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Taking of evidence



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European Judicial Network
(in civil and commercial
matters)

1 The burden of proof

1.1 What are the rules concerning the burden of proof?

The claimant must prove the facts that are necessary to establish the claim, while the defendant bears the burden of proving defences to the claim. A party who fails to present evidence runs the risk of their claims being found not proven.

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?

Admitted facts do not need to be proven. In addition, generally acknowledged facts, or facts that are known *ex officio* to the court, need not be proven. Counter-evidence may, of course, be presented.

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?

In this respect the law merely contains a provision whereby the court must, after having carefully considered all the facts presented, decide what is to be regarded as the truth in the case. Finland applies the principle of 'free evaluation of evidence', and so it is a matter of presenting adequate evidence to the court.

2 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?

In practice the interested parties must themselves obtain the evidence on which they wish to rely. The law also permits the court to decide to obtain items of evidence on its own initiative. However, the court cannot order a new witness to be examined or a document to be presented on its own initiative and against the will of both the interested parties if the case in question is one which is amenable to out-of-court settlement.

In certain cases, such as paternity cases, it is also a duty of the court to ensure that all necessary evidence is obtained.

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

The evidence is heard at the main hearing.

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

The court can deny such an application if, for example, the evidence is irrelevant or the case has already been

proven in the respect in question. An application to obtain evidence can also be rejected if it is made at too late a stage.

2.4 What different means of proof are there?

Different means of proof include the hearing of the interested parties, witnesses and experts, the presentation of written evidence and expert statements, and examination.

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?

There is no difference between the evaluation of oral testimony given by witnesses or experts and written statements provided by experts. However, courts do not accept written statements from witnesses.

2.6 Are certain methods of proof stronger than others?

There are no restrictions. The court has free discretion when evaluating evidence.

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

No.

2.8 Are witnesses obliged by law to testify?

As a rule, a witness cannot refuse to give evidence.

2.9 In which cases can they refuse to give evidence?

The spouse, fiancé(e) and direct ascending or descending relatives of an interested party as well as an interested party's siblings and their spouses or the adoptive parents or adoptive children of an interested party have the right to refuse to give evidence. In addition, the law includes various other situations where a witness has the right or the obligation to refuse to give evidence.

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

A witness who without lawful cause refuses to give evidence can be obliged under the threat of a fine to comply with their obligation. If the witness still refuses to give evidence, the court can order them to be detained until they consent to giving evidence.

2.11 Are there persons from whom evidence cannot be obtained?

It is up to the discretion of the court whether, for example, a person under 15 years of age or a mentally disturbed person can be heard as a witness.

Certain groups of persons, such as doctors and lawyers, cannot give evidence in matters relating to their position of trust.

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?

As a general rule, the party who calls a witness examines that witness first. The other party then has a right to cross-examine the witness. Following cross-examination, the court and the interested parties can put further questions to the witness.

A witness can be heard using videoconferencing or other suitable telecommunications technology that provides an audiovisual link between those taking part in the session, if the court considers this to be appropriate. This procedure can be used, for example, if a witness has been prevented from attending court in person or if their attendance would entail unreasonable costs, or if the witness is under 15 years of age. In certain situations a witness can also be examined over the telephone.

3 The evaluation of the evidence

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

The law does not contain specific instructions for such circumstances. The court must, using its discretion, decide what significance such evidence will have.

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

Yes. Interested parties can be heard freely for the purpose of presenting evidence, and in a civil case they can be heard under oath regarding facts that are of special significance to resolving the case. A statement given by an interested party in evidence will be evaluated on the same criteria as a statement given by a witness.

4 Has this Member State in accordance with Article 2(1) of the Taking of Evidence Regulation specified other authorities that are competent to take evidence for the purposes of judicial proceedings in civil or commercial matters under the Regulation? If so, what proceedings are they competent to take evidence in? Can they only request taking of evidence or also assist in the taking of evidence on the basis of a request from another Member State? See also notification under Article 2(1) of the Taking of Evidence Regulation.

Finland has not designated any other authorities.

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