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Evidence in Civil Law - Latvia

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ABSTRACT The national report of civil procedure in Latvia is based on review of the Latvian Civil Procedure Law, court practice, feedback by the Ministry of Justice on cooperation with the EU states as well as with third countries in various matters of jurisdiction as well as on legal science.

Civil procedure includes all legal principles like disposition, right to be present and to be heard, competition of parties in gaining all necessary evidence and similar concepts to be found in almost every modern civil procedure system.

However, there are certain specific features due to which Latvian process stands out. For instance, there is still a system of legal presumptions which apparently is inherited from Roman law, yet still prescribed by the Latvian Civil law (Civil code). Also certain degree of formal attitude remains as a characteristic feature of the Latvian civil procedure.

KEYWORDS: • principle of free disposition • adversarial principle • hearing of both parties (*audiatur et altera pars)* • public hearing • free assessment of evidence • relevance of material truth • means of proof • legal presumptions • burden of proof • *iura novit curia* • evidence • balance of probability

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Foreword

The basis of Latvian Civil Procedure Law was a civil process law inherited from the pre-independence times (Regulation of the Civil Procedure) – the law of 1864 of the Russian Empire which was adapted to the needs of Latvia as soon as it gained independence in 1918. In 1938 it was renamed to the Civil Procedure Code. During the Soviet occupation since 1940, the Civil Procedure Code was replaced by the Civil Process Code of the Russian Soviet Federative Socialistic Republic, and later on in 1964 replaced by the Civil Procedure Code of Latvia which was then regarded as an integrated part of the Soviet Union. This later code which, at least in theory, prescribed inquisitorial process was replaced again by the Civil Procedure Code in 1999 after Latvia regained its independence.

The Latvian judicial system slowly, but steadily recovered and returned to the principles that were established during the first period of independence (1918-1940).

The Civil Procedure Law of Latvia, which was passed in 1999, established civil procedure based on disposition of parties which allows the parties decide on the progress of a civil law dispute by competing before the court on equal terms. Each participant is entitled to appear before the court and give their explanations orally or in writing, directly or through representatives.

The parties may freely choose by which means of proof to substantiate their claims; each party shall prove the facts upon which they base their claims or objections. No evidence shall have a predetermined effect as would be binding upon the court. However, there is a set of legal presumptions of facts in the material law (Latvian Civil Code) which are strikingly similar to those one can find in the Roman law.

The Latvian process has abandoned the principle which was dominant under the pre-war system where certain kind of evidence enjoyed preference, for instance, not allowing the witness testimony to overturn the fact finding based on written evidence. Latvian contemporary process has also abandoned all elements of inquisitorial court system which prevailed during the Soviet occupation (1940-1991). Although formally the law states that the court must establish material truth, still in case of collision between admittance of certain claims by the party and conviction of the court contradicting this admittance, the decisive role must be devoted to the former rather than latter.

The tendency of simplification of certain types of hearings, like abandoning a hearing before the court of the second instance in some legal disputes or introducing of a written procedure, is a characteristic feature of the modern Latvian civil process and its application in practice.

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Part I

1 Introduction

Back in 1933 V. Bukovskis, one of the founders of theory and practice of the Latvian civil procedure, wrote that contrary to criminal procedure, in the civil court it is completely up to the parties what procedural tools and what evidence to choose. The court will not interfere with the parties. The party also decides what will be the means to convince the court that the party is right and that it needs assistance of the court. Only the party knows whether its rights are violated.

The state has no interest in, let's say, whether a payment due was indeed repaid or not, because "*vigilantibus ius scriptum est*".

It also follows from the principle of disposition that the one who is in control of his/her own rights can abandon them to decide whether there is a need to apply to the court or it is more convenient to suffer interference in the person's rights, because "*volenti non fit iniuria*" and "*nemo iudex sine actore*".

It also follows from the principle of disposition that parties define amount of their respective claims. It is of no importance for the court whether the party claims what is owed by the other party in full amount or in part.[2]

As a consequence of this adversarial nature of the court, the parties on their own define amount of the claim, and the court may not award more than it was claimed by a party:"*iudex ne eat ultra petita partium*". [3]

As it was established by the same textbook, "*one must follow the Ancient Roman principle: "Principium instruendi processus ad instantiam partium" i.e. the court follows only the data submitted to the court by the parties and only these data form the material which can be used as an evidence by the court.*" [4]

There are positive and negative features of adversarial court, V. Bukovskis pointed out. Positive features are as follows:

[2] Bukovskis V., Civilprocesa mācības grāmata (Autora izdevums, 1933), 233. lpp.
[3] Turpat, 234. lpp.
[4] Turpat.

1) The parties have better knowledge of their own case than the court has; for this reason they are more capable in gathering necessary evidence;
2) The parties are more motivated than the court to find out what is important in the case, and they are entitled to choose evidence and means of defence they would prefer;
3) In order to secure impartiality of the court, the latter should not interfere in the legal battle and shall restrict itself to the evidence provided by the parties. If the court undertakes to collect evidence on its own, it may be accused of impartiality and lack of objectiveness, i.e. that the material gathered by the court was favouring one of the parties; besides, the difficulty would arise due to the fact that the court shall examine the material which was gathered by the court itself;
4) The very nature of the private rights is such that interference of the court as a state institution with these rights is unwelcome; also privacy is of importance, only a party is entitled to raise the veil which is hiding the very relations of the household;
5) Adversarial court also fits with the principle of economic division of labour – each party is responsible for collecting its own material, the court is only for evaluation and examination of this material; it is a challenge for the parties to struggle, compete and express personal courage and energy which keeps the civil procedure alive.

However, V. Bukovskis has also pointed out to disadvantages of the adversarial court. This procedure, as he explained, is good where the parties are equally strong and equally prepared. Then the legal battle develops in full swing and leaves for the court impartiality to observe this battle. If this equality is not in place, the adversarial court can lead to victory of injustice over justice; give the upper hand to smartness and cunning over simple mindedness, wealth over poverty. A professional lawyer hired by a party can easily win a poor adversary who lacks knowledge of law and is forced to personally lead his or her own proceedings without knowing formal legal requirements.[5]

Never before or after this publication, the above mentioned principles of the Latvian civil procedure have been described so profoundly and are still referred to by legal writers as well as by courts ever since.

The legal background which has implemented the above mentioned principles has been changed significantly within the course of time. Back in 1933 there was a Civil process law inherited from the pre-independence times (Regulation of the Civil Procedure[6]), the law of 1864 of the Russian Empire which was adapted to the needs of Latvia as soon as it gained independence in 1918. In 1938 it was renamed to the Civil Procedure Code[7]. During the Soviet occupation since 1940, the Civil Procedure Code was replaced by the Civil Process Code of the Russian Soviet Federative Socialistic Republic, and later on in 1964 replaced by the Civil Procedure Code of Latvia which was then regarded as an

[5] Bukovskis V., Civilprocesa mācības grāmata (Autora izdevums, 1933), 236.-237. lpp.
[6] Civīlprocesa nolikums. (Editor Dišlers K., Edition of 1932. with amendments and additions, Dzīve un Kultūra, 1936); skat. arī Устав гражданского судопроизводства с изменениями и дополнениями, последовавшими по 1924 г. (Editor В.И.Буковский, Издание АО Валтерс и Рапа, 1925).
[7] Civīlprocesa likums. (Kodifikācijas nodaļas izdevums, 1938).

integrated part of the Soviet Union. This latter code which, at least in theory, prescribed inquisitorial process, was replaced again by the Civil Procedure Code in 1999 after Latvia regained independence. The Latvian judicial system slowly, but steadily recovered and returned to the principles described by V. Bukovskis almost a century ago. During the Soviet occupation not only the principles of free disposition and adversarial nature of the procedure were abandoned or at least degraded, but also the role of the court as a main institution for solving legal disputes was significantly ruined. As reflected in one of the textbooks of those times, the number of cases reviewed by the courts in 1975 was less than 60 % of those which were dealt with shortly before the Soviet occupation in 1940.[8]

2 Fundamental Principles of Civil Procedure

2.1 Principle of Free Disposition of the Parties and Officiality Principle

In respect of court proceedings by way of action there prevails principle of disposition in the Civil Procedure Law of Latvia[9] which allows parties to decide on the progress of a civil law dispute. While the principle of officiality, in turn, is applied in respect of civil matters to be adjudicated in accordance with special adjudication procedures. These are the following matters (Section 251 of CPL):
1) regarding approval and setting aside of adoption;
2) regarding declaration of a person as lacking capacity to act and establishment of trusteeship;
2^1) regarding termination of temporary trusteeship;
3) regarding establishment of trusteeship for persons because of their dissolute or spendthrift lifestyle, or because of excessive use of alcohol or narcotics;
3^1) regarding termination of rights of a future authorised person;
4) regarding establishment of trusteeship for the property of absent or missing persons;
5) regarding declaration of missing persons as deceased;
6) regarding determination of such facts as are legally significant;
7) regarding extinguishing of rights in accordance with notification procedures;
8) regarding renewal of rights pursuant to debt instruments or bearer securities;
9) regarding inheritance rights;
10) regarding pre-emption with respect to immovable property;
11) regarding legal protection proceedings and insolvency proceedings;
12) regarding liquidation or insolvency of a credit institutions;
13) regarding declaration of a strike or an application to strike as being unlawful; and
14) regarding declaration of a lock-out or an application to lock-out as being unlawful.

Principle of disposition is not directly incorporated in a separate legal norm, but it arises from several regulations of norms under the Civil Procedure Law (hereinafter – the CPL). For instance, Section 74 of CPL regulates rights of parties by providing general rights of the parties in dispute as well as specific rights of each party. It shall be noted

[8] Rozenbergs J., Briģis I., Padomju civilprocesuālās tiesības (Zvaigzne, 1978), 6. lpp.
[9] Civilprocesa likums *(Civil Procedure Law)* (14 Oct. 1998), Latvijas Vēstnesis, nr. 326/330, 1998.3.novembris, 74. pants.

that procedural rights of a party are not of mandatory character, it is possible to choose the most appropriate and suitable ones to protect their rights or interests. Still autonomy of parties may not be arbitrary. Restrictions are provided both by law and by the court. The free choice of parties in the dispute is expressed as applying or failure to apply the rights set forth by law. By choosing certain rights, the party shall observe procedure for exercising respective norm. Principle of disposition is manifested in the following rights:

1) bringing of action and defence against the claim – only a person whose rights or interests are infringed may choose either to suffer infringement and resign to it, or shall apply to a court by bringing an action (Section 1[10] and Section 27[11] of CPL). Whereas a person against whom the action is brought, may choose either to file substantive objections against the claim or shall opt for more active means of defence and bring a counterclaim (Section 148 of CPL and First paragraph of Section 136[12] of CPL).
2) limits and extent of the subject-matter of the claim – only the plaintiff shall decide what infringed interests and rights he/she wishes to protect in court and in what extent protection of the court is required. The court shall not exceed the limits of the subject-matter of the claim, its grounds and extent (Section 192 of CPL[13]). Latvian civil procedure does not admit *et ultra petitium*.
3) withdrawal of procedural rights fully or in part as well as their change within proceedings – within review of the case, the plaintiff may withdraw from the raised claim fully or in part. Both parties in dispute may reach settlement, transfer the case to arbitration court or reach agreement with the opposite party by use of mediation. These rights may be exercised by the plaintiff and the defendant until the moment when review of the case is accomplished on the merits (Section 164 of CPL).

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[10] Section 1. Rights of a Person to Court Protection
(1) Every natural or legal person (hereinafter – person) has a right to protection of their infringed or disputed civil rights, or interests protected by law, in court.
(2) A person who has applied to a court has the right to have their matter adjudicated by the court in accordance with the procedures prescribed by law.

[11] **Section 127. Persons who may Bring Actions in Court**
(1) Any natural person who has reached legal age and has the capacity to act, as well as any legal person, may bring action in court to protect their infringed or disputed rights of a civil nature.
(2) Actions in the interests of minors or persons under trusteeship shall be brought by the legal representatives of such persons, but in cases provided for in Section 72, Paragraph four of this Law, actions may be brought by minors themselves.
(3) A public prosecutor, State or local government institutions, or persons entitled by law to protect the rights or lawful interests of other persons in court, may bring an action in order to protect rights of a civil nature of such persons where such rights are infringed or in dispute.

[12] **Section 136. Bringing Counterclaims**
(1) A defendant is entitled, up to the moment of the closing of adjudication on the merits in a first instance court, to bring a counterclaim against the plaintiff.

[13] **Section 192. Observance of Claim Limits**
The court shall make a judgment regarding the subject-matter of the action set out in the action, and on the basis specified in the action, not exceeding the extent of what is claimed.

4) appeal of the court's rulings – in the occasions provided by the Civil Procedure Law, the parties of the dispute shall have rights to appeal the court's judgments and decisions under appeal and cassation procedures.

It is stated in publications by Latvian lawyers that the principle of disposition may be defined as „chances set forth by law for the parties to act with their material and procedural rights and with means of their protection at their own initiative"[14].

The Civil Case Department of the Senate for the Supreme Court of the Republic of Latvia (since 01.01.2014 known as the Civil Case Department of the Supreme Court of the Republic of Latvia) has ruled in the case on compliance of Sub-paragraph 1 of Paragraph 1 of Section 400 and Paragraphs 1 and 3 of Section 405 of CPL with Section 92 of the Constitution of the Republic of Latvia that „principle of disposition of the Civil Procedure law allows that a creditor may bring action or file application for undisputed forced execution of obligations."[15] In such a way, a person may choose in what proceedings to protect his/her infringed interests. Still, upon making such decision, the person shall in future observe respective procedural requirements set forth by the Civil Procedure law. Understanding of the principle of disposition is also contained in another legal acknowledgment given by the Civil Case Department of the Senate for the Supreme Court of the Republic of Latvia in the judgment no SKC-1627/2012 adopted on October 17, 2012 stating that „a party itself shall choose either to apply to the court and itself shall set the limits of its claim and procedural means to use. Principle of disposition also refers to the appeal procedure, namely – a party shall choose either to appeal against the judgment and in what extent. According to Paragraph 2 of Section 203 of CPL, if a part of a judgment is appealed, the judgment shall come into effect regarding the part, which has not been appealed, after expiration of the time period for appeal thereof." [16]

Section 93 of CPL states that each party shall prove the facts upon which they base their claims or objections. Only in case the evidence is connected with protection of personal data of a natural person, information of restricted availability or a commercial secret of a merchant as well as if this evidence is in possession with the opposite party and due to objective reasons they are not presented or not available for the party of the dispute, the court may require to present such evidence upon a motivated request of a party to the dispute. However, it should be taken into account that the initiative for necessity of the evidence shall come from the party of the dispute and the court may dismiss such request if obtaining of the evidence is possible also by the party itself.

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[14] Līcis A., Prasības tiesvedība un pierādījumi (Tiesu namu aģentūra, 2003), 56. lpp.

[15] Latvijas Republikas Satversmes tiesas 2010.gada 17.maija spriedums lietā Nr. 2009-93-0 „Par Civilprocesa likuma 400. panta pirmās daļas 1. punkta un 405. panta pirmās un trešās daļas atbilstību Latvijas Republikas Satversmes 92. pantam", http://www.satv.tiesa.gov.lv/upload/spriedums_2009-93-01.htm (accessed 19 Feb. 2014).

[16] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2012. gada 17. oktobra spriedums lietā Nr. SKC-1627/2012, at.gov.lv/files/uploads/files/archive/department1/2012/1627-skc-2012.doc (accessed 10 Mar. 2014)

By bringing action, restrictions are also set forth for carrying out procedural activities. In 2013 the Civil Procedure law implemented a new order with regard to presenting of evidence. E.g. Paragraph 3 of Section 93 provides that evidence shall be submitted not later than 14 days before a hearing, unless the judge has set another time period within which evidence is to be submitted. Still, in view of the fact that obstacles may occur for due submission of evidence, it is possible to file them within the hearing upon a motivated request by a party unless it does not delay the hearing or the court has justified the reasons for failure to file the evidence duly, or the evidence concerns facts which have become known during the hearing. If a participant in a matter submits evidence after the time period thereof has ended, and the judge finds that reason for duly submission of evidence shall not be justified, the court may impose a fine up to 750 *euro*. When the judgment of the court of the first instance is appealed, new evidence is admitted only in case if the court of appeal recognises that it was not possible to file those evidences when the case was heard before the first instance.

Certain facts and circumstances, according to the CPL, may be proved only by means set forth by law. E.g., birth, death, marriage of a person is confirmed by relevant registration acts of civil status. With regard to legal persons, their establishment or the powers of officials to act on behalf of a company may only be confirmed by the decisions adopted by the Enterprise Register of the Republic of Latvia. While ownership rights and other rights to immovable property may only be confirmed by records in the Land register. Upon such circumstances, when the means of evidence is determined by law, the court shall observe the law, and submissions of the parties that do not comply with requirements of the law, shall not be binding. In other cases, based on the principles of disposition and competition, the parties may freely choose by what means of evidence they will substantiate their position in the case.

2.2 The Adversarial and Inquisitorial Principles

Adversarial principle is mentioned as one of the ruling principles in the Latvian civil procedure. This principle is expressly defined in the legal norm. Section 25 of the law On Judicial Power provides that within the legal proceedings, the parties shall exercise their procedural rights in an adversarial form. While Section 10[17] of the Civil Procedure law describes the content of the adversarial principle – through the parties providing explanations, submitting evidence and applications addressed to the court, participating in the examination of witnesses and experts, in the examination and assessment of other evidence and in court argument, and in performing other procedural actions. Legal regulation is not exhaustive, but points out only the most essential activities by letting

[17] **Section 10. Adversarial Proceedings in Civil Procedure**
(1) Parties shall exercise their procedural rights by way of adversarial proceedings.
(2) Adversarial proceedings shall take place through the parties providing explanations, submitting evidence and applications addressed to the court, participating in the examination of witnesses and experts, in the examination and assessment of other evidence and in court argument, and performing other procedural actions in accordance with the procedures prescribed by this Law.

both the court and the participants interpret observance of adversarial principle in the civil procedure more widely.

Latvian civil procedure provides passive role for a judge in collecting evidence, but imposes obligation upon the parties to assess and choose what evidence to submit to the court and in what way prove the truth of their claims. In this way the civil procedure diminishes the role of the principle of objective examination, yet without fully excluding it from the civil procedure. Section 8 of CPL contains the principle for determination of facts which obliges the court to clarify obtained circumstances in accordance with the procedures prescribed by law. In this way the borders are marked within which the parties shall exercise their procedural duties, i.e. file evidence on the facts to be proved, but the court has the right to indicate to sufficiency or insufficiency of the evidence.

The court at its own initiative may collect evidence only in matters concerning interests of an under-aged child in the proceedings arising from trusteeship or access rights by ordering the custody court to file its opinion. In the matters related to restrictions of a person's legal capacity due to disorders in mental health or other illnesses, the court may order the custody court to file opinion on the person for whom the legal capacity shall be restricted as well as the court itself requires a statement from the doctor on assessment of health of the respective person and in case of need, also requires psychological or psychiatric expertise. The court's initiative to collect evidence in these matters does not restrict participants to also collect evidence and file them to the court.

In other matters the court is not entitled to collect evidence at its own initiative; still it has the right, upon the request of the party, to request evidence from the opposite party or third persons if a participant of the case cannot obtain these evidences due to objective reasons.

During exercising of adversarial principle, the court may not interfere in collecting of evidence as carried out by the parties, but the court has rights to control sufficiency of evidence and indicate to the parties that evidence has not been submitted for particular facts. However, the choice of means of evidence will always be the right of the participant, and the court may not interfere in exercising adversarial principle by pointing to the particular means of proof as to how the evidence should be presented.

Section 188 of CPL provides that if during deliberation, the court finds it necessary to determine new facts that are significant in the matter or to further examine existing or new evidence, it shall resume adjudicating on the merits of the matter. Thus, the parties of the dispute are themselves interested in due filing of sufficient extent of evidence on all claims and facts to be proved according to the material norms.

In the preparatory stage before the hearing, the judge has the right to request from the participants written explanations to clarify circumstances and evidences in the case as well as, at its own initiative, appoint a preliminary hearing where participants of the case are inquired on the merits of the case in order to make precise the subject-matter of

the case and its limits, explain procedural rights and duties to the participants, consequences for exercising or failure to exercise certain procedural actions, to decide on the applied request for evidences and appointment of expertise, try to reconcile the parties and if necessary, defines a term until which certain procedural activities shall be carried out. If the parties have not filed evidence on the specified circumstances of the dispute, the judge shall decide the dispute guided by the evidences submitted.

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

Section 9 of the Latvian Civil Procedure law has consolidated the principle of equality of parties as a general principle of the civil procedure. This principle states that in regard to procedural rights, parties are equal and the court shall ensure that the parties have equal opportunity to exercise their rights in order to protect their interests. The amount of rights to be exercised by the parties is contained under Paragraph 2 of Section 74 by defining the common rights of both parties, including: to acquaint themselves with the materials of a matter, make extracts therefrom and prepare copies thereof, to participate in court hearings, to make application regarding removal, to submit evidence, to participate in examination of evidence, to submit petitions, to provide oral explanations and written explanations to the court, to express their arguments and considerations, raise objections against requests, arguments and considerations of other participants in the matter, to appellate instance court judgments and decisions, to receive true copies of judgments, decisions and other documents in the matter, and to enjoy other procedural rights granted to them. Civil Procedure law does not provide exhaustive list of these rights and in each individual case the court shall observe that equality of parties is ensured within the dispute. This principle is also related to the person's rights to access the court and fair trial guaranteed by the Constitution of the Republic of Latvia.[18] Besides, each party is granted its specific rights to be exercised solely by the plaintiff or the defendant in the matter. E.g. the plaintiff is granted the right to withdraw the claim partly or fully, to reduce amount of the claim; in writing, to amend the basis or the subject-matter of the action or to increase the amount claimed before the adjudicating of the matter; while only the defendant has the right to admit a claim fully or partly, or to bring a counterclaim or raise objections against the claim.

It is the duty of the court to ensure in all occasions for the parties in the dispute equal chances to receive information on the course of the matter, to inform on the adopted decisions and initiated proceedings against the person.

Latvian law experts have indicated that in the proceedings parties take up equal procedural status and only the court, upon deciding the case on merits, may establish what are the mutual rights and obligations of the parties and during the course of the dispute the parties shall be provided with equal chances to enjoy protection granted by the court. Equality of parties does not mean that all procedural rights and obligations of

[18] Latvijas Republikas Satversme *(The Constitution of the Republic of Latvia)* (15 Feb. 1922), Latvijas Vēstnesis, nr. 43, 1993.1.jūlijs, 91. un 92. pants.

the parties shall be absolutely equal. Equality is said to admit differentiated approach to the persons' rights if it is justified in a democratic society. Digressions from equality of parties in the civil procedure law are said to be objectively and reasonably grounded. Since the parties usually have different, mostly opposite legal interests, it is not always possible to balance rights of the parties. However, in all cases when one party is granted more rights or imposed less duties, the opposite party should be provided with respective procedural means.[19]

In case a party is at the opinion that restriction or violation of the principle of equality is admitted, it has right to appeal against the adopted ruling under the appeal or cassation procedure. Also – if the judgement by the court of the first instance has come into force and was not appealed, a party may request the prosecutor to file a protest within the procedure provided by Chapter 60 of CPL which provides re-adjudication of matters due to breach of significant substantive or procedural norms. Such protest may be filed by a Prosecutor General or a person from the Prosecutor's General Office and the Chief Prosecutor of the National law protection department provided that no more than 10 years have elapsed since the adjudication came into effect.

The Civil Procedure law provides also exceptions to the principle of hearing of both parties, i.e. by providing other instruments to secure equality of parties, but at the same time not to turn the civil procedure into a heavy and long-term litigation. E.g., the court has right to make judgment in default if the defendant has not submitted explanations and evidence regarding the brought action, but there is evidence in the matter that the defendant has received documents from the court on initiation of proceedings. There is also envisaged penalty in the CPL for the default to submit written explanations up to EUR 150 which can be imposed upon the defendant according to the court's decision. If, due to inactivity of the defendant, the court decides to adopt judgment in default, the defendant, in turn, is secured with possibility to file application on renewal of proceedings and on hearing the matter anew by filing application to the court that has made the judgment in default within 20 days from sending such judgment to the defendant.

Similar procedural means are envisaged in the rapid procedures of CPL, such as execution of obligations through court or execution of obligations through warning procedure when a decision adopted by the court in written proceedings is subject to the test of lawfulness if a debtor disputes the creditor's claim in point of fact. Decisions in these proceedings are adopted without convening a hearing. Similarly, without hearings and without informing the parties on the hearing, there are reviewed applications on securing of the claim or on securing of evidence if the respective applications are filed in the court prior the action is raised or if the court establishes an urgent situation. Upon such circumstances the opposite party has no chance either to file explanations or evidences before the application is reviewed. The party, against whom the decision is adopted, shall be informed duly not later than at the moment when the decision is

[19] Opinion of Prof., Dr. iur. J. Rozenbergs; Latvijas Republikas Satversmes tiesas 2010. gada 30. marta spriedums lietā Nr. 2009-85-01, http://www.satv.tiesa.gov.lv/upload/spriedums_2009-85-01.htm (accessed 13 June 2014).

executed. Besides, it has the right to appeal against the court's decision, but in case securing of the claim is applied, the party may request its cancellation.

When a party is informed on reviewing of a claim in written proceedings without the presence of parties, e.g. when ancillary complaint is heard on decisions adopted by court (i.e. practically all decisions adopted by the first instance of the court), when claims of small amount are heard (i.e. claims raised on collection of penalty or subsistence payments not exceeding EUR 2100) as well as when complaints are reviewed in the cassation instance, the parties are provided with right to file their written explanations on the application to be heard.

2.4 Principle of Orality – Right to Oral Stage of Procedure and Principle of Written Form

Paragraph 2 of Section 15 of CPL states that persons summoned and summonsed to a court shall provide explanations and testimony orally. The testimony of previously examined witnesses as recorded in the minutes, documentary evidence and other materials, and shall be read out upon the request of the parties. A court is not required to read out the documents in the matter, if the parties consent thereto. Observance of the principle of orality as a general principle of the civil procedure is consolidated in all cases when the matter is intended to be reviewed in a court hearing. Lately the Latvian civil procedure has started consolidating the principle of written form providing that in litigations where the sum of the principal claim amounts to 2100 EUR, they are to be reviewed in written form. Also complaints on procedural violations and cassation appeals are reviewed in written form. However, the participants to the matter and the court at its initiative may require reviewing the matter by organising oral procedure. Such situations may occur if it is not possible to solve the dispute guided by information contained in written documents and it is necessary to inquire participants on certain issues or a witness shall be examined whose means of testimony is providing of oral testimony. The Latvian Civil Procedure law does not admit written witness testimonies.

2.5 Principle of Directness

Principle of directness as a general principle of the civil procedure provides that the court of the first instance and the court of appeal shall themselves examine evidence when the matter is reviewed. It means that the court examines materials submitted in the matter and assesses them. Principle of directness is grounded on condition that the judge on his/her own shall perceive what is happening in the hearing, shall listen to explanations of parties and third persons on meaningful circumstances in the matter, shall listen to testimonies of witnesses and to oral opinions given by experts by posing accurate questions as well as shall assess written evidence, including those in electronic form. It is within this principle that it is not possible to change or replace an absent judge in the hearing with another judge to preside the hearing. Upon such circumstances the civil procedure provides that hearing of the case shall be commenced on merits anew. Principle of directness is also attributed to admission of the means of evidence. E.g. only such person can act as a witness in the Latvian civil procedure who with

his/her own sense has perceived circumstances to be given testimony about. Representation of a witness is not allowed or giving of derived testimonies. Similar provision is incorporated under Paragraph 2 of Section 111 of CPL by stressing that primarily written evidence is submitted or presented to the judge if doubts arise about authenticity of a derived document. Paragraph 4 of Section 111 of CPL provides that if documentary evidence has been submitted to the court by way of a true copy, copy or an extract, the court is entitled to require, pursuant to a substantiated request of participants in the matter or upon its own initiative, to submit or present the original if it is necessary for determining the facts in the matter. As an exception from this principle can be mentioned occasions when it is necessary to provide evidence before the claim is raised. Especially – if it is necessary to examine a witness or perform inspection of an object in the place of its location. Upon such circumstances the court, upon application of the potential plaintiff, may decide on obtaining the witness testimony by examining such witness in an individual court sitting. Witness testimony shall be recorded in the minutes and later this testimony is read out in the hearing when the case is reviewed on merits. It is similar with inspection of the object in the place of its location. This task may be assigned to a sworn law enforcement officer who fixes the fact during inspection and submits it to the court. In this way the court gathers necessary information on circumstances in the matter through derived evidence instead of the primary source.

When the claim of appeal is heard there is a precondition that new evidence shall not be admitted by the court. Exceptions are those cases when it was not possible to obtain the evidence before or they were not known when the case was initiated before the court of first instance.

The court of appeal itself decides what evidence shall be examined during the hearing but it should be taken into account that facts established in the court of the first instance shall not be examined anew by the court of appeal if they were not challenged in the claim of appeal.

The claims raised according to general provisions, shall be heard both before the first and the second instances of court in oral proceedings by convening a hearing. While in proceedings, where the subject-matter of the claim is collection of money or subsistence payments not exceeding EUR 2100 (claims of small amount), the hearing before the court of the first instance is held only according to the request of a party or if it is the court who finds it necessary to hold a hearing. In the court of appeal, the claims of small amount are reviewed in writing unless the court decides otherwise. Besides, a request by a party to convene a hearing before the court of appeal is not binding upon the court.

The CPL does not also envisage re-adjudication of cases where the judgment or a decision has come into force. A case may be heard anew due to discovery of new substantial circumstances (Sections 478-482) or due to substantial material and procedural violations of legal norms in the cases heard only before the first instance court (Sections 483-485). A case may be requested to be re-adjudicated if no more than 10 years have passed since the ruling has come into force.

For a case to be heard anew due to newly discovered circumstances, a person within three months from the day when the facts forming a basis for re-adjudication of the matter have been ascertained, shall file application to revoke the earlier adopted decision and re-adjudication of the case. An application in connection with newly-discovered facts shall be adjudicated in accordance with the written procedures. If a court determines that there are newly-discovered facts, it shall set aside the appealed judgment or decision in full or as to part thereof and refer the matter for it to be re-adjudicated in a first instance court.

To have the case re-adjudicated due to substantial breach of material and procedural norms, a person shall request the Prosecutor General or a Person from the Office of the Posecutor General and the General Prosecutor of the Department for protection of the state law to file a protest in the Supreme Court on the lawfully enforced ruling of the first instance court. The grounds for submitting a protest are the breach of substantive or procedural norms of law as has been ascertained in matters which have only been adjudicated in a first instance court, if the court adjudication has not been appealed pursuant to procedures prescribed by law due to reasons independent of the participants in the matter, or the infringement, pursuant to a court adjudication, of the rights of State or local government institutions or of such persons as were not participants in the matter.

2.6 Principle of Public Hearing

Principle of public hearing provides that all matters shall be reviewed in public hearing, except those cases when the law provides closed hearing to protect private life of participants in the case. The Latvian civil procedure provides closed hearing regarding determination of parentage of children, approval and annulment of adoption, annulment or dissolution of marriage, declaring a person to be lacking capacity to act because of mental illness or mental deficiency, establishment of temporary trusteeship, suspending of future authorisation, unlawful movement of a child across the border to a foreign state or detention in a foreign state and unlawful movement of a child across the border to Latvia or detention in Latvia, and the matters regarding trusteeship and access rights. These cases only admit presence of a judge, secretary of the hearing, expert, interpreter and participants of the matter. Representatives from public and other persons interested in the case may not be present in the hall of the hearing when such cases are reviewed. However, also in matters, which are reviewed in closed hearing, the operative part of the court judgement shall be publicly pronounced, except in matters regarding confirmation or revocation of adoption which protect the secret of adoption. According to a reasoned request by a participant in the matter or at the discretion of the court, the court hearing or part thereof may be declared as closed if it is necessary to protect official secrets or commercial secrets, the private life of persons and confidentiality of correspondence, interests of under-aged persons, to examine a person who has not reached 15 years of age and in the interests of court adjudication.

Restriction to the principle of public hearing also refers to persons who participate in the hearing as participants or listeners. Only persons who have reached the age of 15 may

participate in the hearing. Persons under the age of 15 may only be present at court sittings with the permission of the court. There are also other restrictions to the principle of public hearing. E.g. only the judge, participants to the case and experts may examine the case materials. Other persons do not enjoy such rights. Representatives from public may be present in the hearing and listen to what is happening, fix the course of the hearing in audio or video form if participants to the case do not object and the judge has given permission.

Witnesses may be present in the court hearing only when the testimony is given and afterwards. Until the testimony is given, the witness may not listen to what is happening in the hearing. In closed hearings the witness must leave the hearing after the testimony has been given.

In public hearings, due to capacity of the hall for the hearing, preference is given to relatives of the participants and media representatives.

2.7 Principle of Pre-trial Discovery

This principle is not consolidated in the Latvian civil procedure as a necessary procedural activity. Parties file their evidence in the case in several stages. Initially, when the plaintiff raises claim in the court, all evidence shall be attached that is in the plaintiff's possession and substantiates facts and circumstances described in the application of claim. The defendant, in turn, submits all evidence that is in his/her possession when written explanations are submitted to the court. However, each party has right to examine materials filed by the opposite party and decide what additional evidence still to submit or ask the court to request from the other party. The final term to submit evidence is 14 days before the date of the hearing. Additional evidence may be submitted also during the hearing on condition that they do not delay review of the matter. Otherwise the court shall postpone the hearing to a later date by letting participants of the case examine the new evidence and prepare their counter-arguments and evidence. Submission of new evidence is not allowed if hearing of the case is accomplished on the merits and debates of the parties have started.

3 General Principles of Evidence Taking

3.1 Free Assessment of Evidence

The court assesses evidence from the moment they are received (Section 149 of CPL) until making of the judgment (Paragraph 5 of Section 193 of CPL). Criteria for free assessment of evidence are provided under Section 97 of CPL – A court shall assess the evidence in accordance with its own convictions, which shall be based on evidence as has been thoroughly, completely and objectively examined, and in accordance with judicial consciousness based on the principles of logic, scientific findings and observations drawn from every-day experience. Evidence in the civil matter shall be filed by parties and other participants of the proceedings, but only the court may recognise this information to be evidence. Thus the court must draw a boundary

between minor information and important information related to the circumstances to be proved, and the status of evidence shall be allocated only to such information that refers to the circumstances to be proved in the civil law dispute. The Latvian legal literature has expressed opinion that guided by the principle of free assessment of evidence, in situations when one evidence contradicts with other evidence, the court may give preference to one of such evidences.[20] Still the court's choice may not be arbitrary. Each such choice shall be based on arguments and grounded in the motivation part of the judgment, reasons shall be indicated why the evidence filed by a party was not chosen by the court due to incompliance with the subject-matter and the grounds of the claim. The arguments described by the court may be made examined by a participant in the case by appealing the judgment under appellate or cassation proceedings. Latvian legal doctrine has stated that "according to provisions under Section 97 of CPL, the testimonies presented in the case shall be evaluated and the judgment shall contain conclusions what meaningful circumstances in the case they prove, but if the court concludes that evidence does not prove meaningful circumstances, it shall present arguments why it has come to such conclusion."[21]

Free assessment of evidence obliges the court to engage in essence of each evidence, compare it with other evidences and allocate to it the meaning that it has obtained in connection with examination of other meaningful circumstances. By interpreting Section 97 of CPL, the Senate for the Supreme Court of the Republic of Latvia has stated that upon assessment of evidence, the court shall specify, according to Section 97 of CPL, why it has given preference to one body of evidence in comparison to another, and has found certain facts as proven, but others as not proven.[22]

Free assessment of evidence is restricted by scientific acknowledgments that shall be taken into account when evidence is submitted and assessed as well as by restrictions contained in material norms indicating that particular circumstances may be established by the court in no other way as by particular evidence. Thus, Section 1838 of the Civil law states that payment may be proven by all permitted means of proof, but particularly with a written confirmation or a receipt. Special credibility is allocated to information recorded in public registers. Their credibility may be disputed only by bringing action to the court. Therefore, information provided by such public registers as the Land register, Road Traffic Department register, Commercial register, Commercial pledge register etc. shall not be approved by any other evidence and the court has no grounds to dispute their credibility and authenticity. It is similar with information contained in public document. Paragraph 3 of Section 178 of CPL envisages that the veracity of notarised documents may not be disputed. Such may be disputed by bringing an independent

[20] Bukovskis V., Civilprocesa mācības grāmata (Autora izdevums, 1933), 349. lpp.
[21] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2008. gada 29. oktobra spriedums lietā Nr. SKC – 386, http://at.gov.lv/files/uploads/files/archive/department1/2008/386-la.doc (accessed 13 June 2014).
[22] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2011. gada 12. janvāra spriedums lietā Nr. SKC-7/2011, http://at.gov.lv/files/uploads/files/archive/department1/2011/7.pdf (accessed 13 June 2014).

action.[23] It is stated in the legal doctrine regarding the meaning of documents and acts executed in public and private procedure that the preference that is allocated to public documents by law is based on presumption that office-holders taking part in drafting these documents, have no interest in certifying false information and they may be held liable for certifying false circumstances. The preference of public acts is such that if their authenticity is not disputed, the content of the document may not be contested either by witness testimonies or by private documents.[24] Without bringing individual action, information contained in the public act may not be contested either by witness testimonies or by a private document.[25]

Latvian Civil Procedure law admits using of all means of evidence provided by the Civil Procedure law on condition that no specific means of evidence is required – the necessary evidence.

Latvian civil procedure has consolidated several stages for assessment of evidence:
1) Initial assessment – during taking of evidence and review of the case;
2) Final assessment – the court is doing it after adopting decision on the merits of the case;
3) Control (supervising) assessment – carried out by supreme instances if the judgment is appealed.

The main criteria for assessment of evidence by the court are their credibility when it is established whether evidence corresponds with objective reality, their truth and impartiality. The court's conviction about credibility of evidence shall be sufficient. It cannot be based on doubts about veracity of evidence.

Latvian legal literature has stated[26] that assessment of evidence is certain cognitive process containing aspects of both logics (ascertains credibility) as well as of lawfulness (requirement of evidence, their joining to the case file).

3.2 Relevance of Material Truth

Paragraph 1 of Section 17 of the law "On Judicial Power" provides that it is the duty of a court, when adjudicating any matter, to ascertain the objective truth. However, Section 8 of CPL states at the same time that the court shall clarify the circumstances of a matter, examining evidence, which has been obtained in accordance with the procedures prescribed by law. It is the court's duty to establish composition of facts to be proved in the case according to the composition of material norms. In order to establish material

[23] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2012. gada 18. aprīļa spriedums lietā Nr. SKC-176/2012, http://at.gov.lv/files/uploads/files/archive/department1/2012/176-skc-2012.doc (accessed 13 June 2014).
[24] Bukovskis V., Civilprocesa mācības grāmata (Autora izdevums, 1933), 392.-393. lpp.
[25] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2012. gada 18. aprīļa spriedums lietā Nr. SKC-176/2012, http://at.gov.lv/files/uploads/files/archive/department1/2012/176-skc-2012.doc (accessed 13 June 2014).
[26] Līcis A., Prasības tiesvedībā un pierādījumi (Tiesu namu aģentūra, 2003), 79. lpp.

truth, the court shall establish facts based on evidence examined in the hearing and obtained in lawful procedure. It is stated in the legal literature[27] that „the court is in no way an indifferent spectator that puts up with anything the parties are presenting to it and in the light the parties are presenting to it. It is the duty of the court to establish truth."

There are no restrictions set forth in the Latvian civil procedure to establish material truth. In a civil matter participants may not allege protection of commercial secret or immunity of private life to refuse submitting evidence to the court. For the sake of protection of private life or commercial secret, a party may request a closed hearing, but the evidence must be submitted in the case.

At the same time parties may freely choose by which means of proof to substantiate their claims. In this way each party of the dispute shall evaluate whether there is a possibility to choose such means of proof that will most completely show circumstances of the dispute and will let the court obtain necessary credibility for making the judgment. For the sake of finding the truth, Section 93 of CPL has consolidated requirement that each party shall prove the facts upon which they base their claims or objections. Plaintiffs shall prove that their claims are well-founded. Defendants shall prove that their objections are well-founded. Section 129 of CPL provides the plaintiff's duty to attach to the statement of claim documents which confirm facts on which the claim is based. Paragraph 2 of Section 148 of CPL, in turn, sets forth the defendant's duty to file evidence corroborating his or her objections against the claim and their substantiation. In case any of the parties are in difficulty to submit necessary evidence to the court and they are meaningful to prove circumstances, the court or a judge is entitled to require, pursuant to a substantiated request from a participant in the matter, documentary evidence from the State and local government institutions and from other natural or legal persons (Paragraph 1 of Section 112 of CPL). Such activity has procedural character because if a party refuses to submit the documentary evidence required by the court, without denying that the party possesses such evidence, the court may find as proved facts which the opposite party sought to prove by referring to such documentary evidence (Paragraph 4 of Section 112 of CPL).

In relation to obtaining the witness testimonies, Section 108 of CPL provides that a person called as a witness shall attend at the court and give true testimony regarding facts of which they have knowledge. The following persons may refuse the duty to testify: 1) relatives in a direct line and of the first or second degree in a collateral line, spouses, affinity relatives of the first degree, and family members of parties; 2) guardians and trustees of parties, and persons under guardianship or trusteeship of the parties; and 3) persons involved in litigation in another matter against one of the parties (Section 107 of CPL).

Expertise as the means of proof may be chosen by a party, but it is appointed by the court. Any specialist of the respective field may be freely chosen as an expert that will

[27] Bukovskis V., Civilprocesa mācības grāmata (Autora izdevums, 1933), 332.-333. lpp.

be competent to provide expert opinion. Still Paragraph 5 of Section 122 of CPL provides rights for an expert to refuse from providing opinion, if the material provided for their examination is not sufficient, or if the questions asked are beyond the scope of the special knowledge of the expert. In such cases the expert shall notify the court, in writing, that it is not possible to provide an opinion.

Upon such circumstances when there are obstacles to use witness testimonies or expert opinion, participants of the case have a chance to choose other means of proof by which it would be possible to obtain the facts to be proved according to the respective material norm.

Participants of the case shall file all evidence duly to the court of the first instance because the Latvian Civil Procedure law does not admit filing of evidence in the court of appeal if they could have been submitted when the case was reviewed by the court of the first instance. The same restriction refers to new facts that may be announced to the court of the first instance until the case is reviewed on the merits. As an exception may be mentioned Paragraph 4 of Section 430 of CPL consolidating the right for a person to file new evidence in the court of appeal if due to justifiable reason it could not be submitted to the court of the first instance.

New evidence and facts (*ius novorum*) may be filed to the court due to newly-discovered circumstances (Sections 478-482 of CPL). To re-adjudicate civil proceedings regarding a case that has already been reviewed and where a judgment has already come into force, there should be certain pre-conditions:

1) The application may be submitted within three months from the day when the facts forming a basis for re-adjudication of the matter have been ascertained, but not later than within 10 years since the judgement or decision have come into force;
2) There should be a newly-discovered fact which may be as follows:

2.1) essential facts of a matter which existed at the time of the adjudicating of the proceeding but were not and could not have been known to the applicant;

2.2) the determination, pursuant to a court judgment which has come into lawful effect regarding a criminal matter, that there was knowingly false testimony of witnesses, expert opinions, or interpretations, or fraudulent written or real evidence, upon which the rendering of a judgment was based;

2.3) the determination, pursuant to a court judgment that has come into lawful effect regarding a criminal matter, of criminal acts due to which an unlawful or unfounded judgment has been rendered or a decision taken;

2.4) the setting aside of such court judgment or such decision by another institution as was a basis for the rendering of the judgment or taking of the decision in this matter;

2.5) the acknowledgement of a norm of law applied in the adjudication of the matter as not in conformity with a higher norm of law in lawful effect; or

2.6) an adjudication of the European Court of Human Rights or other international or trans-national court in such matter, from which it arises that court proceedings should be commenced anew. In such case a court, in taking the adjudication in the resumed matter, shall base on the facts determined in the adjudication of the

European Court of Human Rights or other international or trans-national court and their legal assessment.

The legal literature[28] states that the main requirements for the principle of truth are: to establish in the case existence or non-existence of meaningful factual circumstances by referring in the judgment only to the facts and regard as established only those facts that were founded in the case by evidence and obtained in the lawful procedure with sufficient credibility. The court shall assess all evidence in the case by assessing all circumstances on the whole.

"The law provides the so-called "free" principle for assessment of evidence that was in force already in the pre-war Latvia. This principle is consolidated also in procedural acts of other countries, e.g. in Zivilprozessordnung, parargraph 286 (Der Grundsatz der freien richterlichen Beweiswurdnung). (...) Norms of the Civil Procedure law do not bind the court with (...) formal provisions for assessment of evidences, still they oblige the court to substantiate in the judgment their behaviour in assessment of evidence. In characterising the principle of free assessment of evidence consolidated by law, Prof. Bukovsky says: "On the one hand, it does not restrict the court in assessing the evidence, still on the other hand – obliges the court to deeply comprehend the essence of each evidence in comparison with other evidence and assign it with a meaning it deserves as to its inner value (...). Guided from the principle of free assessment of evidence, in situations when one evidence contradicts with another, the court may give preference to one of them, e.g. to written evidence over testimonies of witnesses or the other way round; the court may ground its decision on testimonies of some particular witnesses disregarding other testimonies."[29]

Section 97 of CPL states: "(1) A court shall assess the evidence in accordance with its own convictions, which shall be based on evidence as has been thoroughly, completely and objectively examined, and in accordance with judicial consciousness based on the principles of logic, scientific findings and observations drawn from every-day experience."

In view of the fact that the court evaluates only those evidences submitted by the parties on which they ground their explanations and applied claims as well as that in the Latvian CPL the principles of disposition and competition prevail, which considerably restricts the court's chances to obtain evidence at their own discretion, it must be concluded that the court cannot in all circumstances establish objective truth. The court's judgment will analyse only those facts and evidences to which the parties have indicated to. Thus it arises that material truth which is established by the court in the judgment by assessing evidences filed by the parties in their interconnection, would rather correspond with the potential material truth standard (probability) based on the court's inner conviction than on the definite material truth standard (certainty).

[28] Līcis A., Prasības tiesvedībā un pierādījumi (Tiesu namu aģentūra, 2003), 53. lpp.
[29] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 271.-272. lpp.

4 Evidence in General

There is consolidated a principle in the Latvian civil procedure that the court shall accept only those evidences that have meaning in the case. Participants of the case can themselves choose by which evidence to prove existence or non-existence of particular circumstances. Paragraph 2 of Section 97 of CPL provides that no evidence shall have a predetermined effect as would be binding upon the court. However, claims of each party shall be grounded by evidence and they shall be sufficient for the court to be convinced about existence of certain facts.

4.1 Comparision of Methods of Proof

Paragraph 2 of Section 97 of CPL prescribes: No evidence shall have a predetermined effect as would be binding upon the court.

As asserted in recent publications on the subject, the Latvian law prescribes the so called principle of "freedom" in evaluation of evidence, pointing out that this principle could be found, for instance, in the German civil procedure code (Zivilprozesordnung – ZPD) § 286.[30]

Latvian process has abandoned the principle which was dominant under the pre-war system where certain kind of evidence enjoyed preference, for instance, not allowing the witness testimony to overturn the fact finding based on written evidence.[31]

However, Paragraph 2 of Section 97 of CPL must be interpreted in conjuncture with other Sections.

For instance, Paragraph 2 of Section 178: Documentary evidence may not be disputed by the person who himself or herself has signed such evidence. Such a person may dispute the evidence by bringing an independent action, if their signature was obtained under the influence of duress, threat or fraud.

The veracity of Land Register entries, notarised documents or other acts certified in accordance with procedures specified by law may not be disputed. Such may be disputed by bringing an independent action (Paragraph 3 of Section 178).

The submitter of disputed documentary evidence shall explain at the same court sitting whether they wish to use such documentary evidence or whether they request that it is excluded from the evidence (Paragraph 4 of Section 178).

If a participant in the matter wishes to use the disputed evidence, the court shall decide as to allowing its use after comparing such evidence with other evidence in the matter (Paragraph 5 of Section 178).

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[30] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 271. lpp.
[31] Bukovskis V., Civilprocesa mācības grāmata (Autora izdevums, 1933), 335.-339. lpp.

A participant in a matter may submit a substantiated application regarding forgery of documentary evidence (Paragraph 1 of Section 179).

4.2 Formal Rule of Evidence

It is pointed out by one of Latvian authors that there is contradictory regulation in the Civil Law of Latvia. On the one hand, he states, the law declares freedom to choose the form by the parties, i.e. Section 1473: The form of a lawful transaction shall depend on the discretion of participants in the matter, except in instances specifically indicated by law. On the other hand, the same law requires that there are certain requirements towards the form of the transaction.[32]

This seems to be a little bit of exaggeration. In fact all examples used by the above mentioned author prove that Latvian law is providing flexibility. For instance, only a written deed can serve as sufficient grounds to amend land register record. However, the acquirer is entitled to claim from the other party to carry out alienation transaction in written form and in case of refusal take him/her to the court. The latter then can rule that the acquirer is entitled to become a new owner. Such court decision can replace a written agreement between the parties and it is binding for the Land Register (Sections 1474-1481 of Latvian Civil Law, Section 44 of the Land Register Law). Similar rules i.e. that the agreement must be in written form, exist in several areas, for instance, the employment agreement (Labour Law, Sections 11, 17, 37, 40)**,** copyright licence agreement (Copyright Law, Sections 13, 17, 64, 67^2) etc.

However, the more unprotected party like an employee and author can always use different means in order to prove that the specific agreement in issue was in fact stepped into even if necessary requirements of written form were not strictly followed.

Thus, in general, no formal rule of evidence exists in Latvia.

Still, the picture is significantly different in the area of civil procedure which is applied to the participants in the court dispute. Rather unusual restrictions provide very carefully each movement of the arguing parties once the proceedings are initiated.

For instance, Section 85 of CPL provides: "Representation of natural persons shall be formalised with authorisation certified by a notary."

As to the scope of authority, Paragraph 2 of Section 86 of CPL provides: "Full or partial withdrawing of an action, varying of the subject-matter of an action, raising of a counterclaim, full or partial admitting of a claim, entering into a settlement, transferring of a matter to an arbitration court, appealing court adjudications in accordance with appellate or cassation procedure, submitting execution documents for recovery, receiving property or money adjudged, and terminating execution proceedings must be specially set out in the authorisation issued by the person represented."

[32] Rudāns S., Darījuma rakstiska forma, http://www.juristavards.lv/doc.php?id=169189 (accessed 19 Feb. 2014).

Courts strictly follow this rule and does not accept appeal petition if it is signed by a representative of the party in the court dispute who is simply mandated to "carry out all necessary procedures in any court" and if his/her power of attorney does not expressly specify the right to "appealing court adjudications in accordance with appellate or cassation procedure". No excuse will be accepted and the appeal petition will not be accepted.

At the same time – if the same appeal petition will be signed in person by the party in absence of any witness, let alone the notary public, no one will even bother to follow up whether such signature was genuine and in this case the appeal petition most probably will be duly accepted.

4.3 The Minimum Standard of Proof to Consider a Fact as Established

Section 97 of CPL states: "(1) A court shall assess the evidence in accordance with its own convictions, which shall be based on evidence as has been thoroughly, completely and objectively examined, and in accordance with judicial consciousness based on the principles of logic, scientific findings and observations drawn from every-day experience." Thus it may be concluded that the grounds for assessment of evidence shall be judicial consciousness.

If one party admits the facts on which the claims or objections of the other party are based, a court may find such facts to be proven, if the court is not in doubt that the admission was not made due to the effects of fraud, violence, threat or error, or in order to conceal the truth (Paragraph 2 of Section 104 of CPL).

During a court hearing the judge may put questions to participants in the matter, if a participant expresses himself or herself obscurely or indefinitely, or if it is not evident from the explanations whether or not the participant admits or denies the facts on which the claims or objections of the other party are based (Paragraph 2 of Section 167 of CPL).

The reasoned part of a judgment shall state the facts established in the matter, the evidence on which the conclusions of the court are based, and the arguments by which such evidence, or other evidence, has been rejected (Paragraph 5 of Section 193 of CPL).

In case the court has avoided arguing why the evidence provided was not taken into account and the conclusions of the court decision contradicted the evidence, the interested party inevitably will point it out in the appeal claim.

4.4 Means of Proof

Latvian Civil Procedure law contains certain means of proof that may be used by parties to substantiate their claims. They are as follows:

1. Explanations by parties and third persons (Section 104 of CPL);

2. Testimony of Witnesses (Sections 105-109 of CPL);
3. Documentary evidence (Sections 110-114 of CPL);
4. Real evidence (Sections 115-119 of CPL);
5. Expert-examination (Sections 121-125 of CPL);
6. Opinion of an authority (Section 126 of CPL).

This list is exhaustive and no other means of proof is admitted. Participants of the case have right to freely choose particular means of proof depending on what kind of evidence is at their disposal. Civil procedure law does not provide restrictions in choosing the means of proof.

As special means of proof in the Latvian civil procedure are explanations of the parties. In view of the fact that in a civil dispute parties are interested in the outcome of the case, Paragraph 1 of Section 104 of CPL states that such explanations have incomplete power of evidence because explanations given by each party shall be substantiated with other evidence submitted in the case. Restrictions for the party to provide explanations are set forth by a legal norm by defining minimum age of procedural capacity to act or general restrictions to legal capacity established by a judgment due to mental or other health disorders. Thus, for example, Section 72 provides that for natural persons under the age of 15 the court matters shall be conducted by their legal representatives without letting the under-aged person give explanations. Natural persons at the age from 15-18 are represented by their legal representatives. Natural persons having attained legal age, but whose legal capacity has been restricted by the court are represented by their legal representatives in the court or – in cases specified by law – by legal representatives together with these persons. In the cases conducted by representatives of the mentioned persons, the court also invites the represented persons. Therefore, the court may also listen to the opinion of these persons and take it into account by assessing it with other circumstances of the case and other evidence in the case. Other restrictions with regard to the right of the parties to provide explanations are not provided.

Explanations by parties can be given in oral or in written form. Written explanations of participants in a matter shall be read at the court sitting in accordance with the order set out in Section 165 of this Law, and shall be appended to the file of the case (Section 166 of CPL). Withdrawal of a claim or admission of a claim by a party shall be recorded in a separate statement prepared by the court and signed respectively by the plaintiff or by the defendant (Paragraph 1 of Section 164 of CPL).

Latvian Civil Procedure law does not provide special procedure in which explanations of the parties are allocated with full meaning of evidence when testimony is given. Section 167 of CPL provides that one party may ask questions to other party which refer to the case. The judge may itself put questions to participants in the matter, if a participant expresses himself or herself obscurely or indefinitely, or if it is not evident from the explanations whether or not the participant admits or denies the facts on which the claims or objections of the other party are based. If a party refuses to answer a question regarding disputable facts, or refuses to provide explanations regarding such, the court may assume that the party does not dispute such facts. In such cases the court,

guided by evidence and explanations filed by the opposite party, may solve the dispute by admitting circumstances of the dispute as proved or not proved. There are not specifically stated in the Civil Procedure Law such cases when a party would be given right to refuse from giving explanations. In some cases giving of explanations is set forth as a duty of the party. For instance, Paragraph 1 of Section 150 of CPL provides that if a participant in a matter without a justified reason fails to submit explanations, does not reply to a request by the judge within the time period set by the judge, the judge may impose a fine not exceeding 150 euro.

Amendments to the Civil Procedure law dated January 4, 2014 with regard to execution of obligations through the warning procedure contain a new duty for a party to provide statement that the court is presented with true information on facts and the applicant is informed that liability may enter as per the Criminal law regarding presenting false application. Such statement is confirmed by the applicant's signature. In updating the Latvian Civil Procedure law it is also intended to introduce such statement in those categories of court cases where a party cannot file evidence. Such statement of truth is also intended for applications filed by a person who has suffered in violence for the court to determine temporary means of protection against the violent person until the claim is brought to the court.

Latvian Civil Procedure law does not provide chance for a party of the dispute to take oath.

Paragraph 6 of Section 74 of CPL states that parties shall exercise their rights and perform their duties in good faith. Therefore, the Civil Procedure law does not provide any sanctions if a party delivers false explanations. These explanations are not taken into account because if explanations are false, they cannot be approved by other evidence submitted in the case. Otherwise the question could be valued on forgery of evidence to be regarded as criminal offence according to the Criminal law.

With regard to the above statement provided by a person in some of the court cases, a similar argument can be mentioned. If one party has deceived the court, the other party can file its own explanations with evidence that the information contained in the statement is contested. In this way the court may establish true circumstances of the case and inform about the criminal offence admitted by the person if the court was provided with false information. Section 300 of the Criminal law[33] may impose sanction regarding providing of intentionally false information – a short-term detention or forced labour, or a fine.

A witness who has been called to court does not have the right to refuse to give testimony (Paragraph 3 of Section 105 of CPL), except clergymen – regarding facts, which have come within their knowledge through hearing confessions, and persons whose position or profession does not permit them to disclose certain information entrusted to them – regarding such information, minors – regarding facts that testify

[33] Krimināllikums *(Criminal law)* (17 June 1998), Latvijas Vēstnesis, nr. 199/200, 1998.7.jūlijs.

against their parents, grandparents, brothers or sisters; persons whose physical or mental deficiencies render them incapable of appropriate assessment of facts relevant to the matter; and children under the age of seven (Section 106 CPL).

There is ongoing discussion whether and under which circumstances a lawyer can be involved as a witness.[34] Section 6 of the Advocacy Law of the Republic of Latvia expressly prohibits requesting information and explanations from advocates as well as interrogate them as witnesses regarding facts which have become known to them in providing legal assistance. There are no *expressis verbis* exemptions in CPL regarding lawyers, physicians etc., but they can be regarded as persons who cannot disclose confidential information that they have received during fulfilment of their professional duties (Paragraph 1 of Section 106 of CPL).

Documentary evidence shall be submitted by way of original, or true copy, copy or extract certified in accordance with the specified procedures. If a part of a written document or of other written matter is sufficient to clarify facts meaningful in the matter, an extract there from may be submitted to the court (Section 111 of CPL).

A court or a judge is entitled to require, pursuant to a substantiated request from a participant in the matter, documentary evidence from the State and local government institutions and from other natural or legal persons (Section 112 of CPL).

Real evidence is defined as tangible things that may, due to their properties, characteristics or very existence, be useful in clarifying facts, which are significant in a matter (Section 115 of CPL).

The term "opinion of an authority" can be somewhat misleading. In fact such opinion enjoys no more "authority" than any other evidence. For instance, in cases over patentability of invention the opinion of the Patent Board was heard as an opinion of the authority. This opinion, in turn, was contested by expert-examination. The court has a final word as to which evidence should be regarded as truthful and which to be rejected.

4.5 Formally Prescribed Type of Evidence

Civil Procedure law does not contain any exceptions as to by what means of proof, in case of a dispute, particular facts shall be proved. Participants of the case may use all admissible means of proof, but material norms may contain individual evidence that would include certain fact, while non-existence of such particular evidence does not deprive the party choosing a number of indirect evidences that allows drawing necessary conclusions on the particular facts. Still, it should be taken into account that in cases when the law provides adjudication in written proceedings, participants of the case have restricted chances to apply other means of proof except written ones. The

[34] Neatkarīgā Rīta Avīze Latvijai: Prokuratūra spiedusi advokātu liecināt pret klientu, http://www.jpa.gov.lv/informacija-presei/neatkariga-rita-avize-latvijai-prokuratura-spiedusi-advokatu-liecinat-pret-klientu (accessed 20 Feb. 2014).

court may determine oral proceedings in such court cases at its own initiative if it is necessary for the sake of interests of the case.

4.6 Proving of Rights Arising Out of a Cheque or Bill of Exchange

On January 4, 2014 amendments were introduced in the category of Undisputed Compulsory Execution of Obligations providing that upon filing the application, it shall be attached by a protested *paper* promissory note – a bill of exchange (promissory note), its certified copy and the act of protested promissory note in a paper form, but according to a protested electronic promissory note – an electronic bill of exchange and electronic act of the protested paper.

4.7 A Party Presents in the Proceedings Various Evidence: Witnesses, Authenticated Documents, Private Documents and Expert Opinion

Participants of the case may apply and submit to the court different kind of evidence, however, the court has the right, guided by the principle of economy of the civil procedure, to apply in the case the submitted direct evidence containing the most complete and most credible information on the facts to be proved. If authentic documents are filed in the case, they will give the most complete information in the process of assessing evidence. Still, the court may also assess private documents, witness testimonies and expert opinions.

In view of the fact that witnesses applied by a party shall be summoned to the court in order to provide their testimonies as well as expert opinions are appointed by the decision of the court, the court has the right to dismiss request by participants of the case on the use of such evidence.

Upon choosing the evidence, parties shall also consider in what kind of proceedings the case will be reviewed. Depending on it, witness testimonies may be excluded as the means of proof because according to Section 105 of CPL, witnesses shall give their testimony orally. Written testimonies are not admissible.

In performance of obligations through the court the main accent is put on execution of particular payment obligations. Thus the party is obliged to attach to the statement of claim a document that would confirm such obligation – an act that is subject to undisputed compulsory execution or its copy.

In reviewing cases in general proceedings or in special proceedings, all means of proof provided by the Civil Procedure law are admissible.

4.8 Duty for Parties to Produce or Deliver Evidence. The Consequences for Breach

Duty to submit evidence is imposed upon each party of the dispute. Written evidence shall be submitted in their original form or in the form of a duly made copy or excerpt.

Observing of the form of evidence is the duty of a party. In case such evidence is necessary to prove some meaningful fact in the case, but a party cannot get access to it due to classified information, the party may request the court to require it from other persons or from the opposite party based on a motivated request.

Witnesses are announced by a party by stating in the application what kind of facts or their absence may be testified by the witness. Witnesses are summoned to the court after the party has paid up the state duty regarding summoning of the witness.

Expertise is announced by a party by specifying questions to be posed to the expert. The court shall decide on such request by formulating questions in the decision to be posed to the expert. Expert takes up his/her duties after the party has paid up the expert expenses.

In case a party fails to submit necessary evidence, the court has the right to indicate that in respect of any of the facts, on which the claims or objectives of the party are based, no evidence is submitted and it shall notify the parties thereof and, if necessary, set a time period within which evidence is to be submitted. If evidence is not filed, the case is reviewed based on the existing evidence.

Particular facts or events, as per law, may be proved only by certain type of evidence. E.g. if the law requires a written form for a certain type of agreement, then concluding of such agreement may be proved only by presenting a written document. Such requirements are set forth for lease agreements of dwelling premises, construction agreements, public procurement agreements. If the written agreement was not concluded or it was lost or it cannot be filed due to other reasons, it is possible to attempt to prove existence of such agreement by other means of proof, e.g. witness testimonies, factual actions, other documents confirming execution of the agreement.

By certain means of evidence – public acts – there are proved those facts that relate to changes in the civil status of physical persons (birth, death, marriage etc.), in relation to establishment of legal entities, reorganisation, liquidation, appointment of officials etc., changes in ownership rights to the objects subject to public registration – immovable property, means of transport, industrial property (patents, trademarks, designs).

4.9 Duty for Third Persons to Deliver Evidence. Consequences for Breach

Civil procedure law provides that the court has the right to require written evidence from other persons if such request has been made by a party in the case in a motivated request and by indicating due to what reasons the party itself could not obtain the necessary evidence. The state and local government institutions and other natural or legal persons which cannot submit the required documentary evidence, or cannot submit such within the time limit specified by the court or the judge, shall notify the court thereof in writing, stating their reasons. Civil Procedure law does not envisage consequences for failure to perform the court's decision, still the court has the right to apply administrative sanction for disrespecting the court.

5 General Rule on the Burden of Proof

5.1 Main Doctrine Behind Burden of Proof Rules in the Country

Paragraph 1 of Section 93 of the Latvian Civil Procedure Law expressly states that each party shall prove the facts upon which they base their claims or objections. Plaintiffs shall prove that their claims are well-founded. Defendants shall prove that their objections are well-founded.

Evidence shall be filed by parties and other participants of the case, but only the court may establish which material filed by the parties shall be valued as evidence in the case.

The duty to submit evidence is imposed upon such participants of the case as plaintiffs, defendants, third persons without independent claims and third persons with independent claims. In cases when the prosecutor has brought action in the civil matter, also he/she is under the duty to file evidence. Such occasions are precisely defined under Paragraph 2 of Section 90 of CPL:

1) it is necessary in order to protect the rights and interests of the State or of local governments set out in law;
2) there has been violation of the rights, or interests protected by law, of persons lacking capacity to act, disabled persons, minors, prisoners or other such persons as have limited means to protect their rights; or
3) in conducting an inspection of public prosecutors, a breach of law is ascertained.

Still the most essential burden of proof is laid exactly upon the plaintiff and the defendant. Legal literature has expressed opinion that „the burden of proof is division of heaviness of the burden of proof between the parties by assuming that each party is interested in clarification of those factual circumstances before the court based on which it grounds its claims."[35]

In labour law infringements on some occasions there is specified a different burden of proof from that defined in the Civil Procedure law.

Section 125 of the Labour Law[36] is one of such exceptions describing when the initial burden of proof is laid upon the employer, i.e.:

1) that a notice of termination of an employment contract has a legal basis and complies with the specified procedure for termination of an employment contract;
2) that, when dismissing the employee, he or she has not violated the right of the employee to continue employment legal relationships.

If the claim is raised based on Paragraph 3 of Section 29 of the Labour Law, then in case of dispute, an employee indicates conditions which may serve as a basis for his or her direct or indirect discrimination based on gender and the employer has a duty to prove that the discriminating attitude is indirect and there is a differential treatment

[35] Bukovskis V., Civilprocesa mācības grāmata (Autora izdevums, 1933), 340. lpp.
[36] Darba likums *(Labour Law)* (20 June 2001*)*, Latvijas Vēstnesis, nr. 105, 2001.6.jūlijs.

based on objective circumstances not related to the gender of the employee, or also that belonging to a particular gender is an objective and substantiated precondition for performance of the relevant work or the relevant employment.

The subjective viewpoint of the employee about the possible differential attitude shall be disproved by the employer by evidence that is at his/her disposal and would prove the opposite. However, also in this case the employee shall first indicate to the factual circumstances of discrimination in order to put the employer under the burden of proof. It is similar with cases concerning prohibition to exercise punishment upon the employee or in other words – directly or indirectly cause for the employee unfavourable circumstances because the employee in admissible way uses his/her rights within legal labour relations (Section 9 of the Labour Law) since also in these cases the burden of proof concerning the mentioned circumstances is laid upon the employer.[37] It means that when action is brought to the court in matters where the burden of proof is imposed upon the employer, the employee must take into account that also he/she shall participate in proving his/her arguments, considerations and potential evidence that is in his/her possession to ground what he/she is stating.[38]

5.2 Proof Standards in the Legal System

Paragraph 1 of Section 8 of CPL provides that the court shall clarify the circumstances of a matter, examining evidence, which has been obtained in accordance with the procedures prescribed by law.

The Supreme Court of the Republic of Latvia has stated that „when hearing the case, the court shall clarify those circumstances which are subject to the burden of proof – the basic facts of the claim and the basic facts of the defendant's objections (facts to be found). Facts to be found are defined by the parties, but the composition of facts to be proved in the case, shall be finally set forth by the court according to those substantive legal norms whose hypothesis contain facts which define the disputed and infringed rights of the parties and respective obligations."[39]

Standard of the proof is incorporated under Paragraph 1 of Section 97 of CPL stating that a court shall assess the evidence in accordance with its own convictions, which shall be based on evidence as has been thoroughly, completely and objectively examined, and in accordance with judicial consciousness based on the principles of logic, scientific findings and observations drawn from every-day experience.

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[37] Ose D., Pierādīšanas pienākums atsevišķu kategoriju lietās, Daugavpils Universitātes 52. Starptautiskās zinātniskās konferences rakstu krājums, (Daugavpils Universitātes Akadēmiskais apgāds „Saule", 2010), 1298.-1306. lpp.

[38] Ose D., Darba strīdu izskatīšana un prasības pieteikumu sagatavošana (Latvijas Brīvo arodbiedrību savienība, 2013), 29. lpp.

[39] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2012. gada 21. marta spriedums lietā Nr. SKC-98/2012, www.at.gov.lv/files/uploads/files/archive/department1/2012/98-skc-2012.doc (accessed 13 June 2014).

Paragraph 1 of Section 95 of CPL provides that the court shall admit only such kind of evidence as provided by law. While Paragraph 2 of Section 95 provides that facts that, in accordance with law may be proved only by particular kind of evidence, may not be proved by any other kind of evidence.

In this way, each party of the dispute shall file only those evidences that are obtained in the due procedure both as to their form and as to the kind of their obtaining so that the court gets sufficient conviction about circumstances of the case.

The court shall substantiate their arguments in the operative part of the adopted judgment by those evidences that were recognized as most appropriate, thorough and credible. Such duty also arises from Paragraph 5 of Section 193 of CPL where it is stated that the court in the reasoned part of the judgment shall state the facts established in the matter, the evidence on which the conclusions of the court are based, and the arguments by which such evidence, or other evidence, has been rejected.

5.3 Rules Exempting Certain Facts from the Burden of Proof (Recognized Facts, Well Known Facts)

Paragraph 1 of Section 96 of CPL provides: If the court acknowledges a fact to be universally known, it need not be proved.

It is left for discretion of the court which of the facts in dispute should be regarded as universally known. For instance, empirical facts whose knowledge is rooted into personal experience of the judge are recognised by the Latvian doctrine[40] as well as by case law[41] as such that no additional evidence is necessary.

There is no need to prove something that is presumed by law. Such presumptions for example can be found in Latvian Civil Law:
146 As the mother of a child shall be recognised the woman who has given birth to the child, which is certified by statement from a physician.
148 The paternity presumption may be contested in court.
378 A missing person may be declared presumed dead:
1) if he or she have gone missing on a battle-field and within a two year period after the end of active hostilities there is no news of him or her; and
2) if he or she were in a ship or an aeroplane disaster or had found himself or herself in other mortal danger and within a six month period there is no news of him or her.

918 Every possession shall be deemed legal and in good faith, so long as it is not proved otherwise.
990 (3) Goods or any other property with the mark of the acquirer thereon shall be deemed to have been delivered and to have passed into the ownership of the acquirer, so long as the contrary has not been proven.

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[40] Bukovskis V., Civilprocesa mācības grāmata (Autora izdevums, 1933), 335. lpp.
[41] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2011. gada 18. maija spriedums lietā Nr. SKC-863/2011, www.at.gov.lv/files/uploads/files/archive/department1/2011/skc-863-11j.doc (accessed 13 June 2014).

994 Only such persons shall be recognised to be the owners of immovable property, as are registered in the Land Register as such owners.
1841 (2) If the debt document has been returned to the debtor, or destroyed, or crossed out, or torn, or shredded it shall be presumed therefrom that the debt has been paid; this shall not, however, revoke the right to prove the contrary.

It is almost universally recognized by the legal doctrine that in case of violation of certain prohibition, the fault of the responsible person is presumed.

Pre-conditions for civil liability are unjustifiable action by the one who infringes the law, existence of damage, causal link between damage and inadmissible action.[42] A different opinion, by changing his earlier view, has been expressed by Prof. K. Torgāns disputing the presence of fault as a pre-condition for civil liability.[43]

One can come across the court decisions which do not presume existence of fault but state that fault must also be proved. For instance: "The cassation appeal correctly states that in order for a claim for damages to be satisfied, it is not sufficient that the existence of loss is determined. It is also necessary to establish material preconditions, namely, an unlawful act or failure to act by a person, the fault of such person, existence of the loss and the amount of the loss, and causation between the unlawful act or failure to act and the loss suffered..." (Judgment of the Civil Law Department of the Senate of the Supreme Court, Case SKC-699, 9 December 1998[44]).

But such decision should be regarded merely as an exclusion from the routine practice.

There are specific presumptions prescribed by other laws, for instance, it is regarded that presumption of fault prevails in cases of unfair competition.[45]

Very recently the court has found that the executive of the company is presumed to be at fault for losses caused to the creditors of the company.[46]

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[42] Sinaiskis V., Latvijas civiltiesību apskats, Lietu tiesības, saistību tiesības (Latvijas juristu biedrība, 1996), 142. lpp.; skat. arī: Bitāns A., Civiltiesiskā atbildība un tās veidi (AGB, 1997), 101.-120. lpp.
[43] Torgāns K. Vainas vai attaisnojuma meklējumi civiltiesībās, http://www.juristavards.lv/doc/109206-vainas-vai-attaisnojumu-meklejumi-civiltiesibas/ (accessed 25 June 2014); skat. arī: Torgāns K., The Concept of Fault of Commercial Transactions in the Commercial Law of Latvia, Humanities and Social Sciences, Latvia, Riga, University of Latvia, 3 (40), p. 96-109 (2003), p. 96-109; Torgāns K., Saistību tiesības I daļa, Mācību grāmata (Tiesu nama aģentūra, 2006), 209. lpp.
[44] Latvijas Republikas Augstākās tiesas Senāta 1998. gada 9. decembra spriedums lietā SKC-699, Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedumi un lēmumi (Tiesu nama aģentūra, 1999), 385.-389. lpp.
[45] Rasnačs L., Vainas nozīme atbildības piemērošanā par negodīgas konkurences aizlieguma pārkāpumiem, Aktuālas tiesību realizācijas problēmas, Latvijas Universitātes 69. konferences rakstu krājums (LU akadēmiskais apgāds, 2011), 48.-58. lpp.
[46] Latvijas Republikas Augstākās tiesas Civillietu departamenta 2014. gada 15. janvāra spriedums lietā SKC-101/2014, (accessed 13 June 2014).

Another case when a party is exempted from a burden of proof is when certain facts of the case have been established pursuant to the judgment that has come into lawful force in another civil matter involving the same parties (Paragraph 2 of Section 96 of CPL).

As to the court judgements in criminal matters, a prosecutor's injunction regarding punishment as well as a decision on termination of criminal proceedings for reasons other than exoneration, they shall have the prejudicial meaning and shall be binding on a court adjudicating a matter regarding civil legal liability of the person regarding whom the relevant adjudication was made, only with respect to the issue of whether a criminal act, or failure to act, occurred and whether such has been committed, or respectively been allowed, by the same person (Paragraph 3 of Section 96 of CPL).

With regard to the court judgments in administrative matters, the borders of their binding force in civil matters are not set forth by law. It means that on prejudicial meaning of the judgment in administrative matters shall decide the court who is reviewing the civil case in view of connection of particular circumstances of the respective administrative and civil case. Rulings, administrative acts and documents issued by the state and municipal institutions and other law protection instances (arbitration courts, parish courts, labour dispute commissions etc.) does not have prejudicial meaning in the court when civil matters are reviewed.[47]

According to Paragraph 4 of Section 96 of CPL the facts, which in accordance with law are deemed to be established, need not be proved. Such assumption may only be disputed in accordance with general procedures. This is called legal (legitimate) presumption (in Latin – *paresumptio iuris*) – recognition of a fact to be undisputable until the opposite is proved.[48] Such presumptions are provided in material legal norms, e.g. in the Civil law of Latvia, and releases one of the parties from the burden of proof. For instance, Section 148 of the Civil Law provides that a farther of a child born in marriage shall be a husband of the mother of the child, the so-called presumption of paternity. At the same time – since the presumption is an assumption based on likelihood, it may never exclude another likelihood, namely – that the presumed fact does not exist. Thus the opposite party shall always have the right to challenge the presumption and prove the opposite,[49] e.g. by disputing the presumption in the court.

A party need not prove the facts, which in accordance with the procedures set out in this Law, have not been disputed by the other party (Paragraph 5 of Section 96 of CPL). The other party can dispute facts on which, for example, the claimant grounds his/her claim by submitting oral or written explanations to the court. In application of this norm not only the form of challenging (explanations) is important, but also observing of the time allocated for such challenging. On expiry of the term, the fact becomes undisputed and the party, who has grounded its claims or objections on it, is released from proving this

[47] Aigars G., Druks-Jaunzemis O., Dudelis M., Fridrihsons I., Gencs Z., Līcis A., Rozenbergs J., Saulīte R., Torgāns K., Višņakova G., Zāģeris A., Civilprocesa likuma komentāri (Trešais papildinātais izdevums, Tiesu namu aģentūra, 2006), 181. lpp.
[48] Turpat, 181. lpp.
[49] Turpat, 181. lpp.

fact.[50] Undisputing of a fact shall be distinguished from recognition of the fact. Undisputing shall release the party from proving the fact, but does not make this fact established. Recognition is the means of proof that may give basis for the court to establish this fact as proved (Paragraph 2 of Section 104 of CPL).[51]

5.4 Extent of the Duty to Contest Specified Facts and Evidence Regulated in the Legal System

Burden of proof starts with a claim by a party the credibility of which is substantiated with respective evidence. In a civil matter the plaintiff cannot have initiation of the case only by a claim on infringement of his/her civil rights or interests protected by law. Each claim shall be followed by respective evidence on factual circumstances included in the subject of the burden of proof. It is highlighted in the works by many scientists that until the moment when the plaintiff has grounded his/her claim, the defendant shall not prove anything.[52]

Paragraph 2 of Section 148 provides that in the explanations the defendant shall state:
1) whether he or she admits the claim fully or in a part thereof;
2) his or her objections against the claim and substantiation thereof;
3) evidence corroborating his or her objections against the claim and their substantiation, as well as the law on which they are based;
4) petitions regarding acceptance of evidence or requiring thereof; and
5) other facts which he or she considers significant in adjudicating of the matter.

Submitting of the defendant's explanations regarding the claim raised by the plaintiff is stated as a duty whose failure may be subject to imposing fine from the defendant up to 150 euro (Paragraph 1 of Section 150 of CPL[53]).

The opposite party has the right not only to contest the facts and evidence indicated by the other party, but also recognise them. Paragraph 2 of Section 104 of CPL states that if one party admits the facts on which the claims or objections of the other party are based, a court may find such facts to be proven, if the court is not in doubt that the admission was not made due to the effects of fraud, violence, threat or error, or in order to conceal the truth. Such admission is not evidence itself, but is releasing the opposite party from the burden of proof.[54]

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[50] Turpat, 182. lpp.
[51] Aigars G., Druks-Jaunzemis O., Dudelis M., Fridrihsons I., Gencs Z., Līcis A., Rozenbergs J., Saulīte R., Torgāns K., Višņakova G., Zāģeris A., Civilprocesa likuma komentāri (Trešais papildinātais izdevums, Tiesu namu aģentūra, 2006), 182. lpp.
[52] Līcis A., Prasības tiesvedībā un pierādījumi (Tiesu namu aģentūra, 2003), 72. lpp., kā arī Bukovskis V., Civilprocesa mācības grāmata (Autora izdevums, 1933), 341. lpp.
[53] If a participant in a matter without a justified reason fails to submit explanations, does not reply to a request by the judge within the time period set by the judge, the judge may impose a fine not exceeding 150 euro on him or her.
[54] Līcis A., Prasības tiesvedībā un pierādījumi (Tiesu namu aģentūra, 2003), 97. lpp.

If one party admits the facts on which the claims or objections of the other party are based, a court may find such facts to be proven, if the court is not in doubt that the admission was not made due to the effects of fraud, violence, threat or error, or in order to conceal the truth (Section 104 (2)).

V. Bukovskis claimed that in case of collision between admittance of certain claims by the party on the one hand and the conviction of the court which contradicts that admittance on the other, the decisive role must be devoted to the former rather than latter. In his understanding the admittance makes an obstacle to the court to upheld its' conviction.[55]

More recently some authors have expressed different view. They insist that the court must contemplate admittance of the claim by the party in the context of all evidence gathered by the court during a hearing rather than take such admittance for a face value.[56]

In my opinion the view expressed by V. Bukovskis more corresponds with the principle of adversarial proceedings. Also the courts in most cases will consider such admittance as sufficient and will act in accordance with the view by V. Bukovskis.

5.5 The Doctrine of iura novit curia

Iura novit curia is known in the Latvian civil procedure providing that the court shall indicate in the judgment meaningful circumstances in the case that are substantiated by evidence. Section 192 of CPL provides that the court shall make a judgment regarding the subject-matter of the claim set out in the action, and on the basis specified in the action, not exceeding the extent of what is claimed; while Paragraph 5 of Section 193 of CPL states that in the reasoned part the court shall state the facts established in the matter, the evidence on which the conclusions of the court are based, and the arguments by which such evidence, or other evidence, has been rejected. This part shall also set out the regulatory enactments by which the court was guided, and a judicial assessment of the facts determined in the matter, as well as the conclusions of the court regarding the validity or invalidity of the claim. If the defendant has fully recognised the claim, the reasoned part of the judgment shall include only an indication of the regulatory enactments, which the court has acted pursuant to.

It means that the court may choose appropriate legal norms to use in substantiation of the judgment depending on what meaningful facts were established in the case. Such statement is also expressed in the judgement made by the Supreme Court of the Republic of Latvia concluding that the fact that the application of claim does not contain reference to Sections 1405 and 1410 of the Civil law, has no meaning in the opinion of the Senate because according to the legal doctrine „(...) reference to law and even misreference does not deprive the plaintiff of possibility to have protection of fair trial,

[55] Bukovskis V., Civilprocesa mācības grāmata (Autora izdevums, 1933), 374. lpp.
[56] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 287. lpp.

even more so because *jura novit curia* – the court itself shall know the law and shall apply it not only literary, but also according to its sense." *(see V. Bukovskis. Civīlprocesa mācības grāmata. Rīga: E. Pīpiņa un J. Upmaņa grāmatu un nošu spiestuve, 1933., 305. lpp.)*[57]

Section 5 of CPL provides provisions for application of legal norms:
Application of Legal Norms
(1) Courts shall adjudge civil matters in accordance with laws and other regulatory enactments, international agreements binding upon the Republic of Latvia and the legal norms of the European Union.
(2) If different provisions are provided for in an international agreement, which has been ratified by the Parliament than in Latvian laws, the provisions of the international agreement shall be applied.
(3) If the relevant issue is regulated by legal norms of the European Union, which are directly applicable in Latvia, the Latvian law shall apply insofar as it allows the legal norms of the European Union.
(4) In specific cases specified in laws or agreements, the courts shall also apply the laws of other states or international legal norms.
(5) If there is no law regulating disputed relations, the courts shall apply a law regulating similar legal relations, but if no such law exists, the courts shall act in accordance with general legal principles and meaning.
(6) In applying legal norms, the court shall take into account case law.

Still, parties of the dispute shall take into account that initially, when the plaintiff brings action to the court, he/she is obliged to point to all aspects of the dispute by making precise references to norms of material law regulating the obligation.[58]

5.6 The Court's Duty to Advise the Party if the Facts Claimed by a Party and the Proposed Evidence are Incomplete

Paragraph 4 of Section 93 of CPL states that if the court admits that in respect of any of the facts, on which the claims or objectives of the party are based, no evidence is submitted, it shall notify the parties thereof and, if necessary, set a time period within which evidence is to be submitted. The Latvian court practise has recognized that it is a procedural violation if the court has dismissed the plaintiff's claim due to failure for substantiated evidence, instead of pointing to shortage of evidence.[59]

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[57] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2012. gada 1. februāra spriedums lietā Nr. SKC-10/2012, www.at.gov.lv/files/uploads/files/archive/department1/2012/10-skc-2012.doc (accessed 13 June 2014).
[58] Aigars G., Druks-Jaunzemis O., Dudelis M., Fridrihsons I., Gencs Z., Līcis A., Rozenbergs J., Saulīte R., Torgāns K., Višņakova G., Zāģeris A., Civilprocesa likuma komentāri (Trešais papildinātais izdevums, Tiesu namu aģentūra, 2006), 216. lpp.
[59] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2012. gada 8. decembra spriedums lietā Nr. SKC-1594/2012, www.at.gov.lv/files/uploads/files/archive/department1/2012/1594-skc-2012.doc (accessed 13 June 2014).

If, during deliberation, the court finds it necessary to determine new facts that are significant in the matter or to further examine existing or new evidence, it shall resume the adjudicating on the merits of the matter (Paragraph 1 of Section 188 of CPL).

5.7 Means of Court to Induce Parties to Elaborate on Claims and Express an Opinion on Any Factual or Legal Matter

The court has several procedural means at its disposal to enhance active participation of the parties in the proceedings. Section 133 of CPL states that a judge may leave the statement of claim not proceeded and give time to the plaintiff that is not less than 20 days to eliminate defects established in the statement of claim if the statement of claim is not drafted according to the requirements of the Civil Procedure law or it lacks all written documents.

Paragraph 3 of Section 133 provides if a plaintiff rectifies the deficiencies within the time limit set, the statement of claim shall be regarded as submitted on the day when it was first submitted to the court; Paragraph 4 of 133, in turn, states that if a plaintiff does not rectify the deficiencies within the time limit set, the statement of claim shall be considered not to have been submitted and shall be returned to the plaintiff.

The defendant is obliged to file its explanations regarding the raised claim according to Paragraph 2 of Section 148 of CPL and indicate his/her objections, if any, and also submit evidence which grounds these objections.

Paragraph 4 of Section 149 of CPL provides that the judge is entitled to require from the participants in the matter written explanations in order to clarify circumstances of the matter and evidence. Explanations and evidence shall be submitted within the time period specified by the judge.

Pursuant to Section 149.[1] the judge is entitled to appoint a preparatory sitting to interview participants in the matter regarding the substance of the matter in order to clarify the subject-matter and limits of the dispute, explain to the participants in the matter their procedural rights and duties, the consequences of performing or failing to perform procedural actions.

Section 150 of CPL lists procedural sanctions that may be applied by the court to the plaintiff and the defendant:
(1) If a participant in a matter without a justified reason fails to submit explanations, does not reply to a request by the judge within the time period set by the judge, the judge may impose a fine not exceeding 150 euro on him or her.
(2) If a participant in a matter without a justified reason fails to attend the preparatory sitting, the judge may impose a fine not exceeding 150 euro on him or her.
(3) If the defendant has failed to submit explanations, has failed to attend the preparatory sitting and has failed to notify the reason for his or her failure to attend, the court upon the request of the plaintiff may render a default judgment at the preparatory sitting.

5.8 Submission of Additional Evidence

The court may indicate to any of the facts on which no evidence is submitted, but referred to in the explanations, according to Paragraph 4 of Section 93 of CPL. Still the court is not entitled to point to some particular evidence to be submitted in the case. It is up to the parties what evidence is to be filed.

Evidence shall be submitted not later than fourteen days before a court sitting, unless the judge has set another time period within which evidence is to be submitted (Paragraph 3 of Section 93 of CPL).

When evidence is submitted in the court sitting, it may hinder adversarial principle for the opposite party, therefore, the court must postpone the hearing to a later date so that the other party may examine the filed evidence and submit its counter evidence. The latest moment to file potential evidence in the court and to request evidence from other persons is until accomplishment of adjudication of the matter on the merits. Such conclusion arises from Paragraph 1 of Section 183 of CPL which states that after all submitted evidence has been examined, the court shall ascertain the opinion of the participants in the matter regarding the possibility of closing the adjudicating on the merits of the matter.

The party may request the court to require evidence that is in possession with other persons or with the opposite party. Such right is envisaged by Section 112 of CPL:
(1) A court or a judge is entitled to require, pursuant to a substantiated request from a participant in the matter, documentary evidence from State and local government institutions and from other natural or legal persons.
(2) Participants in a matter, who request the court to require documentary evidence, shall describe such evidence and provide their reasons for presuming that the evidence is in the possession of the person referred to.
(3) State and local government institutions and other natural or legal persons which cannot submit the required documentary evidence, or cannot submit such within the time limit specified by the court or the judge shall notify the court thereof in writing, stating their reasons.
(4) If a party refuses to submit the documentary evidence required to the court, without denying that the party possesses such evidence, the court may find as proved facts which the opposite party sought to prove by referring to such documentary evidence.

If a court invites (not orders) the party to submit additional evidence (and the court may do so only if it concerns the fact on which a party is relying on, but which is unproved) and the party does not submit any evidence in respect of the fact referred to by the court, the court will make its decision in the case based on evidence already submitted. For the party it means that the court probably will find its position unproved due to lack of evidence and make unfavourable decision in respect of that party.

In case the court or a judge has required documentary evidence from the State and local government institutions and from other natural or legal persons by an order pursuant to

a substantiated request from a participant in the matter, and if a party refuses to submit the documentary evidence required by the court, without denying that the party possesses such evidence, the court may find as proved facts which the opposite party sought to prove by referring to such documentary evidence.

Also when a party does not fulfil the court's order to submit certain documents, the court may also impose a fine in the amount not exceeding EUR 150,00.

5.9 Court's Initiative to Collect Evidence in Civil Cases (e.g. for the Protection of the Public Interest or in Family Matters)

The court on its own initiative may collect evidence only in matters where interests of an under-aged child, arising from the trusteeship and access rights, shall be protected, and the Orphan's Court is requested to provide its opinion. Such regulation arises from Paragraphs 1 and 2 of Section 239 of CPL:
(1) In matters regarding dissolution or annulment of marriage the court on its own initiative shall require evidence, especially for deciding of such issues which affect the interests of a child.
(2) In issues regarding granting custody rights, childcare and exercising of access rights the court shall require an opinion by the Orphan's Court and summon a representative thereof to participate in the court sitting, as well as the opinion of the child shall be clarified if he or she is capable to formulate it taking into account his or her age and degree of maturity.

Similar norms are incorporated under Paragraphs 1 and 2 of Section 244^5 of CPL:
(1) In matters that arise from custody and access rights, the court on its own initiative or the request of an interested person shall request evidence.
(2) In matters that arise from custody and access rights, the court on its own initiative or the request of an interested person shall request an opinion by the relevant Orphan's Court and summon a representative thereof to participate in the court sitting, as well as the opinion of the child shall be clarified if he or she is capable to formulate it taking into account his or her age and degree of maturity.

In the matters related to restrictions of a person's legal capacity due to disorders in mental health or other illnesses, the court may order the custody court to file opinion on the person for whom the legal capacity shall be restricted as well as the court itself requires a statement from the doctor on assessment of health of the respective person and in case of need, also requires psychological or psychiatric expertise. The court's initiative to collect evidence in these matters does not restrict participants to also collect evidence and file them to the court.

Paragraphs 4 and 5 of Section 266 state that:
(4) When hearing the case, the court on its own initiative shall require statement from the medical institution and other evidence from the applicant and institutions necessary to establish the amount of restriction of legal capacity.

(5) The court, on preparing the case for the hearing, may convene the preparatory sitting and in case of shortage of evidence appoint additional expertise or request other evidence.

In other categories of cases, the court is not entitled on its own initiative collect evidence, however, is entitled, based on the request of a participant in the case, to require evidence from the other party or third persons if the participant of the case, due to objective reasons, may not obtain this evidence himself/herself.

5.10 Additional Submission of the Evidence Due to New Facts

During adjudication of the matter new evidence on facts is possible to be submitted only before the court of the first instance while the matter is reviewed on merits. Such provision arises from Paragraph 3 of Section 93 of CPL where it is stated that the court may set the term to file evidence. If a participant submits evidence after the time period has expired, the court may refuse to accept evidence.

According to Paragraph 1 of Section 183 of CPL providing that after all submitted evidence has been examined, the court shall ascertain the opinion of the participants regarding the possibility of closing the adjudicating on the merits of the matter.

When the matter is heard under appeal proceedings, submission of new evidence is not admissible, except cases when justifying reasons are established that did not allow submitting of evidence before the court of the first instance. Such restriction for submitting evidence is set forth under Paragraph 4 of Section 430 of CPL – if a participant in a matter submits to or requests in an appellate instance court that evidence should be examined which the participant was able to submit at the adjudicating of the matter in the first instance court and if the appellate instance court does not establish justifying reasons for failure to submit this evidence in the court of the first instance, the appellate court shall not accept evidence.

5.11 The Right of a Party Charged with the Burden of Proof, Who is Not in Possession of the Evidence, to Ask the Court to Issue an Order, Addressed to a Third Person Holding the Evidence

The right to ask the court by an order to require evidence that is in possession of another person is provided only with regard to written evidence. This norm is consolidated under Paragraph 1 of Section 112 of CPL stating that a court or a judge is entitled to require, pursuant to a substantiated request from a participant in the matter, documentary evidence from the State and local government institutions and from other natural or legal persons.

Pursuant to Paragraph 2 of Section 112 of CPL participants in a matter, who request the court to require documentary evidence, shall describe such evidence and provide their reasons for presuming that the evidence is in the possession of the person referred to.

6 Written Evidence

6.1 The Concept of a Document in the Legal System

Section 110 of the Civil Procedure law gives definition of written evidence: Documentary evidence is information regarding facts relevant to the matter, which information is recorded by letters, figures or other written symbols or use of technical means in documents, in other written or printed matter, or in other relevant recording media (audio and video recordings, computer diskettes etc.). Video or audio recording is not considered to be a document in Latvian legal system.

List of written evidence is not exhaustive because if updated technologies appear that allow fix information, yet are not expressly mentioned in the definition, the term „technical means" shall include fixing of all possible information. Thus all information that is in any form fixed in a data carrier shall be considered as written evidence, including audio records, photos, video records etc.

Understanding of the term „document" in the Latvian legal acts is different and shall be valued within each separate law. Paragraph 8 of Section 1 of Archive law[60] states that a document is information arisen, received or converted in another form to any information medium, initiating, continuing, changing or terminating some activity, and which attests such activity.

Paragraph 1 of Section 1 of the Law on Legal Force of a Document provides that a document is any written information created by any public or private law subject (e.g. the state or municipal institution, a legal person of private law, unity of physical or legal persons, a notary, court enforcement officer) or a physical person.

Electronic evidence is not separately defined in the Latvian Civil Procedure law, still its meaning is created by regulation contained in other laws. Paragraph 3 of Section 1 of Electronic Documents Law[61] provides that electronic document is any data which is created, stored, sent or received electronically, which ensures the possibility of utilising such data for the performance of some activity, realisation of a right and protection.

Paragraph 1 of Section 3 of Electronic Documents Law provides that the requirement for a document in written form in relation to an electronic document shall be fulfilled if the electronic document has an electronic signature and the electronic document conforms to the requirements of other regulatory enactments.

Whereas Paragraph 2 of the above Section states that an electronic document shall be considered to have been signed by hand if it has a secure electronic signature.

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[60] Arhīvu likums *(Archives law)* (11 Feb. 2010), Latvijas Vēstnesis, nr. 35, 2010.3.marts.
[61] Elektronisko dokumentu likums *(Electronic documents law)* (31 Oct. 2002), Latvijas Vēstnesis, nr. 169, 2002.20.novembris.

Only in individual cases and if the regulatory enactments provide that, in addition to other requisites for a document to acquire legal effect, it also requires the imprint of a seal, then this requirement in relation to an electronic document shall be fulfilled if the electronic document has a secure electronic signature and a time-stamp or electronic signature (Paragraph 3 of Section 3 of Electronic Documents Law). Thus, if the court receives written evidence in a form of electronic document, it shall make sure that it complies with requirements of the Electronic Documents Law – secure electronic signature and a time-stamp.

According to Paragraph 4 of Section 4 of Electronic Documents Law an electronic signature is legal evidence and the submission of an electronic document as evidence to competent institutions has no restrictions, based only upon the fact that:
a) the document is in electronic form; or
b) it does not have a secure electronic signature.

It means that it is only at the discretion of the court to assess degree of credibility of an electronic document according to the criteria of Paragraph 1 of Section 97 of CPL that a court shall assess the evidence in accordance with its own convictions, which shall be based on evidence as has been thoroughly, completely and objectively examined, and in accordance with judicial consciousness based on the principles of logic, scientific findings and observations drawn from every-day experience.

Higher degree of credibility will be to the electronic document signed by secure signature and having the time-seal, but it is also possible to file and assess electronic documents without secure electronic signature. Still no evidence shall have a predetermined effect as would be binding upon the court (Paragraph 2 of Section 97 of CPL).

Electronic written evidence shall also be packages of electronic character and records (e-mails, twitters in e-environment etc.), digital photos etc. Paragraph 1 of Section 71.[2] of Electronic Communications Law[62] provides that an electronic communications merchant shall, upon the request of the court, ensure the provision of the information regarding the given name, surname or designation and address of the subscriber or registered user to whom an Internet Protocol (IP) address, user ID or telephone number was allocated at the time of the connection in order to ensure the protection of the rights and legal interests of the individual infringed in the electronic environment in the civil cases. Whereas Paragraph 2 of Section 71.[2] of this law states that upon bringing an action to the court and upon the request of the court, the electronic communications merchant shall ensure the provision of the information also regarding traffic data having the importance in the review of the case, disclosure of which has been recognised as permissible by the court in the case weighing it against the right of the individual to data protection thereof.

[62] Elektronisko sakaru likums *(Electronic Communications Law)* (28 Oct. 2004), Latvijas Vēstnesis, nr. 183, 2004.17.novembris.

6.2 Documents for Which a Presumption of Correctness Exists

On assessment of written evidence, the court shall take into consideration provisions consolidated in special legal norms concerning documents of public credibility.

According to Section 87.[1] of Notaries Law the sworn notary shall ascertain the intent of the participants in the notarial deed and the terms of the transaction, record notifications by persons clearly and unambiguously, acquaint the participants with the possible legal consequences of the transaction so that ignorance of laws and lack of experience is not used against their best interests. Obligation contained in the agreement upon the above described circumstances shall comply with true will of the contracting parties and shall be used as evidence. It arises from Paragraph 3 of Section 178 of CPL stating that the veracity of Land Register entries, notarised documents or other acts certified in accordance with procedures specified by law may not be disputed. Such may be disputed by bringing an independent action.

Legal literature has acknowledged that by a document made in public procedure one understands an act drafted by a competent official or institution (or which has been drafted with their participation) in the procedure provided by law.[63] At the same time it is explained that the preference that is allocated to public documents by law is based on presumption that office-holders taking part in drafting these documents, have no interest in certifying false information and they may be held liable for certifying false circumstances.[64]

Similarly to public notaries, also Orphans courts may draft documents of public credibility according to Section 61 of the Law on Orphans Courts[65]. Paragraph 2 of Section 61 of this law provides that certification by the orphans court shall be equalled with certification made by the public notary.

Public credibility is also determined to information recorded in public registers. Section 1 of the Land Register Law[66] states that immovable properties shall be entered in Land Registers and the rights related thereto shall be corroborated therein. Land Registers shall be available to everyone and the entries thereof shall be publicly reliable. Section 4.[9] of the Law on the Enterprise Register of the Republic of Latvia indicates that records of the information system of the Enterprise register have public credibility unless other regulatory enactments provide otherwise.

Information obtained from public registers shall not be proved by other evidence. However, also this evidence in civil dispute may not be the sole evidence of the fact to be proved. Since a public document or a record in a public register has lawful credibility, disputing of a record in a public register or of an obligation established by a

[63] Bukovskis V., Civilprocesa mācības grāmata (Autora izdevums, 1933), 392. lpp.
[64] Turpat, 392. lpp.
[65] Bāriņtiesu likums *(Law on Orphan's Courts)* (22 June 2006), Latvijas Vēstnesis, nr. 107, 2006.7.jūlijs.
[66] Zemesgrāmatu likums *(Land Register Law)* (22 Dec. 1937), Ziņotājs, nr. 16, 1993.29.aprīlis.

public document shall be carried out by bringing a new action to the court and by filing evidence that would prove forgery of the document or establishment of the obligation through duress, force or fraud.

Practise of the Supreme Court of the Republic of Latvia has recognised that without bringing separate claim, information contained in a public deed may not be overturned either by witness testimonies or by a private document[67].

Private documents and public documents and records in the civil case are assessed together according to provisions under Paragraph 1 of Section 97 of CPL, stating that "A court shall assess the evidence in accordance with its own convictions, which shall be based on evidence as has been thoroughly, completely and objectively examined, and in accordance with judicial consciousness based on the principles of logic, scientific findings and observations drawn from every-day experience". Private documents have the same weight of evidence as public documents. Public documents however are different from private documents in the way they can be contested. Private document can be contested within the proceedings in which they were filed as evidence. While the public document can only be contested by raising a separate claim that would obviously lead to suspension of the main proceedings.

Section 111 of CPL regulates the order and form for submitting written evidence:
(1) In submitting documentary evidence to a court, or requesting the requiring of such evidence, participants in a matter shall indicate what meaningful facts in the matter such evidence can attest to.
(2) Documentary evidence shall be submitted by way of original, or true copy, copy or extract certified in accordance with the specified procedures. If a part of a written document or of other written matter is sufficient to clarify facts meaningful in the matter, an extract there from may be submitted to the court.
(3) Original documents, as well as documentary evidence certified in accordance with prescribed procedures, shall be submitted if laws or international treaties binding on the Republic of Latvia provide that the particular facts may be proven only with original documents or with true copies certified in accordance with prescribed procedures.
(4) If documentary evidence has been submitted to the court by way of a true copy, copy or an extract, the court is entitled to require, pursuant to a substantiated request of participants in the matter or upon its own initiative, to submit or present the original if it is necessary for determining the facts in the matter.

Participants of the case may dispute the truth of information contained in the written document or file application on the forgery of the document. Such activities are regulated by Section 178 of CPL:
(1) Participants in a matter may dispute the veracity of documentary evidence.
(2) Documentary evidence may not be disputed by the person who himself or herself has signed such evidence. Such a person may dispute the evidence by bringing an

[67] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2012. gada 18. aprīļa spriedums lietā Nr. SKC-176/2012, www.at.gov.lv/files/uploads/files/archive/department1/2012/176-skc-2012.doc (accessed 13 June 2014).

independent action, if their signature was obtained under the influence of duress, threat or fraud.
(3) The veracity of Land Register entries, notarised documents or other acts certified in accordance with procedures specified by law may not be disputed. Such may be disputed by bringing an independent action.
(4) The submitter of disputed documentary evidence shall explain at the same court sitting whether they wish to use such documentary evidence or whether they request that it be excluded from the evidence.
(5) If a participant in the matter wishes to use the disputed evidence, the court shall decide as to allowing its use after comparing such evidence with other evidence in the matter.

Application on forgery of the document is regulated by Section 179 of CPL:
(1) A participant in a matter may submit a substantiated application regarding forgery of documentary evidence.
(2) The person who has submitted such evidence may request the court to exclude it.
(3) In order to examine an application regarding forgery of documentary evidence, the court may order an expert-examination or require other evidence.
(4) If the court finds that the documentary evidence has been forged, it shall exclude such evidence and notify a public prosecutor about the fact of forgery.
(5) If the court finds that a participant in the matter has, without good cause, initiated a dispute regarding the forgery of documentary evidence it may impose a fine on such a participant not exceeding 150 euro.

The court practise has recognised[68] that according to the principle of free assessment of evidence in cases when one evidence contradicts with the other, the court may give preference to one of such evidences. A judgement can be rendered on basis of such documents.

6.3 Distinction Between the Evidential (Probative) Value of Public and Private Documents

Public credibility is possessed by documents made by the state institutions and officials. Such acknowledgment is expressed in legal publications as well as in court rulings. In the process of accessing evidence the judges may assign a higher degree of credibility to a public document over a private document according to Paragraph 1 of Section 97 and pursuant to the principle of free assessment of evidence.

Section 126 of CPL states that an opinion of an authority, summoned duly, shall be assessed by the court as evidence. Reasons for a court's disagreement with such opinion shall be set out in the adjudication made in the matter. It means that the court, upon assessing all submitted evidence in context, may recognise that information contained in

[68] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2012. gada 5. septembra spriedums lietā Nr. SKC-366/2012, www.at.gov.lv/files/uploads/files/archive/department1/2012/366-skc-2012.doc (accessed 13 June 2014).

a public document does not correspond with true circumstances and take into account other evidence in the case, including information fixed in a private document.

Still also when civil matters are heard, the court takes into consideration acknowledgments drawn by administrative courts[69] that documents made by officials *a priori* has public credibility and they may only be contested by filing evidence which proves it.

6.4 Taking of Written Evidence

The court shall decide issues regarding the appending of documentary evidence to the file of the case after it has acquainted the participants of the matter with substance of such evidence and has heard their opinion (Paragraph 1 of Section 176 of CPL). If it is established that submitted material does not refer to the facts to be proved or they have defects in their form failing to correspond with requirements of a document having legal force, the court has the right not to recognise this material as evidence in the case.

It must be noted that all evidence shall be submitted to the court by participants not later than 14 days before the hearing or in the term set forth by the judge. In this way it is secured that parties and their representatives in the case may duly, until the date of the hearing, examine all evidence in the case. Also, in case of necessity and according to provisions of Section 112 of CPL, they may request the court to require necessary evidence from the opposite party or other persons. Such regulation is necessary as it is not always that participants to the proceedings may gather evidence themselves, especially from the state and municipal institutions provided that such information contains personal data protected by law. E.g. a party to the case cannot itself require from the State Revenue Service information on income of another person as it is information of restricted availability which the State Revenue Service can give to certain subjects of law, including the courts. Thus, if a party duly motivates necessity to gather respective information from the State Revenue Service and the court satisfies its request and requires the mentioned information from the State Revenue Service by a decision, then it is binding upon this institution. If a party to the proceedings applies such request with regard to the opposite party and requires the court to oblige it to submit certain evidence and the court satisfies such request, the opposite party is obliged to submit the necessary evidence because the court has ruled so. In case the party does not fulfil the court's ruling on submission of the evidence, the party may be subject to penalty up to EUR 150,00.

Section 177 of CPL provides that documentary evidence or the minutes of the examination thereof shall be read at the court sitting or presented to the participants in the matter, and, if necessary, also to experts and witnesses.

[69] Administratīvās apgabaltiesas 2012. gada 11. decembra spriedums lietā Nr. 142245911, 143/AA43-3371-12/1, http://www.tiesas.lv/files/AL/2012/12_2012/11_12_2012/AL_1112_apg_AA43-3371-12_1.pdf (accessed 13 June 2014).

A court is not required to read out the written documents in the matter, if the parties consent thereto and announce that they have examined these documents or such documents are in their possession. Such provision is consolidated under Section 15 of CPL as exception from the principle of directness and orality.

Civil Procedure law does not require submitting written evidence in their original form. Paragraph 2 of Section 111 of CPL states that documentary evidence shall be submitted by way of original or true copy, copy or extract certified in accordance with the specified procedures. According to Paragraph 3 of this Section original documents, as well as documentary evidence certified in accordance with prescribed procedures, shall be submitted if laws or international treaties binding on the Republic of Latvia provide that the particular facts may be proven only with original documents or with true copies certified in accordance with prescribed procedures.

Only in exceptional cases it is admissible to require the participants of the case to file or present to the court the original document. As per Paragraph 4 of Section 111 of CPL the court is entitled to require, pursuant to a substantiated request of participants in the matter or upon its own initiative, to submit or present the original if it is necessary for determining the facts in the matter.

There is no obligation to the parties to produce evidence.

7 Witnesses

7.1 Duty of a Witness to Testify

A witness who has been called to court does not have the right to refuse to give testimony, except in the matters prescribed in Sections 106 and 107 of this Law (Paragraph 3 of Section 105).

Besides, as restricted access information which can affect the taking of evidence shall be deemed information:

1) which has been granted such status by law;
2) which is intended and specified for internal use by an institution;
3) which is a commercial secret, except in the case where a purchase contract has been entered into in accordance with the Public Procurement Law or other type of contract regarding actions with State or local government financial resources and property;
4) which concerns the private life of natural persons;
5) which is related to certifications, examinations, submitted projects (except projects the financing of which is expected to be a guarantee provided by the State), invitations to tender (except invitations to tender, which are associated with procurement for State or local government needs or other type of contract regarding actions with State or local government funds and property) and other assessment processes of a similar nature;
6) which is for official use only; or

7) which are North Atlantic Treaty Organisation or European Union documents, which are designated as "NATO UNCLASSIFIED" or "LIMITE" respectively. Certain exemptions are prescribed in relation to professionals like clergymen, which have come within their knowledge through hearing confessions, and lawyers, physicians whose position or profession does not permit them to disclose certain information entrusted to them (Paragraph 1 of Section 106) as well as minors, persons whose physical or mental deficiencies render them incapable of appropriate assessment of facts relevant to the matter.

If a clergyman refuses to testify about certain facts, claiming that this is covered by the secrecy of confession, the court based on Section 106 shall accept such excuse. Before the court makes its decision, parties are entitled to provide their opinion on whether the excuse is grounded or not. And if the party considers the decision by the court as incorrect, it can raise objections in the appellate claim in course of appeal of the judgement adopted by the first instance court in the matter. There is no judicature on the question of excusing witnesses from their duty to testify, therefore it is difficult to answer whether there could be attributed principles or values in course of applying Section 106 that could out-balance privileges provided in it.

In accordance with the Personal data protection law, the information about a person's health is sensitive personal data, processsing of which (including data collection, registration, recording, storing, arrangement, transformation, utilisation, transfer, transmission and dissemination, blockage or erasure) is prohibited, except in cases where:

1) the data subject has given his or her written consent for the processing of his or her sensitive personal data;
2) special processing of personal data, without requesting the consent of the data subject, is provided for by regulatory enactments, which regulate legal relations regarding employment, and such regulatory enactments guarantee the protection of personal data;
3) personal data processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express his or her consent;
4) personal data processing is necessary to achieve the lawful, non-commercial objectives of public organisations and their associations, if such data processing is only related to the members of these organisations or their associations and the personal data are not transferred to third parties;
5) personal data processing is necessary for the purposes of medical treatment, the provision of health care services or the administration thereof and the distribution of means of medical treatment;
6) the processing concerns such personal data as necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings;
7) personal data processing is necessary for the provision of social assistance and it is performed by the provider of social assistance services;

8) personal data processing is necessary for the establishment of Latvian national archive holdings and it is performed by the State archives and institutions with State storage rights approved by the Director-general of the State archives;
9) personal data processing is necessary for statistical research, which is performed by the Central Statistics Bureau;
10) the processing relates to such personal data, which the data subject has him or herself made public;
11) processing of personal data is necessary when carrying out the State management functions or when collecting information systems set forth by law;
12) processing of personal data is necessary to protect lawful interests of a physical or legal person when insurance indemnity is required according to the insurance contract;
13) according to the Law on Rights of Patients, a research is using medical data of the data subject.

Based on the above, a doctor's refusal to testify on a person's treatment or health condition shall not be always justified. The doctor will have to testify if any of the exception listed under the Personal data protection law will apply. At the same time, if information on a person's health condition is made public unlawfully, i.e. making public of such information does not refer to any of the mentioned exceptions, the person may be held administratively liable.

Section 45^3 of the Latvian Administrative Violations Code prescribes that in case of illegal release of confidential information obtained in a medical treatment process, a fine in an amount up to EUR 350 shall be imposed on the medical practitioner.

A sworn advocate may not divulge the secrets of his or her authorising person not only while conducting the case, but also after being relieved from the conducting of the case or after the completion of the case. The advocate shall ensure that these requirements are also observed in the work of his or her staff (Section 67 of the Advocacy Law of the Republic of Latvia).

As the Advocacy Law applies only to members of the bar association, the above mentioned exemption does not provide the same privilege to other persons who advise their clients in Latvia and are entitled to do so (the Latvian legislation does not restrict the right to provide legal services and a wide range of people, even without necessary legal training, are providing such services).

As per the Latvian law, the fact that a witness testimony can contain a commercial secret shall not be basis for release from the duty to testify. Thus, if a representative of a commercial company refuses giving testimony by referring to a commercial secret, such refusal shall not be recognised as grounded and the court will not accept it. To protect a commercial secret, a person may request that a hearing or a part of it shall be declared as a closed hearing.

Section 22 of the law On the Press and Other Mass Media prescribes that if the person who has provided the information requests that his or her name is not to be indicated in a mass medium, this request shall be binding upon the editorial board.

This clause is provided as an example of the exemptions towards a professional as a witness in recent legal literature.[70] However the issue is controversial.

First of all, it is questionable whether the vague and broad prohibition to disclose sources precludes the court from making to testify a journalist who is aware of the persons' wish not to be disclosed. It is questionable whether a journalist, if asked about the source of the obtained information, can refuse to testify and whether he/she will be exempt from the liability for refusing to testify. Although he/she definitely should be regarded as being within range of "persons whose position or profession does not permit them to disclose certain information entrusted to them" as per Paragraph 1 of Section 106 of CPL, they are not pointed out as persons who may refuse to testify i.e. relatives in a direct line and of the first or second degree in a collateral line, spouses, affinity relatives of the first degree, and family members of parties; guardians and trustees of parties, and persons under guardianship or trusteeship of the parties and persons involved in litigation in another matter against one of the parties (Section 107 of CPL).

It would be difficult to model a possible courts' decision if confronted with the journalist's refusal to testify based on the above mentioned causes because we have not come across such situation in the civil cases.

Still there are certain indications that such refusal would not be accepted easily for the witness in issue. The grounds for such conclusion are a wide range of cases where journalists[71] as well as state officials[72] have refused to reveal their sources of information in criminal procedure. One of such cases eventually ended up with successfully taking Latvia to the ECHR[73] by a journalist. It has proved, on the one hand, that the principle of discretion has prevailed against all odds and, on the other hand, representatives of the authorities felt rather unhappy.

It is up to the court to decide whether a person may act as a witness.

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[70] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 290. lpp.

[71] Jelgavas žurnālists neatklāj tiesai savu avotu; policija pratinās vēl vienā lietā, http://www.delfi.lv/news/national/criminal/jelgavas-zurnalists-neatklaj-tiesai-savu-avotu-policija-pratinas-vel-viena-lieta.d?id=43871198#ixzz2tyNoP0Tf (accessed 12 Mar. 2014).

[72] DP veikusi kratīšanu Mēkona kabinetā un dzīvesvietā; meklējot informācijas avotu noklausās žurnālistus, http://www.diena.lv/latvija/zinas/dp-veikusi-kratisanu-mekona-kabineta-un-dzivesvieta-meklejot-informacijas-avotu-noklausas-zurnalistu-14036871 (accessed 12 Mar. 2014).

[73] European Court of Human Rights 73469/10 Nagla v. Latvia, http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122374#{%22itemid%22:[%22001-122374%22]} (accessed 13 June 2014).

If a person wishes to refuse his/her role as a witness, he/she has to appear before the court anyway, because if a person called as a witness does not appear and the court recognises the person's refusal to appear as a witness as ungrounded, the witness may be subject to paying penalty up to EUR 60. Likewise, the court may decide on forced summoning of a person to the court.

For refusal to testify for reasons which the court has found unjustified, and for intentionally providing false testimony, a witness is liable in accordance with the Criminal Law" (Paragraph 1 of Section 109 of CPL). The criminal liability is prescribed by Section 300 of the Criminal Law (Penal Code). There are certain criteria of such liability, i.e., if the person summoned as a witness presented the facts which did not take place or on the contrary failed to present some facts of which he/she was aware given that the facts were relevant in the case and could influence the outcome in the case.[74]

If a witness, without justified cause, fails to attend the hearing pursuant to a summons by a court or a judge, the court may impose a fine not exceeding 60 euro on him or her, or have them brought to court by forced conveyance (Paragraph 2 of Section 109 of CPL).

The court can admit that refusal to testify can be justified, for instance, if a person due to physical condition is unable to recall certain facts.[75] Refusal to testify can bring criminal liability – a short term arrest (from 15 days to 3 months) or fine (three to a hundred minimum salaries set forth in the Republic of Latvia) (Section 302 the Penal Code), but only in cases when the court finds refusal unjustified Latvian Criminal law recognises a person's right not to testify against himself/herself and his/her relatives according to the Penal Code (Section 110). Persons accused, detained, spouses, parents, grandparents, children, brothers and sisters, grandchildren are exempt from such liability (Section 303 of Penal Code). The court shall decide on a person's refusal to give evidence in each particular case taking into consideration all circumstances in the matter and objections of the parties. Having evaluated the essence of the question, the court may justify the person's refusal from giving evidence and in such case release the person form the status of a witness, or the court may decide on ungrounded refusal to testify. If the refusal is regarded as unjustified, but the witness is still refusing to give evidence, the court make adopt ancillary decision on calling of a person to criminal liability addressed to a competent institution, i.e. investigation institution (the police) or the prosecutor's office.

With the permission of the court, participants in a matter may put questions to each other. The court may reject questions, which are not relevant to the matter (Paragraph 1 of Section 167 of CPL). Section 167 of CPL does not restrict the number of questions to be asked by the court. Parties also may question each other as long as the court permits and as far as such questions refer to the subject-matter of the case. According to Section

[74] Krastiņš U., Niedre A., Krimināllikuma komentāri, 7. Grāmata, Sevišķā daļa (AFS, 1999), 20. lpp.
[75] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 294. lpp.

171 of CPL „When giving testimony, a witness may use written notes, if the testimony is in connection with calculations or other data, which are difficult to remember. Such notes shall be shown to the court and to the participants in the matter and may, pursuant to a court decision, be appended to the matter file." In case a person has speech defects, it is the obligation of the court to provide services of a sign language interpreter who could explain what is said by the witness.

Before questioning a witness, the court shall determine their identity and warn them on their liability for refusing to testify or for knowingly false testimony, as well as explain the substance of Section 107 of CPL .i.e. to acquaint the witness with lawful rights to refuse from testifying in cases set forth by law.

General order for questioning the witnesses is set forth in Section 170 of CPL. For more detail see chapter 8.4 The Hearing. For giving knowingly false testimony in the court and being warned on criminal liability for giving knowingly false testimony, there is envisaged criminal liability – a person may be deprived of liberty (from 15 days to 3 months) or community service (from 40 to 280 hours) or a fine (three to a hundred minimum salaries set forth in the Republic of Latvia) (Section 300 of Penal Code).

8 Taking of Evidence

8.1 Sequence of Evidence taking

Latvian CPL does not provide for any regulation in respect of the mandatory sequence in which different types of evidence should be taken. But there are some rules for taking definite type of evidence, like parties' explanations and testimonies of the witnesses. In the doctrine there is a view that "In reviewing civil matters the procedure for assessment of evidence is not of that great importance as in criminal matters, and usually not much attention is devoted to this regulation in the court practise, still in individual cases determining of the procedure for assessment of evidence may turn out to be important for clarification of factual circumstances of the case."[76]. It might explain such content regulation of CPL in that respect.

The law states that at first parties give their explanations to the court and submit their petitions if any. After that it is determined by the court in accordance with Section 168 what would be the procedure for the examining of witnesses and experts and for examination of other evidence. Before court makes such decision parties are allowed to express their opinion in question of sequence and order for examining of evidence, but it is not binding to the court.

CPL provides regulation in what sequence parties give their explanations and witnesses are questioned. According to Section 162 in a court sitting participants in the matter shall provide explanations in the following order: plaintiffs, third persons with

[76] Aigars G., Druks-Jaunzemis O., Dudelis M., Fridrihsons I., Gencs Z., Līcis A., Rozenbergs J., Saulīte R., Torgāns K., Višņakova G., Zāģeris A., Civilprocesa likuma komentāri (Trešais papildinātais izdevums, Tiesu namu aģentūra, 2006), 253. lpp.

independent claims, defendants. If a third person without an independent claim participates in the proceedings, he or she shall provide explanations after the plaintiff or after the defendant, depending on whose side the third person participates in the matter.

As to the examination of the witnesses, law provides that the witnesses designated by the plaintiff shall be examined first and the witnesses designated by the defendant thereafter. The order of the examination of the witnesses designated by a party shall be determined by the court, taking into account the opinion of such party (170 (2)). With the permission of the court, participants in the matter may put questions to the witness. Questions shall be put first by the participant at whose request the witness was called, and thereafter by other participants in the matter (170 (5)).

In respect of examination of an expert opinion, CPL states that the court and the participants in the matter may put questions to the expert in the same order as with respect to witnesses (CPL 175 (2)).

Written evidence – documents in the matter with consent of the parties may not be read out by a court in accordance with Section 15 (1), which is very common for civil cases as usually parties get acquainted with materials of the case before the court session and they are known to the parties. In some cases parties ask court to read out only separate documents or even parts thereof. It corresponds to the principle of procedural economy.

8.2 Bringing of the Evidence in Court, Appearance of the Witnesses and Experts (or Other Objects) Before the Court

The parties themselves bring evidence to the court. The parties also provide the court with details regarding evidence the parties cannot deliver themselves, like invitation of a witness, requests for experts, the evidence which can be possessed by third persons. In all above mentioned cases the party who considers that the evidence in issue should be obtained points it out in relevant application. The court, provided that the above mentioned application is reasonable, invites the witness, appoints experts, orders the third person to provide the evidence which is in third persons' possession. The interested party covers respective expenses.

Documentary evidence or the minutes of the examination thereof shall be read at the court sitting or presented to the participants in the matter, and, if necessary, also to experts and witnesses (Paragraph 1 of Section 177 of CPL).

Personal correspondence may be read at an open court sitting only with the consent of the persons involved in such correspondence. If no such consent has been given, or if the persons are deceased, such evidence shall be read and examined in a closed court sitting (Paragraph 2 of Section 177 of CPL).

Participants in a matter may dispute the veracity of documentary evidence (Paragraph 1 of Section 178 of CPL).

Section 93 was substantially changed only recently, imposing more stringent rules for the parties and obliging courts to inform the parties if there is no sufficient evidence to support their case (Section 93 (3^3) (4) CPL.

As pointed out in legal literature, the parties presenting additional evidence which in turn led court hearing to long delay is "illness" of Latvian judicial system.[77]

Court is entitled to impose a fine on guilty party in amount up to 750 *euro* (Section 93 (3^2).

Theoretically the court is in a position to impose the above mentioned fine each time when it finds out that there was presented a claim which was not supported by relevant evidence which lead to postponement of the case. However court is entitled to impose such fine only if it considers the causes of delay as no excuse. In practice courts are rather hesitant to impose such fine.

On the one hand, the need for additional evidence is sometimes used as a potential weapon to get court hearing postponed in order to gather necessary documents, witnesses etc.

On the other hand, the delay is not always intentional. Sometimes the party is compelled to ask the hearing been postponed in order to gather additional evidence due to new arguments put forward during a hearing by a counterparty.

It is always tricky to find the right distinction between the two.

Burden of proof usually is put on the claimant. The defendant has the duty to prove only the facts on which his denial of the claim is based. The defendant has to respond to the declaration of claim by submitting a written explanation within 15-30 days (the term usually ordered by the court when sending the declaration of the claim to the defendant), counting from the day when the statement of claim was served to the defendant (Section 148 CPL).

However there can be legal presumptions which put the burden of proof on the defendant as soon as declaration of claim is submitted to the court. For instance, each person has the right to bring court action for the retraction of information that injures his or her reputation and dignity, if the disseminator of the information does not prove that such information is true (Section 2352.[1] CL). If relevant claim is presented then this is up to the defendant to prove that such information is true;[78] claim for alimony for the child triggers the defendants' burden to prove the amount of income in case if he contests the amount of alimony claimed by the other parent.[79]

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[77] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 259. lpp.
[78] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 257. lpp.
[79] Turpat, 256. lpp.

8.3 Deadline for Taking of Evidence

In order to commence the proceedings in reasonable time and to prevent unjustified postponements of the court hearings there is a general rule that all the evidence should be submitted to the court 14 days before the hearing or in some cases in a term specified by the court (Section 93 (3) and (4)). In case of providing the term by the court, the court makes its decision known to the parties in writing if the term is determined outside the hearing, or orally, if it is announced during the hearing. All the evidence should be filed in the first instance before court starts adjudication on the matter. Filing of new evidence in the appellate court is very limited and allowed only in cases when court finds that not filing of evidence is justifiable or it was impossible for a participant to submit evidence earlier.

As in every rule there are exceptions, which are incorporated in Section 93 (3^1): during adjudicating of the matter in the first instance evidence may be submitted at the reasoned request of the party or other participants in the matter if it does not impede the adjudication of the matter or the court finds the reasons for untimely submission of evidence justified, or the evidence concerns facts which have become known during the adjudication of the matter.

Same rules are applied in case a party is unable to provide evidence itself and needs to request the court to require such evidence from third parties, i.e., such request must be filed reasonable time before the hearing, so that the court could manage to send the order to provide the evidence and third parties would have sufficient time to fulfil it.

If a party has cause to believe that the submission of necessary evidence on their behalf may later be impossible or problematic, they may ask for such evidence to be secured (Section 98 (1)). Applications for securing evidence may be submitted at any stage of the proceedings, as well as prior to the bringing of an action to a court. The application for securing evidence shall be decided by a court or a judge within ten days of its receipt. With a decision by a judge, evidence without summoning potential participants in the matter may be ensured only in emergency cases, including immediate violations of intellectual property rights or cases of possible violations or in cases where it cannot be specified who shall be participants in the matter.

In satisfying an application for securing evidence prior to bringing an action, the judge shall determine the time period for the submission of the action application not longer than 30 days. In satisfying an application for securing evidence prior to bringing an action, the judge may also request that the potential plaintiff pay in a specified amount of money into the bailiff's deposit account or provide an equivalent guarantee to ensure coverage of the losses, which may be caused to the defendant in relation to the securing of evidence.

Examination of witnesses, as well as inspection on site and expert-examination, shall be carried out in accordance with the norms of CPL. When it is requested to testify witnesses, the applicant shall specify the name, surname, personal code and the declared

place of living, if known, of the respective person (requisites necessary to send court summons) as well as shall explain on what important circumstances in the matter the person may provide evidence.

The minutes of the court sitting and the material collected in the course of securing the evidence shall be kept until required by the court that adjudicates the matter.

An ancillary complaint may be submitted in regard to a decision by a judge to reject an application regarding the securing of evidence. If the decision on the securing of evidence has been taken without the presence of the participants in the matter, the time period for the submission of the ancillary complaint shall be counted from day of the issuance or sending of the decision. The court's decision on refusal to secure evidence shall be motivated and shall contain all essential obligatory parts of a decision, i.e. introduction, motivation and the resolution part.

The consequence of not filing the evidence in due term is the rejection of the court to accept and appendix the evidence. An additional measure is a fine, which may be imposed to a party not exceeding the amount of 750 euro if court admits that with such action the adjudication of the matter has been delayed. A decision of the court to refuse acceptance of evidence may not be appealed, but objections regarding such may be expressed in an appellate or cassation complaint.

As pointed out in legal literature, the parties presenting additional evidence which in turn led court hearing to long delay is "illness" of Latvian judicial system.[80] On the one hand, the need for additional evidence is sometimes used as a potential weapon to get court hearing postponed in order to gather necessary documents, witnesses etc. On the other hand, the delay is not always intentional. It is always tricky to find the right distinction between the two.

The consequence of not filing the evidence in due term defined by law or court is the rejection of the court to accept and appendix the evidence. In this case the court adjudicates the matter based on evidence already filed. An additional measure is a fine, which may be imposed to a party not exceeding the amount of 750 euro if court admits that with such action the adjudication of the matter has been delayed. Theoretically the court is in a position to impose the above mentioned fine each time when it finds out that there was presented a claim which was not supported by relevant evidence which lead to postponement of the case. However court is entitled to impose such fine only if it considers the causes of delay as no excuse. In practice courts are rather hesitant to impose such fine. A decision of the court to refuse acceptance of evidence may not be appealed, but objections regarding such may be expressed in an appellate or cassation complaint.

Facts established by a court's ruling in one civil proceedings may be recognised as proved in other proceedings only in case the proceedings are taking place between the

[80] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 259. lpp.

same parties (i.e. there is the same plaintiff and the defendant). Otherwise, reference to a court's ruling in different proceedings will not be justified and the facts shall be proved anew.

8.4 The Hearing

After hearing the explanations and opinion of the participants in the matter, the court shall determine the procedure for the examining of witnesses and experts and for examination of other evidence. (Section 168)

Each witness shall be examined separately. (Section 170 (1))

The witnesses designated by the plaintiff shall be examined first and the witnesses designated by the defendant thereafter. The order of the examination of the witnesses designated by a party shall be determined by the court, taking into account the opinion of such party. (Section 170 (2))

Witness examination shall take place in the hearing where the matter is reviewed on its merits. Participation in the hearing, as well as exercising of any other procedural rights, including participation in the witness examination and cross-examination, shall be the right of the party instead of its obligation. Thus, in difference from witnesses, the parties are invited to court, not summoned. However, if a party decides not to participate in the hearing, it may do so by warning the court in advance and request the court to review the matter without its presence. This is one of manifestations of the principle of disposition.

A witness shall give testimony and answer questions orally. (Section 170 (3))

The court shall determine the relationship of the witness with the parties and third persons and ask the witness to tell the court everything that he or she personally knows regarding the matter and to avoid providing information the source of which he or she cannot identify, as well as expressing his or her own assumptions and conclusions. The court may interrupt the narrative of a witness, if the witness speaks about facts not relevant to the matter. (Section 170 (4))

With the permission of the court, participants in the matter may put questions to the witness. Questions shall be put first by the participant at whose request the witness was called, and thereafter by other participants in the matter. (Section 170 (5))

The judge may put questions to the witness at any time during the examination of the witness. During the examination of a witness, questions may also be put to the participants in the matter. (Section 170 (6))

The testimony of a witness obtained in accordance with the procedures regarding the securing of evidence or regarding court assignments, or at a prior court sitting, shall be read during the court sitting at which the matter is being tried (Section 173).

If the court adjudicating a matter is unable to collect evidence located in another city or district, the court or the judge shall assign the performing of specific procedural activities to the appropriate court (Section 102 (1)).

In the decision on the court assignment, there shall be a succinct description of the substance of the matter to be adjudicated, circumstances to be clarified, and the evidence that the court performing the assignment is required to collect. Such a decision shall be mandatory for the court to which it is addressed and shall be performed within fifteen days. (Section 102 (2))

Court assignments shall be performed at a court sitting in accordance with the procedures prescribed by this Law. Participants in the matter shall be notified of the time and place of the sitting. The failure of such persons to attend is not an impediment to performance of the assignment. (Section 103 (1))

Minutes and other material of the matter, which have been collected during the performance of the assignment, shall be forwarded to the court adjudicating the matter within three days. (Section 103 (2))

Following the court argument, the replies and the opinion of the public prosecutor, the court shall retire to the deliberation room to render judgment, prior thereto notifying the persons present in the courtroom thereof. (Section 187)

However, if during deliberation, the court finds it necessary to determine new facts that are significant in the matter or to further examine existing or new evidence, it shall resume the adjudicating on the merits of the matter. (Section 188)

Testimony based on information from unknown sources, or on information obtained from other persons, unless such persons have been examined, is not allowable as evidence. (Section 105)

An appellate instance court itself shall decide which evidence is to be examined at a court sitting. (Section 430 (1))

In examining and assessing evidence, an appellate instance court shall observe the provisions of Section 430 (2).

Facts that have been established by a first instance court are not required to be examined by an appellate instance court if these have not been contested in the appellate complaint. (Section 430 (3))

8.5 Witnesses

The facts on which the claim is based are pointed out in the declaration of claim. The facts on which the denial of the claim is based are pointed out in the explanations of the defendant. If the party considers that certain facts can be proven by the testimony of the

witness the party must point at this either in the statement of claim (the claimant) or in the written explanations to the court (the defendant).

CPL prescribes the following: There shall be appended to a statement of claim, documents which confirm facts on which the claim is based (Section 129 (2)).

The interested party also is responsible for covering the costs for bringing the witness to the court.

CPL prescribes the following:
Costs related to the adjudicating of matters are:
2) costs related to the examination of witnesses or conducting of inspections on-site (Section 39 (1)).

Before questioning a witness, the court shall determine their identity and warn them regarding their liability for refusing to testify or for knowingly providing false testimony, as well as explain the substance of Section 107 of this Law. (Section 169 (1))

Before being examined, a witness shall sign a warning regarding such substance: "I, . . (given name and surname of the witness), undertake to testify to the court about everything I know regarding the matter in which I am called as a witness. It has been explained to me that for refusing to testify or for knowingly giving intentionally false testimony I may be criminally liable in accordance with the Criminal Law." (Section 169 (2))

The warning signed by the witness shall be appended to the minutes of the court sitting. (Section 169 (3))

The judge shall explain to witnesses who have not attained the age of 14 years, their duty to testify truthfully and to tell all they know regarding the matter, but shall not warn such a witness about liability for refusing to testify or knowingly giving false testimony. (Section 169(4))

Each witness shall be examined separately. (Section 170 (1))

The witnesses designated by the plaintiff shall be examined first and the witnesses designated by the defendant thereafter. The order of the examination of the witnesses designated by a party shall be determined by the court, taking into account the opinion of such party. (Section 170 (2))

A witness shall give testimony and answer questions orally. (Section 170(3))

After examination of identity of participants to the proceedings, including witnesses, the witnesses shall leave the room of the hearing. When the matter comes to its reviewing on merits and examination of witnesses starts, they are called to the court-room to give their testimonies. The witnesses who have already given their testimonies shall stay in

the court-room till the end of the hearing as there may occur a situation when it is necessary to make accurate the already given testimony or pose additional questions. Witnesses are questioned one by one. Witnesses may leave the court-room before the end of the hearing only by the permission given by the court.

The question about preparation of witnesses is not regulated in legal acts, i.e. it is presumed that witnesses are not prepared.

The court shall determine the relationship of the witness with the parties and third persons and ask the witness to tell the court everything that he or she personally knows regarding the matter and to avoid providing information the source of which he or she cannot identify, as well as expressing his or her own assumptions and conclusions. The court may interrupt the narrative of a witness, if the witness speaks about facts not relevant to the matter. (Section 170 (4))

With the permission of the court, participants in the matter may put questions to the witness. Questions shall be put first by the participant at whose request the witness was called, and thereafter by other participants in the matter. (Section 170 (5))

The judge may put questions to the witness at any time during the examination of the witness. During the examination of a witness, questions may also be put to the participants in the matter. (Section 170 (6))

The court may examine a witness a second time during the same or at another court sitting, as well as confront witnesses with each other. (Section 170 (7))

If the facts for the determining of which witnesses were called have been determined, the court, with the consent of the participants in the matter, upon taking an appropriate decision on this, may waive examining the witnesses in attendance. The consent of the participants in the matter shall be recorded in the minutes of the sitting and shall be signed by each participant in the matter. (Section 170 (8))

The examination of a minor shall be conducted, at the discretion of the court, in the presence of a lawful representative or a teacher. Such persons may put questions to the witness who is a minor. (Section 172 (1))

The testimony of a witness obtained in accordance with the procedures regarding the securing of evidence or regarding court assignments, or at a prior court sitting, shall be read during the court sitting at which the matter is being tried. (Section 173)

8.6 Expert Witnesses

A court shall order expert-examination in a matter, pursuant to the request of a party, where clarification of facts relevant to the matter requires specific knowledge in science, technology, art or another field. If necessary, a court may order several such examinations. (Section 121 (1))

Expert-examination shall be performed by experts of relevant expert-examination institutions or by other specialists. The parties shall select the expert, by mutual agreement, but if agreement is not reached within the time limit set by the court, the expert shall be selected by the court. If necessary, several experts may be selected. (Section 121 (2))

In the court expertise, i.e. an expertise ordered in the court proceedings in accordance with the CPL, appointment of an expert is made by the court according to its decision. While the person who is to be appointed as an expert may be suggested either by the parties, if they reach agreement, or if such agreement can not be reached, it is selected by the court. There is no difference between the rules governing the taking of evidence from those selecting an expert by the court and from the expert selected by the parties.

But there can also be a situation that a party submits its privately ordered expert opinion to the court which is usually done before the court proceedings are started. In such situation, the "expert opinion" is treated as ordinary written evidence, i.e. a document, but not as an expert opinion in the sense of Section 121.

Participants in a matter have the right to submit to the court issues regarding which expert opinion must, in their opinion, be provided. The court shall determine issues requiring an expert opinion. The court shall indicate grounds for rejection of issues submitted by participants in a matter. (Section 121 (3))

Parties can present report of private expert as evidence, but it will be regarded as written evidence, not as expert statement.A court decision on the ordering of expert-examination shall specify what issues an expert opinion is required in regard to and whom the performing of the expert-examination has been assigned to. (Section 121 (4))

As stated above, questions to the expert must be approved by the court and the final wording of the questions is always defined by the court in its decision, although in the process of appointing an expertise both parties have right to propose their versions of the questions to the court. Proposals for the questions should be well grounded. If the parties agree on the questions to be answered during the expertise, the court may take it into consideration and put these questions into its decision. At the same time the court is not bound by the proposals of the parties and can formulate its own questions as well.

Expert-examination shall be performed in the court or outside the court if its performance in the court is not possible or is problematic. (Section 121 (5))

A person selected as an expert shall attend pursuant to a court summons. The expert may be examined also by using a video conference at the court according to the location of the expert or at the place specially equipped for such purpose.

If an expert who has been summoned fails to attend the court sitting for reasons that the court finds unjustified, the court may impose a fine, not exceeding 60 *euro*, upon the expert.

An expert has the right to review materials in the matter, to question the participants and witnesses in the matter, and to ask the court to require additional materials.

An expert shall provide an objective opinion, in their own name, and shall be personally liable for it.

An expert may refuse to provide an opinion, if the material provided for their examination is not sufficient, or if the questions asked are beyond the scope of the special knowledge of the expert. In such cases the expert shall notify the court, in writing, that it is not possible to provide an opinion.

For refusal to perform their duty without justified cause, or for knowingly providing a false opinion, the expert shall be liable in accordance with the Criminal Law. (Section 122)

An expert may not participate in the adjudicating of a matter, if they have previously been a judge or a participant in the adjudicating of the matter.

An expert also may not participate in the adjudicating of a matter if:
1) they are or have been, due to their position or otherwise, dependent on a party or another participant in the matter;
2) there has been, prior to the initiation of the court proceedings, a connection between a party in the matter being adjudicated and the performance of professional duties by this expert; or
3) it is determined that the expert is not competent.

Removal of an expert shall be applied for, and a decision made by the court. (Section 123)

An expert opinion shall be reasoned and the basis thereof provided.

An opinion shall be stated in writing and submitted to the court. There shall be included in an expert opinion a precise description of the examination performed, conclusions formed as a result thereof, and reasoned answers to the questions asked by the court. If, in performing the expert-examination, an expert ascertains facts as are significant in the matter and the expert has not been questioned regarding them, he or she has the right to indicate such facts in their opinion.

If several experts are selected, they have the right to consult with one another. If the experts reach a common opinion, all the experts shall sign it. If the opinions of the experts differ, each expert shall write a separate opinion. (Section 124)

The court shall assess expert opinions in accordance with the provisions of Section 97 of this Law.

The court shall assess expert opinions in accordance with the provisions of Section 97 of this Law (Section 125), i.e. like all other evidence – in accordance with its own convictions and in accordance with judicial consciousness based on the principles of logic, scientific findings and observations drawn from every-day experience. Court is not bound by the expert opinion.

If the expert opinion is not clear enough or is incomplete, a court may order a supplementary expert-examination, assigning performance thereof to the same expert.

Where an expert opinion is not substantiated, or the opinions of several experts contradict one another, the court may order a repeated expert-examination, assigning performance thereof to another expert or experts. (Section 125)

An expert opinion shall be read at the court sitting.

The court and the participants in the matter may put questions to the expert in the same order as with respect to witnesses.

In cases referred to in Section 125 of this Law the court may order additional or repeat expert-examination. (Section 175)

An opinion of an authority, summoned in accordance with the procedures set out in Section 89 of this Law, shall be assessed by the court as evidence. Reasons for a court's disagreement with such opinion shall be set out in the adjudication made in the matter. (Section 126)

After the evidence has been examined, the court shall hear the opinion of the authorities participating in the proceedings in accordance with law or a court decision (Section 182 (1)).

The court and the participants in the matter may put questions to representative of such authorities concerning their opinion. (Section 182 (2)) Expenses for the expertise covers the party who has made the relevant request. Expenses are paid prior to adjudicating of a matter upon receipt of the invoice of the expert before the expertise is done. Additionally, costs for the expert's accommodation and travel can be compensated if such occur. If the request for expertise has been submitted by both parties, they shall pay the required sums equally. The sums referred need not be paid by a party who is exempted from the payment of court expenses in accordance with provisions of the law and with the court's decision. (Section 40)

9 Costs and Language

9.1 Costs

There is a separate chapter in the Civil Procedure law devoted to types of court expenses, their calculation and payment procedure, exceptions from the general

procedural order and other aspects related to court expenses. Paragraph 1 of Section 33 of CPL is subdivided in court expenses and costs related to conducting a matter. Paragraph 2 of the mentioned section provides that court costs are state fees and office fees, but costs related to conducting a matter are costs related to assistance of advocates, to attending court hearings as well as costs related to gathering of evidence.

State fee is a mandatory payment for adjudication of a civil matter and is provided under the CPL.[81] The duty to pay the state fee is laid upon participants of the civil case according to the order and amount prescribed by the CPL. The law provides three types pursuant to which the state fee shall be calculated and paid: 1) particular sum of money; 2) percentage out of the statement of claim or out of another sum; 3) combination of both above mentioned mechanisms.[82] It is understandable that calculation of the state fee is closely related to the concept of the sum of the statement of claim described under Section 35 of the CPL. This section contains methodology with the help of which the sum of the statement of claim is calculated on various occasions. It should also be mentioned that the sum of the statement of claim shall be calculated not only in general litigations, but also in the matters of specific litigation.[83] Legal literature states that it is a precise calculation of the sum of the claim which further stipulates also admissibility of the subject-matter of the case in the disputes related to the obligations law.[84] Latvian civil procedure regulation also provides cases when the state fee shall be paid in addition or repaid. Section 36 of the CPL provides that if the amount claimed is increased, a supplementary state fee shall be paid accordingly.

Of course, there are cases where it is difficult to evaluate the claim at the moment when it is filed. Upon such circumstances the judge initially defines the amount of the state fee that is average; still the final amount of the state fee is defined during adjudication. Section 37 of CPL prescribes exceptional cases when the already paid-up state fee shall be repaid fully or partially. E.g. the paid state duty shall be repaid partly if the fee paid exceeds the fee prescribed by law. State fees shall be repaid on the condition that an application requesting its repayment has been submitted to the court within one year from the date when the sum was paid into the state budget (Paragraph 2 of Section 37 of CPL). State fees shall be repaid from state budget funds only on the basis of a decision of a court or a judge.

Office fee as a special type[85] of the state fee shall be paid: 1) for issuing a true copy of a document in a matter, as well as for reissuing a court judgment or decision; 2) for issuing a certificate; 3) for issuing a duplicate of a writ of execution; 4) for certifying the coming into effect of a court adjudication, if such adjudication is to be submitted to

[81] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 106. lpp.
[82] Turpat, 109. lpp.
[83] Turpat, 113. lpp.
[84] Turpat, 114. lpp.
[85] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 119. lpp.

a foreign institution; 5) for summoning witnesses[86]. CPL states that the office fee shall be paid in a determined amount. It should be noted that there are also other payable services that may be provided by the Latvian courts.[87]

List of expenses related to conducting of a matter is given under Section 39 of CPL. Legal literature has analysed and grouped expenses related to conducting of a matter as follows: 1) expenses related to execution of a court's ruling; 2) expenses related to collection of evidence; 3) expenses related to search for a defendant; 4) expenses related to informing of participants of the case.[88] It should be noted that legal regulation of calculation and payment procedure is provided not only by the CPL. More detailed regulation is also contained in a number of the Cabinet provisions.[89] Section 40 of CPL provides procedure according to which expenses related to conducting of a matter shall be paid.

The duty of payment of these expenses is laid upon that participant of the case who has requested performance of respective procedural activity unless this participant has been released from payment of these expenses in the cases as provided by law.[90] According to Paragraph 1 of Section 40 of CPL "(1) Sums of expenditure to be paid to witnesses and experts or also sums necessary to pay the expenditure for conducting interrogation of witnesses or on-site inspections, delivery, service and translation of court summonses and other judicial documents, publication of a notice in newspaper and security for a claim shall be paid in prior to adjudicating of a matter, by the party who made the relevant request."

If the request on performance of a particular procedural activity where expenses related to conducting a matter shall be paid, has been expressed by the court at its own initiative, these expenses are covered by the state (Paragraph 4 of Section 40 of CPL).

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[86] Civilprocesa likuma 38. pants

[87] Ministru kabineta noteikumi nr. 96. „Noteikumi par tiesas sniegtajiem maksas pakalpojumiem"*(Provisions regarding payable services provided by courts)* (18 Feb. 2013). Latvijas Vēstnesis, nr. 37, 2013.21.februāris.

[88] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 120.-124. lpp.

[89] Ministru kabineta noteikumi Nr. 983 „Ar lietas izskatīšanu saistīto izdevumu aprēķināšanas kārtība" *(Procedure for calculating costs related to the adjudicating of matter)* (1 Sep. 2009). Latvijas Vēstnesis, Nr. 141, 2009.4.septembris; Ministru kabineta noteikumi Nr. 510 „Noteikumi par izpildu darbību veikšanai nepieciešamajiem izdevumiem" *(Provisons regarding payment of expenses necessary for enforcement proceedings)* (7 Jan. 2014). Latvijas Vēstnesis, nr. 6, 2014.9.janvāris. Ministru kabineta noteikumi Nr. 217 „Kārtība, kādā zvērinātam tiesu izpildītājam tiek segti izpildu darbības veikšanai nepieciešamie izdevumi un izmaksāta amata atlīdzība, ja izpildāms atbildīgās iestādes lēmums par starptautisko organizāciju noteikto sankciju piespiedu izpildi" *(Order of covering expenses necessary for enforcement proceedings and paying remuneration of bailiff, if a decision of the authority responsible regarding compulsory sanctions determined by international organisations is being enforced)* (25 Mar. 2008). Latvijas Vēstnesis, Nr. 49, 2008.28.marts, u.c.

[90] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 124. lpp.

Latvian regulation of civil procedure contains provisions that also refer to compensation of court expenses. In general CPL states[91] that the party in whose favour a judgment is made shall be adjudged recovery of all court costs paid by such party, from the opposite party. If a claim has been satisfied in part, the recovery of amounts set out in this section shall be adjudged to the plaintiff in proportion to the extent of the claims accepted by the court, whereas the defendant shall be reimbursed in proportion to the part of the claims dismissed in the action. Section 42 of CPL provides cases when court expenses shall be compensated to the state. If a plaintiff is exempted from court costs and the judgment is made on behalf of the plaintiff – recovery of such court costs to the state shall be the defendant's duty. If a claim has been satisfied in part, but the defendant is exempted from payment of court costs, such costs, in proportion to that part of the claim which has been dismissed, may be recovered from a plaintiff as is not exempt from the payment of court costs for payment to the State. If both parties are exempt from payment of court costs, the court costs shall be assumed by the State.

If a court approves amicable agreement and terminates legal proceedings in a matter, the court costs that have not been paid previously shall be adjudged from both parties into the State income in equal amount, unless provided otherwise by the amicable agreement.

Separate regulation is devoted to compensation of expenses related to conducting of a matter and it has essential meaning since only expenses listed under Section 44 of CPL may be reimbursed.[92] Reimbursement of these expenses is certainly related to the fact as to on behalf of which of the parties the judgment has been made, still the law provides a number of specific provisions that refer to the compensation amount of these expenses. E.g. the amount to be compensated for advocate's assistance is closely related to the sum of the claim, however, the law sets forth the minimum amount of compensation for such assistance. Expenses due to obtaining written evidence shall be compensated in their factual amount.

CPL also provides exceptions from the general provisions on the duty for payment of court expenses. Section 43 of CPL contains regulation which lists those cases when respective subject is released from the duty to pay for court expenses. For instance, the following plaintiffs are exempt from paying the court costs to the state: 1) in claims for recovery of remuneration for work and other claims of employees arising from legal employment relations or related to such; 2) in claims for recovery of child or parent support etc. Legal literature has justly stated that regulation which concerns exemption from court expenses may be found: 1) in Section 43 of CPL; 2) in special norms of CPL found outside Chapter 4; 3) in other legal acts outside the special norms of CPL.[93] Paragraph 4 of Section 43 of CPL provides that a court or a judge, upon considering the material situation of a natural person, shall exempt him or her partly or fully from payment of court costs into State revenues, as well as postpone payment of court costs

[91] Civilprocesa likuma 41. pants.
[92] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 139.-140. lpp.
[93] Turpat, 131. lpp.

adjudged into State revenues, or divide payment thereof into instalments. Thus it should be concluded that the Latvian regulation is quite flexible in the issue on exemption from court costs.

Finally, it should be highlighted that regulation of Latvian civil procedure provides a chance to appeal against the court ruling concerning court costs, though this chance is granted only to the person to whom such ruling is referred to (Section 45 of CPL).

9.2 Language and Translation

In general the Latvian civil procedural regulation[94] states that litigation shall take place in the Latvian language which is the state language.[95] It means that one shall use Latvian in court hearings, procedural documents and all court rulings shall be drafted in Latvian as well as communication within a civil matter shall be in Latvian.[96] It is true that not all participants of the case know Latvian; therefore the legislator has provided three exceptional occasions in the CPL where deviations from the general principle are admissible.[97] The law states that: 1) the participants in the matter shall submit foreign language documents accompanied with a translation thereof into the official language, certified in accordance with the procedures prescribed by law; 2) the court may also allow certain procedural actions to take place in another language, if a participant in the matter pleads therefore and all participants in the matter agree; 3) the court shall ensure the right of participants in a matter, except representatives of legal persons, who do not have a command of the language used in the court proceedings to have the aid of an interpreter.

As ir arises from Paragraph 4 of Section 13 of CPL, the court shall invite an interpreter if the witness does not know the state language. Failure to observe provisions on the state language shall be regarded as a procedural violation that may lead to revocation of the judgment adopted by the court of the first instance and returning of the case to be adjudicated before the court of the first instance anew (Paragraph 3 of Section 427 (1) of CPL). Also in the court of cassation instance, if the breach of Section 13 of CPL is established, the judgement shall be revoked and the case returned for a new adjudication before the court of appeal (Paragraph 3 of Section 452 (3) of CPL). The legislator has assigned essential meaning for observation of the language of litigation because digressions from this regulation are related to meaningful legal consequences. Several aspects can approve it. First, Sub-paragraph 3 of Paragraph 1 of Section 427 provides that irrespective of the grounds for the appellate complaint, an appellate instance court

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[94] Civilprocesa likuma 13. pants; Par tiesu varu *(Law on Judicial Power)* (15 Dec. 1992), Ziņotājs, nr. 1, 1993.14.janvāris (21. panta pirmā daļa).

[95] Valsts valodas likums *(Official Language Law)* (9 Dec. 1999), Latvijas Vēstnesis, nr. 428/433, 1999.1.decembris (3., 10., 13. pants).

[96] Sk. piem., Rubinšteins G.L., Vai tiesa var nepielaist zvērinātu advokātu uzstāties lietā ar krievu vai vācu valodā sastādītu pilnvaru, kas izdota Latvijā un Latvijas notāra apstiprināta? 1.-2. Tieslietu Ministrijas Vēstnesis (1931), 72. lpp.

[97] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 57.-59. lpp.

shall by its decision set aside a judgment of a first instance court and send the case for it to be re-adjudicated in a first instance court, if the appellate instance court determines that norms of procedural law regarding the language of the court proceedings have been breached.[98] Second, Sub-paragraph 3 of Paragraph 3 of Section 453 of CPL provides that if norms of procedural law regarding the language of the court proceedings have been breached, it shall in any event be regarded as a breach of a norm of procedural law as may have led to an erroneous adjudication of a matter. Upon such circumstances the court of cassation instance is entitled to establish remarkable violation of procedural rights and revoke a judgment made by a court of a lower instance. If no obstacles should be expected regarding the use of the state language in court proceedings in civil matters, a special attention should be drawn to exceptional cases.

As mentioned before, participants of the case have the right to submit documents also in foreign languages, but on such occasion duly certified translation shall be attached in the state language. As per Paragraph 2 of Section 13 of CPL duly certified translations shall be such as certified according to the Cabinet regulations no 291[99] of August 22, 2000, Cabinet regulations no 283[100] of April 21, 2008 or according to requirements of the Notary law.[101]

The exception out of the general application of the state language provided under Paragraph 3 of Section 13 of CPL states that the court may also allow certain procedural actions to take place in another language, if a participant in the matter pleads therefore and all participants in the matter agree. This exception, according to the content of the provision, shall be applicable only in case if all preconditions have occurred: 1) only individual procedural actions may be allowed to be taken in a foreign language, not the whole civil proceedings; 2) such request is made by one participant of the case at least; 3) all other participants agree to such exception; 4) the court, having evaluated circumstances, allows digression form the general principle of the state language, which is not the court's duty. The exception contained under Paragraph 3 of Section 13 of CPL may be attributed both to physical and legal persons.[102]

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[98] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2007. gada 23. marta lēmums lietā Nr. SKC – 515/2007, www.at.gov.lv/files/uploads/files/archive/department1/2007/cd230307_2.doc (accessed 25 Feb. 2014).

[99] Ministru kabineta noteikumi nr. 291 „Kārtība kādā apliecināmi dokumentu tulkojumi valsts valodā" *(Procedure for the certification of document translations in offical language)* (22 Aug. 2000). Latvijas Vēstnesis nr. 302., 2000.29.augusts.

[100] Ministru kabineta noteikumi nr. 283 „Noteikumi par notariālo funkciju veikšanu Latvijas Republikas diplomātiskajās un konsulārajās pārstāvniecībās" *(Provisions regarding performance of notary functions in diplomatic and consular representatives of the Republic of Latvia)* (21 Apr. 2008). Latvijas Vēstnesis, nr. 63, 2008.23.aprīlis.

[101] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 58. lpp.

[102] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2004. gada 12. maija spriedums lietā Nr. SKC – 267, Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedumi un lēmumi, (2005), 699.-704. lpp.

The third exception provided by law refers to the right to use the aid of an interpreter in the cases when participants of the proceedings do not have the command of the language of litigation. This procedural guarantee was introduced so that any natural person, who has applied to the court or is in another procedural status in a civil matter, could effectively exercise his/her rights to fair trial. The law guarantees the right to the aid of an interpreter in all procedural activities.[103] Civil procedure regulation provides the obligation for the court to explain to the interpreter his/her duties as well as to warn interpreters that they are liable in accordance with the Criminal Law for refusal to translate, or for knowingly translating falsely.[104] A participant of the case for whom the right to the interpreter's aid has been secured, as well as other participants may apply removal to the interpreter in the cases stipulated by law.[105] It should be noted that the right to the court's interpreter is not secured for representatives of legal entities because it is assumed that legal entities may authorise such representatives who know the state language in the sufficient level or they may provide interpreting at their own cost.[106] Finally, attention should be drawn to the fact that in case representation of a participant in the matter is exercised by an advocate, there cannot be discussion about providing the interpreter's services to the advocate.[107]

Expenses incurred by ensuring that participants of the matter can examine the file of the matter and participate in procedural activities by using the help of an interpreter, shall be covered by the state.[108]

10 Unlawful Evidence

Chapters 15-18 of CPL contain regulation which refers to general provisions on evidence, securing of evidence, means of evidence, burden of proof (*onus probandi*) and other aspects related to evidence. Latvian civil procedure regulation does not expressly define the concepts of „illegal evidence" or „illegally obtained evidence" as well as does not directly regulate issues related to these concepts. However, special meaning shall be devoted to Section 95 of CPL referring to admissibility of evidence. The above section states: (1) the court shall admit only such kind of evidence as provided for by law; (2) facts that, in accordance with law, may be proved only by particular kind of evidence, may not be proved by any other kind of evidence. Legal science points out that this section highlights only procedural form of the information contained in the norm, however, attention should be also drawn to the method of

[103] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 58. lpp.
[104] Civilprocesa likums, 157. pants.
[105] Civilprocesa likums, 21. pants, 160. pants.
[106] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 58. lpp.
[107] Latvijas Republikas Advokatūras likums *(Advocacy Law of the Republic of Latvia)* (23 Apr. 1993), Ziņotājs, nr. 28, 1993.19.augusts, (14. panta 5. punkts.). Sal. skat. Latvijas Senāta Apvienotās sapulces 1924. gada 3. oktobra lēmumu lietā Nr. 11 (*privātadvokāta Bēra Plinera lieta*). Tieslietu Ministrijas Vēstnesis Nr. 7-9, (1925), 69.-72. lpp.
[108] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 58. lpp.

obtaining such information.[109] Such opinion is closely connected with the provision under Paragraph 1 of Section 8 of CPL that shall determine circumstances of the case by examining evidence gathered in the procedure provided by law. Thus CPL in general determines that the evidence to be examined by the court to establish factual circumstances shall be legal and shall be gathered in the procedure provided by law and not contrary to it. Latvian CPL provides the principle of free assessment of evidence (Section 97 of CPL) as well as obliges the court to examine all evidence that is applied and has been accepted by the court (joined to the case).[110] It follows from the above that analysis of legality of evidence or their obtaining may take place: 1) when the question is decided on joining the applied evidence to the case; 2) by assessing evidence through complicated cognitive process consisting of both logical and lawful aspects.[111] The court shall decide the issue on admissibility of the applied evidence: 1) by adopting decision on accepting the statement of claim or the application for special litigation and by initiation of civil proceedings (Sections 129., 131., 133.); 2) by preparing the case for adjudication (Section 149); 3) by reviewing the case (Section 162). It is true that the court evaluates lawfulness of the evidence in the case and lawfulness for obtaining this evidence when assessment of evidence is taking place. It should be noted that participants of the case, by exercising their procedural rights and performing obligations, participate in review of the request to join evidence to the case file as well as in examination of witnesses and have the right to participate in examination of evidence. Participants of the case have the right to dispute written evidence in the procedure set forth by Section 178 of CPL or file the application as per Section 179 on forgery of evidence. Thus lawfulness of evidence or correspondence of evidence to legal requirements is assessed not only by the court, but also by active participation of the parties in the proceedings.

Lawfulness of evidence and lawfulness for their obtaining is a complex set of issues expressed in the most various forms. It is related to analysis of the method of obtaining evidence and the evidence itself approving information provided by participants on the method of obtaining particular evidence. E.g. Latvian court practise states that a written evidence which has been recognised as forged may be used as far as it may be deemed as lawful (original).[112] Thus admissibility of a forged document is possible as long as it is viewed as original in the sense of expert opinion and the court shall evaluate it, still the initial admissibility of the content of such document (before the expert opinion) is not allowed. Thus it may be concluded that Latvian civil procedure regulation does not directly define illegal evidence and evidence obtained illegally, but these aspects shall be considered within admissibility of evidence. Analysis of admissibility of evidence contains not only the type of evidence (as information on a procedural fact), but also examination of lawfulness for their obtaining.

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[109] Aigars G., Rozenbergs J., Torgāns K., Civilprocesa likuma komentāri, I daļa (1.-28. nodaļa) (Editor prof. K. Torgāns, Tiesu namu aģentūra, 2011), 264. lpp.
[110] Līcis A., Prasības tiesvedībā un pierādījumi (Tiesu namu aģentūra, 2003), 77. lpp.
[111] Turpat, 78.-79. lpp.
[112] Latvijas Senāta Civilās kasācijas departamenta 1936. gada 18. decembra lēmums lietā Nr. 484, *Oto Lāča prasības lietā pret Emīlu Matīsu*, 81 Valdības Vēstnesis, (1937), 97.-98. lpp.

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.	Bringing of action (Prasības celšana)	Claimant	- to indicate facts on which the plaintiff grounds his/her claim as well as to join evidence which prove the facts (Paragraph 5 of Section 128 (2) of CPL); - the statement of claim should contain documents which confirm circumstances on which the statement of claim is grounded (Paragraph 3 of Section 129 (2) of CPL); - *in case obligations under Sections 128 and 129 are not fulfilled, the statement of claim shall be left as not proceeded with as per Section 133 of CPL.*	- to file evidence; - to file application on securing of evidence (Section 98 of CPL); - to request the court to require evidence (from the defendant or third persons, including the state and municipal institutions) (Section 93 (2) of CPL).
		Court	- prior to the matter being initiated, evidence shall be ensured by the district (city) court in the territory of which the source of evidence is located (Section 98 (3) of CPL).	
2.	Preparation of civil matters for trial (Civillietu sagatavošana iztiesāšanai)	Court	- to send the statement of claim and the copies of the attached documents to the defendant by specifying the term to file written	- to request response from the plaintiff regarding the explanations; - to impose fine up to EUR 150 if a participant

			explanations – 15-30 from the day of dispatch of the statement of claim; - to send a copy of the explanations by the defendant to the plaintiff and third persons (if any); - to decide on invitation or admittance of third persons; - to decide on securing of evidence; - to decide on summoning of witnesses; - to decide on appointment of expertise; - to decide on requirement of written real evidence and their transfer into the court's possession; - to decide on requirement of written explanations to specify circumstances of the matter and evidence; - if the court admits that in respect of any of the facts, on which the claims or objectives of the party are based, no evidence is submitted, it shall notify the parties thereof and, if necessary, set a time period within which evidence is to be submitted (Paragraph 4 of Section 93 of CPL).	to the matter, without justifying reason, does not file explanations in the due term, does not respond to the request of the judge; - to impose fine up to EUR 150 if a participant to the matter, without justifying reason, does not appear in the preparatory session.
		Claimant	- to answer requests by the court, including on submission of evidence; - to provide written evidence at the court's request; - to provide response on the explanations according to the court's request; - to appear before the court as per the court's request; - if a participant in a matter without a justified reason fails to submit explanations, does not reply to a request by the judge within the time period set by the judge, the	- to submit evidence; - to examine materials of the matter, make copies and excerpts from them; - to participate in examination of evidence; - to submit application on securing of evidence (Section 98 of CPL); - to request the court to require evidence (from the defendant or third persons, including the state and municipal institutions) (Paragraph 2 of Section 93 of CPL); - to submit evidence in

			judge may impose a fine not exceeding 150 euro on him or her (Paragraph 1 of Section 150 of CPL).	the court not later than 14 days before the hearing provided that the judge has not announced a different term (Paragraph 3 of Section 93 of CPL).
		Defendant	- to provide explanations according to the court's request; - to provide written explanations according to the court's request; - to answer the court's requirements, including on submission of evidence; - to appear before the court as per the court's invitation; - if a participant in a matter without a justified reason fails to submit explanations, does not reply to a request by the judge within the time period set by the judge, the judge may impose a fine not exceeding 150 euro on him or her (Paragraph 1 of Section 150 of CPL).	- to submit evidences; - to examine materials of the matter, makes copies and excerpts from them; - to submit application on securing of evidence (Section 98 of CPL); - to submit evidence in the court not later than 14 days before the hearing provided that the judge has not announced a different term (Paragraph 3 of Section 93 of CPL).
3.	Preparatory hearing (Sagatavošanās sēde)	Court	- to decide on invitation or admittance of third persons; - to decide on securing of evidence; - to decide on summoning of witnesses; - to decide on appointment of expertise; - to decide on requirement of written real evidence and their transfer into the court's possession; - to decide on requirement of written explanations to specify circumstances of the matter and evidence.	- to impose fine up to EUR 150 if a participant to the matter, without justifying reason, does not appear in the preparatory session; - to adopt judgment in default in the preparatory session if the defendant has failed to submit explanations, has not arrived in the preparatory session and has not informed on the reason of absence.
		Claimant	- to participate in the hearing; - if a participant in a matter without a justified reason fails to attend the preparatory sitting, the judge may impose a fine	- to examine materials of the matter, make copies and excerpts from them; - to apply petitions: - on invitation or admittance of third

			not exceeding 150 euro on him or her (Paragraph 2 of Section 150 of CPL).	persons; - on securing of evidence; - on summoning of witnesses; - on appointment of expertise; - on requirement of written real evidence and their transfer in the court's possession.
		Defendant	- to participate in the hearing; - if a participant in a matter without a justified reason fails to attend the preparatory sitting, the judge may impose a fine not exceeding 150 euro on him or her (Paragraph 2 of Section 150 of CPL).	- to examine materials of the matter, make copies and excerpts from them; - to apply petitions: - on invitation or admittance of third persons; - on securing of evidence; - on summoning of witnesses; - on appointment of expertise; on requirement of written real evidence and their transfer in the court's possession.
4.	Court hearing (Civillietas iztiesāšana)	Court	- admits evidences only set forth by law (Paragraph 1 of Section 95 of CPL); - ensures securing of evidences at the request of the participants to the matter (Paragraph 3 of Section 98 of CPL); - ensures reading of written evidence; - gives permission to pose questions to participants of the matter; - ensures reading of written explanations and their joining to the matter; – after listening to explanations of participants to the matter and learning their opinion, the court sets forth examination procedure of witnesses and experts and other	- if the court adjudicating a matter is unable to collect evidence located in another city or district, the court or the judge shall assign the performing of specific procedural activities to the appropriate court (Paragraph 1 of Section 102 of CPL); - the court may reject questions which are not relevant to the matter; - a judge may pose questions to the participants of the matter; - if a party refuses to answer a question regarding disputable facts, or refuses to provide explanations regarding such, the court

			evidences; – warns witnesses on refusal to give testimony or on providing false testimony; - establishes relations of the witness with the parties and third persons, and invites the witness to tell the court everything personally known in the matter without providing information whose source may not be specified as well as without expressing assumptions and conclusions; - gives permission to the participants of the matter to ask questions to the witnesses; - testimony of a witness obtained according to the procedures regarding securing of evidence or regarding court assignments, or at a prior court sitting, shall be read during the court sitting at which the matter is being tried (Section 173 of CPL); - ensures reading of expert opinion (Paragraph 1 of Section 175 of CPL); - decides issues regarding appending of documentary evidence to the matter file after it has acquainted the participants in the matter with the substance of such evidence and has heard their opinion (Section 176 of CPL); - reads documentary evidence or the minutes of the examination at the court sitting or presented to the participants in the matter, and, if necessary, also to experts and witnesses (Paragraph 1 of Section 177 of CPL); - if a participant in the matter wishes to use the disputed evidence, the	may assume that the party does not dispute such facts (Paragraph 3 of Section 167 of CPL); - the court may interrupt the narrative of a witness, if the witness speaks about facts not relevant to the matter (Paragraph 4 of Section 170 of CPL); - the judge may put questions to the witness at any time during examination of the witness (Paragraph 6 of Section 170 of CPL); - during examination of a witness, the court may also pose questions to the participants of the matter; - the court may examine a witness a second time during the same or at another court sitting, as well as confront witnesses with each other (Paragraph 7 of Section 170 of CPL); - if the facts for determining of which witnesses were called have been determined, the court, with the consent of the participants in the matter, upon taking an appropriate decision, may waive examining the witnesses in attendance (Paragraph 8 of Section 170 of CPL); - to decide on appending of the written notes by the witness to the case fail; - in cases where it is necessary to determine facts of a matter, any participant in the matter or any person present in the courtroom may, pursuant to a court's decision, be sent out of the courtroom during examining a witness who

			court shall decide as to allowing its use after comparing such evidence with other evidence in the matter (Paragraph 5 of Section 178 of CPL); - real evidence shall be inspected at the court sitting and presented to the participants in the matter, and, where necessary, also to experts and witnesses (Paragraph 1 of Section 180 of CPL); - minutes of the inspection of real evidence, written pursuant to the procedures for securing evidence or a court assignment, shall be read at the court sitting (Paragraph 3 of Section 180 of CPL); - if documentary or real evidence cannot be brought to the court, the court shall take, pursuant to the petition of a participant in the matter, a decision on inspection and examination of such evidence at the site where it is located (Paragraph 1 of Section 181 of CPL); - notifies participants on inspection at the site (Paragraph 2 of Section 181 of CPL); - the course of the inspection shall be recorded in the court sitting minutes, to which shall be appended plans, technical drawings and representations of the real evidence drawn up and examined during the inspection (Paragraph 4 of Section 181 of CPL); - after all submitted evidence has been examined, the court shall ascertain the opinion of the participants in the matter regarding possibility of closing adjudicating on the	is a minor (Paragraph 2 of Section 172 of CPL); - to adopt decision on leaving the courtroom before the end of the trial taken after hearing the opinion of the participants in the matter (Section 174 of CPL); - in situations under Section 125 of CPL, the court may adopt decision on additional or repeated expertise; - in order to examine an application regarding forgery of documentary evidence, the court may order an expert-examination or require other evidence (Paragraph 3 of Section 179 of CPL); - if the court finds that the documentary evidence has been forged, it shall exclude such evidence and notify a public prosecutor about the fact of forgery (Paragraph 4 of Section 179 of CPL.); - if the court finds that a participant in the matter has, without good cause, initiated a dispute regarding the forgery of documentary evidence, it may impose a fine on such a participant not exceeding 150 euro (Paragraph 5 of Section 179 of CPL); - in conducting an inspection on site, the court may summon experts and witnesses (Paragraph 3 of Section 181 of CPL); - if a participant in a matter submits evidence after the time period has expired, and the court does not find the reasons for untimely submission

			merits of the matter (Paragraph 1 of Section 183 of CPL); - if it is not necessary to examine additional evidence, the court shall determine whether plaintiffs maintain their claim and whether the parties wish to enter into a settlement (Paragraph 2 of Section 183 of CPL); - if during the court's deliberation, the court finds it necessary to determine new facts that are significant in the matter or to further examine existing or new evidence, it shall resume adjudicating on the merits of the matter (Paragraph 1 of Section 188 of CPL); - a court shall assess evidence in accordance with its own convictions, which shall be based on evidence as has been thoroughly, completely and objectively examined, and in accordance with judicial consciousness based on the principles of logic, scientific findings and observations drawn from every-day experience.(Paragraph 1 of Section 97 of CPL).	of evidence justified, the court shall impose the participant in the matter a fine up to EUR 750 (Paragraph 3^2 of Section 93 of CPL); - to adopt decision on refusal to accept evidence (Paragraph 3^3 of Section 93 of CPL).
		Claimant	- the duty to prove that their claims are well-founded (Paragraph 1 of Section 93 of CPL); - explanations shall comprise all facts on the basis of which their claims are grounded; - if a documentary evidence is submitted which is disputed, shall explain at the same court sitting whether to proceed with using such evidence or requests it be excluded from the evidence (Paragraph 4 of Section	- the right to file application on securing of evidence (Paragraph 1 of Section 98 of CPL); - the right to file their explanations in writing; - the right to ask questions to witnesses upon the court's permission; - the right to ask questions to the expert upon the court's permission; - the right to dispute truthfulness of written evidence;

			178 of CPL); - if a participant in a matter submits evidence after the time period has expired, and the court does not find the reasons for untimely submission of evidence justified, the court shall impose the participant in the matter a fine up to EUR 750 (Paragraph 3^2 of Section 93 of CPL).	- the right to file a motivated application on forgery of written evidence (Paragraph 1 of Section 179 of CPL); - the right to request the court to exclude written evidence if application is filed regarding its forgery (Paragraph 2 of Section 179 of CPL); - the right to provide explanations on real evidence, express their opinion and requests (Paragraph 2 of Section 180 of CPL); - if documentary or real evidence cannot be brought to the court, the court shall take, pursuant to the petition of a participant in the matter, a decision on inspection and examination of such evidence at the site where it is located (Paragraph 1 of Section 181 of CPL); - during adjudicating of the matter evidence may be submitted upon reasoned request of the party or other participants in the matter if it does not impede the adjudication of the matter or the court finds the reasons for untimely submission of evidence justified, or the evidence concerns facts which have become known during the adjudication of the matter (Paragraph 3^1 of Section 93 of CPL).
		Defendant	- the duty to prove that their objections are well-founded (Paragraph 1 of Section 93 of CPL); - explanations shall comprise all facts on the basis of which their objections are grounded; - if a documentary evidence is submitted	- the right to file application on securing of evidence (Paragraph 1 of Section 98 of CPL); - the right to file their explanations in writing; - the right to ask questions to witnesses upon the court's permission;

			which is disputed, shall explain at the same court sitting whether to proceed with using such evidence or requests it be excluded from the evidence (Paragraph 4 of Section 178 of CPL); - if a participant in a matter submits evidence after the time period has expired, and the court does not find the reasons for untimely submission of evidence justified, the court shall impose the participant in the matter a fine up to EUR 750 (Paragraph 3^2 of Section 93 of CPL).	- the right to ask questions to the expert upon the court's permission; - the right to dispute truthfulness of written evidence; - the right to file a motivated application on forgery of written evidence (Paragraph 1 of Section 179 of CPL); - the right to request the court to exclude written evidence if application is filed regarding its forgery (Paragraph 2 of Section 179 of CPL); - the right to provide explanations on real evidence, express their opinion and requests (Paragraph 2 of Section 180 of CPL); - if documentary or real evidence cannot be brought to the court, the court shall take, pursuant to the petition of a participant in the matter, a decision on inspection and examination of such evidence at the site where it is located (Paragraph 1 of Section 181 of CPL); - during adjudicating of the matter evidence may be submitted upon reasoned request of the party or other participants in the matter if it does not impede the adjudication of the matter or the court finds the reasons for untimely submission of evidence justified, or the evidence concerns facts which have become known during the adjudication of the matter (Paragraph 3^1 of Section 93 of CPL).
5.	Judgment (Spriedums)	Court	- the court shall ground the judgment on the facts established in the matter by	- the court that renders a judgment in a matter is entitled, upon its own

			evidences. In a judgment a court shall not disclose information that is a subject matter of an official secret, but indicate that it has become acquainted with such information and assessed it (Section 190 of CPL); - the descriptive part shall set out the claim of the plaintiff, the counterclaim of the defendant, objections, and the substance of the explanations provided by participants in the matter (Paragraph 4 of Section 193 of CPL); - the reasoned part shall state the facts established in the matter, the evidence on which the conclusions of the court are based, and the arguments by which such evidence, or other evidence, has been rejected (Paragraph 5 of Section 193 of CPL); - a court shall set out in its judgment why it has given preference to one body of evidence in comparison to another, and has found certain facts as proven, but others as not proven. (Paragraph 3 of Section 97 of CPL).	initiative or pursuant to the application of a participant in the matter, to render a supplementary judgment if judgment has not been rendered regarding any of the claims for which the participants have submitted evidence and provided explanations (Paragraph 1 of Section 201 of CPL); - the court may recognise a fact as universally known (Paragraph 1 of Section 96 of CPL).
		Claimant	- after a judgment has entered into lawful effect, the participants in the matter or their successors in interest are not entitled to dispute at other court proceedings the facts established by the court (Paragraph 3 of Section 203 of CPL).	- the right to request explain the judgment; - the right to request to adopt ancillary judgment; - the right to appeal under cassation proceedings; - the right to request the Prosecutor General to submit protest regarding the enforced judgement which has been reviewed only before the first instance court and where substantial violations of material and procedural norms were admitted;

				- to the right to request to hear the matter anew due to newly discovered facts.
		Defendant	- after a judgment has entered into lawful effect, the participants in the matter or their successors in interest are not entitled to dispute at other court proceedings the facts established by the court (Paragraph 3 of Section 203 of CPL).	- the right to request explain the judgment; - the right to request to adopt ancillary judgment; - the right to appeal under cassation proceedings; - the right to request the Prosecutor General to submit protest regarding the enforced judgement which has been reviewed only before the first instance court and where substantial violations of material and procedural norms were admitted; - to the right to request to hear the matter anew due to newly discovered facts.

1.2 Basics about Legal Interpretation in Latvian Legal System

There is application procedure of legal norms in the Latvian legal system.

Section 5 of CPL provides basic principles for application of legal norms without distinction of interpretation of substantive or procedural norms.

The most exhaustive regulation of application of legal norms can be found under Sections 15 and 17 of the Administrative Procedure law which not only provides mutual hierarchy of acts (Paragraphs 1-4 of Section 15), provisions to solve their inner disagreement (Paragraphs 5-12 of Section 15), but also interpretation methods and analogy of legal norms (Section 17).

1.3 Functional Comparison

Legal Regulation / Means of Taking Evidence	National Law	Bilateral Treaties	Multilateral Treaties	Regulation 1206/2001
Hearing of Witnesses by Mutual Legal Assistance (Legal Aid)	1. A court shall, upon its own initiative or upon a substantiated request of a participant in the matter in the cases and in accordance with the procedures provided for in this Law, decide an issue on a request of Latvia for taking of evidence (Paragraph 2 of Section 706); **2. Legal assistance shall take place only by mediation of the Ministry of Justice or other competent institutions;** **3. The content of the request for taking of evidence is set forth by Section 708 of CPL, i.e. there are no blank forms (International agreements on legal assistance as well as the Council Regulation No 1206/2001 contain such forms);** 4. A request of Latvia for taking of evidence and documents appended thereto shall be prepared and submitted in the official language appending a	1. A court shall, upon its own initiative or upon a substantiated request of a participant in the matter in the cases and in accordance with the procedures provided for in this Law, decide an issue on a request of Latvia for taking of evidence (Paragraph 2 of Section 695); 2. A request for taking of evidence and the documents appended thereto shall be prepared and submitted in the language that has been determined as the language for communication in the application of the international agreements binding on the Republic of Latvia (Section 697); **With regard to bilateral international treaties on legal assistance, the legal cooperation shall only take place by mediation of the Ministry of Justice or other competent institutions.**	**Note:** See the information provided in Section **"Bilateral treaties"**	1. The court decides on taking of evidence in a foreign country and submits requests of Latvia for taking of evidence **directly to the foreign country or Ministry of Justice** (Paragraph 2 of Section 685); 2. A request of a foreign country for taking of evidence and documents appended thereto, as well as notifications court shall be prepared in writing in the language of the Member State receiving the request or in the language which the relevant country has notified as acceptable for communication **(Paragraph 1 of Section 687);** 3. The request of Latvia for taking of evidence shall be signed by a judge and approved by the seal of a court **(Paragraph 1 of Section 687)**; 4. In the cases provided for in this Law a court, upon its own initiative or upon a substantiated request of a participant in the matter, may require in a request of Latvia for taking of evidence: 1) to permit the

	translation in any of the following languages: 1) in the language of the country addressed; 2) in another language, upon mutual agreement by competent authorities of Latvia and foreign country thereon. **(Paragraph 1 of Section 709).**			participants in a matter or their representatives to be present or participate in taking of evidence in accordance with Article 11 of Council Regulation No 1206/2001; 2) to permit court representatives to be present or participate in taking of evidence in accordance with Article 12 of Council Regulation No 1206/2001 **(Section 688).** 5. the request shall be made and examination carried out as per Article 4 of Regulation 1206/2001 6. the request and all documents accompanying the request shall be exempted from authentication or any equivalent formalities.
Hearing of Witnesses by Video-conferencing with Direct Asking of Questions	1. See Points 1-4 in the table section above; If necessary, an interpreter shall participate in taking of evidence in Latvia or in a foreign country, using technical means **(Paragraph 2 of Section 714).**	1. See Points 1-3 in the table section above; 2. If necessary, an interpreter shall participate in taking of evidence in Latvia or in a foreign country, using technical means. **(Paragraph 2 of Section 703).**		1. See Points 1-6 in the table section above; 2. (2) If necessary, an interpreter shall participate in taking of evidence in Latvia or in a foreign country using technical means. (3) A court shall confirm the identity of persons involved and ensure the performance of taking of evidence in Latvia. **(Paragraphs 2 and 3 of Section 692);** **If there is no access to the technical means referred to above in the requesting or in the requested court, such means may be**

				made available by the courts by mutual agreement (Point 4 of Article 10 of Council Regulation No 1206/2001)
Direct Hearing of Witnesses by Requesting Court in Requested Country	1. See Point 1 in the table section above; 2. **Terms of CPL does not determine direct hearing of witnesses by requesting court in requested country.**	1. See Point 1 in the table section above; 2. In the cases provided for in this Law a court may, upon its own initiative or upon a substantiated request of a participant in the matter, request in a request of Latvia for taking of evidence: 1) to permit the participants in the matter or their representatives to participate in taking of evidence in accordance with Article 7 of Hague Convention 1970; 2) to permit court representatives to participate in taking of evidence in accordance with Article 8 of Hague Convention 1970 **(Paragraph 699 of CPL).**		1. See Point 1 in the table section above; 2. Article 12 of Council Regulation No 1206/2001 determine the opportunity of direct hearing of witnesses by requesting court in requested country.

Legal Regulation / Means of Taking Evidence	**National Law**	**Bilateral Treaties**	**Multilateral Treaties**	**Regulation 1206/2001**
Hearing of Witnesses by Mutual Legal Assistance (Legal Aid)	1. A court shall take evidence in Latvia on the basis of a request of a foreign country for taking of evidence and a decision of the Ministry of Justice on	1. A court shall take evidence in Latvia on the basis of a request of a foreign country for taking of evidence and a decision of the Ministry of Justice on permissibility of	**Note:** See the information provided in Section **"Bilateral treaties"**	1. A court shall take evidence in Latvia on the basis of a request of a foreign competent authority regarding taking of evidence in Latvia (hereinafter – request of a foreign

	permissibility of the request of the foreign country for taking of evidence (Paragraph 1 of Section 706); 2. **Legal assistance shall take place only by mediation of the Ministry of Justice or other competent institutions;** 3. **The content of the request for taking of evidence is set forth by Section 708 of CPL, i.e. there are no blank forms (International agreements on legal assistance as well as the Council Regulation No 1206/2001 contain such forms);** 4. (2)A request of a foreign country for taking of evidence shall be accepted prepared in or with a translation appended in the official language, Russian or English; (3) If it is not possible to ensure translation in any of the languages referred to in Paragraph two of this Section, the competent authorities of Latvia and the foreign country may mutually agree on another language in which the request of the foreign country for taking of evidence and the documents appended thereto should be drawn up	the request of the foreign country for taking of evidence.(Paragraph 1 of Section 695); 2. **With regard to bilateral international treaties on legal assistance, the legal cooperation shall only take place by mediation of the Ministry of Justice or other competent institutions;** 3. A request of a foreign country for taking of evidence and documents appended thereto shall be accepted prepared in writing. A request of a foreign country for taking of evidence and documents appended thereto may be accepted by other means of communication if they are submitted also in writing (Paragraph 4 of Section 698); 4. The Ministry of Justice shall decide on a request of a foreign country for taking of evidence within seven days from the day of receipt thereof (Paragraph 1 of Section 700); 4. **With regard to application of the Council Regulation No 1206/2001 where the foreign request for taking of evidence may be decided both by the district (city) court and the Ministry of**		country for taking of evidence) and a decision of the competent authority of Latvia on permissibility of the request of the foreign country for taking of evidence (Paragraph 1 of Section 684); 2. Court decides on taking of evidence in a foreign country and submit requests of Latvia for taking of evidence **directly to the foreign country or Ministry of Justice** (Paragraph 2 of Section 685); 3. In accordance with Articles 4 and 5 of Council Regulation No 1206/2001 a request of a foreign country for taking of evidence and documents appended thereto, as well as notifications shall be accepted if such documents have been prepared in the official language or in English (Paragraph 1 of Section 686); 4. A request of a foreign country for taking of evidence shall be decided by a district (city) court in the territory of which the source of evidence to be taken is located, or by the Ministry of Justice in the cases provided for in Article 3(3) and Article 17 of Council Regulation No 1206/2001 within seven days from the day of receipt thereof

	or in which the translation should be appended thereto (Paragraph 2 of Section 709); 5. The Ministry of Justice shall decide on a request of a foreign country for taking of evidence within 10 days from the day of receipt thereof (Paragraph 1 of Section 711); 6. A request of a foreign country for taking of evidence shall be enforced by a district (city) court in the territory of which the source of evidence to be taken is located; 7. **It is admissible to execute the foreign request of the taking of evidence both pursuant to the CPL and the foreign procedural order;** 8. (1) In executing a request of a foreign country for taking of evidence a court shall ascertain whether the obstacles indicated in Section 106 of this Law exist, as well as explain the witnesses their right of refusal to testify in the cases provided for in Section 107 of this Law; (2) In executing a request of a foreign country for taking of evidence, the witnesses may refuse to testify also in accordance with the law of the country submitting	**Justice, in case of international treaties such right is only to the court;** 5. (1) In executing a request of a foreign country for taking of evidence, a court shall ascertain whether the obstacles indicated in Section 106 of this Law exist, as well as explain the witnesses their right of refusal to testify in the cases provided for in Section 107 of this Law. (2) In executing a request of a foreign country for taking of evidence a court shall, in accordance with Hague Convention 1970, explain the witnesses their right of refusal to testify also in accordance with the law of the country submitting the request **(Section 703 of CPL).** **6. It is admissible to execute the foreign request of the taking of evidence both pursuant to the CPL and the foreign procedural order;**		(Paragraph 1 of Section 689); 5. **It is admissible to execute the foreign request of the taking of evidence both pursuant to the CPL and the foreign procedural order;** 6. (1) In executing a request of a foreign country for taking of evidence a court shall ascertain whether the obstacles indicated in Section 106 of this Law exist, as well as explain the witnesses their right of refusal to testify in the cases provided for in Section 107 of this Law; (2) In executing a request of a foreign country for taking of evidence a court shall, in accordance with Article 14 of Council Regulation No 1206/2001, explain the witnesses their right of refusal to testify also in accordance with the law of the country submitting the request **(Section 693).**

	the request, if such right is provided for in the request of the foreign country for taking of evidence or it has been otherwise confirmed by the competent authority of the foreign country **(Section 715).**			
Hearing of Witnesses by Video-conferencing with Direct Asking of Questions	1. See Points 1-8 in the table section above; 2. (1) If enforcement of a request of a foreign country for taking of evidence is permitted using technical means, such request of the foreign country for taking of evidence shall be enforced by the district (city) court for which the necessary technical means for taking of evidence are available; (2) If necessary, an interpreter shall participate in taking of evidence in Latvia or in a foreign country, using technical means; (3) A court shall confirm the identity of the persons involved and ensure the performance of taking of evidence in Latvia **(Section 714).**	1. See Points 1-5 in the table section above; 2. (1) If enforcement of a request of a foreign country for taking of evidence is permitted using technical means, such request of the foreign country for taking of evidence shall be enforced by the district (city) court for which the necessary technical means for taking of evidence are available; (2) If necessary, an interpreter shall participate in taking of evidence in Latvia or in a foreign country, using technical means; (3) A court shall confirm the identity of the persons involved and ensure the performance of taking of evidence in Latvia **(Section 703).**		1. See Points 1-7 in the table section above; 2. (1) If enforcement of a request of a foreign country for taking of evidence is permitted using technical means, such request of a foreign country for taking of evidence shall be enforced by the district (city) court for which the necessary technical means for taking of evidence are available; (2) If necessary, an interpreter shall participate in taking of evidence in Latvia or in a foreign country using technical means; (3) A court shall confirm the identity of persons involved and ensure the performance of taking of evidence in Latvia **(Section 692).**
Direct Hearing of Witnesses by Requesting Court in Requested Country	1. See Point 1 in the table section above; 2. (1) If enforcement of a request of a foreign country for taking of evidence is permitted in the presence or with the	1.See Point 1 in the table section above; 2. (1) If enforcement of a request of a foreign country for taking of evidence is permitted in the presence or with the		1.See Point 1 in the table section above; 2. A court that enforces a request of a foreign country for taking of evidence in accordance with Article 11 or 12 of Council Regulation

	participation of the parties or their representatives, or representatives of the competent court in the taking of evidence, a court that enforces the request of the foreign country for taking of evidence shall notify the competent authority of the foreign country or directly the representatives of the competent court of the foreign country or the parties, or their representatives regarding the time and place of taking of evidence, as well as regarding conditions for participation; (2) A court shall ascertain whether representatives of the competent court of a foreign country, the parties or their representatives need an interpreter; (3) If the persons referred to in Paragraph one of this Section fail to understand the official language and if there are no substantial practical difficulties, an interpreter shall participate in taking of evidence upon the request of representatives of the competent court of the foreign country or the parties, or their representatives **(Section 713).**	participation of the representatives of the competent court or parties, or their representatives in the taking of evidence in accordance with Article 7 or 8 of Hague Convention 1970, the court that enforces the request of the foreign country for taking of evidence shall notify the competent authority of the foreign country or directly the representatives of the competent court of the foreign country or the parties, or their representatives regarding the time and place of taking of evidence, as well as regarding conditions for participation; (2) A court shall ascertain whether representatives of the competent court of the foreign country, the parties or their representatives need an interpreter; (3) If the persons referred to in Paragraph one of this Section fail to understand the official language and if there are no substantial practical difficulties, an interpreter shall participate in taking of evidence upon the request of representatives of the competent court of the foreign country or the parties, or their		No 1206/2001 shall notify the representatives of the competent court of the foreign country or the parties, or their representatives regarding the time and place of taking the evidence, as well as regarding conditions for participation; (2) A court shall ascertain whether representatives of the competent court of the foreign country, the parties or their representatives need an interpreter; (3) If the persons referred to in Paragraph one of this Section fail to understand the official language and if there are no important practical difficulties, an interpreter shall participate in taking of evidence upon the request of representatives of the competent court of the foreign country or the parties, or their representatives **(Section 691).** 2. Article 12 of Council Regulation No 1206/2001 determine the opportunity of direct hearing of witnesses by requesting court in requested country.

		representatives **(Section 702).**		

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