

## ANNEX 45

- Country Report ROMANIA

**CONTRACT**  
**JLS/2006/C4/007-30-CE-0097604/00-36**

*IMPLEMENTED BY*



*DEMOLIN, BRULARD, BARTHELEMY*

*- HOCHÉ -*

*FOR*



*COMMISSION EUROPEENNE*

*- DG FOR JUSTICE, FREEDOM AND SECURITY -*

**Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union**

**Jean ALBERT**  
**Team Leader**

**- COUNTRY REPORT -**

**- ROMANIA -**

**Submitted by Roxana Eftimie**

**DECEMBER 30, 2007**

COUNTRY REPORT .....	6
Introduction .....	7
Executive Summary .....	9
1. Summary of the mains sources of costs .....	9
2. Level of transparency in the sources of costs .....	9
3. Determination of the amounts of costs .....	10
4. Level of transparency in determining the actual costs .....	12
5. Proportion of each identified cost on the overall cost of civil judicial proceedings .....	12
6. Proportion of each identified cost on the overall volume of activity .....	12
7. Proportion of each identified cost on the value of disputed claim .....	12
8. Specificities in relation to EU cross-border disputes .....	12
9. Recommendations for EU action/national action .....	13
10. Relationship between the costs of justice, the transparency in the costs of justice and access to justice .....	14
11. Conclusions and recommendations .....	14
Detailed Draft Report .....	16
1. General Questions .....	16
<b>1.1 Level of information on the transparency of fees and costs of justice</b> .....	<b>16</b>
<b>1.2 Transparency perception</b> .....	<b>17</b>
<b>1.3 Solutions to improve transparency</b> .....	<b>17</b>
<b>1.4 Fairness of costs</b> .....	<b>17</b>
<b>1.5 Conclusions and recommendations</b> .....	<b>18</b>
2. Court fees .....	18
<b>2.1 General</b> .....	<b>18</b>
<b>2.2 Cost of bringing an action to the courts</b> .....	<b>20</b>
<b>2.3 Other proceedings costs</b> .....	<b>20</b>
<b>2.4 Costs of legal recourses (Appeals)</b> .....	<b>20</b>
<b>2.5 Costs of ADR</b> .....	<b>20</b>
<b>2.6 Costs of legal Aid porceedings</b> .....	<b>21</b>
<b>2.7 Costs of fast track proceedings</b> .....	<b>22</b>
<b>2.8 Costs of Group actions proceedings</b> .....	<b>22</b>
<b>2.9 Payment</b> .....	<b>22</b>
<b>2.10 E-justice</b> .....	<b>23</b>
<b>2.11 Impact of the number of hearings on costs</b> .....	<b>23</b>
<b>2.12 Transcription costs</b> .....	<b>24</b>
<b>2.13 Conclusions and recommendations</b> .....	<b>24</b>
3. Lawyers' consulting and representation fees .....	24
<b>3.1 General</b> .....	<b>25</b>
<b>3.2 Fees depending on the nature of the litigation</b> .....	<b>27</b>
<b>3.3 Fees depending on the type of lawsuit or proceedings</b> .....	<b>27</b>
<b>3.4 Fees depending on the value of the claim</b> .....	<b>27</b>
<b>3.5 Fees depending on the jurisdiction</b> .....	<b>28</b>
<b>3.6 Legal aid cases</b> .....	<b>28</b>
<b>3.7 Contingency fees</b> .....	<b>29</b>
<b>3.8 Payment</b> .....	<b>29</b>
3.8.1 Retainer .....	30
<b>3.9 Conclusions and recommendations</b> .....	<b>30</b>
4. Bailiff fees .....	30
<b>4.1 General</b> .....	<b>30</b>

4.2	Ante judgment .....	32
4.3	During proceedings .....	32
4.4	Post proceedings .....	33
4.5	Legal aid cases .....	34
4.6	Payment.....	34
4.6.1.	Retainer .....	34
4.7	Conclusions and recommendations .....	34
5.	Expert .....	35
5.1	General .....	35
5.2	Fees .....	37
5.3	Payment.....	37
5.3.1.	Retainer .....	38
5.4	Legal aid cases .....	38
5.5	Reimbursement of experts' fees .....	39
5.6	Practical questions.....	39
5.7	Conclusions and recommendations .....	40
6.	Translation and interpretation .....	41
6.1	General.....	41
6.2	Translation fees .....	44
6.3	Interpretation fees.....	46
6.4	Payment.....	47
6.4.1.	Retainer .....	47
6.5	Practical questions.....	48
6.6	Legal aid .....	49
6.7	Reimbursement.....	49
6.8	Conclusions and recommendations .....	49
7.	Witness Compensation.....	50
7.1	General .....	50
7.2	Fees .....	53
7.3	Legal aid cases .....	53
7.4	Payment.....	53
7.5	Practical questions.....	53
7.6	Conclusions and recommendations .....	55
8.	Pledges and security deposits.....	55
8.1	General .....	55
8.2	Fees .....	56
8.3	Payment.....	57
8.4	Practical questions.....	58
8.5	Conclusions and recommendations .....	59
9.	Court decisions.....	59
9.1	Cost of notification.....	59
9.2	Cost of obtaining an authenticated decision.....	60
9.3	Conclusions and recommendations .....	60
10.	Civil Legal aid.....	60
10.1	General .....	60
10.2	Conditions of grant.....	62
10.3	Strings attached .....	62
10.4	Practical questions.....	62
10.5	Conclusions and recommendations .....	63
11.	Personal experience.....	63

12. Case studies ..... 64  
12.1 Case study 1 ..... 64  
12.2 Case Study 2..... 66  
12.3 Case Study 3..... 68  
12.4 Case Study 4..... 71  
12.5 Case Study 5..... 75

**ANNEXES TABLE:**

ANNEX 1 Questionnaire completed for the implementation of this study

## COUNTRY REPORT

### *Preliminary notes*

This report analyses the main costs of activities of justice in Romania. These depend on the proceedings in which the litigant is involved, the type of litigation and its value, as well as on the person involved in a given act of justice.

Our considerations are based on the experience gained by our company, on the answers given to the general questionnaire, and on answers given by the other persons involved in the activity of justice who answered favorably to our requests.

In Romania, the costs related to legal proceedings are not generally different for litigations containing aspects of foreign origin. The proceedings that must be followed by the persons involved are much more important for the determination of these costs, rather than just the aspect of foreign origin.

## Introduction

Each legal system has its own specific features concerning both the legal framework and the proceedings. However, they all have the same finality, namely the creation of a stable legal framework in which people can efficiently exercise their rights.

Should free access to the court system be restricted, freedom of movement, capital, and services in the Community Space would essentially be left without purpose.

In the *Romanian legal system*, any person can turn to the courts for the defense of his legitimate interests, rights, and freedoms concerning his right to a fair trial.

The Romanian Constitution guarantees the principle of “*free access to justice*” under Article 21, which states that any person can turn to the courts for the defense of his legitimate interests, rights, and freedoms and that no law can restrict such right.

*The equality of the parties in trial*, as stated in Article 16 of the Romanian Constitution, is another constitutional principle placed above the acts of justice. According to this article, “*Citizens are equal before the law and public authorities, without any privilege or discrimination*”.

A very important aspect must be analyzed when it comes to judicial proceedings and to the free access to justice for every citizen, namely the court expenses. These expenses include court fees and stamp duty, attorney and expert fees, as well as expenses for official trips and discovery of evidence.

The existence of such expenses cannot be considered as a restriction to the access to justice, since they are necessary to the proceeding of any given litigation and of any other proceedings prior or subsequent to it, under normal conditions. Thus, free access to justice does not equate with free-of-charge.

In spite of this, we consider that the court fees system should be regulated so as not to affect the right to free access to justice in any domain in which it might become necessary.

It is both normal and legal that litigants who benefit from the activity of judicial authorities contribute to cover their expenses. Moreover, court fees are also necessary in order to limit the submittal of unfounded, abusive or frivolous applications. The court fee is also regarded as a public necessity, representing a way to cover partially the expenses incurred by the public service of justice. Furthermore, according to the law, the litigant's contribution that he pays in advance can be recovered from the losing party.

Therefore, the principle is represented through the stamping of claims, the only exceptions admitted are those instituted by law.

The same rules are applicable to *the access to justice for foreigners*.

The Romanian legislation provides that foreign natural or legal persons have the right to turn freely and without restrictions to the Romanian court system to file claims, law suits, and uphold their interests in the same conditions as a Romanian natural or legal person. Furthermore, they are exempt from payment of any guarantees for being foreign, given the absence of residence or headquarters on Romanian territory. The foreign natural person benefits from free legal aid under the same conditions as the Romanian natural persons. In addition, court fees are also necessary in order to limit the submittal of unfounded, abusive or frivolous applications.



## **Executive Summary**

### **1. Summary of the mains sources of costs**

The main costs in a Romanian law suit are the following:

- court fees, which include the court fee established for each law suit or claim, payable in cash or by bank transfer, as well as the stamp duty which is a print that is attached to the claim.
- attorney fees;
- expert fees ;
- interpreter fees ;
- translator fees ;
- bailiff fees ;
- expenses for the discovery of evidence;

### **2. Level of transparency in the sources of costs**

The level of transparency of the costs related to a civil or commercial law is low.

However, the low transparency level of costs is not determined by an insufficient regulation at national or Community level. The access to such information by a large audience is rather an administrative problem. Nevertheless, this problem could be solved through legislation.

There is a higher transparency in the case of court fees. Both the amount and the modality of the payment of these are determined by law. There are also minimum and maximum thresholds for bailiff fees, which are fixed by order of the Minister of Justice. The same thing cannot be said about the other costs.

There is very low transparency regarding attorneys', experts', interpreters' and translators' fees, or concerning the compensation of witnesses.

Attorney fees, for example, have no minimum or maximum thresholds. The amount of the fee differs, depending on the workload but also on the prestige of the attorney or law firm involved. Furthermore, many other aspects can be taken into account when determining a fee because this is done through negotiation between the client and the attorney. For this reason we consider that it is impossible to have transparency regarding this type of costs.

The sources of information are very incomplete. This type of information is not to be found on public or private internet sites. There are also no published brochures with such content. There are information centers in each court which should normally give information regarding all the administrative aspects, including court fees and the stamp duty.

Contacting a professional from the respective domain on the respective costs is the surest way to obtain this information.

The applicable legislation can be found on the web-sites of public institutions working in that domain or in legislation software.

### **3. Determination of the amounts of costs**

The amount of the costs related to a lawsuit is determined differently and depends on the nature of the source of the cost.

Court fees and stamp duty are regulated by Law no. 146/1997 on court fees, with subsequent modifications and completions, published in the Official Gazette no. 173/1997 and Government Ordinance no. 32/1995 on stamp duty, with subsequent modifications and completions, published in the Official Gazette no. 201/1995.

Attorney fees are fixed freely through negotiation between attorney and client, in conformity with the law and the Attorney's Statutes. They are included and fixed in the legal assistance contract, prior to the beginning of the legal assistance or representation. They differ from one law firm to another and from one attorney to another.

Expert fees differ depending on whether it is a judiciary expert assessment (submitted as proof in the context of a litigation) or an extra-judiciary expert assessment (done at a person's request and may be used in a litigation). The court fixes the designated expert's fee in the case of a judiciary expert assessment. For the extra-judiciary expert assessment, the fee is fixed in a written contract of services, which is negotiated between the person that requested the expertise and the expert.

Bailiff fees are fixed according to Law no. 188/2000 on bailiffs, published in the Official Gazette no. 559/2000, as well as Order no. 2550/C on the approval of minimum and maximum fees for the services of the bailiff, published in the Official Gazette no. 936/2006.

The amount of the fee depends on the amount of work the bailiff has in order to carry out the forced execution of a court decision or of writ of execution declared by law.

Interpreter and translator fees are fixed by a court ruling or by the criminal prosecution authority by ordinance. The fees instituted by the applicable laws apply to all other cases. Their exact amount is determined by the parties through negotiation and depends on the amount of work necessary.

Expenses for the discovery of evidence, those regarding the proof by witnesses, with entries, by expertise, letter of request, etc. are fixed by the court according to the Civil Procedure Code. Documents justifying these expenses are necessary.

#### **4. Level of transparency in determining the actual costs**

In the majority of cases, the costs of the litigation (judiciary expert assessment, translation, interpretation, discovery of fact) are fixed by the court. The court first takes into consideration a general level for each amount, so it may subsequently increase or decrease it, in case it is proven that the amount was not correctly determined initially.

On the other hand, some costs are fixed contractually between the service provider and the beneficiary. In this case also, costs differ from one service provider to another.

#### **5. Proportion of each identified cost on the overall cost of civil judicial proceedings**

This proportion cannot be estimated.

#### **6. Proportion of each identified cost on the overall volume of activity**

It is hard to estimate, depending on the case.

#### **7. Proportion of each identified cost on the value of disputed claim**

This proportion cannot be estimated.

#### **8. Specificities in relation to EU cross-border disputes**

There is no regulation imposing specific costs for litigations comprising an element of foreign origin.

Two principles of law are applied regarding the condition on the foreigner as a party to trial:

- equality in treatment;
- reciprocity condition.

Equality in treatment between foreigners and Romanian citizens is applicable to both the substantial and the procedural aspects of a civil or commercial trial.

The reciprocity condition is justified by the fact that it would not be understandable for the foreigner to enjoy the same rights as a Romanian citizen before the Romanian court system, while the latter be subject to discriminatory conditions before the courts of the state to which the foreigner belongs.

Thus, the Romanian legislation provides that foreign natural or legal persons have the right to access freely and without restrictions the Romanian courts, to file claims, introduce law suits and uphold their interests under the same conditions as a Romanian natural or legal person.

Furthermore, they are exempt from payment of any guarantees derived from being foreign, and the absence of residence or headquarters on the Romanian territory.

Foreign natural persons benefit from free legal aid under the same conditions as Romanian natural persons.

## **9. Recommendations for EU action/national action**

The low transparency level of costs is not determined by an insufficient regulation at national or Community level but by the ways in which a large audience can gain access to information.

Thus, the legislation should contain the obligation for courts and other institutions involved in judicial proceedings, associations representing legal professions, associations representing citizens, to inform, through various means, the persons who are interested in the costs of civil proceedings. Moreover, efficient methods should be devised in order to

get this information through to the public. Information can be published on websites, brochures can be published or information centers can be created.

The costs of civil procedures and information on the access to justice by foreign citizens in the different member states should be centralized and published at a Community level, on the websites of the related institutions.

## **10. Relationship between the costs of justice, the transparency in the costs of justice and access to justice**

There is an undisputable link between the amount and transparency of the civil proceedings costs and the constitutional principle of free access to justice.

Excessively high costs imposed by the legislation for exercising one's right would restrict the access to justice. A situation could arise in which some categories of persons cannot uphold their rights because they cannot pay the expenses imposed by law.

It is not the expenses themselves which are discouraging in the Romanian legal system, but the long duration of the trial. Because of this problem of the justice activity in Romania, any person that files an action to court or a lawsuit may undertake much higher costs resulting from a lengthy trial.

The costs themselves, which are fixed by legislation, are justified. They vary depending on the value of the claim, and the importance or the nature of the litigation.

The absence of transparency can itself discourage a person from upholding his or her right.

Even though these restrictions are not legal restrictions to the access to justice—but rather factual restrictions—they cannot be condoned, as their effects are felt.

## **11. Conclusions and recommendations**

The low transparency level of costs is not determined by an insufficient regulation at national or Community level but by the ways in which a large audience can gain access to information.

Thus, the legislation should contain the obligation for courts and other institutions involved in judicial proceedings, associations representing legal professions, associations representing citizens, to inform, through various means, the persons who are interested in the costs of civil proceedings. Moreover, efficient methods should be devised in order to get this information through to the public. Information can be published on websites, brochures can be published or information centres can be created.

The costs of civil procedures and information on the access to justice by foreign citizens in the different member states should be centralized and published at a Community level, on the websites of the related institutions.

## Detailed Draft Report

### 1. General Questions

#### Level of information on the transparency of fees and costs of justice

The level of transparency of the fees received by the persons involved in the civil trial and of the other costs generated by a civil trial is low.

The information referring to the costs can rarely be identified on public or private websites. There is no information in this respect and there are no brochures on this domain. Information can only be found directly from persons working in the field.

At this moment, the only expenses that can be identified easily are the court fees and the stamp duty, for the legislation on these expenses is found on many websites.

As mentioned above, a higher level of transparency exists only in the case of expenses that are regulated by law and which cannot vary depending on the persons involved (in the case of the bailiffs, translators, interpreters and court fees). The applicable legislation can be found on the web-sites of public institutions working in the corresponding domain or in legislation software.



Even so, there is no easier way for individuals without legal preparation to be informed of these expenses.

### **Transparency perception**

People's perception of the transparency of the costs of a civil trial is not an encouraging one.

It is generally considered that trials last a very long time and imply high costs. It is very difficult for the persons involved in a trial to estimate which are the expenses they will have to cover and how long the trial will last.

Evidently, all these aspects can discourage these persons from upholding their rights by judicial means.

### **Solutions to improve transparency**

The transparency of such costs would improve if we were able to identify and use efficiently all the means through which to inform the public on this subject.

Thus, we consider that the most efficient solution would be to establish the obligation of the courts and the institutions involved in the field of law, the associations representing the legal professions and the associations representing the citizens, to give the public all the necessary information on the expenses related to the judicial proceedings. This should be done through various sources and means. Information should be published on websites of institutions, brochures should be edited and information centers should be created.

### **Fairness of costs**

These costs are justified. They represent the exchange-value for the work done. By the way they are regulated by law, the costs are never excessively high so as to restrict the access to justice.

The costs fixed through negotiation (the fees of the attorneys, translators or interpreters hired by the parties, bailiffs or councils, etc), cannot be deemed unjustified, precisely because they represent the will of the parties, which cannot be censored.

Regarding the court fees, it is both normal and legal that the litigant who benefits from the activity of the judicial authorities contributes to their expenses. The court fee is also regarded as a public necessity, representing a way to partially cover the expenses implied by the public service of justice. Furthermore, according to the law, the litigant's initial monetary contribution can be recovered from the losing party.

On the other hand, the fees of the attorneys, translators or interpreters as well as of the bailiffs represent the exchange-value for the work done.

## **Conclusions and recommendations**

In our opinion, the access to information concerning the costs of justice is difficult having regard to the fact that such information can be found on public websites. Moreover, the information is limited and the number of people accessing it is really high.

It would be recommended to give the public all the necessary information on the expenses related to the judicial proceedings through various sources and means. Information should be published on websites of institutions, brochures should be edited and information centres should be created.

## **2. Court fees**

### **General**

In the Romanian legislation, the court fees represent the costs of bringing an action to the courts or the costs of any other claim brought before the court.

The court fees are made up of two components:

- *the court fees*, fixed for each law suit or claim, payable in cash or by bank transfer;
- *the stamp duty*, which is a print that is attached onto the claim.

These fees are regulated by law. Thus, Law no. 146 of July 24, 1997 on court fees, with subsequent modifications and completions, published in the Official Gazette no. 173 of July 29, 1997, is the applicable legislation to court fees, and Ordinance no 32 of August 18, 1995 on stamp duties, published in the Official Gazette no. 201/1995 is the legislation applicable to stamp duties.

According to Article 1 of Law no. 146/1997, “the lawsuits and claims submitted to court, as well as claims submitted to the Ministry of Justice and to the Criminal Section of the High Court of Cassation and Justice are subject to ‘court fees’”. They are taxed differently depending on whether the object of the claim is appraisable, while taking into account the legal exceptions mentioned in this or other laws.

The law includes provisions concerning the determination of court fees, the principle of advanced payment of court fees, the exceptions to this principle, as well as the cases for refunding court fees.

According to the Code of Civil Procedure, the court can grant exemptions, reductions, phasings, or adjournments to a party requesting legal aid, for the payment of court fees.

On the other hand, Government Ordinance no. 32/1995 on stamp duties provides that the stamp duty applies to lawsuits, claims, documents and services of all courts. Stamp duty is not charged in the cases when court fees are also not requested.

The claims for which stamp duty is requested will not be received or registered unless they are stamped as stated by the law. The exemptions, reductions, phasings, or adjournments admitted by the court concerning court fees do not apply to stamp duties. Failure to fulfill these duties will result in the withdrawal of the claim.

Romania’s legislation makes no distinction between to the quality of the person, concerning court fees. Thus, it provides that foreign natural or legal persons have the right to turn freely and unrestrictedly to the Romanian courts, to formulate claims, to introduce law suits and to uphold their interests under the same conditions as a Romanian natural or legal person. Furthermore, they are exempt from payment of any guarantees due to their being foreign, and their lack of residence or headquarters on the Romanian territory. The foreign natural person benefits from free legal aid under the same conditions as the Romanian natural person.

## **Cost of bringing an action to the courts**

The costs related to bringing an action to the courts are represented by:

- the court fees and the stamp duty for the claim
- the fees of the attorney who represents and assists the party in the trial
- the expenses necessary for the translation of the documents annexed to the claim, if they are written in a foreign language.
- postal taxes for the cases in which the claim is sent by mail to the court;

## **Other proceedings costs**

- fee of the expert who carries out an expert evaluation during the trial;
- fee of the translator or of the interpreter, if applicable;
- compensation for the witnesses heard by the court;
- expenses necessary for a rogatory commission;
- expenses necessary for a search at the scene;
- expenses related to official trips by the attorney and the party to court, in case it is located in another city.

## **Costs of legal recourses (Appeals)**

The costs of a trial in the first degree are similar to the ones in an appeal. Only their amount differs.

Thus, the court fees for the appeal are 50% of the court fees incurred in the first trial.

The fee of the attorney can be increased in the appeal, especially if the appeal is going to the High Court of Cassation and Justice, given that the party can only be represented by an attorney having 5 years of professional experience and an outstanding professional reputation.

## **Costs of ADR**

The Romanian legislation recognizes the following procedures of out-of-court resolution of disputes: the direct conciliation in commercial litigation, mediation and arbitration.

*The direct conciliation in commercial litigation* is regulated by Article 720 of the Civil Procedure Code. Thus, in the case of trials and claims of commercial nature that are appraisable monetarily, the claimant must try to settle the disagreement out of court, by direct conciliation with the other party. The costs of this procedure for the parties consist of: expenses for the convocation of the opposing party by registered letter, by telex, fax or any other means of communication that ensures the transmission of the text of the act and the confirmation of its receipt. These expenses are met by the person having initiated the conciliation procedure.

*The mediation* is a mechanism of solving a conflict out of court. It is relatively new and is not yet used often in practice. Mediation is regulated by Law no. 192/2006 on mediation and the organization of the profession of mediator. According to Article 26 of said law, the mediator is entitled to the payment of a fee fixed by negotiation with the parties, as well as to the restitution of expenses related to the mediation. The fee must be reasonable and take into account the nature and the object of the conflict. According to Article 45 of Law no. 192/2006 the mediation contract must mention, under sanction of absolute nullity, the obligation of the conflicting parties to pay the fee to which the mediator is entitled and the expenses the latter has engaged in their interest. It must also mention the methods of advanced payment of these sums, including in case of renunciation to the mediation or of failure of the procedure, as well as the proportion of the expenses that will be met by the parties, while eventually taking into account their social status. The expenses will be met by the parties equally, unless decided otherwise.

### **Costs of legal Aid proceedings**

In case a party cannot afford a lawyer or cannot afford the costs of proceeding, after his written request, the Court shall ask the Bar to appoint a lawyer in that matter.

Legal aid is defined as:

- giving exemption, reduction, spread of payments or delays in paying court fees, judicial stamp duties or securities;
- free defence or representation by a lawyer named by the Bar association.

The costs covered by legal aid are:

- court fees, judicial stamp duties and securities;
- the fees for lawyers who are representing the party.

According to article 80 of the Civil Procedure Code the expenses covered by legal aid can be reimbursed by the losing party. The covered costs include the court fees, judicial stamp duties, securities and the lawyer's fees.

### **Costs of fast track proceedings**

There are costs of fast track proceeding, e.g. the fees of the interpreters and translators that are fixed by an ordinance or a conclusion in which the translator or interpreter is appointed or by a civil contract of services.

The 20 lei minimum tariff is increased by 50% for urgent translations (24-48 hours).

### **Costs of Group actions proceedings**

As regards the costs of Group actions proceedings, there is no difference related to a proceeding started by an individual.

The costs or the exemptions or the need of a judicial stamp will depend on the nature of the action, according to Law no. 146/1997 on court fees.

### **Payment**

The court fees are governed by the principle of advanced payment. According to Article 20, Paragraph 1 of Law no. 146/1997, court fees are paid in advance, before the receipt, realization or issue of the taxable documents or before the realization of the requested service.

Exceptions to this rule are interpreted strictly. In practice, at the moment of the submittal of the claim, the party pays the court fees for an amount he or she estimates to be correct. At the first hearing, the court fixes the legal court fees and eventually notifies the party to pay a supplement.

There is also the case when a party sends the claim by mail, without paying the court fees. In this case, the court issues a subpoena for the first hearing, in which it also states the party's obligation to pay the court fees.

The President of the court will verify at the first hearing if the party was notified to pay the court fees and if the latter complied.

The exception of absence of stamping is a preliminary question which must be analyzed with priority by the court and before going on to discuss other aspects of the litigation. In the case when the President of the panel of judges notes that the court fees have not been paid but the party was notified, he will nullify the claim for being unstamped.

If a party makes a claim that should be stamped before the court according to the law (counterclaim, introduction of a third party request, supplement request), the court must notify the party to pay the court fees before the analysis of the request.

## **E-justice**

This domain is not regulated in Romania. "E-justice" is a notion that does not exist in our legal system.

Thus, it is not possible for an online procedure to take place. In the case of arbitration, it is not possible to organize video-conferences or to submit claims or notifications by e-mail.

## **Impact of the number of hearings on costs**

The number and duration of hearings affect the costs of a trial significantly. It entails an increase of expenses related to the discoveries of fact, transportation and expenses derived from the impossibility of regaining the right for which the trial was engaged. Some of these costs are determinable in money, others are not. For example, the long duration of a trial can also be regarded as a cost.

There is a real problem in Romania concerning the excessively long duration of trials. Although the law provides expressly for some litigations that they must be tried with celerity (the commercial litigations for example), the high number of cases in the docket prevents this obligation from being respected.

Of course, the long duration of the trial entails an abnormal increase of costs, the party having to support, in addition to court fees and expenses related to the findings of fact, transportation costs and, most importantly, significant costs derived from the impossibility of regaining the right for which the trial was engaged.

### **Transcription costs**

Drafting of documents issued by the court in a civil or commercial trial bears no costs because all the documents (court communications, conclusions, court decisions) are drafted by specialized personnel (court clerks).

In order to obtain simple copies of this documents, the photocopy costs must be paid. This costs may vary between 20 bani - 5 lei per each copy.

### **Conclusions and recommendations**

Generally, the costs for legal proceedings are not high. Moreover, the court fees are established by the government and the courts.

The costs of filing a claim before the courts (filing fees and courts fees) depend on the nature of the action. There are also some actions that are fee exempted.

The main regulations regarding this matter are: Law no. 146/1997 on court fees and Ordinance no. 32/1995 on stamp duty.

## **3. Lawyers' consulting and representation fees**



## General

The lawyers' activity is regulated by Law no. 51/1995 regarding the organization and performance of lawyer's profession published in the Official Gazette no. 116 of June 9, 1995 and republished in the Official Gazette no. 113 of March 6, 2001 and by the Statute of the profession of September 25, 2004, published in the Official Gazette no. 45 of January 13, 2005.

According to Law no. 51/1995, the lawyer's profession is free and independent, being exercised only by members of the bar.

The lawyers have the legal right to charge fees for their services.

Any lawyer also has the right to have the expenses that he incurred in the interest of his client reimbursed.

Detailed provisions regarding the lawyers' fees are found in Articles 132 to 137 of the Statute of the profession.

According to the Statute, the fees are determined in relation with the difficulty, the proportions and the duration of the case. The following elements will be taken into account:

- the time and the work needed for the execution of the mandate that was received or of the activity requested by the client;
- the nature, the novelty and the difficulty of the case;
- the importance of the interests at hand;
- the situation when the acceptance of the mandate given by the client prevents the lawyer from accepting another mandate from another person (if this situation can be ascertained by the client without additional investigation);
- the notoriety, titles, experience, reputation and specialization of the lawyer;
- the cooperation with experts or with other specialists required by the nature, the object, the complexity or the difficulty of the case;
- the advantages and results obtained by the client, resulting from the work done by the lawyer;
- the financial situation of the client;
- the time constraints resulting from the case;

The law provides that the fees be fixed freely between the lawyer and his client and within the limits of the law and the Statute of the profession. The fees are included in the legal aid contract at the moment of its signature, but they are fixed before the actual beginning of the legal aid or representation. Moreover, the fixation of minimum or maximum fees by the profession authorities or by any other entity is forbidden.

Different methods can be used for the fixation of the fees:

- hourly fees;
- fixed fees;
- fees depending on a successful outcome;
- a combination of the above.

The hourly fee is fixed on the worked hour.

The fixed fee consists of a fixed sum awarded to the lawyer for a professional service or for different categories of professional services done for the client.

The hourly fee as well as the fixed fee is due to the lawyer, regardless of the result that was obtained through the professional services.

Beside the fixed fee, the lawyer can request a fee depending on success which will be paid according to the result or service done. The fee consists of a fixed or variable sum established for the attainment by the lawyer of a certain result. It can be established together with the hourly or fixed fee.

The Statute forbids fixing the fees on the basis of a “de quota litis” pact. The “de quota litis” pact is a convention concluded between the client and the lawyer before the ultimate solving of the case. This convention fixes exclusively the totality of the lawyer’s fee depending on the judicial results of the case. It is indifferent if the fee consists of a sum of money, goods, or any other valuable. Moreover, fees representing the gain, under whatever form, of “contributions from the business” are forbidden.

The provisions of the law are the same for litigations containing an element of foreign origin. There are no special provisions. The fees are fixed freely between lawyer and client. The quality of the client being a Romanian or foreign citizen being is inconsequential.

### **Fees depending on the nature of the litigation**

According to the Attorney's Statute, the fees are determined in relation with the difficulty, the proportions and the duration of the case. The difficulty or the proportions of the case evidently depend also on the nature of the litigation.

For the representation of a party in a commercial litigation of very high value and with special implications, a higher fee will evidently be requested. For a litigation with a patrimonial object, the attorney will generally request a smaller or a larger fee, depending on the value of the litigation.

An estimation of these fees is almost impossible because this information can only be obtained after presenting the case to an attorney who will then be capable of fixing the fees by taking into account the workload, the value of the litigation and also the quality of the person involved. There is also an interdiction, as we mentioned above, to fix minimum, recommended or maximum fees by the profession's authorities or by any other entity.

### **Fees depending on the type of lawsuit or proceedings**

According to the Attorney's Statute, the attorneys' fees are determined in relation with the difficulty, the proportions and the duration of the case. These differ depending on the type of the trial and of the procedures handled by the attorney.

An estimation of these fees is almost impossible because this information can only be obtained after presenting the case to an attorney who will then be capable of fixing the fees by taking into account the workload, the value of the litigation and also the quality of the person involved. There is also an interdiction, as we mentioned above, to fix minimum, recommended or maximum fees by the profession authorities or by any other entity.

### **Fees depending on the value of the claim**

According to the Attorney's Statute, the attorneys' fees are determined in relation with the difficulty, the proportions and the duration of the case.

The Statute forbids fixing the fees on the basis of a “de quota litis” pact. The “de quota litis” pact is a convention concluded between the client and the lawyer before the ultimate solving of the case. This convention fixes exclusively the totality of the lawyer’s fee depending on the judicial results of the case. It is indifferent if the fee consists of a sum of money, goods, or any other valuable. Moreover, fees representing the gain, under whatever form, of “contributions from the business” are forbidden.

### **Fees depending on the jurisdiction**

According to the Attorney’s Statute, the attorneys’ fees are determined in relation with the difficulty, the proportions and the duration of the case. They differ according to the degree of the jurisdiction to which the litigation is addressed.

The Attorney’s Statute provides expressly that only attorneys having passed the tenure exam may represent and assist a party before the tribunals and the courts of appeal. Furthermore, only attorneys with a 5-year uninterrupted seniority after their tenure exam can represent and assist parties before the High Court of Cassation and Justice. Evidently, the fees of such attorneys will differ according to the court before which the trial is pending.

An estimation of these fees is almost impossible because this information can only be obtained after presenting the case to an attorney who will then be capable of fixing the fees by taking into account the workload, the value of the litigation and also the quality of the person involved. There is also an interdiction, as we mentioned above, to fix minimum, recommended or maximum fees by the profession authorities or by any other entity.

### **Legal aid cases**

The expenses covered by legal aid can be reimbursed by the losing party. The covered costs include the court fees, judicial stamp duties, securities and the **lawyer’s fees**.

In case a lawyer is appointed by the Bar in order to provide legal aid for criminals (when the Criminal Code stipulates that the presence of a lawyer is mandatory), the lawyer will be paid the Ministry of Justice.

## **Contingency fees**

The lawyer fees can be established as a success fee. In this case, the client pays a fixed fee when signing the legal assistance contract and, if the court rules in his favour, he will pay the lawyer another fee which can be established as a fixed amount or contingent upon the litigation amount.

## **Payment**

The law provides that the fees be fixed freely between the lawyer and his client within the limits of the law and of the Statute of the profession. The fees are included in the legal assistance contract at the moment of its signature, but they are fixed before the actual beginning of the legal assistance or representation. The time and the methods of the payment are determined at the same time the fee that the attorney is entitled to is fixed.

The Statute also provides for the case when circumstances impose immediate aid or representation, without the possibility of signing a legal assistance contract. In this case, the attorney has the obligation to send the client, without delay, a note comprising the fees that he proposes. Moreover, the fees communicated by the attorney are considered as accepted in the absence of express instructions from the client regarding the cessation of the legal assistance or representation, or in the absence of a communication in which the client clearly expresses his dissent regarding the fees.

In all cases, the fees are included in the legal assistance contract which is concluded in written form.

The payment is done by any instrument of payment that is accepted by the attorney and mentioned in the legal assistance contract. These methods are generally the payment in cash or by bank transfer.

Concerning the term of payment, it is usually stipulated that the payment take place either at the signing of the legal assistance contract, or at the first hearing.

The legal assistance contract's clauses are confidential. The attorney is not compelled to show the court the fee that he has received. In general, the receipt of the payment of the

fee is presented to the court to enable the winning party to recover the legal expenses from the losing party.

### 3.8.1 Retainer

The relation between the attorney and the client are contractual. The fees are included in the legal assistance contract at the moment of its signing, before the beginning of the legal assistance or of the legal representation.

## **Conclusions and recommendations**

In all types of litigations you can be represented by a lawyer, if you chose to do so, but the lawyer must be registered in the Bar Association.

You can also choose to represent yourself in the court, situation regulated by art. 67 of the Civil Procedure Code.

The lawyers' fees are determined between the lawyer and the client and are stipulated in the legal assistance contract before any activity is performed by the lawyer. VAT is not applicable.

## **4. Bailiff fees**

### **General**

Bailiffs fulfill a public service. They have as main attribution to carry out the forced execution of the civil provisions in writs of execution. They also have other attributions as established by law.

Law no. 188 of November 1, 2000 on bailiffs, published in the Official Gazette no. 559/2000 and Order no. 2550/C of November 14, 2006 on the approval of minimum and maximum fees for the services of the bailiff, published in the Official Gazette no. 936/2006 are the applicable legislation to bailiff fees.

Thus, according to Article 37 of Law no. 188/2000, bailiffs are entitled, for their services, to minimum or maximum fees fixed by the Ministry of Justice after consultation with the National Bailiffs Union. These fees must respect the following conditions:

- for sums smaller than 50.000 lei, the fee can amount up to 10%;
- for sums between 50.001 and 80.000 lei, the fee is 3%;
- for sums between 80.001 and 100.000 lei, the fee is 2%;
- for sums over 100.000 lei the fee is 1%.

According to the law, the Ministry of Justice shall establish the minimum and maximum fees for persons earning less than the minimum brute salary by country, as well as the possibility of payment in several installments.

Moreover, bailiffs cannot make the advanced payment of the fee a condition for the execution of court decisions.

Article 65 of the law provides for the destination of the taxes derived from the fees of the bailiffs. These are income to the State budget. They are set aside in the income and expenses budget for court fees of the Ministry of Justice, according to the conditions and destination provided by law.

The minimum and maximum fees entitled to bailiffs are regulated in Order no. 2550/C of November 14, 2006 on the approval of minimum and maximum fees for the services of the bailiff, published in the Official Gazette no. 936/2006.

According to the Order, the minimum and maximum fees are fixed at half the minimum respectively maximum fees mentioned in the annex, for persons earning less than the minimum brute salary by country. The option of paying the fees in several installments is also regulated. Thus, the Order states that the fees may be paid in up to four installments until the end of the forced execution.

The quality of the person requesting the execution bears no importance for fixing the fees of the bailiff and for the methods of payment. The same conditions are valid whether the execution is requested by a Romanian or by a foreign citizen.

## Ante judgment

The costs of the procedures implemented by the bailiff before filing the claim are the following:

- *the notification and the communication of procedural documents* - 20 lei minimum fee and 400 lei maximum fee;
- *ascertaining a factual situation and inventory of goods* (Article 239 of the Civil Procedure Code) - 100 lei minimum fee and 2.200 lei maximum fee for the natural person debtor / 5.200 lei for the legal person debtor;
- *real offer minute* - 50 lei minimum fee and 350 lei maximum fee;
- *confiscations* - minimum fee of 10% of the value and maximum fee of 10% of the value;
- *insuring sequester* - 100 lei minimum fee and 1.200 lei maximum fee for natural person debtor / 2.200 for legal person debtor;
- *opinions related to the constitution of documents of execution* - 20 lei minimum fee and 200 lei maximum fee.

## During proceedings

The costs of the procedures implemented by the bailiff while the case is being tried are the following:

- *garnishment* - 60 lei minimum fee for a credit of up to 1.000 lei / 60 lei plus 2% of the sum exceeding 1.000 lei for credits exceeding 1.000 lei and maximum fee; for sums of up to 50.000 lei the fee may be up to 10% / for sums between 50.001 and 80.000 lei the fee is 3% / for sums between 80.001 and 100.000 the fee is 2% / for sums exceeding 100.000 the fee is 1%.



- *the protest for the non-payment of draft, promissory order and checks* - 150 lei minimum fee and 400 lei maximum fee;
- *judicial sequester* - 100 lei minimum fee and 1.200 maximum fee for a natural person debtor / 2.200 for a legal person debtor.

### **Post proceedings**

The costs of the procedures implemented by the bailiff after the court has given its solution are the following:

- *evacuations* - 150 lei minimum fee, 2.200 lei maximum fee for a natural person debtor / 5.200 lei for a legal person debtor;
- *the placement of the child or the establishment of the residence of the child* - 50 lei minimum fee and 1.000 lei maximum fee;
- *the visit to the child* - 50 lei minimum fee and 500 lei maximum fee;
- *the destruction of works or constructions* - 150 lei minimum fee and 2.200 lei maximum fee for the natural person debtor / 5.200 for the legal person debtor;
- *the prosecution of credit on personal estate* - 60 lei minimum fee for a credit of up to 1.000 lei / 60 lei plus 2% of the sum exceeding 1.000 lei for credits exceeding 1.000 lei and maximum fee; for sums of up to 50.000 lei the fee may be up to 10% / for sums between 50.001 and 80.000 lei the fee is 3% / for sums between 80.001 and 100.000 the fee is 2% / for sums exceeding 100.000 the fee is 1%;
- *the prosecution of credit on real estate* - up to 10% for sums not exceeding 50.000 lei / 3% for sums between 50.001 and 80.000 / 2% for sums between 80.001 and 100.000 / 1% for sums exceeding 100.000.

## **Legal aid cases**

The legal aid doesn't cover the enforcement of court decisions and neither the bailiff fees.

### **Payment**

Law no. 188/2000 states as a general rule that bailiffs cannot make the advanced payment of the fee a condition for the execution of court decisions.

According to the disposition on forced execution found in Article 371 of the Code of Civil Procedure, the party requesting a document or an activity regarding forced execution is compelled to pay in advance the necessary expenses. The expenses are paid in advance by the creditor for the documents or activities ordered *ex officio* by the court. The expenses arising from the forced execution are in the debt of the prosecuted debtor, except in the case when the debtor has given up the execution or the law provides otherwise.

#### **4.6.1. Retainer**

The relation between the attorney and the client are contractual. The fees are included in the legal aid contract at the moment of its signing, before the beginning of the legal aid or of the legal representation.

### **Conclusions and recommendations**

The applicable regulations are: is Law no. 188/2000 on bailiffs, published in the Official Gazette no.559/2000 and Order of the Minister of Justice no. 2550/2006 on the approval of the minimum and maximum bailiff's fees, published in the Official Gazette no. 936/2006.

The bailiff fees depend on the nature of the activity performed. The payment of the fees shall be made by the person who requests the bailiff's to start an execution of a procedure.

The bailiffs are usually paid per act.

The intervention of a bailiff is required by law prior to a judicial proceeding, during or post.

## 5. Expert

### General

There are two types of expert assessment:

- judiciary;
- extra-judiciary

The *judiciary* expert assessment is performed by experts or other specialists in a certain field, at the request of the courts or of other authorities with judicial attributions.

The *extra-judiciary* expert assessment is performed by experts or other specialists in a certain field, at the request of natural or legal persons regarding to situations that do not have a direct link with the judicial activity. The extra-judiciary report may be used in a trial to eventually combat the expert assessment that was performed in the case.

The dispositions referring to *expert assessment expenses* are found in Articles 170-171 of the Civil Procedure Code, as well as in Articles 17-20, Article 23, Articles 24-25 of Government Ordinance no. /2000 on the organization of the activity of judiciary or extra-judiciary technical expertise.

According to article 170 of the Code of Civil Procedure, when a local investigation, an expert assessment or a proof with witnesses is accepted, the party having requested it has the obligation to pay the sum fixed by the court for the investigation expenses, the official trip expenses or the expert's fee within a 5 day delay. The receipt must be submitted to the court clerk's office.

Failure to fulfill this obligation will result in losing the accepted evidence.

In the case when the evidence was ordered *ex officio*, the court will fix the expenses of the presentation of evidence and the incumbent party. The court can also decide that the expenses will be supported by both parties.

References concerning the fees of the experts are found in Ordinance no. 2/2000 on the organization of the activity of judiciary or extra-judiciary technical expert assessment.

Thus, the authority entitled to order a judicial technical expert assessment fixes the provisional fee and, when it is the case, the advanced payment for official trip expenses. The expert has the right to the refund of transportation and accommodation costs and to the payment of a daily allowance, according to the dispositions regulating these rights for public institutions employees, in the case when the expert must travel to a different city from the one in which he resides for the performance of the expert assessment that was ordered.

The sum that was fixed as provisional fee and, when it is the case, the advanced payment for official trip expenses must be deposited within 5 days from the nomination of the expert. It is deposited by the party for whom the requested expert assessment was accepted in the special account which is opened to this end at the local technical and accounting judiciary expertise office.

The *definitive fee* for the judiciary technical expert assessment is fixed by the authority that has carried out the order. This is done according to the complexity of the work, the workload and the professional or scientific level of the expert or specialist. The payment of the fee and the eventual reimbursement of other expenses entitled to the expert or specialist are done only through the local technical and accounting judiciary expertise office.

According to Article 31 of Government Ordinance no. 2/2000, the relations between the technical expert and the petitioner of the *extra-judiciary* technical expert assessment are fixed in a written contract, signed by both parties. The method of determination and payment of the taxes on the sums paid to the expert differ depending if the beneficiary is a natural or a legal person. Thus, the legal persons have the responsibility of calculating and depositing the taxes relative to the sums paid as fees for the extra-judiciary technical expert assessment performed. For natural persons, this obligation is incumbent to the technical expert that has individually executed the work.

The quality of Romanian or foreign citizen is of no importance when determining the fees or their payment. Foreign citizens benefit from the same conditions as Romanian citizens.

## **Fees**

There is no regulation concretely fixing expertise fees. The *judiciary fees* are fixed by the *court* while the *extra-judiciary fees* are fixed by *agreement between the parties*.

At the present moment, the court fixes the initial judiciary expertise fees at a sum between 300 and 700 lei, depending on the type of expertise.

In the case when, during or after the expertise, the expert considers that the fee initially fixed is insufficient, he will solicit the court that it be increased. He will have to submit proof supporting his claim for a higher fee. The court will submit the claim to discussion between the parties and it will rule upon the claim in its conclusions.

The Experts and Accountants Organization of Romania has issued a Regulation regarding the discipline of the fees, compensations and the criteria for the restitution of the expenses for the professional activities of authorized experts and accountants. The accountant is entitled to compensation for official trips and accommodation costs, other compensations and fees for the activity performed in the interest of the client.

The compensation for official trips and accommodation costs and the other compensations are determined in the regulation to a fixed amount.

It must be referred to the nature, characteristics, duration, time and sales turnover or the value of the activity for the determination of the fees mentioned in the regulation. In addition, the economic result sought, the patrimonial and non-patrimonial advantages the client receives must also be taken into account.

## **Payment**

According to Article 170 of the Code of Civil Procedure, when a local investigation, an expertise or a proof with witnesses is accepted, the party having requested it has the obligation to pay the sum fixed by the court for the investigation expenses, the official trip expenses or the expert's fee within a 5 day delay. The receipt must be submitted to the court clerk's office.

In the case when the proof was ordered *ex officio*, the court will fix the expenses of the presentation of evidence and the incumbent party. The court can also decide that the expenses will be supported by both parties.

The party responsible for the payment of the presentation of evidence will pay the fee at the Local Expertise Office within the jurisdiction of the court judging the trial. The expert will recover the sums representing the fees from this Local Expertise Office when he proves that he has finalized the expertise and drafted the report. The report must be approved by the Local Expertise Office prior to its submittal to the court.

#### 5.3.1. Retainer

The judiciary expert assessment is performed by the expert at the request of the court. The court issues an order to the expert notifying him to perform the expert assessment according to the established objectives. The expert must abide the court's dispositions. He can be otherwise sanctioned for failure to perform the expert assessment. In the case when it is impossible for the expert to perform the expert assessment because of the time or because of personal problems, he must inform the court, which will then appoint another expert.

The extra-judiciary expert assessment is performed on the basis of a contract concluded between the expert and the concerned party.

### **Legal aid cases**

According to the Code of Civil Procedure, exemptions, reductions, phasings or adjournments of the payment of the fees and guarantees can be granted. The Bar can also delegate an attorney in order to give free legal assistance.

There are no legal provisions on legal aid for the payment of expertise expenses. Thus, the fees shall be paid by the person requesting the expertise. The party can eventually recover these expenses from the succumbing party.

### **Reimbursement of experts' fees**

According to Article 274 of the Code of Civil Procedure, the succumbing party will be asked to pay the trial expenses. These also include the fees of these experts that the winning party has paid.

However, the defendant who has confessed to the pretensions of the claimant at the first hearing will be not compelled to pay the trial expenses except for the case when he was notified before the hearing.

On the other hand, in the case when the court partially accepted the claims of both parties, the court will determine to which extent the parties can be compelled to pay the trial expenses. The court can also order the compensation of the expenses.

In the case when there are several defendants or several claimants, they will be compelled to pay the trial expenses equally, proportionally and jointly, according with each person's interest or according to the relations existing between them.

### **Practical questions**

A judiciary or extra-judiciary expert assessment can be performed by three categories of persons:

1. technical persons
2. accounting experts
3. persons with a high degree of specialization in a domain lacking authorized experts.

Technical experts are organized in the Technical Experts Organization of Romania. The profession is regulated by Government Ordinance no. 2/2000.

The quality of technical judiciary expert is acquired through an exam. The exam is passed by the Ministry of Justice for the purpose of verifying the knowledge of the future experts in the specialty they postulate for. Members of the Academy, University Professors, University Lectors, Doctors or Doctors in technical sciences are exempted from the exam.

The *quality of technical expert* can be acquired by meeting the following conditions:

- being a Romanian citizen and knowing the Romanian language;
- having complete exercise capacity;
- having a College Degree in the field the exam is passed;
- having a minimum 5 year traineeship in the field the diploma was obtained in;
- being medically fit for performing the activity of judiciary expert;
- having no criminal record and having a good professional and social reputation
- being admitted to the exam organized for this purpose.

The *quality of accountant* can also be acquired through examination, the performing of 3 year traineeship and the passing of an aptitude exam at the end of the traineeship.

To present himself for examination for the accounting profession, the person has to meet the following conditions:

- have complete exercise capacity;
- have College education with a College Degree recognized by the Ministry of Education and Research;
- have no conviction that, according to the law, forbids the right to manage commercial companies;

According to the law, in the absence of authorized experts in the requested field, the court may solicit the point of view of one or more personalities or specialists of that field.

## **Conclusions and recommendations**

There are national organizations to contact to obtain a list of experts:



- The House of Technical Experts
- General Society of Technical Experts
- The House of Accountant Experts and Authorized Accountants.

As a conclusion, clients have an easy access to expert's names, the information on expert and on the cases in which they have to be called being easily accessible.

The expert's compensation is determined by the court according to article 202 paragraph 2 in the Civil Procedure Code.

If the expert considers that the compensation established by the court should be higher he can request to the court to re-establish the compensation.

The nature of litigation determines the expert's volume of work, consequently the volume of work determines the fee.

The winning party has the possibility to request that the party who loses pay all the legal costs, including the experts' fee.

Notice that a person entitled to legal aid can't claim the partial or total assistance in respect to legal expert fees.

## 6. Translation and interpretation

### General

Interpreters and translators are persons certified and authorized in the profession by the Ministry of Justice. They perform the activity of interpreter and translator for the Superior Council of Magistracy, the Ministry of Justice, the courts, the criminal sections by the courts, the criminal prosecution authorities, the public notary offices, for the attorneys and the bailiffs.

Dispositions concerning translators and interpreters are found:

- in the Code of civil Procedure, Articles 141-143
- Law no. 178 of November 4, 1997 for the authorization and payment of interpreters and translators used by criminal prosecution authorities, judicial bodies, public notaries, barristers and by the Ministry of Justice, published in the Official Gazette No. 305/1997
- Order no. 1341/C of September 20, 2005 on the establishment of fees for authorized interpreters and translators used by the Superior Council of

Magistracy, the Ministry of Justice, the Criminal Section of the High Court of Cassation and Justice, the National Anti-corruption Directorate, the criminal prosecution authorities, the judicial bodies, the public notaries, the barristers and bailiffs, published in the Official Gazette No. 905/2005

- Law no. 189/2005 on international legal aid in civil and commercial law, published in the Official Gazette no. 337/2003.

According to the Code of Civil Procedure, in the case when the party or the witness does not know the Romanian language, an authorized interpreter or a reliable person, if not available, shall be used. In the case of the latter, the dispositions regarding the experts apply. Moreover, the judge may perform the translator's duties without taking oath.

When the person auditioned is mute or deaf and cannot be understood, he will be required to write down his answers. If he doesn't know how to write, an interpreter shall be used.

Law no. 178/1997 makes a distinction between tariffs and fees. Thus, the tariffs designate services done for the Ministry of justice, while the fees are fixed by the court by issuing a conclusion in which the interpreter or translator is appointed. The fees can also be fixed in a civil contract of services.

The tariffs received by the interpreters and translators are regulated by Articles 7 and 10 of Law no. 178 of November 4, 1997 for the authorization and payment of interpreters and translators used by criminal prosecution authorities, judicial bodies, public notaries, barristers and by the Ministry of Justice, published in the Official Gazette no. 305/1997 as well as Order no. 1341/C of September 20, 2005 on the establishment of fees for authorized interpreters and translators used by the Superior Council of Magistracy, the Ministry of Justice, the Criminal Section of the High Court of Cassation and Justice, the National Anti-corruption Directorate, the criminal prosecution authorities, the judicial bodies, the public notaries, the barristers and bailiffs, published in the Official Gazette no. 905/2005.

According to Law no. 178/1997 the tariffs for the payment of authorized interpreters and translators shall be index-linked to the annual inflation rate index by a joint order from the Minister of Justice and the Minister of Public Finance.

The law mentions that the tariffs of interpreters cannot be less than 20 lei per hour.

The fees of the interpreters and translators shall be fixed by an ordinance or a conclusion in which the translator or interpreter is appointed, or by a civil contract of services.

The 20 lei minimum tariff is increased in the following way:

- by 50% for translations from or into an oriental language (Japanese, Chinese, etc.) or a rarely used language;
- by 50% for urgent translations (24-48 hours);
- by 100% for translations done simultaneously with headphones, at courts, at criminal prosecution authorities and criminal sections by the courts;
- by 100% when the interpreters or translators shall be solicited during weekends, during legal holidays or in other days exempted from work according tot the law, as well as for services done between 22:00-06:00.

Furthermore, interpreters and translators that travel to another town for the realization of the work required by the legal courts are entitled to the restitution of their transportation, support, accommodation and other necessary expenses.

In order to ensure the exercise of the rights and attributions recognized by the law, the courts may use reliable persons who know the language in which or from which the translation in made and who use it usually or professionally, in the cases when there are no authorized interpreters or translators according to the present law.

The Order of the Minister of Justice and of the Minister of Finances no. 1341/2005 on the establishment of fees for authorized interpreters and translators used by the Superior Council of Magistracy, the Ministry of Justice, the Criminal Section of the High Court of Cassation and Justice, the National Anti-corruption Directorate, the criminal prosecution authorities, the judicial bodies, the public notaries, the barristers and bailiffs is another regulation applicable to the tariffs received by interpreters and translators.

According to this Order, the tariffs are fixed in the following way:

- 20 RON per hour or, according to each case, by hour fraction, for the payment of authorized interpreters for translations from a foreign language to Romanian and vice-versa;

- 14.5 RON per page in the A4 format, typed in two row spacing, for translations from a foreign language to Romanian and vice-versa;

The VAT shall be added to the tariffs in case it is owed according to the law. These tariffs shall be index-linked to the annual inflation rate index.

Law no. 189/2005 on international legal aid in civil and commercial law, published in the Official Gazette no. 337/2003 contains dispositions regarding the translation of documents necessary to the procedures treated by the present law, namely:

- communicating judiciary and extra-judiciary documents to and from abroad;
- obtaining proof through exceptional international rogatory commission;
- transmitting/obtaining information on foreign law.

### **Translation fees**

Law no. 178/1997 makes a distinction between tariffs and fees. Thus, the tariffs designate services done for the Ministry of Justice, while the fees are fixed by the court by issuing a conclusion in which the interpreter or translator is appointed. The fees can also be fixed in a civil contract of services. The tariffs may be taken into consideration by the judge in determining the fees. The tariffs have a guiding role.

According to Law no. 178/1997 the tariffs for the payment of authorized interpreters and translators shall be index-linked to the annual inflation rate index by a joint order from the Minister of Justice and the Minister of Public Finance.

The law mentions that the tariffs of interpreters cannot be less than 20 lei per hour.

The fees of the interpreters and translators shall be fixed by an ordinance or a conclusion in which the translator or interpreter is appointed or by a civil contract of services.

The 20 lei minimum tariff is increased in the following way:

- by 50% for translations from or into an oriental language (Japanese, Chinese, etc.) or a rarely used language;

- by 50% for urgent translations (24-48 hours);
- by 100% for translations done simultaneously with headphones, at courts, at criminal prosecution authorities and criminal sections by the courts;
- by 100% when the interpreters or translators shall be solicited during weekends, during legal holidays or in other days exempted from work according tot the law, as well as for services done between 22:00-06:00.

Furthermore, interpreters and translators that travel to another town for the realization of the work required by the legal courts are entitled to the restitution of their transportation, support, accommodation and other necessary expenses.

In order to ensure the exercise of the rights and attributions recognized by the law, the courts may use reliable persons who know the language in which or from which the translation in made and who use it frequently or professionally, in the cases when there are no authorized interpreters or translators according to the present law.

The Order of the Minister of Justice and of the Minister of Finances no. 1341/2005 on the establishment of fees for authorized interpreters and translators used by the Superior Council of Magistracy, the Ministry of Justice, the Criminal Section of the High Court of Cassation and Justice, the National Anti-corruption Directorate, the criminal prosecution authorities, the judicial bodies, the public notaries, the barristers and bailiffs is another regulation applicable to the tariffs received by interpreters and translators.

According to this Order the tariffs are fixed in the following way:

- 20 RON per hour or, according to each case, by hour fraction, for the payment of authorized interpreters for translations from a foreign language to Romanian and vice-versa;
- 14.5 RON per page in the A4 format, typed in two row spacing, for translations from a foreign language to Romanian and vice-versa;

The VAT shall be added to the tariffs in case it is owed according to the law. These tariffs shall be index-linked to the annual inflation rate index.

## Interpretation fees

Law no. 178/1997 makes a distinction between tariffs and fees. Thus, the tariffs designate services done for the Ministry of justice, while the fees are fixed by the court by issuing a conclusion in which the interpreter or translator is appointed. The fees can also be fixed in a civil contract of services. The tariffs may be taken into consideration by the judge in determining the fees. The tariffs have a guiding role.

According to Law no. 178/1997 the tariffs for the payment of authorized interpreters and translators shall be index-linked to the annual inflation rate index by a joint order from the Minister of Justice and the Minister of Public Finance.

The law mentions that the tariffs of interpreters cannot be inferior to 20 lei per hour.

The fees of the interpreters and translators shall be fixed by an ordinance or a conclusion in which the translator or interpreter is appointed or by a civil contract of services.

The 20 lei minimum tariff is increased in the following way:

- by 50% for translations from or into an oriental language (Japanese, Chinese, etc.) or a rarely used language;
- by 50% for urgent translations (24-48 hours);
- by 100% for translations done simultaneously with headphones, at courts, at criminal prosecution authorities and criminal sections by the courts;
- by 100% when the interpreters or translators shall be solicited during weekends, during legal holidays or in other days exempted from work according to the law, as well as for services done between 22:00-06:00.

Furthermore, interpreters and translators that travel to another town for the realization of the work required by the legal courts are entitled to the restitution of their transportation, support, accommodation and other necessary expenses.

In order to ensure the exercise of the rights and attributions recognized by the law, the courts may use reliable persons who know the language in which or from which the translation is made and who use it usually or professionally, in the cases when there are no authorized interpreters or translators according to the present law.

The Order of the Minister of Justice and of the Minister of Finances no. 1341/2005 on the establishment of fees for authorized interpreters and translators used by the Superior Council of Magistracy, the Ministry of Justice, the Criminal Section of the High Court of Cassation and Justice, the National Anti-corruption Directorate, the criminal prosecution authorities, the judicial bodies, the public notaries, the barristers and bailiffs is another regulation applicable to the tariffs received by interpreters and translators.

According to this Order the tariffs are fixed in the following way:

- 20 RON per hour or, according to each case, by hour fraction, for the payment of authorized interpreters for translations from a foreign language to Romanian and vice-versa;
- 14.5 RON per page in the A4 format, typed in two row spacing, for translations from a foreign language to Romanian and vice-versa;

The VAT shall be added to the tariffs in case it is owed according to the law. These tariffs shall be index-linked to the annual inflation rate index.

## **Payment**

The party having requested this type of services has the obligation of supporting the resulting expenses. It has the possibility of recovering these expenses in the case when the adversary party succumbs in his or her claims.

### **6.4.1. Retainer**

The fees and the other conditions concerning the activity shall be fixed by the judge in charge of the case for the situation when the translator or the interpreter performs his activity at the request of the court.

In case the translator or interpreter performs his activity at the request of a natural or a legal person, all the conditions shall be fixed by civil contract of services.

## Practical questions

According to the Code of Civil Procedure, in the case when the party or the witness does not know the Romanian language, an authorized interpreter or a reliable person, if not available, shall be used. In the case of the latter, the dispositions regarding the experts apply. Moreover, the judge may perform the translator's duties without taking oath.

*The quality of authorized translator* may be obtained by a person meeting the following conditions:

- is a Romanian citizen or a citizen of an European Union or European Economic area member state;
- has fulfilled capacity to exercise;
- has a degree or equivalent diploma from which results the specialization in the foreign language or languages for which the authorization is solicited or which certifies having graduated a institute of higher learning in the foreign language for which the authorization in solicited or is certified by the Ministry of Culture and Cults as translator in legal sciences from the Romanian language to the foreign language the authorization is solicited for and vice-versa;
- is medically fit;
- has no criminal record and has a good professional and social reputation.

A foreign citizen of a European Union or European Economic Area member state who established in Romania may exercise the profession of interpreter or translator in the same conditions as the Romanian citizens. He may prove the fulfillment of the conditions mentioned above (except for the first) including with documents issued or delivered by the qualified authorities of the State of origin.

According to the law, the procedure of authorization is not applied to the foreign citizen of a European Union or European Economic Area member state who is established in Romania and is certified interpreter or translator in legal sciences by the qualified authority in the state of origin.



## **Legal aid**

According to the Code of Civil Procedure, exemptions, reductions, phasings or adjournments of the payment of the fees and guarantees can be granted. The Bar can also delegate an attorney in order to give free legal assistance.

There are no legal provisions on legal assistance for the payment of translation or interpretation related expenses. Thus, the fees shall be paid by the person requesting the expert assessment. The party can eventually recover these expenses from the succumbing party.

## **Reimbursement**

According to the Code of Civil Procedure, the succumbing party will be asked to pay the trial expenses. These also include the fees of these experts that the winning party has paid.

However, the defendant who has confessed to the pretensions of the claimant at the first hearing will be not compelled to pay the trial expenses except for the case when he was notified before the hearing.

On the other hand, in the case when the court partially accepted the claims of both parties, the court will determine to which extent the parties can be compelled to pay the trial expenses. The court can also order the compensation of the expenses.

In the case when there are several defendants or several claimants, they will be compelled to pay the trial expenses equally, proportionally and jointly, according with each person's interest or according to the relations existing between them.

## **Conclusions and recommendations**

A person who needs to translate any documents or to have an interpreter during a meeting will have to request information about the fees directly from the translator. He can also negotiate the fees.

In court, when a translator must be present, the judge establishes his fee.

The translator's/interpreter's compensation is determined by the Minister of Justice and the Minister of Public Finances.

The costs are established by a common Order of the Minister of Justice and The Minister of Finances. The price cannot be lower than 20 RON - according to art. 7 of Law no. 178/1997, with the subsequent modifications.

Notice that in order to be admitted in court, all the foreign language documents must be translated by an accredited translator.

Moreover, translators/interpreters have to be accredited by the Ministry of Justice before they can act as translators in litigation.

The fee of a translator depends of the work volume for translating the document and not on the nature of the litigation.

In a legal proceeding the winning party has the possibility to be reimbursed by the losing party all the costs, including the translator's fee.

## 7. Witness Compensation

### General

In the case when a person knows facts that illustrate the solidity of the claims of one of the persons involved in the litigation, the procedure for using these probatory elements is her hearing as witness. This can be done only if there is no legal restriction.

The legal dispositions regarding *witness compensation* are found under Articles 170, 200 and 274 of the Code of Civil Procedure.

According to article 170 of the Code of Civil Procedure, when a local investigation, an expertise or a proof with witnesses is accepted, the party having requested it has the obligation to pay the sum fixed by the court for the official trip expenses and for the witness compensation within 5 days. Furthermore, the witness may request that his official trip expenses be covered and that he be compensated according to his status, to his occupation or according to the distance to his residence and the time lost.

The party having supported these expenses has the possibility of recovering them from the adversary in case the latter succumbs in his claims. According to the Code of Civil Procedure, the trial expenses are supported by the party which succumbs in his claims. These expenses include those related to the proof with witnesses.

Another regulation applying to this domain is Law no. 189/2005 on international legal assistance in civil and commercial law, published in the Official Gazette no. 337/2003.

This law provides the possibility of hearing witnesses through a rogatory commission in the case of legal relations containing an element of foreign origin.

For this purpose, the law defines the international rogatory commission. The rogatory commission in civil or commercial matters is the action through which a judicial authority in a state commissions a judicial authority in another state to undertake, in its name and for its sake, a legal action in a specific case.

These rogatory commissions can be solicited to enable the parties to obtain evidence for a procedure which is under way or planned for the future.

Two situations are regulated:

- the request of rogatory commission abroad;
- the procedure regarding rogatory commission received from abroad;

In the first hypothesis, the law provides that *Romanian authorities have the possibility to solicit a rogatory commission abroad*. This solicitation can be done at the parties' request as well as *ex officio*.

The qualified central authority is the Ministry of Justice. Within its attributions is transmitting abroad the rogatory commission requests. Nevertheless, prior to their transmission, these rogatory commissions are submitted to the international regularity control.

The transmission of the request can be made directly towards the qualified central authority in the state where the rogatory commission is to be carried out. If urgent, it can also be transmitted through the Ministry of Foreign Affairs to the Romanian diplomatic or consular missions in the respective state.

In the second hypothesis, the law regulates *the procedure regarding the rogatory commissions received from abroad*.

In this case also, the Ministry of Justice is qualified to receive the rogatory commission requests submitted by judicial authorities from abroad. The Ministry transmits the requests to the court in whose jurisdiction the solicited judicial action shall be performed. After the realization of the rogatory commission, the documents attesting it are transmitted to the Ministry of Justice which, in turn, shall transmit them in the same way to the soliciting authority. In case the rogatory commission is transmitted to an unqualified authority, the latter shall transmit it *ex officio* to the qualified authority and has the obligation to notify the Ministry of Justice regarding the matter.

The law also fixes the court's role in the procedure for the rogatory commission received from abroad. Thus, it is provided that for the execution of the rogatory commission the Romanian rules of procedure shall be used. It is possible to use a special procedure, at the request of the soliciting authority, on the condition that the procedure does not infringe upon the Romanian legislation. The Romanian court must inform the soliciting judicial authority on the time and place of the execution of the rogatory commission. The Romanian court may allow, upon special request, the participation of foreign magistrates.

The law also regulates the possibility to refuse the rogatory commission in some specially determined cases, namely:

- if its execution is not of the competence of the judicial power;
- if its execution conflicts with national sovereignty or national security;

Moreover, the execution of a rogatory commission shall not be possible when the person who is to be heard cannot testify because of Romanian legislation prohibitions, or when the documents which were to be transmitted or examined cannot be circulated. According to the law, if such a case arises and the rogatory commission cannot be carried out, the soliciting authority must be informed immediately. The non-execution of the rogatory commission must be justified.

According to the law, the execution of the rogatory commission shall not lead to the restitution of the related expenses, except for the translation of the documents and for the use of interpreters and experts. These dispositions are under condition of reciprocity.

On the other hand, the diplomatic or consular missions on the Romanian territory can carry out rogatory commissions solicited by authorities of the state they represent only for their citizens. The procedure used by the diplomatic or consular agent authorized to carry out the rogatory commission is the procedure of the qualified authority in the soliciting state, on the condition that it does not infringe upon Romanian legislation. Furthermore, foreign citizens may be assisted by a defense, at the request of the concerned party.

## **Fees**

The witness compensation includes the official trip expenses as well as the compensation of the witness according to his status and occupation of the person and according to the distance of the residence and the time taken by the trip.

The compensation of witnesses represents part of the trial expenses and is a *sum fixed by the court*. The party who proposed the respective evidence has the obligation to deposit the sum within 5 days from the moment of its fixation.

## **Legal aid cases**

There aren't any cases where the witnesses' fees are taken care of by legal aid organizations. Eventually, the fees for the witness will be covered by the losing party.

## **Payment**

The sum representing the compensation of the witnesses must be deposited by the party having proposed the evidence, within 5 days from the moment of its fixation.

## **Practical questions**

Witnesses are persons who are not involved in the trial but they hold valuable information for the resolution of a civil trial. By giving it to the trial court they help establishing the truth.

Any person holding information that can lead to the resolution of the case can have the quality of witness, excepting:

- relatives and in-laws up to and including the third degree;
- the spouse, even if separated;
- convicts under judicial disability and those declared by law as being incapable of testifying;
- persons convicted for false testimony.

The relatives can have the quality of witnesses in case of divorce.

There are categories of persons exempted from testifying. Those are persons who, under the terms of their trade, have to keep the professional secrecy (doctors, attorneys, public notaries etc.), civil servants, as well as those who would expose themselves by their own answers or who would expose a relative, in-law or spouse to a criminal penalty or to public contempt.

The hearing of the witnesses is an oral procedure that takes place in front of the court. The witness cannot read an answer written previously. He can only use notes regarding numbers and names.

The testimony is oral, but it is written down by the clerk on dictation from the president of the court. It shall be signed on each page and at its end by the judge, the clerk and the witness.

If the person who should be heard is mute or deaf and cannot be comprehended, he shall write down his answers. In the case the person does not know how to write, an interpreter shall be used.

The appreciation of the proof by witnesses shall be done by the trial court.

## **Conclusions and recommendations**

The witness is not paid, but the losing party has to pay all the witnesses' compensation (including transport costs, the wage for a work day, etc), if requested. Also, the employer is not allowed to withhold part of a witness' salary for time spent in court.

The witness' compensation is determined by the judge, taking into consideration the demonstrated costs.

In cross-border litigation the witnesses' audition or the administration of an evidence can be made by a rogatory commission. In this case the costs of translations are paid depending on whether the rogatory commission was solicited by a Romanian entity to a foreign one or by a foreign entity to a Romanian one.

## **8. Pledges and security deposits**

### **General**

There are situations when, as part of the procedure taking place before the court, the judge or the bailiff may request a guarantee from the party soliciting a measure, according to the law.

Guarantees are regulated in Articles 392 to 396 and Article 723 index 1 of the Code of Civil Procedure.

A guarantee is deposited in the following cases:

- suspension of a temporary execution;
- suspension of the execution in appeal;
- suspension of the execution in revision;
- decisions executed provisionally;
- provisional suspension of execution;
- suspension of forced execution by the deposit of the exchange-value of the credit;
- sale by auction, in the case of forced execution of real estate;
- payment of conditional credit or of credits affected by a term;

- the suspension of the execution of the decision made by presidential ordinance, until the judgment of the appeal against the decision;
- insuring sequester;
- insurance garnishment;
- judicial sequester.

According to the law, the decision obliging a party to provide a guarantee or a guarantor shall also give the delay for the deposit of the guarantee or for the presentation of the guarantor. The guarantor will show himself before the public audience trial. He shall be received in the case when his solvability is generally known or if he can prove it with documents.

According to the Code of Civil Procedure, the sum owed by the party for guarantee is fixed by the court. It is deposited by order of the court or, if it is the case, by order of the bailiff, at the Treasury of the State, Romanian Savings Bank C.E.C. or at any other banking institution on the name of the respective party.

The guarantee shall not amount to more than 20% of the value of the object of the claim, if the law doesn't provide otherwise. For claims whose object cannot be evaluated in money, the guarantee shall not amount to more than 2.000 lei.

If the winning party has not formulated a request for payment of the damages he is entitled to, within 30 days of the irrevocable decision by which the case was solved, the guarantee is released by an irrevocable decision to the person who deposited it.

The guarantee is immediately released if the interested party declares expressly that he or she does not intend to demand damages for prejudices suffered.

## **Fees**

The amount of the guarantee owed is established by the trial court, taking into account also the legal dispositions applicable to each case.



As a general rule, the guarantee shall not amount to more than 20% of the value of the object of the claim, if the law does not provide otherwise. For claims whose object cannot be evaluated in money, the guarantee shall not amount to more than 2.000 lei.

For example, in the case of an appeal to an execution, the court may provisionally suspend the forced execution until after the decision on the appeal to execution, if the party deposits a guarantee. The amount of this guarantee is 10% of the amount of the object of the claim or 500 lei for claims that cannot be evaluated in money (Code of Civil Procedure, Article 403 Paragraph 5)

Another example is the procedure of auction sale of a building, as a part of the forced execution of real estate. The amount of the guarantee that the bidders must deposit is 10% of the price at which the building was evaluated (Code of Civil Procedure, Article 504 Paragraph 1, Point 12 and Article 506).

The situation when the debtor solicits the cessation or the suspension of the forced execution and deposits the whole value that is requested of him or the value of the object that is claimed is an exception to the rule according to which the amount guarantee cannot be greater than 20% of the value of the object of the claim. The court will decide on the merits of the request of cessation or suspension of the forced execution.

According to the Code of Civil Procedure, if the winning party has not formulated a request for payment of the damages he is entitled to, within 30 days of the irrevocable decision by which the case was solved, the guarantee is released by an irrevocable decision to the person who deposited it.

The guarantee is immediately released if the interested party declares expressly that he or she does not intend to demand damages for prejudices suffered.

## **Payment**

According to the Code of Civil Procedure, the sum owed by the party for guarantee is fixed by the court. It is deposited by order of the court or, if it is the case by order of the bailiff, at the Treasury of the State, Romanian Savings Bank C.E.C. or at any other banking institution on the name of the respective party.

The original receipt of the deposit representing the guarantee shall be given to the court or to the bailiff, according to the law.

### **Practical questions**

The payment of a guarantee is mandatory according to the law in the following cases:

- suspension of a temporary execution;
- suspension of the execution in appeal;
- suspension of the execution in revision;
- decisions executed provisionally;
- provisional suspension of execution;
- suspension of forced execution by the deposit of the exchange-value of the credit;
- sale by auction, in the case of forced execution of real estate;
- payment of conditional credit or of credits affected by a term;
- the suspension of the execution of the decision made by presidential ordinance, until the judgment of the appeal against the decision;
- insurance sequester;
- insurance garnishment;
- judicial sequester.

The law fixes the amount of the guarantee in some cases (the provisional suspension of execution, the guarantee for the participation to the auction in the case of forced execution of real estate, the suspension of forced execution by the deposit of the exchange value of the credit). In other situations, it is left to the appreciation of the trial judge (suspension of a temporary execution, insuring sequester, insurance garnishment etc.). The judge shall analyze the circumstances of the cause and the importance as well as the prejudice the solicited measure may produce. He shall consequently fix the guarantee owed.

The court cannot exempt a party from paying the guarantee, if it is mandatory by law. Moreover, the exemption of such guarantee cannot be done by legal aid because this institution is applicable only to court and attorney fees.

## **Conclusions and recommendations**

A pledge can be used as a type of security only in contractual legal relations between parties. In this situation the parties can freely negotiate any type of security they consider appropriate. In our juridical system, pledge is never required in the case of litigation.

In litigation procedure, the judge can require a deposit. This kind of deposit is necessary in the cases expressly established by law.

According to article 723<sup>1</sup> in of the Civil Procedure Code, when a security deposit is requested by law, the amount of that security deposit is established by the judge.

Notice that a party cannot request a security deposit from another party.

## **9. Court decisions**

### **Cost of notification**

Law 146 of July 24, 1997 on stamp duties, with subsequent modifications and completions, published in the Official Gazette 173 of July 29, 1997 mentions the legal dispositions on the costs arising from the notification of the decisions of the court as well as the notification to the interested persons of any documents of the file.

The communication of judicial decisions as well as of the subpoenas, of the notifications sent to parties, witnesses, experts or any other persons or institutions involved in the litigation is free.

However, the parties must pay taxes fixed by law in case they solicit the consultation of documents of the file or to receive copies of these documents or certificates from the court clerk's office.

The court fees for such cases are the following:

- 2 lei - for requests to the courts to deliver copies of judicial decisions mentioning that they are final and irrevocable;

- 1 leu per page - for requests of authentication of copies of documents in the file, for each copy;
- 1 leu - for requests for the delivery of any other certificates that certify facts or situations resulting from the court archives or regarding the files in the archive;
- 4 lei - for notifications and summons communicated by bailiffs.

### **Cost of obtaining an authenticated decision**

According to Law no. 146/1997, requests to the courts to deliver copies of judicial decisions mentioning that they are final and irrevocable are stamped with a court fee in amount of 2 lei.

According to the same law, solicitations to invest with the enforceable formula of court decisions given by the national courts or abroad or of any other decisions or documents mentioned by law, which are not enforceable according to the law, shall be stamped with a court fee in amount of 4 lei.

### **Conclusions and recommendations**

Although in principle court decision notifications are free, from a practical standpoint small taxes will apply because copies of decisions are usually needed.

A recommendation could be to unify all minor fees related to copies authentication, etc, and facilitate access to this information.

## **10. Civil Legal aid**

### **General**

Legal aid is a way of helping persons found in pressing circumstances in such a way as to allow them to have free access to justice and to uphold their rights.

Legal aid is regulated in Articles 74 to 81 in the Code of Civil Procedure.

Legal aid benefits the person who cannot meet the trial expenses without endangering his or his family's welfare. It is granted upon request, but only to natural persons.

Legal aid includes:

- Granting exemptions, reductions, phasing or adjournments for the payment of court fees, stamp duty and guarantees;
- Free representation and legal assistance by a lawyer appointed by the Bar.

Legal aid may be granted at any time in the course of a trial, wholly or partially.

The request for legal aid is done in writing and is submitted to the court involved in the first situation and to the Bar in the second case. The request shall mention the object and nature of the trial for which legal aid is solicited, the identity, residence and fortune of the solicitor. Furthermore, written evidence on personal income and on support or payment obligations owed by the solicitor towards other persons must be attached to the request.

The court shall examine the request and give its decision in its ruling.

The law provides for the possibility of showing evidence to the court, by any interested party, of the real situation of the person whose request for legal aid was accepted. In case the court finds that the request was made in bad faith by manipulation of the truth, the court can compel the respective party to pay the sums owed.

The right to legal aid ceases by:

- The death of the party;
- The improvement of fortune of the party.

The expenses for which the party has benefited from exemptions and reductions related to legal aid shall be charged to the other party if he or she succumbed in his or her claims. Moreover, attorneys appointed to the defense and assistance have the right to ask the court that their fees be charged to the other party, if he or she succumbed.

Dispositions on legal aid are also found in Law no. 189/2005 on international legal aid in civil and commercial law, published in the Official Gazette no. 337/2003.

This law provides that foreign natural persons shall benefit from legal aid in Romania in the same conditions as Romanian natural persons.

### **Conditions of grant**

Legal aid is granted only to natural persons.

Legal aid benefits the person who cannot meet the trial expenses without endangering his own or his family's welfare.

It is granted under the same conditions to Romanian natural persons and foreign natural persons.

The person soliciting legal aid shall submit a written request to the court or, according to the case, to the Bar. The request shall mention the object and nature of the trial for which legal aid is solicited, the identity, residence and fortune of the solicitor. Furthermore, written evidence on personal income and on support or payment obligations owed by the solicitor towards other persons shall be attached to the request.

### **Strings attached**

There is no obligation related to legal aid at the charge of the beneficiary.

### **Practical questions**

Legal aid may only be granted to natural persons. Moreover, foreign natural persons benefit from legal aid in Romania in the same conditions as Romanian natural persons.

## **Conclusions and recommendations**

The regulation of legal aid is represented by art. 74 to art. 81 of the Civil Procedure Code.

According to art. 75 of the Civil Procedure Code, legal aid is defined as:

- giving exemption, reduction, spread of payments or delays in paying court fees, judicial stamp duties or securities;
- free defence or representation by a lawyer named by the Bar Association.

Granting legal aid is decided by the court or the Bar Associations.

According to article 80 of the Civil Procedure Code the expenses covered by legal aid can be reimbursed by the losing party.

As a general recommendation, we think it would be appropriate for those persons seeking justice to be better informed by all means of information about the costs of justice.

Generally, the information available is limited. It is highly recommended that more information be posted on websites on the internet, so that access to public institutions and authorities be granted for everyone more easily.

In regards to the level of costs, the low transparency is not determined by insufficient regulation at national or EU level. Instead, the access to such information for a large audience is rather an administrative problem that could be solved through proper legislation.

To conclude, the competent authorities should be involved much more for a better administration. These authorities should held consultations with individuals, associations and organizations, as well as with other public authorities. Last but not least, the competent authorities should also focus on consultations with professionals operating in this field.

## **11. Personal experience**

Our law firm has not yet been confronted litigations with aspects of foreign origin that have implied expenses far too elevated for our clients. These litigations are generally solved by the same procedure as those with origins in Romania, without obstacles or extra costs.

When clients that call on our law firm are involved in litigations foreign, we advise them to seek an attorney from that country. We can contact such attorneys ourselves, to whom we shall provide all the necessary information for handling our client's case.

Regarding the transparency of costs of justice, we consider that it is necessary to use all available information systems in order to inform the persons involved in the act of justice about the costs that they may have to cover in case they want to uphold a right in front of a court.

There are many people in Romania that do not understand that resorting to an attorney is preferable when filing a claim or when a claim is filed against them. In case these persons want to represent themselves, because of the lack of information, they shall come before the court without knowing which expenses they shall have to cover. Only when the court notifies them to pay the court fees, the fees of the expert, to translate certain documents into Romanian will these persons be able to analyze if they are able to cover the expenses of a trial that is already under way and which could have eventually been settled out of court.

## **12. Case studies**

### **Case study 1**

**Case A:** The dispositions of Articles 607 to 619 of the Code of Civil Procedure and Article 38 of the Family Code apply to the situation when two persons of Romanian nationality, living on Romanian territory decide to divorce by mutual consent.



According to Article 38 of the Family Code, the divorce petition can be passed only with the consent of both spouses, if the following conditions are met:

- a) At least one year has passed from the date of the marriage and the divorce petition
- b) There are no minor children resulting from the marriage.

The costs of the divorce petition shall consist of: court fees, stamp duty, the attorney fees, and the fee for the authentication of the decision after the court has passed it.

There will generally be no expert assessment fees because, in a divorce procedure by mutual consent, the court is held only to analyze if the conditions of Article 38 of the Family Code are met and if the consent of the spouses for the dissolution of the marriage exists. There is no need for an expert assessment.

The hearing of witnesses is not necessary either, for the reasons mentioned above, nor is the intervention of a bailiff after the decision is given.

The decision regarding the divorce by mutual consent is final and irrevocable. It cannot be appealed by any way of recourse.

The parties can request legal aid according to Article 74 of the Code of Civil Procedure. Given that the court fees in a divorce by mutual consent are very small, that the procedure is very simple and does not necessarily require the assistance of an attorney, and legal aid is generally not necessary.

Recovering the expenses incurred for the trial is not an issue given that the divorce petition by mutual consent is done by both spouses. Thus, they will cover all the expenses equally.

**Case B:** If the decision of divorce by mutual consent is passed by a court in another country, it shall be recognized on Romanian territory. The recognition of a decision passed in another state is made by the procedure of exequatur. This procedure is provided by Articles 165 to 178 of Law no. 105/1992 on the regulation of private international law relations.

The recognition of such a decision in Romania is necessary since it has to be presented to the public authorities in order to prove the marital status of the persons involved in the divorce procedure.

Such exequatur request involves the following costs: court fees, attorney fees, and the fee for the authentication of the decision after the court has passed it, the fee of the authorized translator who shall translate the documents to be presented in court.

There will generally be no expert assessment fees because in an exequatur procedure the court must only verify if the conditions for the recognition of the decision on the Romanian territory are met.

Neither the hearing of witnesses nor the intervention of a bailiff after the decision is given is necessary, for the reasons mentioned above. The decision of recognition and the decision passed by the foreign court shall be presented to the civil status officer for the necessary modifications to be made.

The decision passed regarding the exequatur can be submitted to appeal. Approximately the same expenses are at the party's charge as for the first instance trial. The court fee is different, being 50% of the amount paid for the judgment in first instance and, eventually, the attorney's fee.

It is not possible to recover the expenses related to the judgment of the exequatur claim. None of the parties can say it has lost the trial or that it has "succumbed", according to Article 274 of the Code of Civil Procedure.

## **Case Study 2**

**Case A:** In case the mother solicits the restriction of the father's visiting rights, she will file a claim to the Romanian court.

The costs of such a claim shall be made of: court fees, stamp duty, the attorney's fees, and the fee for the authentication of the decision after the court has passed it.

There is no need for a judiciary expert assessment in this case because, generally, the advisability of the restriction of the father's right of access shall be proven with witnesses and social investigation, which is free of charge.

Article 200 of the Code of Civil Procedure shall be applicable to the hearings of witnesses which are necessary in order to prove the need of restricting the father's visiting rights. The witness shall receive compensation.

According to Article 74 of the Code of Civil Procedure, the mother may solicit legal aid in order to uphold the claim for the restriction of the father's visiting rights in case she proves that she cannot face the costs of a trial without compromising her own or her family's welfare. Even so, the costs of such a trial are not very high. The presence of an attorney is not necessary. Thus, the cases when legal aid is solicited are very rare.

The decision passed in this case can be appealed. Approximately the same expenses are at the party's charge as for the first instance trial. The court fee is different, being 50% of the amount paid for the judgment in first instance and, eventually, the attorney's fee.

If the mother's claim for the restriction of the father's visiting rights is accepted, she may solicit, according to Article 274 of the Code of Civil Procedure, that the father pay all the trial expenses.

**Case B:** The claim shall be judged following the same procedure as the one described above for the case when the mother, living in Romania and having obtained a decision from a foreign court granting her custody, files a claim for the restriction of the father's visiting rights in Romania as well.

However, the costs will differ due to the elements of foreign origin within the trial.

The costs of such a claim for the restriction of visiting rights consist of: court fees, stamp duty, the attorney's fees, and the fee for the authentication of the decision after the court has passed it. Because of the elements of foreign origin, extra costs shall be added, such as the translation and authentication costs of documents written in a foreign language, the translation of the claim and of the notifications issued in the course of the trial to the father living in another state.

There is no need for a judiciary expert assessment in this case because, generally, the advisability of the restriction of the father's right of access shall be proven with witnesses and social investigation, which is free of charge. It is possible, considering that the father lives abroad, that an evaluation be done at his residence, which shall be carried out by letter rogatory. The costs of the letter rogatory shall be covered by the Romanian state. They shall bear on none of the parties.

Article 200 of the Code of Civil Procedure shall be applicable to the hearings of witnesses which are necessary in order to prove the need for restricting the father's visiting rights. The witness shall receive compensation.

According to Article 74 of the Code of Civil Procedure, the mother may solicit legal aid in order to uphold the claim for the restriction of the father's visiting rights in case she proves that she cannot face the costs of a trial without compromising her own or her family's welfare. Even so, the costs of such a trial are not very high. The presence of an attorney is not necessary. Thus, the cases when legal aid is solicited are very rare.

The decision passed regarding the exequatur can be submitted to appeal. Approximately the same expenses are at the party's charge as for the first instance trial. The court fee is different, being 50% of the amount paid for the judgment in first instance and, eventually, the attorney's fee.

If the mother's claim for the restriction of the father's visiting rights is accepted, she may solicit, according to Article 274 of the Code of Civil Procedure, that the father pay all the trial expenses.

### **Case Study 3**

**Case A:** The obligation of child support between parents and children is provided by Articles 86 and 94 of the Family code. For the duration of the child's minority, the parent who has custody shall solicit child support in his name in front of the court against the other parent.

In this case, the mother shall file the claim against the father in front of the Romanian court qualified for determining the child support and compelling the father to pay the sums that the court has ordered.

According to the dispositions of Article 15 Letter c) of Law 146/1997, the claim filed in this case by the mother is exempted from the payment of court fees.

Other costs related to the judging of such a claim may be the attorney's fee as well as the fee for the authentication of the decision after the court has passed it.

An evaluation is not necessary in such a case. Generally, it is only necessary to establish the father's income as a basis for determining the amount of the child support. The court generally issues a notification to the father's work place requesting information on his monthly income. Should the father be unemployed and be unable to prove that he has a regular income, the amount of child support shall be fixed according to the minimum salary at the moment of the trial.

The intervention of a bailiff is not necessary because, according to Article 453 Paragraph 2, the garnishment of the father's income shall be ordered *ex officio* by the trial court.

In such cases, witnesses are not heard for, as we have shown above, the amount of the child support is paid according to the father's monthly income and this aspect cannot be proven with witnesses.

The mother may request legal aid according to Article 74 of the Code of Civil Procedure in order to be able to uphold the claim for the restriction of the father's visiting rights in case she proves that she cannot face the costs of a trial without compromising her own or her family's welfare. Even so, the costs of such a trial are not very high. The presence of an attorney is not necessary. Thus, the cases when legal aid is solicited are very rare.

The decision passed in this case can be appealed. Approximately the same expenses are at the party's charge as for the first instance trial. The court fee is different, being 50% of the amount paid for the judgment in first instance and, eventually, the attorney's fee.

If the mother's claim for the restriction of the father's visiting rights is accepted, she may solicit, according to Article 274 of the Code of Civil Procedure, that the father pay all the trial expenses.

**Case B:** In case the mother, living with the child in Romania, files a claim against the father living in another country, the procedure in front of the Romanian courts shall be the same as the procedure followed for the case when there is no element of foreign origin. We have presented that procedure above.

Even so, there will be additional expenses as opposed to litigation with elements of foreign origin.

According to Article 15, Letter c) of Law 146/1997, the claim filed by the mother is also exempted in this case of the court fees.

Other costs related to the judgment of such a claim may be: the fee of the attorney representing the party, the costs of the translation from a foreign language into Romanian of documents delivered by foreign authorities, the costs of translating the claim and the notifications to the adversarial party from Romanian to a foreign language as well as the fee for the authentication of the decision after the court has passed it.

An evaluation is not necessary in such a case. Generally, it is only necessary to establish the father's income as a basis for determining the amount of the child support. The court generally issues a notification to the father's work place requesting information on his monthly income. Should the father be unemployed and be unable to prove that he has a regular income, the amount of child support shall be fixed according to the minimum salary at the moment of the trial. In case the father is employed by the foreign state, the establishment of his income is done by letter rogatory, which implies no extra costs for the party.

The intervention of a bailiff is not necessary because, according to Article 453 Paragraph 2, the garnishment of the father's income shall be ordered *ex officio* by the trial court.

In such cases, witnesses are not heard because, as we have shown above, the amount of the child support is paid according to the father's monthly income and this aspect cannot be proven with witnesses.

The mother may solicit legal aid according to Article 74 of the Code of Civil Procedure in order to be able to uphold the claim for the restriction of the father's visiting rights in case she proves that she cannot face the costs of a trial without compromising her own or her family's welfare. Even so, the costs of such a trial are not very high. The presence of an attorney is not necessary. Thus, the cases when legal aid is solicited are very rare.

The decision passed in this case can be appealed. Approximately the same expenses are at the party's charge as for the first instance trial. The court fee is different, being 50% of the amount paid for the judgment in first instance and, eventually, the attorney's fee.

If the mother's claim for the restriction of the father's visiting rights is accepted, she may solicit, according to Article 274 of the Code of Civil Procedure, that the father pay all the trial expenses.

#### **Case Study 4**

**Case A:** The seller shall request the payment of the goods that were provided in the contract concluded with the buyer. Thus, a claim shall be filed in the court requesting the payment from the person to whom the goods were provided.

The costs relating to the judging of such a claim might be: the court fees and the stamp duty for the claim as well as the court fees for the authentication of the decision passed by the court, the fee of the attorney representing the party, the fee of the expert, the costs of the proof by witnesses and the fee of the bailiff that shall enforce the decision in favor of the claimant in case the other party doesn't execute it willingly.

The seller must go through a preliminary out-of-court procedure before filing a claim. The procedure is called "direct conciliation" and is provided by Article 720 of the Code of Civil Procedure.

This preliminary procedure implies the following costs: the fee of the attorney drafting the conciliation invitation and representing the seller at the conciliation hearing, the fees resulting from the transmission of documents to the buyer (postal taxes, photocopies, etc.).

The court fees for a claim soliciting a sum of money shall be fixed according to the value of the claim. Law 146/1997 fixes the court fees for claims assessable in money according to their value. The court fee shall be made of a fixed sum and a percentage of the value of the claim.

The fee of the attorney representing the party is also generally fixed according to the value of the claim. It is made of a percentage of the sums recovered from the debtor.

The fee of the expert is fixed according to the complexity of the expertise as well as to the Fees Regulation established by the Body of Expert and Licensed Accountants of Romania - CECCAR. The object of the expertise may be to establish if the goods delivered by the seller correspond to the buyer's expectations.

In case the claim is accepted, the judicial decision shall be executed by the bailiff by garnishment, by forced execution of personal or real estate. The expert shall determine a fixed fee at the beginning of the execution. He shall also receive a percentage fee of the sum effectively recovered from the buyer.

Because the two parties are commercial companies, legal aid mentioned at Article 74 of the Code of Civil Procedure is not applicable to this case. The law allows only natural persons to solicit legal aid.

The same taxes and fees are paid in principle for the appeal against the judicial decision regarding the claim. Specific to the appeal are the amount of the court fees which is divided by half and the fees of the attorney that increase depending on the court judging the claim, in front of which he shall have to uphold the interests of the party.

According to Article 246 of the Code of Civil Procedure, the seller may solicit the court to compel the buyer to pay all the expenses of the trial, in the case when the court has accepted his claim concerning the payment of the price of the goods he delivered. The court may modify the amount of some of the court fees should she consider that these are very high.

According to Article 274 paragraph 3 of the Code of civil Procedure, judges may not reduce the stamp duty, fees related to procedure and the proportional tax, nor the fees of the



experts, the compensation of witnesses or any other expenses that the winning party proves having done.

However, according to Article 274 Paragraph 3 of the Code of Civil Procedure, judges have the right to increase or to reduce the fees of the attorneys every time they find that they are unreasonably small or high compared to the value of the case or to the work invested by the attorney.

**Case B:** In case a foreign commercial company files a claim against a Romanian commercial company, the same procedure as in the first situation shall be followed. Specific costs may arise in this case.

The costs relating to the judging of such a claim might be: the court fees and the stamp duty for the claim as well as the court fees for the authentication of the decision passed by the court, the fee of the attorney representing the party, the fee of the translator doing the authenticated translation of documents drafted in a foreign language in order for them to be presented in front of the Romanian court, the fee of the expert, the costs of the proof by witnesses and the fee of the bailiff that shall enforce the decision in favor of the claimant in case the other party doesn't execute it willingly.

The seller must go through a preliminary out of court procedure before filing a claim. The procedure is called "direct conciliation" and is provided by Article 720 of the Code of Civil Procedure.

This preliminary procedure implies the following costs: the fee of the attorney drafting the conciliation invitation and representing the seller at the conciliation hearing, the fees resulting from the transmission of documents to the buyer (postal taxes, photocopies, etc.).

The foreign legal person shall generally have to designate a representative in Romania who shall follow the case and execute the actions related to procedure. The claimant may solicit the court that all actions related to procedure be done by the court with his agent in Romania. This is requested in order for the trial not to be postponed due to long hearing delays resulting from the procedure of notification abroad.

The court fees for a claim soliciting a sum of money shall be fixed according to the value of the claim. Law 146/1997 fixes the court fees for claims assessable in money according to their value. The court fee shall be made of a fixed sum and a percentage of the value of the claim.

The fee of the attorney representing the party is also generally fixed according to the value of the claim. It is made of a percentage of the sums recovered from the debtor.

The fee of the translator who translates the documents drafted in a foreign language that have to be submitted to the court shall be fixed by agreement between the parties, according to the work volume and the complexity of the translations.

The fee of the expert is fixed according to the complexity of the expertise as well as to the Fees Regulation established by the Body of Expert and Licensed Accountants of Romania - CECCAR. The object of the expertise may be to establish if the goods delivered by the seller correspond to the buyer's expectations.

In case the claim is accepted, the judicial decision shall be executed by the bailiff by garnishment, by forced execution of personal or real estate. The expert shall determine a fixed fee at the beginning of the execution. He shall also receive a percentage fee of the sum effectively recovered from the buyer.

Because the two parties are commercial companies, legal aid mentioned at Article 74 of the Code of Civil Procedure is not applicable to this case. The law allows only natural persons to solicit legal aid.

The same taxes and fees are paid in principle for the appeal against the judicial decision regarding the claim. Specific to the appeal are the amount of the court fees which is divided by half and the fees of the attorney that increase depending on the court judging the claim, in front of which he shall have to uphold the interests of the party.

According to Article 246 of the Code of Civil Procedure, the seller may solicit the court to compel the buyer to pay all the expenses of the trial, in the case when the court has accepted his claim concerning the payment of the price of the goods he delivered. The court may modify the amount of some of the court fees should she consider that these are very high.

According to Article 274 paragraph 3 of the Code of civil Procedure, judges may not reduce the stamp duty, fees related to procedure and the proportional tax, nor the fees of the experts, the compensation of witnesses or any other expenses that the winning party proves having done.

However, according to Article 274 Paragraph 3 of the Code of Civil Procedure, judges have the right to increase or to reduce the fees of the attorneys every time they find that they are unreasonably small or high compared to the value of the case or to the work invested by the attorney.

### **Case Study 5**

**Case A:** In this case, the final consumer who has used the heating equipment may file a claim for the recovery of the damages caused by the fire in two ways:

1. Claim against the constructor, against the person having installed the equipment and against the insurer, based on the dispositions of the Emergency Ordinance 21/1992 on consumer's protection, in which he solicits the recovery of the damages;
2. Claim against the constructor, against the person having installed the equipment and against the insurer, based on the dispositions of Articles 998 and 999 of the Civil Code regulating civil tort liability.

The trial procedure, the administration of evidence and the costs of the trial shall mainly be the same in both cases, with some differences mentioned below.

The costs relating to the judging of such a claim might be: the court fees and the stamp duty for the claim as well as the court fees for the authentication of the decision passed by the court, the fee of the attorney representing the party, the fee of the expert, the costs of the proof by witnesses and the fee of the bailiff that shall enforce the decision in favor of the claimant in case the other party doesn't execute it willingly.

The claim based on Emergency Ordinance 21/1992 shall be exempted of court fees. For the claim based on the dispositions of Articles 998 and 999 of the Civil Code, the court fees shall be fixed according to the amount of the damages that were solicited.

The fee of the attorney representing the party is also generally fixed according to the value of the claim. It is made of a percentage of the sums recovered from the debtor.

The fee of the expert is fixed according to the complexity of the expertise as well as to the Fees Regulation established by the Body of Expert and Licensed Accountants of Romania - CECCAR. The object of the expertise may be to establish if the goods delivered by the seller correspond to the buyer's expectations.

In case the claim is accepted, the judicial decision shall be executed by the bailiff by garnishment, by forced execution of personal or real estate. The expert shall determine a fixed fee at the beginning of the execution. He shall also receive a percentage fee of the sum effectively recovered from the buyer.

According to Article 74 of the Code of Civil Procedure, the consumer may solicit legal aid in order to uphold the claim for the restriction of the father's visiting rights in case he proves that he cannot cover the costs of a trial without endangering her own or her family's welfare.

The same taxes and fees are paid in principle for the appeal against the judicial decision regarding the claim. Specific to the appeal are the amount of the court fees which is divided by half and the fees of the attorney that increase depending on the court judging the claim, in front of which he shall have to uphold the interests of the party.

According to Article 246 of the Code of Civil Procedure, the seller may solicit the court to compel the buyer to pay all the expenses of the trial, in the case when the court has accepted his claim concerning the payment of the price of the goods he delivered. The court may modify the amount of some of the court fees should she consider that these are very high.

According to Article 274 paragraph 3 of the Code of civil Procedure, judges may not reduce the stamp duty, fees related to procedure and the proportional tax, nor the fees of the

experts, the compensation of witnesses or any other expenses that the winning party proves having done.

However, according to Article 274 Paragraph 3 of the Code of Civil Procedure, judges have the right to increase or to reduce the fees of the attorneys every time they find that they are unreasonably small or high compared to the value of the case or to the work invested by the attorney.

**Case B:** In the case when the final consumer files a claim in Romania against the constructor and the person having installed the equipment residing abroad, the claim shall be judged following the same procedure. Thus, the final consumer may file the claim in two ways:

1. Claim against the constructor, against the person having installed the equipment and against the insurer, based on the dispositions of the Emergency Ordinance 21/1992 on consumer's protection, in which he solicits the recovery of the damages;
2. Claim against the constructor, against the person having installed the equipment and against the insurer, based on the dispositions of Articles 998 and 999 of the Civil Code regulating civil tort liability.

The trial procedure, the administration of evidence and the costs of the trial shall mainly be the same in both cases, with some differences mentioned below.

The costs relating to the judging of such a claim might be: the court fees and the stamp duty for the claim as well as the court fees for the authentication of the decision passed by the court, the fee of the attorney representing the party, the fee of the certified translator doing the translation of documents drafted in a foreign language in order for them to be presented in front of the Romanian court as well as the fee of the certified translator who shall translate, in the language of the state of the defendants' residence, the claim, the documents attached and the notification, in order for them to be submitted to the court. Other costs include the fee of the expert, the costs of the proof by witnesses and the fee of the bailiff that shall enforce the decision in favor of the claimant in case the other party doesn't execute it willingly.

The claim based on Emergency Ordinance no. 21/1992 shall be exempted of court fees. For the claim based on the dispositions of Articles 998 and 999 of the Civil Code, the court fees shall be fixed according to the amount of the damages that were solicited.

The fee of the attorney representing the party is also generally fixed according to the value of the claim. It is made of a percentage of the sums recovered from the debtor.

The fee of the expert is fixed according to the complexity of the expertise as well as to the Fees Regulation established by the Body of Expert and Licensed Accountants of Romania - CECCAR. The object of the expertise may be to establish if the goods delivered by the seller correspond to the buyer's expectations.

In case the claim is accepted, the judicial decision shall be executed by the bailiff by garnishment, by forced execution of personal or real estate. The expert shall determine a fixed fee at the beginning of the execution. He shall also receive a percentage fee of the sum effectively recovered from the buyer.

According to Article 74 of the Code of Civil Procedure, the consumer may solicit legal aid in order to uphold the claim for the restriction of the father's visiting rights in case he proves that he cannot cover the costs of a trial without endangering his own or his family's welfare.

The same taxes and fees are paid in principle for the appeal against the judicial decision regarding the claim. Specific to the appeal is the amount of the court fees, which are divided by half and the fees of the attorney that increase depending on the court judging the claim, in front of which he shall have to uphold the interests of the party.

According to Article 246 of the Code of Civil Procedure, the seller may solicit the court to compel the buyer to pay all the expenses of the trial, in the case when the court has accepted his claim concerning the payment of the price of the goods he delivered. The court may modify the amount of some of the court fees should it consider that these are very high.

According to Article 274 paragraph 3 of the Code of civil Procedure, judges may not reduce the stamp duty, fees related to procedure and the proportional tax, nor the fees of the

experts, the compensation of witnesses or any other expenses that the winning party proves having done.

However, according to Article 274 Paragraph 3 of the Code of Civil Procedure, judges have the right to increase or to reduce the fees of the attorneys every time they find that they are unreasonably small or high compared to the value of the case or to the work invested by the attorney.