EVIDENCE IN CIVIL LAW – BULGARIA

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Part I – Normative Questionnaire

1 Fundamental Principles of Civil Procedure

There is a wide array of fundamental and important principles of civil justice. For the outline of this questionnaire the approach developed under the influence of the doctrine of Franz Klein (Austria, Slovenia, Croatia…) was taken into consideration with regard to main principles important for taking evidence. International uniformity on all points is an unattractive goal, but agreement on fundamental values and doctrines is desirable.

1.1 Principle of Free Disposition of the Parties and Officiality Principle

1.1.1 Does Bulgarian law know the principles by these names and in what extension do they exist in Bulgarian legal system? How does Bulgarian law understand autonomy of parties in the process and the limitations of their autonomy?
The Bulgarian Civil Procedure applies both principles. They are explicitly recognised in the Civil Procedure Code (hereafter – CPC): Art. 6, sec. 1-2 „Диспозитивно начало“ – free disposition of the parties; and Art. 7, sec. 1-2 „Служебно начало“ – officiality principle.

1.1.2 Shortly explain how the legislation and jurisprudence define the scope of authority of the court to adjudicate the civil case. Do you apply the rule of adjudication in the frames of submitted claims? Is it forbidden to decide extra et ultra petitum?
Art. 6, sec. 1 CPC provides that the court is seized of a civil procedure only on a motion by a party (with a legitimate interest) or by the state prosecution, if the law explicitly prescribes so (i.e. in cases of bigamy in order the second marriage to be declared inoperative in law – the Family Code, Art. 47, sec. 1, subsec. 3). Sec. 2 of the same Article provides any further that the subject matter of the litigation and the type of remedy sought are determined by party's application.
The court acts on its own motion with respect only to the administration of the case, including supervision of the admissibility and the adherence of parties' acts to the law. It has also certain authorisation in order to ensure that the facts are stated clear and unambiguous and the burden of proof is understood (see 1.2.4. infra).

Accordingly, (i) the court has no power to decide extra petitum (Art. 270, sec. 3 CPC) and (ii) judgment that does not decide upon all parts of the petitum gives a ground for an appeal.

1.1.3 What is the definition of the principle in Bulgarian legal system?

The free disposition of the parties is defined as the rule that the civil procedure intervenes only when and to the extent the party applies for it, and the decision is limited to the personal, temporal and subjective scope of the party's application.

As a mirror rule from the viewpoint of the court, the judge has no authority to, on its own motion, commence proceedings, change their subject matter, change the relief sought or to terminate admissible proceedings before a judgment on the subject matter is rendered.

The officiality principle is defined as the court of law duty to undertake on its own motion all necessary procedural steps for the administration of the case until a final judgment is rendered.

1.1.4 To Preclusions (eventual maxim/maxima eventualis). What limitations of introduction of new facts and evidence exist in Bulgarian legal system?

The general model of the beginning of civil litigation is that the plaintiff lodges a statement of claim and the defendant files an answer to the claim. In the first hearing of the case, the parties may submit further their developed opinions based on the previous exchange of their legal position and of evidences, and the court reports its understanding of the case.

The parties are under the duty to exhaust with the claim and the answer their positions concerning the facts and the evidences (Art. 127, sec. 2 and Art. 131, sec. 3 CPC in connection to Art 133 and Art. 143, sec. 2 CPC) and thus they cannot principally raise new issues and introduce facts and evidences after this written phase of the litigation is completed (Art. 133 CPC and Art. 143, sec. 2 CPC).

There is no duty the evidences to be physically submitted at this point. They might only be listed in the statement of claim, respectively the answer, and/or a request for their taking to be made, and the court will decide upon this in the first hearing considering also parties' developed opinions (Art. 146, sec. 3-4 CPC). Solely concerning the written evidences, the parties are under the duty to submit all the documents at their disposal, otherwise they will be precluded to do so later, irrespectively whether listed in the statement, respectively the answer, or not (Art. 127, sec. 2 and Art. 131, sec. 3 CPC). New documents might be introduced additionally solely as provided in Art. 146, sec. 2 CPC (see the next two paragraphs).

As an understandable exemption, in the first hearing, the plaintiff may introduce further facts and evidences as a defence against issues, contention and objections raised with the answer. The defendant has the respective counter possibility as a response to claimant's defence (Art. 143, sec. 2 CPC) and so forth to the expiry of the options for the legal duel. For both parties, those secondary possibilities will be precluded with the end of the first hearing (Art. 143, sec. 3 and Art. 146, sec. 3 CPC).

The court also lists in its report the facts that need to be proved, but no evidence is introduced at all (Art. 146, sec. 2 CPC). The party might introduce evidences with respect to this facts in the same hearing, or request a later term and the preclusion will

apply after the expiry of the term granted. If no request or introduction is done, the preclusion will be applied with the end of the hearing.
In all cases, facts and evidences might be introduced after the preclusion, if it is fair and just – (i) the party has omitted to introduce them due to obstacles which are unpredictable and unpreventable for the reasonable man (force majeure), or if they are new – (ii) the party was not able to discover them earlier with reasonable endeavour and due diligence, or they are newly came into being (Art. 133 and Art. 147 CPC and Art. 64, sec. 2 CPC).

1.1.5 To what extent is the court bound by the party submissions regarding the means of evidence?
The court considers whether the means is admissible and/or irrelevant. Only in a case of excessive witnesses (a number of witnesses that prove a same fact), their number may be reduced by the court (Art. 159 CPC), although the examination of all the witnesses is admissible at principle.

1.2 The Adversarial and Inquisitorial Principle

1.2.1 Does Bulgarian law know the principles by these names and in what correlation do they exist in Bulgarian legal system? Who in Bulgarian law is in principle charged to collect evidence materials (e.g. the parties or the court or both)?
The Bulgarian Civil Procedure applies the adversarial procedure. The principle is explicitly recognised in the Civil Procedure Code: Art. 8, sec. 1-2 „Състезателно начало“.

1.2.2 What is the definition of the principle in Bulgarian national system?
The judgment is reached in the way of an argument (legal dispute) between opposing parties before a neutral tribunal, empowered to administer justice, where the parties are under the duty to substantiate and prove their case in the course of the dispute. As a mirror rule from the viewpoint of the court: it is not authorised to introduce facts or evidences in the dispute.

1.2.3 Is the court allowed or empowered to decide to take evidence other than the one submitted by the parties?
For the sake of justice, (i) the court might appoint experts on its own motion, if it appears to the judge that an expert opinion is necessary for the proper consideration of the fact already introduced by the party, although the party does not request an appointment of an expert (Art. 195, sec. 1-2 CPC); (ii) if a party is summoned by the other to give explanations, or a witness is requested and summoned, the court is empowered to summon and question the party (Art. 176, sec. 1 CPC) or the witness, even though the initial request is withdrawn (Art. 1 173 CPC); and (iii) he court might also order on its own motion an inspection or a certification.

1.2.4 What is the role of a judge in Bulgarian legal system? The concept of substantive and procedural guidance of proceedings – direction of main hearing as a principle familiar to Bulgarian legal system? Does in Bulgarian system the judge

prepare the list of references and in which phase of the procedure (in connection with substantive governance)?
The judge administers the proceedings and renders the judgment.
Substantive guidance is not envisaged.
The procedural guidance is limited to the basic explanation about the distribution of the burden of proof (Art. 146, sec. 1, subsec. 5. CPC). In the first hearing, the court also lists in its report the facts that need to be proved, but no evidence is presented at all and this gives the parties the opportunity to introduce evidences in connection to these facts despite the general rule of preclusion (Art. 146, sec. 2-3 CPC supra). The court has also the authority to put questions for clarifications about the facts, when they are not clearly stated or stated with ambiguities and discrepancies, and to explain the relevance of these facts to the parties (Art. 145, sec. 1-2 CPC). For this purposes (and solely confined to them), the court might freely intervene and question parties, witnesses and expert during the course of examinations.
The concept of terms of references as understood in the arbitral proceedings is not applicable. The court report its understanding of the case, including definition of the subject matter and relief sought, the set of provisions which are applicable to the demand, statements of and rulings on the facts and evidences introduced, statement of the burden of proof and possible additional issues (Art. 146, sec. 1 CPC). If a party does not object to the report and requires its correction, his/her omission shall not be considered as a legitimate ground for an appeal – on other words, the party is deemed to have agreed that the subject matter and relief sought are confined to the statements in the report.

1.3 Hearing of Both Parties Principle (audiatur et alter pars) – Contradictory Principle

1.3.1 Does it exist in Bulgarian legal system?
The Bulgarian Civil Procedure applies this principle. It is explicitly recognised in the Civil Procedure Code: Art. 9, sec. 1-2 „Равенство на страните – the principle of parties' equal rights in litigation.

1.3.2 Explain how far it goes.
Considering the particular circumstances, the court is under the duty to ensure that both opposing parties will have the realistic possibility to present, substantiate and prove their case adequately. There is no formal equal treatment of the parties.
The principle might be limited, if its full application will intolerably infringe other party's legitimate interest, i.e. of due, fair and swift procedure – for instance, in a case, a party request a witness about who is obvious that he/she will not appear, or there is no information about his/her whereabouts and such cannot be derived, the request will be rejected; however, the witness will be examined later despite the preclusion, if he/she appears or information towards successful summoning is discovered in the course of the proceedings and this is not a cause for an unreasonable delay of litigation (Art. 158, sec. 1-2 CPC).

1.3.3 What is the definition of the principle in Bulgarian legal system?
The parties to the proceedings shall enjoy adequate procedural rights to prove and defend their case towards a successful judgments.

1.3.4.1 Right to present evidence (submission of evidence, presence in taking of evidence, hearing of the parties) – Explain the basic rights and obligations that parties have?
To be present when taking evidence, including the activity of the experts; to be present at inspections and certifications; to be informed about the evidences introduces or submitted by the opposite party and about orders of the court. To submit evidences unless a preclusion is in operation. To submit statement, opinions and objections about the evidences.

1.3.4.2 Are there any exceptions to this principle (decisions of the court without the hearing of the opposite party, preclusions)?
A judgment by default is possible, if the party is passive and disinterested (Art. 238 CPC).

1.3.4.3 What are the means for party if this right is violated?
The party might protest before the court at issue and request an order. If not satisfied, the party may appeal the judgment.
In a case of a judgment by default, the party may only apply for a setting-aside of the judgment.

1.3.5 Right to equal treatment (the same decision in the same cases) – Explain what is the meaning of this principle in Bulgarian system?
This principle was slowly virtually extrapolated after the change in 1989, although it is considered as a vital part of the modern concept of the rule of law (the principle of legal certainly). It was a practice that different panels of the High Court of Cassation issued contradictory judgment. There were even cases, where a panel issued judgments in contradiction to its previous rulings. There was no tool established for a comprehensive and systematic report of the cases to the legal practitioners and academics.
Bearing in mind all of this, it is no surprise the practice of the lower courts not to apply the decisions of the High Court, or of the higher courts, thus accompanied by no reasoning and followed by no responsibility for the judges.
Therefore, one of the pillars of the reform of the civil procedure that resulted in the new Civil Procedure Code of 2007 was devoted to ensuring a stable inherent and consistent practice. It will take however a long way this to be achieved, considering especially the fact that the High Court of Cassation established grounds the practice of contradictory judgments stemming from its own different panels to continue (and there is still no efficient tool of reporting the judgments to the audience…).
As a result of the reform, an appeal against a judgment of the courts of second instances that contradicts to other judgments, will be admitted to consideration before the High Court of Cassation, although there might not be important legal issues concerned.

1.3.6 What are the sanctions for passivity or absence of the party in the procedure? (e.g. judgment by default, or the consequences for absence from the hearing, preclusions?)
A judgment by default might be rendered both against the litigator, if he/she is passive after the lodging of the answer by the defendant and does not appear in the first hearing, or against the defendant, if he/she is passive after the filing of the claim and does not appear in the first hearing (Art. 238, sec. 1-3 CPC). In the first hypothesis, it is presumed that the litigator abandons the claim, in the second – that the defendant agrees with it. A judgment on default may not be appealed against, only a procedure for setting aside is available. The party cannot also request hearing etc. to be repeated, in a case of an inexcusable default to appear for a particular hearing or other procedural session.

1.4 Principle of Orality – Right to Oral Stage of Procedure, Principle of Written Form

1.4.1 Is in Bulgarian legal system the right to oral stage of procedure raised to the level of general principles?
It is proclaimed in Art. 11 CPC „Публичност и непосредственост“.

1.4.2 What is the definition of the principle in Bulgarian legal system?
According to Art. 11 CPC all hearings are oral.

1.4.3 What is the correlation between the oral and written form of procedural acts?
Every act done in a hearing is admissible in an oral form, unless the law provides explicitly for a written. If no nearing is taking part, the act is presented to the court always in written (Art. 100 CPC).

1.4.5 If the principle of written form is dominant within Bulgarian legal system, how is it balanced with the principle of orality?
Every regular case might be decided without the appearance of the parties and based solely on their written submissions. This is the matter, even where the appearance might be practically useful for the parties (witness examinations etc.). This means that if both parties does not appear, the court will not order their appearance either for further submission or for oral pleadings but will decide the dispute. If however a party appears, he/she will enjoy his/her full set if rights – due to Art. 11, the court cannot deny a party of the right to be heard.
A summary judgment (no hearing and no oral pleadings upon court of law's discretion) is possible only in commercial cases (Art. 376 CPC).

1.4.6 Does principle of directness exist in Bulgarian legal system?
It is proclaimed in Art. 11 CPC „Публичност и непосредственост“.

1.4.6.1 Explain what does it mean?
All procedural acts shall be performed before the judge who hears the case. The judge who heard the pleadings decides the case and cannot be substituted. If a judge has to be substituted, the procedure continues from the point, where he/she enters the proceeding.

Solely in the hypothesis, where the judge who has heard the pleadings is substituted, the new judge will order new hearing about the oral pleadings.

1.4.8 What does this principle apply to?
To all acts of the parties and other procedural acts, i.e. during the course of the taking of evidences.

1.4.9 Are there any exceptions to this principle?
If an evidence is not within the territorial jurisdiction of the court, the court may request the competent court to obtain the evidence and transfer it (Art. 25 CPC).

1.4.9.1 What are the limits of such exceptions?
In order to collect the evidence, the requesting court should inevitably act outside its territorial jurisdiction (Art. 25, sec. 1 CPC).

1.4.10 Can appellate courts take evidence?
Yes. As any other court, if the evidence taking is not precluded. See underneath.

1.4.10.1 Is it normal or exceptional?
Exceptional. See underneath.

1.4.11 To what extent are the appellate courts allowed to evaluate evidence?
Only evidences, which initial introduction is not precluded (1.1.4 supra), or which were incorrectly not admitted by the court of first instance.

1.5 Principle of Public Hearing

1.5.1 Does it exist in Bulgarian legal system?
It is proclaimed in Art. 11 CPC „Публичност и непосредственост“.

1.5.1.1 Explain what does it mean?
The hearing are held in public and the public has free access to the files. The general rule is that the one who wants to see the files has to do this with an advocate and a legitimation as an advocate is enough the file to be presented. Practically, the file is given to the advocate, not to the citizen. There is also no obstacle a person to request from the court by a motion for an access to the file, with no legal representation. All this is considered as a guarantee for the supervision by the society (the sovereign) of the correct work of the courts. Of course, there are limitations concerning the procedures for preliminary measures and preliminary protection, insolvency, commercial and state secrets etc.
Principally, live transmissions are not prohibited, however in practice the particular court decides whether to allow them or not – very rarely they are allowed. Reportages from the court room are however often allowed, when the case is of significant public interest.

1.5.4 Are there any exceptions to this principle?
In cases the law provides the opposite, i.e. as a protection against consequent infamy etc. (Art. 135 CPC).

1.6 Principle of Pre-Trial Discovery

1.6.4 Are there any exceptions to this principle?
In the meaning of the common law, the principle is not applicable. The exchange of the statement of claim and the answer and the supporting evidence was considered in connection to the preclusions (1.1.4. supra). It should be noted that in commercial cases in addition to the exchange of a statement of claim, answer, there is also an exchange of written rejoinder and rebuttal.

1.7 Are there any other general principles in Bulgarian legal system?
No.

2 General Principles of Evidence Taking

2.1 Free Assessment of Evidence

2.1.1 Does it exist in form of fundamental principle in Bulgarian legal system?
It is explicitly defined in Art. 12 CPC „Вътрешно убеждение".

2.1.2 Explain its meaning and scope?
The judge is independent when assessing the evidences and relays only on its experience, ratio and its perception of fairness and justice.
The judge is confined only be a few rules about the evidentiary power of documents etc.

2.1.4 Are courts bound by the party's dispositions or not?
No. The evidences are to be evaluated based on the judge's understanding of their value and corresponding adjudication (Art. 12 CPC and Art. 235, sec. 2 CPC).

2.1.5 How does that effect the assessment of evidence?
There is no specific effect, since there is no other rule known to the system.

2.1.6 Does Bulgarian legal system provide certain methodological guidance for judge to apply free assessment of evidence?
No. It is an experience that is transmitted through the forms of education in the system (mainly apprenticeship, conversations and work with more experienced judges, reading appeal judgments etc.)

2.1.7 Does Bulgarian legal system regulate any formal rules for assessment of evidence?
Concerning the evidentiary power of the written documents and the admission of witness testimony.

2.1.8 What is the definition of the principle in Bulgarian legal system?
See. 2.1.2.

2.2 Relevance of Material Truth

2.2.1 Does a principle of material truth exist in Bulgarian legal system?
It is proclaimed in Art. 10 CPC „Установяване на истината“.

2.2.1.1 Explain the scope of the principle.
Realistically, the provision of Art. 10 CPC is more or less a declaration proclaiming the justice as the fundament of the litigation and its ultimate goal that is to be observed in every single case, than a reality, since the introduction of facts and evidences is in parties' discretion and responsibility. The confined powers given to the courts in this respect are a clear sign of this conclusion: the court is expected to facilitate the parties and cooperate with them in order the facts to be established. Those powers were discussed in details in 1.2.3. and 1.2.4. supra. The preclusion of the right of introduction of facts and evidences also supports this view.
Before the first reform of CPC in 1997, this principle has been understood as a duty of the court to introduce issues, facts and evidences and no preclusion was envisaged. This worked satisfactory before the change in 1989 since the sheer bulk of the cases was about family issues, rents and divisions of immovable etc. With the change of the national turn-over and the development of private economic interests, commercial entities and more sophisticated economical tools, this approach proved to be clearly not capable of response. It created too much possibilities for unfair conduct and misuse of their rights by parties seeking unacceptable delays in the proceedings. Thus, the reform in 1997 turned the rules towards fully passive role of the judge. This also proved to be not the best variant and with the new CPC of 2007 the present rules were adopted, which seems to be optimal by now in respect to the reconciliation of the adversarial principle, the pursuit of the material truth and the objective of due process.

2.2.2 What are the limitations, if any, of establishing the material truth in Bulgarian legal system (protection of secrecy, privacy)?
The only rule that might be applied is that if it is clear that an evidence will not be collected or it will take too much time and effort to be collected, it might be excluded as an evidence (Art. 158 CPC). However this will be applied solely of the evidence is nor concluding and decisive or of main importance. Other limitation are the right of the witness and parties to refuse to answer, which are addressed separately in this questionnaire.

2.2.3 Are there any limitations in selection of evidence?
No, see here above.

2.2.3.1 Which are provisions in Bulgarian law allowing for determination of the material truth? (e.g. question of the obligation to testify, duty to provide findings and opinions, obligation to submit the documentary evidence).
The entire design of the litigation and particularly the law of evidence are serving to the purpose justice to be revealed and established. Otherwise, there will be no rule of law. See also 1.2.2. about the procedural guidance and the content of the court's report in the first hearing.

2.2.3.2 Does Bulgarian legal system regulate a limitation of the right to propose new facts and evidence (ius novorum)? Explain how is it regulated?
See 1.1.4. supra.

2.2.4 What are the standards of material truth?
What a reasonable man will consider.

2.3 Are there any other general principles regarding evidence taking in Bulgarian legal system?
No.

3 Evidence in General

3.1 Are certain methods of proof stronger than others?
In practice, documents prevail, especially official.

3.2 Does any formal rule of evidence exist in Bulgarian country?
There is no formal evidentiary power of any means of proof. This is the general principle. In 2.1.7, it is stated that there is a formal subordination between the evidentiary power of the documents and the witness testimony, which confines to some extend the free assessment of the evidences by the judge, if he/she has to decide solely upon these types of means of proof. However, if by other means it is proved that the witness testimony is correct, i.e. the document is object of some type of falsification etc.,, it contradicts to convincing material evidences, expertise etc., the subordination is abolished. Therefore, it might be considered that there are some formal rules about the assessment of documents and witness testimony but they do not have formal evidentiary power in general.

3.3 What is, if any, the minimum standard of proof to consider a fact as established?
What a reasonable man will consider.

3.4 Means of Proof
3.4.1 Are means of evidence provided or listed in the national legal system?
Yes (Chapter 14 CPC provides the list). See underneath.

3.4.1.1 Does numerus clausus principle apply?
This is the principle.

3.4.2 List means of proof in Bulgarian legal system (specifically stated in legal acts or found in practice).
Witness evidence, party explanations, written evidence, electronic document, expert opinion, inspection, certification, material evidences (Chapter 14 CPC).

3.4.3 Are certain means of evidence excluded from the possible modes of proof?
Withnes evidence cannot be used in some cases concerning the proof of contracts (Art. 164 CPC) – i.e. if the value of the contract is above 5.000 BG Leva (see Art. 164 CPC).

3.4.4 Do parties' statements count as evidence?
Yes, they are evaluated as every other evidence (Art. 175-177 CPC) but they have practically little significance unless they prove something not in favour of the party.

3.4.4.1 If parties can testify, are there any constraints to their capability of testifying?
Underage and mental disability. Thus follows from the general civil law principles. In every particular case it will be adjudicated whether the party is able to testify.

3.4.5 Who can ask/request for a party testimony?
The other party (Art. 176 CPC).

3.4.6 Are there any limits to the facts they can testify about?
Principally no, as long as the facts are relevant to the case. Of course, they must have in some way perceived the facts.

3.4.8 Can a party refuse to testify?
Yes (Art. 176, sec. 3 CPC) the matter is addressed separately in this questionnaire. See underneath.

3.4.9 If a party can refuse to testify, what are the admissible grounds for the refusal?
If there is an excusable reason. There is a full list in Art 166 CPC: a party might refuse to answer questions that will result in criminal proceedings against, dishonour or cause damages to the party herself, or to his/her closest relatives, spouse and ex-spouse, or partner in stable relationship.

3.4.10 Who evaluates the legality of such claim?
The court bearing in mind his role in the procedure.

3.4.11 If the refusal to testify is considered unlawful, what are the consequences, if any?
The party is under the duty to testify, if called to, and if he/she does not appear, the court might consider the facts proved (considered systematically with the other facts and evidences in the case – Art. 176, sec. 3 CPC).

3.4.12 Are testifying parties under oath?
No, since they are not considered as witnesses.

3.4.13 What is the penalty, if any, for perjury?
Concerning the parties – no penalty, since they are not under oath.

3.4.14 Are there any rules for evaluating evidence gathered trough parties testimony?
An admission of a fact is considered systematically with all the facts and evidences in the case – the fact is not deemed proved automatically (Art. 175 CPC). If the party gives vague statements or tries to delude its statements, the court might consider the facts proved (Art. 176, sec. 3 CPC).

3.5 Is it necessary for certain facts to be proven by formally prescribed type of evidence?
Yes, concerning the contracts – i.e. if the law requires a written from for their validity, if their value is above 5.000 BG Leva etc. (see Art. 164 CPC).

3.6 Can the existence of rights arising out of a cheque or bill of exchange be proven by any other means than presentation of such document?
Only if the party proves that the document is lost, stolen, destroyed etc. In this case, the court will issue an act based on all possible means of evidences, which act will substitute the original document (Art. 560 CPC and Art. 165, sec. 1 CPC).

3.7 A party presents in the proceedings various evidence: witnesses, authenticated documents, private documents and expert opinion.

3.7.1 Will the court consider certain type of such evidence to have greater value then others?
No on formal grounds. The court will consider and compare all the evidences systematically, and will evaluate them based on a rational approach.

3.7.3 Are there any means of evidence which can be applied/presented only after the modes of proof required by law become impossible?
No. As noted, the principle of numerus clausus applies with respect to means of evidence.

3.7.4 In order to prove certain facts, are certain methods of proof obligatory?
In cases of contracts – see 3.5. supra.

3.7.5 Are there certain types/forms of procedure, where the facts can only be proven by a certain method of proof (e.g. documents)?
No.

3.7.6 Are there certain types/forms of procedure, where the facts are in principle proven by certain method of proof (e.g. documents) only?
No.

3.8 Is there a duty for parties to produce or deliver evidence? What are the consequences for breach?
Yes. The parties will have to bear the negatives of their omission – i.e. the fact will be deemed by the court as not proven (Art. 161 CPC).

3.9 Is there a duty for third persons to deliver evidence? What are the consequences for breach?
Yes, documents and material evidences, if they are at the third person's disposal. Fines will be ordered by the court, if the third person refuses to obey (Art. 192 CPC).

3.10 Explain the value of judicial and administrative decisions as evidence?
Civil and administrative judgments are no proof about the facts they have stated as grounds for the decision. The judgment as a documents is a proof about the decision itself. The decision fixes with res iudicata the legal relation and its subjective, temporal and objective parameters (or its non-existence) – it provides the binding final formula for the resolution of the dispute. However, the facts upon which the decision is based might be freely contested by the same parties in other proceedings (for different legal disputes). This is an unexplainable feature of our legal system and a significant problem, since it opens a floodgate of unfair recourse to procedural rights.
See also 5.2. infra.

4 General Rule on the Burden of Proof

4.1 What is the main doctrine behind burden of proof rules in Bulgarian national legal system?
To prove the positive facts that are in Bulgarian favour is a duty. If the party does not prove such a fact that fact will be considered not proven.

4.2 What are the proof standards in Bulgarian legal system?
What a reasonable man will consider.

4.3 Are there any rules in Bulgarian legal system which exempts certain facts from the burden of proof (recognized facts, well known facts)?
Well known facts; facts that the court has become aware of in performing its authority (Art. 155 CPC).

4.4 In what extent is the duty to contest specified facts and evidence regulated in Bulgarian legal system?
If a fact or an evidences is not contested when introduced, a preclusion will apply and it cannot be contested later.

4.5 Does Bulgarian legal system recognize a doctrine of iura novit curia?
Yes. Art. 5 CPC and Art. 235, sec. 2 CPC explicitly provide for this.

4.5.1 Explain the meaning in Bulgarian legal system!
The parties are not under the duty to submit the law to the court – only the facts and the evidences. If they express opinions on points of law, this is only with supportive meaning. The court will apply the correct legal provision in their correct meaning irrespective of parties' submissions and omissions.
The parties are under the duty to prove the foreign law. For this all appropriate routes might be followed – the parties might require the court to consult the ministry, or to submit the foreign rules by itself via trusted copies of the legislation, expert opinions, etc.

4.6 If the facts claimed by a party and the proposed evidence are incomplete, is the court obliged to advise the party of this fact?
Solely if there is no evidence introduced at all (see. 1.2.4 supra).

4.7 Do the courts have means to induce parties to elaborate on claims and express an opinion on any factual or legal matter?
See 1.2.4 supra. If the possibility to ask question is utilized cleverly and efficiently, the court will have a rather clear view on the facts by elaboration by the parties. If a point of law is raised, the court will ask both parties for opinions.

4.7.1 Is the court required to provide this information only during hearings or also in writing (e.g. in a writ of summons)?
When requiring an answer, a clarification or an opinion from a party, the court might choose whether to do this in a hearing or in written, or both, depending on the circumstances given.

4.8 May a court propose to the parties and other participants in a proceeding that they are to submit additional evidence and until which phase of the procedure?
No. It will be contrary to the corresponding general principles of the procedure.

4.8.1 If a party does not comply with the court's request for production of evidence, what are the consequences foreseen in Bulgarian legal system (e.g. court may regard this to be in favour of the opposite party as part of the court's assessment of evidence, unless the party is unable to comply with the court's request due to legal or factual reasons)?
The court might impose a fine (Art. 89, sec. 2 CPC), if there is not an excusable reason for the lack of production. If the party continue refusing to submit the evidence, the court will finally consider the fact in favour of the opposing party, if the fact is coherent with other facts in the case (Art. 190, sec. 2 CPC).

4.9.1 Explain for what reasons or in which matters may a court collect evidence on its own initiative in civil cases (eg. for the protection of the public interest or in family matters)?
Only if the law provides so, in order interests with exceptional importance for the society to be protected – i.e. when deciding the consequences for the kids after the

divorce (Art. 59 and Art. 127 Family Code), when deciding upon mental disability (Art. 338, sec. 1 CPC).

4.10 If during the presentation of evidence new facts that were previously not rised by parties become known, may a court allow additional submission of the evidence?
Yes. This submission is not within the general preclusion. See underneath.

4.10.1 Explain the condition and in which phase of the procedure is this possible?
New facts and evidences might be introduced after the preclusion, if it is fair and just – (i) the party has omitted to introduce them due to obstacles which are unpredictable and unpreventable for the reasonable man (force majeure), or if they are new – (ii) the party was not able to discover them earlier with reasonable endeavour and due diligence, or they are newly came into being (Art. 133 and Art. 147 CPC and Art. 64, sec. 2 CPC). New facts cannot be introduced in the course of cassation.

4.11 Is a party charged with the burden of proof, who is not in possession of the evidence, allowed to ask the court to issue an order, addressed to a third person holding that evidence, to make it available?
Yes (Art. 192 CPC). The provision is addresses here above and envisages submission of documents. There is however no obstacle to be applied to material evidences too.

5 Written Evidence

5.1 What is a concept of a document in Bulgarian legal system?
A piece of paper or of similar material on which some information is fixed trough an alphabet or other similar tools.

5.1.1 Is a video or audio recording considered to be a document within Bulgarian legal system?
No. They are considered as a material evidences.

5.1.2 What kind of electronic documents are recognized in Bulgarian legal system?
All types that are electronic transmitters of text in the technical sense of the word (Art. 184, sec. 1-2 CPC).

5.1.2.1 What is their probative value?
Equal to this of the paper documents. Electronic documents are considered documents (Art. 184 CPC).

5.1.3 What kind of electronic signatures are recognized in Bulgarian legal system?
Provided by undertakings certified by the State as such providers.

5.1.3.1 What is their probative value?
Equal to a personal signature.

5.1.4 Are there any other objects equivalent to written evidence recognized within Bulgarian legal system?
No.

5.2 Are there any documents for which a presumption of correctness exists?
Yes. See underneath.

5.2.1 Which are these documents?
Only for the public documents, whether issued by courts or state authorities. They are evidence for their subject matter (declaration about the acts undertaken before the authority, or by the authority itself with all the ensuing consequences) – Art. 179 CPC. They cannot be refuted by witnesses (Art. 164, sec. 1, subsec. 2 CPC) and will prevail over private documents (compare Art 179 and Art. 180 CPC).

5.2.2 How can such documents be contested as evidence?
The party has to prove that the document is issued by infringement of the law (outside the scope of the particular authorities' competence or the requirements of the procedure and/or form were not applied). Or it is inauthentic or false.

5.2.3 Can a judgment be rendered on basis of such documents only?
Yes. There is no legal obstacle. They are evidences.

5.2.4 What is the weight of private documents as evidence?
See above.

5.2.5 Are there different categories of private documents in the perspective of evidence?
No. The CPC does not provide for any deviations and there are no reasons for such.

5.2.6 What if such documents are contested by the other party?
There are no such documents.

5.3 Does the law draw distinction between the evidential (probative) value of public and private documents?
The public document will prevail over private document (compare Art 179 and Art. 180 CPC). See here above.

5.4 How is the written evidence taken – does it need to be read at the hearing?
No. Just submitted to the court with a copy for the opposite party. He/she might request to compare the copy of the document to the original.

5.4.1 How can the court obtain written evidence, if parties are unable to do so?
To request it from a third subject, if the parties requests so. It is addressed here above.

5.4.2 Is there an obligation of the parties to produce evidence?
It is a duty in accordance to the adversarial principle (see. 1.2.2)

5.4.3 Is it necessary for documents to be produced in their original version?
No, unless the opposing party require so. See here above.

6 Witnesses

6.1 Are witnesses obliged by law to testify?
Yes. The opposite would leave too much discretion to the witnesses to decide when to appear and in favour of who.

6.2 Are witnesses in proceedings summoned by court or is it up to the parties to assure the presence of witnesses in court?
Both ways are possible (Art. 169, sec. 1-3 CPC). The parties decide whether to request summoning or not. Usually, a party will decide to assure the presence of a witness in order to save time or expenses (it is questionable due to lack of time, whether the witness will be summoned for the respective hearing, the witness is abroad or constantly moving (international truck driver) and thus it will take time and money to be summoned etc.). Of course, the party is to be sure that he/she will persuade the witness to appear.

6.3 Can a witness refuse her role as a witness?
If there is an excusable reason. There is a full list in Art 166 CPC: the witness has been/is a mediator or representative of the party in the same dispute; is a closest relative, spouse and ex-spouse, or partner in stable relationship. A witness cannot refuse his role but might refuse to answer questions that will result in criminal proceedings against, dishonour or cause damages to himself, or to his/her closest relatives, spouse and ex-spouse, or partner in stable relationship.

6.4 Does she have to appear in court anyway or can she just notify the court about her refusal?
To notify. There is no duty to appear for this notifiacation.

6.4.1 What is the discretion of court to decide upon this issue?
The court evaluates it and adjudicates as a matter of the case.

6.4.2 Can the interested party contest such refusal?
Yes. And to prove that the grounds for refusal are incorrect or missing.

6.4.3 Are there certain persons who are deemed to be unfit to be a witness?
Yes. See underneath.

6.4.3.1 Which are these persons?
Minors, mentally disabled. This is a rule following the general principles of the civil law.

6.4.3.2 What if such a person is summoned in court or called by parties anyway?
The court has to correct its order for summoning and withdraw it, the judge has to do this also ex officio (Art. 253 CPC). If no, the other party might appeal against the decision. If not appealed on this ground, the next instance have to correct the first instance also ex officio.

6.4.4 In which cases can the witnesses refuse to give evidence?
If the testimony will result in Infamy, direct losses, criminal charges against the person giving it, or against his/her closest relatives, spouse and ex-spouse, or partner in stable relationship (Art. 166, sec. 1-2 CPC).

6.4.4.1 Are these cases enumerated in law or is it decided on a case by case basis?
Numerus clausus.

6.4.4.2 What kind of discretion does a court have in assessing the grounds for refusal?
To evaluate it prima facie as they are done. It is for the other party to prove that the grounds are not correct or non-existent.

6.4.5 Are there persons who can refuse to give evidence on basis of their personal status in general (e.g. mediators, representatives of parties, priests) or can they refuse to give evidence only for certain cases?
Yes. Art. 166, sec. 1. Subsec. 2 CPC. When the persons were in charge as mediators or representatives in connection to the pending dispute. No priests were ever summoned to give testimony obtained via confession. The status of a priest itself does not however produce a general exclusion for testifying.

6.4.6 What kind of secrets (e.g. business, state, military etc.) are recognized in Bulgarian law and can affect the taking of evidence?
Commercial, bank, industrial, state, military. If such an obstacle appears, the case will continue with closed doors and limited access to the file. The court will request an admission to the evidence from the responsible state body and evaluate the evidence. The parties will not have access to the evidence unless they are also eligible for such an admission.

6.4.7 A CEO (or general manager of juridical person) refuses to testify about certain fact, claiming that it represents a company's business secret. Will the court accept such excuse and under what conditions?
No, the court will not accept, it will order closed doors hearing and limit the access to the file.

6.4.7.1 What if such a company is a holder of concession or public service, would there be a difference?
No. There are no exclusions or even cases reported where such exclusions are pleaded.

6.4.7.2 What if it is a public law entity?
No difference. There are no exclusions or even cases reported where such exclusions are pleaded.

6.4.8 A state official refuses to testify about certain fact, claiming that it represents a state secret. How will the court proceed?
As above.

6.4.9 A journalist refuses to testify about his sources, claiming that this is covered by the privilege of the sources. Will the court accept such excuse?
As a trend, the courts prefer the guarantee the freedom of the journalists. Cases such as lives or public order were never put at issue and will be considered on particular manner.

6.4.9.1 Can such excuse be contested by parties?
Yes, as every decision of the courts.

6.4.10 A priest refuses to testify about certain facts, claiming that this is covered by the secrecy of confession. Will the court accept such excuse?
Yes. See here above.

6.4.10.1 Are there principles or values that can out-balance this privilege?
No. Such cases were never put at issue. I personally worked on several occasion on tasks by the Holy Synod of the Bulgarian Orthodox Church (including drafting of legislation etc.) and based on my experience I will consider that a priest will simply answer to such a request in the manner that his duty concerning the secrecy of confession is not from a mortal authority and thus he is not bound by any order of any state body. Moreover, if a priest discloses a confession (even to another priest), this will be considered a crime under the Bye-Law of the Church, which is sanctioned as operative in law for this matters by the state legislation (and equal to the state legislation).

6.4.10.2 Can such excuse be contested by parties?
Yes. There will be exclusion of the right of the party to contest.

6.4.11 A medical doctor refuses to testify about certain facts regarding his patient. Will the court accept such excuse?
No. Just the general rules under Art. 166 will be applicable – dishonour, harm, criminal prosecution. See here above.

6.4.11.1 Are there principles or values that can out-balance this privilege?
The rules that apply to the general right of refusal to testify about certain facts, i.e. his/her testimony will cause infamy (Art. 166, sec. 2 CPC)

6.4.11.2 Can such excuse be contested by parties?
Yes. There will be exclusion of the right of the party to contest.

6.4.12 An attorney at law (advocate) refuses to testify about certain facts regarding his client. Will the court accept such excuse?
Yes. If the advocate got knowledge of the fact in his/her capacity as an advocate.

6.4.12.1 Are there principles or values that can out-balance this privilege?
No. This will open a floodgate and ruin one of the most important basis of the profession.

6.4.12.2 Can such excuse be contested by parties?
Yes. There will be exclusion of the right of the party to contest, i.e that the advocate did not perceived the fact in its capacity as a lawyer.

6.4.13 Are there any other legal professions that can rely upon same privilege?
It will be applied to all legal professions including arbitrators in private law arbitrations.

6.4.14 Can a witness be forced to take an oath?
No. And no one has ever refused to take it.

6.4.15 Can a witness refuse to testify under oath?
Testifying not under oath will not be consider as a testifying for the purposes of the civil procedure.

6.4.16 What are the consequences of such refusal?
It will be considered as a breach of the duty to testify and a fine will levied (Art. 163 CPC).

6.4.18 Describe judge's powers and duties in the process of questioning.
The court administers the process of testifying. It observes that the question are in compliance with the law. The court has also the authority to put questions for clarifications about the facts, when they are not clearly stated or stated with ambiguities and discrepancies, and to explain the relevance of these facts to the parties (Art. 145, sec. 1-2 CPC). During the course of examinations, the court might freely intervene and question parties, witnesses and expert. The latter is confined to the authority of the court to put only questions for clarifications about the facts.

6.4.19 Describe delivering party's powers and duties in the process of questioning.
To ask the respective questions and require clarifications. Questions about matters that are not listed in the request for summoning are not allowed, as well as misleading questions or conclusions put as questions.

6.4.20 Describe opposing party's powers and duties in the process of questioning.
To ask the respective questions and require clarifications. Questions about matters that are not listed in the request for summoning are not allowed, as well misleading questions or conclusions put as questions.

6.4.21 Can/must a witness produce written or oral testimony, or both?
Solely oral. Affidavits are not admissible, since that are nor envisaged in the list of the means of evidence.

6.4.22 Are there any limits to the facts they can testify about? Explain those limits.
Only about facts he/she has personally perceived, experienced or learned by a third person.

6.4.23 What is the penalty, if any, for the perjury?
The witness will face criminal charge and a criminal penalty.

6.4.24 Are there any rules for evaluating evidence gathered through parties' testimony?
No. Discussed here above.

6.5 Is the cross examination in contradiction with the usual procedural policy of Bulgarian country?
No. Is a practice (Art. 171 CPC).

7 Taking of Evidence

7.1 Is there a mandatory sequence in which evidence has to be taken?
No. Practically, the written evidences are presented and collected first.

7.2 Do parties have to bring the evidence in court, or are the witnesses and experts (or other objects) invited or requested by the court?
Both ways are possible. The parties are under the duty to submit. Expert and witnesses might also present evidences that are not submitted by the party.

7.3 Shall the court determine a deadline when allowing taking of evidence?
As addressed there is a general preclusion. When a court orders an exemption of it, it will also impose a time limit.

7.3.1 Shall the order contain instructions?
There is no rule. However, if the court deems it appropriate, there is no obstacle to include instructions.

7.3.2 What are the consequences regarding the admissibility of evidence if the party does not follow instructions or misses the deadline?
The evidences will be precluded. See the explanation about the general preclusion.

7.3.3 Is the court bound by its decision on evidence, or can it be changed?
It can be changed concerning the relevance and the admissibility (Art. 253 CPC).

7.3.4 Under what condition can evidence be secured before or during the main hearing (e.g. to ensure that the evidence can be taken later, if problems are expected)?
Art. 207-209 CPC. If problems are expected that due to different factual reasons (specific in every case) the evidence might become missing or that their taking will become unusually burdensome, the court at issue collects the evidence. If no proceedings are pending, the district court, where the evidence is, will collects it.

7.4 Rejection of an application to obtain evidence
7.4.1 What reasons does the national law state for rejection of an application to obtain evidence, if any?
If they are inadmissible (i.e. as provided in CPC, some fact are to be proven by a document not by a witness testimony (limitation of witness testimony), there is a time preclusion etc.) or not related to the subject matter of litigation (which is also considered sensu stricto as an inadmissible fact).

7.4.2 Shall the court justify refusal?
It has to ground it for the purposes of a possible appeal.

7.4.3 Shall the court reject an application, if the request was not submitted in time?
Yes. It shall be deemed as limited by the preclusion.

7.4.4 What is the last time to submit an application?
Before the expiry of the respective periods for preclusion (see 1.1.4 supra).

7.4.5 To which extent are the parties obliged to specify the evidence (e.g. state the name of a witness and the claims in respect of which he or she will testify)?
It has to be clear what evidence is to be collected and in concern to what fact.

7.4.6 What is the general status of facts established in other proceedings?
They are irrelevant, if the meaning of the question is that they are proved in other proceedings.

7.4.7 If the facts were established in other proceedings as having legal force, can/must the court reject the application to take evidence relating to these facts?
No.

7.5 The Hearing
7.5.1 Is the evidence taken at the hearing? Does the principle of directness apply?
Yes. It is within the operation of the principle as explained supra.

7.5.2 State the person in Bulgarian national system who can take the evidence.
The judge at charge.

7.5.3 Can the evidence be taken before another person (e.g. another judge or court personnel)?
Yes, before other judge in cases of delegation requests. See 1.5.4. supra.

7.5.4 What are the conditions to take evidence before another person?
See 1.5.4. supra.

7.5.5 Are there any circumstances where the evidence can be taken after the hearing has already ended?
If it is requested to be taken during the hearing. If a new evidence appears after all hearings, it will be collected and assessed by the next instance, or will be possible bases for setting aside the judgment, if the hearing is in the last instance.

7.5.6 Are there any rules in national law on the order of taking different types of evidence?
Yes, the different means of evidence taking (Chapter 14 CPC). When listing the means of evidences, the CPC provides also the specific procedures for each means: examination of witnesses, certification etc.

7.5.7 Presence and participation of the parties
7.5.7.1 Do the parties have a right to be present when the evidence is being taken?
Yes. Otherwise their rights of due and fair process will be imperilled.

7.5.7.2 Do they have an obligation to be present?
No. It is within their discretion similar to as they might decide whether to appear or not before the court

7.5.7.3 What are the consequences of them not being present?
There are no direct consequences. The evidence will be simply collected in their absence and this will be considered in accordance to the law, unless the party proves that his/her right to be presented has been infringed by the court.

7.5.8 Does Bulgarian legal system distinguish between the direct and indirect type of evidence?
Yes. The direct evidence provides a simple conclusion about the fact solely by itself, the indirect provides not a straight conclusion but with connection to other evidences.

7.5.8.1 Does the recorded testimony of a witness or an expert represent a direct or indirect type of evidence?
It will depend on the particular facts: what exactly is aimed to be proven and what exactly does the witness/expert say and how is it related to all other facts in the case.

7.5.8.2 Does the testimony of a witness or an expert by video-link (or similar allowed live communication by IT, e.g. telephone calls, video calls, etc.) represent a direct or indirect type of evidence?
The Ministry of Justice has not arraigned for such facilities yet and correspondingly there are no rules.

7.5.8.3 What sort of technology can be used in Bulgarian legal system to collect live testimony at the distance? Would it be possible to do it abroad without the cooperation of a local court at the place where the witness is?
The Ministry of Justice has not arraigned for such facilities yet and correspondingly there are no rules.

7.6 Witnesses
7.6.1 Shall the court summon the witness or shall the parties bring evidence in the court?
Both ways are possible as stated before.

7.6.2 What procedure shall be followed for summons?
The procedures provided for by CPC for summoning a party: post, court's clerk, private state executor officer, telephone (Art. 47, sec. 8 CPC and Art. 44 CPC). The court will decide which manner is the most appropriate.

7.6.3 Is it necessary for the parties to adduce the written statement before the testimony?
No affidavits are admissible as stated before.

7.6.4 Shall the witness swear an oath?
Yes, as stated before.

7.6.5 Are all the witnesses present at the same time, or are they questioned individually?
Principally individually, however the court might decide differently.

7.6.6 What's an approach towards preparation of witnesses before the hearing – can/must they be prepared by the councils or the parties and to what extent?
There is no rule. Practically, the witnesses are prepared. They should be instructed to give correct, clear and exhaustive answers about the facts they are summoned about – these are the instruction by the court and by the advocates. It is however difficult to prevent to what extent an advocate instructs the witness.

7.7 Expert witnesses
7.7.1 Shall the questions for an expert be given by a judge or by the parties?
Both is possible (Art. 195, sec. 1-2 CPC). As stated before.

7.7.1.1 Is the same procedure being followed when experts or when ordinary witnesses are questioned?
No. They are different means of evidence.

7.7.2 Describe judge's powers and duties in the process of obtaining evidence from expert.
The court might appoint experts on its own motion, if it appears to the judge that an expert opinion is necessary for the proper consideration of the fact already introduced

by the party, although the party does not request an appointment of an expert (Art. 195, sec. 1-2 CPC). During the course of examinations, the court might freely intervene and question parties, witnesses and expert. The latter is confined to the authority of the court to put questions for clarifications about the facts.

7.7.3 Describe delivering party's powers and duties in the process of obtaining evidence from expert.
To introduce materials, make requests, to question the expert and deliver opinions.

7.7.4 Describe opposing party's powers and duties in the process of obtaining evidence from expert.
To introduce materials, make requests, question the expert and deliver opinion.

7.7.5 Can/must an expert produce written or oral opinion, or both?
Both. The rule is to produce written, but in the hearing he/she might produce for first time oral.

7.7.6 Are experts selected from a list of registered experts, which is kept by the court or some other institution and which institution?
By the court based on the list of registered expert. Only if there is no registered expert with the appropriate knowledge the court on its own motion or/and advised by the parties researches for an expert not in the list.

7.7.7 Are there different rules governing the taking of evidence from an expert appointed by the court and an expert appointed by the parties?
No experts appointed by the parties are envisaged.

7.7.8 Can the parties present private expert report as evidence?
It is not admissible, since no witness testimony are admissible and private expert reports are not listed as means of evidence.

7.7.9 Who pays for the expert's expenses? When?
The party who bears the burden of proof. He/she advances a deposit.

7.7.10 Do parties have a right to reject one and propose another expert?
Yes, this is within the meaning of due and fair process. However this must be well grounded.

7.7.11 Is the judge bound by the content of written evidence in general?
No. He/she is free to evaluate it in relation to the other evidences and acts of the parties.

7.7.12 How about by the written expert opinions?
The same – it is to be evaluated by the judge.

8 Costs and Language

8.1 Costs

8.1.1 Which expenses are covered under the term "legal expenses" according to Bulgarian legal system?
Court costs, expert's fees, cost concerning taking other evidences (if any – translations, travel expenditures in cases of inspections etc.), counselor's fees (Art. 78 CPC).

8.1.2 Which party has to pay for expenses resulting from taking of evidence?
The party that required their taking.

8.1.3 Shall the payment for these expenses be made in advance, before the evidence is being taken? Regarding what types of evidence? What are the rules regarding payment of taking evidence ex officio?
Yes, as a deposit concerning all types of evidence. In ex officio evidence taking the cost will be advanced by the party, which bears the burden of proof: they may apply for legal aid if qualified, or the evidence will be not collected.

8.1.4 What does the compensation for appearance of a witness before a court include (e.g. traveling costs)?
Solely traveling costs.

8.1.5 How are specific amounts of the compensation specified (e.g. in terms of kilometers, number of days, etc.)?
Terms of kilometers.

8.1.6 Which costs, if any, are to be paid by the requesting court, if an expert is appointed in the proceedings?
Fees and expenditures.

8.1.7 Which costs, if any, are to be paid by the requesting court, if an interpreter is appointed in the proceedings?
Fees and expenditures.

8.1.8 Are there any circumstances where the procedural expenses must be paid by the requesting court due to special procedure or technology in accordance with provisions of Regulation 1206/2001?
If such a technology or procedure are required and they cause expenditures.

8.1.9 Would costs have to be paid in advance, or reimbursed later?
In advance (Art. 160 sec. 2 CPC), under the conditions of Reg. 1206/2001.

8.2 Language and Translation

8.2.1 Do the courts have to use professional accredited interpreters, or do they rely on the parties or their counsel?
If the judge has no sufficient knowledge of the foreign language, he/she will request for professional interpretation (Art. 185 CPC).

8.2.2 Do all the documents used in the proceedings have to be translated into Bulgarian official language by a sworn interpreter?
No, only if the judge has no sufficient knowledge of the foreign language.

8.2.3 Is an interpreter always appointed when a witness is being questioned? What if the witness renounced her right to interpretation?
Always (Art. 4, sec. 2 CPC). No violations of the human rights and general freedoms are admissible.

8.2.4 Who shall cover costs of the interpretation?
The party that requests the witness.

8.2.5 Is an interpreter appointed when the requested court is taking evidence directly using VCF?
It should be in the light of the above stated.

9 Unlawful Evidence

9.1 Is there, in Bulgarian legal system of civil and commercial litigation, a distinction between "illegally obtained evidence" and "illegal evidence"?
No. This is a result of the concept before 1989 – the material truth is to be fully revealed in the civil cases. There has been no practical problems so far. Of course, we are talking about civil cases, since in the criminal law the matters are completely different – no evidence, that is collected in violation of the rules provided for in the Code on Criminal Procedure is a valid evidence in criminal cases.

9.2 If there is no legal rule, is there normative solution establishing the illegality of the mean of obtaining evidence?
No. As to my knowledge, such requests has not been addressed to the courts. Usually, obtaining an evidence illegally is equal to a crime and probably this is the real reason why this matter has not gained any significance.

9.3 If there is a legal concept or definition of "illegal evidence" state the rule and explain it referring.
There is no such a concept. See above.

9.4 If there is no such legal rule, is there any normative solution establishing the illegality of evidence?
No. See right above.

10 Table of Authorities

The Ministry of Justice; International Legal Cooperation and European Affairs Directorate, Telephone: (+359 2) 9237413, Fax: (+359 2) 9809223; Address: Ul. Slavianska 1, 1040 Sofia, Bulgaria.

Request for evidence taking are to be send directly to the District Court within which territorial competence is the evidence (Art. 617 CPC).

11 Table of Cases

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Part II - Synoptical Presentation

1 Synoptic Tables

1.1 Ordinary/common civil procedure timeline

Phase #	Name of the Phase Name of the Phase in National Language	Responsible Subject	Duties of the Responsible Subject (related only to Evidence) and Consequences of their Breach	Rights (related only to Evidence) of the Responsible Subject
1	Lodging of statement of claim Искова молба подаване	claimant	To introduce the facts and the evidenced, otherwise preclusion of introduction and submission will apply. All written evidences are to be submitted, otherwise preclusion to submit wily apply.	To request appointing of experts; and delivery of evidences from the other party or from a third party.
2	Answer to the claim Отговор на иска	defendant	To introduce the facts and the evidenced, otherwise preclusion of introduction and submission will apply. All written evidences are to be submitted, otherwise preclusion to submit wily apply.	To request appointing of experts; and delivery of evidences from the other party or from a third party.
3	Closed session Закрито заседание по подготовка на делото	court	Draft its report.	Admits all the evidences to which there are no obstacle to be admitted at this stage, i.e. uncontested documents.
4	First hearing Първо заседание по делото	claimant; defendant; court	Submission of developed opinions by the parties; report of the case by the court; admission of evidences, final requests or introductions and application of the preclusion of further facts	See 1.1.4.

			and evidences. Facts and evidences might be introduced after the preclusion, if it is fair and just – (i) the party has omitted to introduce them due to obstacles which are unpredictable and unpreventable for the reasonable man (*force majeure)*, or if they are new – (ii) the party was not able to discover them earlier with reasonable endeavour and due diligence, or they are newly came into being. Taking of evidences – if all the evidences are collected and there is no need for further taking the case is moved to oral pleadings and the court proceed to granting the judgment.	
5	Hearings заседания	claimant; defendant; court	Only if further hearing are needed for evidence taking.	According to the evidence taking and the means of evidence at issue.
6	Final hearing Последно заседание	claimant; defendant; court	Concluding of the evidence taking oral pleadings.	According to the evidence taking and the means of evidence at issue.
7	Appeal Въззивно производство	claimant; defendant; court	facts and evidences might be introduced after the preclusion, if it is fair and just – see above.	According to the evidence taking and the means of evidence at issue. See above
8	Cassation Касационно производство	claimant; defendant; court	facts and evidences might be introduced after the preclusion, if it is fair and just – see above.	According to the evidence taking and the means of evidence at issue. See above.

1.2 Basics About Legal Interpretation in Bulgarian Legal System

There is no protocol for interpretation of substantive legal rules.

1.3 Functional Comparison

1.3.1

Legal Regulation / Means of Taking Evidence	National Law	Bilateral Treaties	Multilateral Treaties	Regulation 1206/2001
Hearing of Witnesses by Mutual Legal Assistance (Legal Aid)	There is no difference. The judge will simply follow the national procedure provided in the CPC and take account of the particular specifics of the international treaties, or respectively apply Regulation 1206/2001. As mentioned, the Ministry of Justice has not ensured the material basis for video examinations.			
Hearing of Witnesses by Video-conferencing with Direct Asking of Questions				
Direct Hearing of Witnesses by Requesting Court in Requested Country				

1.3.2

Legal Regulation / Means of Taking Evidence	National Law	Bilateral Treaties	Multilateral Treaties	Regulation 1206/2001
Hearing of Witnesses by Mutual Legal Assistance (Legal Aid)	There is no difference. The judge will simply follow the national procedure provided in the CPC and take account of the particular specifics of the international treaties, or respectively apply Regulation 1206/2001. As mentioned, the Ministry of Justice has not ensured the material basis for video examinations.			
Hearing of Witnesses by Video-conferencing with Direct Asking of Questions				
Direct Hearing of Witnesses by Requesting Court in Requested Country				

Evidence in Civil Law – Bulgaria
Petar Bonchovski

Part III – Case Based Part

1. Requesting court asks Bulgarian court to take evidence by use of video-conference.

As mentioned, the Ministry of Justice has not ensured the material basis for video examinations. There is no practice and no regulation. Correspondingly, there questions cannot be referred to.

1.1 What if the requesting court is from a non-Member State for which no bilateral or multilateral treaty can be applied?

1.2 What if the requesting court is from Denmark?

2. The requested court is taking evidence by hearing of witnesses by use of VCF with the requesting court. The requesting court indicated that they want to ask questions on their own. As in some countries the parties cannot directly address witnesses, can the judge in the requesting country allow the parties to directly address the witnesses in the requested country? Answer this from the perspective of requested country!

3. How would a judge in Bulgarian country establish identity of a person who is refusing to show her face on a basis of religious (or similar) customs?

There is no exception. A private room and a person of the same gender will be enusured.

4. What are the powers/duties of requesting judge to intervene during the hearing by VCF in cases of violation of mandatory rules, public policy/ordre public or discipline in courtroom?

5. What are the powers/duties of requested judge to intervene during the hearing by VCF in cases of violation of mandatory rules, public policy/ordre public or discipline in courtroom?

6. The witness mentions that she has some important documents or objects while testifying. Do the parties have to request such documents (or objects) to be included into evidence or can the judge do it on its own motion or are there any preclusions applicable to such case?

The general preclusion (see. 1.1.4.). The parties have to request submission.

7. A person asks the court to secure evidence for a contemplated judicial proceeding. Is this possible?

Yes. It is thoroughly adressed above.

7.1 Would it be different if that request is made by the court in a different Member State under regulation 1206/2001? Answer from the perspective of requesting and requested court!

No. There are no grounds these requests to be treated differently, excluding the application of the rules of the Regulation.

7.2 Would it be different if the request comes from a Non-Member State?

No. There are no grounds these requests to be treated differently.

8. A document is sent, but the party is already precluded to do so. However, the judge is now acquainted with it and it is possibly creating a prejudice. What are the consequences in Bulgarian legal system?

It will be reason for an appeal, if the documents has actually been considered by the judge.

9. Person A calls person B who puts her on speaker phone in presence of person C. Will the testimony of person C be admissible as evidence? Would there be a difference if person C is a legal representative of person B?

It will be admissible, since this is considered a normal conversation (you never know who is listening to occasionally), unless C explicitly states that the conversation is private – this will be considered as not bona fides act and thus unlawful and against the general rule that nobody could derive rights from its unlawful acts; No.

9.1 If person B recorded the conversation, would such recording be admissible? Would there be a difference if person C recorded the conversation?

Yes. No.

9.2 What would be the consequences of person A's consent to (a) speaker phone mode in presence of person C; (b) recording by person B; or (c) recording by person C?

a) no matter; b) and c) it will be clear that the conversation is not private.

10. Person A attaches a stealth recording device or software to person B's cell phone. Would the recordings be admissible as evidence?

Since this is a crime, there are no such requests for evidence taking. I would suggest that the court will not admit such an evidence in civil proceedings due to the jeopardy to the constitutional principle that nobody is to be recorded without his/her consent.

10.1 Would it make a change if person B's cell phone is registered as belonging to person A?

No. How this changes the matter?

10.2 Would it make a change if person B's cell phone is owned by B's employer A? Would it be different if person A explicitly restricted B's use of cell phone to professional use?

No. The responsibility to the employer and the Employers Act is a different matter.

11. Person A steals person B a letter from person X. Can person A use such letter as evidence?

No, if there is a steal the letter must be returned to B in which discretion is to use the letter or not.

11.1 Would there be a difference if person A just makes a copy of the letter?

No. It is just a copy of the letter and cannot have more significance than the original.

11.2 Would there be a difference if person A finds such letter by accident?

No. This is also considered a steal, if the letter is not returned to the owner.

11.3 Would there be a difference if person A finds such letter in a garbage bin?

No. This will be considered as too wide intrusion in the private life.

12. What are the consequences of accidental e-mail forwarding as to the admissibility of such correspondence as evidence? Would there be a difference if the forwarded e-mail contained a disclaimer interdicting its use by persons other than its proper addressee.

Such an E-mail is not admissible, since the E-mail is equal to a letter.

12.1 Is the addressee of the correspondence able to use it as evidence if it contains a disclaimer banning its use for such purpose?
It is able. There is only a moral sanction.
13. Person A took a polygraph testing for the purpose of police investigation. Are the results of such testing admissible in a civil case if presented by person A? What if the opposite party in the civil procedure suggests the court to obtain such results from the police or a criminal case?
The results are inadmissible. Polygraph tests are uncertain and rather easy to be manipulated.
13.1 Would a self-ordered polygraph test by certified commercial provider be admitted as evidence? Can such certified commercial provider later be summoned to testify as a witness in a civil case about the test?
No to all. See right above.
13.2 Company A performed routine alcohol test on their employees. Would results be admissible as evidence?
No.
13.3 Would it be different if performed by an authority for health and safety?
Yes. If the authority is empowered by the state to perform such tests.
13.4 Would it be different if performed by third outsourced impartial certified person (e.g. medical personal)? Yes.
13.5 Would it be different if it was a polygraph testing?
See above.
14. Would recordings of stealth CCTV at the workplace be admissible as evidence? Would it be different if it recorded video and audio? Would it be different if it wasn't stealth?
Record of stealth CCTV are not admissible due to perils for rhe violation of the right of privacy. Only if the record is made with the consent of the recorded person, it will be admissible.
14.1 Would the rightful owner of legal CCTV recording be obliged to make it available at the court's request in civil or commercial cases? Would the court be able even to ask for it?
Yes, it will be considered as a regular material evidence.
15. To what extend the personal information collected from social networks can be used as evidence?
As long as it is provided directly and voluntarily to the person that introduces it in the court, i.e. pictures are downloaded via accepted friendship request.
16. Are the DNA tests coercively enforceable for family cases within Bulgarian legal system? What about in other civil and commercial cases?
Yes. Art. 333 CPC: the test is to be imposed coercively in appropriate manner if the party refuses voluntarily.
16.1 The requested court obtains evidence from a witness by coercive measures not allowed in requesting country. Would evidence be admissible (answer from the perspective of requesting country)?
Yes, within the meaning of Reg. 1206/2001, if there is no violation of the national rules of public order.

16.2 What if the requesting country asks for coercive measures to be applied against a witness that are not allowed in the requested country (answer from the perspective of requested country)?

Not admissible, unless envisaged in the requested country.

17. A court in Member State A conducts criminal proceedings. The injured party claims damages on which the court decides within an adhesive procedure. In connection with the amount of property damage it is necessary to examine a witness in a Member State B, where the injured party was employed prior to the occurrence of the damaging event.

17.1 Does the concept of adhesive procedure exist in Bulgarian legal system?

Yes. A civil claim might be joined to a criminal procedure.

17.2 Can the Regulation 1206/2001 be applied concerning the taking of this evidence? Answer from the perspective of Member State B!

There should be no obstacle, if the requested party agrees. However, it is not easy the evidences related to the crime, to be separated from these related to the tort/civil matter.