Please note that the original language version of this page fr has been amended recently. The language version you are now viewing is currently being prepared by our translators.
Swipe to change

French

Taking of evidence

Luxembourg

There is no official translation of the language version you are viewing.
You can access a machine translated version of this content here. Please note that it is only provided for contextual purposes. The owner of this page accepts no responsibility or liability whatsoever with regard to the quality of this machine translated text.

-----English-----

1 The burden of proof

1.1 What are the rules concerning the burden of proof?

Under Luxembourg law, the basic principle is that persons requesting enforcement of an obligation must prove their case. Similarly, persons who claim to be no longer bound by an obligation must prove that they have made the payment or performed the act which relieved them of their obligation.

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?

In certain cases Luxembourg law provides for presumptions which release a person from having to provide evidence of a fact that would be difficult or impossible to prove. Presumptions are conclusions which the law or a court draws about an unknown fact from a known fact.

The law distinguishes between two kinds of presumption. Firstly, there are legal presumptions, which are attached to certain acts or facts by a specific law. Then there are presumptions which are not established by law and which are left to the discretion of the court, which will accept only presumptions that are serious, precise and consistent.

Generally speaking, it is possible to provide evidence to rebut presumptions. For example, where a child is born to a married couple the mother's husband is presumed to be the child's father. An action may nevertheless be brought to contest paternity.

More rarely, presumptions can be irrebuttable, meaning that it is not possible to produce evidence against 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?

Appraisal of the facts is left to the court's discretion, which is absolute. If there is any doubt, the court will ascertain whether there is serious, precise and consistent evidence and will accept or reject the evidence depending on the plausibility of the facts alleged.

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 can be ordered by a court at the request of a party. In certain cases, however, courts may also take evidence of their own motion.

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

The court informs the designated expert of the nature of the task. The parties to the case and any third parties who are required to assist the inquiry are summoned by the expert. In accordance with the adversarial principle, evidence must be taken in the presence of the parties.

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

The taking of evidence can be ordered whenever a court does not have enough information on which to base a decision.

The taking of evidence in respect of an alleged fact can be ordered only if the party making the allegation does not have sufficient evidence to prove it. In no circumstances may the taking of evidence be ordered in order to compensate for a party's negligence in assembling the evidence.

Courts must also limit the choice of measure to what is sufficient for resolving the dispute; they must opt for the simplest and least expensive solution.

2.4 What different means of proof are there?

The different means of proof are documentary evidence, oral evidence, presumptions, admission, and sworn evidence.

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?

Methods of obtaining evidence from witnesses and from expert witnesses:

When witness evidence is admissible, the court may take evidence from third parties who, because of their personal knowledge of the facts at issue, may be able to shed light on them. This evidence may take the form of statements or be gathered by investigative methods, depending on whether it is written or oral.

The court may ask for clarification to be provided by anyone it chooses, in the form of statements, consultations, or an expert opinion on a matter of fact that requires elucidation by an expert. If the opinion does not need to be in writing, the court may allow expert witnesses to give their opinion orally at a hearing; a record of this opinion is drawn up and is signed by the judge and the clerk of the court.

Rules applying to the presentation of written evidence and written reports or opinions by expert witnesses:

Written evidence:

A party relying on a document is obliged to make it available to any other party to the case. It is made available against receipt or by lodging with the court registry (*greffe*). Documents must be made available without prompting.

Experts' written reports or opinions:

Experts lodge their reports with the court registry. A single report is drawn up, even if there are several experts; if they disagree, each expert gives his or her opinion. If the expert has asked for an opinion from another expert in a specialisation differing from his or her own, that opinion is annexed to the record of the hearing or to the file, depending on the case.

2.6 Are certain methods of proof stronger than others?

Some methods of proof are stronger than others:

A public document (*acte authentique*) drawn up by a public official (notary, bailiff, etc.) acting in his or her official capacity constitutes proof unless shown to be false.
A private document (*acte sous seing privé*) drawn up by the parties themselves and signed by them, without involving a public official, constitutes proof in the absence of evidence to the contrary.
Oral evidence and other methods of proof are left to the court's discretion.

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

Written proof is necessary to substantiate a legal transaction (contract) the value of which exceeds €2 500. Proof of a fact (e.g. an accident), however, may take any form.

2.8 Are witnesses obliged by law to testify?

The law requires witnesses to cooperate in legal proceedings with a view to discovering the truth.

2.9 In which cases can they refuse to give evidence?

People who can prove that they have good cause may be exempted from giving evidence. Parents or other direct relatives of one of the parties may refuse to give evidence, as may a party's spouse, even if they are divorced.

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

Defaulting witnesses may be summoned to appear, at their own expense, if their testimony is felt to be required. Defaulting witnesses and persons who, without good cause, refuse to give evidence or to take an oath may be subject to a civil penalty (*amende civile*) of between €50 and €2 500.
The penalty and any costs may be waived if the person concerned can prove that he or she was unable to attend on the day stipulated.

2.11 Are there persons from whom evidence cannot be obtained?

Anyone can be called to testify as a witness except persons who are judged unfit to do so.
People who are unable to testify may nevertheless be heard under the same conditions, but without taking an oath. However, children and other descendants may never give evidence regarding the facts relied on by spouses in an application for divorce or separation.

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?

Role of the court and the parties when hearing a witness
Courts hear evidence from witnesses separately, in the order decided by the court, when the parties are present or have been called. Witnesses may not read from a script.
The court may hear evidence from or question witnesses on any matter on which evidence may be taken by law, even if such matters are not mentioned in the decision ordering the taking of evidence. They may recall witnesses, confront them with each other or with the parties, and, if necessary, hear their evidence in the presence of a technical expert.
The parties may not interrupt, question or attempt to influence witnesses who are giving evidence, or address them directly, under pain of exclusion. After the judge has finished questioning a witness the judge may, if he or she considers it necessary, put further questions to the witness that have been submitted to the judge by the parties.
Videoconferencing or other technical measures
Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters is intended to improve, simplify and accelerate cooperation between the courts of the Member States in the taking of evidence. There is no specific provision for videoconferencing in Luxembourg law. Videoconferencing is subject to the ordinary rules of the New Code of Civil Procedure on the hearing of witnesses, personal appraisal by the court, and appearance in person. Courts are equipped with the necessary technical equipment. On the date set for a videoconference, a judge, a registrar, an interpreter and a technician are present.
The court may have an audio or video recording made of all or part of the preparatory inquiries. The recording is kept at the court registry. Either party may ask for a copy or a transcription at their own expense.

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 will not accept evidence obtained by unlawful means, such as a hidden camera or a telephone tap of which the person was unaware.

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

Generally speaking, statements made by a party to the case have no evidential value.

Related links

http://www.legilux.lu/

Last update: 13/05/2020