Taking of evidence

Bulgaria

1 The burden of proof

1.1 What are the rules concerning the burden of proof?

For an assertion made by a litigant to be recognised by the court, it must be proved by the party making reference to it by any admissible means of proof envisaged by law. This means that a body of procedural actions of various types exists, grouped into categories depending on the stage of the judicial proceedings.

Article 153 of the Civil Procedure Code (GPK) requires all disputable facts of relevance for the adjudication of a dispute and links between them to be proved, and Article 154 of the GPK requires each party must establish the facts on which its claims and objections are based.

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?

Under current national law facts for which a legal presumption has been established by law are exempt from the burden of proof. Evidence produced in order to prove that a specific legal presumption is not valid is admissible in all cases, except when prohibited by law (Article 154(2) of the GPK).

In addition, the exemption from the burden of proof applies to facts that are ostensibly known by the public and the court on an *ex officio* basis of which the court must inform the parties (Article 155 of the GPK).

In connection with this, upon the commencement of proceedings the court must draw up a list detailing the facts to be proved, indicating the parties that must prove them and on whom the burden of proof lies. The court also rules on the applications for evidence filed by the parties and admits evidence that constitutes pertinent, admissible and necessary proof (Article 146 of the GPK).

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 facts to which the parties make reference in support of their claims must be substantiated by the relevant means of proof prescribed by law. The court must consider each item of evidence in order to determine its weight in the case (i.e. the difference between an official and a private document).

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?

Evidence in a lawsuit is taken on the basis of a written application from the relevant party or on a motion made verbally in a hearing in accordance with the rules for application of the principle of free disposition.

However, when the court finds that certain evidence is relevant to a dispute, it may order that evidence be taken on its own motion.

In its application for evidence, the party indicates the facts and the means of proof it will use to substantiate those facts.

In the application seeking permission to interview a witness the party must indicate the questions that will be put to the witness, the full name and address of the witness, and the date on which the party wishes that the witness be summoned.

The application to put questions to the opposing party must contain the questions which the party will be asked to answer.

The application for admission of expert testimony must indicate the area of special expert knowledge, the subject-matter of the expert opinion and the task of the expert witness.

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

When the court grants the evidentiary motion, it issues a ruling setting a period for evidence taking. The period commences at the time of the court hearing in which it was set, including for a party that did not appear in court despite being duly summoned.

Under Articles 131(1) and 127(2) of the GPK, the parties must indicate the evidence and the concrete circumstances substantiated by that evidence and present all written evidence available to them at the time of lodging the application and at the time of receipt of the respondent's rejoinder.

Under Article 158 of the GPK, when the gathering of certain items of evidence is in doubt or presents a particular challenge, the court may set a period for evidence gathering and proceed to hear the case without the evidence in question, if it is not furnished within the period specified. The evidence may be taken later in the proceedings, provided that it does not cause an unreasonable delay in proceedings.

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

The court may reject applications to obtain evidence by a dedicated ruling if the facts which the party wishes to prove have no bearing on the case and if the applications to obtain evidence were not submitted in a timely manner. When a party asks that several witnesses be heard in order to establish a fact, the court may admit only some of the witnesses proposed. If the fact in dispute is not established, the other witnesses are called (Article 159 of the GPK).

2.4 What different means of proof are there?

The Civil Procedure Code provides for the following means of evidence:

witness statements, which are governed by the provisions of Articles 163 to 174;

explanations of the parties:

acknowledging a specific fact;

provided in reply to specific questions;

The statements made by the parties are governed by the provisions of Articles 175 to 177 of the GPK;

written evidence, which is governed by the provisions of Articles 178 to 194 of the GPK:

official documents;

private documents.

Written evidence may be presented by both parties, but it may also be required by the court. Written evidence may be presented on paper or in electronic form. In the latter case, in addition to a printout the court may require that the document be submitted in electronic form. If a party presents a copy of a document, it may be instructed to also present the original of the document (Article 183 of the GPK).

Documents are ordinarily submitted in Bulgarian. Where submitted in a foreign language, the documents must be accompanied by an accurate translation into Bulgarian, which the party has certified.

Under Article 187 of the GPK, if the court can obtain printed materials without any difficulty, it is sufficient to indicate the place where the materials are published.
The court may order that certain written evidence be provided by the parties or third parties not involved in the case. Under Articles 190 and 192 of the GPK, each party may ask the court to do so, and the court bases its decision on all the evidence available to it. In order to obtain written evidence from an outside party, a dedicated written application must be submitted to the court. A copy of the application is made available to the third party in question.
Although the parties have a legal obligation to present evidence, they may decline to do so if a document concerns their personal life or that of a member of their family, or if presenting the evidence would expose them to opprobrium or criminal prosecution. In this case, if certain conditions are met, the court may instruct the party to present excerpts from the document.
Under national law the parties may dispute the authenticity of a written document submitted by the opposing party but must to do so by the time a reply to their submission is received. If the document is produced in a hearing, it must be challenged before the end of the hearing. If the opposing party wishes to use the document challenged, the court orders an inquiry into its authenticity. The burden of proof lies on the party disputing the authenticity of the document. If the document challenged does not bear the signature of the party that is contesting its authenticity, the burden of proof lies on the party that presented the document. Having conducted an investigation to ascertain the authenticity of the challenged document, the court decides whether it is genuine or false. The court may incorporate this determination into its judgment in the case (Articles 193 and 194 of the GPK).
The rules on expert witnesses are laid down in Articles 195 to 203 of the GPK.
Expert witnesses are appointed at the request of the parties or by the court acting on its own initiative. Expert witnesses present their reports at least one week before the scheduled date of the hearing in which the report must be admitted.
If the conclusion of the expert witness is challenged, the court may appoint one or more other expert witnesses. The court may also ask the expert witness to revise or provide a second opinion on the matter.
The rules for visual inspection and certification are laid down in Articles 204 to 206 of the GPK.
At the request of the parties or at its own discretion, the court may order that moveable or immoveable property be visually inspected or that a person be certified with or without the involvement of witnesses and court-appointed experts.
Visual inspections and certification are methods for gathering and verifying evidence. They are within the purview of the entire court and may be delegated to a member of the court or to another court.
The court notifies the parties of the date and place of the visual inspection. A record of the visual inspection is drawn up, detailing the findings of the inspection, the explanations provided by the expert witnesses and the statements made by witnesses interviewed on the inspection site.

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?

Evidence from witnesses is obtained through witness interviews. Witness statements submitted in writing are inadmissible. The conclusions of expert witness are submitted in writing at least one week before the scheduled date of the hearing and are then heard in court and admitted as evidence. The court and the parties may put questions to the expert witnesses.

2.6 Are certain methods of proof stronger than others?

National procedural law does not accord some types of evidence greater weight than others. Evidence is considered on its own merit and in its entirety as at the date of assessment of the proven facts, which determine the cause of action.

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

In certain cases expressly stipulated by the law, for example the validation of legal transactions for which a written act is required, solely written evidence is permissible. Witness statements are inadmissible in the following cases: refutation of the content of an official document; ascertainment of circumstances for which evidence must be provided in the form of a written act; validation of contracts of a value exceeding BGN 5000, unless the contract was concluded between spouses, ascendants or descendants in the direct line, relatives up to the fourth degree of consanguinity or relatives by marriage up to and including the second degree of affinity; settlement of monetary obligations established by a written decision; validation of written agreements to which the litigant seeking witness admission is a party or the modification or cancellation of such agreements; refutation of the content of a private document originating from the party.

2.8 Are witnesses obliged by law to testify?

No one may refuse to give testimony unless expressly exempted from doing so by law.

2.9 In which cases can they refuse to give evidence?

In addition to the attorneys of the parties or the mediators in the dispute, the following parties may refuse to testify: the parties' ascendants or descendants in the direct line of kinship, their siblings, relatives by marriage in the first degree of affinity, spouses, former spouses or common-law partners (Article 166 of the GPK). The court assesses witness testimony in light of all other information available in the case, taking into account any vested interest a witness may have in the case.

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

Under Article 163 of the GPK, witnesses must appear in court and testify. If a witness has valid reasons not to testify or answer certain questions, they must declare those reasons to the court in writing before the hearing at which they are to testify, providing the necessary supporting evidence. (Article 167 of the GPK). Failure to comply with a summons and appear in court carries a fine and the court may also order that the witness be brought to court by the judicial police.

2.11 Are there persons from whom evidence cannot be obtained?

Evidence may be obtained from all parties other than those listed in point 6B, even if they are incapacitated or have an interest in the outcome of the dispute. The court assesses witness testimony by taking into account the incapacity or vested interest of the 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?

Witnesses are admitted at the request of the parties or by the court acting on its own initiative. A witness summons is served at the address given by the party calling the witness. If the address is incorrect, the court sets a deadline by which that party must indicate a new address.
Each witness who has been duly summoned and appears in court is interviewed separately in the presence of the parties. A witness may be interviewed more than once. The court assesses the testimony of the witness in light of all other evidence gathered in the case. Under Article 170 of the GPK, before hearing a witness the court advises them of the liability for perjury and takes down their personal details. When the court has a compelling reason to do so, it may hear the witness before the scheduled date of the hearing or conduct the examination out of court. The parties are summoned to attend the examination. There is no provision in the Civil Procedure Code for witness examination by way of videoconference or other technical means. When evidence must be gathered in another judicial district , the court may delegate this task to the local district court (*rayonen sad*) (Article 25 of the GPK).

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?

Evidence obtained unlawfully or proved false following a challenge raised against it in accordance with the procedure for contesting written documents is ignored in the deliberation of the judgment. Such evidence may be excluded from the case. The same procedure applies to presented evidence found to be irrelevant to the dispute.

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

A statement made by a party may be admitted as evidence if given in accordance with the procedure laid down in Article 176 of the GPK, i.e. when the court has ordered the party to appear in person and provide explanations relevant to the circumstances of the case.

Last update: 11/02/2020