Taking of evidence

Romania

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European Judicial Network (in civil and commercial matters)

1 The burden of proof

Main legal basis:

Articles 249 to 365 of the Code of Civil Procedure (*Codul de procedură civilă*).

1.1 What are the rules concerning the burden of proof?

An allegation made in the course of the proceedings must be proved by the party making it, except in certain cases expressly provided for by law. A claimant must prove his or her case. For procedural objections by a defendant, the burden of proof lies with the defendant. In the case of presumptions, the burden of proof shifts from the party in whose favour they were established to the opposing party.

1.2 Are there rules which exempt certain facts from the burden of proof? In which cases? Is it possible to produce evidence in order to prove that a specific legal presumption is not valid?

No one is required to prove what the court is bound to take notice of its own motion.

The court must take notice of the law in force in Romania of its own motion. Law that is not published in the Official Gazette of Romania (*Monitorul Oficial*) or by other means, international conventions, treaties and agreements applicable in Romania that are incorporated into legislation, and customary international law must be proved by the interested party. Regulatory provisions contained in classified documents may be proved and consulted only under the conditions laid down by law. The court may, of its own motion, take notice of the law of a foreign state, provided that it has been relied upon in court. Evidence of foreign law is adduced in accordance with the provisions of the Civil Code (*Codul civil*) on the content of foreign law.

If a fact is generally known or is not challenged, the court may decide that, in the circumstances of the case, it need not be proved. Customary practices, professional rules of conduct and practices established between the parties must be proved by the party that relies upon them. Local rules and regulations must be proved by the party that relies upon them only if the court so requests.

A presumption is a conclusion that the law or the court draws from a known fact to establish an unknown fact. A legal presumption relieves the person in whose favour it is established of the burden of proving the fact that the law deems to be proved. A legal presumption may be rebutted by evidence to the contrary, unless otherwise provided for by law.

1.3 To what extent must the court be convinced of a fact in order to base its judgment on the existence of that fact?

Evidence must be admissible and must be relevant to the resolution of the proceedings. After the court has admitted evidence in respect of particular facts, whether those facts have been proved is determined freely by the court, according to its own conviction, except where the law determines its probative value.

2 The taking of evidence

2.1 Does the taking of evidence always require the application by a party, or can the judge in certain cases also take evidence on his/her own initiative?

Evidence must be proposed by the applicant in the originating application, and by the defendant in his or her defence, unless otherwise provided for by law, failing which the right to rely on such evidence is forfeited. If the proposed evidence is insufficient for the full clarification of the case, the court will order the parties to adduce further evidence. The court may, of its own motion, draw the parties' attention to the need for further evidence and may order that such evidence be taken even if the parties object.

The parties may apply for the following evidence to be taken: documents, expert reports, witness evidence, on-site inspections, and the examination of a party at the request of the party seeking an admission from the opposing party. The new Code of Civil Procedure also regulates material means of evidence, which may be relevant in certain categories of civil proceedings (e.g. divorce proceedings).

2.2 If the application by a party concerning the taking of evidence is approved, what steps follow?

The court first considers whether the evidence proposed by the parties is admissible and then makes an order setting out the facts to be proved, the evidence allowed, and the parties' obligations in regard to the taking of the evidence. As far as possible, the evidence will be taken during the hearing at which it is admitted.

The taking of evidence is governed by some essential rules: the evidence must be taken in the order determined by the court; as far as possible, evidence should be taken at the same hearing; evidence must be taken before the submissions on the merits of the case; evidence and counterevidence should be taken, as far as possible, at the same time.

Evidence is taken in a public hearing before the court hearing the case, unless otherwise provided for by law. If, for objective reasons, evidence can be taken only outside the municipality where the court is seated, it may be taken by way of judicial delegation by a court of the same level or, where no such court exists in that municipality, by a lower court.

2.3 In which cases can the court reject an application by a party to obtain evidence?

Evidence may be used only if it satisfies certain requirements as to its legality, plausibility, relevance and probative value. As regards legality, the evidence requested must constitute a means of proof provided for by law and must not be prohibited by law. As regards plausibility, the evidence requested must not be contrary to universally recognised natural laws. As regards relevance, the evidence must be connected to the subject matter of the proceedings, that is, it must relate to facts that must be proved in support of the claims or defences put forward by the parties. In order to be admissible, the evidence must also be plausible and capable of leading to the resolution of the proceedings.

In the case of documentary evidence, the court must refuse a request for production of a document: where the content of the document concerns strictly personal matters related to a person's dignity or privacy; where the production of the document would breach a duty of confidentiality; or where it would give rise to criminal proceedings against the party, the party's spouse, or any relative or in-law up to and including the third degree.

Witness evidence is inadmissible for legal acts exceeding RON 250 in value, for which the law requires evidence in writing. Also, witness evidence is inadmissible if it is contrary to or goes beyond the content of a document.

Evidence is proposed by the claimant in the originating application or by the defendant in the defence. Evidence not proposed in this way may be requested and admitted by the court in any of the following situations: the need for the evidence arises from an amendment to the claim; the need for the evidence arises in the course of the proceedings, and the party could not have foreseen it; the party shows the court that, for well-founded reasons, it was unable to adduce the requested evidence within the time permitted; the taking of evidence does not lead to a postponement of the proceedings; all parties have given their express consent.

2.4 What different means of proof are there?

A legal act or a fact can be proved by documents, witnesses, presumptions, an admission of either party (whether made voluntarily or obtained on examination), an expert report, physical evidence, site inspections, or any other means provided for by law.

2.5 What are the methods of obtaining evidence from witnesses and do these differ from the means employed to obtain evidence from expert witnesses? What are the rules in relation to the submission of written evidence and expert reports/opinions?

Witnesses are proposed by the parties, either by the claimant in the originating application or by the defendant in the defence. After allowing witness evidence, the court will summon the witnesses for examination.

Where the court finds it appropriate to obtain expert opinion in order to clarify certain facts, it will appoint, at the parties' request or of its own motion, one or three experts, and make an order specifying the matters on which they are to give their opinion and the time limit for their report. The experts' findings are set out in an expert report. Where justified, the court may order a further report by another expert, at the request of the parties or of its own motion.

As regards documentary evidence, each party may submit the documents on which it intends to rely during the proceedings in the form of duly certified copies. The party must also have the original available and be able to produce it in court on request, failing which the document will not be taken into account. The court may order the production of a document in the possession of the opposing party where the document is common to the parties, where the opposing party has itself made reference to the document during the proceedings, or where the opposing party is under an obligation to adduce it. If a document is held by a party and cannot be brought before the court, the court may delegate a judge in whose presence the parties may examine the document at the place where it is kept. If a document is held by a third party, that party may be summoned as a witness and required to bring the document.

The evidence is taken before the court, in chambers. Where evidence is to be taken in another municipality, it will be taken by way of judicial delegation by a court of the same level or, where no such court exists in that municipality, by a lower court. If the nature of the evidence so permits and the parties agree, the court that takes the evidence may dispense with summoning the parties.

2.6 Are certain methods of proof stronger than others?

All means of evidence have equal probative value, except where otherwise expressly provided for by law.

Documents in authentic form are often accepted by the parties owing to the advantages they offer, including the presumption of authenticity, which relieves the party relying on such a document of the burden of proof.

2.7 In order to prove certain facts, are certain methods of proof obligatory?

For legal acts whose value exceeds RON 250, only documentary evidence may be accepted, although there are certain exceptions where witness evidence is also admissible.

Until it is declared false, an authentic document constitutes full proof, as against any person, of the findings of fact made personally by the person who authenticated it in accordance with the law. Statements made by the parties and recorded in an authentic document constitute proof only until proof to the contrary is produced.

Where presumptions are left to the discretion and judgement of the court, the court may rely on them only if they have sufficient weight and strength to establish the probability of the alleged fact; such presumptions may be admitted only where the law allows witness evidence.

2.8 Are witnesses obliged by law to testify?

See the answer to question 2.11.

2.9 In which cases can they refuse to give evidence?

The Code of Civil Procedure does not set out the grounds on which a witness may refuse to testify, but merely specifies the persons who may not be heard as witnesses and those who are exempt from giving witness evidence. See the answer to question 2.11.

2.10 Can a person who refuses to testify be sanctioned or forced to give evidence?

The court will impose a fine on any witness who fails to appear or refuses to testify. Where a witness fails to appear in response to the first summons, the court may issue a warrant to secure attendance. In urgent matters, the court may issue such a warrant even for the first hearing.

If a party fails to appear or refuses to answer questions, the court may treat this as a full admission or only as a beginning of proof in favour of the party who requested that the party be examined.

2.11 Are there persons from whom evidence cannot be obtained?

The following may not be heard as witnesses: relatives and relatives by marriage up to and including the third degree; spouses, former spouses, engaged partners or cohabiting partners; persons in a relationship of enmity or of interest with either party; persons under special guardianship; and persons convicted of perjury.

In proceedings concerning parenthood, divorce or other family matters, the court may hear relatives and relatives by marriage, with the exception of descendants.

The following are exempt from appearing as witnesses:

- ministers of religion, doctors, pharmacists, lawyers, notaries public, judicial enforcement officers, mediators, midwives and nurses, and any other professionals bound by law to professional or official secrecy in respect of facts of which they became aware in the course of their work or the in the practice of their profession, even after they have ceased their activity;
- judges, prosecutors and public officials, even after they have ceased their duties, in respect of confidential circumstances of which they became aware in the exercise of their duties;
- persons who, by their answers, would expose themselves, their relatives or relatives by marriage, their spouse, former spouse etc. to criminal prosecution or public contempt.

2.12 What is the role of the judge and the parties in the hearing of a witness? Under what conditions can a witness be heard via videoconferencing or other technical means?

The court summons witnesses and determines the order in which they are to be heard. Before being heard, the witness is identified and required to take an oath. Each witness must be heard separately. The witness must first answer questions asked by the presiding judge and then, with the permission of the presiding judge, those asked by the party who called the witness and by the opposing party. A witness who cannot appear before the court may be heard at the place where he or she is located.

There are no legal provisions governing the cases in which testimony may be recorded by audiovisual means, but such recordings are admissible. They may subsequently be transcribed at the request of an interested party in accordance with the law.

3 The evaluation of the evidence

3.1 Where evidence has not been obtained legally by a party, are there restrictions placed on the court in reaching its judgment?

If the party who has produced a document insists on relying on it even though it has been challenged as a forgery and that challenge has not been withdrawn, and if there are indications as to the author of the forgery or an accomplice, the court may stay the proceedings and immediately forward the document alleged to be false to the competent public prosecutor’s office for investigation, together with a report drawn up for that purpose. Where criminal proceedings cannot be instituted or cannot continue, the examination of the forgery will be conducted by the civil court.

Furthermore, the court will impose a fine on any person who, in bad faith, challenges the handwriting or signature of a document or the authenticity of an audio or video recording.

In assessing witness statements, the court will take into account the witnesses' sincerity and the circumstances in which the facts to which they testify came to their knowledge. If, in the course of the inquiry, there are indications of perjury or witness bribery, the court will draw up a report and refer the matter to the competent prosecution body.

3.2 As a party to the case, will my own statement count as evidence?

An admission is the acknowledgement by either party of a fact on which the opposing party bases its claim or defence. An admission made in court constitutes full evidence against the person who made it and cannot be taken into account in separate parts unless they relate to distinct facts that have no connection with each other. Out-of-court admissions are made outside the proceedings and are subject to the court's assessment. They are subject to the admissibility and evidence-taking requirements applicable under ordinary law to other forms of evidence.

The court may order either party to be examined on personal facts capable of leading to the resolution of the case.

4 Has this Member State in accordance with Article 2(1) of the Taking of Evidence Regulation specified other authorities that are competent to take evidence for the purposes of judicial proceedings in civil or commercial matters under the Regulation? If so, what proceedings are they competent to take evidence in? Can they only request taking of evidence or also assist in the taking of evidence on the basis of a request from another Member State? See also notification under Article 2(1) of the Taking of Evidence Regulation.

No other authority has been notified.

Relevant links

https://www.just.ro

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