TEST MEANS. AUTHENTIC REGISTRATION

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Abstract

The authentic document, according to art. 269 of the Code of Civil Procedure, is the document drawn up or, as the case may be, received and authenticated by a public authority, by the notary public or by another person invested by the state with public authority, in the established form and conditions. by law. The authenticity of the document refers to the establishment of the identity of the parties, the expression of their consent regarding the content, their signature and the date of the document.

Keywords: *authentic document, public authority, identity of the party, consent.*

JEL classification: K0 K1

By document is meant any statement about a fact or legal act, made by hand or by any other way of writing on paper, other material: glass, wood, metal, canvas, telex, fax, etc., or printing on electromagnetic tape, film , disc, etc.

According to art.265 of the Code of Civil Procedure, the document is any writing or other record that contains data about a legal act or fact, regardless of its material support or the manner of conservation and storage.

The document on computer support is admitted as evidence under the same conditions as the document on paper, if it meets the conditions provided by law.

Documents made in electronic form are subject to the provisions of the special law[2]. The documents are preferred by the parties and have the advantage that they are easy to store, can be multiplied and easily administered.

The role of the signature

According to art.268 of the Code of Civil Procedure, the signature of a document makes full faith, until proven otherwise, about the existence of the consent of the party who signed it regarding its content. If the signature belongs to a civil servant, it confers authenticity on that document, in accordance with the law.

When the signature is electronic, it is valid only if it is reproduced under the conditions provided by law[3].

The documents can be: preconstituted and unconstituted documents.

There are pre-constituted documents: authentic documents, documents under private signature, drafts, receipts, notes, invoices, etc., issued in order to serve as evidence in the future.

There are unconstituted documents: the registers of the merchants, the registers and the house papers, the mentions written by the creditor on the credit titles or on the receipts, the ordinary letters.

The authentic document, according to art. 269 of the Code of Civil Procedure, is the document drawn up or, as the case may be, received and authenticated by a public authority, by the notary public or by another person invested by the state with public authority, in the established form and conditions. by law. The authenticity of the document refers to the establishment of the identity of the parties, the expression of their consent regarding the content, their signature and the date of the document.

Any other document issued by a public authority and to which the law confers this character is also authentic.

Authentic documents are considered:

- authentic notarial deeds[4];

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[2] Law no. 365/2002 on electronic commerce, republished in Official Gazette no. 959 / 29.11.2006.

[3] Law no. 455/2001 regarding the electronic signature, published in the Official Gazette no. 429 / 31.07.2001.

[4] Law no. 36/1995 of the notaries public and of the notarial activity, republished in the Official Gazette no. 479 / 01.08.2013.

- decisions of the courts[1];
- other authentic documents, provided by special laws (Law no. 119/1996 on civil status documents).

The authentic instrument takes effect from the moment the notary took the consent of the parties and they signed the document.

Proving power

The proving power of the authentic document derives from the fact that it was authenticated, or even drafted, by the notary public.

According to art.270 of the Code of Civil Procedure, the authentic document makes full proof, against any person, until its declaration as false, regarding the findings made personally by the person who authenticated the document, in accordance with the law.

The statements of the parties contained in the authentic document shall prove, until proven otherwise, both between the parties and against any other person.

These provisions on the statements of the parties are also applicable in the case of entries in the document which are directly related to the legal relationship of the parties, without being the main object of the act. The other entries shall constitute, between the parties, the beginning of written evidence.

The authentic instrument contains two categories of mentions:

Mentions referring to the personal findings of the notary, mentions that have full proving power and that can be challenged only through a specific procedure, called "denunciation of the document as false". This category of mentions includes: the signatures of the parties and the notary, the mentions regarding the presence of the parties and their identity, the date of drawing up the deed, the place of its conclusion, the declaration of the parties that those contained in the document express their will.

The statements containing the statements of the parties, statements that prove to the "contrary evidence". These mentions have the proving power of the deed under private signature.

The authentic document enjoys "a presumption of authenticity", the person contesting it having the task to prove the falsity of the document through the procedure of registration in false.

The authentic document is opposable erga omnes, ie it is opposable to all.

Reporting the document as false

According to art.304 of the Code of Civil Procedure, if at the latest after the submission of a document used in the process one of the parties declares that it is false by falsifying the writing or signature, it is obliged to show the reasons on which it is based.

If the party using the document is not present, the court will order the person to appear in person in order to become aware of the denunciation of the document as false, to submit the original and to give the necessary explanations.

The judge may order the presentation of the parties even before the first trial period, if the party declares, by reply, that his writing or signature is forged.

In duly justified cases, the parties may be represented by proxies.

Checking the status of the document reported as false

The judge will immediately ascertain, through the minutes, the material condition of the document denounced as false, if there are erasures, additions or corrections on it, then he will sign it, unchanged, and will entrust it to the registry, after being countersigned by the clerk. and parts.

If the parties do not want or cannot sign, all this will be mentioned in the minutes.

At the same time when the document was denounced as false or, if the party using the document is not present, at the next term, the judge asks the party who produced the document, if he agrees to use it.

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[4] Law no. 134/2010 Code of Civil Procedure, republished in the Official Gazette no. 247 / 10.04.2015.
Art.434. The court decision has the probative force of an authentic document.

If the party who used the document is missing, refuses to answer or declares that the document is no longer used, it will be removed, in whole or in part, as the case may be.

If the party who denounced the document as false is missing, refuses to answer or withdraws his declaration of denunciation, the document will be considered recognized.

Suspension of the trial and notification of the prosecutor's office

If the party who presented the document insists on using it, although the denunciation as false has not been withdrawn, the court, if the author of the forgery or his accomplices is indicated, may suspend the trial, immediately forwarding the document denounced as false to the competent prosecutor's office. for the investigation of the forgery, together with the minutes that will be concluded for this purpose.

The investigation of the forgery by the civil court

If, according to the law, the criminal action cannot be initiated or cannot continue, the investigation of the forgery will be made by the civil court, by any means of proof.

Nullity and conversion of the authentic document

According to the provisions of art. 265 of the Code of Civil Procedure, the authentic document drawn up without observing the forms provided for its valid conclusion or by an incompatible, incompetent person or exceeding the competence is struck by absolute nullity, unless the law provides otherwise.

However, the respective document makes full proof as a document under private signature, if it is signed by the parties, and if it is not signed, it constitutes, among them, only the beginning of a written proof[1].

Convert the authentic document

If the document is not valid as an authentic document, the problem of its conversion arises.

If the solemn form was validated ad validitatem and the act is struck by absolute nullity if it did not comply with the form, so that the act can not be considered valid either as a private signature or as a beginning of written evidence.

If the solemn form was not required by law ad validitatem, and the authentic document is not authentic due to the incompetence or incapacity of the investigating agent, it is valid, if it was signed by the parties, as a document under private signature. If the document is not signed by the parties, it has the value of a beginning of written evidence that can be completed with the evidence with witnesses and presumptions.

In connection with the proving power of the authentic document, a clarification must be made in two respects:

When for the authentic act the law requires the “formal condition of authenticity” - ad validitatem -, the nullity of the authentic document necessarily attracts the nullity of the legal act itself - negotium -, which, thus, will no longer have any proving power.

When the authentic document was drawn up only to constitute “ad probationem” proof, the nullity of this authentic document does not attract the nullity of the legal act - negotium - ascertained by that document, it having the proving power of the document under private signature.

The advantages of authentic writing.

- proves it until the false registration test, practically until the finding of the forgery following the expertise.

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[1] According to art.310 of the Code of Civil Procedure, any writing, even unsigned and undated, which comes from a person to whom that writing is opposed or from the one whose successor in rights is that person, is considered the beginning of written proof. the writing makes the alleged fact credible.

The document, even unsigned by the person to whom it opposes, constitutes the beginning of written proof, even if it was drawn up in front of a competent official attesting that the statements contained in the document are in accordance with those made by that person.

The beginning of written evidence may be proved between the parties only if it is supplemented by other means of proof, including witness evidence or presumption.

- enjoys the presumption of validity, the one who uses it is exempt from any proof, the one who challenges it having the task of proving the contrary proof.

- the document authenticated by the notary public who ascertains a certain and liquid receivable has the force of executory title at the date of exigibility of the receivable (art. 67 of Law no. 36/1995). Thus, the authentic document can be enforced without the need to invest it with an enforceable formula[1].

A legal consequence of a special importance of the authentic document consists in the fact that, by investing it with the executory formula, it "becomes executory", allowing the transition to the forced execution, without the need for the process.

Regarding the obligation to return, the loan agreement concluded in authentic form or by a document under private signature with a certain date constitutes an enforceable title, in accordance with the law, in case of termination by the death of the borrower or by the expiration of the term.

If a term for restitution has not been stipulated, the loan agreement constitutes an enforceable title only if the use for which the good was borrowed is not provided or the intended use has a permanent character (art. 2157 of the Civil Code).

Lease contracts concluded by document under private signature that have been registered with the tax authorities, as well as those concluded in authentic form constitute enforceable titles for the payment of rent at the terms and in the manner established in the contract or, in their absence, by law (art.1798 of the Civil Code).

The lease contract terminates by right upon expiration of the term agreed by the parties or, as the case may be, provided by law, without the need for prior notice.

Regarding the obligation to return the leased property, the contract concluded for a determined duration and established by an authentic document constitutes, in accordance with the law, an enforceable title at the expiration of the term.

These provisions apply accordingly to the contract concluded for a determined period by document under private signature and registered with the competent fiscal body (art. 1809 of the Civil Code).

Applications of the authentic document

According to art.99 of the new Civil Code, the proof of marital status is regulated, thus, marital status is proved by birth, marriage and death documents drawn up, according to the law, in the civil status registers, as well as by civil status certificates issued on the basis them.

The civil status documents are authentic documents and prove until the false registration, for what represents the personal findings of the civil status officer, and, until the contrary proof, for the other mentions.

The court decision given on the marital status of a person is opposable to any other person unless a new decision has established otherwise.

If by a court decision a certain marital status of a person has been established, and by a subsequent court decision an action is allowed challenging the marital status thus established, the first decision loses its effects on the date of finality of the second decisions.

The authentic will

The will is authentic if it was authenticated by a notary public or by another person invested with public authority by the state, according to the law.

On the occasion of authentication, the testator may be assisted by one or 2 witnesses (art. 1042 of the Civil Code).

Preparation of the authentic will

The testator dictates his dispositions in front of the notary, who takes care of writing the deed and then reads it to him or, as the case may be, gives it to him to read it, expressly

[1] M.Tăbârcă - Civil procedural law, Ed. Universul Juridic, Bucharest, 2013
Law no. 36/1995 on Notaries Public and Notarial Activity, republished in the Official Gazette no. 479 / 01.08.2013.

mentioning the fulfillment of these formalities. If the disposer has already drafted his last will and testament, the authentic will will be read to him by the notary.

After reading, the disposer must declare that the act expresses his last will.

The will is then signed by the testator, and the authentication conclusion by the notary (art. 1044 of the Civil Code).

Authentication in particular situations

In the case of those who, due to infirmity, illness or any other cause, cannot sign, the notary public, fulfilling the act, will mention this circumstance in the conclusion he draws up, the mention thus made taking the place of signature. The mention will be read to the testator by the notary, in the presence of 2 witnesses, this formality replacing the absence of the testator's signature.

The declaration of will of the deaf, dumb or deaf-mute, literate, will be given in writing before the notary public, by the registration by the party, before the signature, of the mention "I consent to this act, which I have read".

If the deaf, dumb or deaf-mute is, for any reason, unable to write, the declaration of intent will be taken by the interpreter.

In order to obtain the consent of a blind person, the notary public will ask if he heard correctly when the contents of the will were read to him, noting this in the conclusion of authentication (art. 1045 of the Civil Code).

Registration of the authentic will

In order to inform the persons who justify the existence of a legitimate interest, the notary who authenticates the will has the obligation to register it, immediately, in the National Notarial Register kept in electronic format, according to the law. Information about the existence of a will can only be given after the testator's death.

Designation of the guardian by the parent

The parent may designate, by unilateral act or by mandate contract, concluded in authentic form, or, as the case may be, by will, the person to be appointed guardian of his children (art. 114 of the Civil Code).

Designation of guardian

Any person who has full capacity to exercise may designate by unilateral act or mandate contract, concluded in authentic form, the person to be appointed guardian to take care of the person and his property in case he is placed under judicial interdiction (art.166 of the Civil Code).

Date of transmission of rights and obligations

In the case of reorganization of legal entities subject to registration, the transfer of rights and obligations is made both between the parties and to third parties, only by registering the operation and from its date.

With regard to other legal entities not subject to registration, the transfer of rights and obligations is made both between the parties and to third parties, only on the date of approval by the competent body of the inventory, balance sheet prepared for delivery-receipt, records and the distribution of all contracts in progress, as well as any other such acts provided by law.

In the case of real estate subject to transfer, the right of ownership and other real rights are acquired only by registration in the land register, based on the reorganization deed concluded in authentic form or, as the case may be, the administrative act ordering the reorganization, in both situations accompanied, if necessary, by the registration certificate of the newly established legal entity (art. 242 of the Civil Code).

Liquidation of the matrimonial regime

In case of termination or change, the matrimonial regime is liquidated according to the law, by good will or, in case of misunderstanding, by court. The final court decision or, as the

case may be, the document drawn up in authentic notarial form constitutes a liquidation act (art. 320 of the Civil Code).

Conclusion of the matrimonial agreement

Under the sanction of absolute nullity, the matrimonial agreement is concluded by a document authenticated by the notary public, with the consent of all parties, expressed personally or by an agent with an authentic, special power of attorney and having a predetermined content.

The matrimonial agreement concluded before the marriage takes effect only from the date of the conclusion of the marriage.

The agreement concluded during the marriage takes effect from the date provided by the parties or, failing that, from the date of its conclusion (art. 330 of the Civil Code).

Liquidation of the community regime

Upon termination of the community, it is liquidated by court decision or authentic notarial deed (art. 335 of the Civil Code).

Sharing during the community regime

During the community regime, the common goods can be divided, in whole or in part, by a deed concluded in authentic notarial form, in case of goodwill, or in court, in case of misunderstanding (art. 358 of the Civil Code).

Forms of recognition

Recognition can be made by declaration to the civil status service, by authentic document or by will.

If the recognition is made by an authentic document, a copy of it is sent ex officio to the competent civil status service, in order to make the corresponding mention in the civil status registers.

The recognition, even if it was made by will, is irrevocable (art. 416 of the Civil Code).

Registration of the property right in the land book

Whenever the acquisition of the property right, exclusively or in shares, is conditioned, according to the regulations in this section, by the registration in the land book, the registration is made under the agreement of the parties, concluded in authentic form, or, as the case may be, of the court decision (art. 589 of the Civil Code).

Minimum distance in construction

Any constructions, works or plantations can be done by the owner of the fund only with the observance of a minimum distance of 60 cm from the border line, unless otherwise provided by law or by urban planning regulations, so as not to infringe the rights the neighboring owner. Any derogation from the minimum distance can be made by agreement of the parties expressed in an authentic document (art. 612 of the Civil Code).

Conventions on the suspension of sharing

Agreements on the suspension of sharing may not be concluded for a period longer than 5 years. In the case of real estate, the agreements must be concluded in authentic form and subject to the publicity formalities provided by law (art. 672 of the Civil Code).

Legal effects of sharing

Each co-owner becomes the sole owner of the assets or, as the case may be, of the sums of money assigned to him only from the date established in the deed of division, but not earlier than the date of conclusion of the deed, in case of voluntary division, or, as the case may be, from the date of finality of the court decision.

In the case of real estate, the legal effects of the division occur only if the partition deed concluded in an authentic form or the final court decision, as the case may be, have been registered in the land book (art. 680 of the Civil Code).

Conditions for registration in the land book

The registration in the land book is made on the basis of the authentic notarial deed, of the final court decision, of the heir certificate or on the basis of another act issued by the administrative authorities, in cases where the law provides this (art. 888 of the Civil Code).

Authentic donation registration

The donation is concluded by an authentic document, under the sanction of absolute nullity.

Indirect donations, disguises and hand gifts are not subject to these provisions.

In order to inform the persons who justify the existence of a legitimate interest, the notary who authenticates a donation contract has the obligation to immediately register this contract in the national notarial register, kept in electronic format, according to the law. The provisions regarding the land book remain applicable (art. 1012 of the Civil Code).

Contents of the inventory

In cases where the administrator is obliged to draw up an inventory, it must include a complete enumeration of the entrusted goods or of the content of the patrimonial mass or of the patrimony subject to administration.

The inventory is drawn up either by an authentic document or by a document under private signature comprising the date and place of preparation and signed by the author and the beneficiary, and in the absence of the latter, by 2 witnesses. The findings regarding which the beneficiary did not object have full probative force towards the latter (art. 820 of the Civil Code).

Acquisition and extinguishment of real rights over real estate

Subject to contrary legal provisions, the real rights over the real estate included in the land book are acquired, both between the parties and against third parties, only by their registration in the land book, based on the act or fact that justified the registration.

The real rights will be lost or extinguished only by their deletion from the land book, with the consent of the holder, given by a notarial deed. This consent is not necessary if the right is extinguished by the fulfillment of the term indicated in the registration or by the death or, as the case may be, by the cessation of the legal existence of the holder, if he was a legal person.

If the right to be canceled is encumbered in favor of a third person, the cancellation will be made by keeping the right of this person, except for the specific cases provided by law.

The final court decision or, in the cases provided by law, the act of the administrative authority will replace the agreement of will or, as the case may be, the consent of the holder (art. 885 of the Civil Code).

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