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Recovering litigating attorney fees under Romanian jurisdiction

Principles

Litigation costs including attorney fees are governed by articles 451 - 455 of Law no. 134/2010 regarding the Romanian Civil Procedure Code.

According to these provisions, the party who won the case is entitled to recover the attorney fees from the party who lost. Therefore the losing party has to bear apart from its attorney's fees, also the attorney fees of the counterparty. If the claim is only partially admitted, the court establishes how much of the court costs are borne by each party.

Means to recover attorney fees

In order to recover attorney fees, the winning party has to claim them before the court. The parties have the possibility (i) to claim the attorney fees during the trial that led to such fees or, (ii) to file a separate claim before the court, after winning the case that entailed the attorney fees.

However one should not overlook the shortcomings of filing a separate claim, such as:

- (i) second trial court costs (the legal stamp fee, other attorney fees); these second trial court costs cannot be recovered from the counterparty, given that it is not the party's fault that the winning party did not claim the attorney fees during the main trial; the legal stamp fee that the winning party has to pay for such claims is a percentage of the attorney fees required from the losing party;
- (ii) statute of limitations; the second claim should be filed within a period of three years since the final decision of the main trial;
- (iii) it can be more difficult to convince a different judge that such fees were necessary and reasonable.

In all cases, such claim has to be proven, usually by presenting before the court the accounting document that ascertains the payment made to the lawyer. However, scholars recently argued that such claims should be granted even where only the legal assistance agreement stipulating the attorney fee is presented before the court.

The potential decrease of the attorney fees by the court

Under Romanian law, the court may diminish the attorney fees whenever it considers them manifestly disproportionate as to the complexity or value of the case or to the work performed by the lawyer.

This provision conveys the judge with a large power of appreciation as it can be rather difficult to assess the intellectual effort. Therefore, the court may diminish the attorney fees, not only if the counterparty demands it, but also *ex officio*, whenever it considers the decrease appropriate. The existing jurisprudence provides many such examples.

Regardless of the court's decision to decrease the amount of the attorney fees, this will have no impact upon the lawyer-client relationship. Therefore the winning party will pay his lawyer the full amount they agreed no matter the amount recovered from the losing party.

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