Taking of evidence

Kroatien

1 The burden of proof

1.1 What are the rules concerning the burden of proof?

The rules regarding taking of evidence and presenting, selecting, collecting, examining and assessing the items of evidence in civil proceedings are set out in Articles 219 to 276 of the Civil Procedure Act (*Zakon o parničnom postupku*) (*Narodne novine* (NN; Official Gazette of the Republic of Croatia) Nos 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 96/08, 123/08, 57/11, 148/11 – consolidated text, 25/13, 89/14 – Decision of the Constitutional Court of the Republic of Croatia (*Ustavni sud Republike Hrvatske*), 70/19, 80/22, 114/22 and 155/23 (ZPP)).

The general rule is that each party must set out the facts and present the evidence on which their claim is based, or by which they contest the statements and evidence of the opposing party, which means that in Croatian (civil) procedural law the principle of the right to be heard predominates in the collection of facts and presentation of evidence.

Therefore, each party has to prove the veracity of statements on the existence of facts that are favourable to them, on which their claims (and objections) are based, unless otherwise provided by law.

As a rule, the court is authorised to establish only the facts that the parties have set out and to take only the evidence that the parties have presented. By way of exception, the court is authorised (and obliged) to establish the facts which the parties have not set out and to take evidence which the parties have not presented only if it suspects that the parties are intending to assert claims which they are not permitted to assert.

If, on the basis of the evidence produced (Article 8 of the ZPP), the court cannot establish a fact with certainty, it will decide on the existence of the fact by applying the rules on the burden of proof.

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?

The evidence includes all facts of importance for issuing a decision.

It is not necessary to prove the facts that the party has acknowledged before the court in the course of proceedings, but the court may also order the presentation of evidence for these facts if it deems that, in acknowledging them, the party is seeking to assert a claim which it is not permitted to assert (third paragraph of Article 3 of the ZPP).

Moreover, legal rules are exempt from evidence because they are covered by the rule that the court is deemed to know the law (*iura novit curia*).

It is not necessary to prove facts which are common knowledge. However, it is admissible to prove that a certain fact is not common knowledge.

Facts whose existence is assumed by the law do not need to be proven, but it may be proven that they do not exist, unless otherwise provided by law.

Accordingly, the rules on rebuttable presumptions (*praesumptiones iuris*) facilitate evidence because the party that relies on a legally relevant fact is not required to prove the existence of such a fact directly; it is sufficient to rely on a general legal rule included in a rebuttable presumption, and a party that claims that the general rule included in the rebuttable presumption cannot be applied to a particular case must prove it.

However, there are cases in which the law does not allow the non-existence of facts presumed by the law to be proven (*praesumptiones iuris et de iure*) when the court is obliged to conclude that the legally relevant fact in question exists.

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's task is to convince itself of the existence or non-existence of the facts on which the application of the law relies. The ZPP does not include explicit provisions on probability, but the degree of probability should increase in proportion to the importance of the action to be taken, taking into account the stage of the proceedings at which a particular procedural issue is discussed and decided and the procedural consequences that will follow if certain facts are found to exist or not.

Under the general rule on the free assessment of evidence, the court decides according to its own conviction which facts it finds to be proven, based on conscientious and careful assessment of all the evidence, presented individually and as a whole, and taking into consideration the results of the entire proceedings.

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?

As has been previously stated, the Croatian (civil) procedure is predominantly inter partes, which means that the parties may collect facts and take evidence of their own motion, and the court is authorised to establish facts not set out by the parties and to take evidence only if it suspects that the parties intend to assert claims that they are not permitted to assert (third paragraph of Article 3 of the ZPP).

Once the preparatory hearing has been held, the court adopts a decision terminating the preliminary ruling proceedings.

The court will terminate the preliminary ruling proceedings and hold and conclude the main hearing at the preparatory hearing if it considers that it is possible to do so in the light of the circumstances of the case.

If the court considers that it is not possible to terminate the preliminary ruling proceedings and hold and conclude the main hearing at the preparatory hearing, it will draw up a plan for the management of the proceedings.

The plan for the management of the proceedings must contain:

- a summary of the questions of fact and law at issue;
- the evidence for establishing the facts at issue;
- the deadline for obtaining further evidence required;
- the deadline for the parties to submit written observations on the submissions of the opposing party and on the findings and opinion of experts;
- the date and time of the hearing for the main hearing.

If the main hearing requires several hearings, the court will consult the parties before setting dates and times for all the subsequent hearings for the main hearing, while seeking to ensure that the proceedings are of reasonable duration.

The court adopts the plan for the management of the proceedings by means of a decision, usually at the first hearing in the proceedings. Before adopting the decision on the plan for the management of the proceedings, the court will allow the parties to give their views on the plan at a hearing.

By way of exception, if one of the parties is not present at the hearing at which the plan for the management of the proceedings is discussed, the court may establish a plan for the management of the proceedings without consulting the absent party.
As the litigation progresses, the court may amend the plan for the management of the proceedings, provided that it has given the parties the opportunity to make their views known on this matter. If the changes to the plan do not affect the deadlines for action by the parties, the court may amend the plan without consulting the parties beforehand.

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

The court decides which items of evidence presented are to be taken to establish the decisive facts.
If the court has accepted the offer of evidence from the party, it will, as a rule, begin with the taking of that evidence.
In disputes heard by a chamber (*vijeće*), the evidence is taken at the main hearing before the chamber, but the chamber may, for important reasons, decide that certain evidence is to be taken before the president of the chamber or the judge of the requested court (the requested judge). In this case, a record of evidence taken is read out at the main hearing.
The single judge, or the president of the chamber, conducts the main hearing, questions the parties and takes evidence, but the court is not bound by the decision on the conduct of the hearing, which means, inter alia, that it is not bound by the decision accepting or dismissing the offers of evidence submitted by the parties.

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

Under the provisions of the ZPP, the court dismisses evidence produced that it does not find relevant and states the reason for dismissal in the decision.
The ZPP does not contain special provisions on the possibility of dismissal of inadmissible evidence or evidence which cannot be taken cost-effectively.
However, in disputes before a municipal court (*općinski sud*) with a value not exceeding 10 000 Croatian kuna and in disputes before a commercial court (*trgovački sud*) with a value not exceeding 50 000 Croatian kuna, the court may, if it deems that establishing facts important for the settlement of the dispute would lead to disproportionate difficulties and costs, decide on the existence of such facts on the basis of a free assessment, taking into account the documents that the parties have submitted and their testimony if the court adduced evidence by hearing of the parties.
Also, the provisions of the ZPP provide for a time limit for the parties to set out all facts and to submit offers of evidence. In the course of ordinary civil proceedings, each party must, in the application and in the response to the application, at the preparatory hearing at the latest, set out all the facts substantiating their claim, present the evidence necessary for establishing the facts that they have submitted and declare their position on the statements of facts and evidence offered by the opposing party. During the main hearing, the parties may present new facts and evidence only if, through no fault of their own, they were unable to provide or present them before the previous proceedings were concluded.
The court does not take into account new facts and evidence which, through their own fault, the parties provide or present during the main hearing.
For more information on evidence and the taking of evidence in small claims procedures, see the information sheet entitled 'Small claims – Republic of Croatia'.

2.4 What different means of proof are there?

The ZPP provides for the following items of evidence: on-site inspection, documentary evidence, witnesses, experts and hearing of the parties.

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?

A witness is any natural person who is capable of giving information about the facts which are being proven. Witnesses are heard individually and without the presence of other witnesses who are to be heard later, and they are obliged to give their answers orally.
A witness is first advised that they are obliged to speak the truth and that they must not omit anything. Afterwards, they are warned of the consequences of giving false testimony. Moreover, a witness is always asked how they know the facts they are testifying about.
An expert witness must possess the same qualities as a witness, that is, they must be capable of observing, remembering and recounting, and, in addition, they must also possess professional expertise.
Certain expert witnesses who are summoned by the court must obey the summons and submit their findings and an opinion.
Accordingly, the task of expert witnesses implies establishing findings and opinions. The court determines whether the expert witness will only present their findings and opinions orally at the hearing or also submit them in writing before the hearing. The court sets a time limit for the submission of written findings and opinions, which may not exceed 60 days.
The expert witness must always explain their opinion.
The court delivers to the parties the written findings and opinions no more than 15 days before the hearing at which they are to be heard.
The ZPP makes no distinction between the procedure for hearing 'ordinary' and expert witnesses, and lays down no special procedural provisions in that regard.
In relation to written evidence, the parties themselves must submit the document on which they rely as proof of their statement.
A document which has been issued in the prescribed form by a state authority within its sphere of responsibility and a document issued by a legal or natural person in that form, acting in the exercise of its public powers assigned to it by law or a regulation based on law (a public document), is deemed to prove the veracity of what it certifies or regulates.
Other documents have the same evidential value if, under special regulations, their evidential value is equivalent to that of public documents.
It is admissible to prove that facts stated in public documents are false or that the document has been incorrectly drawn up.
If the court doubts the authenticity of the document, it may request the authority from which it is supposed to have originated to express an opinion about it.
Unless otherwise specified in an international agreement, foreign public documents which are duly authenticated have, subject to the condition of reciprocity, the same evidential value as domestic public documents.
The ZPP also lays down rules on the delivery of documents (the duty to provide documents), which depend on whether the document is with the party referring to it, with the opposing party, with a state body or organisation exercising a public authority, or with a third person (natural or legal person).

2.6 Are certain methods of proof stronger than others?

According to the general rule on the free assessment of evidence applied in Croatian (civil) procedural law, the court decides, according to its own conviction, which facts it finds proven, based on a conscientious and careful assessment of all the evidence, presented individually and as a whole, and taking into consideration the results of the entire proceedings.
Accordingly, there is no rule according to which certain items of evidence are of greater weight or importance than others, although, in practice, documents are considered more reliable (but not more important) than other evidence (witnesses, hearings).

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

No, the ZPP does not provide that certain methods of proof are obligatory in order to prove certain facts. In accordance with the inter partes principle, the parties are authorised to present evidence and the court assesses which items of evidence presented it takes for the purpose of establishing relevant facts.

2.8 Are witnesses obliged by law to testify?

Every person summoned as a witness is obliged to obey the summons and, unless otherwise provided by the ZPP, is required to testify. Therefore, testifying, which implies a duty of attending court, giving evidence and telling the truth, is a general obligation of every person. Witnesses who due to old age, illness or severe physical impairments are unable to obey the summons are heard in their own home.

2.9 In which cases can they refuse to give evidence?

A person who would, by their testimony, violate the obligation of confidentiality in respect of official or military secrets must not be heard as a witness until the competent authority relieves them of such responsibility.

A witness may refuse to give evidence:

• about something the party has confided to them as their authorised representative;

• on matters which the party or another person has confessed to them as a religious confessor;

• about facts which the witness has learned as an attorney, doctor, or in the performance of any other calling or any other activity, if there exists an obligation to keep confidential what is learned in the performance of that calling or activity.

The single judge or the president of the chamber informs these persons of the possibility to refuse to give evidence.

A witness may refuse to answer individual questions due to compelling reasons, in particular, if by responding to such question, they would expose themselves, or their lineal blood relative up to any degree, or a collateral blood relative up to the third degree, including their spouse, or relatives by marriage to the second degree – even if the marriage has ended – and their guardian or ward, adopted parent or child, to serious disgrace, significant material damage or criminal prosecution.

The single judge or the president of the chamber informs the witness that they may refuse to give answers to the questions asked.

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

Yes, it is possible. If a witness who has been properly summoned fails to attend without explanation, or if such a witness leaves the place where they are to be heard without permission or any justified reason, the court may order them to be forcibly brought back, at their expense, and may also impose a monetary fine ranging from 500 to 10 000 Croatian kuna.

If the witness appears and refuses to give evidence or to respond to certain questions after being informed of the consequences arising therefrom, and the court deems their reasons for refusing to answer unjustified, it may impose on them a monetary fine ranging from 500 to 10 000 Croatian kuna; if the witness still refuses to give evidence, the court may detain them. The witness is detained until they agree to give evidence or until their testimony becomes unnecessary, but for no longer than one month.

If the witness subsequently provides an explanation for their absence, the court will rescind its decision on the fine, and it may relieve the witness from settlement of costs in full or in part. The court may also rescind its decision on a fine if the witness subsequently agrees to give evidence.

2.11 Are there persons from whom evidence cannot be obtained?

For information on exemption from the general duty to testify in respect of official or military secrets, i.e. on the right of persons performing specific activities to refuse to give evidence and the right to refuse to answer specific questions, see point 9.

As a general rule, only the persons who are able to provide information on facts that are being proved may be heard as witnesses, and the court decides on a person’s ability to testify on a case-by-case basis.

A person cannot be a witness if they are directly involved in the proceedings, as a party or as the legal representative of a party, whereas an authorised representative of the party may be heard as a witness.

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?

Each witness must be examined individually, and not in the presence of witnesses who are to be heard subsequently. The witness is obliged to give their answers orally.

A witness is first advised that they are obliged to speak the truth and that they must not omit anything. Afterwards, they are warned of the consequences of giving false testimony.

The witness will then be asked to state their first name, surname, personal ID number, their father’s name, their occupation, address, place of birth, age and relationship to the parties.

After these general questions the witness is asked to state everything they know about the facts they are to testify about, and afterwards, they may be asked questions for the sake of confirmation, addition or explanation. It is not permitted to ask questions which already contain the answer to the question.

The witness is always asked how they know the facts about which they are testifying.

Witnesses whose testimonies conflict in relation to important facts may be brought face to face. They are questioned individually on each circumstance for which there is a conflict and their answers are recorded in the minutes.

The Republic of Croatia has no special provisions stipulating the taking of evidence via videoconferencing. However, the provisions of Articles 126a to 126c of the ZPP represent a basis for such a method of hearing, i.e. court hearings may be audio recorded. The decision to record is taken by the court on its own initiative or at the request of the parties. The method of storage and transmission of an audio recording, the technical conditions and the manner of recording are regulated by the Rules of the Procedure of the 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?

Under the ZPP a court decision must not be based on illegally obtained evidence (inadmissible evidence).

A court may adopt a decision authorising the taking of inadmissible evidence and may examine such evidence if it considers it necessary in order to establish a material fact. When deciding on the admissibility of evidence, the court will weigh up the infringement resulting from the taking of inadmissible evidence against the interest of establishing the facts fully and accurately in the proceedings.

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

Parties to the proceedings cannot be heard as witnesses; however, the provisions of the ZPP provide for the hearing of the parties as one of the items of evidence in the absence of other evidence or if, notwithstanding the other evidence adduced, the court deems it to be necessary for establishing important facts.

The provisions of the ZPP on the taking of evidence from witnesses apply to the hearing of the parties, unless specified otherwise.

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.

Courts are the only authorities specified by the Republic of Croatia as being competent to take evidence for the purposes of judicial proceedings in civil and commercial matters, in accordance with Article 2(1) of the Taking of Evidence Regulation.

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