art. 322 remain applicable.

#### Lack of proof of representative quality

When the court finds the lack of proof of the representative's capacity to act on behalf of the party, it will give a short term for covering the deficiencies. If they are not covered, the application will be canceled.

The exception of the lack of proof of the quality of representative before the first court cannot be invoked for the first time in the appeal.

#### Conventional representation of natural persons

Before the first court, in the appeal, as well as in the appeal, the natural persons can be represented by a lawyer or another agent. If the mandate is given to a person other than a lawyer, the agent can draw conclusions on the procedural exceptions and on the fund only through a lawyer, both in the process investigation process and in the debates stage.

If the agent of the natural person is a spouse or a relative up to the second degree inclusive, he can draw conclusions before any court, without being assisted by the lawyer, if he is licensed in law.

In the case of the annulment appeal and the revision, the provisions apply accordingly.

#### Conventional representation of legal entities

The legal persons can be represented conventionally before the courts only through legal counsel or lawyer, according to the law.<sup>1</sup>

The aforementioned provisions also apply to the entities mentioned in art.56 paragraph 2<sup>2</sup>.

#### Request for enforced execution

According to art.664 of the Code of Civil Procedure, forced execution can only start at the request of the creditor, unless otherwise provided by law.

The forced execution request is submitted, either personally or through a legal or conventional representative, to the competent judicial executor's office, or it is sent to him by mail, courier, fax, electronic mail or by other means that ensure the transmission of the text and the confirmation of the receipt of the execution request with all the documents supporting.<sup>3</sup>

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To the extent that his interests related to the community of goods have been harmed by a legal act, the spouse who did not participate in the conclusion of the act can only claim damages from the other spouse, without affecting the rights acquired by the third parties of good -faith.

#### Article 346

##### Deed of alienation and encumbrance

The alienation or encumbrance documents with real rights regarding the common property can only be concluded with the agreement of both spouses.

However, any of the spouses may dispose of, on a charge basis, the common movable property whose alienation is not subject, according to the law, to certain advertising formalities. The provisions of art. 345 paragraph (4) remain applicable.

They are also exempted from the provisions of par. (1) ordinary gifts.

#### Art.347

##### Relative nullity

The act concluded without the express consent of the other spouse, when it is required by law, is void.

The third party acquiring the due diligence to inquire about the nature of the good is defended by the effects of nullity. The provisions of art. 345 paragraph (4) remain applicable.

<sup>1</sup>By Decision no.9 / 2016 of the JCCJ published in the Official Gazette no.400 / May 26, 2016 the Completion for the unraveling of some questions of law in civil matters and established:

In the interpretation and application of the provisions of art.84 paragraph 1 of the Code of civil procedure, the request for legal proceedings and the conventional representation of the legal person before the courts can not be made through the agent legal person, nor through the legal adviser or his lawyer.

<sup>2</sup> Art.56 of the Code of Civil Procedure

##### Procedural capacity of use

Any person who has the use of civil rights can be sued.

However, associations, companies or other entities without legal personality can be sued, if they are established according to the law.

The lack of procedural capacity for use can be invoked in any state of the process. The procedural documents performed by the person who has no capacity for use are struck by absolute nullity.

<sup>3</sup> By Decision no.19 / 2018 of the JCCJ published in the Official Gazette no.510 / June 21, 2018, the Completion for the unraveling of some questions of law in civil matters, and establishes that:

### ***Form of mandate***

According to art.84 of the Code of civil procedure, the power to represent a natural person given to the trustee who does not have the capacity of lawyer is evidenced by an authentic document.

In the cases provided above, the right of representation can also be given by verbal declaration, made in court and recorded at the conclusion of a meeting, showing the limits and duration of representation.

The empowerment to represent a natural person or legal person given to a lawyer or legal adviser is evidenced by writing, according to the laws of organization and exercise of the profession.

### ***General mandate***

The proxy with a general power of attorney can sue the principal only if this right has been given to him. If the person who has given the power of attorney has no domicile or residence in the country or if the power of attorney is given to a foreclosure, the right of representation in court is presumed given.

### ***Content of the mandate***

The mandate is supposed to be given for all the procedural acts performed before the same court; however, it may be expressly restricted to certain acts.

The lawyer who represented or assisted the party in the trial of the trial can do, even without a warrant, any acts for the preservation of the rights subject to a deadline and which would be lost by not exercising them in time and can also bring any appeal against the decision. pronounced. In these cases, all the procedural documents will be performed only to the party. The appeal can be sustained only on the basis of a new power of attorney<sup>1</sup>.

### ***Termination of the mandate***

The mandate does not end with the death of the one who gave it, even if he has become incapable. The term of office continues until he is withdrawn by the heirs or by the legal representative of the incapable.

### ***Waiver of mandate and revocation of mandate***

The renunciation of the mandate or its revocation can be opposed to the other party only from the communication, except if it was made in the court hearing and in its presence.

The trustee who relinquishes the power of attorney is required to notify both the person who gave the mandate and the court, at least 15 days before the immediate term following the resignation. The trustee cannot waive the mandate during the term of the appeal.

### ***Legal assistance***

#### ***Granting conditions***

According to Article 90 of the Code of Civil Procedure, the person who is unable to face the expenses involved in the initiation and support of a civil trial, without jeopardizing his own maintenance or his family, can benefit from legal assistance, under the conditions special law on public judicial aid.

The judicial assistance includes:

- a) granting exemptions, reductions, staggerings or postponements for the payment of the legal fees provided by law;
- b) free defense and assistance through a lawyer appointed by the bar;
- c) any other modalities provided by law.

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In the interpretation and application of art.664 paragraph 2 of the Civil Procedure Code, the conventional representation of the legal person cannot be made through the agent legal person, nor through the legal adviser or his lawyer according to art.84 paragraph 1 of the Procedural Code civil law, as it was interpreted by the decision no.9 / 2016 pronounced by the JCCJ.

<sup>1</sup> Law no.51 / 1995 for the organization and exercise of the profession of lawyer, republished in the Official Gazette no.440 / 24.05.2018.

Law no.514 / 2003 on the organization and exercise of the profession of legal adviser, published in the Official Gazette no.867 / 05.12.2003.

Judicial assistance can be provided at any time during the trial, in whole or in part.

The legal entities can benefit from facilities in the form of reductions, staggerings or postponements for the payment of stamp stamp fees due for actions and requests introduced in the courts, under the special law conditions.

***Special provisions***

The provisions contained in special laws regarding the exemption of taxes, tariffs, commissions or sureties for applications, actions and any other measures taken in order to administer the tax receivables remain applicable.

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