Taking of evidence

Lithuania

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European Judicial Network (in civil and commercial matters)

1 The burden of proof

Parties must prove the facts underlying their claims and replications except in the cases in which they do not have to be proved (see 1.2).

1.1 What are the rules concerning the burden of proof?

Under the Code of Civil Procedure of the Republic of Lithuania (*Lietuvos Respublikos civilinio proceso kodeksas*), the burden of proof lies with the parties in a case. They must prove the facts underlying their claims and replications except in the cases in which they do not have to be proved in accordance with the Code of Civil Procedure.

All courts consider civil cases according to the adversarial principle. Each and every party must prove the facts underlying their claims and replications except in the cases in which they do not have to be proved.

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?

Article 182 of the Code of Civil Procedure lists the following types of facts as being exempt from the burden of proof:

facts acknowledged by the court as being common knowledge;

facts established in effective judgements in other civil or administrative proceedings where participants were the same persons, except in cases where a court judgement gives rise to legal consequences for other persons who are not involved in the proceedings (prejudicial facts);

the consequences of personal acts constituting an offence where such consequences have been adjudged in an effective judgement in criminal proceedings (prejudicial facts);

facts that are presumable under the law and are unchallenged under the general procedure;

facts admitted by the parties.

A party has a right to admit to facts underlying another party's claim or replication. The court may consider an admitted fact to be established if it believes the admission is consistent with circumstances of the case and is not stated by the party for the purposes of deception, violence or threat, or has been made by mistake or in order to suppress the truth.

It should also be noted that such circumstances may be challenged by submitting evidence under the general procedure.

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?

If evidence submitted permits the court to conclude that there is a stronger probability that a certain fact existed than not, the court will acknowledge that fact as established.

2 The taking of evidence

Evidence in civil proceedings means any actual data serving as a basis for the court to determine under the statutory procedure the existence or non-existence of facts substantiating the claims and replications of the parties as well as any other facts relevant to reaching a fair and just decision in the case. Such data may be established by the following means: statements of the parties or third persons (directly or through a representative), testimonies of witnesses, written evidence, material evidence, inspection protocols, expert reports, legally obtained photographs, video and audio recordings and other forms of proof.

A court may also request an EU Member State to gather evidence or to take it directly in accordance with Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters in order to improve, simplify and accelerate cooperation between courts in 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?

Under Article 179 of the Code of Civil Procedure, parties and other participants in the proceedings shall present evidence. Where the evidence submitted is not sufficient, a court may ask the parties and other participants in the proceedings to provide the court with corroborative evidence and fix a time-limit for presenting it. A court is also entitled to collect evidence on its own initiate (*ex officio*), but only in cases provided for by law.

A court is entitled under the Code of Civil Procedure to collect evidence on its own initiate while hearing family or employment cases if, in its opinion, this is essential in order to decide a case fairly (Articles 376 and 414).

In addition, Article 476 of the Code of Civil Procedure stipulates that a court preparing to hear cases concerning the declaration of a minor to be of full capacity (emancipated) shall:

appoint a state child-protection institution at the minor’s place of residence to submit its conclusion on the minor's readiness to independently enforce all the civil rights or perform duties;

request data as to whether the minor has been convicted or has committed an infringement of administrative or other law;

if it is necessary to establish the level of the minor’s physical, moral, spiritual or mental development, order a forensic psychological and/or psychiatric examination and request any of the minor’s medical documents or other material necessary to perform the examination;

perform any other actions necessary to prepare for hearing the case.

Article 582 of the Code of Civil Procedure also stipulates that when a matter of permission to transfer a title to the family property, mortgage the family property or otherwise encumber the rights thereto is being considered, a court, while taking into account the circumstances of the case, has a right to demand evidence from the applicant of the financial situation of the family (income, savings, other property, liabilities), data on the family property being transferred, data from the children’s rights protection service on the child’s parents, the preliminary terms and conditions and prospects of the performance prospects of the future transaction, the prospects of the rights of a child being protected if the transaction is not performed and other evidence.

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

In order to gather evidence (in accordance with Articles 199 and 206 of the Code of Civil Procedure), a court may require a legal or natural person to present written or material evidence, which must be submitted directly to the

court within fixed time-limits. Where the natural or legal persons are unable to submit the requested written or material evidence or are unable to do this within the fixed time-limit, they must advise the court thereof and indicate the reasons. A court may issue a person requesting written or material evidence with a certificate entitling the person to obtain the evidence so that it can be submitted to the court.

During preparations for a court hearing, a judge also performs other procedural activities that are necessary to properly prepare a case for a court hearing (demands evidence that cannot be obtained by participants in the proceedings, collects evidence on their own initiative where the court is entitled to do so under the Code of Civil Procedure, etc.).

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

A court may reject evidence in the following circumstances:

where it is inadmissible;

where evidence does not confirm or disprove facts relevant to the case (Article 180 of the Code of Civil Procedure);

where evidence could have been presented earlier and later presentation thereof will delay the proceedings (Article 181(2) of the Code of Civil Procedure).

Any documents or other evidence on which the plaintiff is basing claims, proof that a court fee has been paid and applications to demand evidence which the plaintiff is unable to submit, indicating reasons as to why evidence cannot be submitted, should be annexed to the statement of claim in order to be accepted by a court (Article 135 of the Code of Civil Procedure).

It should also be noted that a court of appeal will refuse to accept new evidence that could have been submitted to a court of first instance except in cases where a court of first instance wrongly refused to accept the evidence or where the need to submit the evidence arose subsequently (Article 314 of the Code of Civil Procedure).

2.4 What different means of proof are there?

As defined in the Code of Civil Procedure, evidence in civil proceedings means any actual data serving as a basis for a court to find under the statutory procedure whether or not circumstances substantiating the claims and replications of the parties exist as well as other circumstances relevant to reaching a fair and just decision in the case. These data can be obtained as follows: statements of the parties or third persons (directly or through a representative), testimonies of witnesses, written evidence, material evidence, inspection protocols and expert reports.

Legally obtained photographs and audio and video recordings may also serve as evidence.

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?

Articles 192 to 217 of the Code of Civil Procedure lay down the following rules regulating methods of obtaining evidence from witnesses and expert witnesses:

The witness examination procedure

Each witness is summoned to a courtroom and examined individually. Unexamined witnesses may not remain in the courtroom during the hearing. Examined witnesses must remain in the courtroom until the hearing has ended. If examined witnesses so request, the court may allow them to leave the courtroom after the opinions of participants in the proceedings have been heard.

A witness may be examined *in situ* if they cannot appear upon summons before a court because of illness, old age, disability or other substantial reason recognised by a court and a participant in the proceedings who initiated the calling of the witness cannot ensure the appearance of that witness before a court.

The court must identify the witness and explain the witness's rights and duties as well as their liability for oath-breaking and non-fulfilment or improper fulfilment of any other of their duties.

Before undergoing examination, a witness shall take an oath by putting a hand on the Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*) and saying: "I, (full name), honestly and faithfully swear to tell the truth without suppressing, adding to or changing anyevidence". A sworn witness shall sign the wording of the oath. The signed oath is attached to the documents of the case.

Having determined the witness's relationship to the parties and third persons and other circumstances relevant to the evaluation of their evidence (education, occupation of the witness, etc.), the court shall instruct the witness to tell the court all they know about the case and to avoid disclosing information if the witness is unable to specify its source.

After giving evidence, a witness may be asked questions. A witness will first be examined by the person who requested that they be summoned and by a representative of that person. The witness will then be examined by other participants in the proceedings. A witness summoned on the court's initiative will first be examined by the plaintiff. The judge must disregard leading questions and questions irrelevant to the case. The judge is entitled to put questions at any time during the examination of the witness.

If required, at the request of a participant in the proceedings or on its own initiative, the court may re-examine a witness at the same hearing, call the examined witness to another hearing of the same court or confront witnesses against each other.

In exceptional cases where it is impossible or difficult to examine a witness at court, the court hearing a case is entitled to examine written testimony if, in court's opinion and in consideration of the identity of the witness and the substance of the of circumstances about which testimony is to be given, this will not have a detrimental effect on establishing the essential facts of the case. On the initiative of the parties, a witness may be summoned to an additional examination in court if that is necessary to establish the facts of the case in greater detail. Before giving evidence, the witness must sign the text of the oath set out in Article 192(4) of the Code of Civil Procedure and is warned upon signed acknowledgement that giving false evidence is a criminal offence. Written testimony must be given in the presence of a notary and is certified by the notary.

Examination of experts

Expert opinion is read out loud in a court hearing. Before the expert opinion is read, the expert (experts) giving the expert opinion and participating in the court hearing must take an oath by putting a hand on the Constitution of the Republic of Lithuania and saying: "I, (full name), swear to perform the duties of an expert in the proceedings with honesty and to produce an impartial and reasoned expert opinion based on my full expertise". If an examination is conducted outside a court hearing, the wording of the oath signed by the expert constitutes an integral part of the expert report. Experts included in the List of Court Experts of the Republic of Lithuania (*Lietuvos Respublikos teismo ekspertų sąrašas*) who took an oath at the time of being entered into that List do not have to take an oath at court and are deemed to have been warned about their liability in the event that they give a false opinion and statements.

A court is entitled to ask an expert to explain their opinion orally. The oral explanation of an expert opinion is included in the minutes of the court hearing.

Experts may be asked questions to explain or supplement the expert opinion. The person requesting their appointment has the first opportunity to put questions. Then an expert may be questioned by other participants in the proceedings. If an expert is appointed by the court on its own initiative, the plaintiff has the first opportunity to put questions to an expert.

Judges are entitled to put questions to an expert at any time of their examination.

Expert opinion is provided only at the request of a court (and must be submitted in writing in the form of an expert report). An expert report must include a detailed description of investigation carried out, the conclusions drawn on the basis of the findings, and reasoned answers to the questions asked by the court.

If a court asks for an expert opinion without an expert report, the expert opinion is considered to be written

evidence submitted by an expert (similar to other participants in the proceedings) or that is requested by the court under the procedure laid down by the Code of Civil Procedure.

Article 198 of the Code of Civil Procedure lays down the following rules for the submission of written evidence:

Written evidence may be submitted by participants in the proceedings or be requested by a court in accordance with the procedure stipulated by the Code.

Written evidence must be submitted in the form prescribed by the Code of Civil Procedure: a participant in proceedings who substantiates the contents of a procedural document with written evidence must attach the originals or copies (digital copies) thereof, as certified by a court, a notary (or other person who is authorised to perform notary actions), a lawyer taking part in the proceedings or the person who issued (received) the document. A court may require, on its own initiative or at the request of a participant in the proceedings, that the original documents be submitted. A request by a participant in the proceedings for original documents to be submitted shall be presented with their claim, counterclaim, statement of defence or other procedural documents of participants in the proceedings. Participants in the proceedings may lodge such a request at a later date where the court recognises the reasons for failing to submit a request earlier to be compelling or where the granting of the request in question will not delay resolution of the case. In cases where only part of a document is related to the contents of procedural documents, only the relevant parts (excerpts, extracts) may be submitted to the court.

All procedural documents and appendices thereto must be submitted to the court in Lithuanian except in the case of certain exceptions laid down by legislation. Where participants in the proceedings to whom procedural documents have to be served do not understand Lithuanian, translations of these documents into a language they can understand must be submitted to the court. Where the documents to be submitted are required under the Code to be translated into a foreign language, the participants in the proceedings must submit certified translations thereof to the court in compliance with the established legal procedure.

Original documents in a case file may be returned at the request of submitters. In that case copies of the documents to be returned, certified in accordance with the procedure stipulated by the Code, must be retained in the file.

2.6 Are certain methods of proof stronger than others?

Under Article 197 of the Code of Civil Procedure, documents issued by state and municipal authorities which have been approved by persons authorized by the state within the limits of their competence and in compliance with requirements applied to the form of particular documents may be considered to be official written evidence and shall have stronger evidentiary effect. Facts indicated in official written evidence are considered to be fully proved until they are disproved by other evidence in the proceedings, except for witness evidence. A ban on the use of witness evidence does not apply where it would contradict the principles of good faith, fairness and reasonableness. The evidentiary value of official written evidence may also be conferred upon other documents as well by legislative acts.

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

Circumstances of a case which are required by law to be proved by particular means of evidence cannot be proved by any other means of evidence (Article 177(4) of the Code of Civil Procedure).

2.8 Are witnesses obliged by law to testify?

A person summoned as a witness must appear before the court and give truthful evidence. A person summoned as a witness is liable under the law for failure to fulfil the duties of a witness (Article 191), i.e. a fine may be imposed on them.

2.9 In which cases can they refuse to give evidence?

A witness may refuse to give evidence where such evidence would constitute evidence against oneself, family members or close relatives.

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

Where witnesses, experts or interpreters fail to appear at a hearing, the court will ask the persons participating in the proceedings whether they case may be heard in the absence of witnesses, experts or interpreters and rule that the court hearing be continued or deferred. Where a summoned witness, expert or interpreter fails to appear in court without valid reason, they may be liable for a fine of up to one thousand litas. A witness may also be forcefully brought to court on the basis of a court ruling (Article 248 of the Code of Civil Procedure).

2.11 Are there persons from whom evidence cannot be obtained?

The following persons may not be examined as witnesses:

representatives in civil and administrative proceedings or defence counsel in criminal proceedings, about circumstances of which they learnt in their capacity as representative or defence counsel;

persons who are unable to understand circumstances relevant to the case or give fair evidence because of physical or mental handicaps;

priests, about circumstances obtained in confession;

the medical profession, about circumstances covered by professional secrecy;

mediators, about circumstances of which they learnt during a conciliatory mediation procedure.

Other persons may also be defined by law.

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?

Having clarified the witness's relation to the parties, third persons and other circumstances relevant to the evaluation of testimonial evidence (the witness's education, occupation, etc.), the court will invite the witness to tell the court all they know concerning the case and to avoid any information if the witness is unable to specify its source.

After giving witness evidence, a witness may be asked questions. A witness will first be examined by the person who requested that the witness be summoned and by a representative of that person, and then by other participants in the proceedings. A witness summoned on the court's initiative is first examined by the plaintiff. The judge must disregard leading questions and questions irrelevant to the case. The judge is entitled to put questions at any time during the examination of the witness. If required, at the request of a participant in the proceedings or on its own initiative, the court may re-examine a witness at the same hearing, call the examined witness to another hearing of the same court or confront witnesses against each other.

In exceptional cases where it is impossible or difficult to examine a witness at court, the court hearing a case is entitled to examine written testimony where in the court's opinion and in consideration of the witness's identity and the substance of the of circumstances about which testimony is to be given, this will not have a detrimental effect on establishing the essential facts of the case. On the initiative of the parties, a witness may be summoned to an additional examination in court where that is necessary to establish the facts of the case in greater detail. Before giving evidence, a witness must sign the predetermined text of the oath and is warned upon signed acknowledgement that giving false evidence is a criminal offence. Written testimony must be given in the presence of a notary and is certified by the notary.

Participation in court hearings by participants in the proceedings and witness examination *in situ* may be ensured by means of information and electronic communication technologies (via videoconferencing, teleconferencing, etc.). When using such technologies in compliance with the procedure set by the Minister of Justice, it must be ensured that participants in the proceedings are identified in a reliable manner and that the data (evidence) is recorded and submitted objectively.

In addition, Article 803 of the Code of Civil Procedure provides for the possibility for courts of the Republic of Lithuania to request a court of another state to use communication technologies (videoconferencing, teleconferencing, etc.) while gathering evidence.

3 The evaluation of the evidence

A court evaluates evidence in proceedings in accordance with its own conviction based on the comprehensive and unbiased examination of the facts presented in the proceedings and in compliance with the law.

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

Factual data is established by the following means: statements by the parties and third persons (directly or through a representative), witness testimonies, written evidence, material evidence, inspection protocols, expert conclusions, legally obtained photographs, video and audio recordings and other pieces of evidence. Factual data constituting a state or professional secret normally cannot serve as evidence in civil proceedings until it is declassified in compliance with the statutory procedure. Data received during a conciliatory mediation procedure cannot serve as evidence in civil proceedings except in cases provided by the Law on Conciliatory Mediation in Civil Disputes.

It should also be noted that in accordance with Article 185 of the Code of Civil Procedure, a court must evaluate evidence in the proceedings in accordance with its own conviction based on the comprehensive and unbiased examination of the facts presented in the proceedings and in compliance with the law. No evidence shall have any predefined effect on a court, except where this is provided for in the Code of Civil Procedure.

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

Yes (see 2.4).

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