OBJECT AND TASK OF THE EVIDENCE IN THE CIVIL PROCESS

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Abstract

The object of the evidence is the element that must be proved by the one who claims a right. Consequently, the object of the evidence is the "legal acts and facts", from which result the correlative rights and obligations of the concrete legal relationship. For example, in order to be proven, the deposit contract must be concluded in writing (art. 2104 of the new Civil Code).

According to art. 249 of the Code of Civil Procedure, the one who makes a claim during the trial must prove it, except for the specific cases provided by law.

In turn, the "defendant" may challenge the plaintiff's claims by invoking exceptions, such as: the authority of res judicata, the expiry of the limitation period, the debt has been extinguished, the nullity of the act, etc.

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In judicial theory and practice, the term "evidence" has the following meanings:

a. the action of presenting, before justice, the legal means by which the establishment of a certain legal fact is sought;

b. the means of persuasion or proof by which the establishment or non-existence of a fact generating rights and obligations is sought (documents, confession, witness statements, presumptions, expertises);

c. the result of the action of presenting, in court, the means of proof; In this sense, the expressions are used: "the test is done", "the test is complete", "the test is convincing", etc.

The legal regulations on evidence can be found in the Code of Civil Procedure.

The practical importance of evidence consists in the fact that it constitutes the legal instrument by which the person who claims to have a certain subjective right proves which are the facts that generate those rights.

It is true that the subjective right exists and can be realized without the use of evidence, if the correlative obligation is performed voluntarily. The need to resort to the administration of evidence occurs when the right of the holder is disregarded by someone.

Establishing the objective truth, using the legal means of proof, has a decisive role in drafting and pronouncing legal and sound decisions.

Evidence also plays an important role in preventing litigation, because knowing that the right holder has evidence of his right, the one who would like to challenge it is discouraged from starting the process[2].

The object of the evidence is the element that must be proved by the one who claims a right. Consequently, the object of the evidence is the "legal acts and facts", from which result the correlative rights and obligations of the concrete legal relationship. For example, in order to be proven, the deposit contract must be concluded in writing (art. 2104 of the new Civil Code).

Proof of a legal act or fact may be made by documents, witnesses, presumptions, confession of one of the parties, made on its own initiative or obtained at interrogation, by expertise, by material means of evidence, by on-site investigation or by any other means provided by law (art. 250 of the Code of Civil Procedure).

Legal facts, in principle, can be proved by any means of proof, unlike legal documents, which, as a rule, are proved by "preconstituted evidence" (documents). In the case of legal acts for which the law imposes the solemn form, their proof is made by presenting the document drawn up in authentic form.

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[2] Iosif Urs - Civil law. General Theory, Oscar Print Publishing House, Bucharest, 2000.

According to art.309 paragraph 2 of the Code of Civil Procedure, no legal act can be proved with witnesses, if the value of its object is higher than 250 lei. However, any legal act, regardless of its value, may be proved by witnesses, against a professional, if it was done by him in the exercise of his professional activity, unless the special law requires written evidence[1].

If the law requires the written form for the validity of a legal act, it cannot be proved with witnesses.

Cases when the proof is made with documents:

The document stating the conclusion of the contract may be under private or authentic signature, having the probative force provided by law (art. 1241 of the Civil Code).

The contract concluded in the absence of the form that, no doubt, the law requires for its valid conclusion is struck by absolute nullity.

If the parties have agreed that a contract be concluded in a certain form, which is not required by law, the contract is considered valid even if the form has not been complied with.

Unless otherwise provided by law, any modification of the contract is subject to the formal conditions required by law for its conclusion.

The donation is concluded by an authentic document, under the sanction of absolute nullity (art. 1011 of the Civil Code).

The movable goods that constitute the object of the donation must be listed and evaluated in a document, even under private signature, under the sanction of the absolute nullity of the donation.

The ordinary will can be holographic or authentic.

Under the sanction of absolute nullity, the holographic will must be written in its entirety, dated and signed by the testator's hand.

The will is authentic if it was authenticated by a notary public or by another person invested with public authority by the state, according to the law.

On authentication, the testator may be assisted by one or 2 witnesses.

The mortgage contract is concluded in authentic form by the notary public, under the sanction of absolute nullity (art. 2378 of the Civil Code).

Proof of the company contract

The company contract is proved only in writing (art. 1950 of the Civil Code).

Proof of the property right over the real estates registered in the land book

In the case of real estate registered in the land book, the proof of the property right is made with the land book extract (art. 565 of the Civil Code).

According to art.1244 of the Civil Code, the form required for registration in the land book, apart from other cases provided by law, must be concluded by authentic deed, under the sanction of absolute nullity, the conventions that relocate or constitute real rights to be registered in Land Registry.

Proof of the commission contract

The commission contract is concluded in written, authentic or privately signed form.

Unless otherwise provided by law, the written form is required only for proof of contract (art. 2044 of the Civil Code).

Proof of consignment contract

The consignment contract is concluded in writing. Unless otherwise provided by law, the written form is required only for proof of contract (art. 2055 of the Civil Code).

Proof of deposit agreement

In order to be proven, the deposit contract must be concluded in writing (art. 2104 of the Civil Code).

Form and proof of the insurance contract

[1] Law no. 134/2010 Code of Civil Procedure, republished in the Official Gazette no. 247 / 10.04.2015.

In order to be proved, the insurance contract must be concluded in writing[1]. The contract cannot be proved with witnesses, even when there is a beginning of written evidence (art.2200 of the Civil Code).

Form and proof of maintenance contract

The maintenance contract is concluded in authentic form, under the sanction of absolute nullity (art. 2255 of the Civil Code).

Transaction form

In order to be proven, the transaction must be concluded in writing (art. 2272 of the Civil Code).

Contents of the inventory

In cases where the administrator is obliged to draw up an inventory, it must include a complete enumeration of the entrusted goods or of the content of the patrimonial mass or of the patrimony subject to administration.

The inventory is drawn up either by an authentic document or by a document under private signature comprising the date and place of preparation and signed by the author and the beneficiary, and in the absence of the latter, by 2 witnesses. The findings regarding which the beneficiary did not object have full probative force towards the latter (art. 820 of the new Civil Code).

Situations when the proof is made by any means of proof:

Proof of cause

The contract is valid even when the cause is not expressly provided.

The existence of a valid cause is presumed until proven otherwise (art. 1239 of the Civil Code).

Novation test

Novation is not presumed. The intention to novate must be unquestionable (art. 1610 of the Civil Code).

Concluding and breaking the engagement

Engagement is the mutual promise to end the marriage.

The conclusion of the engagement is not subject to any formality and can be proved by any means of proof (art. 266 of the Civil Code).

Breaking the engagement is not subject to any formality and can be proved by any means of proof.

Proof of marriage

The marriage is proved by the marriage certificate and by the marriage certificate issued on its basis.

However, in the situations provided by law, the marriage can be proved by any means of proof (art. 292 of the Civil Code).

Proof of spouses' property

The quality of the common good does not have to be proven.

Proof that a property is own can be made between spouses by any means of proof (art. 343 of the Civil Code).

State possession in accordance with the birth certificate

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[1] According to art.271 of the Code of Civil Procedure, the beginning of a written proof is:
The authentic document drawn up without observing the forms provided for its valid conclusion or by an incompatible, incompetent person or with exceeding the competence is struck by absolute nullity, unless the law provides otherwise. However, the document makes full proof as a document under private signature, if it is signed by the parties, and if it is not signed, it constitutes, between them, only the beginning of a written proof.
Art.310 of the Code of Civil Procedure
Any writing, even unsigned and undated, that comes from a person to whom that writing is opposed or from the one whose successor in rights is that person, is considered a beginning of written proof, if the writing makes the claimed fact credible.
The document, even unsigned by the person to whom it opposes, constitutes the beginning of written proof, even if it was drawn up in front of a competent official attesting that the statements contained in the document are in accordance with those made by that person.
The beginning of written evidence may be proved between the parties only if it is supplemented by other means of proof, including witness evidence or presumption.

No person may claim any affiliation with the mother other than that resulting from his birth certificate and state possession in accordance with it.

No one can dispute the parentage of the person who has a state possession in accordance with his birth certificate.

However, if it has been established by a court decision that a child replacement has taken place or that a woman other than the one who gave birth to her has been registered as the mother of a child, the true filiation may be proved by any means of proof. (art.411 of the Civil Code).

The parents' refusal to give their consent

Exceptionally, the guardianship court may override the refusal of the natural parents or, as the case may be, of the guardian to consent to the adoption, if it is proved, by any means of proof, that it is abusive and the court considers that the adoption is in the best interest of the child, taking into account his opinion, given in accordance with the law, with the express motivation of the decision in this regard (art. 467 of the Civil Code).

Proof of need

The state of need of the person entitled to maintenance, as well as the means of the one who owes maintenance can be proved by any means of proof (art. 528 of the Civil Code).

Proof of will

Any person claiming a right based on a will must prove its existence and content in one of the forms provided by law.

If the will has disappeared by chance or force majeure or by the deed of a third party, either after the testator's death or during his lifetime, but without the testator's disappearance, the validity and form of the will may be proved by any means of proof. (art. 1037 of the Civil Code)

Simulation test

Proof of the simulation may be provided by third parties or by creditors by any means of proof. The parties may also prove the simulation by any means of proof, when they claim that it is illegal (art. 1292 of the Civil Code).

Means of proof of payment

Unless otherwise provided by law, proof of payment is made by any means of proof (art. 1499 of the Civil Code).

Proof of required deposit

If the good was entrusted to a person under the constraint of an unforeseen event, which made it impossible to choose the person of the depositary and to draw up a document establishing the contract, the deposit is necessary.

If the good was entrusted to a person under the constraint of an unforeseen event, which made it impossible to choose the person of the depositary and to draw up a document establishing the contract, the deposit is necessary.

The necessary deposit can be proved by any means of proof, whatever its value (art.2124 of the Civil Code).

Form and proof of the insurance contract

In order to be proved, the insurance contract must be concluded in writing. The contract cannot be proved with witnesses, even when there is a beginning of written evidence. If the insurance documents have disappeared by force majeure or fortuitous event and there is no possibility of obtaining a duplicate, their existence and content can be proved by any means of proof (art. 200 of the Civil Code).

The following rules are taken into account when administering the sample:

The burden of proof

The first to make a proposal to the court is called a "plaintiff"; requesting a contested right, means that he has the burden of proof, according to the rule formulated since Roman law (onus probandi incumbent authors).

According to art. 249 of the Code of Civil Procedure, the one who makes a claim during the trial must prove it, except for the specific cases provided by law[1].

In turn, the "defendant" may challenge the plaintiff's claims by invoking exceptions, such as: the authority of res judicata, the expiry of the limitation period, the debt has been extinguished, the nullity of the act, etc[2].

In the same trial, the defendant may raise claims against the plaintiff through the so-called "counterclaim", in which case the burden of proof falls on him, becoming the plaintiff.

There are situations in which the defendant not making a counterclaim has the first burden of proof:

- in the case of relative legal presumptions, the beneficiary of the presumption must prove only the fact on which he bases his presumption and the other party must prove the contrary proof. As in the case of the division of the common property of the spouses, the plaintiff benefits from the presumption of community of property and must prove that the property was acquired during the marriage, with the defendant having to prove otherwise.

- in the case of the presumption of paternity enjoyed by the child conceived or born during the marriage, who has as father the mother's husband. The husband can bring an action for denial of paternity and prove that it was impossible to be the father of the child, the child only has to prove that he was conceived or born during the marriage, he being the beneficiary of the presumption of paternity.

During the trial, "the judge has a role in finding out the truth" in the sense that "the judge has a duty to persevere, by all legal means, to prevent any error in finding out the truth in question, based on the establishment of facts and the correct application of the law, for the purpose of pronouncing a sound and legal decision. To this end, with regard to the factual situation and the legal reasoning which the parties invoke, the judge is entitled to ask them to present explanations, orally or in writing, to put in their debate any factual or legal circumstances, even if they are not mentioned in the request or in the response, to order the administration of the evidence they consider necessary, as well as other measures provided by law, even if the parties oppose "(art. 22 (2) of the Code of Civil Procedure).

To be admitted, any test must meet the following conditions:

- not to be prohibited by law;

- to be plausible, ie to lead to the proof of possible and not impossible facts, not to contravene the laws of nature;

- to be useful, ie to contribute to finding out the truth;

- to be relevant, ie to be related to the object of the process;

- to be conclusive, ie able to contribute to the resolution of the process.

The Code of Civil Procedure (Law no. 134/2010) regulates the evidence in art. 249-382.

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[1] For example, in labor disputes where the employer bears the burden of proof for the sanctions applied to the employee.

[5] Law no. 134/2010 the new Code of Civil Procedure, republished in the Official Gazette no. 247 / 10.04.2015.

Art.430 Judged work authority.

The court decision that resolves, in whole or in part, the merits of the trial or decides on a procedural exception or on any other incident has, from the pronouncement, the authority of res judicata regarding the settled issue.

The res judicata authority shall consider the operative part, as well as the considerations on which it is based, including those in which a dispute has been resolved.

The court decision by which a provisional measure is taken has no authority to adjudicate on the merits.

When the decision is subject to appeal or recourse, the res judicata authority is provisional.

The judgment challenged with the appeal for annulment or review retains its res judicata until it is replaced by another judgment.

Art.431 The effects of the res judicata

No one may be sued twice in the same capacity, on the same basis and for the same purpose.

Either party may oppose the previous judgment in another dispute, if it is related to the settlement of the latter.

Art. 432 Exception of the res judicata authority

The exception of res judicata may be invoked by the court or by the parties in any state of the proceedings, even before the court of appeal. As a result of admitting the exception, a worse situation can be created for the party in its own appeal than the one from the contested decision.

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