Taking of evidence

Greece

1 The burden of proof

1.1 What are the rules concerning the burden of proof?

On matters of proof, Greek law follows the principle of party prosecution (*archí tis diáthesis*). This means that the court acts only on the application of a party and decides on the basis of the factual claims made and demonstrated by parties and of the applications that they submit. Procedural steps are taken on application by a party, unless the law provides otherwise. Each party is required to demonstrate only the facts which have a bearing on the judgment of the case and which are necessary to support his or her independent claim or counter-claim. An application that is not demonstrated is rejected.

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?

Where the law requires evidence for the existence of a fact, counter-evidence is allowed unless there is a rule to the contrary. Facts which are so well-known that there can be no reasonable doubt that they are true, or which are known to the court from other judicial proceedings, are taken into consideration automatically, and do not need to be proven. The court will take account automatically of the lessons of common experience, without requiring evidence. The court will likewise take notice of the laws, customs and usages of other countries of its own motion, though it may require evidence if it is not familiar with them.

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 court judges the evidence freely and decides at its own discretion whether the statements made are true. In its decision it sets out the reasons that led it to conclude as it has. Where the law lays down that the case can be determined on the balance of probabilities alone, e.g. on an application for interim measures (*asfalistiká métra*), the court is not obliged to apply the rules governing the taking of evidence, the admissible forms of evidence and the force of the evidence that may be brought forward, but may take into consideration anything it deems appropriate in order to arrive at an opinion as to the facts.

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 basic principle is that evidence is proposed and supplied by the parties. However, the court may of its own motion order the submission of any evidence allowed by law, even if it has not been adduced by a party.

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

After the taking of evidence the court decides on the substance of the case, unless it finds that the evidence was insufficient, in which case it may order new, additional evidence to be submitted.

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

If it finds that the existing evidence is sufficient or if the party has not managed to submit it within the legal deadline.

2.4 What different means of proof are there?

Evidence, under the Code of Civil Procedure (*Kódika Politikís Dikonomías*), comprises admissions, inspections, expert reports, documentary evidence, the hearing of parties, witnesses' statements, presumptions of fact and affidavits.

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?

Expert witnesses (*pragmatognómones*) assist the court by delivering an opinion on questions put to them by the court. If necessary, the court requires the expert witnesses to be present when all or certain judicial steps are carried out. Each court keeps a list of expert witnesses. Orders issued upon a proposal from the Minister for Justice lay down how the lists are drawn up and kept. The court trying the case gives expert witnesses the necessary instructions on how they are to carry out their tasks, and lays down in particular (a) whether it considers it necessary that they be present at any stage in the judicial proceedings, and (b) whether the expert opinion is to be given in court or drawn up by the expert witnesses alone. Unless determined otherwise by the court trying the case, the same powers can be exercised by another court that acts on a request or a reference to take some judicial step relating to the expert opinion, or by a delegated judge (*entetalménos dikastís*). If a written opinion is ordered, the court lays down a time-limit within which the expert witnesses must deliver their opinion. The judge, or, in the case of a bench of judges the president of the court, may extend the time-limit at the request of the expert witnesses and without the parties having been previously summoned, if the expert witnesses consider that the time allowed is not adequate for the preparation of the opinion. If there is more than one expert witness, they carry out all the actions needed for the preparation of an expert report and draw up their written opinion jointly. They meet at the invitation of any one of them. A written opinion must state the actions they have carried out and give the views of each of them, with reasons, and must be signed by them. If any of the expert witnesses is not present when the opinion is drawn up, or refuses to sign it, this is stated in the opinion. The expert witnesses or a person authorised by them for the purpose submit the written opinion to the registry of the court that appointed them and that fact is recorded. If the opinion is submitted to the registry of a court acting on a request or reference from the delegated judge's court, the report is forwarded immediately to the registry of the court trying the case. The court always assesses the expert witnesses' opinion freely.

2.6 Are certain methods of proof stronger than others?

An oral or written admission (*omología*) made by a party in court or before the delegated judge constitutes full proof against the person making it; admissions made outside court, like other evidence, are assessed freely.

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

Contracts and acts of a collective nature cannot be proven by witness evidence if the value of the transaction is over EUR 20 000, and witness evidence is not allowed against the content of documentary evidence even if the value of the transaction is less than GRD 2 million or EUR 20 000. But the evidence of witnesses is nevertheless admitted in the following cases: (a) where there is rudimentary evidence provided by a document with evidential value that makes it appear likely that the transaction was indeed entered into (the 'beginnings of written evidence', *archí éngrafis apódeixis*); (b) if there is a physical or moral reason why the document cannot be produced; (c) if it is shown that a document was drawn up but has been accidentally lost; (d) if the evidence of witnesses is justified by the nature of the transaction or the specific conditions under which it was entered into, and especially if it concerns commercial dealings.

2.8 Are witnesses obliged by law to testify?

Anyone who is called to be examined as a witness must appear and state the facts within his or her knowledge. If the person fails to appear, without justification, the court will order him or her to pay the expenses caused by his or her absence, and may also impose a fine.

2.9 In which cases can they refuse to give evidence?

The following persons have the right to refuse to be examined as witnesses: (1) ministers of religion, lawyers, notaries, doctors, pharmacists, nurses, midwives, their assistants, and the party's counsel, in respect of facts that have come to their knowledge in the practice of their profession; (2) persons related to the parties by blood, marriage or adoption up to the third degree of kinship, in the direct line or a collateral line, unless they are related in the same way to all the parties, and spouses, former spouses, and persons engaged to be married. Furthermore, a witness is not obliged to testify to (1) facts that might lead to prosecution of an offence committed either by the witness or by a person related to him or her within the meaning of Article 401(2) of the Code of Civil Procedure, or which might reflect on the witness's honour or the honour of such a person, (2) facts that constitute a professional secret.

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

A witness who appears but refuses to testify, even when required to do so, can be ordered by the court to pay a fine.

2.11 Are there persons from whom evidence cannot be obtained?

The following cannot be examined as witnesses:

priests, in respect of anything they have learned under the seal of confession;

persons who, at the time of the events in question, did not have the mental capacity to comprehend them or are unable to communicate what they perceived;

persons who, at the time of the events in question, were in a state of mental disorder that effectively limited the operation of their judgment and their will or who are in such a state when they are to be examined;

lawyers, notaries, doctors, pharmacists, nurses, midwives, their assistants, and the party's counsel, in respect of facts which have been confided to them or which came to their knowledge in the practice of their profession for which they have a duty of confidentiality, unless the person who confided them and to whom they owe the duty of confidentiality allows them to testify;

public officials and serving military personnel in respect of facts for which they have a duty of confidentiality, unless the responsible minister allows them to be examined;

persons who may have an interest in the outcome of the trial.

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?

Before he is examined a witness is put under oath (by swearing a religious oath or by making an affirmation). Witnesses are examined separately and only if it is deemed essential can they be confronted with other witnesses or with the parties. Witnesses give their evidence orally. Witnesses must state how the evidence they are giving came to their knowledge, and in the case of hearsay evidence they must state the person who gave them the information. The court may disallow questions put to witnesses by parties or their counsel if they are clearly pointless or irrelevant, and it declares the examination of a witness to be ended when it considers that he or she has stated everything he or she knows of the facts to be proved. The court may decide that a videoconference should be held in a specific case, of its own motion or on application by a party. The court decides whether or not to accept such an application after determining whether the use of the technology is necessary for the effective conduct of the proceedings. Having regard to the circumstances of the case, the court may allow an application for videoconferencing while requiring additional guarantees for the proper conduct of the proceedings. The judge, the registrar and the other persons participating in the videoconference must be present in the respective rooms before the scheduled time of connection. The court will consider on a case-by-case basis whether there should be a judge involved at the remote location. The equipment is handled by the judge or authorised court staff. In the case of a consular authority, the equipment is handled by a person authorised by the head of delegation. A hearing by videoconference is carried out in accordance with the provisions of the Code of Civil Procedure governing the judicial step concerned. The judge determines the number of persons who may be present in the rooms. He or she conducts the hearing and provides the necessary guidance to the persons who are present in both places. Each member of the court or participant in the trial is entitled, with the permission of the judge who conducts the hearing, to put questions to the parties, the witnesses and the expert witnesses present. In order to establish the identity of the person in the remote room, the judge is assisted by the registrar or by a person at the remote location who has been authorised by the consul. The judge who conducts the hearing decides when the videoconference comes to an end. The hearing of witnesses, expert witnesses and parties by videoconference is deemed to take place before the court and has the same evidential force as a hearing in open court.

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 court can consider legal evidence only. The concept of 'legal' evidence (*nómima endeiktiká mésa*) includes the means by which the evidence was obtained. Evidence obtained illegally is illegal, and is not taken into consideration.

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

Yes, the examination of parties is accepted as evidence.

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.

Greece has not designated any other authorities competent to take evidence in judicial proceedings in civil or commercial matters under the Regulation.

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