# WITNESS' TESTIMONY IN CIVIL PROCESS – IN INTERNAL LAW AND IN THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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**ABSTRACT:** *The witness' testimony is essential in a civil process. The witness plays a key role in resolving a lawsuit. in fact, many times, a civil trial cannot continue without the factual existence of a witness. The same importance is given by the European court of human rights to the role of the witness in a trial, sanctioning states that fail to give importance to the person who testimony. This European court admit that the evidence is relevant, and the role of it is to assess the judgment of the national court in justifying the admission of witnesses the administration of evidence was fairly observed.*

**KEY WORDS:** *testimony, The European Court of human rights, law, witness, civil process.*

**JEL CLASSIFICATIONS:** *K12, K38, K33.*

## 1. INTRODUCTION

The witness must be a foreigner who can give impartial information about the parties' claims. The testimony is characterized by: a) personal knowledge by the witness of past circumstances that he relates; it does not matter what is heard or heard ("par commune renommée"), but only what "has seen and heard" sensibus; b) orally, because the report is made verbally before the court, without reading a written answer beforehand. If in Roman law the testimonial evidence was almost obligatory (testimoniorium usus frequens as necesus est), and in the old law the evidence was admitted without any restriction, at present, the legal regulation gives, in principle, to the testimonies of the witnesses less trust than to the documents. This reluctance is justified by the fact that fidelity and memory reproduction capacity is never complete,

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but they "have a scale that goes up to 75-80% on average, and can go down to almost zero", while the inscription "does not forget".

In other words, the witness is the person who participates in a particular situation and in which he can relate what he has seen or heard. The witness, in the civil process, has the obligation to appear before the court, except in cases expressly provided by law, to testify for what he knows, his testimony being essential in solving the case.

The probative value of the testimony is left today to the sovereign discretion of the court, who, after evaluating the statements of the witnesses, will rule on the facts and circumstances related. In assessing this evidence, the judge must first determine whether the witness is honest, and then, in good faith, whether his statement corresponds to reality. At present, the number of witnesses is not important in proving a disputed fact, being removed the Roman principal testis unus, testis nullus applicable in the old law, and, in practice, a single witness is sufficient if it inspires confidence.

With regard to the admissibility and administration of evidence, the jurisprudence of the ECHR has concluded that only national courts have jurisdiction to admit that evidence is relevant, the role of the Court being to assess the judgment of the national court in justifying the admission of witnesses the administration of evidence was fairly observed.

## 2. IN NATIONAL LAW

In national law, articles 309 - 326 of the Code of Civil Procedure are devoted to witness evidence.

In order to determine the criteria for admissibility of evidence with witnesses, it is important to distinguish between legal acts and legal facts, from the provisions of the Code of Civil Procedure, relatively detaching the idea that only in terms of legal acts there are limitations in evidence. Article 309 C. civ. pr. it refers to the proof of legal acts and not to the proof of legal facts, as manifestations of will which do not seek to produce legal consequences, these being the consequence of the law.

Also, some aspects related to the manifestations of will of the parties, in connection with the conclusion of the legal acts will always be able to be proved with witnesses even if the law requires ad probationem the written form. They are as follows: vices of consent, false, unlawful cause, fraud in law, etc.

If the general rule is given by art. 309 al. 1 according to which “the evidence with witnesses is admissible in all cases where the law does not provide otherwise”, regarding the situation of legal acts, the Code of Civil Procedure establishes the exception to the mentioned rule so that that legal act of whose value of the object is higher than 250 lei.

The value in the matter of relations with professionals is irrelevant, when the issue of proving a legal act committed in the exercise of professional activity arises, if the act is invoked against the professional. Obviously, when the law expressly requires the written form ad probationem, the said derogation will not apply, so that in the case of the contract of deposit, insurance, etc. in which the professional is a debtor, the claimant will have to produce a written document, regardless value.

If the law requires the written form for the authenticity of any legal act, it cannot be proved by witnesses. It is the situation of the sale-purchase documents, the mandate given for concluding an act, the donation, the will, etc.

The Code stipulates that the evidence with witnesses is inadmissible if for the confirmation of a legal act the law requires the written form, except for some situations provided in art. 309, al. 4.

Thus, it is possible to administer the evidence with witnesses when there is either material or moral impossibility to draw up a document.

Evidence with witnesses is also possible when there is a beginning of written evidence. Written proof means any credible writing, even unsigned or given as long as it is opposed to the person belonging to him or his successor in title. At the same time, it is a written proof of that document, without the signature of the person to whom it is opposed, but drawn up in the presence of a competent official to certify the conformity of those contained in the document.

It can be proved with witnesses, the document lost due to a fortuitous or force majeure case. There is also the possibility of proving with witnesses that legal act which is affected by fraud, error, malice, violence or absolute nullity for illicit or immoral cause.

Another important rule in the administration of evidence with witnesses is the fact that it cannot be proved with witnesses against or over the contents of a document, nor with regard to what is alleged to have been said before, during or after its elaboration, even if the law does not require the written form, the act remaining in the sphere of consensualism (under 250 lei), but the parties agreed to conclude a document attesting it, its content can only be contested with another document.

It is mentioned in the Code of Civil Procedure in Articles 311 to 326.

As a synthesis of these legal provisions, it can be specified that, in the trial phase, the summoning and hearing of witnesses will be ordered. Their replacement is possible only in case of death, disappearance or well-founded reasons. The list of new witnesses will be submitted under penalty of forfeiture, within 5 days of the court's approval.

The parties to the proceedings may object to the hearing of a witness who is not listed or unidentified.

The code specifies the exceptions in which persons cannot be heard as witnesses.

Cannot be heard as witnesses: 1. relatives and affinities including the third degree; 2. husband, ex-husband, fiancé or concubine; 3. those who are at odds or in a relation of interest with either party; 4. persons placed under judicial interdiction; 5. those convicted of perjury.

However, the procedural provisions also mention in art. 315 of 2 that the parties may agree, expressly or tacitly, to be heard as witnesses and the persons provided in par. (1) points 1-3 and at the same time in the civil proceedings that have as object the filiation, the divorce and other family relations, it will be possible to listen to the relatives and affines provided in art. 315, except for descendants.

The absence of the witness at the first summons may result in the issuance of an arrest warrant in his name.

The impossibility of presenting a witness in court due to illness or other serious impediment, will not hinder the process, as he may be heard at the place where he is, with the summoning of the parties.

The quality of witness is limited in the situations expressly provided in the Code. According to art. 317, the persons exempted from testifying are:

1. servants of the cult, doctors, pharmacists, lawyers, notaries public, bailiffs, mediators, midwives and nurses and any other professionals required by law to maintain professional or professional secrecy in respect of facts of which they have become aware service or in the exercise of their profession, even after the cessation of their activity; With the exception of servants of the cult, other persons may testify if they are approved for professional or professional secrecy.

2. judges, prosecutors and civil servants, even after their termination of office, on the secret circumstances of which they became aware in this capacity; These persons will be able to testify if the authority or institution with which they operate or has operated, as the case may be, gives their approval.

3. those who, through their answers, would expose themselves or expose any of the above persons to criminal punishment or public contempt.

The role of the president of the court, before taking the witness statement, is to identify the witness, then he will consider the obligation to swear.

The taking of the witness oath is devoted to an entire article.

The oath will be taken by holding the cross or the Bible. But the reference to divinity in the formula of the oath changes according to the religion of the witness.

After taking the oath, the president will warn the witness that if he does not tell the truth, he is committing the crime of perjury. All this is mentioned in the written statement.

The hearing of witnesses will be in the order set by the President, taking into account the request of the parties, each witness will be heard separately, without the presence of the unheard.

In the first stage of the hearing, the witness will first answer the questions put by the President and then the questions put, with his approval, by the proposing party and by the opposing party. The witness heard will remain in the courtroom until the end of the investigation.

The question addressed by one of the parties which cannot lead to the settlement of the case, is offensive or tends to prove a fact whose proof is prohibited by law, the court will not approve it, will pass in the conclusion of the hearing both the name of the party and the question, as well as the reason why it was not approved.

Proposed witnesses may be questioned again if the court deems it necessary, and those whose statements do not match may be confronted.

The testimony will be written by the clerk, who will record the witness's statement exactly and literally, and will be signed on each page and at the end of it by the judge, clerk and witness, after he has read the contents. If the witness refuses or is unable to sign, this will be mentioned at the end of the hearing.

A relevant case in national case-law concerns the hearing of the offender's spouse as a witness, a witness who thus succeeds in overturning the presumption of validity of the contested contravention report. In order to establish and find out the

truth, the hearing of the only witness present at the event takes place regardless of whether he is the person of the person in question.

In short, the testimonial evidence, in the situation where the witness has one of the qualities provided by art. 315 points 1 and 2 of the Code of Civil Procedure is admissible, the contravention matter benefiting, according to the jurisprudence of the European Court of Human Rights, from the procedural guarantees applicable to the criminal process.

Extract from the considerations of decision no. 49/2019 of the Bucharest Court:

"Regarding the validity of the report of finding and sanctioning the contravention no. x, drawn up by the General Directorate of Police of the Municipality of Bucharest - Road Brigade on 12.07.2017, the appellate court holds that the appellant - petitioner in the present case managed to overturn the presumption of validity of the contested contravention report, as regards regarding the commission of the contravention provided by art. 135 lit. h from H.G. no. 1391/2006 and sanctioned by art. 100 para. 3 lit. b of the O.U.G. no. 195/2002, republished, with subsequent amendments and completions.

Thus, from the statement of the witness IME, the appellate court notes that the appellant-petitioner IMC gave priority to pedestrian crossings (…)

From the economy of the text of art. 34 para. 1 of O.G. no. 2/2001 on the legal regime of contraventions shows that the contravention report proves the factual situation and the legal framework until proven otherwise (the contravention report benefits from a relative presumption, and not an absolute one of legality and validity), which was done by the appellate court hearing the only witness present at the place of the contravention, who happens to be the wife of the appellant-petitioner.

The judge is obliged to establish the truth, so that when the witness can relate the true state of affairs, his relations with the petitioner do not matter.

According to the provisions of art. 33 para. 1 and of art. 34 para. 1 of O.G. no. 2/2001, the court hears the petitioner, the persons indicated as witnesses in the minutes and in the complaint, as well as any other persons who may contribute to the establishment and finding out the truth. The text of the law does not make any distinction regarding the quality of persons, so that the persons provided by art. 315 points 1 and 2 of the Code of Civil Procedure.

On the other hand, (…) by directly applying art. 6§3 lit. d of the Convention, referred to in art. 20 para. 2, in conjunction with art. 11 para. 2 of the Constitution, the provisions of art. 315 points 1 and 2 of the Code of Civil Procedure and the testimonial evidence will be approved with persons who were relatives, husband, etc., of the petitioner.

Therefore, the testimonial evidence, in the situation where the witness had one of the qualities provided by art. 315 points 1 and 2 of the Code of Civil Procedure is admissible, the contravention matter benefiting, according to the jurisprudence of the European Court of Human Rights, from the procedural guarantees applicable to the criminal process - in order to establish whether art. 6 C.E.D.O. is applicable in its criminal aspect, it being sufficient for the "act" to be a criminal offense under the Convention or the perpetrator to be subject to a sanction which, by its nature or gravity,

belongs to the "criminal sphere" (Judgment of 25 August 1987, Lutz v. Germany, §55), the criterion of classifying the deed according to national law having relative value (Judgment of 8 June 1976, Engel and the Netherlands, § 81). Therefore, the admissibility of the testimonial evidence in the presented situation is based on the imperative to find out the truth, especially since the circumstance that is to be proved is a spontaneous one, difficult or impossible to prove by other means. Testimonial evidence cannot be limited to persons who are not in the cases provided by art. 315 points 1 and 2 of the Code of Civil Procedure, only as an effect of the special norm contained in art. 47 of O.G. no. 2/2001 - of reference to the general norms (Code of Civil Procedure). Of course, in assessing the evidence, in particular and in conjunction with the other evidence administered in the case, the court may take into account elements related to the degree of kinship between the witness and the offender.

The judges of the civil sections of the courts from the constituency of the Târgu Mureș Court of Appeal also pronounced the same opinion, on the occasion of the quarterly meeting of June 19, 2015 (point 1 of the minute).

Even if the witnesses appearing to be heard in the contravention complaints are sometimes of interest in the case, being relatives, relatives or friends with the petitioners, the court may wonder if the witness is sincere (the veracity of his statement) by an intensive hearing, possibly the hearing. several witnesses to compare their statements. However, the appellate court does not consider any objective reason to be able to dismiss the statement of the witness of the EMI, provided that no other statement of another witness or other evidence administered in the case was confronted, such as to reveal a contradiction with them.

Therefore, the appellate court considers that the appellant - petitioner in the present case managed to overturn the presumption of legality and validity of the contested report of the contested contravention regarding the commission of the contravention provided by art. 135 lit. h from H.G. no. 1391/2006 and sanctioned by art. 100 para. 3 lit. b of the O.U.G. no. 195/2002, republished, with subsequent amendments and completions, provided that the evidence administered is capable of convincing the court of the non-existence of the contravention and the guilt of the appellant - petitioner, without any reasonable doubt. " (Bucharest Tribunal, Second Administrative and Fiscal Litigation Section, Civil Decision no. 49 of January 10, 2019, www.rolii.ro).

## 3. IN INTERNATIONAL LAW

The European Court of Human Rights (ECHR), often informally referred to as the "Strasbourg Court", has been set up to systematise the procedure for human rights complaints from Council of Europe member states. The Court's mission is to ensure that the signatory states comply with the provisions of the European Convention on Human Rights and the Additional Protocols. The European Court of Human Rights should not be confused with the Court of Justice of the European Union (CJEU), which is based in Luxembourg and is responsible for resolving European Union law issues.

Among the most relevant rulings of the European Court of Human Rights on witness evidence are: Dombo Beheer B.V. v. the Netherlands, Wierzbicki v. Poland and Ankerl v. Switzerland.

Article 6 para. 1 does not explicitly guarantee the right to call witnesses and the admissibility of evidence with witnesses which is in principle governed by national law. However, the procedure as a whole, including the manner in which witness statements are admitted, must be fair within the meaning of Art. 6 § 1 (Dombo Beheer B.V. v. The Netherlands, § 31).

The judge's refusal to summon a witness must be sufficiently reasoned and not arbitrary: he must not, therefore, disproportionately restrict the litigant's ability to present his arguments in support of his case (Wierzbicki v. Poland, § 45).

A difference in treatment as regards the hearing of the parties' witnesses may be likely to infringe the principle of "equality of arms" [Ankerl v. Switzerland, § 38, in which the Court concluded that there was no clear disadvantage compared with the other party; compare with Dombo Beheer B.V. v. the Netherlands, paragraph 35, in which only one of the two participants in the events in dispute was allowed to testify before the courts (infringement)].

Article 6, paragraph 1, of the European Convention on Human Rights states that "Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. will decide either on the violation of his civil rights and obligations or on the merits of any criminal charge against him. The judgment must be given in public, but access to the courtroom may be denied to the press and the public for the whole or part of the proceedings, in the interests of morality, public order or national security in a democratic society, when the interests of the minors or the protection of the privacy of the parties to the trial so require, or to the extent deemed absolutely necessary by the court, when, in special circumstances, publicity would be prejudicial to the interests of justice ".

The content inherent in the right to a fair trial is not necessarily the same in private law litigation as in litigation in criminal matters. This is due to the express dedication of art. 6 par. 2 and par. 3 of the scope of application of criminal law. However, although these safeguards have a certain relevance that goes beyond the limits of the criminal sphere, the states enjoy a wide margin of appreciation in regulating the conduct of proceedings pertaining to private interests.

In another case, the Court reached a different conclusion, finding a breach of the principle of equality of arms by ordering the court to hear the witness proposed by the applicant in the national dispute, who also acted as its representative, while rejecting the application for hearing of the defendant's representative, even though these two persons had participated in the contractual negotiations on positions of legal equality ", ECHR, Dombo Beheer BV c. The Netherlands, no. 14448/88, decision of October 27, 1993, par. 34-35, www.echr.coe.int.

The famous Dombo Beheer B.V. against the Netherlands proves that the role of the Court is not to show which testimony should have prevailed in a civil case, but to decide to what extent the admission of evidence by the national court is justified and whether the fairness of the administration is also respected evidence.

As a summary of this case, it is shown that:

*Dombo Beheer B. V. v. The Netherlands - Application in a civil case of a rule of evidence prohibiting the interrogating of a party as a witness in his own case*

504. Dutch limited liability company Dombo Beheer B. V. is established in Nijmegen. A dispute between her and her bank over the development of their financial relationship between December 1980 and February 1981. Dombo claims that it has entered into a credit facility agreement with the bank in the form of a short-term loan authorization. The bank refuses to execute the payment orders, and Dombo files a lawsuit in the Arnhem district court for damages. On 2 February 1984, he invited him to provide evidence of the contract in question, in particular as regards the alleged increase in the loan ceiling. On 8 February 1985 the Arnhem Court of Appeal dismissed the bank's appeal against that decision. At the request of both parties, it then uses its evocative power.

On 13 February 1985, the trial counsel refused to hear the former Dombo director (Mr van Reijendam), who had negotiated the contract, as a witness. instead, he listens to the bank's guarantor (Mr van W.), who took part in the negotiations; present during this hearing, however, the former director of Dombo is not being heard as a witness. On 11 March 1986 the Arnhem Court of Appeal dismissed Dombo's claim for damages. On 19 February 1988 the Court of Cassation dismissed Dombo's appeal against that judgment and the decision of the trial counsel; In its view, the Court of Appeal was free to assess the evidence produced by the bank in the light of the other party's observations and to take into account the statements made by the bank's witness.

505. In his application to the Commission of 15 August 1988, Dombo criticizes the domestic courts for refusing to allow its former managing director to file as a plaintiff, while they granted such authorization to the guarantor of the bank branch, the only person present, in addition, at the time of the conclusion of the verbal agreement. These authorities thus violated, to the detriment of the petitioner, the principle of equality of arms, enshrined in art. 6 § 1 of the Convention.

• Judgment of 27 October 1993 (Chamber) (Series A no. 274)

506. The Court notes from the outset that it is not called upon to decide in a general manner whether it is lawful for a party to civil proceedings to be prevented from testifying in his own case. Nor is it called upon to examine in the abstract the Dutch law of probation in civil matters. It could not substitute its own assessment of the facts for that of the national courts. Its task is to investigate whether the procedure referred to in its entirety, including the manner in which the testimonies were admitted, has been of a fair nature within the meaning of Art. 6 § 1.

507. - The imperatives inherent in the notion of a fair trial are not necessarily the same in disputes concerning civil rights and obligations in cases concerning charges in criminal matters. As proof, the absence, in the case of the former, of the detailed clauses similar to paragraphs 2 and 3 of art. 6. From this point of view, and although these provisions have a certain relevance outside the strict limits of criminal law, the Contracting States enjoy a greater latitude in the field of civil litigation than in criminal proceedings.

However, according to the case law of the Court, certain principles related to the notion of a "fair trial" emerge in civil cases. and criminal; this is especially

important here. The Court considers that in litigation between private interests, equality of arms implies the obligation to give each party a reasonable opportunity to present its case - including evidence - in conditions that do not place it at a clear disadvantage compared to its opponent. It is for the national authorities to ensure compliance with the conditions of a fair trial in each case.

508. - in the present case, the obligation to establish the existence of a verbal agreement between Dombo and the bank, regarding the extension of certain credit facilities, fell on the petitioner. Only two people attended the meeting, during which the verbal agreement was reached: the director of Dombo and the guarantor of the bank's branch. However, only the second of these protagonists was authorized to testify. The Court of Appeal denied Dombo the opportunity to summon his representative on the grounds that he had identified himself with his office.

During the negotiations, the director of Dombo and the guarantor of the bank's branch had acted on an equal footing, each of them being empowered to treat on behalf of his client. So it is hard to see why they could not both testify. The petitioner company being thus placed in a situation of net disadvantage compared to the bank, there was a violation of art. 6 § 1 (unanimity).

509. - in the name of art. 50. Dombo's various claims for pecuniary and non-pecuniary damage are based on the idea that he would have won the case if the domestic courts had authorized van Reijendam to testify. However, the Court could not uphold that hypothesis without assessing the evidence itself. The hearing of Mr van Reijendam by the Arnhem Court of Appeal led to the existence of two contradictory statements, one of which should have been preferred, based on the evidence provided in support. The court has no jurisdiction to state which testimony should have prevailed. It therefore rejects this part of the application (unanimously).

She points out that, like the claim for damages, the petitioner's claim for costs and fees before the domestic courts is based on the idea that Dombo would have won the case if his director had been heard. For the same reasons, this claim must also be rejected (unanimously). As to the costs and expenses incurred before the Strasbourg courts, the Court shall award the petitioning company, in equity, 40,000 guilders for this chapter, less the amount of FF 16,185 already paid as legal aid (unanimously). However, the Court does not consider it appropriate to grant Dombo's claim for damages.

## 4. PECUNIARY LIABILITY FOR FALSE TESTIMONY OF THE WITNESS

For the liability of the false declaration of the witnesses, in judicial practice, it is aimed to apply a pecuniary liability of the person in question.

It has been proven that, in many cases, for inappropriate declarations of reality by the witness, it is often enough to impose a criminal fine, especially since the perpetrator is the first to commit the crime.

In the criminal sentence no. 184/2016, it was ordered to impose a criminal fine of 5400 lei (135 days-fine of 40 lei for each day-fine), for committing the crime of perjury.

Thus, the defendant proposed as a witness in a civil case of the Zărnești Court, with the object of ascertaining the acquisition of the right of ownership, by usufruct regarding a real estate, declared, in a false way, that the said N. and D. use the respective land since 1966 and that, in the community, the named N. and D. are known as the owners of the land, under the conditions that he met them, personally, only in 2011, on the occasion of testifying as a witness in the file having as object is the ascertainment of the acquisition of the right of ownership, through usufruct. The court notes that the defendant committed the crime with direct intent, foreseeing that, through his action, he would influence the solution that was to be pronounced in the civil file of the Zărnești Court, having as its object the ascertainment of the acquisition of the property right, through usufruct, and pursuing this result. When establishing the punishment in concrete terms, the court will take into account the fact that the defendant is facing the criminal law for the first time and also that he has admitted and regretted the commission of the crime.

In another sentence, no. 327/2019, the court ordered the penalty of a criminal fine in the amount of 3000 lei. Taking into account the nature of the crime and the social relations violated by the act committed, we appreciate that the penalty of the criminal fine with its execution is necessary to prevent the commission of new crimes in the future and to ensure the re-education of the defendant, as it is necessary for this conviction to constitute a signal for him firmly, in the sense that the judicial bodies are not willing to allow such behavior contrary to the legal norms that regulate the proper administration of justice, which is why the court will not apply the provisions of art. 83 regarding the postponement of the application of the penalty.

Factually, the defendant on 21.04.2016, being heard as a witness in a civil case of the Hunedoara Court, falsely declared that he did not participate in the communication activity by displaying at the suspect's residence the minutes of contravention no. x/13.10.2015 and did not sign the display minutes. The court notes that through the contravention report no. xxx drawn up on 13.10.2015, the suspect was penalized for committing several traffic violations. Since the violator refused to sign the violation report, it was communicated to him by the postal service, however, the documents were returned to the police authorities because he did not appear at the post office to pick up the mail. In this context, the police authorities proceeded to communicate the minutes and the payment notice by posting them at the violator's residence, which is why in the evening of 03.11.2015 they went to the building located in the municipality of Hunedoara. According to art. 27 of OG no. 2/2001 in the form in force on that date, the display operation is recorded in a minute signed by at least one witness. Thus, the police officers proceeded to stop the driver of the van with no. registration number X identified in the person of the defendant and requested him to assist in the fulfillment of the communication procedure by displaying the contravention report.

The defendant expressed his agreement to this, handed over the identity card to the police officers and together they moved in front of the staircase of the building where the documents were displayed on the main door of the building. At the end, the defendant signed the minutes of the completion of the procedure issued on 03.11.2015 under the heading "Signature of the witness". Subsequently, on 08.01.2016, the

violator filed a complaint with the Hunedoara Court against the record of finding the contravention and applying the sanction

In this file, the defendant was heard as a witness who, in the deposition dated 21.04.2016 after taking the oath, falsely stated that the signature on the display report issued on 03.11.2015 did not belong to him and that at the date of conclusion of this minute was in another municipality, in the interest of the service.

## 5. CONCLUSIONS

The analysis of the relationship between domestic and international law in relation to evidence with witnesses on the civil side is important.

Although the provisions of Article 6 of the European Convention on Human Rights are enshrined in criminal law, they still cover a wide area of law in general.

In domestic law, the Code of Civil Procedure devotes 18 articles to this probation procedure. The witness plays a key role in resolving a lawsuit. In fact, many times, a civil trial cannot continue without the factual existence of a witness.

The C.E.D.O attaches the same importance to the role of the witness in a trial, sanctioning states that fail to grant the legal right to the person who testifies.

In the national jurisprudence in the case of the hearing of the offender's spouse as the sole witness, the court admitted that the evidence with the witness overturned the presumption of validity of the contested contravention report, although the provisions of O.G. no. 2/2001 mentions that the contravention report itself proves the factual situation until proven otherwise.

On the other hand, the European Court of Human Rights found that there was a violation of art. 6 para. 1 in the case of Dombo Beheer B.V. against the Netherlands, but the same Court ruled that it was not competent to state which testimony should have prevailed, that of the director of Dombo or the guarantor of the bank branch as both had acted on an equal footing, each of them being empowered to treat his principal.

The role of the European Court of Human Rights is not to examine in the abstract the law of probation in the national court nor to make an assessment of the facts, but its role is strictly to verify whether the procedure as a whole and the testimonies were fair. in the sense given by art. 6 par.1.

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