ADMINISTRATION OF EVIDENCE BY LAWYERS OR LEGAL ADVICERS

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Abstract

At the first court term at which the parties have been legally summoned, the parties, present in person or represented, may agree that the lawyers who assist and represent them administer the evidence in question.

Consent for the administration of evidence will be given by the parties, personally or through a special power of attorney, in front of the court, taking note of this in the conclusion, or by a document drawn up in front of the lawyer, who is obliged to certify the consent and the signature of the party which he assists or represents. If there are several parties assisted by the same lawyer, consent will be given by each of them separately.

At the same time, each party is obliged to declare that for the respective procedure it chooses its domicile with the lawyer who represents it.

Key words: *parties, conclusion, special power of attorney, court, consent, signature.*

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According to the provisions of art. 366 of the Code of Civil Procedure, the provisions of the code are applicable to all disputes, except those concerning the marital status and capacity of the persons, family relations, as well as any other rights on which the law does not allow to make a transaction.

The court's obligation

At the first court term at which the parties have been legally summoned and if they are present or represented, the court will ask them if they agree that the evidence be administered according to the provisions of this subsection.

Convention of the parties

At the first court term at which the parties have been legally summoned, the parties, present in person or represented, may agree that the lawyers who assist and represent them administer the evidence in question, according to the provisions of this subsection.

Consent for the administration of evidence will be given by the parties, personally or through a special power of attorney, in front of the court, taking note of this in the conclusion, or by a document drawn up in front of the lawyer, who is obliged to certify the consent and the signature of the party which he assists or represents. If there are several parties assisted by the same lawyer, consent will be given by each of them separately.

At the same time, each party is obliged to declare that for the procedure in this subsection it chooses its domicile with the lawyer who represents it.

The given consent cannot be revoked by one of the parties.

Conducting the court session

According to art. 369 of the Code of Civil Procedure, during the administration of the evidence by the lawyers, the court hearings, when they are necessary, take place according to art. 240, with the mandatory participation of lawyers[2].

Measures taken by the court

According to the provisions of art. 370 of the Code of Civil Procedure, after establishing the validity of the given consent, the court will take the measures provided for in art. 237 para. (2).

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[2] Art. 240 of the Civil Procedure Code

The investigation of the trial takes place in front of the judge, in the council chamber, with the summoning of the parties. The provisions of art. 154 are applicable.

In appeals, the investigation of the process, if necessary, is done in open session.

When, according to the law, requests can be made even after the first court term at which the parties are legally summoned, the court can grant a short term for this purpose, notified to the parties represented by the lawyer.

The provisions of art. 227 and of art. 254 para. (2)-(4) are applicable[1].

The party that is unjustifiably absent from the deadline for the approval of evidence will be deprived of the right to propose and administer any evidence, except for the one with documents, but will be able to participate in the administration of evidence by the other party and will be able to fight this evidence.

The deadline for the administration of evidence

According to art. 371 of the Code of Civil Procedure, for the administration of evidence by lawyers, the court will establish a term of up to 6 months, taking into account their volume and complexity.

The 6-month period may be extended if during the administration of the evidence:

1. an exception or a procedural incident is invoked on which, according to the law, the court must rule; in this case, the term is extended by the time necessary to resolve the exception or incident;

2. terminated, for any reason, the legal assistance contract between one of the parties and his lawyer; in this case, the term is extended by at most one month for hiring another lawyer;

3. one of the parties has died; in this case, the term is extended by the time during which the process is suspended according to art. 412 para. (1) point 1 or with the deadline granted to the interested party for bringing the heirs to trial[2];

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[1] Article 227

Throughout the process, the judge will try to reconcile the parties, giving them the necessary instructions, according to the law. For this purpose, he will request the personal appearance of the parties, even if they are represented. The provisions of art. 241 para. (3) are applicable.

In disputes that, according to the law, can be the subject of the mediation procedure, the judge can invite the parties to participate in an information session regarding the advantages of using this procedure. When he considers it necessary, taking into account the circumstances of the case, the judge will recommend the parties to resort to mediation, in order to settle the dispute amicably, in any phase of the trial. Mediation is not binding on the parties.

If the judge recommends mediation, the parties will appear before the mediator, in order to inform them about the advantages of mediation. After the information, the parties decide whether or not to accept the settlement of the dispute through mediation. Until the deadline set by the court, which cannot be shorter than 15 days, the parties submit the minutes drawn up by the mediator regarding the result of the information session.

The provisions of para. (3) are not applicable if the parties tried to settle the dispute through mediation before the action was initiated.

If, under the conditions of para. (1) or (2), the parties reconcile, the judge will note their consent in the content of the decision he will give. The provisions of art. 440 are applicable.

Art. 254 paragraphs 2 and 4

The evidence that was not proposed under the conditions of para. (1) will no longer be able to be requested and approved during the process, except in cases where:

1. the need for proof results from the amendment of the request;
2. the need for the administration of evidence emerges from the judicial investigation and the party could not foresee it;
3. the party informs the court that, for thoroughly justified reasons, it could not propose the required evidence within the deadline;
4. the administration of the evidence does not lead to the postponement of the judgment;
5. there is the express agreement of all parties.

In case of postponement, for the reasons provided in para. (2), the party is obliged, under the penalty of losing the right to administer the approved evidence:

a) to submit the list of witnesses within 5 days from the approval of the evidence, when the evidence with witnesses is requested;

b) to submit certified copies of the cited documents at least 5 days before the deadline set for the trial, if the evidence with documents has been approved;

c) to submit the interrogation within 5 days from the approval of this evidence, in cases where the interrogation must be communicated, according to the law;

d) to submit the proof of payment of the expenses necessary to carry out the expertise, within 5 days from the appointment of the expert or within the term established by the court according to the provisions of art. 331 para. (2), if the expert evidence was approved.

[2] 3Art. 412

The trial of the cases is suspended by law:

4. in any other cases where the law provides for the suspension of the process, the term is extended by the period of the suspension, the provisions of art. 411 para. (1) point 2 not being applicable.

Test administration schedule

In no more than 5 days after the approval of the evidence, the lawyers of the parties will present to the court the program for their administration, bearing the signature of the lawyers, in which the place and date of the administration of each evidence will be shown. The program is approved by the court, in the council chamber, and is binding for the parties and their lawyers.

In the processes provided for in art. 92 para. (2) and (3) the program will be communicated immediately to the prosecutor, under the conditions of art. 383[1].

The evidence can be administered in the office of one of the lawyers or in any other agreed place, if the nature of the evidence requires it. The parties, through lawyers, are obliged to communicate their documents and any other documents, by registered letter with confirmation of receipt or directly, under signature.

The agreed date for the administration of evidence can be changed, with the consent of all parties.

If the administration of the test is not possible for objective reasons, a new term will be established. If the parties do not agree, the court will be notified, according to art. 373.

Unjustified non-compliance with the program entails forfeiture of the party's right to administer the respective test.

The provisions of art. 262 are applicable[2].

Incident resolution

According to art. 373 of the Civil Procedure Code, if during the administration of evidence one of the parties formulates a request, invokes an exception, the inadmissibility of any evidence or any other incident regarding the administration of evidence, it will notify the court which, with the summons of the other party, by concluding given in the council chamber, it will be pronounced immediately, and when necessary, in no more than 15 days from the date on which it was notified. The termination can only be challenged with the merits of the case.

Entries held by third parties

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1. by the death of one of the parties, until the heirs are brought into the case, except when the interested party requests a deadline for bringing them to court.

[1] Article 92

(2) The prosecutor may present conclusions in any civil process, in any phase thereof, if he deems it necessary to defend the legal order, the rights and interests of citizens.

(3) In the specific cases provided by law, the participation and submission of conclusions by the prosecutor are mandatory, under the penalty of absolute nullity of the decision.

[2] 996 / 5,000

Translation results

Art.262 Expenses necessary for the administration of evidence

When the administration of the approved evidence requires expenses, the court will ask the party that requested it to submit to the registry office, immediately or within the term set by the court, proof of the payment of the amount established to cover them.

In cases where the evidence was ordered ex officio or at the request of the prosecutor in the process initiated by him under the conditions provided for in art. 92 para. (1), the court will establish, by conclusion, the costs of administering the evidence and the party that must pay them, being able to charge them to both parties.

Failure to deposit the amount provided for in para. (1) within the fixed term, the party forfeits the right to administer the approved evidence before that court.

Depositing the amount provided for in para. (1) however, it can be done even after the deadline has passed, if this does not postpone the judgment.

The provisions of para. (1)-(4) are also applied in the event that the administration of the evidence is done by rogatory commission.

If it is ordered to produce a document held by an authority or another person, the court, according to the provisions of art. 298, will order the request for the document and, as soon as it is submitted to the court, its communication in a copy to each lawyer[1].

Verification of documents

According to art. 375 of the Code of Civil Procedure, if one of the parties does not recognize the writing or signature in a document, the lawyer of the interested party, according to art. 373, will request the court to proceed with the verification of the documents.

Hearing witnesses

According to the provisions of art. 376 of the Code of Civil Procedure, the witnesses will be heard, at the place and date provided in the program approved by the court, by the lawyers of the parties, under the conditions of art. 318 para. (1) and art. 321 para. (1), (2), (4) and (5)[2], which apply accordingly. The hearing of the witnesses is done without taking an oath, but they are warned that if they do not tell the truth, they commit the crime of perjury. All this is mentioned in the written statement.

The witnesses provided for in art. 320 will be heard only by the court[3].

Recording of testimony

According to art. 377 of the Code of Civil Procedure, the testimony shall be recorded exactly by a person agreed upon by the parties and shall be signed, on each page and at the end, by the lawyers of the parties, by the person who recorded it and by the witness , after he became aware of the contents of the recording.

Any additions, deletions or changes in the content of the testimony must be approved by the signature of those mentioned (lawyers of the parties and witnesses), under the penalty of not being taken into account.

If the testimony was stenographic, it will be transcribed. Both the transcript and its transcription will be signed (lawyers of the parties and witnesses) and submitted to the file.

If the testimony was recorded with audiovisual means, it may be later transcribed at the request of the interested party, in accordance with the law. The transcript of the records will be signed (lawyers of the parties and witnesses) and submitted to the file.

Authentication of testimony

The parties may agree that the witnesses' statements be recorded and authenticated by a notary public. The provisions of art. 376 are applicable.

The Expertise

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[1] Art. 298

If the document is in the custody of a public authority or institution, the court will take measures, at the request of one of the parties or ex officio, to bring it, within the term fixed for this purpose, putting in view the head of the holding authority or public institution the measures that can be taken disposes in case of non-compliance.

The holding public authority or institution has the right to refuse to send the document when it refers to national defense, public safety or diplomatic relations. Partial extracts may be sent if none of these reasons oppose it. The provisions of art. 252 para. (3) shall apply accordingly.

[2] Art. 318 paragraph 1

The president, before taking the statement, will ask the witness to show:

a) name, surname, profession, domicile and age;

b) if he is related or related to one of the parties and to what degree;

c) if he is in the service of one of the parties.

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Each witness will be heard separately, those who have not yet been heard cannot be present.

The order of hearing the witnesses will be fixed by the president, taking into account the request of the parties.

After the hearing, the witness remains in the courtroom until the end of the investigation, outside only if the court decides otherwise.

During the hearing, the witness will be allowed to give his testimony freely, without being allowed to read a previously written answer; however, he can use notes, with the approval of the president, but only to specify figures or names.

[3] Art.320 exemption from oath

Children who have not reached the age of 14 and those who lack discernment at the time of the hearing, without being placed under a ban, can be heard without an oath, but the court will draw their attention to tell the truth and will take into account, in the assessment their deposition, their special situation.

According to art. 379 of the Code of Civil Procedure, if an expert opinion is approved, in the evidence administration program the parties will include the name of the expert they will choose by their consent, as well as the names of the advisors of each of them.

If the parties do not agree on the choice of the expert, they will ask the court, at the time when the evidence approves, to proceed with his appointment, according to art. 331 para. (1) and (2)[1].

The expert is obliged to carry out the expertise and hand it over to the lawyers of the parties, under signature of receipt, at least 30 days before the deadline set by the court. Also, he has the duty to give explanations to the lawyers and the parties, and after fixing the court term, to comply with the provisions of art. 337-339.

On-site research

According to art. 380 of the Civil Procedure Code, if an on-site investigation has been ordered, this will be done by the court according to the provisions of art. 345-347. The minutes provided for in art. 347 para. (1) will be drawn up in as many copies as there are parties and will be handed over to their lawyers no later than 5 days after the investigation[2].

According to the provisions of art. 381 of the Code of Civil Procedure, when the summons to the interrogation has been approved, the court will summon the parties, at the set term, in the council chamber. Copies of the interrogation thus taken, as well as of the one ordered and received according to art. 355 para. (1) will be immediately handed over to the lawyers of the parties[3].

Evidence Incidents

The court will decide on the request to replace the witnesses, to hear them again or to confront them.

Also, under these conditions, the court will rule on the request to admit new witnesses or other evidence that proves necessary and that could not be foreseen to be requested according to art. 237 par. (2) point 7[4].

Written conclusions

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[1] Art. 331

If the parties do not agree on the appointment of experts, they will be appointed by the court, by drawing lots, from the list drawn up and communicated by the local expertise office, including the persons registered in its records and authorized, according to the law, to carry out expertise judicial.

The conclusion of the appointment of the expert will establish the objectives on which he is to pronounce, the term in which he must carry out the expertise, the expert's provisional fee and, if applicable, the advance for travel expenses. For this purpose, the court can fix a hearing in the council chamber, during which it will ask the expert to estimate the cost of the work to be performed, as well as the time required to perform the expertise. In the same way, the court can fix a short term for when it will ask the expert to estimate in writing the cost of the work to be performed, as well as the term necessary to carry out the expertise. The position of the parties will be recorded in the conclusion. Depending on the position of the expert and the parties, the court will set the deadline for submitting the expert report and the conditions for paying the costs necessary to carry out the expertise.

[2] Art. 347 paragraph 1

About the findings and the measures taken on the spot, the court will draw up a report, in which the parties' arguments and objections will be recorded, which will be signed by those present

[3]Art. 355 paragraph 1

The state and other legal entities under public law, as well as legal entities under private law, will respond in writing to the interrogation that will be communicated to them in advance, under the conditions provided for in art. 194 lit. e).

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e) showing the evidence on which each end of the claim is supported. When the proof is made through documents, the provisions of art. 150. When the plaintiff wants to prove his claim or any of its parts by questioning the defendant, he will ask for his appearance in person, if the defendant is a natural person. In cases where the law stipulates that the defendant will respond in writing to the interrogation, it will be attached to the summons. When witness evidence is requested, the name, surname and address of the witnesses will be shown, the provisions of art. 148 para. (1) sentence II being applicable accordingly.

[4] Art.237 The purpose and content of the trial investigation

In the research stage of the process, procedural documents are completed, according to the law, at the request of the parties or ex officio, for the preparation of the debate on the merits of the process, if necessary.

In order to achieve the purpose provided for in para. (1), the court:

7. will approve the evidence requested by the parties, which it finds conclusive, as well as those which, ex officio, it considers necessary for judging the trial and will administer them in accordance with the law.

According to art. 383 of the Code of Civil Procedure, after the administration of all the evidence approved by the court, the plaintiff, through his lawyer, will draw up written conclusions regarding the support of his claims, which he will send, by registered letter with acknowledgment of receipt, or hand them directly, under signature, to the other parties in the process and, when appropriate, to the Public Ministry.

After receiving the plaintiff's written conclusions, each party, through its lawyer, will draft its own written conclusions, which it will communicate to the plaintiff, the other parties, and, when appropriate, the Public Ministry.

Compilation of the file

The attorneys of the parties will prepare a file for each party and one for the court, in which they will submit a copy of all the documents that, according to the law, confirm the administration of each piece of evidence.

The files will be numbered, bound and will bear the signature of the lawyers of the parties on each page.

Submission of the file to the court

At the expiration of the term set by the court, the lawyers of the parties will present the case file to the court together.

Judgement of the cause

According to art. 386 of the Code of Civil Procedure, upon receiving the file, the court will fix the trial term, notified to the parties, which will not be longer than 15 days from the date of receipt of the file.

At this term, the court will be able to decide, for good reasons and after listening to the parties, to administer new evidence or to administer directly in front of it some of the evidence administered by the lawyers.

For this purpose, the court will establish short deadlines, further, given to the parties. For the presentation before the court, the witnesses will also be summoned in a short time, the cases being considered urgent. The provisions of art. 159 and of art. 313 para. (2) are applicable[1].

If, at the set deadline, the court considers that it is not necessary to administer new evidence or some of those administered by the lawyers, it will proceed to the substantive trial of the trial, giving the parties the floor to present conclusions through the lawyer.

The provisions of subsection 3 "Evidence" of section 2 of chapter II of the Code of Civil Procedure are applicable, if this subsection does not provide otherwise.

At the request of the lawyer or the interested party, the court can take the measure of the judicial fine and the obligation to pay compensation, in the cases and conditions provided by the provisions of art. 187-190.

Legal advisers

According to art. 399 of the Code of Civil Procedure, the provisions of this subsection are also applicable to the legal advisers who, according to the law, represent the party.

Bibliography.

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[1] Article 159
The subpoena and the other procedural documents, under penalty of nullity, will be handed to the party at least 5 days before the court date. In urgent cases or when the law expressly provides, the judge may order the shortening of the term for serving the summons or the procedural document, mentioning this in the summons or the procedural document.
Art. 313 paragraph 2
In urgent cases, witnesses can be ordered to be brought with a mandate at the very first term.