

Avalaht>Kohtumenetlused>Tsiviilasjad>Tõendite kogumine

Taking of evidence

Ungari

1 The burden of proof

The burden of proof rests on the party whose interests are affected negatively if the effort to provide evidence is unsuccessful.

1.1 What are the rules concerning the burden of proof?

It is the obligation of the parties to assert the relevant facts of the case and to provide evidence in support of their assertions, unless otherwise provided for by law. Unless otherwise provided for by law, the relevant facts in a case must be proven by the party having an interest in the fact being accepted by the court as the truth, and the consequences of lack of evidence for or failure to prove such a fact are borne by the same party. In a labour dispute the employer has to prove the content of any collective agreement, any internal rules and instructions that are necessary for deciding the claim and any document produced as part of the operations of the employer that is necessary for deciding on the legal dispute, the correctness of calculations related to the claimed benefits, if disputed, and the payment of any benefit, in the case of a wage dispute.

In a dispute concerning a public service employment relationship, the public sector body has to prove the content of the generally applicable provisions and instructions that are necessary for deciding the claim and any documents produced as part of the public sector body's operations that are necessary for deciding on the legal dispute, the correctness of the contested calculations related to the claimed benefits, and the payment of any benefit, in the case of a wage dispute.

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?

If there is incapacity to prove, the fact to be proven by the party affected by such incapacity may be accepted by the court as the truth, if it does not have any doubt regarding its veracity. A statement of fact may be accepted by the court as the truth if it does not have any doubt regarding its veracity and, if it is acknowledged by the opposing party, it is presented by the parties identically, it is not disputed by the opposing party despite the court calling on him or her to do so, or it is to be considered as undisputed under this Act. Facts which are considered by the court to be commonly known, or which the court has official knowledge of, are taken into account by the court even if they are not invoked by any of the parties. The court takes statutory presumptions into account *ex officio*, including circumstances which, by virtue of law and unless proven otherwise, are to be considered as true. For example, in family law, there is a limited number of irrebuttable presumptions and facts that the law does not allow to be rebutted.

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 Hungarian rules of civil procedure do not provide for any minimum degree of certitude by the court. Unless the law provides otherwise, the court is not restricted to the application of specific formal rules, methods or means of evidence and is free to rely on evidence from the parties or any other evidence which is suitable to establish the facts of the case. This, however, does not apply to statutory presumptions, including legislative provisions stipulating that certain facts must be regarded as true unless evidence is provided to the contrary. The court establishes the relevant facts of the case by comparing, and individually and jointly evaluating the statements and conduct of the parties during the proceedings, as well as the evidence discovered during the hearing and other data related to the action, according to its conviction.

2 The taking of evidence

The court takes evidence to establish the facts necessary for a decision on a dispute.

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?

Unless otherwise provided by law, the relevant facts in a case must be proven by the party having an interest in the fact being accepted by the court as the truth, and the consequences of lack of evidence for or failure to prove such a fact are borne by the same party. In civil proceedings, the court may order the taking of evidence *ex officio*, if doing so is permitted by law.

In administrative proceedings, the court may order the taking of evidence *ex officio* with regard to facts or evidence in support of circumstances which it must take into account *ex officio*, if reference is made to an infringement jeopardising a minor or a person entitled to disability benefits or if the law so provides.

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

Witnesses are heard, opinions are obtained from experts and, if needed, experts are heard, inspections are conducted, holders of documents, video recordings, sound recordings, sound and video recordings or other material evidence are ordered to present them.

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

The court is not bound by any application to present evidence submitted by a party or by its decision regarding the provision of evidence. The court may reject an application for the provision of evidence if the application for the provision of evidence was not submitted according to the provisions of Act CXXX of 2016 on the Code of Civil Procedure, unless otherwise provided for by law, or the party obliged to advance the costs of taking evidence has not fulfilled his or her obligation to pay the advance, in spite of having been called upon to do so. The court rejects an application for the provision of evidence or discontinues the taking of evidence already ordered if this is not necessary for passing a judgment on the legal dispute.

2.4 What different means of proof are there?

In particular, means of proof include evidence obtained from witnesses, expert opinions, documents, video recordings, sound recordings, video and sound recordings and other material evidence. Means of proof cannot be admitted if excluded by law or if subject to conditions, unless the conditions are met. Evidence may be taken by inspection. No declarations on oath may be made in the proceedings.

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?

In accordance with the principle of direct evidence, as a general rule witnesses and experts give evidence at a hearing. If a party wishes to prove his or her allegations with documents, he or she must attach the document to his or her application or must present them at the hearing. At least a simple Hungarian translation of the document must be attached to a document in a foreign language. If any doubt arises concerning the accuracy or completeness of the translated text, a certified translation must be used, in the absence of which the court will disregard the document. At the request of the party presenting evidence, the court may oblige the party with opposing interests to make available any document that is in his or her possession and which he or she would be obliged to release or present anyway under the rules of civil law. In particular, the party with opposing interests is subject to such an obligation if the

document was issued in the interest of the party presenting evidence or attests a legal relationship concerning the latter party, or is related to a hearing pertaining to such a legal relationship. If the document is in the possession of a person who is not participating in the action, the court will have the document made available by applying the rules on inspection. If a motion to present evidence is submitted by a party, the court arranges to obtain documents or data held by a court, notary, other public authority, administrative body or other organisation, provided that the release of the document or data may not be requested by the party directly. It is not necessary to obtain the original document if there is no need to inspect it and the party presents a certified or simple copy of it during the hearing. The sending of a document may only be refused if it contains classified information.

2.6 Are certain methods of proof stronger than others?

Generally not.

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

There is no such obligation, in general. In exceptional cases, for example in proceedings to declare a person's incapacity, the court is required to invite a medical psychiatric expert to assess the defendant's mental state.

2.8 Are witnesses obliged by law to testify?

Yes, but in certain cases they may refuse to testify.

2.9 In which cases can they refuse to give evidence?

The following persons may refuse to give evidence:

relatives of either party;

a person who would in his or her testimony incriminate himself/herself or a relative of having committed a criminal offence with respect to the relevant issue;

a person who is committed to secrecy by his/her profession if their testimony would mean violating their secrecy obligation, unless the party concerned exempts them from that obligation;

a person bound to confidentiality of business secrets with respect to matters in which giving evidence would mean violating that confidentiality obligation, unless the data concerned by the testimony do not qualify as business secrets under the Act on the accessibility of data of public interest and data accessible on public interest grounds, or if the subject-matter of the proceeding is to decide whether or not the given data is of public interest or is accessible on public interest grounds;

the mediator/expert in mediation proceedings involved in the dispute, providers of media content and persons in an employment or similar relationship with such providers, with respect to issues in which their testimony would mean revealing the identity of the person who provided them with information in the context of his/her activity as a provider of media content.

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

Witnesses, court-appointed experts, owners of a document or item subject to inspection, and other persons whose participation in taking evidence is considered necessary by the court (hereinafter jointly: 'contributors') are obliged to contribute to evidence being taken. If a contributor fails to perform his or her obligation without requesting in advance to be excused for a good reason that he or she is able to substantiate, the court will oblige the contributor to reimburse the costs incurred, may impose a fine on the contributor, may order the contributor's compulsory appearance, may reduce the contributor's remuneration, and may inform the superior, supervisor or employer of the contributor of his or her failure to attend. The court may apply more than one of these coercive measures at a time.

Coercive measures cannot be applied against a minor below the age of fourteen, but his or her legal representative may be required to reimburse the costs incurred and may be subject to a fine.

If a contributor performs his or her obligation or applies to be excused for a good reason that he or she is able to substantiate after the application of any coercive measure, the order on the coercive measure will be set aside by the court.

A witness may file a separate appeal against the decision obliging him or her to testify. The appeal suspends the hearing of the witness. If the witness' refusal to testify is clearly unfounded, the court deciding on the appeal may impose a fine on the witness, and the court proceeding in the action may oblige the witness to reimburse the costs incurred.

2.11 Are there persons from whom evidence cannot be obtained?

The legal representative of a witness cannot be heard as a witness, unless the natural person represented by him or her is competent to participate in the proceedings.

A person cannot be heard as a witness if he/she acted as a counsel for the defence regarding a matter he/she learned about in his/her capacity as a counsel for the defence, or if he/she was not exempted from the obligation of confidentiality in a matter regarding classified information.

A minor person below the age of fourteen may only be heard as a witness if the evidence expected from his/her testimony cannot be provided in any other way.

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?

The witnesses appear at the hearing by summons of the court where in principle they will be heard by the presiding judge, or in the case of a single judge, the judge proceeding in the case.

The presiding judge may allow the party initiating the hearing of the witness, at his or her request, to be the first to directly ask questions of the witness, before allowing the opposing party to ask questions, if the opposing party has made a request to this end. In such cases the presiding judge and the other members of the panel may ask the witness questions after questioning by the parties.

3 The evaluation of the evidence

The court establishes the relevant facts of the case by comparing, and individually and jointly evaluating the statements and conduct of the parties during the proceedings, as well as the evidence discovered during the hearing and other data related to the action, according to its conviction.

3.1 Where evidence has not been obtained legally by a party, are there restrictions placed on the court in reaching its judgment?

A means of proof, or any separable part of it, is unlawful and may not be used in the action, if

- a) it was obtained or presented by violating or threatening a person's right to life and physical integrity;
- b) it was produced by any other unlawful method;
- c) it was obtained in an unlawful manner;
- d) its submission to the court would violate personality rights.

Except if it was obtained or presented by violating or threatening a person's right to life and physical integrity, an unlawful means of proof may be taken into account by the court exceptionally and with due regard to the specific circumstances and extent of the violation of law, the legal interest affected by the violation of law, the impact of the unlawful piece of evidence on discovering the facts, the weight of other available pieces of evidence, and all other circumstances of the case.

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

A party's statement is not considered as evidence; however, the court also evaluates the parties' claims when establishing the facts of the case, as described under Question 3.

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