FROM THE IUSTORIA BLOG

“Surely the Court Will Find Out What Happened.” Why It Won't, and What to Do About It

> *A civil court decides on what the parties alleged and proved, not on what really happened. The burdens of allegation and proof, court guidance, and why “everyone knows” is not enough.*

IUSTORIA TEAM

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There is one sentence we hear at our firm more often than any other: “But it's the truth, surely the court will see that.” The client knows they paid the debt, or that the neighbour knew about the defect in the house. They are sure of it, and so they see no reason to look for a bank statement, an email or a witness. The judge is a clever person, after all, and will sense the truth.

That is not how a civil dispute works. The court has no investigators, and it does not visit the scene or question the neighbours of its own accord. It decides on what the parties alleged and what they proved. A party who is right but fails to discharge the burden of allegation (*břemeno tvrzení*) or the burden of proof (*důkazní břemeno*) loses just like a party who is wrong.

Below we explain what the court actually establishes, what you yourself have to allege and prove, what to do when the evidence is in the other side's hands, and why the argument “everyone knows that” does not stand up in court.

What the court actually establishes

The Czech Code of Civil Procedure says so at the very beginning. The court proceeds so that the facts in dispute between the parties are reliably established “to the extent of their participation” (Section 6). The law, then, does not demand the whole truth. It demands a reliable finding on what the parties are arguing about, and the quality of that finding depends on what the parties put before the court. The court then gives judgment on the basis of the facts as established (Section 153(1)), not the facts as they really were.

The difference between the established facts and the real ones shows most clearly where no evidence is taken at all:

- **Matching allegations.** If both parties allege the same thing, the court may adopt it as its own finding of fact (Section 120(3)). The court does not usually take evidence on what nobody disputes, even if it is untrue.
- **The defendant's silence.** If the court orders the defendant to respond to the claim in writing and the defendant, despite being warned of the consequences, fails to do so without good reason, the defendant is deemed to have admitted the claim (Section 114b(5)), and the court gives a judgment on admission (Section 153a(3)).
- **Absence.** If a defendant who was duly summoned and warned fails to appear at the first hearing without a justified excuse made in time, and the plaintiff so requests, the factual allegations in the claim are treated as undisputed and the court may give a default judgment (Section 153b(1)).

In all three cases the court does not examine what really happened. It takes what the parties offered it through their conduct or their inaction.

It is different in matters concerning the protection of the weaker party, such as the care of minor children or legal capacity. There the court must establish all the facts relevant to the decision and is not limited to what the parties put forward (Section 20(1) of the Czech Act on Special Court Proceedings). It takes evidence even if nobody has proposed it (Section 21), and it may not infer from a party's failure to appear or to respond that they have admitted anything (Section 20(3)). That is why a dispute over children is conducted differently from a dispute over

money; we write more about this in our article Child Custody Disputes: What Every Parent Needs to Know. In a dispute over payment, damages, defective work or an invalid notice of termination, however, the rule from the preceding paragraphs applies.

Two burdens: alleging and proving

The parties must allege all the facts relevant to the decision and discharge their duty to prove (Section 101(1)(a) and (b) of the Code of Civil Procedure), that is, identify evidence to prove their allegations (Section 120(1)). A statement of claim must therefore set out the decisive facts and identify the evidence (Section 79(1)), and the plaintiff attaches the documentary evidence they rely on (Section 79(2)).

The burden of allegation is the first step, and an often underestimated one. The court can decide only on facts that someone has put forward. If, in a claim for payment for work done, you do not say when and how you handed the work over, the court has nothing to take evidence on. In practice, we advise against relying on the court to pick the necessary facts out of the attached documents. Whatever is essential to the claim belongs in the text of the filing.

The burden of proof comes into play where the other side denies an allegation. The Supreme Court has described it as a party's procedural responsibility for the fact that its allegations were not proven and that the case therefore had to be decided against it (Supreme Court judgment of 7 August 2003, file no. 21 Cdo 408/2003). It lies on the party who derives favourable legal consequences from a particular fact and who also alleges that fact (Supreme Court judgment of 16 December 2011, file no. 22 Cdo 883/2010). A plaintiff claiming money will typically prove that the debt arose. A defendant who argues that they have already paid proves the payment. How the same rule applies in a dispute with a hospital that claims things "would have turned out the same anyway" is described in our article "It Would Have Happened Anyway": After a Medical Error, the Hospital Must Prove It, Not the Patient.

The court must not, however, decide against a party "for failure to discharge the burden of proof" lightly. According to the same judgment, 21 Cdo 408/2003, it may do so only once it has properly and fully taken all the evidence the party identified for the allegation (except evidence that is manifestly unsuitable or irrelevant), and when even after assessing that evidence it can conclude neither that the allegation is true nor that it is false. If it rejects evidence as superfluous, it cannot then reproach the party for having proved nothing.

If a party does not identify the necessary evidence, the court relies on the evidence that has been taken. It may take evidence other than that proposed, but only where it is needed to establish the facts and emerges from the case file (Section 120(2)). So the court will not go looking for a witness who is mentioned nowhere in the file.

Losing for failure to discharge the burden of proof does not mean that the court believed the other side. It only means that your allegation remained unproven. For the outcome of the dispute, though, it comes to the same thing: a claim you cannot prove will not be awarded, even if you are entitled to it.

When the truth cannot be proven: the widow's case

How harsh the consequences can be is shown by the Supreme Court judgment of 30 June 2026, file no. 21 Cdo 908/2025. A driver was killed in 2012 in a road accident while on a business trip in Germany. His wife sued for compensation for the cost of maintaining his surviving dependants, the amount of which depends on the deceased's average earnings. According to his payroll records he was paid the minimum wage, but every month roughly another CZK 30,000 was paid into his account, recorded as travel allowances. The widow argued that this was hidden pay. The employer had ceased to exist in the meantime, so she brought the case against its insurer, and nobody produced the documents on the travel allowances in court.

On the main part of the claim, the courts at all three levels ruled against her; the dismissal of a claim for more than CZK 1.3 million stood. The Supreme Court explained that the burden of proving the hidden pay lay on the widow, because she was the one deriving favourable consequences from that fact (paragraph 21). Where the law wants to give a weaker party enhanced protection, it provides for a different allocation expressly, as it does for discrimination in Section 133a of the Code of Civil Procedure (paragraph 22). Without a statutory basis, the burden shifts only exceptionally, for example where the other side has thwarted the evidence (paragraph 24); that was out of the question here, because it was the employee himself who first had access to the documents on his business trips, so evidence other than what the employer held could also have been proposed (paragraph 29).

The Supreme Court did take her situation into account, at least as regards costs: it did not award the insurer its costs of the proceedings on the appeal on a point of law (*dovolání*), because the plaintiff had found herself "in a difficult procedural situation which she had not caused herself" (paragraph 36). It made no difference to the outcome of the dispute, though. The truth about what the monthly payments consisted of could no longer be proven, and the risk of that was borne by the person who wanted to benefit from it.

What to do when the other side holds the evidence

Not everyone is in the same position. An employer has the payroll records, a bank has the records of payments. For such situations, the law and the case law offer several tools:

- **Order to produce a document.** The presiding judge may order whoever holds a document needed as evidence to produce it, or obtain it from another court, an authority or a legal entity (Section 129(2) of the Code of Civil Procedure). If a party that does not bear the burden of proof fails to comply, the burden does not in principle shift as a result, but the failure may be reflected in an assessment of the evidence to that party's detriment (judgment 21 Cdo 908/2025, paragraph 33).
- **Duty to explain.** If the party bearing the burden of proof objectively has no way of getting hold of information that only the other side has, and puts forward at least some "anchor points" of the facts, the other side's duty to explain (*vysvětlovací povinnost*) comes into play; if it fails to meet that duty, the court will assess the evidence to its detriment (judgment 22 Cdo 883/2010). That case concerned a wife who, in the division of the couple's property, did not produce documents on the value of her business, saying she had shredded them.

- **Court enquiry.** Everyone is obliged, when asked, to inform the court free of charge of facts relevant to the proceedings (Section 128). This is one way to obtain information from an authority or a third party, for instance.
- **Securing evidence.** If there is a risk that evidence will disappear before the dispute (a witness is seriously ill, the other side's company is going into liquidation, a building is due to be demolished), you can ask the court to secure it even before filing the claim (Section 78(1) of the Code of Civil Procedure). A dispute can drag on for a long time, and evidence disappears in the meantime; a realistic timetable of proceedings is set out in our article How Long Does a Court Case Take: A Realistic Timeline from Claim to Enforcement.

All four tools have one thing in common: you have to request them specifically. A request that "the defendant produce all documents" does not help the court. A request that "the defendant produce the vehicle logbook for March to May 2025" does. And the duty to explain does not arise if both parties had access to the information, or if the other side does not have it either; both were the case in the widow's dispute, 21 Cdo 908/2025 (paragraph 32). How negative facts are proven, and why you cannot hide behind "that can't be proven", we explained in our article What You Didn't Know You Could Ask For in a Civil Lawsuit.

Why "everyone knows" is not enough

The law recognises facts that need not be proven: facts that are common knowledge, facts known to the court from its official activity, and legislation published in the Collection of Laws (Section 121 of the Code of Civil Procedure). People tend to imagine "common knowledge" as whatever the whole company or the whole family knows. That is not what it means.

In its judgment (*nález*) of 13 May 2014, file no. II. ÚS 3764/12, paragraph 27, the Constitutional Court described as common knowledge facts known to a wide range of people in a given place and time, and therefore to judges as well, and it included among them what can be found out from the media without much difficulty. The case concerned a university rector whose dispute had been covered by the media; according to the Constitutional Court, the court therefore could not overlook the fact that he had been elected a senator. That your business partner "has a reputation for not paying" is not common knowledge of that kind; it has to be known to the court as well. And who owns a plot of land is decided not by what "the whole village knows" but by the entry in the Land Registry and the documents on which that entry was based.

The same applies to a witness who knows something only by hearsay. The court assesses each piece of evidence at its own discretion, individually and all of it taken together (Section 132), and testimony along the lines of "my brother told me" proves above all that people are saying it. And your own testimony is a last resort: the court will order a party to be examined only if the fact cannot be proven in any other way and the person to be examined consents (Section 131(1)). How to choose and propose witnesses is described in our article Witnesses in Court: How to Call and Prepare Them, and when messages and emails stand up in court we discuss in "I Have a Screenshot." When Messages and Emails Hold Up in Court.

One piece of good news: you do not have to prove the law. The court is expected to know it, and must apply the provision that governs the matter even if no party has pointed it out (the same judgment, paragraphs 26 and 28). Facts are proven, not sections of statutes.

Guidance from the court: a safety net, not a substitute lawyer

The court does not leave a party entirely without help. If it becomes apparent at the hearing that a party has not set out all the decisive facts, the presiding judge will invite them to fill the gap and advise them what to add and with what consequences (Section 118a(1)); this is the court's duty to give guidance (*poučovací povinnost*). The same applies where a party has not proposed evidence to prove their disputed allegations (Section 118a(3)), and where the court takes a different legal view of the case from the party (Section 118a(2)). A party represented by a lawyer also receives this guidance; only guidance on their other procedural rights is not given to them (Section 118a(4)). How a hearing runs, and when the court says what is in dispute, is described in our guide to the courtroom (in Czech).

Guidance, however, will not produce evidence. The court will tell you that proof of payment is missing; if you do not have it, that will not help. And guidance does not mean that the court will play your hand for you: allegations and evidence must be supplemented in time, because at a certain stage the proceedings close to new allegations and evidence (Section 118b). How this concentration of proceedings (*koncentrace řízení*) works, and when missing guidance opens the way to new evidence on appeal (Section 205a(d)), we discuss in our article The Appeal Is Written at First Instance.

Before you file a claim or respond to one, write down every fact on which your claim or defence rests, and next to it a specific piece of evidence. Wherever evidence is missing, there is a weak spot in your case, and it is better to know about it before the court does.
Does the other side hold the evidence? Ask the court to order production of a specifically identified document (Section 129(2) of the Code of Civil Procedure), and state the anchor points on which your allegation is based. A general demand to "produce everything" is not enough.
Keep your documents before a dispute begins: bank statements, handover reports, emails confirming an oral agreement. What "everyone knows" today, nobody may be able to confirm in court three years from now.

At a glance

Question	Answer	Provision
What the court establishes in a dispute	The disputed facts, to the extent of the parties' participation	Sections 6 and 153(1), Code of Civil Procedure
What a party must do	Allege the decisive facts and identify evidence	Sections 101(1) and 120(1), Code of Civil Procedure
Will the court take evidence nobody proposed	Only if it emerges from the case file and is needed	Section 120(2), Code of Civil Procedure
Who bears the burden of proof	Whoever derives favourable consequences from a fact; exceptions are set by law and, exceptionally, by case law, for example where evidence was thwarted	22 Cdo 883/2010; 21 Cdo 908/2025; Section 133a, Code of Civil Procedure
The other side has the evidence	Order to produce a document, duty to explain, court enquiry; before filing, securing evidence	Sections 78, 128 and 129(2), Code of Civil Procedure
What need not be proven	Facts that are common knowledge, facts known to the court from its official activity, published legislation	Section 121, Code of Civil Procedure
When the court gives guidance	Where allegations or evidence are missing, or where it takes a different legal view	Section 118a(1) to (3), Code of Civil Procedure

You know you are right, but are not sure you can prove it in court? We will go through with you what you have to allege in the proceedings and what is up to the other side, which evidence you have, which is missing and how to obtain it before the dispute begins. See how we handle court disputes. Get in touch.

Conclusion

A civil court is not a detective. It decides on the picture the parties put together for it from allegations and evidence, and whatever is missing from that picture counts against whoever should have proven it. That is why disputes are won not by being convinced you are right, but by preparation: who has to allege what, how they will back it up, and where there is a hole that no witness will fill. It is worth knowing the answer before a claim is filed, because it also determines whether to file one at all.

Sources

- Act No. 99/1963 Coll., the Code of Civil Procedure, Sections 6, 78, 79, 101, 114b, 118a, 118b, 120, 121, 128, 129, 131, 132, 133a, 153, 153a, 153b and 205a (as in force on 6 November 2026).
- Act No. 292/2013 Coll., on Special Court Proceedings, Sections 20 and 21.
- Supreme Court judgment of 7 August 2003, file no. 21 Cdo 408/2003.
- Supreme Court judgment of 16 December 2011, file no. 22 Cdo 883/2010.
- Constitutional Court judgment of 13 May 2014, file no. II. ÚS 3764/12.
- Supreme Court judgment of 30 June 2026, file no. 21 Cdo 908/2025.

This article is for information only and does not constitute legal advice. It describes the law as at the date of publication; what each party has to allege and prove in a particular dispute depends on the substantive law on which the claim is based.

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https://www.iustoria.cz/en/blog/the-court-does-not-establish-the-truth/

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