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# Taking of evidence

 Portugal

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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 general rules on burden of proof are laid down in Articles 342 to 348 of the [Portuguese Civil Code](#).

### 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?

Yes, there are rules which exempt certain facts from the burden of proof.

In the following cases:

- Article 412 of the [Portuguese Code of Civil Procedure](#) – Facts not requiring a claim or proof
- Article 350 of the [Portuguese Civil Code](#) – Legal presumptions

Legal presumptions may, however, be rebutted by means of counter-evidence, except in cases where the law does not allow this (Article 350(2) of the [Portuguese Civil Code](#)).

### 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?

The judge assesses evidence freely, on the basis of their judicious belief regarding each fact. The free assessment of evidence by the court does not cover facts for which the law requires special formalities to prove them, or those that can be proven only by documents or that are fully proven, either by documents, by agreement or confession of the parties (Article 607(5) of the [Portuguese Code of Civil Procedure](#)).

The court must consider all evidence produced, whether or not originating from the party that should have produced it, without prejudice to the provisions declaring the statement of a fact to be irrelevant if it is not made by a certain interested party (Article 413 of the [Portuguese Code of Civil Procedure](#)).

The value of each means of proof varies according to its nature (Articles 369 to 396 of the [Portuguese Civil Code](#)).

## 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?

The taking of evidence does not always require the application by a party.

Portuguese law sets out the ‘inquisitorial principle’, i.e. it is the judge’s duty to carry out or order, even of their

own motion, all actions necessary to determine the truth and fair settlement of the dispute with regard to the facts that they are lawfully entitled to examine (Article 411 of the [Portuguese Code of Civil Procedure](#)).

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

At the pre-trial hearing or by order, as applicable, the court determines which means of proof are admissible and can be adduced (Articles 591 and 593 of the [Portuguese Code of Civil Procedure](#)).

As a general rule, evidence is taken at the final hearing (Article 604(3) of the [Portuguese Code of Civil Procedure](#)). By way of exception, however, the court may allow evidence to be given at an earlier stage (Article 419 of the [Portuguese Code of Civil Procedure](#)).

If, after the trial is over, the judge believes that they do not have sufficient information, they may reopen the trial to hear the people they wish to and order any other necessary action (Article 607(1) of the [Portuguese Code of Civil Procedure](#)).

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

In general, in compliance with the procedural duty laid down in Article 6 of the [Portuguese Code of Civil Procedure](#), it is for the judge to reject evidence which is irrelevant or merely dilatory.

Below are some of the examples that can give rise to rejection, in whole or in part, of an application to obtain evidence:

- Limit on the number of witnesses (Article 511 of the [Portuguese Code of Civil Procedure](#))
- Impediments (Article 496 of the [Portuguese Code of Civil Procedure](#))
- Oath and preliminary questioning (Article 513 of the [Portuguese Code of Civil Procedure](#))
- Facts on which a party may base their testimony (Article 454 of the [Portuguese Code of Civil Procedure](#)).

## 2.4 What different means of proof are there?

The following means of proof exist:

- Presumptions (Article 349 of the [Portuguese Civil Code](#))
- Confessions (Article 352 of the [Portuguese Civil Code](#))
- Statements by a party (Article 466 of the [Portuguese Code of Civil Procedure](#))
- Documentary evidence (Article 362 of the [Portuguese Civil Code](#))
- Expert evidence (Article 388 of the [Portuguese Civil Code](#))
- Confessions (Article 390 of the [Portuguese Civil Code](#))
- Witness evidence (Article 392 of the [Portuguese Civil Code](#))
- Presentation of movable or immovable property (Article 416(1) of the [Portuguese Code of Civil Procedure](#)).

## 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 are various means of obtaining witness evidence under Articles 452, 456, 457, 466, 500, 501, 502, 503, 506, 518 and 520 of the [Portuguese Code of Civil Procedure](#):

- Appearance of parties and witnesses in person or via technological means, pursuant to Article 502 of the [Portuguese Code of Civil Procedure](#)
- Examination by letter rogatory (Article 500(b) of the [Portuguese Code of Civil Procedure](#))
- Examination at place of residence or headquarters of the services (Article 503 of the [Portuguese Code of Civil Procedure](#))
- Written hearing (Article 517 of the [Portuguese Code of Civil Procedure](#))
- Written submission of evidence (Article 518 of the [Portuguese Code of Civil Procedure](#))
- Direct communication between the court and the person giving evidence (Article 520 of the [Portuguese Code of Civil Procedure](#))

- On-the-spot examination (Article 501 of the [Portuguese Code of Civil Procedure](#))

The means of taking expert evidence in accordance with Articles 486, 490 and 492 of the [Portuguese Code of Civil Procedure](#) differ from the abovementioned means of taking witness evidence as follows:

- The experts attend the final hearing when either party so requests or when ordered to do so by the judge. Experts from establishments, laboratories or official services are heard by video conference at their workplace (Article 486 of the [Portuguese Code of Civil Procedure](#)).
- The court may conduct an inspection of objects or persons, carry out on-the-spot visits or order a reconstruction of the facts; the judge may be accompanied by a specialist if they consider it appropriate (Articles 490 and 492 of the [Portuguese Code of Civil Procedure](#)).

The rules governing the submission of written evidence, reports or expert opinions are laid down in Article 416 of the [Portuguese Code of Civil Procedure](#).

## 2.6 Are certain methods of proof stronger than others?

Yes, probative value varies depending on the nature of each means of proof (see answer to question 1.3).

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

Yes, specifically in the following cases:

- Legal requirement for a written document (Article 364 of the [Portuguese Civil Code](#))
- Failure to comply with legal form (Article 220 of the [Portuguese Civil Code](#))

## 2.8 Are witnesses obliged by law to testify?

All persons, whether or not they are parties to the case, have a duty to assist in discovering the truth of the matter, in accordance with Article 417 of the [Portuguese Code of Civil Procedure](#).

## 2.9 In which cases can they refuse to give evidence?

The cases in which a witness may legitimately refuse to give evidence are set out in Article 497 of the [Portuguese Code of Civil Procedure](#).

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

All persons, whether or not they are parties to the case, have a duty to assist in discovering the truth of the matter, in accordance with Article 417 of the [Portuguese Code of Civil Procedure](#).

Anybody refusing to cooperate is fined, without prejudice to possible coercive means (Article 417(2) of the [Portuguese Code of Civil Procedure](#)).

If a witness unjustifiably fails to appear, the court may impose a fine or order the witness to appear under custody (Article 508(4) of the [Portuguese Code of Civil Procedure](#)).

## 2.11 Are there persons from whom evidence cannot be obtained?

Yes, evidence cannot be obtained in the following cases:

- People who are not mentally fit to testify on the facts to be proven may not serve as witnesses, pursuant to Article 495 of the [Portuguese Code of Civil Procedure](#)).
- People who may give testimony as parties in the case are forbidden to testify as witnesses (Article 496 of the [Portuguese Code of Civil Procedure](#)).

## 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?

The role of the judge and the parties in the hearing of a witness is governed by the rules on testifying by witnesses laid down in Article 516 of the [Portuguese Code of Civil Procedure](#).

Witnesses testify at the final hearing in person or by videoconferencing (Article 500 of the [Portuguese Code of Civil Procedure](#)). The examination of witnesses by technological means, such as teleconferencing, is governed by Article 502 of the [Portuguese Code of Civil Procedure](#).

### 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?

Yes. An example of this is evidence obtained in disregard of private and family life and human dignity, as required by Article 490 of the [Portuguese Code of Civil Procedure](#)).

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

Yes. A confession whereby the party recognises a fact that is detrimental to him or her and benefits the counter party is obtained through the testimony of the party (Article 352 of the Portuguese Civil Code and Article 452 of the [Portuguese Code of Civil Procedure](#)).

The court freely considers the statements of the parties, except where they involve a confession (Article 466(3) of the [Portuguese Code of Civil Procedure](#)).

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.

Portugal has not specified any other authorities, the taking of evidence for the purposes of judicial proceedings being the responsibility of the Portuguese courts.

Applicable legislation

[Portuguese Civil Code](#)

[Portuguese Code of Civil Procedure](#)

Note:

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