

**PRIVATE REMEDIES: DISCOVERIES AND GATHERING EVIDENCE**  
**HUNGARY**  
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**I. Discovery of Documents**

1. According to the Code of Civil Procedure, the court takes evidence for the purposes of determining the facts necessary to decide the case. As a general rule the facts necessary for deciding the case are to be proved as a general rule by the party in whose interest it is that the court accepts them to be true. At the filing of the claim to the court the plaintiff has to rely on the documents, which it would like to be submitted to the court.

2. The rule on the burden of proof in cases of claims for damages, according to the general rule on liability in damages, is as follows: the one suffering damages (the plaintiff) shall prove (i) the behaviour (active or passive) causing the damages, (ii) the damage itself (the fact that damage occurred and the level of it) and (iii) the causality between the behaviour and the damage. Further, it is up to the plaintiff to prove (iv) that the behaviour infringes the law. The rule on damages is an “exculpation system”, which means that it falls to the defendant to (v) exempt himself from liability on the ground that it was not his fault, that is to say it is for the defendant to prove that he behaved himself in the given situation as is “generally expectable”. Further, in case of acknowledgement of a debt, it is for the person who acknowledged the debt to prove that the debt does not exist, that the debt cannot be claimed in court or that the contract is not valid under the rules of the Civil Code. In such cases the burden of proof shifts to the person who made the acknowledgement. The court is entitled to accept facts to be true if they are admitted by a counter-party, if the statements of parties are identical and if a counter-party does not dispute a statement against notice by the court. Further, the court is entitled to accept facts to be true if those are known by the court as facts of public knowledge, and the same rule applies in respect of facts officially known by the court. These facts are taken into consideration even if the parties do not rely upon them, but the court shall notify the parties of these facts.

3. The court may order probation ex-officio only if it is allowed by law. According to the Code of Civil Procedure itself the court may:

- obtain documents in the possession of authorities, notaries and other organisations if the party can not turn directly to these entities,
- verify the authenticity of public and private deeds,
- order probation considered necessary in marriage law cases,
- order ascertainment of paternity,

4. If certain documents indicated by a party are in the possession of the other party the court may only oblige the possessor to present them if under civil law the party should present or hand over those proofs anyway. Such an obligation exists especially if the document was prepared for the benefit of the

other party, or it attests a legal relationship in which it is involved. The frame provided by the Code of Civil Procedure is therefore rather narrow. However in practice upon request the courts are willing to order the presentation of any document considered to be necessary and it is not examined whether the possessor would have an obligation under civil law to present or to hand it over. On the other hand there are no effective sanctions to ensure that the requested documents would be submitted. Though the Code of Civil Procedure prohibits acting in bad faith and in this frame the court shall impose a fine on the party, who conceals a fact or circumstance about which he must have known that such fact or circumstance is relevant to deciding the case this tool is not always efficient enough. In practice unless more important interests are at stake the parties may agree to submit the requested document in order to avoid offending the court. Another solution could be to summon e.g. an official of the party who must have knowledge on the issue because the refusal to take testimony is an act sanctioned by criminal law.

5. If a document is in the possession of a person not party in the litigation than upon request the court summons it as a witness and orders the presentation of the document. A witness may not be heard about state, official or business secrets unless released from the obligation of secrecy.

6. The witness has the right of silence if

- it is the relative of any of the parties as defined by the Act,
- it would indict itself or its relative with the perpetration of a crime,
- it got known the fact as a doctor, advocate or as the practitioner of an other profession subject to professional secrecy unless authorised by the relevant person,
- it participated in the preceding mediation process as a mediator or expert.

7. The witness, who - against proper summon - does not appear at the court or leaves without permission, or refuses to give witness testimony without giving reasons or against the order of the court shall bear the costs caused and can be fined by the court. Further, the court is entitled to order that the witness be brought before the court.

8. Beside the rules above there are no precise provisions on discovery. However evidently there is no rule on limiting the admissibility of evidences obtained through disclosure procedure outside Hungary, either. Since neither the Code of Civil Procedures addresses the topic, nor the published court practice has a saying on this, it is not possible to foresee how Hungarian courts will consider the admissibility of evidences, which are products of foreign discovery, taking into consideration the “free evidencing system”, however it is to be noted that there is no legal norm precluding the admissibility of such evidence.

## **II. Witnesses**

9. If the establishment or assessment of substantial facts or circumstances require special expertise the court does not have it invites an expert to submit its opinion. Normally only one expert is applied and more than one expert can be asked to provide opinion if questions requiring differing expertise is at stake. The expert should be selected from the list of judicial experts or expert institutions authorised by law. Other experts may be invited for important reasons however. If necessary the parties should be heard before the invitation of the expert and if possible their mutual proposal should also be taken into account.

10. The parties may submit opinions provided by other experts to support their arguments. The court however is free to accept or reject these arguments.

11. The infringement is a legal issue to be decided by the court itself, therefore no expert evidence is admissible in this respect. However in respect of EC law the expert advice of the European Commission or that of the GVH is available for the courts relating to the legal issues deriving from the case. The so called amicus curiae system are to be extended to litigations initiated under national competition law as well by a forthcoming amendment of the Competition Act. The institution of amicus curiae differs from the general expert witnesses in the sense that the intervention of the competition authorities can not be initiated by the court or by any of the parties.

12. The proceeding court shall notify both the Commission and the GVH if the application of Articles 81 and 82 of the Treaty seems to be necessary, and the authorities can submit their observation until the end of the last trial. Upon request, the court shall forward those documents of the case to the Commission and/or the GVH, which are necessary for making observations.

*Is cross-examination of witnesses/expert witnesses possible? If not, how can the credibility of evidence provided by witnesses/expert witnesses be examined?*

13. The hearing is led by the president of the tribunal. The president and other members of the tribunal may pose questions. The parties may solicit questions and may be permitted by the president to ask questions directly to the witness. In case of contradictions in the testimonies a face-to-face questioning of the witnesses can be ordered. If the court find that the opinion of the expert is not convincing or contradictory it can invite an other expert to submit a new opinion.

### **III. Competition Authorities And Gathering Evidence for Private Litigation**

14. A final decision of the GVH on an issue falling within its competence is decisive. Under the present rules the establishment of the illegality of cartel agreements and abusive behaviours is in the exclusive competence of the GVH. Once became final either due to the lack of appeal or after its judicial revision the establishment that the behaviour in question is illegal bounds the court. It is therefore considered as one of the evidences. According to the proposed amendment of the Competition Act this exclusive competence would be broken up and courts would have the power to bring their judgements without the need to await for a decision of the GVH. This is already the case when claims are based on EC law. Under the new national regime the procedure of the courts would still be based on private interests and the public enforcement of competition law remains the competence of the GVH.

15. Both under the present (purely national) and the planned private enforcement system a statement or decision of the GVH or a competition authority from any EU Member State can be considered as evidence. A judgement of a court of an EU Member State is res iudicata in Hungary if the judgement is not passed in a matter falling within the exclusive jurisdiction of Hungary and if there is no legal ground to refuse the recognition of the judgement.

16. As it was mentioned above the court has the possibility, either upon request or on its own initiative, to order the presentation of the documents in the possession of the GVH. It is therefore possible to use the evidences gathered during an investigation already closed or conducted parallel to the litigation.