



Project **DEECP**: JUST/2011-2012/JCIV/AG/3434
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Faculty of Law, University of Maribor
With financial support from the Civil Justice/Criminal Justice
Programme of the European Union

Questionnaire for National Report

Authors



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Guidelines to Authors

The following guidelines provide details about the general outline for preparing your national report. Our and also practical interest is with our academic work to contribute to creation of a wider system of European civil procedure.

The structure of the report does not necessarily have to follow the list of questions below. The questions raised there should be dealt with somewhere, but authors are free to decide where this will be suitable. However, sticking more or less to the structure of the questionnaire will make it easier to compare the various jurisdictions.

The list of questions is not regarded to be a conclusive one. It may well be that we did not think of certain issues that are important aspects in some jurisdictions. Please include such issues where suitable. You should also include your personal evaluation or opinion about the national system.

Please give representative reference to court decisions and literature. Please try to illustrate important issues by giving examples from court practice. If possible, please include empirical and statistical data.

Please, do not repeat the full questions in your text.

It is necessary to use scientific instruments (revealed comparative overview of the works of other domestic authors, presented relevant methodological instruments, critical analysis of presented findings, the appropriate number of sources, citations, etc) for the work to meet the criteria of scientific monographs.

As regards the headings of chapters for each national report, please, do not repeat the questions from the questionnaire in text. The text should not be written as an answer, but should instead be in the form of a scientific article, consisting of paragraphs.

Every national report should include table of contents and bibliography.

Further instructions for contributors:

Authors are responsible for ensuring that their manuscripts conform to the scientific monograph style and are in good language.

Kluwer Law International has adopted the Association of Legal Writing Directors (ALWD) legal citation style to ensure uniformity, which is becoming increasingly critical for content that appears online. Below are some examples of common citation (for detail instructions see and please follow http://www.kluwerlaw.com/NR/rdonlyres/1BDFB2D4-2D0D-46BC-88D8-85DC88673A05/1699/KLI_House_Style_31.pdf).

BOOKS

The full citation to a treatise, book or other non-periodic work may contain up to eight components.



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Author, ●Title●Pinpoint reference(s)●(Editor [if any]●, Translator [if any]●, Edition [if any]●,
Publisher●Date).

Example:

Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure vol. 7A, § 1758,
114-115 (3d ed., West 2005).

PERIODICALS

Citations to articles in journals, law reviews, newspapers, newsletters, and other periodicals typically contain seven components.

Author, ●Title,●Volume number●Periodical abbreviation●Initial page●, Pinpoint page●(Date).

Example:

L. Ray Petterson, Legal Ethics and the Lawyer's Duty of Loyalty, 29 Emory L.J. 909, 915 (1980).

ELECTRONIC SOURCES

A full citation to an internet site contains six components.

Author or Owner, ●Title,●Pinpoint reference [if available]●, URL●(Access or update information●Exact date).

Example:

ABA Ctr. for Hum. Rights, Rule of Law Letter History,
<http://www.abanet.org/humanrights/projects/roll/history.html> (accessed 5 Sept. 2009).

CASE LAW

Cases should be compiled in a reference table. A full citation for a case may contain as many as nine components. However, some citations will contain fewer components.

Case Name, ●Reporter volume●Reporter abbreviation●Initial page●, Pinpoint page●(Court abbreviation●Date),●Subsequent history citation [if any].

Example:

N.Y. Times Co. v. Sullivan, 144 So. 2d 25, 40-41 (Ala. 1962), rev'd, 376 U.S. 254 (1964).

INTERNATIONAL LEGISLATION

Legislation should be compiled in a reference table, including: legislation, treaties, and conventions.

International legal material has four components.

Title●Pinpoint reference●(Exact date)●, Source.



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Example:

Treaty of Peace between the Allied and Associated Powers and Austria pt. XII, art. 372 (10 Sept.1919), T.S.
No. 8.



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 your law know the principles by these names and in what extension do they exist in your legal system? If no, how does your law understand autonomy of parties in the process and the limitations of their autonomy?
- 1.1.2 Please 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?
- 1.1.3 What is the definition of the principle in your legal system?
- 1.1.4 To Preclusions (eventual maxim/maxima eventualis). What limitations of introduction of new facts and evidence exist in your legal system?
- 1.1.5 To what extent is the court bound by the party submissions regarding the means of evidence?

1.2 The adversarial and inquisitorial principle

- 1.2.1 Does your law know the principles by these names and in what correlation do they exist in your legal system? If no, who in your law is in principle charged to collect evidence materials (e.g. the parties or the court or both)?
- 1.2.2 What is the definition of the principle in your national system?
- 1.2.3 Is the court allowed or empowered to decide to take evidence other than the one submitted by the parties?
- 1.2.4 What is the role of a judge in your legal system? The concept of substantive and procedural guidance of proceedings - direction of main hearing¹ as a principle familiar to your legal system? Does in your system the judge prepare the list of references and in which phase of the procedure (in connection with substantive governance)?
 - 1.2.4.1 If yes, please explain in which phases of the procedure is applicable?
 - 1.2.4.2 What are the consequences of the preclusion ?

¹ English translation of ZPP.



1.3 Hearing of both parties principle (audiatur et alter pars) – contradictory principle

- 1.3.1 Does it exist in your legal system?
- 1.3.2 If yes, please explain how far it goes?
- 1.3.3 What is the definition of the principle in your legal system?
- 1.3.4 Right to be heard – What kind preparatory acts may parties do before the hearing?
 - 1.3.4.1 Right to present evidence (submission of evidence, presence in taking of evidence, hearing of the parties) – Please explain the basic rights and obligations that parties have?
 - 1.3.4.2 Are there any exceptions to this principle (decisions of the court without the hearing of the opposite party, preclusions)?
 - 1.3.4.3 What are the means for party if this right is violated?
- 1.3.5 Right to equal treatment (the same decision in the same cases) – Please explain what is the meaning of this principle in your system?
- 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?)

1.4 Principle of orality - right to oral stage of procedure, principle of written form

- 1.4.1 Is in your legal system the right to oral stage of procedure raised to the level of general principles?
- 1.4.2 What is the definition of the principle in your legal system?
- 1.4.3 What is the correlation between the oral and written form of procedural acts?
- 1.4.4 If the principle of orality is dominant within your legal system, how is it balanced with the principle of written form?
- 1.4.5 If the principle of written form is dominant within your legal system, how is it balanced with the principle of orality?

1.5 Principle of directness

- 1.5.1 Does it exist in your legal system?
 - 1.5.1.1 If yes, please explain what does it mean?
- 1.5.2 What is the definition of the principle in your legal system?
- 1.5.3 What does this principle apply to?
- 1.5.4 Are there any exceptions to this principle?
 - 1.5.4.1 If yes, what are the limits of such exceptions?
- 1.5.5 Can appellate courts take evidence?
 - 1.5.5.1 If yes, is it normal or exceptional?



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1.5.6 To what extent are the appellate courts allowed to evaluate evidence?

1.6 Principle of public hearing

1.6.1 Does it exist in your legal system?

1.6.1.1 If yes, please explain what does it mean?

1.6.2 What does this principle apply to?

1.6.3 What is the definition of the principle in your legal system?

1.6.4 Are there any exceptions to this principle?

1.7 Principle of pre-trial discovery

1.7.1 Does it exist in your legal system? If yes, please explain what does it mean?

1.7.2 What does this principle apply to?

1.7.3 What is the definition of the principle in your legal system?

1.7.4 Are there any exceptions to this principle?

1.8 Are there any other general principles in your legal system? Please explain?



2. General principles of evidence taking

2.1 Free assessment of evidence

- 2.1.1 Does it exist in form of fundamental principle in your legal system?
- 2.1.2 If yes, please explain its meaning and scope?
- 2.1.3 If no, please explain your rules for assessment of evidence
- 2.1.4 Are courts bound by the party's dispositions or not?
- 2.1.5 How does that effect the assessment of evidence?
- 2.1.6 Does your legal system provide certain methodological guidance for judge to apply free assessment of evidence?
- 2.1.7 Does your legal system regulate any formal rules for assessment of evidence?
- 2.1.8 What is the definition of the principle in your legal system?

2.2 Relevance of material truth

- 2.2.1 Does a principle of material truth exist in your legal system?
 - 2.2.1.1 If yes, please explain the scope of the principle.
 - 2.2.1.2 If no, please explain what are the guarantees in fact finding process regarding its correctness
- 2.2.2 What are the limitations, if any, of establishing the material truth in your legal system (protection of secrecy, privacy)?
- 2.2.3 Are there any limitations in selection of evidence?
 - 2.2.3.1 Which are provisions in your 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)
- 2.2.4 Does your legal system regulate a limitation of the right to propose new facts and evidence (*ius novorum*)?
 - 2.2.4.1 If yes, please explain how is it regulated?
- 2.2.5 What are the standards of material truth?

2.3 Are there any other general principles regarding evidence taking in your legal system? Please explain?



3. Evidence in general

3.1 Are certain methods of proof stronger than others?

3.2 Does any formal rule of evidence exist in your country?

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

3.4 Means of proof

3.4.1 Are means of evidence provided or listed in the national legal system?

3.4.1.1 If yes, does numerus clausus principle apply?

3.4.2 List means of proof in your legal system (specifically stated in legal acts or found in practice).

3.4.3 Are certain means of evidence excluded from the possible modes of proof?

3.4.4 Do parties' statements count as evidence?

3.4.4.1 If parties can testify, are there any constraints to their capability of testifying (underage? Disability?)?

3.4.5 Who can ask/request for a party testimony?

3.4.6 Are there any limits to the facts they can testify about?

3.4.7 If yes, what are the limits?

3.4.8 Can a party refuse to testify?

3.4.9 If a party can refuse to testify, what are the admissible grounds for the refusal?

3.4.10 Who evaluates the legality of such claim?

3.4.11 If the refusal to testify is considered unlawful, what are the consequences, if any?

3.4.12 Are testifying parties under oath?

3.4.13 What is the penalty, if any, for perjury?

3.4.14 Are there any rules for evaluating evidence gathered through parties testimony? If yes, please specify.

3.5 Is it necessary for certain facts to be proven by formally prescribed type of evidence?

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?

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 than others?

3.7.2 If yes, is this a formal rule or just logical persuasiveness?

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?

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

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)? If yes, state which these procedures are and what kind of proof is required!



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- 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? If yes, state which these procedures are and what kind of proof is required!
- 3.8 Is there a duty for parties to produce or deliver evidence? What are the consequences for breach?**
- 3.9 Is there a duty for third persons to deliver evidence? What are the consequences for breach?**
- 3.10 Explain the value of judicial and administrative decisions as evidence?**



4. General rule on the burden of proof

- 4.1 What is the main doctrine behind burden of proof rules in your national legal system?**
- 4.2 What are the proof standards in your legal system?**
- 4.3 Are there any rules in your legal system which exempts certain facts from the burden of proof (recognized facts, well known facts)?**
- 4.4 In what extent is the duty to contest specified facts and evidence regulated in your legal system?**
- 4.5 Does your legal system recognize a doctrine of iura novit curia?**
- 4.5.1 If yes, please explain the meaning in your legal system!
- 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?**
- 4.7 Do the courts have means to induce parties to elaborate on claims and express an opinion on any factual or legal matter?**
- 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)?
- 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?**
- 4.8.1 If a party does not comply with the court's request for production of evidence, what are the consequences foreseen in your 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)?
- 4.9 May a court collect evidence on its own initiative in civil cases (eg. for the protection of the public interest or in family matters)?**
- 4.9.1 If yes, please explain for what reasons or in which matters?
- 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?**
- 4.10.1 If yes, please explain the condition and in which phase of the procedure is this possible?
- 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?**



5. Written evidence

5.1 What is a concept of a document in your legal system?

- 5.1.1 Is a video or audio recording considered to be a document within your legal system?
- 5.1.2 What kind of electronic documents are recognized in your legal system?
 - 5.1.2.1 What is their probative value?
 - 5.1.2.2 Is an electronic version of a document considered to be equivalent to a document in your legal system?
- 5.1.3 What kind of electronic signatures are recognized in your legal system?
 - 5.1.3.1 What is their probative value?
- 5.1.4 Are there any other objects equivalent to written evidence recognized within your legal system?
 - 5.1.4.1 What is their probative value?

5.2 Are there any documents for which a presumption of correctness exists?

- 5.2.1 Which are these documents?
- 5.2.2 How can such documents be contested as evidence?
- 5.2.3 Can a judgment be rendered on basis of such documents only?
- 5.2.4 What is the weight of private documents as evidence?
- 5.2.5 Are there different categories of private documents in the perspective of evidence? If yes, which?
- 5.2.6 What if such documents are contested by the other party?

5.3 Does the law draw distinction between the evidential (probative) value of public and private documents?

5.4 How is the written evidence taken – does it need to be read at the hearing?

- 5.4.1 How can the court obtain written evidence, if parties are unable to do so?
- 5.4.2 Is there an obligation of the parties to produce evidence?
- 5.4.3 Is it necessary for documents to be produced in their original version?



6. Witnesses

6.1 Are witnesses obliged by law to testify?

6.2 Are witnesses in proceedings summoned by court or is it up to the parties to assure the presence of witnesses in court?

6.3 Can a witness refuse her role as a witness?

6.4 If yes, does she have to appear in court anyway or can she just notify the court about her refusal?

6.4.1 If yes, what is the discretion of court to decide upon this issue?

6.4.2 If yes, can the interested party contest such refusal?

6.4.3 Are there certain persons who are deemed to be unfit to be a witness?

6.4.3.1 If yes, which are these persons?

6.4.3.2 What if such a person is summoned in court or called by parties anyway?

6.4.4 Does a privilege against self-incrimination exist in your law and what does it mean?

6.4.5 In which cases can the witnesses refuse to give evidence?

6.4.5.1 Are these cases enumerated in law or is it decided on a case by case basis?

6.4.5.2 What kind of discretion does a court have in assessing the grounds for refusal?

6.4.6 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?

6.4.7 What kind of secrets (e.g. business, state, military etc.) are recognized in your law and can affect the taking of evidence?

6.4.8 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?

6.4.8.1 What if such a company is a holder of concession or public service, would there be a difference?

6.4.8.2 What if it is a public law entity?

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

6.4.10 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?

6.4.10.1 Are there principles or values that can out-balance this privilege?

6.4.10.2 Can such excuse be contested by parties?

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



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- 6.4.11.1 Are there principles or values that can out-balance this privilege?
 - 6.4.11.2 Can such excuse be contested by parties?
 - 6.4.12 A medical doctor refuses to testify about certain facts regarding his patient. Will the court accept such excuse?
 - 6.4.12.1 Are there principles or values that can out-balance this privilege?
 - 6.4.12.2 Can such excuse be contested by parties?
 - 6.4.13 An attorney at law (advocate) refuses to testify about certain facts regarding his client. Will the court accept such excuse?
 - 6.4.13.1 Are there principles or values that can out-balance this privilege?
 - 6.4.13.2 Can such excuse be contested by parties?
 - 6.4.14 Are there any other legal professions that can rely upon same privilege?
 - 6.4.15 Can a witness be forced to take an oath?
 - 6.4.16 Can a witness refuse to testify under oath?
 - 6.4.17 What are the consequences of such refusal?
 - 6.4.18 Obtaining evidence from witnesses
 - 6.4.19 Describe judge's powers and duties in the process of questioning.
 - 6.4.20 Describe delivering party's powers and duties in the process of questioning.
 - 6.4.21 Describe opposing party's powers and duties in the process of questioning.
 - 6.4.22 Can/must a witness produce written or oral testimony, or both?
 - 6.4.23 Are there any limits to the facts they can testify about? If yes, explain those limits.
 - 6.4.24 What is the penalty, if any, for the perjury?
 - 6.4.25 Are there any rules for evaluating evidence gathered through parties' testimony? If yes, please specify.
- 6.5 Is the cross examination in contradiction with the usual procedural policy of your country?**



7. Taking of evidence

7.1 Is there a mandatory sequence in which evidence has to be taken?

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?

7.3 Shall the court determine a deadline when allowing taking of evidence?

7.3.1 Shall the order contain instructions?

7.3.2 What are the consequences regarding the admissibility of evidence if the party does not follow instructions or misses the deadline?

7.3.3 Is the court bound by its decision on evidence, or can it be changed?

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)? How?

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?

7.4.2 Shall the court justify refusal?

7.4.3 Shall the court reject an application, if the request was not submitted in time?

7.4.4 What is the last time to submit an application?

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)?

7.4.6 What is the general status of facts established 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?

7.5 The Hearing

7.5.1 Is the evidence taken at the hearing? Does the principle of directness apply?

7.5.2 State the person in your national system who can take the evidence.

7.5.3 Can the evidence be taken before another person (e.g. another judge or court personnel)?

7.5.4 What are the conditions to take evidence before another person?

7.5.5 Are there any circumstances where the evidence can be taken after the hearing has already ended?

7.5.6 Are there any rules in national law on the order of taking different types of evidence?

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?

7.5.7.2 Do they have an obligation to be present?

7.5.7.3 If yes, what are the consequences of them not being present?

7.5.8 Does your legal system distinguish between the direct and indirect type of evidence?

7.5.8.1 If yes, does the recorded testimony of a witness or an expert represent a direct or indirect type of evidence?



7.5.8.2 If yes, 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?

7.5.8.3 What sort of technology can be used in your 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?

7.6 Witnesses

- 7.6.1 Shall the court summon the witness or shall the parties bring evidence in the court?
- 7.6.2 What procedure shall be followed for summons?
- 7.6.3 Is it necessary for the parties to adduce the written statement before the testimony?
- 7.6.4 Shall the witness swear an oath?
- 7.6.5 Are all the witnesses present at the same time, or are they questioned individually?
- 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? If yes, to what extent?

7.7 Expert witnesses

- 7.7.1 Shall the questions for an expert be given by a judge or by the parties?
- 7.7.2 Is the same procedure being followed when experts or when ordinary witnesses are questioned?
- 7.7.3 Describe judge's powers and duties in the process of obtaining evidence from expert.
- 7.7.4 Describe delivering party's powers and duties in the process of obtaining evidence from expert.
- 7.7.5 Describe opposing party's powers and duties in the process of obtaining evidence from expert.
- 7.7.6 Can/must an expert produce written or oral opinion, or both?
- 7.7.7 Are experts selected from a list of registered experts, which is kept by the court or some other institution? If yes, which institution?
- 7.7.8 Are there different rules governing the taking of evidence from an expert appointed by the court and an expert appointed by the parties?
- 7.7.9 Can the parties present private expert report as evidence?
- 7.7.10 Who pays for the expert's expenses? When?
- 7.7.11 Do parties have a right to reject one and propose another expert?
- 7.7.12 Is the judge bound by the content of written evidence in general?
- 7.7.13 How about by the written expert opinions?



8. Costs and language

8.1 Costs

- 8.1.1 Which expenses are covered under the term “legal expenses” according to your legal system?
- 8.1.2 Which party has to pay for expenses resulting from taking of evidence?
- 8.1.3 Shall the payment for these expenses be made in advance, before the evidence is being taken? If yes, regarding what types of evidence? What are the rules regarding payment of taking evidence *ex officio*?
- 8.1.4 What does the compensation for appearance of a witness before a court include (e.g. traveling costs)?
- 8.1.5 How are specific amounts of the compensation specified (e.g. in terms of kilometers, number of days, etc.)?
- 8.1.6 Which costs, if any, are to be paid by the requesting court, if an expert is appointed in the proceedings?
- 8.1.7 Which costs, if any, are to be paid by the requesting court, if an interpreter is appointed in the proceedings?
- 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?
- 8.1.9 Would costs have to be paid in advance, or reimbursed later?

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?
- 8.2.2 If yes, do all the documents used in the proceedings have to be translated into your official language by a sworn interpreter?
- 8.2.3 Is an interpreter always appointed when a witness is being questioned? What if the witness renounced her right to interpretation?
- 8.2.4 Who shall cover costs of the interpretation?
- 8.2.5 Is an interpreter appointed when the requested court is taking evidence directly using VCF?



9. Unlawful evidence

9.1 Is there, in your legal system of civil and commercial litigation, a distinction between “illegally obtained evidence” and “illegal evidence”?

9.1.1 If yes, please deliver the concept or definition of “illegally obtained evidence” stating the rule and explain it referring:

9.1.1.1 To the legal/constitutional right(s) or other legal values it protects;

9.1.1.2 What means of obtaining evidence (by showing examples or defining a category) are prohibited;

9.1.1.3 What means of evidence it applies to;

9.1.1.4 The consequences for the presenting party;

9.1.1.5 Its admissibility in civil and commercial proceedings

9.1.1.6 If your system acknowledges the balance of interest solution, please clarify in as much detail as possible all pertinent concepts and scope.

9.1.1.7 Once admitted, are there any limits to the court’s evaluation of the evidence?

9.2 If there is no legal rule, is there normative solution establishing the illegality of the mean of obtaining evidence?

9.2.1 If yes, please state the normative solution and explain it referring:

9.2.1.1 The nature and hierarchy of the author of the solution and the effects (*erga omnes* or otherwise) of it;

9.2.1.2 To the legal/constitutional right(s) or other legal values it protects;

9.2.1.3 What means of obtaining evidence (by referring to case-law or defining a category) are prohibited;

9.2.1.4 What means of evidence it applies to;

9.2.1.5 The consequences for the presenting party.

9.2.1.6 Once admitted, are there any limits to the court’s evaluation of the evidence?

9.3 If there is a legal concept or definition of “illegal evidence” state the rule and explain it referring:

9.3.1 To the legal/constitutional right(s) or other legal values it protects;

9.3.2 What means of evidence (by showing examples or defining a category) may be considered illegal under the provision;

9.3.3 The consequences for the presenting party;

9.3.4 If the illegal evidence is to be admitted, under what circumstances is it possible?

9.3.5 If your system acknowledges the balance of interest solution, please clarify in as much detail as possible all pertinent concepts and scope.

9.3.6 Once admitted, are there any limits to the court’s evaluation of the evidence?



9.4 If there is no such legal rule, is there any normative solution establishing the illegality of evidence?

- 9.4.1 If yes, please state the normative solution and explain it referring;
- 9.4.2 The nature and hierarchy of the author of the solution and the effects (erga omnes or otherwise) of it;
- 9.4.3 To the legal/constitutional right(s) or other legal values it protects;
- 9.4.4 What means of evidence it applies to;
- 9.4.5 The consequences for the presenting party;
- 9.4.6 If the illegal evidence is to be admitted, under what circumstances is it possible?
 - 9.4.6.1 If your system acknowledges the balance of interest solution, please clarify in as much detail as possible all pertinent concepts and scope.
- 9.4.7 Once admitted, are there any limits to the court's evaluation of the evidence?



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10. The Report about the Regulation No 1206/2001 includes the following table:

https://mail-attachment.googleusercontent.com/attachment/u/0/?ui=2&ik=2a2db81c06&view=att&th=13f0f97163496afb&attid=0.4&disp=inline&realattid=f_hhj6lu5y3&safe=1&zw&saduie=AG9B_P8EO8b4lziLZq4qog2cr9qs&sadet=1380110165810&sads=7W4b6HEaZBZTan6x62SUMJhic1s

(Please, see pages 104-107.)

Please advise the accuracy of the information regarding your legal system and in what sense are the reported treaties more favourable than the system established under the Regulation No 1206/2001.



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Table of authorities

Please, provide information on the competent authorities referred to in Article 3(3) in your national legal system and give indication of relevant statutes (which acts are applicable, the name in national language, does the English translation exist, are there some important cases, name of the case and link)



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Table of cases



Bibliography

Part II - Synoptical presentation

1. Synoptic tables

1.1 Ordinary/common civil procedure timeline

Please use the following table to produce a timeline of the ordinary form of civil procedure in your legal system; Replace the text with the adequate solution for your legal system. Please refer to the examples included in the Guidelines for National reporters and to the sample report you were supplied with.

Phase #	Name of the phase (e.g. Application, reply, preparatory phase, preliminary hearing, terms of reference, hearing, etc.) Include also the name of the phase in your national language	Responsible Subject (e.g. applicant, defendant, court, etc.)	Duties of the Responsible Subject (evidence related only) and consequences of their breach (e.g. duty to include documents and eventual preclusion)	Rights (evidence related only) of the Responsible Subject (e.g. request for the other party to deliver documents)



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1.2 Basics about Legal interpretation in your legal system

Is there a protocol for interpretation of substantive legal rules? If yes, please describe in short.	
If there is a protocol does it apply to the interpretation of procedural rules? If no, is there a specific one for procedural rules? Please describe it in short.	



1.3 Functional comparison

- 1.3.1 1. Imagine that you are a requesting judge in a process of taking evidence. Describe the most important differences you would face in trying to obtain evidence. Consider that there are four different legal regulations you can apply: a) national regulation; b) bilateral treaties; c) multilateral treaties; and d) Regulation 1206/2001 (with exception for Denmark). According to different legal regulation you are asking the evidence to be taken by three different methods: a) hearing of witnesses by mutual legal assistance (legal aid, i.e. sending questions to the requested court); b) hearing of witnesses by video-conferencing and asking questions directly; and c) direct hearing of witnesses by requesting court in requested country. What difference would it make to you as a requesting judge? What would be your role in such taking of evidence?

Legal regulation Means of taking evidence	National law	Bilateral treaties	Multilateral treaties	Regulation 1206/2001
Hearing of witnesses by mutual legal assistance (legal aid)				
Hearing of witnesses by video-conferencing with direct asking of questions				
Direct hearing of witnesses by requesting court in requested country				



1.3.2 2. Imagine that you are a requested judge in a process of taking evidence. Describe the most important differences you would face in trying to obtain evidence. Consider that there are four different legal regulations you can apply: a) national regulation; b) bilateral treaties; c) multilateral treaties; and d) Regulation 1206/2001 (with exception for Denmark). According to different legal regulation you are asking the evidence to be taken by three different methods: a) hearing of witnesses by mutual legal assistance (legal aid, i.e. sending questions to the requested court); b) hearing of witnesses by video-conferencing and asking questions directly; and c) direct hearing of witnesses by requesting court in requested country. What difference would it make to you as a requested judge? What would be your role in such taking of evidence?

Legal regulation Means of taking evidence	National law	Bilateral treaties	Multilateral treaties	Regulation 1206/2001
Hearing of witnesses by mutual legal assistance (legal aid)				
Hearing of witnesses by video-conferencing with direct asking of questions				
Direct hearing of witnesses by requesting court in requested country				



Part III - Case based part of the questionnaire

1. Requesting court asks your court to take evidence by use of video-conference.
 - 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 your country establish identity of a person who is refusing to show her face on a basis of religious (or similar) customs?
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?
7. A person asks the court to secure evidence for a contemplated judicial proceeding. Is this possible?
 - 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!
 - 7.2 Would it be different if the request comes from a Non-Member State?
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 your legal system?
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?
 - 9.1 If person B recorded the conversation, would such recording be admissible? Would there be a difference if person C recorded the conversation?
 - 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?
10. Person A attaches a stealth recording device or software to person B's cell phone. Would the recordings be admissible as evidence?



- 10.1 Would it make a change if person B's cell phone is registered as belonging to person A?
- 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?
- 11.** Person A steals person B a letter from person X. Can person A use such letter as evidence?
- 11.1 Would there be a difference if person A just makes a copy of the letter?
- 11.2 Would there be a difference if person A finds such letter by accident?
- 11.3 Would there be a difference if person A finds such letter in a garbage bin?
- 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.
- 12.1 Is the addressee of your correspondence able to use it as evidence if it contains a disclaimer banning its use for such purpose?
- 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?
- 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?
- 13.2 Company A performed routine alcohol test on their employees. Would results be admissible as evidence? Would it be different if performed by an authority for health and safety? Would it be different if performed by third outsourced impartial certified person (e.g. medical personal)? Would it be different if it was a polygraph testing?
- 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?
- 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?
- 15.** To what extend the personal information collected from social networks can be used as evidence?
- 16.** Are the DNA tests coercively enforceable for family cases within your legal system? What about in other civil and commercial cases?
- 17.** 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)? 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)?
- 18.** 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



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occurrence of the damaging event. Does the concept of adhesive procedure exist in your legal system? If yes, can the Regulation 1206/2001 be applied concerning the taking of this evidence? Answer from the perspective of Member State B!