Taking of evidence

Czechia

1 The burden of proof

1.1 What are the rules concerning the burden of proof?

The burden of proof stems from the ‘burden of allegation’, which is essentially determined by the legal provision on the basis of which a right is to be enforced before a court; in particular, it is the set of facts which must be claimed in a specific case. The Code of Civil Procedure provides that each party is required to prove its claims by specifying the relevant evidence – this obligation is known as the ‘burden of proof’. As a general rule, all persons who make a claim that is relevant to a particular case are subject to the burden of proof.

All parties must fulfil the obligation of the burdens of allegation and proof to the extent of their claims. If the facts claimed by a party and the proposed evidence are incomplete, the court is obliged to advise the party of this fact.

If the court holds that facts claimed by any of the parties have not been proved in contentious proceedings, it is required to advise that party that evidence must be proposed in support of all claims and that if the party fails to fulfil this obligation it could lose the case. However, the court is required to provide this advice only during hearings, not in court documents sent to the parties (e.g. in a writ of summons).

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?

Evidence need not be produced for facts which are generally known (i.e. facts known to a large group of people in a particular place and at a particular time) or are known to the court from its activities, as well as legislation published or notified in the Collection of Laws of the Czech Republic. The court may become aware of foreign law through its own study, through a statement from the Ministry of Justice at the court’s request or by means of an expert opinion, or through a request in accordance with international treaties. All these facts may be rebutted with the proposal of evidence.

For certain categories of facts, the law may lay down a presumption. There may be rebuttable presumptions that admit evidence to the contrary and, exceptionally, non-rebuttable presumptions that do not admit evidence to the contrary. In the case of a rebuttable presumption, the court shall consider it proven if none of the parties proposes evidence to rebut the presumption and thus prove facts to the contrary in the proceedings. With some rebuttable presumptions, the contrary may be proven only within a statutory time limit.

The court is bound by decisions of competent authorities that a crime, offence or another administrative infraction has been committed which is punishable under special regulations, and decisions on who committed it. The court is also bound by decisions on personal status. However, the court is not bound by a decision that an offence has been committed or by a decision on who committed it if the decision was made in on-the-spot proceedings. No other verdicts under a criminal judgment or decisions on administrative delicts are binding on the court.

A special type of rebuttable presumption is facts claiming that a party has been directly or indirectly subject to discrimination on grounds of sex, race, faith or other circumstances. The burden of proof is then borne by the counterparty, who is required to prove that the party was not discriminated against.

Instruments issued by the courts of the Czech Republic or other State authorities within the scope of their competence and instruments declared public by legislation confirm that they constitute a regulation or statement of the authority which has issued the instrument (unless proven otherwise), and also confirm the veracity of the facts certified or confirmed therein. Where facts are proven by public instruments, the burden of proof is borne by the party which wants to refute the authenticity of such instruments. In contrast, where private instruments are involved, the burden of proof is borne by the party invoking them. If a party substantiates their claims with a private instrument and the counterparty challenges its authenticity or correctness, the burden of proof passes back to the party to the dispute having proposed this evidence, who must then substantiate its claims in another way.

As a rule, identical claims by parties need not be proven and the court views them as its findings.

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 principle of free evaluation of evidence is applied in judicial proceedings, i.e. the law does not provide the precise limits determining when a court must accept a fact as proven or not. The Code of Civil Procedure provides that ‘the court evaluates evidence at its discretion, each piece of evidence separately and all evidence in its mutual context; the court shall take due account of everything which comes to light in proceedings, including the facts presented by the parties’.

The court passes judgment on the basis of its findings. Findings represent a situation in respect of which there are no reasonable or legitimate doubts.

In general, if considerations in the evaluation of evidence lead to the conclusion that the veracity of claims cannot be confirmed or denied, the judgment will be unfavourable for the party who was to prove the veracity of their claims.

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 contentious proceedings, the general principle is that the court only takes evidence proposed by the parties. However, the court may decide that certain evidence will not be taken – typically if it deems the fact in question to be proved. The court may also take evidence other than that proposed by the parties in cases where it is necessary to establish the facts and if it follows from the content of the file. If the parties do not identify the evidence needed to substantiate their claims, the court shall base its examination of the facts on the evidence that has been taken. The court may also consider identical claims by the parties as its findings.

Conversely, in non-contentious proceedings, i.e. in matters in which proceedings may be initiated of the court’s own motion, as well as in certain other proceedings, the court is obliged to also take evidence necessary to establish the facts other than that proposed by the parties.

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

The court takes evidence during hearings. If it is practical, another court may be asked to take the evidence, or the presiding judge, with the chamber’s mandate, may take the evidence outside the hearing (this also depends on the type of evidence, etc.). The parties have the right to be present when evidence is taken. The results of the taking of evidence must always be communicated after the hearing. The parties have the right to comment on any piece of evidence that has been taken.

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

It depends on the court which evidence it takes. The court's decision not to take particular proposed evidence must be duly substantiated. Generally speaking, the court will not take evidence that, in the court's opinion, cannot help clarify the case (i.e. to prevent the unnecessary taking of evidence), nor will the court take evidence that would require expense disproportionate to the amount of the claim which is the subject of the dispute, or if the amount of the claim cannot be determined at all. In order for the court to evaluate clearly which evidence to take, the parties are obliged to propose specific evidence, i.e. to specify witnesses by name and other identification information, and to state the claims in respect of which the proposed witness will testify; the parties are also obliged to specify documentary evidence or state the scope of an issue that an expert is to address in an expert opinion.

2.4 What different means of proof are there?

All means that can be used to determine the facts of a case may be used as evidence. These include, in particular, the interviewing of witnesses, expert opinions, reports and statements of authorities and natural and legal persons, notarial and enforcement officer's records and other instruments, examination and interviewing 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?

Any natural person who is not a party to proceedings is obliged to appear in court if summoned, and to testify as a witness. A witness testifies about what they have experienced and observed. They must tell the truth and not conceal anything. Witnesses may only refuse to testify in cases where such testimony would result in the risk of criminal prosecution for him or persons close to him; the court decides whether the reasons for refusing to give testimony are justified. At the beginning of an examination, the identity of the witness must be determined along with circumstances which could affect their credibility. Witnesses should also be informed of the significance of their testimony, of their rights and obligations and of the criminal consequences of a false testimony. The presiding judge asks witnesses to describe everything they know about the subject of examination. The judge then asks questions necessary to supplement and clarify their testimony. Questions may also be asked by members of the chamber and, with the permission of the presiding judge, by parties and experts.

The presenting of evidence through experts is different mainly because in most cases experts draw up a written expert opinion and then typically provide oral comments on this opinion. Evidence by means of an expert opinion is taken in cases where it is necessary to evaluate circumstances which require expert knowledge. An expert opinion has three parts: the finding, in which the expert describes the circumstances they have examined; the opinion, which contains the expert assessment (expert's conclusions), and the expert's clause. As a rule, experts address specific questions defined by the court, unless an opinion is subject to statutory requirements (especially in the field of company law). Experts are appointed by the court which selects them from a register of experts and interpreters (kept by regional courts). Experts are entitled to financial compensation for the preparation of an expert assessment or expert opinion, if so provided by relevant legislation.

The presiding judge may order a party or another person to appear before an expert, present to him the necessary items, give him the necessary explanations, undergo a medical examination or a blood test, or do or suffer something if it is necessary for the submission of an expert opinion.

An expert opinion may also be submitted by a party to the proceedings. If an expert opinion submitted by a party to the proceedings has all the statutory elements and includes an expert's clause stating that they are aware of the consequences of a deliberately false expert opinion, the evidence shall be taken as if it were an expert opinion requested by the court. The court shall allow an expert whom one of the parties has asked for an expert opinion to consult the file or otherwise allow him to become familiar with the information needed to draw up the expert opinion.

Witnesses provide testimony on facts they noticed directly, whereas experts express opinions only in areas where an assessment of the facts depends on expert knowledge. The conclusions reached by an expert are not subject to a court evaluation in terms of their correctness; the court evaluates the persuasiveness of the opinion as regards its completeness in relation to the set requirements, internal consistency and compliance with other evidence taken.

Documentary evidence is taken in such a manner that the document or part thereof is read out, or the content is communicated, during the hearing by the presiding judge. The presiding judge may require that a party possessing an instrument needed as evidence present this instrument, or may obtain this instrument from another court, authority or legal person.

2.6 Are certain methods of proof stronger than others?

There is no preference in terms of the methods applied, although some means of evidence may be applied only after the taking of statutory evidence becomes impossible (as a rule, various acts in an obligatory written form – only if, for example, they are destroyed, can evidence be obtained by other means, e.g. by examining witnesses). Evidence obtained by examining a party on their claims may be ordered in contentious cases only if the fact at issue cannot be proved by other means (except for consent to an examination). Therefore other evidence takes precedence.

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

In some cases, the law may provide which evidence needs to be obtained; it depends on the specific dispute (e.g. in proceedings on permission to enter into matrimony both betrothed persons need to be examined).

Certain facts may be proved only in a particular manner, e.g. a bill or cheque order may be issued solely upon the production of the original bill, a decision on the redemption of the bill or another instrument; a writ of execution may be enforced only upon the production of an enforceable decision or execution title etc.).

For the establishment of certain obligations or in-rem rights (especially in relation to property), the law requires a written contract – the method of presenting evidence is then derived from this requirement.

2.8 Are witnesses obliged by law to testify?

Yes, all persons are required by law to appear before a court as a witness if summoned and to testify; they cannot be represented by another person. Witnesses who fulfil their obligation to testify are entitled to a 'witness allowance' (the reimbursement of cash expenses and lost earnings).

2.9 In which cases can they refuse to give evidence?

Witnesses may refuse to testify in cases where such testimony would give rise to the risk of criminal prosecution of the witness or persons close to him; the court decides whether the reasons for refusing to give testimony are justified. The court must also respect the statutory obligation of witnesses to maintain confidentiality of classified information protected by a special law and other confidentiality obligations provided by law or recognised by the State (e.g. facts specified in the health documentation of a patient – 'medical secrets', banking secrets, etc.). In these cases, a person may be examined only if the examinee has been released from that obligation by the competent authority or by the person in whose interest that obligation exists.

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

The fulfilment of the witness obligation may be enforced by having the person brought before the court by the Police of the Czech Republic or, in extreme cases, by imposing a fine.

2.11 Are there persons from whom evidence cannot be obtained?

Generally speaking, there are no categories of persons who may not be required to give testimony; however, there are types of facts about which certain persons may not testify (see question 2.9).

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?

Only a judge (the presiding judge) has the right to examine a witness and leads the examination. Other members of the chamber and other parties or experts may ask a witness further questions only with the permission of the presiding judge; the presiding judge may refuse a specific question which, for example, is a leading question, one intended to entrap, or a question which is not appropriate or practical.

The use of modern technologies (including videoconferencing) allowing remote examination is currently permitted in those courts that have the necessary technical equipment.

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. If a party proposes evidence to prove their claims that has been obtained or procured by the party in contravention of generally binding legislation, and the obtaining or procurement of the evidence has resulted in an infringement of the rights of another natural or legal person, the court shall not take such evidence due to its inadmissibility.

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

The court may order evidence to be taken by examination of the parties if the fact at issue cannot be proved otherwise and if the party to be examined agrees therewith. This rule shall not apply in non-contentious proceedings, i.e. in proceedings which may be initiated of the court's own motion (see paragraph 2.1), and in divorce proceedings or proceedings on the dissolution, invalidation or non-existence of a partnership. Only the examination of parties which the court has ordered separately as procedural evidence to prove claimed facts is considered a means of 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.

There are no such bodies in the Czech Republic.

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