International Journal Of

Recent Scientific Research

ISSN: 0976-3031

Volume: 7(1) January -2016

THE DOCUMENT AS AN EVIDENCE IN CIVIL LITIGATION IN REPUBLIC OF BULGARIA

Atanas Simeonov Ivanov

THE OFFICIAL PUBLICATION OF
INTERNATIONAL JOURNAL OF RECENT SCIENTIFIC RESEARCH (IJRSR)
http://www.recentscientific.com/ recentscientific@gmail.com

ISSN: 0976-3031

Available Online at http://www.recentscientific.com

International Journal of Recent Scientific Research
Vol. 7, Issue, 1, pp. 8442-8446, January, 2016

International Journal of Recent Scientific Research

RESEARCH ARTICLE

THE DOCUMENT AS AN EVIDENCE IN CIVIL LITIGATION IN REPUBLIC OF BULGARIA

Atanas Simeonov Ivanov

"Ivil Litigation at South-Western University "Neofit Rilski"- Blagoevgrad, Bulgaria; Judge at Blagoevgrad Regional Court

ARTICLE INFO

Article History:

Received 16th October, 2015
Received in revised form 24th November, 2015
Accepted 23rd December, 2015
Published online 28st January, 2016

Key words:

Document, evidence, mean of evidence, characters, proof, electric signs, civil litigation, litigation

ABSTRACT

The document is an evidence needed to prove facts occurred in the past. With review of the difference of the lawsuit's moment of ruling and the moment of occurrence of facts relevant for the dispute needed is establishment of those facts through sources of information – means of evidence. The document as an item with characters or electronic signs on it is a materialized expression for certain facts. The legal meaning makes the document relevant – assessed is the document not as such but whether it can be used as evidence in a specific lawsuit. Thus, it does not matter whether the statement is legally relevant and with legally irrelevant one the kind does not matter.

INTRODUCTION

The notion of evidence is epistemological, law serves for objective support of the notion. For settling every legal dispute needed is to prove facts occurred in the past. From the point of view of cognitive activity they are evidence for existence or non-existence of legal relations. Legally relevant and evidentiary relevant facts are evidence because from a point of view of "legal relation set for judicial consideration they are evidence for its existence or non-existence".

Since the filing of the claim, it's addressing and solving of the lawsuit is performed in a moment different than the moment of carrying out legally relevant and evidentiary relevant facts, the establishment of those facts is through sources of information about them. Those sources of information about facts liable to proof are means of evidence. Means of evidence in their essence are knowledge about certain facts as they themselves have no value in the lawsuit. Their sense and purpose are in proving the truthfulness of facts claimed by the parties relevant to the correct settlement of the lawsuit. Means of evidence are objective grounds of the compliance of actual claims with reality.

Issues related to the document as mean of evidence according to Civil-Procedural Code are not few and are various in nature. They are researched in the Bulgarian legal doctrine[1] and ordered are various rulings in judicial practice. Regardless, there are still cases of various interpretation in the practice regarding the document's essence, the types of documents and their contents. Subject of this research are those issues with no intent of exhaustiveness.

Written mean of evidence (document) is an item on which materialized is a statement with characters[2].

The document is an item with characters or electronic signs representing a statement[3].

The document is an item on which placed are characters forming a system subordinate (by the human) to certain (grammatical) rules allowing forming words or phrases for transmitting (conversion and storage) knowledge of certain facts[4].

The document is an item (physical media) – characters shall be objectified somewhere. On it there objective shall be a statement – characters of some language. In order a document to be present sufficient is a signature, if by the circumstances

Corresponding author:* **Atanas Simeonov Ivanov
"ivil Litigation at South-Western University "Neofit Rilski"- Blagoevgrad, Bulgaria; Judge at Blagoevgrad Regional Court

the statement can be extracted in silence (painter's signature on a painting); the document can also be unsigned. For the statement itself is irrelevant whether it is signed, which relates to its evidentiary value.

The statement shall be materialized with characters. The storage media is irrelevant – distinction between physical evidence and a document: due to the objective necessity the document is an item. The difference is in the fact that when the court is interested in the document as such it collects information by the statement. With the physical evidence the court is interested in its quality characteristic – the item as an item is physical evidence. The document is not an item, the document is the statement but only verbally. It does not matter what characters are used to materialize the verbal thought, the material of the document – paper, wood or another substance as well as whether the statement materialized in the document covers the contents of a legal deal or another judicial fact are also of no significance.

The document is a mean of evidence and as such is directed towards establishing facts, the essence of the facts is irrelevant. In this sense whether of legal significance – statement of legal significance – has no relation when the "document" category turns into not objective but subjective statement (whether something has legal significance depends on the law, and law is result of subjective assessment of the legislator). The legal matter is not inherent characteristic of the document. The law gives the feature "document" and it is also not objectively present. The legal significance gives relevance to the document – estimated is not the document as such but whether the document may be used as mean of evidence in a specific case. This is why in theory adopted is that it does not matter whether the statement is legally relevant and with legally relevant statement the kind does not matter (matters for the document type, not its availability)[5].

Drawings, pictures, border signs, plumbs, tapes are not documents for they do not materialize a written statement – they are physical evidence. On the other hand in the practice adopted is decision No 630/09.10.95 on civil case No 391/95 of 5th panel of Supreme Court of Cassation (SCC) that uncertified copies of documents, regardless of being undisputed by the other party are not documents.

I do not share this statement for the document's copy bears the marks of a written mean of evidence as on the other hand according to the provisions of art. 183 of Civil-Procedure Code the party having presented a document's copy shall, upon request by the court of the other party, provide an original or an officially certified copy for if it fails to do this the copy is excluded from the case's evidences. In this case the court will exclude presented copy of the case's evidence – Decision No 479/30.09.2009 on civil case No 4953/2008 of II civil division of Supreme Court of Cassation ruled under art. 290 of Civil-Procedure Code. In case of failure to do so the court shall, on the grounds of art. 235, par. 2 of Civil-Procedure Code discuss the same and take it into consideration when ruling the decisions without being able to ignore it – the same applies for decision No 451/15.07.2010 on civil case No 536/2010 of II civil division of Supreme Court of Cassation, also ruled under art. 290 of Civil-Procedure Code. From the aforementioned a conclusion could be drawn that the difference is in the evidentiary significance of the certification, not whether the copies are documents.

With regards to electronic document present are some peculiarities

Electronic document is an electronic statement recorded on a magnetic, optical or another media giving opportunity it to be reproduced (argument from art. 3, par. 1 of Electronic Document and Electronic Signature Act (EDESA)). The definition of an electronic document is compiled on the grounds of a written document notion. The written document as well as the electronic document is a statement.

As oppose to the written document the electronic one is a digital, not written statement – electronic statement in a digital form. The written document can be materialized on an item (usually a piece of paper) while for the electronic statement to be an electronic document it shall be recorded on a magnetic, optical or another media – chip, disc or another item providing opportunity for statement's reproduction. The recording shall ensure a way for the precise reproduction allowing visual representation and reading of information – argument from art. 2, par. 2 of EDESA, as any way is permissible. With the electronic document there is no original and copy for it can be reproduced unlimited number of times but law considers the electronic document as a written one. The electronic document as well as the written may not be signed as with the signed one used is an electronic signature.

The electronic statement is a verbal statement presented in digital form through a commonly adopted standard for conversion, reading and visual presentation of information. It is a judicial act, not event – consequence of behavior of a legal subject. It can be directed towards occurring of legal consequences but can be legally irrelevant. As oppose to the remaining verbal statements the electronic statement is materialized not with sounds or characters of written communication but in digital form - ones and zeros. The digital form is converted through a commonly adopted standard for conversion, reading and presentation of information. Since present is an opportunity for conversion, reading and visual representation of the statement through a commonly adopted standard, subsequently it is electronic according to the legislator. If this is impossible, this is an obstacle a certain statement to be qualified as electronic one.

The electronic statement can contain non-verbal information – art. 2 of EDESA. Statement containing only non-verbal information is not an electronic statement under EDESA. In the written document as well as in the electronic document there shall be only verbal statement. Exception of the written document – it may not contain verbal information – signature on a painting – here the statement is concluded from the custom of applying signature in certain cases at a certain place.
The electronic document as well as the written one may not be signed, the signed electronic document shall be signed by an electronic signature.

Documents can be divided in several groups

According to the nature of materialized statement: - attesting– materializing the certified statement of their issuer, i.e. they regard to existence or non-existence of certain facts performed by the issuer or adopted by him (observation protocols, accounting records, fiscals, receipts and others). During an estimate whether a document is an attesting one, its physical evidentiary value is irrelevant, i.e. the ability of the document to establish existence of respective facts. Attesting is the private document objectifying facts beneficial for the issuer even though it does not have physical evidentiary power; - dispositive – materializing other non-certifying statements – having no attesting significance. Usually those are documents materializing legal instruments, contracts, administrative and legal instruments. Sufficient is not to certify a fact being outside the document, as oppose to the attesting one. Only the attesting document has physical evidentiary value – there is no evidentiary significance regarding the fact outside the document the certifying statement that it regard to. With the dispositive document there is no question of the truthfulness of the dispositive document for the statement has no certification significance.

Attesting documents are result of the cognitive process conducted by the official – expression of the facts adopted by the person and reproduced in the document. Those are documents containing certifying (information) statement. The person has adopted certain facts and has reproduced them on a specific physical media – facts exist outside and regardless of the conscious of the perceiving subject, he perceives them and reproduces them and makes a cognitive statement – testifies of the existence or non-existence of certain facts. This is why only with attesting documents their veracity may be questioned – whether they comply or not with the objective reality. Other documents are dispositive (they are formed in person's conscious) – with them we cannot speak of veracity, they are a reflection of existing facts and we cannot speak of their adequacy to objective reality for they are subjective (this is why there is a statement in the literature that the will expression can be valid or invalid but not true or false).

Dispositive documents – result of expression of will formed in the subject's conscious – they contain expression of will. Dispositive is every document materializing non-certifying expressions (written legal deals, administrative and court instruments).

Next, authenticity regards to both types of documents that can be authentic or non-authentic.

According to the capacity of the document's issuer: - official – materializing statements of the state authorities, officials, private persons being assigned state and public functions as the statement shall be made by the person (authority) in its capacity, within the granted powers. Official documents can be attesting (such as certificates, court protocols, summons) or dispositive (administrative instruments, court decisions). In order the document to be official needed is it to be issued within the statutory competence of the issuer – for example, not an official document is a certificate issued by the municipality that certain person is owner of a property. In order the document to be official besides it shall be compiled by a state authority it shall be within their competence. When a statement objectified in a document is not state-legal (for example a municipal sale contract issued by the mayor), the document is not official. The document may in one part be official and in other – private – here the statement is materialized in one item but the documents are two.

- Private document – they do not have the marks of an official document, all documents that are not official. Private document materializes legally irrelevant statements or civil statements in a wide point of view – civil, occupational. The minimally required may be derived from art. 180 of Civil-Procedure Code – minimally required is the presence of a signature. The signature, however, is not necessary for a document to be present, for the question whether there is a document is not who the statement's author is.

Whether the document materializes the signature of its issuer: - a signed document – bears the signature of its issuer. This document encloses the hypothesis of art. 189 of Civil-Procedure Code – private document issued by an illiterate; private document issued by a blind, but literate person; - unsigned document – does not bear the signature of its issuer.
The signature is a way a person usually signs (holograph). The signature shall be handwritten. The signature on a document follows the text (statement) as the signature gives a formal evidentiary value of the private document – according to art. 180 of Civil-Procedure Code, it is adopted that the document's author is whoever signed it.

According to the document's authorship: - authentic – materializing statement of people set to be their authors; - non-authentic – proving that materialized statements result of other people not those stated as their authors. Those are forged documents – forged is the signature and/or the text before it. Such is a document signed by the issuer but with different contents which is subsequently amended by another person.

According to the compliance between the certified in the attesting document and the objective reality: - true – complying with the actual condition they certify. It does not regard to a dispositive document; - false – not complying with this actual condition.

The document's contents is the knowledge it offers for certain legally relevant or evidentiary facts[6]. Depending on whether the gives knowledge for the legally relevant facts or evidentiary facts they are divided into direct (dispositive) and indirect (attesting). The direct document as a mean of evidence gives knowledge about the legally relevant facts and the indirect one- for evidentiary facts. For proving, the direct document with its contents has a direct significance for the right, subject of the dispute, and the indirect one – indirect significance. The legislator however, through the law has expressed a statement that the evidentiary significance is legal as with this grouping of documents they reflect the nature of facts which reflection is the document's contents. Law is interested in those documents

having legal matter for it. The statements in the document in an evidentiary aspect represent the subject of proof.

The dispositive document cannot be untrue in its contents as the physical evidentiary value is inherent to attesting documents. Each classification of written documents relates to their veracity and their evidentiary value which are procedural characteristic of means of evidence.

The procedural act knows the division of documents to original and copies – art. 179, par. 2 of Civil-Procedure Code, art. 183 of Civil-Procedure Code. The copy results of the original – it is a document of another document. Every copy has evidentiary value if is a true document, regardless whether it is official or private. Not always needed is, in order to establish the veracity and evidentiary value of a copy as a document, the original to be presented – argument from art. 183 of Civil-Procedure Code. The copy cannot be excluded as mean of evidence, without researching and inspecting the collected evidence, even if the original is not provided – argument from art. 161 of Civil-Procedure Code. The party presents a copy of the document namely due to reason that it does not have an original – it is presented elsewhere. In this sense the written evidence as a rule is presented in original, if presented is a copy the court may, if needed, request providing the original – argument from art. 183 of Civil-Procedure Code.

The document's date, when real, establishes the time of document's issue. Preparing a document after the statutory defined term in all cases will affect its veracity.

The date is not a necessary element of document's content besides nowadays all documents are dated. It is, however, practically directed – proving a certain fact in the process would be hindered if it is established in the document but lacking is a specification of the fact in time. Similar to the signature serving for proving the author of the document's content, the data of the document eases the individualization of the facts as well as their proof. All facts are performed in relation to time due to which the time of document's issue or performing of documentary actual content is not that necessary, while it will be liable to proof with evidentiary means, extracted not only by the document itself – witnesses' statements or others.

The date under art. 181 of the Civil-Procedure Code is the date of the civil expression of will due to which it is a subject of proof. The designation of the regulation of art. 181 of Civil-Procedure Code is to guide the subjects of proof which are parties on a deal to use forms with which the veracity of the date can be proven. Those circumstances are also not unconditional grounds for themselves, but are a guarantee.

The rule of art. 180 of Civil-Procedure Code does not regard to the date of compilation of the private document while with official documents present is a binding evidentiary value not only by the fact of the statement and its authorship but the stated in the document date and compilation place. The existing danger the private document to be anti-dated the law has set the notion "valid data" as this is not necessarily the date of document's compilation but the one when the document has been existing for sure and was contradicted to third parties. The valid date settled by art. 181 of Civil-Procedure Code is the date of fact's occurrence of its hypothesis. The purpose is not to allow the parties to state a time of their agreements which would harm third parties. Valid date is present in the following hypothesis: - with notarial certification of the date, the signature or the contents of the private document it is evidence that the document has been existing on the date presented to the notary public; - the date of author's death or its actual inability to sign it, it is the final date when possible was the document to have been compiled, otherwise it is possible to have signed the document earlier; - the date on which the document's contents has been reproduced in an official document (contents of an invoice in a court session protocol); - the date of occurrence of another fact from which undoubtedly established is that the private document has existed.

According to Decision No 1326/25.10.84 on civil case No 763/84 of IV civil division of Supreme Court of Cassation, impermissible is to establish the veracity of a private document's date by witnesses but established can be a fact of which resulting is that the document has existed at a certain date. The proving of valid date can be performed only by evidences permissible according to the general rules – an assessment shall be made whether the respective fact of which the truthfulness of the date results can be proven by witnesses according to art. 164 of Civil-Procedure Code with one exception – occurrence of actual inability for affixing a signature can be revealed by all means of evidence. Next, in case of undated document the date can be established by all means of evidence – including witnesses – argument from art. 181, par. 2 of Civil-Procedure Code unless with exceptions related to art. 145, par. 1 of Civil-Procedure Code.

"Third parties" under the meaning of art. 181, par. 1 of Civil-Procedure Code the legislator understands the people not taking part in the deal, objectified in the document but would have suffered damages if the deal is adapted – their rights could have occurred only in case that the date of acquisition supersedes the document's date.

The official document has formal evidentiary value – it certifies with all binding evidentiary value the execution of the statement objectified in it, the stated date and place of issue, the authorship of the issuer as well as that the latter has acted in their capacity stated in the document but not whether it actually holds it, which can always be proven and if disproved the document will not be official. With such evidentiary value used are attesting as well as dispositive official documents.

This analysis does not purport exhaustiveness but intends to set the issue for the document as a mean of evidence in a civil litigation to a discussion. Of course many of the ideas here cannot be realized without legislative reform but the article can be accepted as an attempt to provoke adequate legislative amendments.

Reference

Kornezov, L. Civil litigation. Volume one. Claim process. Sofi-R, 2009; Stalev, Zh., Mingova, A., Stamboliev, O.,

Popova, V. and Ivanova, R. Bulgarian Civil Procedural Law. Ninth revised and supplemented issue. First on the effective Civil-Procedure Code. 2012; Vlahov, K. Up-to-date Problems of New Civil-Procedural Code. Second issue. Sibi, 2012; Stamboliev, D. Proof in Civil Process. Second revised and supplemented issue. Siela, 2012; Radulov, P. Evidentiary force of a document in civil litigation. University publishing house "St. Kliment Ohridski", 1993.

Kornezov, L. Civil Litigation. Volume one. Claim process. Sofi-R, 2009, page 548.

Stalev, Zh., Mingova, A., Stamboliev, O., Popova, V. and Ivanova, R. Bulgarian Civil Procedural Law. Ninth revised and supplemented issue. First on the effective Civil-Procedural Code: Siela, 2012, page 273.

Radulov, P. Evidentiary force of document in civil litigation. University publishing house "St. Kliment Ohridski", 1993, page 23.

See Stalev, Zh., Bulgarian Civil Procedural Law. Sixth supplemented and revised issue: Siela, 2000, page 291.

See Radulov, P., Quote on page 72.

****

How to cite this article:

Atanas Simeonov Ivanov.2016, The Document As An Evidence in Civil Litigation in Republic of Bulgaria. *Int J Recent Sci Res.* 7(1), pp. 8442-8446.

TSSN 0976-3031