SUMMARY OF DOCTORAL THESIS

The doctoral dissertation entitled ***"The evidence system in civil proceedings"*** is a scientific work developed over 250 pages, the information is structured in 8 chapters, which also include several sections and subsections. The thesis undertakes a topic of particular complexity, importance and timeliness within the national system of law.

The complexity of the topic is reflected by the many facets of judicial evidence, expressed both in the features and overall unity of the system and the specificity and concrete legal phenomenology of each of its components.

The importance of judicial evidence and its role in ensuring the valorization and completion of the legitimate rights and interests of individuals and businesses engaged in various aspects in civil trials, are expressed synthetically so well and so timely by the Latin dictum "idem est non esse et non probari"; the judicial wisdom of Romanian forerunners also surprised by the adage "dabi mihi factum dabo tibi jus" the need to reveal to the judge the reality of facts, through evidence, in order to get proper justice.

Aubry and Rau, who built the classical theory of evidence, said that proving is to submit to a judge convincing elements capable of justifying the truth of a fact which one of the parties affirms and the other denies.

The particular timeliness of the approached topic is marked by the contemporaneousness of legislative changes made within the civil law (and thus inevitably also in terms of evidence) by the recent adoption of the Civil Code, by law no. 287 published in the Official Gazette no. 511 of July 24, 2009 and the expected adoption of the Code of Civil Procedure.

A topic as prodigious as this requires careful investigation, in a manner both analytical and synthetic, designed to reveal without taking away the substance from the component, unity and diversity, the overall functionality of the system, but also the phenomenology of each evidence means.

In order to reveal in the most appropriate manner timeliness and functional identity of civil judicial evidence system and its components, the appeal to the past was imperative; therefore, the work presents essential data and reference points for judicial evidence evolution over time, in ambivalent key (as a unitary system in Chapter I and for each means of evidence in their reserved sections).

The historical approach has been backed by one of comparative law, the evolution over time of the civil evidence system and its components being sustained by their examination in different legal systems, concerning both evolution and timeliness coordinates.

The paper includes a "Foreword", designed to highlight the particular importance of the approached institutions, their role and significance in the national system of law.

Chapter I - „*General concepts about evidence*", divided into 10 sections, deals with issues about basic elements, common and defining for civil evidence, exposing general theory elements of civil judicial evidence, presenting common key concepts about proof in the light of unity and systemic functionality.

Thus, the first section contains meanings that can be given to the notion of evidence in legal literature and legal practice.

Particular attention is paid to evidence history and evolution over time, including a detailed overview of this evolution within our country.

Section 3 presents the importance of evidence in legal activity in general, and especially in the procedural activity, analyzed in several respects. Here we should emphasize that our evidence system does not allow a hierarchy of

evidence, formal evidence being annulled, evidence whose probative force was predetermined by law. All evidence is left to the free assessment of the judge, who evaluates it after his own intimate belief.

Classification of evidence, Section 4 of the paper, is presented in detail since it has theoretical and practical importance, because it represents the means of highlighting their common and particular characteristics, the attributes of different pieces of evidence, which must be taken account of during the admissibility, management and assessment stages.

The following sections cover the subject and the burden of proof, elements of particular importance for understanding what should and can be proved, and the chronology, the order in which evidence may be used.

All operations involved by judicial evidence shall be conducted according to certain rules laid down by law, general and common rules of admissibility, administration and assessment of evidence, and special rules applicable for each piece of evidence. These issues are detailed in Sections 7 and 8 of the first chapter.

Section 9 "Process analysis in the case of producing evidence by lawyers" details the procedure that would practically ensure an increased speed to the civil trial, to producing evidence by lawyers.

The last section of this chapter is reserved for the evidence system in the international civil procedure, taking into account the norms of the Law 105/1992, where we can find regulations on the applicable law in private international law trials, and in the provisions of art. 161-162 the law particularly deals with the system of evidence, since evidence is one of the most important factors in the judgment activity, without it being impossible to pronounce a decision.

Chapter II of the paper is restricted to the analysis of key evidence in civil proceedings - *documents*. The historical approach, designed to reveal the evolution in time of evidence procedure with documents is used also in this

chapter, scrolling sequentially aspects of Roman law, the former Romanian law, etc., and aspects of procedure.

A special section is reserved for defining the concept of this evidence and the classification.

In the section A are analyzed separately and in detail pre-established documents.

Thus, the first subsection highlights successively, in theoretical and practical-applied key, aspects of the concept, the conditions of validity, the evidential value of an authentic document and of one that is inept as authentic, genuine improper. The examination of the official form ad validity/ad probationem of legal documents is presented to reveal the whole phenomenology of this means of evidence. A synthetic analysis is also performed on simulation and fraud to law and procedural institutions that may be used against legal documents established by authentic documents.

The second subsection referring to private signature documents details aspects of the concept, characteristics, conditions of validity, the evidential value of the document between the parties and against third parties or that of its various elements (date, acquisition of the certain date, the condition of multiple copies...), and various aspects of evidence in judicial practice.

The last subsection presents one of the most important regulations concerning the conformation of Romanian law to new technical developments and electronic communication, represented by Law 455/2001 on the document in electronic form.

In Section B of this chapter entitled "Non pre-established documents" are presented documents that are not made with intent to serve as evidence and that, on principle, are unsigned, respectively the statement made by the creditors on the debt instrument; records, books and domestic papers; business records, letters and telegrams, including calculations. Each of these is considered separately in subsections with specific entries relating to the evidential value of such evidence.

Chapter III is restricted to analyzing *evidence by witnesses*, in fact the first evidence used in judicial evidence procedures, following the previously established line of inquiry.

The first section contains short historical considerations on evidence by witnesses, revealing aspects of the Roman law, Greek, Romanian old law also with the presentation of some procedural aspects.

The concept and importance of this evidence represent section 2 of this chapter which points out that although the evidence is seemingly fragile, yet it is of particular importance because in many disputes there cannot be produced other evidence.

The admissibility of proof by witnesses is treated in Section 3, where distinctions are made between the admissibility of proof by witnesses in civil litigations and admissibility of proof by witness in commercial litigations; between the proof by witnesses of legal facts in the strict sense and the proof by witnesses of legal documents.

In Section 4 are analyzed the conditions to propose witnesses, persons that may be heard as witnesses and those who are exempted from giving evidence, permission of proof with witnesses and the proper administration of this evidence.

The last section is about the evidential value of proof with witnesses, which should establish the intimate conviction of the judge about the reality of the related facts.

Chapter IV deals with the evidence by *confession* and undertakes the same approach in multiple key, revealing in the first section elements of historicity and timeliness of this type of evidence.

The next section is attempting an analysis of the legal nature of confession and a definition of the concept of confession, although Romanian law, unlike the law of other states, does not include a definition of confession.

The last sections of this chapter are devoted to analyzing the forms of confession, the conditions regarding the proposal of the proof, admissibility of the confession and the submission of induced judicial confession, by presentation of the procedural means given by law for that purpose to the parties and the court, concluding with an analysis of the evidential value of this means of evidence.

Chapter V entitled "Presumptions" begins with the analysis of the evolution in time of this evidence.

Presumptions represent the result of two reasonings: first, from the acknowledgement of direct evidence, the judge induces, through a reasoning, the existence of a past fact, which is close and connected to the rights-generating fact; through a second reasoning, from the acknowledgement of the close and connected fact, the existence of the main fact is deducted, due to the connection between these two facts, with the mention that in the case of legal presumptions, the second reasoning does not belong to the judge, but is imposed to him by law. All these aspects concerning the classification, the concept and the probative force of presumptions are widely considered in Sections 2 and 3 of this chapter.

Chapter VI examines *the evidence in the code of civil procedure*.

The first section regards the expert valuation and the relevant evidence, respectively the expert advice, with the presentation of historical elements, of the general rules on its proposal and submission, examining the way the expertise is carried out and analyzing its probative value.

Section 2 deals with research on site and exhibits, following the previously established line of inquiry.

Chapter VII separately examines *the means and auxiliary procedures of evidence submission in civil proceedings*.

Thus, the first section is reserved for questioning as an evidence procedure specific to the civil trial, used in order to obtain and use evidence

specific to civil trials, namely the confession.

The second section examines "providing evidence", also called in *futurum* investigation, which constitutes a means of managing evidence in special circumstances, means governed expressly by the Code of Civil Procedure by a special procedure called "providing evidence".

The last section deals with the fact that to the rule of direct administration of evidence by the court there is an exemption that allows the possibility that in exceptional situations, the management of evidence can be also done before another court than the one called upon to judge the trial, using the procedure, the auxiliary means of evidence called a rogatory commission.

Chapter VIII entitled *"Highlights of the evidence system in the new civil code"* presents some significant aspects concerning the topic approached in this paper, aspects found in the new Civil Code. Through the Law no. 287/2009 regarding the Civil Code published in the Official Gazette of Romania, Part 1, Nr. 511 of July 24, 2009, the new Civil Code was adopted, which seeks to reflect the need to adapt of the existing legislation to the requirements of socio-economic realities.

The paper ends with the presentation of *conclusions* which stress out the fact that the civil judicial evidence system has a place and a role which are essential for the structure of the national law, representing a real engine for the concrete achievement of the rights and interests of individuals and businesses, when they participate to the civil process.