
INFORMATION TECHNOLOGY AND LAW -- ELECTRONIC DOCUMENTS AND ITS VALIDITY IN COURT

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The validity of electronic documents as evidence is still producing controversy in the legal environment.

Those who defend it support their understanding on the Brazilian Code of Civil Procedure to deal with the documentary evidences. In addition, those who are opposed, support their opinion on the absence of an express mention regarding the possibility of their use as a way of evidence.¹

There are also those who advocate that the elements that prove its authorship, content integrity and corporeality would be absent in this type of document - requirements that are essential for its characterization as apt evidence.

Despite justifications presented, the contrary opinion to the use of electronic documents does not correspond to the progress degree of the legal relations achieved by the end of XX century and early XXI century.

¹ CPC, art. 366. When the law requires the public instrument, as substance of the act, no other evidence, even special, will fill its lack.

Moreover, if the problem is the naming, those documents do not even need to be described as it, in order to be accepted in court, since they could be included into the general category known as non-typical evidences.²

Anyway, it is necessary to mention that the Jurisprudence has already bent to the new reality, accepting the electronic documents as evidence in many cases.³

² DINIZ, David Monteiro apud GANDINI, João Donizeti; Salomão, Diana Paola da Silva et al. The legal validity of digital documents. Jus Navigandi, Teresina, year 6, n. 58, August. 2002. Available at: HTTP: // jus2.uol.com.br/doutrina/texto.asp? Id = 3165. Accessed on September 26. 2008.

³ Summary: Innominated precautionary measure - PRESENTATION OF ELECTRONIC DOCUMENT - ANONYMOUS E-MAIL - Rejection IN THE FIRST LEVEL - CONSTITUTIONAL IMPEDIMENT OF THE anonymity - *FUMUS BONI JURIS E PERICULUM IN MORA DEMONSTRADOS* - *DECISUM REFORMADO* - Appeal granted. (TJSC, Interlocutory appeal n. 2003.024687-8, decision 13/10/2005, Reporting Judge. Antônio do Rego Monteiro Rocha).

Summary: ACTION - tuition - SERVICE CONTRACT - ELECTRONIC DOCUMENT - POSSIBILITY - CHARGES - LEGALITY. In spite of the service contract does not contain the signature

The theory regarding the fragility of electronic documents as evidence also experienced a hard impact by the introduction of digital certification in Brazil, which the most important legal document is the Provisional Measure Nº 2.200/01, establishing the Infrastructure of Brazilian Public Keys -- ICP-Brazil.

The public key is a cryptographic method⁴ that aims to ensure the authenticity, integrity and legal validity of documents in electronic form, from the support applications and enabled applications that uses digital certificates, as well as the performance of secure electronic transactions.

So, if the electronic documents had their validity contested because of the ease of alteration, which could ultimately implicate their originality and integrity, the digital certification proves to be as effective mechanism to combat fraud, responsible for the revocation as a means of evidence.

In a recent trial, the Supreme Federal

Court, recognized the validity of digital certificate or the printed version of a digital document protected by digital certificate, despite having warned the need of regulation.⁵

The Brazilian law, however, is analyzing the progress of the digital age. In this sense, Law Nº 11.419/06 was edited in 2006 in which presents the automation of judicial proceedings. Referred law - despite does not treat specifically about the electronic document and its validity as evidence - is already indicating the need and importance of its use in the Judiciary.

There are several benefits offered by the use of electronic documents in relation to traditional documents, such as: i) more rapidity in their development, as well as reducing costs of printing, ii) simple filing and easy recovery of data, iii) high storage capacity, with a low cost, iv) difficulty to fraud, through mechanisms that prevent it, among others.⁶

Thus, in spite of the conservative positioning of some - since the integrity of its content is preserved through

of the defendant, this fact is not able to invalidate the adjustment, since the contract for educational services is informal and it is not required in law, and can even be agreed verbally. The services contract, attached with the documents, though devoid of the defendant signature, is sufficient to prove the completion of adjustment, because the electronic documents have a probative value and doc. of f. 06-09 shows that the defendant actually accepted the contract via Internet. There is no illegality or abuse of clauses which provides in case of default, the incidence of penalty of 2%, interests of 1%, indexation by IGP-M. (TJMG, Reporting Pedro Bernardes, Ap. Nº 2.0000.00.450396-4/000, in July. 19/10/2004).

⁴ Encryption: Art of writing in cipher or in code. In FERREIRA, Aurelio Buarque de Holanda. New Dictionary Aurélio da Língua Portuguesa. Rio de Janeiro, Nova Fronteira, 1986, 2nd ed., page. 499. Rio de Janeiro.

⁵ Procedural Act: appeal: electronic seal: requirement for regulation of use to protect legal security. 1. Agree the understanding of the Supreme Court that only the petition in which the lawyer has originally recognized his signature is valid. Precedents 2. In records, it is not digital certificate or the printed version of digital document protected by digital certificate, these are mere electronic seal without any regulation and it is not possible to confirm its originality without the technical expertise assistance. 3. The need for regulations for the use of digital signature is not mere procedural formality, but reasonable demand which aims to stop the practice of acts that responsibility would not be possible. 564765 / RJ - Rio de Janeiro, Reporting judge: Min Sepulveda Pertence, Trial: 14/02/2006, First Panel.

⁶ GANDINI, João Donizeti; SALOMÃO, Diana Paola da Silva et al, op. cit., loc. cit.

mechanisms such as digital certification, as well as preserved the "access logs", which are necessary information for an indication of responsibility in the network or in an "internal" corporate environment - the electronic document has been gaining acceptance even at the lower of trial.

This means that the electronic document not only contributes to the development of trade held in virtual environment, as well as guarantee the legal security needed for its achievement, as the parties will have

the assurance that, in case of a possible conflict of interests, the documents generated in this environment can be used as a means of defense for their rights in court.

Almeida Advogados is at your disposal for any additional detail related to the matter discussed in this article.