Taking of evidence

Slovakkja

1 The burden of proof

1.1 What are the rules concerning the burden of proof?

The rule by which the court takes evidence during hearings is based on Article 48 (2) of the Constitution.

Where appropriate, a different court can be requested to take evidence or evidence can be taken outside the hearing. The court usually notifies the parties to the proceedings of evidence taking outside a hearing five days in advance. The parties to the proceedings have the right to attend such taking of evidence.

The parties are required to indicate the evidence to prove their claims. The court decides which of the indicated pieces of evidence it will take.

The court may, exceptionally, take evidence other than evidence proposed by the parties if necessary for deciding in the case.

The court can decide that evidence taken be supplemented or repeated before it.

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?

An exception to taking evidence during a hearing is where the conditions for delivering a decision without an oral hearing are met. This does not mean that evidence is not taken in such cases, but rather that evidence is taken outside rather than during the hearing. Evidence taking is qualitatively similar to demonstrating a claim.

Such exceptions include the following:

hearing a case on the merits where a simple legal assessment of the matter is involved;

the facts claimed by the parties are uncontested and the value of the dispute, without incidentals, does not exceed EUR 2 000;

on the basis of the parties' consent; if a payment order, default judgment or judgement for acknowledgement is issued, and where a claim is waived.

Furthermore, hearings do not have to be ordered in proceedings on a review *in abstracto* in consumer cases, when a default judgment in favour of a consumer is being delivered, in anti-discrimination disputes provided the claimant consents, in individual labour disputes, and in the case of motions for ordering an urgent measure.

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?

When evaluating evidence the court is not, in principle, restricted by legislation as to how it should evaluate a particular piece of evidence in terms of veracity. Thus, the principle of discretionary evaluation of evidence is applied. Only rarely does the law impose certain restrictions on the court in evidence evaluation; for example, the court must accept as proven any fact for which the law contains a rebuttable presumption, unless proven otherwise in the proceedings – Section 133 of the Civil Code.

The court is bound by decisions of the Court of Justice of the European Union. It is also bound by the Constitutional Court's decision on whether or not a certain piece of legislation is in conflict with the Constitution, a law, or an international treaty that is binding on the Slovak Republic. The court is also bound by the decisions of the Constitutional Court and the European Court for Human Rights concerning fundamental human rights and freedoms. Furthermore, the court is bound by decisions by competent bodies that a criminal offence or a minor offence or other administrative offence punishable under specific regulations has been committed; however, the court is not bound by on-the-spot fine decisions.

Apart from that, a court can examine issues within another authority's decision-making competence. If, however, the competent authority has delivered a decision on such an issue, the court takes this decision into account and incorporates it into the grounds for its judgment (respect for prior decisions).

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 parties to the proceedings are required to indicate the evidence to prove their claims. The court decides which of the indicated pieces of evidence it will take. The court can also take evidence on its own initiative in the case of evidence based on public registers and lists if such registers and lists indicate that the facts claimed by the parties are at variance with reality; the court does not take any other evidence on its own initiative.

On its own initiative, the court can take evidence to establish whether the procedural conditions have been satisfied or whether the proposed decision will be enforceable, and also to familiarise itself with relevant foreign law.

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

The court takes evidence during hearings, unless the conditions for delivering a decision without holding an oral hearing have been satisfied.

The parties have the right to submit their observations on motions for evidence and on any evidence taken.

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

The court evaluates evidence at its own discretion, taking each piece of evidence individually and all pieces of evidence in relation to each other, while carefully considering any matters brought to light in the proceedings. The reliability of each piece of evidence taken can be contested unless the law provides otherwise.

A certain limit on the discretionary evaluation of evidence applies to the appellate court and the court dealing with appeals on points of law, where the appellate court is not bound by the facts of the case as established by the court of first instance. It may thus reach a different conclusion as to the facts. However, it cannot depart from the evaluation of the specific evidence taken by the court of first instance. It can only evaluate evidence taken by the court of first instance differently if it repeats that evidence. However, unlike the court of first instance, it can evaluate differently evidence taken by a lower court through a requested court.

2.4 What different means of proof are there?

Anything that can contribute to the proper clarification of the matter and that has been obtained in a lawful manner from the means of proof can serve as evidence. Means of proof include examination of the parties and of witnesses, documents, expert reports, expert witnesses, and inspections. If the manner of taking evidence is not prescribed it is specified by the court.

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 a person distinct from the court and from the parties to the proceedings who testifies about facts they have perceived through their senses. Only natural persons can be witnesses.
In matters falling within the competence of civil courts expert opinions on the facts that serve as the factual basis for decisions on the merits of the case are often required. Where deciding on the merits of a case depends on an assessment of facts for which expert knowledge is required, the court appoints an expert witness. In such a case the court must appoint an expert witness even if the judge has expert knowledge that would enable him or her to assess the subject matter of the proceedings in an expert manner. This knowledge cannot take the place of the objective establishment of the facts by a party outside the body deciding on them.
The court's basic task is to formulate the questions for the expert witness correctly. The court is required to ask the expert witness questions as to the facts only, avoiding questions relating to the legal assessment of the subject matter of the expert opinion.
The court can have the expert opinion reviewed by another expert witness, or by a scientific or other institution. The subject matter of such a second opinion is a review of the opinion submitted earlier. This is sometimes referred to as the review opinion. The court examines expert opinions as any other evidence.

2.6 Are certain methods of proof stronger than others?

The court evaluates individual pieces of evidence in terms of their reliability and veracity. The court is not restricted by any legislation as to how it should evaluate any particular piece of evidence – this is the principle of discretionary evaluation of evidence. Nevertheless, the court's evaluation considerations are not arbitrary; the court must take into account everything that has been brought to light in the proceedings. The court should respect these facts and must correctly determine how they relate to each other. At the same time, the court is not bound by any order of priority in terms of the significance and probative force of individual pieces of evidence.

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

In matters where proceedings may begin without a motion and also in proceedings on permission to marry, on the determination and denial of parenthood, on adoptability and on adoption, and in commercial register matters, the court is required to take additional evidence needed for establishing the facts even if the parties have not proposed such evidence.

2.8 Are witnesses obliged by law to testify?

Any natural person who is summonsed is obliged to appear in court and testify as a witness –Section 196 (2) of the Rules of Contentious Civil Procedure. They must tell the truth and conceal nothing. The court must advise the witness of the criminal-law consequences of giving false testimony and of their right to refuse to give evidence.

2.9 In which cases can they refuse to give evidence?

Witnesses may refuse to give evidence only where it might incriminate themselves or persons close to them. The court decides on whether the refusal to testify is legitimate. Witnesses may also refuse to give evidence if their testimony would break the seal of the confessional or the confidentiality of information imparted to them as persons entrusted with pastoral care, orally or in writing, on condition of confidentiality.

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

The court decides on the legitimacy of the refusal to testify. Appeals against the court's decision are not admissible. If, despite the court's decision, the witness refuses to give evidence the court may levy a procedural fine on him or her.

2.11 Are there persons from whom evidence cannot be obtained?

Courts must always hear the statutory representative of an organisation that is a party to civil proceedings as a party to such proceedings rather than as a witness (Section 185 of the Code of Contentious Civil Procedure)

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?

Before examining witnesses the court must establish their identity and their relationships to the parties. Furthermore, witnesses must be informed of the significance of testimony, their rights and obligations, the criminal consequences of giving false testimony, and of their entitlement to witness fees.
The court invites the witnesses to describe, in a coherent manner, everything that they know about the subject matter of the examination. The court then asks the witnesses questions that are necessary for supplementing and clarifying their testimony.
Witnesses may not be asked tendentious or leading questions. If the parties to the proceedings or expert witnesses are asked any such questions or any questions relating to the legal assessment of the case the presiding judge deems the questions inadmissible. The presiding judge decides on the inadmissibility of the questions in an order that is not served and against which no appeal may be lodged. The order only forms part of the transcript of the hearing.
Subject to the consent of the parties to the proceedings the court can organise an oral hearing via videoconferencing or other communication technology facilities.

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?

It should be reiterated that the court is not restricted by legislation as to how it should evaluate any particular piece of evidence – this is the principle of discretionary evaluation of evidence under Section 191 of the Code of Contentious Civil Procedure.

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

The court assesses acts by the parties and their counsels and other persons involved in the proceedings strictly in terms of their content rather than on the basis of how these persons have denoted them. Acts by the parties are governed by the principle of informality. In principle the parties have discretion in making procedural acts: whether submitted in writing or as an oral statement entered on the record, their testimony has the same legal effects, but it must be stated in explicit terms or in a manner preventing any doubts as to their true intent.

Last update: 22/04/2022

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