

Evidence in proceedings before Romanian courts

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If differences of opinion arise, the parties usually try to avoid court proceedings. All too often, however, it is not possible to reach an agreement, meaning that legal action is the only way to assert rights.

For this, it is of course necessary to prove the prerequisites of the claims; according to the principle “*idem es non esse et not probari*”, meaning what is not proven is considered non-existent. Below we discuss the most important aspects in connection with evidence in Romanian court proceedings.

Burden of proof, procedural rules

Under Romanian law, the person who asserts a fact in court must also prove it in principle. This applies to both the plaintiff and the defendant.

However, there are some exceptions. For example, a negative fact, e.g. the assertion of a lack of payment, does not have to be proven; in this case, the opponent is obliged to prove that payment has been made.

In principle, the evidence must be requested in the complaint or statement of defense and, if possible, attached to it. A later introduction of evidence is not excluded, but requires negotiation and approval by the court.

Written documents

The most commonly used means of evidence are documents (*înscrișuri*), which can be stored on any medium (paper, electronic, etc.). In general, anything that is or can be printed on paper can be used as a document for evidentiary purposes.

The category of evidence includes contracts, correspondence (by post, e-mail, SMS, etc.), out-of-court expert opinions (which are considered documents of the parties), accounting documents, decisions of public authorities, etc.

The use of documents as evidence is only in very rare cases deemed inadmissible.

Witnesses

Witnesses are another type of evidence that is frequently used. In order for a person to be heard as a witness, the court must authorize it; this is done when it is shown that the person is able to provide information that they have personally experienced. Due to the general rule, witnesses must report their own direct experience and not hearsay or rumor.

During the hearing, the witnesses are questioned by the court and not directly by the parties (or their lawyers). In order for a party's question to be directed to the witnesses, that party must address the question to the court; only after the court's approval is the question put to the witness by the court.

Expertise

One type of evidence that is often close to judges' hearts is expertise (*expertiză*). Since a large number of disputes are based on technical aspects, sometimes to a considerable extent, and judges generally have no technical training, it is relatively easy to obtain the approval of an expert opinion as evidence.

A court expert opinion in a case is ordered at the request of a party, in which the party must in particular propose the objectives (results) of the expert opinion. This application, including the individual objectives of the expert opinion, is heard by the court; if the court recognizes the necessity and suitability of an expert opinion, it orders its preparation.

Should this occur, the court will also appoint an expert from among the experts approved by the Romanian government for certain specialized fields (there are lists of experts specialized in certain fields, e.g. civil buildings, facilities, accounting, valuation, etc.).

The parties may also appoint supervising experts (*expert parte*). These persons represent the interests of the party in the examination of the facts and the drafting of the expert opinion, or ensure that the facts and the resulting conclusions are correctly presented in the expert opinion. If this is not the case, this party expert may submit a reasoned side opinion with his or her dissenting opinion.

Although expert opinions can have very positive effects, it is widely known that proceedings in which this occurs are often considerably prolonged. In particular, it should be noted that there are practically no sanctions imposed on experts due to delays in their reports.

Other forms of evidence are used relatively rarely and are therefore not covered here.

In principle, great care must be taken when selecting evidence and the associated procedures. On the one hand, no right is granted in the absence of evidence; on the other hand, strategic aspects often play a significant role in this selection. Good cooperation between the client and lawyer is essential.

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