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Evidence in Civil Law - Lithuania

Authors:
Egidija Tamošiūnienė
Darius Bolzanas
Laura Augytė-Kamarauskienė


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EVIDENCE IN CIVIL LAW – LITHUANIA

Egidija Tamošiūnienė
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Evidence in Civil Law – Lithuania

EGIDIJA TAMOŠIŪNIENĖ, DARIUS BOLZANAS & LAURA AUGYTĖ-KAMARAUSKIENĖ

Abstract The report aims first to present the main keys of the Lithuanian evidence law on the frame of research and to reveal peculiarities of taking evidence. Analysing various questions of taking evidence were used relevant examples from Lithuanian courts practice. Although there were just few cases in higher courts (appeal and cassation) regarding to application norms of Regulation No. 1206/2001 the main arguments provided in the case based part of the questionnaire.

Keywords: • free assessment of evidence • burden of proof • taking of evidence • hearing • witnesses • (un)lawful evidence

CORRESPONDENCE ADDRESS: Egidija Tamošiūnienė, Ph.D., Professor, Mykolas Romeris University, Faculty of Law, Civil Justice Department, Ateities st. 20, LT-08303 Vilnius, Lithuania, email: darius.bolzanas@gmail.com. Darius Bolzanas, Ph.D., Mykolas Romeris University, Faculty of Law, Civil Justice Department, Ateities st. 20, LT-08303 Vilnius, Lithuania, email: darius.bolzanas@gmail.com. Laura Augytė-Kamarauskienė, Ph.D., Associate Professor, Mykolas Romeris University, Faculty of Law, Civil Justice Department, Ateities st. 20, LT-08303 Vilnius, Lithuania, email: laura@sgka.lt.

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Egidija Tamošiūnienė, Darius Bolzanas, Laura Augytė-Kamarauskienė

Prof. dr. Egidija Tamošiūnienė, Civil justice Departament, Mykolas Romeris University; the Chairwoman of Civil cases division The Court of Appeal of the Republic of Lithuania. Constantly lectures judges, advocates, bailiffs, notaries, lawyers in the Judicial Training Centre, The Lithuanian Bar Association, Lithuanian Chamber of Notaries, the Judicial Assistant's Association, various private institutions. Actively participates in the group of developing Civil procedure code, organises various conferences, projects. She had practised as advocate 2001-2013, also was The Director of Civil Justice Institute, The Head of Civil Procedure Department (2010-2013).

Dr. Darius Bolzanas, Civil justice Department, Mykolas Romeris University, also practising as advocate and arbitrator. Research field - European civil procedure, Insolvency law, Contract law. Constantly lectures judges (assistants), advocates, bailiffs, notaries, lawyers in various institutions. On the period 2003-2013 worked in the Court of Appeal of the Republic of Lithuania, Klaipėda regional court, notary office.

Assoc. prof. dr. Laura Augytė-Kamarauskienė, Civil justice Departament, Mykolas Romeris University. Subjects - International and European Civil Procedure, Arbitration; course for Erasmus students in English "International civil procedure"; Erasmus Exchange Programme in Masaryk University (Brno, Czech Republic), Federico II University (Naples, Italy). Research field - International and European Civil Procedure, recognition and enforcement of foreign judgments, topic of the Doctoral Dissertation: "Recognition and Enforcement of Foreign Judgments in Civil Procedure". Also practising as advocate. The main activities - legal advices, representing clients, preparing judicial and extrajudicial documents, agreements, litigation, cross border cases, recognition and enforcement of foreign judgments.

Foreword

Procedural law is a part of national law. Nevertheless, inevitable rapid migration processes in the European Union (hereinafter – EU), free movement of goods, services, capital and persons lead to the need to unify certain individual civil procedural law institutes. The evidence law is a core of civil procedure. Although national procedural norms of evidence law are still not in the common field of EU with the exception of taking evidence procedures, it is absolutely necessary to analyse not only the application of taking evidence regarding Regulation No. 1206/2001 in EU states systems, but also research practice of various national courts for finding possible common conception, principles of evidence law.

Lithuanian procedural law until 2003-01-01 when came into force the new Civil procedure Code was based on the Soviet Union civil procedure system which was adopted from the Russian model similar to French civil procedure model. Nowadays Lithuanian civil procedure is based on the Austrian social model of civil procedure reasoned of the principles of concentration and effectiveness, which complement not deny the principle of free disposition and the principle of officially as core principles on evidence law. The principle of free disposition in the mean of evidentiary is not absolute and limited in the cases public interest dominate (adjudicate disputes concerned with "weak" party in family, labour, insolvency, consumer cases). The court has very active role in such questions, including taking of evidence. Also the parties and the court in civil procedure are not limited by concrete means of proof and any data relative to a dispute could be considered as lawful evidence. The judge evaluating evidences is limited only by laws.

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Part I

1 Fundamental Principles of Civil Procedure

1.1 Principle of Free Party Disposition and of Officiality

The principle of free party disposition is one of the basic principles in civil procedural law. It is established in Article 13 of Civil Procedure Code of the Republic of Lithuania (*hereinafter – CPC*). The principle of free party disposition entails that the parties have the right to dispose their substantive rights and procedural protection measures on their own initiative. This principle is common in all civil proceedings. Nevertheless, the principle of free party disposition is not absolute. In the CPC there are some cases where this principle is limited. For example, in the context of family or employment case, the court may go beyond the limits of an action (CPC Art. 376, 414) Also the Court may not accept the applicant's refusal of the application, refusing to confirm the peaceful settlement agreement (CPC Art. 42. paragraph 2) if the actions are contrary to the mandatory rules of law or the public interest. Civil proceedings, *inter alia*, are also based on such principles as the dispute of the parties and the equality of treatment. The adversarial principle (CPC Art. 12) means that each party must prove the facts relied on as their requirements and replications, unless they are based on circumstances which do not need to be proven. The principle of equality of parties (CPC Art. 17) in the context of the proving process, means that the trial court on the parties must ensure equal opportunities to prove their claims or denials and assessing levels of evidence under the correct legal rules governing the process.

A principle of free party disposition in civil proceedings, under which the parties have the right to dispose their procedural rights on their own initiative (Article 13 of the Code of Civil Procedure), means that the trial is set as a subject of the parties, rather than the duty of the court. The parties are required to use good faith and to not abuse their procedural rights. The key hearings take place initially in accordance with the principles of speedy process and concentration, which means that the parties have to provide to the Court all their requirements, denials and evidence. Article 226 of the CPC (which establishes obligations of the parties and third-party) explicitly states that in the pre-trial proceedings, the parties and third parties must represent to the court all evidence and explanations and formulate their requirements and responses. According to the Court of Cassation, if the parties or third parties of the proceedings before the Court fail or do not perform properly these duties, they can be subject to unfavourable legal consequences.

In the CPC there are also established limitations to the principle of free party disposition which are applied in the area of public interest for the purposes of considering the substantive legal relationship of the dispute, specifically, the legal right to collect evidence on one's own initiative, to go beyond the case limits, higher than normal Court activity and other restrictions in family law and employment and other matters.

Also in the special dispute proceedings, the principle of formality is applied which is contrary to the principle of free party disposition. The principle of operation means that the Court can instigate proceedings on its own initiative. The CPC Art. 505 (paragraph 1) provides the duty of the court – to instigate proceedings for a guardianship of the person if a person is declared incapable or the Court imposed restrictions on person's civil capacity. Under Article 459 of CPC paragraph 1 the Court has a right to resume on its own initiative if the Court recognized the person to declared either missing or dead. The formality principle requires the court to be particularly active in the process and provides the right to take some action on their own initiative (CPC Art. 570 paragraph 1; from the case on its own initiative to restore the lost court file or executable). Formality principle is limited only in exceptional cases.

Lithuanian case law recognizes that in the cases of incapable persons (which is processed in special proceedings (CPC Art. 462-469)), the court must not only take all the necessary measures in order to fully clarify the circumstances of the case (CPC Art. 185, paragraph 1, Art. 443 paragraph 8), but also be very attentive, investigating and assessing the evidence and circumstances important for the recognition of a person's incapability because such matters are also held as a public interest matters. The Trial Chamber finds that the balance of probabilities principle – the rule that if the presented evidence allows the court to conclude that there is a higher probability that a certain fact (in this case – the identification of the nature of the person suffering from mental illness or mental disability with inability to understand his actions or control them) exists than not exists, the court recognizes that fact as established. But the case for personal recognition incapacity, according to its importance for a person's social and legal consequences, cannot be applied.

A person's inability to understand his actions or to control them, forming the basis for recognition of a person's incapacity under Article 2 paragraph 1 of CPC, must be proven by forensic psychiatric expert evidence data (CPC Art. 177, paragraph 4, Art. 466) or can be proven by other CPC Art. 177 paragraph 2, 3 (the means of proof), but it was also decided that the burden of proof set of measures has to form an undeniable (but not probable) conclusion that the person being asked to be recognized as incapable because of such mental disorders (medical test), because of which he is unable to understand his actions and manage them in a way that he needed care (legal criteria). On the question of the adequacy of the evidence on such cases should be dealt with through a very stringent criteria formulated by the Supreme Court of Lithuania in cases relating to the public interest defence. Only above mentioned mental illness or intellectual disability (the impossibility to focus, to work, to integrate, to be economically independent, to make judgements himself and for them to respond permanent and complete) consist the

basis to declare a person incompetent in civil legal point of view (CPC Art. 2.10, paragraph 1).

The Court cannot go beyond the limits of the claim and change the scope of the action (for example, a party cannot award what it does not ask for (*ultra petita*), and the award the Court decides cannot be based on facts and arguments which the parties were nor arguing, since the actual plea should be the legal basis for the claim. The law does not require that the plaintiff of the claim must indicate the legal basis for the claim[1].

A plaintiff in the claim may indicate substantive law, which, in his opinion, should be applied to the dispute. Resolution of disputes, qualification, and interpretation of law are the prerogatives of the Court, whereas a plaintiff's legal plea is not binding for the Court. Consequently, if the plaintiff indicates a substantive rule of law erroneously, the Court must apply the appropriate rule of law. It should not be regarded as an action beyond the limits, as neither the subject of an action or plea in this case are the same (CPC Art. 135, paragraph 1, Art. 146 paragraph 2, 6, 7). These are the procedural rules to interpret and apply by the Supreme Court of Lithuania[2].

The plaintiff formulates the substantive legal claim against the defendant, and the circumstances under which he bases his claim against the defendant (the factual basis of the claim), provide evidence of the following circumstances (CPC Art. 135 paragraph 1, 2, 4). The Supreme Court of Lithuania ruled that the court in its judgement cannot go beyond the limits of the claim, i.e., the Court cannot alter the scope of the action (for example, award more than the party demanded) or plea, and the judgment cannot be based on facts which parties did not mention and the evidence which is not in the case. According to the CPC the plaintiff is not required to indicate the legal basis for the claim. The plaintiff is required to prove actual basis for the subject requirement (s), while the application of the law is the duty of the Court.

The gathering of evidence begins when a civil case is raised, and it usually must be raised at this stage in order for the court to decide on its adoption (CPC Art. 226, 232). Therefore the evidence should be presented in the pre-trial stage. It is at this stage of Civil Procedure when evidentiary information is collected.

Lawsuit evidence is submitted to the parties (CPC Art. 42). The plaintiff must prove the evidence with the action (CPC Article 135 paragraph 1.3), and the defendant has a defence (CPC Article 142). Therefore, the burden of proof in civil proceedings is distributed among the parties and other persons participating in the case in the preparedness stage, seeking to prove the facts, and provide significant information. The CPC provides for an evidence of compliance with the disclosure rules, thus fostering equality of arms and adversarial fairness, as the parties and other participants in the proceedings have the opportunity before the trial in advance to access the evidence submitted and to properly prepare for the case proceedings. All legally relevant evidence must be submitted with the application, and the presentation of evidence cannot be "dosed" or deliberately left to later stages of the process. Parties which bring

evidence not in the pre-trial stage can suffer such results as the refusal of the civil court to accept the evidence if the "late" presentation of evidence would delay the proceedings (CPC Art. 142, Art. 181, paragraph 2). Unjustified proffering of evidence during the trial and postponement of the hearing for the examination of new evidence would violate the principles of concentration and economy of procedure (CPC Art. 7) and fundamental freedoms (Article 6 of the Convention). Consequently, submission of evidence in the pre-trial stage of civil procedure ensures the principles of the procedural equality of the parties, of adversarial argument and of concentration and economy of procedure.

As a general rule, evidence must be presented in the first instance (CPC Art. 135 paragraph 1, 2). Timely submission of evidence ensures the availability of the other party and the court as soon as possible to have access to them, as well as a smoother process. The Court of First Instance has the right to refuse to accept the evidence if it could have been submitted earlier, and if its subsequent presentation can delay the proceedings (CPC Art. 181, paragraph 2). However, the requirement to provide evidence before the Court, together with the application, is not absolute and in some cases evidence may be submitted to the appellate court. Under Article 314 of CPC the appellate court refuses to accept the evidence that could be presented in the first instance, but a reservation is made: the rule does not apply to the adoption of new evidence in cases where the Court of First Instance wrongly refused to accept them or when some of the evidence was submitted to it later. Therefore, the process is directed to the previous submission of evidence in the case, ensuring the principle of concentration and economy of procedure. There is no absolute prohibition for important reasons to give evidence later on appeal. According to the new evidence, making the question of the evidence has probative value to the present case, and the dispute must be an essential part. In deciding on such evidence at a later stage, i.e. the appellate court, it is necessary to take into account the fact that the court does not formally examine the dispute, but fulfils the constitutional imperative – administration of justice.[3]

The court accepts only the evidence that confirms or denies the facts relevant to the case (CPC Art. 180).

1.2 The Adversarial and Inquisitorial Principle

The adversarial principleis one of the main principles of Civil Procedure. This principle is enshrined in CPC Article 12 and in the Article 34 of the Law on Courts of the Republic of Lithuania. The adversarial principle expresses the essence of Civil Procedure, i.e. in civil procedure the parties are equal. Civil cases by all courts are dealt in accordance with the adversarial principle. The adversarial principle establishes the general burden of proof in civil proceedings rules: the parties must prove the facts forming the basis of their claims and denials, except when it is based on circumstances that are in accordance with CPC and are not necessary to prove (CPC Art. 12, 178).

The adversarial principle regulates the parties and other persons participating in the case (including legal action, collection, presentation, analysis of the evidence). Unlike criminal proceedings, civil proceedings are not authorized by institutions or persons for judicial review in court to collect and analyse evidence. Therefore, stakeholders must ensure that, in the event of a dispute regarding rights, they have at their disposal the necessary evidence confirming transactions, legal obligations, etc. If they present insufficient evidence, the court may invite the parties to submit additional evidence and set a deadline for their submission (CPC Art. 179 paragraph 1). The court has the right to collect evidence on its own initiative only in some cases, such as family matters (CPC Art. 376), and labour matters (CPC Art. 414)). Each party tries to defend its position in accordance with the procedural rules. An impartial and independent Court supervises the dispute between the parties. The court, as a public body, is not interested in any of the parties' benefit. This is important because the Court has to resolve a dispute impartially and adopt a lawful and reasonable decision. The court does not inquire into any side of the parties to look for evidence and submit them to the detriment of the other party. Both parties before the court are equal.

The principle of inquisitorial proceeding is enshrined in the CPC (Article 443, paragraph 8) which provides that the court hearing the case of special legal order (special proceeding) shall take all measures necessary in order to fully clarify the circumstances of the case. The inquisitorial principle is realized through for the specific duties and powers to take active steps in the determination of the court. The court must determine and include in the case of all its stakeholders, offer individuals involved in the case, to submit additional evidence, set a deadline for their submission, and if it is necessary – to obtain the evidence. In dealing with a case of special legal order (special proceeding), the court must examine all the circumstances that may affect the judgement. The court is not limited to the information provided and regardless of the legal dispute regarding the existence, finds all, in his view, the essential facts of the case.

As a general rule, in the Civil Procedure Law of Lithuania the parties and other persons participating in the case provide evidence. If the evidence is not sufficient, the court may invite the parties or other persons involved in the case to submit additional evidence and set a deadline for their submission (CPC Art. 179). The court has the right to collect evidence on its own initiative only on the basis established in CPC and other cases provided by law, as well as if the public interest so requires it and the absence of these measures would affect the individual, society or the law and their legitimate interests.

The Court also gives the right to use the data of the case information system, as well as other information systems and records (CPC Art. 179 paragraph 3).

The adversarial principle implies that an impartial court examines private dispute of private parties because the parties have the burden of proof which cannot be transferred to the court. In the Civil Procedure Law of Lithuania, the Court should invite the parties

or other persons involved in the case to present additional evidence in cases where the evidence is not sufficient. In other cases, the Court has a right to implement the proof process, investigate and evaluate the collected evidence and decide on their adequacy. Under Article 179 (paragraph 1) of CPC ratio cannot be interpreted as consuming the Court to find that certain facts are unproven for lack of evidence, if the case does not have circumstances that should be exempted from the adversarial principle[4].

Parties in civil proceedings are free to exercise their rights, but nevertheless, the trial is not their private dispute resolution, because the court is binding on each of the civil procedural law relations. The Court is a public institution and it is entitled to use state coercion measures. The civil process is strictly regulated by law. The Court can identify the parties and the terms for certain procedural steps by the parties to be carried out. The Court has to ensure order at the hearing and lead evidence to an expert in the local inspection and so on.

The CPC Articles 158-162 establishes rights and obligations of the hearing President,, which he (she) implements to preside over the proceedings. The CPC Article 159 (paragraph 1) defines the general hearing Chairman's rights and responsibilities – to take measures to reconcile the parties ensure speedy process and continuous examination of the case in order to establish the essential facts of the case and remove from hearing everything that is not related to the case. The chairman of the hearing also has the right to 1) to demand evidence that the parties are unable to get 2) ask questions to the parties, requiring explanation, referring to the circumstances, which must be set in order to investigate the case fairly, offerring the parties opportunity to submit additional evidence 3) appoint experts to the case 4) oblige the parties to submit evidence that they have relied on 5) collect evidence on its own initiative (CPC Art. 160).

Legal relationships between the parties can be qualified after proper interpretation of the facts (after the case examination and evaluation of the evidence submitted by the parties). The parties are required to exercise good faith and not to abuse their procedural rights – the speedy trial, diligent and timely manner in the light of the process, submission of evidence and arguments (CPC Art. 7, paragraph 2). Failure to observe these duties means action against the fair trial, and the violating party may be obliged by the Court to compensate the other party's losses or to pay a fine (CPC Art. 95).

In a fair trial, the parties should not delay the process and should not abuse their rights, and all facts must be specified before the start of the trial on the merits. It must be shown and the evidence of the plaintiff must set forth the circumstances. The evidence must be presented in the first instance (CPC Art. 135 paragraph 1 item 3, paragraph 2). Submission of evidence opportunely ensures the same of the other party. and the court will hear the case as soon as possible, as well as speed up the process. The Court of First Instance has the right to refuse to accept the evidence, if it could have been provided earlier, and if their subsequent presentation delay the proceedings (CPC Art. 181, paragraph 2). However, the requirement to provide evidence before the Court, together with the application being absolute in some cases allows parties to provide

evidence the appellate court. The appellate court refuses to accept new evidence that may have been present before the Court, unless the Court of First Instance wrongly refused to accept it (CPC Art. 314). It should be noted that there is no absolute prohibition on submitting evidence to an appellate court. There are some exceptions: 1) the Court of First Instance wrongly refuses to accept the evidence and 2) the necessity to submit evidence arises later. The appellate court's judgement on each of the newly submitted evidence to ascertain whether the particular evidence could have been submitted to the court of first instance or not, or the subsequent submission of proof of delay the proceedings, and requested to take into account new evidence to take effect on the parties dispute. The appellate court determines whether or not the conditions apply (CPC Art. 314) for the mentioned exceptions and then accepts evidence or refuses to accept it. Attention is drawn to the fact that according to the new evidence, making the question of the evidence has probative value to the present case. The dispute must be an essential part of the case.

A cassation appeal is not permitted to rely on new evidence and circumstances that have not been examined in the Court the first instance and in the appellate court (CPC Art. 347 paragraph 2). The Court of Cassation is bound by the decision of the court of first instance and the appellate court's set circumstances. The Court of Cassation within the limits of the cassation appeal hears cases exclusively on the questions of law (CPC Art. 353, paragraph 1).

1.3 Principle of Contradiction or audiator et altera pars

The principle of audiator et altera pars is one principle of Civil procedure law of Lithuania. According to this principle 1) the Court adopts a decision after listening carefully to both parties to the dispute (*audiatur et altera pars*). The principle of equality ensures equal opportunities for the parties. These principles would be violated if the decision is adopted ignoring arguments of the parties and without notifying the hearing and etc. 2) the Court has to respond and discuss all the arguments of the parties, 3) the procedure established by CPC in respect of the service of public notice of court summons ensures the right to be heard (CPC Art. 117-134), 4) the law prohibits the limitation of the duration of the speech (CPC Art. 255), 5) also the court must follow the criteria of reasonableness and set time limits that would allow both parties to use their procedural rights, 6) the right to appeal. In order to qualify legal relationship between the parties, the Court has to hear out both parties.

The defendant has the right to defend himself against the claim. It ensures principles of adversary and of equality of arms. (CPC Art. 12, 17). Disputes in the Court include not only the plaintiff's claim but also the defendant's arguments which he uses to deny the validity of the claim against him.

So, one of the fundamental rights of the parties in civil proceedings is the right to be heard. The court adopts a decision after listening carefully to both parties of the dispute (*audiatur et altera pars*). It ensures proper implementation of the adversarial principle.

The law regulates in detail the court pleadings served on the parties and other interested persons. The Court is responsible for court summonses. Article 123 of CPC regulates general procedural service rules under which a court summons to the case of natural persons which shall be served personally or, if they did not have the capacity of Civil Procedure, to representative of the law[5].

A violation of this principle (principle of *audiator et altera pars*) is a ground for appeal or cassation or in the civil case. According to Article 329 of CPC such violation is an absolute ground for invalidity of the court's judgement. There are three conditions under which the Court may return the case back to the Court of First Instance: 1) a person involved in the case has not been served information about the hearing location and time; 2) the Court dealt with the case in the absence of the person (i.e. a person involved in the case has (not) been served information about the hearing location and time) 3) the person's appeal is based on the examination of the case in the circumstance of his absence. Only when all these conditions exist is it possible to start the procedure under Article 329 of CPC (this article regulates an absolute invalidity of the Court judgement and it is a ground to return the case back to the Court of First Instance)[6].

According to Article 366 (paragraph 1) of CPC the proceedings in the civil case may be renewed if one of the fundamental principles of a fair trial – the right to be heard (*audiatur et altera pars*) was violated[7]. This procedural rules violation may result in a finding that case excluded person and heard about the important circumstances of the case, andwas not properly investigated and decided on the facts and the law applicable erroneously, and that the rights and responsibilities that need to be corrected. In the application to renew the proceedings in the civil case, the applicant should specify the circumstances which were not examined or set incorrectly forming the basis for the error. It may be factual or legal circumstances. The civil proceedings should be expedient and economical and the proceedings in the civil case may be renewed seeking to eliminate possible mistakes for the persons not involved in the case rights and duties settlement, but should not be used as a measure to re-examine the case on the same facts[8].

The principle of audiator et altera pars is related to the application and limits of cassation. Under Article 353, paragraph 1 of CPC the Court of Cassation, within the cassation appeal limits, hears cases exclusively on the questions of law. To go beyond the limits of cassation appeal, the Court is entitled only to cases where involving public interest (CPC Art. 353, paragraph 2). However, the prohibition to go beyond the limits of cassation appeal does not mean that this court considers only legal arguments specified in cassation appeal. Article 12 of CPC provides that in civil cases all courts must deal with accordance to the adversarial principle, which ensures compliance with the equality of the parties, impartiality of the judiciary. This approach also compells the parties to prove the facts forming the basis of their claims and denials (CPC Art. 178), and achieve the objective evidence. They are placed in the appropriate hearing, and in writing, they may submit the application (CPC Art. 135 paragraph 1). According to Article 351 (paragraph 1) of CPC the other party should respond (submit written

comments) to the appeal, setting out the detailed objections to the subject of the appeal. Recourse to the Court of Cassation case established the facts and legal arguments are not specified in the complaint of Cassation, but referred to another party whose response to the appeal shall not be an outlet for the outcome of the appeal site as a response to the appeal The arguments are related to the outcome of the appeal and the arguments to the Court of Cassation must analyse otherwise would violate one of the fundamental principles of civil procedure – the right to be heard (*audiatur et altera pars*). So hearing's thresholds determined by the Court of Cassation appeal, and the response to the appeal of the parties referred to in cassation form the basis of legal arguments[9].

The right to an equal treatment implies that any differentiation needs to be founded on an objective basis. It is realized through the principle of equality of arms, for example, that the judge is obliged to guide and instruct parties (CPC Art. 158 paragraph 3; Art. 243), except those who are represented by professional lawyers.

If a party fails to appear at court hearings, the court has a right to impose a fine for the passive part of its representative. Also, if a party fails to appear at court hearings a default judgment can be issued if the counterparty requests so (CPC Art. 158). If both parties fail to appear in the court without any important reasons, the proceeding is suspended (CPC Art. 246).

1.4 Principle of Orality – Right to Oral Stage of Procedure

The principle of orality is enshrined in Article 15 of CPC. It regulates that all parties give oral explanations for the testimony, as well as for their applications and requests, except in the cases specified in the CPC. There are cases heard in written procedure without an oral hearing (for example, a written consent of the parties in the first instance proceedings may be conducted in writing, documentary process cases on the court order of the small claims ordering, if not request oral proceedings by either party (in this category of Court has the right to choose the form)).

The principle of orality is applicable only at the hearing stage. During the oral hearing an audio recording is made, which reflects all the essential trial moments or separate action of the trial.
The principle of orality exists only in the first instance. In appellate and cassation proceedings the principle of the written procedure is applicable. Appellate proceedings may be oral only if the court finds that an oral hearing is necessary. Parties have a right to request an oral hearing but tmust specify a reason. This request is not binding to the Court (CPC Art. 322). The Court of Cassation may also decide that the case is necessary to examine through oral proceedings (CPC Article 356, paragraph 2). However, the appellate and cassation oral proceedings are applied rarely. It is necessary to notice that the CPC provisions relating to the written procedure, in compliance with the Constitution of the Republic of Lithuania, were addressed to the Constitutional Court of Republic of Lithuania (*hereinafter – the Constitutional Court*). The Constitutional Court ruled that legal provisions (when the oral proceeding are applied only in the First

instance) ensures the right to a public trial, interpreting it in the context of other provisions of Code of Civil Procedure, (*inter alia*, guarantees the right to express their views on all matters pending in the case) and protects the public interest (to be informed about the proceedings and judgements) It also assures the conditions to examine the case and make the judgement without unwarranted interruption, thus preventing delay in court proceedings. The Constitutional Court ruled that these provisions are compatible with the Constitution of the Republic of Lithuania[10].

1.5 Principle of Directness

The principle of directness is entrenched in Article 14 of CPC. It means that the court must directly examine all of the evidence: listen to the explanations of the parties, witnesses, experts' findings, access to documentary evidence, examine physical evidence. The decision of the Court must be based on the evidence and the circumstances which were examined at the hearing (CPC Art. 263 paragraph 2). The judge in civil proceedings must participate directly in order to make a lawful, reasonable and fair solution. If there is a change in the court proceedings (for example the judge is excluded, dies, gets sick and etc.), the new judge starts the case from the beginning, except (where the parties do not contradict) to the proceeding is further form the procedural action, for which it has been postponed. (CPC Art. 16 paragraph 2).

Under the principle of directness the Court has no right to decide the question of whether a person is not involved in the case rights and duties (CPC Art. 14 paragraph 3). It would be absolute ground for invalidity of the court's judgment (CPC Art. 329 paragraph 2), and can also be the ground for resumption of civil proceedings (CPC Art. 366., Art. 1 paragraph 7). Article 14 of CPC provides that the parties during the final speeches may rely only on the facts, which were examined at the hearing. However, if the court during the final speeches or after it went into making the judgement, recognizes there is need to establish new circumstances relevant to the case or to investigate evidence he is entitled to make an order, which is an updated assessment of the merits (CPC Art. 256).

In the doctrine of Civil Procedure Law of Lithuania and in case law, it is explained that the main evidentiary process is implemented in the Court of First Instance. The Court of Appeals manifests just evidence researched and evaluated by the First instance court, and in exceptional cases provided by law,makes the adoption of new evidence.

The process in the Court of Appeal is the Court of First Instance's judgement form of control. Only the appellate court has a right to decide whether the decision reached by the Court of First Instance is legal and grounded. The appellate court hears the case in the limits determined by the petition for appeal (CPC Article 320). The Court of Appeal checks the decision of the Court of First Instance by different reasons: wrongly indicated circumstances, false testimony offered by the witness, false written evidence, contradictory evidence, etc. Under Article 314 of CPC the Court of Appeal refuses to accept new evidence that could be presented to the Court of First Instance. This rule is

not absolute. There are two exceptions, bound to the parties to present evidence in the first instance. If the parties did not have a fair opportunity to present evidence relevant to the case with, the law provides the right to present such evidence to the Court of Appeal. There are such cases: 1) the Court of First Instance refuses to accept the evidence wrongly and 2) when there is a need for the presentation of evidence after the decision of the Court of first instance and it appears later. These exceptional conditions require parties to identify and justify their requests. The following conditions should be assigned to the first instance court and unfounded refusal to obtain evidence of a person involved in the case itself was not able to get it. The first condition for the submission of new evidence is related to the first instance by the CPC rules governing admission of evidence. The second condition (the need for the submission of new evidence in the appellate court later) is related to the Court's findings on the relevance of evidence, admissibility, reliability, adequacy, and the burden of establishing subject-matter of its weakness, as well as the order of the Court of Cassation, which has been withdrawn or the Court of Appeal judgement ruling and the case referred back to it, reasoning. If the Court of Appeal decides that the evidence in the case is insufficient to justify the judgement of the court, the appellate court accepts the new evidence. When the Court of Appeals hears cases of family law, label cases, corporate insolvency and restructuring and other matters related to the protection of public interest, it has the right to obtain new evidence on his own initiative. After accepting the new evidence, the Court of Appeals examines the evidences in the general procedure (CPC Art. 302).

When the Court of Appeals accepts the new evidence or refuses to accept an oral order, and files a written hearing process in its order,the Court adopts a reasoned decision.

In the Judicial practice of new presentation of evidence, the evidence is interpreted to be a means of denying the other party's appeal and allegations[11].

1.6 Principle of Public Hearing

Publicity of court proceedings is enshrined in the Constitution of the Republic of Lithuania (Art. 117), which states that all courts must issue publicly. This principle is also enshrined in (CPC Art. 9) and the Law of courts. However, the constitutional human privacy principle requires us to question the principle of exceptions. The CPC Article 9 indicates that by a reasoned court order, a court hearing may be closed – to protect the secrecy of private or family life, as well as the present case where the public may be disclosed to State (also professional or commercial secrets). However, the judgment must always be available to the public. Civil Procedure publicity means that not only the parties to the case, but any member of the public over 16 years of age can freely monitor the judicial process. In this sense, the process of publicity is one of the guarantees of due process, because it is only during the public hearing, the public is entitled to make the judicial system's impartiality and independence of a particular judge's integrity and legitimacy of civil procedure.

1.7 Principle of Pre-Trial Discovery

As in many states of continental legal system (CPK was created fundamentally on the ground of Civil procedure model of Austrian), there is no "principle of pre-trial discovery" in Civil procedure law of the Republic of Lithuania. However, there is the possibility to preserve evidence in some special cases.

1.8 Other General Principles in Lithuanian Legal System

The gathering of facts and evidence begins at raising a civil case and usually has to end in order for a case to be sent to the court hearing the adoption (CPC Art. 42 paragraph 1, Article 111 paragraph 2 of 4, 5, Article 112 paragraph 2, 3, Article 134, paragraph 6, Article 135 paragraphs 1-3, Article 141, Article 142 paragraph 3, Article 143, paragraph 1, 3, Article 225, paragraph 1, Article 226, Article 227, paragraph 2, Article 230, Article 232, paragraphs 1-3). The parties must specify the circumstances of the statement, which is based on requirements and replications, and submit evidence in support of their position. The parties in their leadings must specify the reasons for which they cannot provide evidence of the case and formulate a request to obtain evidence. Such request must specify the circumstances which confirm that the evidence is required. The party requesting must demand written, exhibits and other evidence of the consent, and the court may issue a certificate to give evidence that they would submitted to the court (CPC Art. 13, Art. 42 paragraph 1, Art. 199, Art. 206).

If a claim, request, counterclaim or other document is contrary to the requirements of form and content, the court sets a timelimit to overcome these deficiencies, but not less than 7 days. The court may suggest submission of additional evidence. The court is not obliged to specify the specific means of proof, unless there are not required to present written evidence (marriage, birth certificates of children in family matters, data form the public register (CPC Art. 420, paragraph 3), leased the site plan disputes regarding the land lease contract or land scheme, where the land is rented to 3 ha (CC 6.547, paragraph 3, and others). If a person who filed a pleading within the time limit does not remove the burden of deficiencies, the procedural document is considered not submitted and transferred to the person who filed (CPC Art. 115 paragraph 2, 3, 6 Art. 138, 227, paragraph 3).

The parties and other participants in the case must be fair and not abuse procedural rights of the speedy trial, diligence and time limits, taking into account the process, submitting evidence and arguments in support of their claims and defenses (CPC Art. 7, paragraph 2). The court may refuse to accept the pleadings and the evidence if the such presentation will delay the proceedings and if the parties are found to be abusing procedural rights (CPC Art. 114 paragraph 2, Art. 142, paragraph 3, Art. 181 paragraph 2, Art. 227, paragraph 2). On the other hand, refuse to allow the evidence submitted to the court only to examine the reasons for the delay, is the blame for the party. Where a defendant, without important reason, within the time limit does submit the defense, rejoinder (the answer to the reply), or a party fails to appear at the hearing, if place and

time of the proceedings is reported the applicant or if that party does not submit a reply did not reply, the court may accept the default judgment (CPC Art. 135 paragraph 1, 5, Art.142, paragraph 2, 4, Art. 227, 230 paragraph 2, Article 285).

Sometimes a party relies on the evidence contained in the other case, which has already been examined in civil, criminal or administrative proceedings. The court itself usually examines such evidence, asking to send the necessary files, or parts to it. Articles 7 and 8 provide for principles of concentration and of cooperation. The court on its own initiative obtains the evidence in the cases of family, work, in special proceedings cases, including bankruptcy, corporate restructuring and other cases in which the court has a duty to act *ex officio*, and also when there is a demand to protect the public interest (CPC Art. 157, Art. 159, paragraph 1, Art. 179, paragraph 1, Art. 184, Art. 320, paragraph 2, Art. 376, paragraph 1, Art. 414, paragraph 1, Art. 443, paragraph 8, and other laws). In such cases the court has not only the right but also the duty to carry out and gather evidence if the parties in such cases does not provide evidence, as well as in cases where the evidence is insufficient to determine the circumstances. The Supreme Court of Lithuania ruled that the court may decide that an expert at the request of the parties, before the stage of the preparatory meeting or hearing oral proceedings can be invited (CPC Art. 184, paragraph 1, Art. 212, Art. 219, Art. 228 paragraph 1, Art. 230 paragraph 1, Art. 245 paragraph 2, Art. 251 paragraph 2, and other laws). This conclusion is based on the fact that the parties and the other parties of the case without a court decision cannot submit to the court an expert's report where it is needed. It can be related to special knowledge, for example scientific, medical, artistic, technical and craft knowledge.

The court has a right to refuse to submit the evidence if it might delay the proceedings. In this case-law under the Article 114 (paragraph 2), Article 142 (paragraph 3), Article 181 (paragraph 2), Article 227 (paragraph 2) of CPC is interpreted that the court should impalement rights resolve disputes in accordance with the process of concentration and economy, cooperation, equality of arms, the right to a fair trial (CPC Art. 2, Art. 7 paragraph 1, 8, 17, 21). Refusal to accept a delay in the evidence must be resolved in an oral or written reasoned decision, (CPC Art. 181, paragraph 1, Art. 290 paragraph 1-4, Article 291).

In the pre-trial procedures in civil cases, the court must ascertain the parties and the subject matter of the volume of the evidence. If the evidence is not enough to ask the parties or other persons to be involved in the case, additional evidence can be required within a set time. The court can make a preliminary assessment of legal relation, the applicable rule of law and the burden of proof, the basis of the subject, the burden of proof in connection with the subject matter (the relevance of evidence), and evaluation of the admissibility of evidence, if it is necessary to clarify the obligations of the parties to prove facts (CPC Art. 159 paragraph 1, Art. 179 paragraph 1, Art. 225, Art. 226, 227 paragraph 3, Article 230, paragraph 1). Such court action should not be considered as biased by one or other party concerns.

2 General Principles of Evidence Taking

2.1 The Principle of Free Assessment of Evidence

"If you dare to tell the truth, you have to be independent from success." (Russo)

The right to judicial defence by itself is not valuable. It starts to become valuable only in cases where positive law constitutes the conditions for its realization. From the most common point of view, the right to judicial defence is considered as it is implemented by proper means, if final "act" of implementation of this right – the verdict of the court – is not only legal and legitimate, but also – it is true (i.e. the truth is ascertained). The realization of justice is also correlative immediately with the procedure of assessment of evidence. Defining the immediacy principle, the CPC states that the court must directly examine all the evidence, except in the cases clearly declared in the CPC (Art. 14, paragraph 1) It is a mandatory condition for the court seeking fairness and transparency in the last stage of the proof procedure – assessment of evidence. The Lithuanian CPC defining contents of civil procedure principles in the chapter 2 does not determine free assessment of evidence as civil procedure principal. However, in the special chapter 12 intended for evidence and proof procedure, the legislature provides the criteria or requirements for the court (judge) who assesses the evidence. Although free assessment of evidence is not directly established in the special chapter defining civil procedure principles, it is explained as civil procedure principal in the doctrine of law, also in the judicial practice. It is stated in Article 185 of CPC that the court assesses the evidence according to their inner conviction based on a thorough and objective review of the circumstances in accordance with the law. No evidence has a pre-determined power for the Court, except when the CPC provides an exception.[12] Final and compulsory assessment of evidence is the exceptional prerogative of the court. Assessment of evidence is not anymore formal than it was in the middle-ages. Assessment of evidence is the legal and logical procedure of the judge's activity who analyses each evidence as equal under the concrete conditions and finally decide – verifying facts as proven or not. In this procedure, a judge is bound only by the laws based on the essential principles of civil procedure.

There is no "good" or "bad" evidence for the court because of equality of parties. There is only one exception stated in the CPC – official written evidence that has a considerable probative value. Circumstances approved by prima facie evidence are considered completely proven until they are not denied to other evidence, except circumstances approved by witness testimony (CPC Article 197, paragraph 2). Expert opinion is optional and the court assesses it under the inner conviction of the judge, based on a thorough, comprehensive and objective evidence adduced testing (CPC Article 218). The court also is not bound by the one party's recognition of facts in the case. The court may hold a recognized fact established, if it decides that recognition corresponds to the facts and is not established against the party's deception, violence, threat, mistake or concealment of truth (CPC Article 187).

In judicial practice the court must preliminarily evaluate the evidence before confirming the requirement, but if the courst does is not satisfied by the veracity of such evidence, reliability is not required to remove contradictions between the evidence[13]. In other civil cases, such as loan contract cases, the Court of Cassation declared "under the rules of evidence evaluated all the evidence collected in the case and their totality is the data concludes the court formed the belief that such circumstance exists or does not exist. No evidence before the Court has a pre-determined power, except when the CPC provides for an exception"[14].

The court must consider not only any evidence of probative value, but also evidence of totality, and only the weight of evidence to draw conclusions about the subject matter of certain evidence in a particular case, the facts contained in the presence or absence[15].

The Lithuanian legal system does not provide methodological guidance for judge to apply free assessment of evidence. Usually courts are bound by the party's dispositions. However, in some categories of cases, public interest dominates (labour cases, consumer cases, family cases), and therefore the court is really active and it effects the assessment of evidence. In such cases stricter criteria for determining the adequacy of the evidence is subject to the more powerful party[16].

2.2 Relevance of Material Truth

"Even strong arguments have to give the way to more convincing." (Shakespeare)

There is no doubt that finding truth is the essential condition of course of justice in all concepts. The question is how do we have to explain the meaning of truth in civil procedure? Legal doctrine provides a unanimous consensus as to what should be the concept of truth based on civil process. Some authors consider that a case has to be determined by its material truth, and others by its objective truth. The objective truth proponents argue that the lack of objective truth means it is impossible to determine whether the person exercising personal rights actually refused to perform his duties, which he was required to do in order to legalize this practice. Supporters of the material truth idea state nowadays it is necessary to eliminate the established objective truth from civil procedure, since the publication of evidence determining the objective truth should be addressed to the conclusion that in many cases the goal of the principle cannot be reached, and therefore will need to explain a lot of exceptions. Also, the purpose of handling would mean the court becomes the inquisition body and creates real conditions for the violation of the principle of equality of parties.

For some time in judicial practice there has not been a common approach. In some cases, it was argued that the court is obliged to determine the objective truth[17], while in other cases, the court states that one of the purposes of civil proceedings is to establish the material truth. So for a long time in Lithuania, neither in juridical doctrine, nor in the practice of the courts, the question of the standard of averment was not addressed. After reproduction of civil procedure of Lithuania in 2002 and adoption of CPC, the

idea of assessment of material truth during civil procedure began to be preached generally, and this foreran the averment standard worded in practice of the courts, and which was predicated by principle of theory of chances.[18]

The definition of truth is not established in the law directly. Moreover, the word "truth" is used only once in CPC. It is stated in CPC Article 194 paragraph 3 in exceptional situations where it is necessary to find the truth or to avoid prejudicing the interests of a minor, any person can be removed from the courtroom for a period of the interview of a minor witness.

Although the laws do not state directly an obligation of the court to establish the truth, in all the cases a court has to seek establish the truth through evidence taking and assessment of evidence procedures, as usually, the material truth, except in non-disposition cases where standard for fact would be considered as established in the case is higher. Even in these cases the truth would not be explained as objective. According to the role of the court in special proceedings, default judgment, a documentary proceeding, a court order proceeding, where the judge has an obligation to assess evidence only in formal way, one more kind of the truth could be presented – formal truth. There are some procedural norms allowing for the determination of the material truth for the court. First, there is no exhaustive list of evidential means. Second, parties and third persons before giving explanations, witnesses before giving testimony take an oath for saying the truth (CCP Article 186, paragraph 6 Article 192, paragraph 4). Third, party's recognition of the facts do not bound the court (CCP p. 2 Art. 187). Fourth, written evidence may be given by the parties or in accordance with provisions of CCP, recovered by the trial (p. 1 Art. 198). Fifth, the court has a right to disagree with an expert opinion but must motivate it in a judgment; also the court may appoint an additional or repeated examination (Art. 218-219). Sixth, the court has a right to impose sanctions to the persons for failure to comply with court orders (p. 6 Art. 186; p. 1 Art. 191; p. 6 Art. 199; Art. 207). Seventh, the court may refuse to accept the evidence and the reasons for that if it could be presented earlier (in the preparation stage), if subsequent submission will delay the judgment-making case (p. 2 Art. 227). New facts are not accepted in the Court of Appeal, but in exceptional situations that court refuses to accept new evidence that may have been present before the Court of First Instance, except if wrongly refused to accept them, or presentation of evidence necessity arose later (Art. 314).

In conclusion, the conception of truth in civil cases depends on the category case to which it belongs, and also the specific proceedings, but in general the court has enough power to establish material truth.

By reason of restricted authorities of the court on the way of implementation of the duty of exposure of the purpose pursued by using principles of permissive rule and competition, expedition and economy, namely – to identify the truth that occurs in process of analysing the case, in many cases has only the declarative meaning, which doesn't match with the content of procedural law and mostly becomes unreachable.

Nevertheless taking into account the fact, that realistically operating form or competition might form the opportunity to assess all true, "historical" and factual conditions of the case, which took place objectively during legal relations (in order to assess the truth), the term of assessment of truth must not be written out of terminology of civil procedure. The title of the principle of civil procedure must be given to the assessment of truth[19].

3 Evidence in General

3.1 Methods of Proof

The procedure of substantiation is based on the rule the court has to set assurance on the questions of (non) existing circumstances related to the subject matter of the dispute (CPC Art. 176 paragraph 1). The general rule states not all proofs have any higher power to the court. However, there are few exceptions of this rule (p. 2 Art. 185). The information in official (legal) written documents could be denied only by other strong evidence, except witness testimonies (such evidence could be used if the prohibition to use it contradict to the main principles of law – justice, honesty, rationality) (p. 2 Art. 197). Moreover, the conclusions in an expert report (conclusion) practically could be denied only in exceptional cases under the very strong motivation of the court in a judgment (Art. 218). All the other means of proof are not excluded as *stronger or weaker* in the laws and practice.

3.2 Formal Rules of Evidence

There are very few exceptions to the principle of free assessment stated in Article 185 of CPC. For instance, in the default judgment exists a formal rule of evidence, meaning that the court has to consider established the facts provided by the party not in default (unless those facts have already been disproven by evidence available) (p. 2 Art. 285). Also in the documentary procedure the court also more formally assesses the evidence (p. 1-2 Art. 428), in the case of passing court order does not assesses any evidence at all (p. 1 Art. 436).

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

The Supreme Court of Lithuania several years ago decided that "*high probability*" shall be the minimum standard of proof. In the cases where court is active the higher standard of proof are required (especially in a non-dispute procedure where the legal facts should be established).

3.4 Duty to Deliver Evidence

The law provides that the parties must prove the facts forming the basis of their claims and denials, except the cases when based on circumstances that are prescribed by the law as those which have not to be proven (CPC Section 12, Art. 178). In view of the

recent law, is distinguished that the party must indicate (say) the evidence which prove the facts. However, it should be noted that the law may provide exceptions under which a party is not required to prove the facts (CPC Art. 182). The party and a the third party have the right to refuse or survey responses to certain questions put by, if it would incriminate themselves, their family members or close relatives (CPC Art. 188). Under this rule, a party or a third person may comment on them unfavourable circumstances, but they cannot distort known facts or provide false knowledge[20].

Legal norms that determine the strength of certain means of proof would conflict with the principle of free assessment of evidence. However, some of the exceptions from the principle of free assessment of evidence can actually make certain types of evidence stronger than others (see chapter. 3.1).

In the Lithuanian procedural law there is non-finite list of means of proof, e.g. there is no "*numerus clausus principle*". It means that in the Lithuanian procedural law could be used any mean of proof, even non mentioned in the laws directly, in exceptions if only very specific means should be used in concrete cases.

The main means of proof mentioned in the CPC Articles 176-220: 1) examination of the parties; 2) witnesses (Art. 320-350 ZPO); 3) written evidence; 4) material evidence; 5) protocol of inspection; 6) expert report (conclusion); 7) photos, video and recorders.

In family cases when resolving the question of false statements between spouses, the examination of the parties (spouses) is not objective and should be assessed very critically, because of their direct and very personal interest in the case[21].

3.5 A Duty for Third Persons to Deliver Evidence

As a general rule, documentary evidence can be presented in the case in accordance with CPC, or recovered from the court (CPC Section 1, Art. 198). Third parties are obligated to submit the required forensic evidence and witness summoned person must appear in court and give truthful testimony. For unjustified refusal to testify, the court may impose a fine up to two hundred and eighty-nine euros (CPC Art. 191 paragraph 1). If the time requirement to provide written proof is not met and the court withheld the fact that it could not be present for valid reasons or reasons given to the court recognized unimportant, guilty persons may be granted up to a fine up to 289 euros. Fines do not relieve the persons concerned from the obligation to provide the court requested written evidence (CPC Art. 199, Section 6). However, persons who cannot be questioned as witnesses (clergy, physicians, and others; CPC Art. 189 paragraph 2) are not required to provide written evidence if this may reveal circumstances which they cannot be questioned as witnesses. If the above mentioned facts constitute the only written evidence, for information to be submitted duly approved by the written evidence is involved, excluding the parts discussing the circumstances. A person is not required to provide written evidence as well as in cases where such evidence would incriminate themselves, their family members or close relatives (principle of nemo tenetur se ipsum

accusare). (CPC Art. 188), or if the witness would testify against themselves, their family members or close relatives (CPC Art. 191 paragraph 2).

3.6 The Value of Judicial and Administrative Judgements as Evidence

The CPC Article 182 are contained in four groups of factors which need not be proved. These facts, the court recognized all known, the findings of the final judicial judgement in a civil or administrative case, which involved the same people, and a final judgment of the court set a person's criminal consequences (preliminary data), according to the law presumed facts, the opposing party to recognize the facts. A party to the case, which is correctly based on the CPC Article 182, under those circumstances, is exempt from the duty to prove. On the other hand, the CPC Article 182 does not relieve the burden of operators from the obligation to submit a final judgment, plead and prove the circumstances under which, the legal presumption.

There is the second group of factors, which do not need to be proven. According to the CPC Article 182 (paragraph 2) parties no longer have to prove the facts set out in a final judgment in a civil or administrative case, which involved the same persons, except when the judgment gives rise to legal consequences, and did not attend to the case. A previous court order to determine the legal significance of the facts have recognized references for preliminary judgment on entry into force and lose the power, if the previous judgment is hereby repealed. Previous civil or administrative proceedings referred for preliminary findings are acknowledged only when they are in that case the burden of proof thing, or at least part of it. In addition, it is important that the facts should be set in another case, but not in the same case, examining it in a given jurisdiction. The preliminary findings rule cannot be applied in the same civil case, considered in the appeal or cassation, the coming into effect of not appealed against the first instance judgment in part, and other relevant parts of the judgement are appealed. It is held in judicial practise[22]. Explaining the preliminary definition of fact, the Court of Cassation stated that the preliminary evidence in another case must be considered as a final judgment sets out the circumstances. The preliminary findings of such circumstances has the power only, when in both cases, the status of any proceedings involved the same person, unless the court rise to legal consequences and did not attend to the case, the previous civil case acknowledged references for preliminary findings only when they are in that case the burden of proof thing, or at least part of it is important, from proof that fact is significant in both cases[23].

The preliminary findings rule is directly related to the people’s right to judicial protection and the right to present evidence. Therefore, this rule should not be extended. It should not be subject to the administrative authorities, the investigating authorities the judgements and resolutions. It does not apply to court orders, with the exception of the appellate court's ruling that the case is a judicial judgement for the eyes as well as court orders. These documents are assessed by written evidence under the general rules of evidence evaluation.

4 General Rule on the Burden of Proof

4.1 The Main Doctrine Behind Burden of Proof Rules in Lithuanian National Legal System

The burden of proof lies on both parties: the plaintiff and the defendant. This rule ensures the equality of arms principle of proper implementation, creating equal opportunities for parties to implement the procedural rights: what is not allowed to the plaintiff, he must be prevented and the defendant, and *vice versa*. The claimant has to prove the validity of their claims (factual basis), and the defendant must show opposition to the plea (*reus in excipiendo fit actor*). If the claimant has failed to show the plea of the action, it will not be satisfied (*Actor non probante absolvitur reus*). If the defendant has failed to show any objection basis for the subject the unfavorable judgment can be taken. In addition to the improper burden of proof, the court may refuse to allow a party to present the evidence.

Articles 12, 178 of CPC state a general rule on the burden of proof: any party has to prove the existence of all factual requirements for the legal rule favourable to him. This means that if relevant facts or circumstances remain unclear, the judge has to decide as if it had been proven that the fact does not exist or the circumstance did not occur.

4.2 Standards of Proof in Lithuanian Legal System

Under the Lithuanian doctrine of procedural law, legal norms and case-law practise the standards of the proof depends on the category of the case. First, until 2010 in Lithuanian case law, one factor usually dominated, decreasing a predominant likelihood of the matter of fact in question – the existence of the matter of fact is more likely than its nonexistence. Second, in more current case law, a new factor dominates the normal standard of proof, requiring the judge's conviction of a *high likelihood* of the matter of fact in question. Third, in some cases there is *utmost likelihood* of the matter of fact in question, e.g. the proof that a child does not descend from concrete man.

4.3 Exemptions from the Burden of Proof

In Lithuanian procedural laws exempts certain facts from the burden of proof (Art. 182):
1) ***Obvious facts or circumstances*** which the Court declares as publicly known. Facts and circumstances are obvious if they are common knowledge – are known to a vast number of people or if they can easily be found out, such as geographic facts, or if they are known to the court through its official activities.
2) ***Facts set in the final judgements*** in administrative, civil cases between the same parties or set in the final judgement on the criminal case as circumstances of the crime offence (*prejudicial facts*).
3) ***Legal presumptions***
Legally presumed facts or circumstance do not need to be proven. However, it is admissible to prove the contrary unless the law explicitly prohibits it. The party does not

have to prove the fact in question, but only the fact that serves as a base for the presumption. If the party successfully does so, the counterparty either has to prove the nonexistence of the base for the presumption or the nonexistence of the factual requirements for the legal rule unfavourable to him.

4) ***Recognised facts* (*confessions*)**. Confessions stating that the other party's allegations are correct. Explicitly confessed facts or circumstances have to be taken as true and must not be evaluated in the judgement. However, the court has an obligation to sure such confession is not made on the ground of deception, violence and is not influenced for real aim to conceal the truth (Art. 187).

4.4 Duty to Contest Specified Facts and Evidence

The burden of proof could be very generally explained as the rule the plaintiff must prove all the circumstances approved in the claim, the defendant – approved the circumstances approved in the counterclaim, the applicant – in a statement or request a factual basis (the CPC Article 182 apply with no need to argue). On the other hand, there are some rules in the substantive law, where the material norms state other rules of the burden of proof or exceptions (e.g., the mother of a child recognised the woman who has given birth to the child, which is certified by statement from a physician.). It states law presumption or indicates which party and what specifically has to be proved in. Parties and the court must ascertain in each case whether the burden of proof is sufficient to establish the rules of the CPC, or need to follow the laws of the other (usually the substantive rules) indicates the distribution of the burden of proof. When substantive law sets a different burden of proof than the CPC regime rules should be followed the substantive law and case law set formed proof manner.

4.5 Doctrine of *iura novit curia*

Determined by the manner in which the plaintiff subjective rights should be protected and specified the remedy affected consolidating rule of law, the trial court must assess the facts relating to the subject matter of the action. In other words, the plaintiff is not bound by a legal plea, because the legal qualifications a judicial prerogative (*iuria novit curia*). Only when the legal relationships between the parties are properly qualified, the court may apply for this relationship material law stipulating and breach remedies.

After accepting the application, the court, if necessary, revise or distribute the burden of proving the parties.

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

The court has procedural means at its disposal to enhance active participation of the parties in the proceedings. A judge may leave the statement of claim not proceeded and give time to the plaintiff that is not less than 7 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 (p. 2 Art. 115, p. 3 Art. 137). The judge has the power to require from the participants in the matter written explanations in order to clarify circumstances of the matter and evidence. Explanations and evidence submitted within the time period specified by the judge. Article 246 of CPL lists procedural sanctions that may be applied by the court to the plaintiff and the defendant. If a party 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, or in a matter without a justified reason fails to attend the preparatory sitting, the judge may impose a fine not exceeding 289 euros. If the defendant has failed to prepare procedural document to the court or 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.

4.7 A Proposal of the Court to the Parties and Other Participants in a Proceeding that They are to Submit Additional Evidence

According to the CPC Article 179, relating to the court proof steps in the process, one part of the evidence submitted by the parties and other persons participating in the case, and if the evidence is insufficient, the court may invite the parties or other persons involved in the case to submit additional evidence and set a deadline for their submission. These provisions are fully applicable in dispositive matters which come from substantive legal relationship of actors to freely dispose of their substantive rights and duties are not limited, their judgements are not related to the protection of public interest.

4.8 Collection of Evidence on the Court‘s Own Initiative in Civil Cases

The court has the right to collect evidence on its own initiative only on the basis stated in CPC (and other matters but just provided by law), as well as if the public interest requires and the absence of these measures would affect the individual, society or the law and legitimate interests (CPC Art. 179 paragraph 2). The court is entitled to their own initiative to collect evidence in family law, employment, bankruptcy matters, and so on. This provision is governed by the general rule that the court has the right to collect evidence on its own initiative, an exception applies in non-dispositive cases (family, work, special proceedings, bankruptcy, restructuring, and others), where the court is required by law to act *ex officio*. In such cases the court has not only the right but the power or obligation to collect evidence if the parties are not adduced any evidence, as well as in cases where the evidence is insufficient to determine the circumstances irrelevant. In both situations court controls non-dispositive proof process is responsible for the proper allocation of the burden of proof and the burden of the identification of the subject may require clarification from the parties to the case, they specify the circumstances in which it is necessary to identify correctly handle the case offer the parties to the case to provide additional evidence[24].

For bankruptcy proceedings challenging the transactions, the burden of proof process is specific, because it defends both private and public interest, and the court in these cases is more active than in other matters. In a civil case in which the company's bankruptcy administrator defends the interests of creditors, an action on the transaction concluded by challenging the court not only to invite the parties to provide the necessary evidence and, if necessary, when the parties are not fulfilled its responsibilities in the process of proof, the court may on its own initiative gather evidence, investigate and evaluate (CPC Art. 179, Art. 9 of the Bankruptcy Law)[25].

In this study, it was mentioned that the court has the right to refuse to admit the evidence if that evidence could have been presented in the past, and their subsequent presentation delays the proceedings (CPC Art. 181 paragraph 2). It is acknowledged that the evidence submitted later causes another process, i.e. if wisely conducting the process, depending on the procedural status of the proceedings before the Court, they had to be submitted before[26], so the Court refuses to accept the evidence brought later what is also associated with the second condition – delay of the proceedings. Such a case is decided by the Civil Procedure Law of known science theories: the rest of the process of delaying the whole process or delay the application. By way of the rest of the process of delaying the theory of the court compares two versions of workflow process, one that would, if he refuses to accept late evidence presented, the fact is that if it is to adopt[27]. For the purposes of delaying the whole process of the theory of the case examination time compared with that which would have provided evidence of late to have been delivered on time (usually talking about the supposed duration of the process[28].

Both of these theories are criticized and Lithuanian legal doctrine is offered to seek a compromise.

The process is directed to the previous presentation of evidence in the case, because it ensures the principles of concentration and of economy, but they are not an absolute prohibition for important reasons to give evidence later, i.e. appeal. Attention is drawn to the fact that according to the new evidence making the question of the evidence has probative value to the present case, the dispute must be essential. i.e. since they can usually depend on the outcome of the dispute. In deciding on such evidence at a later stage, i.e. the appellate court, it is necessary to take into account the fact that the court does not formally examine the dispute, but fulfils the constitutional imperative – administration of justice. In addition to the assessment of forensic evidence to connect the delay, it is important to take the blame for the party's late submission of evidence and the interpretation of the court's obligation. If the party provides evidence too late for her guilt, the Court may refuse to accept them. The court's interpretation of the duty associated with the legal consequences of the party submitting late evidence, interpretation, revision or reversal of the burden distribution.

4.10 An Order for a Third Person to make Evidence Available

According to the norms of the CPC, the Court has the right to issue a certificate of the right to obtain the evidence that would be submitted to the court. Such a certificate may be issued in written or physical evidence receiving (CPC Art. 199, Art. 206 paragraph 4). This certificate is issued by the court at the request of the person concerned, which must include information on the demand and requested proof of the basis on which it is believed that the evidence of that person, the reason for which it was not a given, and the circumstances which help to set the proof of (CPC Art. 199 paragraph 1, Art. 205). Natural persons or legal entities, without being able to provide the required proof of his or unable within the time limit, must inform the Court, and must indicate the reason (CPC Art. 199 paragraph 5 Art. 206 paragraph 3). If the court's (within the time) required proof is not met and the court withheld the fact that it could not be present for valid reasons or the reasons for the court acknowledged unimportant, guilty persons may be granted up to a fine up to 289 euros. Fines do not relieve the persons concerned from the obligation to provide the court required proof of (CPC Art. 199 paragraph 6, Art. 207).

Relevant cases, the practice of the Court of Cassation, in accordance with the CPC, enshrined the interpretation of proof and evidence application. Evaluation of evidence in accordance with the CPC Article 185 refers to any information relevant to the dispute to resolve evidentiary value determined by the court in its inner conviction. The courts, in assessing the evidence presented by the parties, based on the evidence of the adequacy of the rule and the conclusion on the existence of specific facts, is done by an internal court conviction, based on a thorough and objective review of all the relevant circumstances of the case[29], in each specific situation to decide on the sufficiency of the evidence in the case and the credibility assess whether there are contradictions between the evidence and the main confirmed by the data, or sufficient direct data or consistent by supporting facts. If all evidence presented isn't contradictory, it is possible to conclude based on the facts argued the existence of a case of finding evidence of the adequacy[30]. Interpreted by the Court of Cassation, and the fact that,if measured at all, the evidence is made principled assessment that could affect the outcome[31].

5 Written Evidence

Before the Second World War in Lithuania written evidence had a greater value than witness testimony. Article 106 stated "written documents cannot be ruined by witnesses" (Art. 106 of Civil procedure law 1933). Nowadays evidentiary process is based on documentary equality, i.e., evidence does not have priority over other evidence, except official written evidence (p. 2 Art. 185, p. 2 Art. 197).

The definition of written evidence is wide enough. Written evidence is not only documents, but also personal and business correspondence, notes, all other material objects, which consist the data on the circumstances relevant to the case. Comparing written evidence with other evidence, it is possible to distinguish two characteristic

features: 1) evidence is neutral to the procedural status of persons in respect of;2) the information contained in evidence usually observed before dispute of law arises.

According to the occurrence of (origin), written evidence are divided into private (individual) and official. Such distinctions of written evidence are stated in p. 2 Art. 197. Under this Article, documents issued by the state or local authorities or approved by a person who has a power to act as state representative authorized according to their competence (notaries, judicial officers), and determined in accordance with the relevant documents meet the formal requirements considered as official written evidence and has more probative value. The circumstances referred to official written evidence, considered completely proven, until they will be denied by other means of evidence, with the exception of eyewitness evidence. Prohibition of use of witness testimony does not apply if it is contrary to the principles of fairness, justice and reasonableness. Probative value of official documentary evidence also could be given by laws to the other documents. Written evidence may be given by the parties or in accordance with CPC norms, recovered from the trial. If the documentary evidence submitted is not written in Lithuanian language, evidence must be translated (Art. 198).

Documents, including written evidence provided to the court in electronic form are also recognized as written evidence. In electronic case filings, all procedural documents, also action and annexes, including evidence may be submitted in electronic form via electronic means. Persons providing procedural documents by electronic means must have an advanced electronic signature or confirm their identity by other means (through e-banking systems and so on), or sign up in the judicial information system. Identity validation requirements and methods are determined by the Minister of Justice (hereinafter – Order – Judiciary Law p. 3 Art. 37 (1), CPC p. 2 Art. 175(1)[32]. Order states procedural documents by electronic means submitted to the court through the judicial information system in Lithuania (hereinafter – LITEKO public e-services Command (hereinafter – VEP subsystem). By attaching LITEKO VEP subsystem account, a person must confirm his identity. A natural person is connected to LITEKO VEP subsystem, in the account in its own name or as part of another person or entity representative.

Participants in the process of court hearings and witness in his location can be secured by using information and communication technologies (through video conferencing, teleconferencing, and other). Information and communication technologies (video conferencing, teleconferencing, etc.) also could be used to gather evidence (CPC art 175^2).

A secure electronic signature created by a secure signature creation device based on a qualified certificate has the same legal effect as a signature and documents are admissible as evidence in court[33].

In some categories of civil cases written evidence is the main one, but almost in all the civil cases it is not the only exceptional permitted evidence. The Court of Cassation

declared the main evidence in matters of paternity is DNA expert conclusion and it is a direct proof of paternity. The other means of evidence relevant to the extent that they can contribute to the formation of the inner court conviction on a person's presence in a child's father. Indirect evidence as a whole as well may cause doubt on the reliability of the DNA expert's report, in which case there are grounds for further consideration of scientific evidence-gathering that would confirm or refute the initial findings of the examination of DNA[34].

The court has a right to impose sanctions for persons who default the court order to present concrete written evidence. If the written evidence is not given to the court on the time stated in order and the court withheld the fact that it could not be present for valid reasons or reasons given to the court recognized unimportant, guilty persons may be granted up to a fine of up to 289 euros. Fines do not relieve the persons concerned from the obligation to provide the court requested written evidence (CPC p. 6 Art. 199). Written evidence shall be read aloud at the hearing and should be available to the parties, and also in some cases to experts or witnesses, except in cases the content of such evidence is known for all the person involved in a case before the hearing. After reading written evidence the parties may submit comments in oral way (CPC Art. 200).
Photos, video and audio clips, submitted to the court as evidence are examined in the trial. Photo, video or audio recordings that captured a person's private life, display or disclosure in open court are only permitted with the consent of that person, and in other cases - only in a closed hearing (Art. 220). If audio recordings secretly made in the beginning of the proceedings, such evidence gathering comparable operational activity for which the only persons authorized by the state.

6 Oral Witness Testimony

Parties and third persons who have given their oath have the right to give explanations about the circumstances relevant to the case orally or in writing. When a party or a third party for important reasons cannot come to the court to give explanations, the court may require a written statement or, in exceptional cases, the person can testify by telephone or other means of remote communication. In this case, the party or third person giving the written statement does not take oath. Explanations of parties and third persons about circumstances relevant to the case should be reviewed and assessed by the court. Prior to the party or a third person taking an oath, their legal representatives takes an oath by putting a hand on the Constitution of the Republic of Lithuania in the following words: "I, (name, surname), promise to honestly and fairly tell the truth". The authorised party or a third person, as well as their legal representatives signs the oath. The court has a right to impose a fine for a person for violating an oath (Art. 186). Party and the third person have the right to refuse answer to certain questions, if it would incriminate themselves, their family members or close relatives (Art. 188).
The definition of witness was not stated in the CPC until Lithuania became a part of the Soviet Union. In recent CPC of Lithuania (p. 1 Art. 189), also as in CPC 1964 (Art. 68) witness was defined as every legal person, who may be known any circumstances

connected with the case, regardless of his age and family connections with persons involved in the case.

To summon a witness, the summoning party submits a request in accordance with legal norms and agrees to pay all expenses incurred by witness. A convocation witness must appear in court and give truthful testimony. For a witness summoned as a witness omissions person responsible according to the law. For unjustified refusal to testify, the court may impose a fine up to 290 euros. A witness is allowed to refuse give evidence if the witness would testify against themselves, their family members or close relatives.

As witnesses should not be treated: 1) Legal representatives of the civil and administrative proceedings or criminal defence (including advocates) about the circumstances they have known while being a representative; 2) Persons who have physical or mental disabilities and unable to correctly understand the circumstances relevant to the case or give the correct impression of it; 3) Priests about the circumstances they have known during the confession of the believer; 4) Physicians about the circumstances which consist a professional secret; 5) Mediators about the circumstances they have known during the mediation proceedings; 6) Other persons under the laws (p. 2 Art. 189 of CPC).

There is a privilege against self-incrimination in Lithuanian civil procedure law. According to Art. 191 paragraph 2, a witness has the right not to answer questions if the answer would be disgraceful or holds the risk of criminal prosecution for the witness or his or her close relatives.

Giving false evidence in court constitutes a criminal offence according to the Article 235 of the Criminal Code and can be sanctioned with a term of imprisonment of up to two years.

Every witness is summoned to the courtroom and questioned separately. Questioned witnesses cannot be left in the courtroom during the trial. Witnesses remain in the court room until the end of a trial. Witnesses at the request of the court, after hearing the parties to the case, may be allowed to leave the court room. A witness may be questioned in the hearing of his location in the case of sickness, old age, disability or any other reason court recognized important reason not to arrive to trial (p. 1-2 Art. 192).

The judge before the survey procedure ascertains all the relationships between the parties, third parties and witnesses and other important circumstances of importance to assess the witness testimony (witness education, activity, etc.)., The court proposes to correct the witness to tell the court all he knows about the case and avoid the information that the source is not specified. After hearing the testimony of a witness, he or she may be asked questions. The witness is first interviewed by the party who summoned him, then later by the opposing party. The judge removes questions that have no connection with the case. The judge has the right to question a witness at any

time. If necessary, the court may petition the parties or on its own initiative to re-examine the witness at the same meeting, to call witnesses to the same court on the next meeting, as well as enter to confront witnesses. In exceptional cases when it is impossible or difficult to question a witness at the hearing, the judge has the right to assess the witness's written testimony, if the opinion of the court, according to the witness's personality and the circumstances, it will not harm the essential facts in disclosure. The initiative of the witness may be required to undergo further questioning in court, where it is necessary to determine the detailed circumstances of the case. Before the testimony, the witness shall be signed by paragraph 4 and be prescribed the oath and signature warned for criminal liability for false testimony. Written witness statements are given before a notary and are confirmed by the notary (p. 5-8 Art. 192). Moreover, from the 1st of March 2013 witnesses have to testify using new technologies such as television or videoconferencing.

As in many continental countries in Lithuanian Civil Procedure Law there is also no cross-examination like there is in Common law countries. However, the judge has rights and duties in the process of questioning. He starts with the interrogation and questions the witnesses about all the facts.

7 Taking of Evidence

7.1 A Sequence in Which Evidence has to be Taken

Usually the taking of evidence requires the application of a party, but the court has the right to propose to the parties to submit additional evidence. However, the judge can take evidence on his own initiative when there is a need to protect public interest. There is some other type of cases, where the judge can take evidence on his motion, e.g. matrimonial, maintenance, labour cases.

There is no specific order in conducting the taking of evidence in the trial. The court has the right to determine the order of evidence examination. The court must also take into account the requests of the participants in the proceeding. Such requests submitted in writing or verbally during the proceeding. If the participant in the proceeding is unable to provide evidence, he may request the court to take such evidence.

7.2 Responsibility to Bring the Evidence in Court

If it is necessary, the court is able to prepare an order for taking evidence in another city or area of trial court and instruct the appropriate court to perform certain procedural steps (parties, third parties and witnesses, the local inspection and others). The court order must set forth briefly the essence of the case, the circumstances in which it is necessary to determine the evidence to be collected by the court passed the order. In addition, the order may contain the questions to be put to the witness. This judgement is binding on the court, to which it is addressed, and must be completed no later than thirty days from receipt of the order.

7.3 Time Limits for Taking of Evidence

There are no special procedural rules on determination a deadline for taking of evidence. It is the jurisdiction of the court to set a term in the order for the party or other person to take evidence. The court is bound by the principle of concentration (Art. 7) what means the evidence should be taken as soon as it is possible in the case. Usually the term set by the court for taking evidence should be at least 7 days. However, in some certain cases (labour, state procurement), where there are set terms for preparation of the case and its resolution, the term set for taking evidence has to be as short as possible. The court also has a power to renew the term or set another term if the first one is missed, also impose a fine for the person who should not follow court's instruction regarding taking evidence, including time terms.

7.4 Rejection of an Application to Obtain Evidence

Under the Article 6 paragraph 1 of the Convention of the Protection of Human Rights, every person has the right to effective and real judicial protection. It means that in general, the parties' applications for evidence to be taken should not be rejected. However, there are some exceptions.

The court can reject an application for evidence if the disputed fact is not required to be proven by evidence, because the facts are common knowledge, or the facts are established in other civil, administrative or criminal procedure between the same parties, or a legal presumption regarding a certain fact being given exists, or the facts alleged by one party were admitted by the other party (Art. 182). Moreover, the court can reject to issue an order for evidence to be taken if the taking of evidence is unlawful, the evidence is not related to the proving circumstances or the evidence could be presented formerly (Art. 181, 182).

7.5 The Hearing

According to the general rule all court hearings are public. Only by court order, court hearing should be closed to the public for the human personal or family life protection, state or commercial secrecy protection (Art. 9 paragraph 1, 2). The general rule stipulates the evidence taken before the court hearing the case, except the situations when the party is enabled under the conclusive reasons to take the evidence. However, there is the possibility that evidence can be taken when requested by a judge of the other court. In such a case the evidence is taken indirectly in a thirty-day period by means of legal assistance (which means that the trial court requests another court to take the evidence). However, this is only admissible if the direct taking of evidence before the court of trial would be unreasonably difficulty or even be impossible. Al the raised evidence by the requested judge is sent to the court resolving the case (Art. 220^3).

The court after hearing the explanations and opinion of the participants, on the ground of suggestions of the parties, who are invited to court, not summoned, and also on the

ground of concrete circumstances, determines the procedure for the examining of witnesses and experts and for examination of other evidence. (p. 2 Art. 250). The order of the examination of the witnesses designated by a party is determined by the court, taking into account the opinion of such party.

Witness examination takes 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, should be the right, but not the obligation of the party. Each witness shall be examined separately. The witnesses designated by the plaintiff are examined first and the witnesses designated by the defendant thereafter. However, if a party decides not to participate in the hearing, a party may do so by warning the court in advance and request the court to review the matter without its presence. A witness can give testimony and answer questions orally.

Testimony based on information from unknown sources, or on information obtained from other persons, unless such persons have been examined, is not admissible as evidence.

After the hearing of the parties, witnesses and experts, the court hears the conclusion of the state (municipal) institution, if such is involved in the procedure. The representatives of such institutions explain conclusions and answer the questions of the parties (p. 1 Art. 252). After that each party presents final speech and makes remarks. If, during or after the hearing procedure, the court decides it is necessary to determine new facts significant in the matter or to further examine existing or new evidence, it resumes the adjudicating on the merits of the matter (Art. 256).

7.6 Witnesses

The party requesting to convene a witness should give to the court the name, residence or place of work of the witness wanted to be summoned, and also the circumstances relevant to the case, which the witness can attest. All the expenses incurred by the witness must be covered by the summoning party (usually in advance). A witness has an obligation to appear to the court on the time and give truthful testimony. For unjustified refusal to testify, the court may impose a fine up to 289 euros. Certainly, under the constitutional norm it is allowed for a witness to refuse to testify if the witness would testify against himself, family members or close relatives.

Every witness is summoned to the courtroom and questioned separately. Questioned witness cannot participate in the courtroom during the trial procedure. Witnesses remain in the courtroom after gave testimonies. Witnesses at the request of the court, after testimony, may leave the court room. A witness may be questioned in other place in the case of sickness, old age, disability or any other court recognized important reasons.

Before questioning, the judge determines the identity of the witness, explains the rights, duties and responsibilities to the witness (under 16 years of age) and the witness gives

an oath putting the hand on the Constitution of the Republic of Lithuania and reading the text of swear. Sworn witnesses sign the text of the oath. The court proposes to correct the witness to tell the court all he/she knows about the evidential circumstances and avoid the information the source of which is not specified or unknown. After hearing the common testimony of a witness, he or she may be questioned, firstly, by the person under whose request the witness was summoned, later – by the other party. The judge has a right to question witness at any time (Art. 192).

In exceptional cases when it is impossible or difficult to question a witness at the hearing, the trial court has the right to assess the witness' written testimony, if the opinion of the court, according to the witness 's personality and essence circumstances, it should not harm the essential facts in disclosure. Written witness statements are given in a front of a notary, and the notary confirms the identity of a witness and testimony's text.

Interviewing a juvenile witness who is less than sixteen years old, and at the discretion of the court – under the age of eighteen years, summoned to the witness's legal representative, the teacher of a child and officer from Child protection authority may also be called to participate (Art. 194).

If the circumstances of the case are clear enough, the court may dismiss an order from those witnesses who arrived to the court or questioning some of them (Art. 196).

7.7 Expert Witnesses (Expert Conclusion)

To detect all the subject matter and answer the questions in specific area, requiring special science, medicine, arts, engineering or craft knowledge, the court may order (appoint) an expert or several experts (if necessary). The court regarding to the parties suggestions appoint an expert from the special list of court experts. If there is no possibility to appoint an expert(s) from such list, should be appointed a private expert, whose expertise is equated to the court expert's (p. 1 Art. 212).

Each party in the case has a right to formulate and suggest questions to an expert(s). However, the court can prepare a motivated order and formulate final questions to the expert(s) (Art. 213). The person who is appointed as an expert summoned must attend and pass objective conclusion (report) referring to the questions submitted. The expert has a right to refuse a conclusion referred to, if he or she considers that the material is not enough to pass a conclusion or that expert's qualification or competence, referring to the matter is insufficient. If convened expert does not appear to the hearing without important reasons, the court may impose a fine up to 289 euros. Giving false conclusions is a crime punishable by up to two years imprisonment (p. 1 Art. 235 of the Criminal Code). During the course of examinations, the court might freely intervene and question parties, witnesses and expert. The latter is confined to the authority of the court to put questions for clarifications about the facts. Appointed expert passes an expertise act (called as expert report or conclusion, Art. 216) on the ground of made inquiry.

Expert in the report describes in very details the inquiry itself, answer the questions and makes conclusions. Moreover he has a right to explain more details additionally then it was asked by the court in order. If the several experts where appointed, they pass one common conclusion before after consulting procedure. The expert who has a different opinion passes a report separately.

The expert report is read aloud in the court hearing. Before reading an expert report, the participating expert (s) take an oath, if he (she) is not court expert, e.g. expert from the list, who was taken an oath for the Minister of Justice before appointed as an expert. The court has a right to request explanations made in the expert report orally in the hearing.

The expert report as a mean of proof has a major evidentiary power. However, a court has a right to disagree with the expert's conclusions by passing a motivated final judgment or order (Art. 218). In case law, stating a disagreement with the expert's conclusion or questioning its reliability may be motivated by different reasons: the conclusion incompleteness, uncertainty, some important factors failure to appreciate the objection to the other expert's report or other evidence permitted in the case, the facts giving rise to doubts about the impartiality of the expert, qualification or competence, the disclosure and others. In such cases, the court may make appropriate conclusions or other sufficient evidence base, or an additional or repeated examination.

If the expert conclusion is not clear enough or incomplete, the court may appoint additional experts. If the court has a ground to doubt of the expert’s conclusions or several experts passed different conclusions on the same questions, the court may appoint another expert or experts (Art. 219).

Expenses for the expertise are covered by 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 (Art. 101-102). Additionally, costs for the expert’s accommodation and travel can be compensated if necessary. 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 judgement.

8 Costs and Language

8.1 Costs

The Lithuanian civil procedure law defines the term of legal expenses in Article 79 of CPC. It includes two types: 1) *state fee* (CPC Art. 80-87); 2) all the other *costs which are related to the case hearing* defined by the types in the Article 88 of CPC (not the final list) and caused by the conducting of legal proceedings and which are necessary for appropriately pursuing the claim or appropriately defending against the claimant. All

these costs in the doctrine can be categorized into court costs, attorneys' fees and the parties' costs.

State fee is a mandatory payment for adjudication of a civil matter (there are exceptions, which are stated in the CPC and other laws, CPC p. 1 Art. 80) The duty to pay the state fee is laid upon claimant. 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. The laws only prescribe exceptional cases when a plaintiff is exempt from such taxation. In all the other situations the judge has a power to exempt a plaintiff from state budget funds partially. State fees shall be repaid from state budget funds only on the basis of a decision of a court or a judge in two years period.

List of *expenses related to the case hearing* is given in Article 88 of CPC: 1) expenses related to witness, expertise, translation; collection of evidence; 2) expenses for searching defendant 3) expenses related to delivery of the procedural documents; 4) expenses related to execution of a court's ruling; 5) expenses related to search for a defendant; 6) representative expenses, including attorney's fee; 7) expenses related to coercive measures; 8) other necessary and reasonable expenses.

As in many other countries, the duty to pay these expenses is laid upon the participant 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. 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. The compensation mechanism is set out by the order of the minister of Justice (hereinafter – *Order*)[35]. The court, when calling a witness indicates a concise matrix of regulations on the reimbursement of necessary expenditure, associated with the summons to court and on the remuneration for loss of earnings. The witness is entitled to demand reimbursement of the necessary expenses, associated with the appearance in the court, and compensation for loss of earnings (Art. 6 of Order). Compensation to the witness for appearance is not paid before the hearing has taken place. The witness can be compensated on the incurred costs usually only after the hearing. The reimbursement is paid (compensated) from the front money the party paid into the court's account by the party who summons a witness or from the state budget, if the witness is summoned by an initiative of the court (p. 1-2 Art. 90 of CPC). If the money is not paid in advance for reimbursement witnesses, also experts expenditures, the court can deny the request of the party to summon witness or expert and continue hearing procedure (p. 3 Art 90 of CPC). All the arrival costs of the witnesses, experts, also translators on the documents gave to the court form the basis to reimburse also return costs (Art. 10 of Order).

Amounts for the experts who are included into the court expert list are paid on the basis of the concrete normative act which regulates rates of the expertise, but does not exceed the necessary amount for labor and material costs. The ground to award the amount to the private expert is the order for expertise (Art. 11 of CPC).

Private translators for the translation services are paid on the ground of invoices from the state budget fund, because it is the state obligation to ensure the proper translation for the participants of the procedure whom is easier to speak or understand the other than Lithuanian language (p. 3 Art. 13 of CPC). If the translators are court servants, expense are not reimbursement (Art. 12 of Order).

The Order also set out the rules, including maximum rates of paying salaries to the curator for representation the party. These salaries are really law (for instance, maximum 45 euros for all long day in the hearing; maximum 27 euros for preparation procedural document, Art. 24, 26 of Order) and are paid on the ground of filled specific form (Art. 28 of CPC).

Rates of expenses concerning delivery of procedural documents are reimbursed (usually to the state budget from the party who lost the case) are also set out by the order of the minister of Justice together with the minister of Finance[36] (Art. 92 of CPC).

Finally, the party in whose favour a judgment is ruled shall be adjudged recovered of all court costs paid by such party, from the opposite party. If a claim has been satisfied partly, the recovery of amounts 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 (Art. 93 of CPC). If a court approves an 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 (p. 2 Art. 94 of CPC). If a plaintiff is exempted from court costs and the judgment ruled 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 partly, 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 (Art. 96 of CPC). If both parties are exempt from payment of court costs, the court costs shall be assumed by the State.

8.2 Language and Translation

The process in the Republic of Lithuania is conducted in the state (Lithuanian) language. Persons who do not speak the national language, are guaranteed the right to an interpreter. The interpreter during the court hearing remunerated from the state budget (p. 1-3 Art. 11 of CPC). The court appoints an interpreter (from the private interpreters or court servants), if the judge recognizes Lithuanian language difficulties of the person questioned. Therefore the court does not rely on the parties or their

counsels. The appointed interpreter has to be trustworthy, but does not necessarily have to be a professionally accredited interpreter. An interpreter can also be the servant of the court. In such a case the state is not reimbursed for the expenditures, although the court servant is off his or her main (direct) duties or is working as interpreter and got a salary from the state fund.

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. Cassation court in civil case quashed the decision of appellate court, because the appeal complaint was not translated for the defendant into the foreign language and therefore essential violation of Regulation No. 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) was made[37].

There are no special regulations on (procedural) documents in foreign language translation. The translator for documents is equal to the interpreter for spoken language. Under the rules of Advocacy (the Bar) law an advocate also able to provide services of translator repayable as far as related to legal services (p. 1 Art. 4)[38]. In practise, 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[39].

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. 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. If in the criminal case on the stand up decision set a translator or interpreter approved scienter deceitfully translation, it is ground to reopen the procedure (item 3, p. 1, Art. 366 of CPC).

Failure to observe provisions on the state language shall be regarded as essential procedural violation in appeal and cassation procedures (if a party bases a complaint on that argument) and it 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 lower instance anew (item 3 p. 2 Art. 329 of CPC).

9 Unlawful Evidence

There is no distinction in CPC rules between "illegally obtained evidence" and "illegal evidence". The term "illegally obtained evidence" is understood as any evidence that was unlawfully gathered by a party or by the court itself (using unlawful means of evidence or method of taking evidence).

Under the main rule there are no strict limitations to the court to take and evaluate the evidence illegally obtained. However, if the court establishes the evidence was taken by breaking the fundamental human rights or braking criminal law, or executed as operative actions after civil case was sued, evidence taken must not be used.

As it was mentioned in chapter 6, procedural imperative rules set as witnesses should not be treated: 1) Legal representatives of the civil and administrative proceedings or criminal defence (including advocates) about the circumstances they have known while being a representative; 2) Persons who have physical or mental disabilities and unable to correctly understand the circumstances relevant to the case or give the correct impression of it; 3) Priests about the circumstances they have known during the confession of the believer; 4) Medicals about the circumstances which consist a professional secret; 5) Mediators about the circumstances they have known during the mediation proceedings; 6) Other persons under the laws. Such means of proof could be evaluated as illegal evidence and could not be used in the civil case as legally obtained evidence.

Regarding the question of audio recording as legal (allowed) evidence in civil procedure, the court of cassation takes coherently that position that it has to be decided individually in each particular case, evaluating the case circumstances of fixation of recording, fixation method, tools and so on. In the case where plaintiff seek to prove that contract which the law required imperatively the written form was made only using an audio recording evidence obtained during the conversation between the parties, the courts recognized it as legal evidence, but not sufficient to prove the action[40]. In labor dispute the courts also recognized audio recordings between employee and employer made by employee for proving illegal actions of employer as legal evidence[41].

Notes:

[1] Supreme Court of Lithuania Civil cases division 2008 July 11 judgement *civil case No. 3K-3-370/200*8.
[2] Supreme Court of Lithuania Civil cases division 1999 September 8 judgement *civil case No. 3K-3-404/1999*; 2001 January 24 judgement *civil case No. 3K-3-101/2001*.
[3] Supreme Court of Lithuania Civil cases division 2013 June 21 judgement *civil case No. 3K-3-348/2013*.
[4] Supreme Court of Lithuania Civil cases division 2013 March 14 *civil case No. 3K-3-142/2013*.
[5] Supreme Court of Lithuania Civil cases division 2009 December 23 judgement in *civil case No. 3K-3-603/2009*.
[6] Supreme Court of Lithuania Civil cases division 2010 November 30 judgement in *civil case No. 3K-3-484/2010*.
[7] Supreme Court of Lithuania Civil cases division 2006 March 20 judgement in *civil case No. 3K-3-187/2006*.
[8] Supreme Court of Lithuania Civil cases division 2011 November 30. judgement *civil case No 3K-3-487/2011*.
[9] Supreme Court of Lithuania Civil cases division 2011 November 17 judgement *civil case No. 3K-3-453/2011*.
[10] The Constitutional Court of Lithuania 2012 December 6 ruling.
[11] Supreme Court of Lithuania Civil Cases Division 2003 March 17 judgment *civil case No. 3K-3-364/2003*.
[12] The role of a judge in interpreting and applying the law and the limits of the power of a judge assessing evidence are discussed in legal doctrine of Lithuania. Ruta Kazanaviciute. *Teise 2009 No. 71*.
[13] Supreme Court of Lithuania Civil cases division 2013 November 20 judgment *civil case No. 3K-3-548/2013*.
[14] Supreme Court of Lithuania Civil cases division 2013 December 31 judgment *civil case No. 3K-7-430/2013*.
[15] Supreme Court of Lithuania Civil cases division 2014 February 27 judgment *civil case No. 3K-3-52/2014*.
[16] Supreme Court of Lithuania Civil cases division 2004 October 4 judgment *civil case No. 3K-3-513/2004*.
[17] The Court of appeal of Lithuania 2008 July 29 judgment in *civil case No. 2A-412/2008*.
[18] Terebeiza Zilvinas. Burden of proof and its distribution during civil procedure. Doctoral dissertation. Vilnius, 2009.
[19] Terebeiza Zilvinas. Burden of proof and its distribution during civil procedure. Doctoral dissertation. Vilnius, 2009.
[20] Driukas. A., Valančius, V. *Civil procedure: theory and practise*. Vol. 2. Vilnius: TIC, 2005. P. 631.
[21] Supreme Court of Lithuania Civil cases division 2015 February 13 judgment *civil case No. 3K-3-27-686/2015*.
[22] Lithuanian Supreme Court Civil cases division 2004 February 17 judgement *civil case No. 3K-3-36/2004*.
[23] Lithuanian Supreme Court Civil cases division 2007 May 10 judgement *civil case No. 3K-3-203/2007*; 2008 February 4 judgment in *civil case No. 3K-3-37/2008*; 2008 April 7 judgement *civil case No. 3K-3-214/2008*; 2009 March 17 judgement *civil case No. 3K-3-130/2009*; 2009 April 14 judgement *civil case No. 3K-3-180/2009*.

[24] Supreme Court of Lithuania Civil Cases Division 2013 February 8 judgement *civil case No. 3K-3-10/2013*.
[25] Supreme Court of Lithuania Civil Cases Division 2013 June 12 judgement *civil case No. 3K-3-314/2013*.
[26] The commentary of Lithuanian civil procedure code. Vol II-III. Vilnius: Justitia, 2005. P. 15.
[27] The commentary of Lithuanian civil procedure code. Vol II-III. Vilnius: Justitia, 2005. P. 16.
[28] The commentary of Lithuanian civil procedure code. Vol II-III. Vilnius: Justitia, 2005. P. 16-17.
[29] Supreme Court of Lithuania Civil cases division 2013 January 16 judgement *civil case No. 3K-3-110/2013*.
[30] Supreme Court of Lithuania Civil cases division 2013 November 4 judgement *civil case No. 3K-3-539/2013*.
[31] Supreme Court of Lithuania Civil cases division 2009 July 31 judgment *civil case No. 3K-3-335/2009*.
[32] Order of the Minister of Justice 2012 December 13 No. 1R-332 *Pleadings to the court and their service in person by electronic means Procedure*.
[33] *Lithuanian Law of electronic signature*, Art. 8.
[34] Supreme Court of Lithuania Civil cases division 2013 November 8 judgement *civil case No. 3K-3-558/2013*.
[35] The order of the Minister of Justice 2002-12-06 No. 344 "Procedure for payment of expenditures and cost rates relating to civil proceedings".
[36] The order of the Minister of Justice and the Minister of Finance 2002-12-06 No. 343/388 "Description of costs rates and their refund concerning delivery of procedural documents in civil cases".
[37] Supreme Court of Lithuania Civil cases division 2015 March 20 judgment *civil case No. 3K-3-172-916/2015*.
[38] The Advocacy law, adopted 2004-03-18.
[39] Vilnius regional court 2015 April 01 judgment *civil case No. 2S-634-730/2015*.
[40] Supreme Court of Lithuania Civil cases division 2014 March 14 judgment *civil case No. 3K-3-67/2014*.
[41] Supreme Court of Lithuania Civil cases division 2011 December 30 judgment *civil case No. 3K-3-562/2011*.

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.	Application, request – *prašymas, pareiškimas*	Applicant – *pareiškėjas*	Duty to prepare and submit application, to submit evidence. Consequence: the court rejects unfounded requests.	Right to take an application, to submit evidence.
2.	Claim – *ieškinys*	Plaintiff – *ieškovas*	Duty to formulate substantive legal claim on the defendant and the circumstances under which he bases his claim (the factual basis of the claim), provide evidence.	Law does not require the applicant to indicate in its application the legal basis for the claim.
3.	Reply – *atsiliepimas*	Defendant – *atsakovas*	Duty to provide arguments by which he seeks to deny the validity of the claim against him.	The right to defend himself against the claim brought before him.
4.	The collection of the evidence – *įrodymų rinkimo procesas*	Parties and the court – *šalys ir teismas*	Duty to submit evidence.	Right to request for the other party/institution to deliver documents.
5.	Preparation of civil cases in court – *pasiruošimas civilinių bylų nagrinėjimui teisme*	The court, parties, third parties – *teismas, šalys tretieji asmenys*	The parties and third parties have a duty to submit all the evidence and explanations that are significant for the case, indicate the evidence which they cannot submit to the court.	The court has a duty to order preparation by preparatory documents if the parties have representatives (Art. 227 of CPC). The court can order a preparatory hearing (Art. 228 Art. Of CPC) or court hearing

				(Art. 252 of CPC).
6.	Conciliation – *taikinimo procedūra*	The court and the parties – *teismas ir šalys*	The Court takes measures to reconcile the parties.	Parties have a right to conclude a peaceful settlement agreement.
7.	Hearing – *teismo posėdis*	The court and the parties – *teismas ir šalys*	Parties have rights and duties under Article 42 of CPC and *etc*.	Parties have rights and duties under Article 42 of CPC and *etc*.
8.	Appeal – *apeliacinis skundas*	Parties – *šalys*	Duty to base an appeal.	Right to be heard by the Court of Appeal.
9.	Cassation appeal – *kasacinis skundas*	Parties – *šalys*	Duty to base an cassation appeal.	Right to be heard in the Court of Cassation.
10.	Application to renewal the civil proceedings – *prašymas atnaujinti procesą civilinėje byloje*	Parties – *šalys*	Parties have to specify the circumstances which were not examined or set incorrectly and that was the basis for the error.	The court also has a power to renew the term or set another term if the first one is missed.

1.2 Basics about Legal Interpretation in Lithuanian Legal System

There is no protocol for interpretation of substantive legal rules and it does not apply to the interpretation of procedural rules.

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)	Under 220[1] of CPC if necessity to collect evidence in another city or district exists, a requesting judge entrusts to the appropriate court to carry out certain	Agreement between Lithuania and China (2000-03-20) on legal assistance applicable: an application for legal aid must be in writing. The parties give legal	Agreement between Lithuania, Estonia and Latvia (1992-11-11) on legal assistance applicable: an application for legal aid must be in writing. The	The requested court executes the request in accordance with its own law. The requesting court may require to execute the request in special order.

	procedural actions (for example, hearing of witnesses). Witness's testimony are read aloud at the hearing (Art. 195 CPC).	assistance to each other upon request in accordance with their own legislation by hearing witnesses. Agreement between Lithuania and Armenia (2003-09-15), Azerbaijani (2001-10-23), Uzbekistan (1997-02-20), Kazakhstan (1994-08-09), Ukraine (1993-07-07), Moldavia (1993-02-09), Poland (1993-01-26), Estonia (1992-11-11), Byelorussia (1992-10-20), Russia (1992-07-21), Turkey (1995-09-19)) on legal assistance applicable: an application for legal aid must be in writing. The parties give legal assistance to each other upon request in accordance with their own legislation by hearing witnesses. Upon request it may be applied / taken into account the requesting Contracting Party procedural norms	parties give legal assistance to each other upon request in accordance with their own legislation by hearing witnesses.	

		if this norms are compatible with the foreign laws.		
Hearing of Witnesses by Video-conferencing with Direct Asking of Questions	Hearing of witnesses can be ensured by the use of videoconferencing (Art. 175^2 CPC).	No references to videoconferencing in the treaties.	No references to videoconferencing in the Agreement between Lithuania, Estonia and Latvia (1992-11-11) on legal assistance.	Hearing of witnesses can be ensured by the use of videoconferencing (Art. 10 (4).
Direct Hearing of Witnesses by Requesting Court in Requested Country	A person who is served with a subpoena must appear in court and give truthful testimony (Art. 191 of CPC).	Between Lithuania and China (2000-03-20) applicable: the Party in application for legal aid can indicate that participation in the hearing of the witness is necessary. In application costs to be paid for the witness to attend the hearing should be specified. The requesting party cannot apply sanctions for a witness who refuses to testify. Between Lithuania and Armenia (2003-09-15), Azerbaijani (2001-10-23), Uzbekistan (1997-02-20),	Agreement between Lithuania, Estonia and Latvia (1992-11-11) on legal assistance applicable: the Party in application for legal aid can indicate that participation in the hearing of the witness is necessary. The requesting party cannot apply sanctions for a witness who refuses to testify.	The court has the right to request that evidence would be collected directly in another Member State. Direct evidence can be collected only on a voluntary basis (Art. 17 (2).

		Kazakhstan (1994-08-09), Ukraine (1993-07-07), Moldavia (1993-02-09), Poland (1993-01-26), Estonia (1992-11-11), Byelorussia (1992-10-20), Russia (1992-07-21), Turkey (1995-09-19) there is no reference to direct hearing.		

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