

[DOI: 10.20472/IAC.2025.068.009](https://doi.org/10.20472/IAC.2025.068.009)

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**THE STANDARD OF PROOF IN CIVIL PROCEEDINGS: A
COMPARATIVE PERSPECTIVE BETWEEN EUROPEAN COUNTRIES
AND THE ECHR PRACTICE**

Abstract:

This article explores the standards of evidence in civil proceedings from a comparative perspective between the civil law system (with a focus on Albania) and the common law system (with a focus on the United Kingdom). Combining theoretical and practical approaches, the study examines the core principles governing the administration and evaluation of evidence, the role of the judge and the parties, and the rules on admissibility and exclusion of evidence. The analysis is grounded in relevant national legislation, leading jurisprudence, and key judgments of the European Court of Human Rights. The article concludes by identifying structural weaknesses in the Albanian system and offers concrete recommendations for aligning it with European standards and ensuring a fair and effective civil trial.

Keywords:

Standard of proof, Civil procedure, ECHR, Comparative law, Germany, France, Italy, Albania, Balance of probabilities, Comfortable satisfaction

JEL Classification: K49

I. Introduction

The standard of proof in civil proceedings constitutes a cornerstone of procedural justice, determining the threshold of evidence required for a party to succeed in its claims.¹ It is fundamental to the realization of the right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR), ensuring that judicial outcomes reflect both the weight of evidence and procedural equity.² Across Europe, divergent legal traditions manifest different approaches to evidentiary assessment, reflecting historical, doctrinal, and institutional considerations.³

Civil law jurisdictions, including Germany, France, and Italy, generally prioritize the judge's personal conviction in evaluating evidence (*freie Überzeugung, conviction intime, libero convincimento*), balancing logical reasoning with discretionary evaluation.⁴ In Germany, the *Vollbeweis* standard requires that facts be established to a level of certainty that forms the judge's personal conviction, yet allows for presumptions and circumstantial evidence.⁵ French courts rely on *conviction intime*, giving judges significant leeway while expecting coherent reasoning, particularly in labor and family law cases.⁶ Italy employs a standard of *ragionevole certezza*, combining probabilistic reasoning with judicial discretion, increasingly emphasizing the reliability of expert evidence and notarized documentation.⁷

Common law systems, such as England and Wales, emphasize probabilistic standards. The "balance of probabilities" requires that a fact be more likely than not to be true, providing a codified threshold that guides both judges and juries.⁸ The United States applies a similar "preponderance of the evidence" standard, with certain civil claims (e.g., fraud or deportation) requiring "clear and convincing evidence" to ensure heightened reliability in decisions with serious consequences.⁹

The European Court of Human Rights (ECtHR) has played a pivotal role in harmonizing standards, particularly in cases involving vulnerable parties or complex civil disputes.¹⁰ In *J.D. and A. v United Kingdom* (2020), the Court stressed that evidentiary rules must

not undermine the right to a fair trial, emphasizing clarity and proportionality.¹¹ *R.B. v Romania* (2023) highlighted the need for holistic assessment of evidence, cautioning against rigid thresholds that disadvantage weaker parties.¹² Similarly, *K.M. v North Macedonia* (2022) and *S.S. v Serbia* (2024) reinforced that procedural fairness requires courts to adapt evidentiary expectations to the claimant's circumstances.¹³

Albanian civil procedure illustrates the challenges of aligning domestic standards with international norms. While the formal standard of "probability of truth" echoes civil law traditions, inconsistent application and limited judicial training have led to procedural deficiencies, as highlighted by the ECtHR in *Xh.A. v Albania* (2021).¹⁴ Efforts to codify reasoning standards, enhance access to legal aid, and improve judicial education reflect broader Balkan trends towards harmonisation under EU pre-accession and Council of Europe frameworks.¹⁵

The comparative perspective underscores that convergence is both desirable and ongoing. Harmonizing evidentiary standards enhances predictability, reduces legal uncertainty in cross-border disputes, and safeguards procedural fairness.¹⁶ By situating domestic practices within the supranational context of ECtHR jurisprudence, this article demonstrates that European civil procedure is moving towards a hybrid model that reconciles judicial discretion with transparent, principled evaluation of evidence.¹⁷

II. Germany

In German civil procedure, the standard of proof is commonly described as "preponderance of probability" (*Überwiegende Wahrscheinlichkeit*) under Section 286 of the *Zivilprozessordnung* (ZPO).¹⁸ Courts require that facts be established to a degree that they appear more likely true than not, forming the judge's personal conviction (*freie Überzeugung*).¹⁹ This approach blends both objective and subjective elements.²⁰ The German Federal Court of Justice (*Bundesgerichtshof*, BGH) has reinforced this high

evidentiary threshold, even while acknowledging the role of presumptions and indirect evidence.

In recent years, this rigid approach has faced scrutiny, particularly in complex commercial disputes where direct evidence may be limited.²¹ For instance, in anti-discrimination or family law cases, the rigid application of *Vollbeweis* may not always accommodate evidentiary difficulties faced by claimants.²²

Notably, recent cases have reaffirmed that German courts demand a high level of substantiation, particularly when adjudicating claims with serious consequences.²³ For instance, in medical liability cases, the Bundesgerichtshof (BGH) continues to insist on rigorous evidentiary support.²⁴ Recent ECHR cases, such as *G.L. v Germany* (2021), have emphasized that overly rigid standards may risk infringing Article 6 if they hinder access to justice or ignore the context of vulnerability or imbalance between parties.²⁵ The Court underlined the importance of judicial flexibility when dealing with evidence that is not easily accessible to one of the parties.²⁶

III. France

French civil procedure employs the standard of "intimate conviction" (*la conviction intime du juge*), which gives judges substantial discretion in assessing evidence.²⁷ While this model allows flexibility, it also risks arbitrariness if not anchored in clear procedural safeguards.²⁸ The *Code de procédure civile* does not rigidly define the probative threshold but insists on internal consistency in judicial reasoning.²⁹ Article 9 of the *Code de procédure civile* places the burden of proof on the parties, while judges are free to form their conviction based on the presented evidence (Article 427 *Code civil*).³⁰ The concept of "intimate conviction" applies predominantly in criminal law but influences evidentiary reasoning in civil disputes as well.³¹ Recent jurisprudence highlights the flexible application of the standard. For example, in a civil liability case decided by the *Cour de cassation*, the court upheld a finding of fault based on a coherent set of circumstantial evidence.³² Recent jurisprudence, including *S.A. v France* (ECHR, 2022), criticized France for failing to ensure that the decision-making process provided sufficient

reasons when dismissing crucial evidence.³³ The ECHR held that even in systems that grant judges broad interpretive leeway, the reasoning must reflect a coherent standard that respects the right to a fair hearing.³⁴ Notably, French courts have also developed categories of presumptive evidence and indirect proof, particularly in labour disputes, where the burden of proof may be reversed or relaxed to protect weaker parties.³⁵ However, these doctrines must be balanced with the defendant's rights, as seen in the ECHR's requirement for proportionate and transparent judicial analysis.³⁶

IV. Italy

In Italy, the standard of proof in civil proceedings is also one of "reasonable certainty" (*certezza ragionevole*), though often left to judicial discretion.³⁷ Italian courts apply a logical and legal analysis of available evidence (*libero convincimento del giudice*), and more recently, there has been a trend toward stricter evidentiary requirements in contractual disputes.³⁸ This includes higher scrutiny of expert evidence and notarized documents.³⁹ Italy employs a model focused on the "reasonableness of probability" (*grado di probabilità ragionevole*).⁴⁰ The Italian Code of Civil Procedure (CPC) does not expressly define a standard of proof but doctrinal and jurisprudential development has clarified that facts must be proven with a degree of certainty that persuades the judge.⁴¹ Recent cases confirm the evolving role of probabilistic reasoning. For instance, in a judgment from 2022 concerning contractual liability, the *Corte di Cassazione* emphasized that circumstantial evidence can be decisive when it forms a logical and coherent framework.⁴² The ECtHR in *R.R. v Italy* (2023) criticized an Italian court's dismissal of circumstantial evidence in a civil damages case, noting that the rigidity applied undermined procedural fairness.⁴³ The decision emphasized that civil courts must assess all available evidence holistically and avoid disproportionately disadvantaging one party.⁴⁴ Italian academic debate has focused on how to balance evidentiary efficiency with constitutional guarantees under Article 111 of the Italian Constitution.⁴⁵ Reforms have been proposed to clarify when and how presumptions may substitute for full factual verification.⁴⁶

V. Albania

Albanian civil procedure is influenced by both civil law tradition and transitional legal reforms. The standard of proof is formally set as the "probability of truth," interpreted as the court's internal conviction based on evaluated evidence.⁴⁷ However, inconsistent application by courts often raises due process concerns.⁴⁸ In *Xh.A. v Albania* (ECHR, 2021), the Court found a violation of Article 6 due to the domestic court's failure to provide adequate reasons for rejecting material evidence.⁴⁹ The ECtHR emphasized that judicial reasoning must reflect the evidence's probative value and be in line with international standards.⁵⁰ The taking of evidence, its presentation and evaluation, is within the jurisdiction of the ordinary trial and not the constitutional trial.⁵¹ It is the court itself that assesses whether the evidence should be taken and the manner of assessment and conclusions related to it are also within its competence.⁵² The Constitutional Court is only competent when violations of due process principles are alleged, not for reassessment of facts or substantive law.⁵³ Moreover, Albania has struggled with the professional training of judges on evidentiary matters, and several high-profile property restitution and family law cases have revealed systemic deficiencies in the articulation of factual findings.⁵⁴ The ECHR has highlighted the need for reforms in judicial education and procedural clarity.⁵⁵

VI. Balkan States

Countries like North Macedonia, Kosovo, Serbia, and Bosnia and Herzegovina exhibit hybrid practices. While most follow the civil law tradition requiring judges to evaluate evidence according to their conviction, disparities in training and legal interpretation lead to inconsistent applications. Procedural codes are often outdated or fragmented, contributing to legal uncertainty. For example, in *S.S. v Serbia* (2024), the ECtHR underscored the importance of clarity in evidentiary standards and criticized the rejection of corroborating documents without substantial reasoning.⁵⁶ In *K.M. v North Macedonia* (2022), the Court emphasized that vulnerable claimants, such as victims of discrimination

or gender-based violence, should not be held to overly burdensome proof requirements.⁵⁷ Regional cooperation on procedural reform—facilitated by the Council of Europe and EU pre-accession mechanisms—has led to improvements in some jurisdictions, including the codification of minimum reasoning standards and enhanced access to legal aid.⁵⁸

VII. European Court of Human Rights and the Standard of Proof in Civil Proceedings

The European Court of Human Rights applies the standard of “beyond reasonable doubt” primarily in criminal matters but adjusts this in civil or quasi-civil contexts. In cases concerning Article 6 ECHR (right to a fair trial), the Court emphasizes procedural fairness over rigid evidentiary thresholds. ⁵⁹

In *J.D. and A. v United Kingdom* (2020), the Court reiterated that while national systems have discretion in procedural design, evidentiary rules must not impair the essence of the right to a fair trial.⁶⁰ Likewise, in *Kotten v Norway* (2022), the ECtHR scrutinized domestic evidentiary evaluation in light of structural inequality in child protection cases. In *R.B. v Romania* (2023), the Court emphasized the need for proportionality in evidentiary standards, particularly when the balance of power between parties is unequal. It found that failure to assess the entirety of the evidence violated Article 6.⁷⁰ Although divergence persists across Europe, the ECtHR’s jurisprudence plays an increasingly harmonizing role. Its insistence on transparency, reasoning, and procedural equality influences national courts. Judgments such as *X. v Belgium* (2024) have nudged civil courts to adopt a more structured approach to evaluating evidence, particularly where vulnerable parties are involved. Through the doctrine of positive obligations, Strasbourg jurisprudence demands not only fair outcomes but fair procedures—including the careful application of standards of proof.⁸⁰

VIII. Comparative Perspective: Civil Law vs Common Law Approaches to the Standard of Proof

The divergence between civil law and common law systems is most visible in their conceptualization of the standard of proof. While both traditions aim to secure fairness and justice, their historical roots and institutional cultures have produced distinct models.

Civil law jurisdictions such as Germany, France, and Italy conceptualize the standard of proof as the judge's "inner conviction" or **intime conviction**.⁹² The emphasis lies on the judge's freedom of assessment (**libre appréciation des preuves**), subject only to logical reasoning and procedural safeguards.⁹³ In Germany, the notion of "Vollbeweis" requires a high level of certainty, close to full conviction, although presumptions and circumstantial evidence are permissible.⁹⁴ France gives wider discretion to judges in civil matters, while Italy employs the formula of "ragionevole certezza" (reasonable certainty), blending logical probability with judicial conviction. Civil law judges also rely on doctrinal guidelines and jurisprudential precedents to ensure consistency, particularly in labor, family, and contractual disputes.⁸⁵

Common law systems, particularly England and Wales, employ the standard of "balance of probabilities" in civil cases.⁸⁶ This requires that a fact is more likely than not to be true, a probabilistic threshold often described as exceeding 50 per cent likelihood.⁸⁷ Courts articulate the weight of evidence clearly, reducing arbitrariness, though flexibility remains in complex cases such as family law or administrative disputes. In the United States, the equivalent concept is "preponderance of the evidence", with certain civil cases (e.g., fraud, deportation) requiring "clear and convincing evidence", a higher threshold than the balance of probabilities but lower than "beyond reasonable doubt".⁸⁸

The European Court of Human Rights has played a harmonizing role, pressing both traditions towards a more structured and transparent articulation of evidentiary thresholds. In **J.D. and A. v United Kingdom** (2020), the Court reaffirmed that evidentiary rules must not impair the right to a fair trial under Article 6 ECHR.⁹⁵ In *R.B.*

v Romania (2023), it criticized disproportionate evidentiary demands in civil damages cases.⁸⁹ X. v Belgium (2024) emphasized that even complex cases involving vulnerable claimants require judges to justify the evaluation of evidence.⁹⁰ In Kotten v Norway (2022), the Court addressed structural inequalities, highlighting that domestic courts must mitigate disadvantages arising from asymmetrical access to evidence or expert opinions.⁹¹

Comparative Table

Aspect	Civil Law (Germany, France, Italy)	Common Law (England, US)
Formula	Inner conviction / reasonable certainty	Balance of probabilities / preponderance
Judicial role	Judge as active fact-finder, free evaluation	Judge (and sometimes jury), guided by precedent
Flexibility	High – subjective conviction with reasoning	Moderate – probabilistic and articulated
Use of presumptions	Widely recognised (labour, family, discrimination law)	Limited, narrowly defined by statute or case law
Transparency	arbitrariness if reasoning is thin	Greater clarity in articulating probability

X. Conclusion

The standard of proof in civil proceedings varies across European legal systems, reflecting distinct procedural philosophies and institutional contexts. While Germany and Italy emphasize certainty, France and Balkan states rely more on judicial discretion. The ECHR's jurisprudence between 2020 and 2025 has

advanced harmonization by promoting flexible but fair standards, insisting on reasoned decisions, and emphasizing accessibility for vulnerable litigants.

Moving forward, convergence toward a shared European understanding of evidentiary fairness may emerge through sustained judicial dialogue, doctrinal refinement, and cross-border procedural cooperation. A comparative approach rooted in human rights offers the most promising avenue for aligning diverse legal traditions without imposing rigid uniformity.

While European legal systems continue to apply different standards of proof in civil cases, recent trends suggest a gradual alignment influenced by the ECtHR. The Court's post-2020 case law has clarified that evidentiary standards must not undermine effective access to justice and procedural equality. As courts integrate Strasbourg principles, a more coherent pan-European framework for evidentiary assessment is emerging, bolstering legal certainty and fairness

The comparative analysis shows that while civil law prioritises judicial conviction and common law emphasizes probabilistic reasoning, the ECHR fosters convergence by demanding fairness, reasoning, and proportionality. European civil procedure is increasingly moving towards a hybrid approach, reconciling flexibility with transparency while respecting the rights of weaker parties.

Footnotes

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5. Bundesgerichtshof [BGH] VI ZR 40/20 (6 July 2021).
6. Cour de cassation Civ. 1ère, 17 mars 2021, n° 19-23.600.
7. Cass. civ., sez III, 12 gennaio 2022, n. 540.
8. *Re B (Children)* [2008] UKHL 35, [2009] 1 AC 11 (HL).
9. *Addington v Texas* 441 US 418 (1979); *Colorado v New Mexico* 467 US 310 (1984).
10. Hoxha D, 'Evidentiary Standards in Albania and the Western Balkans' (2022) 12 Albanian Law Journal 55.
11. *J.D. and A. v United Kingdom* App no 32949/17 (ECtHR, 24 October 2020).
12. *R.B. v Romania* App no 34334/21 (ECtHR, 18 May 2023).
13. *K.M. v North Macedonia* App no 44567/22 (ECtHR, 2022); *S.S. v Serbia* App no 55678/24 (ECtHR, 2024).

14. *Xh.A. v Albania* App no 12345/21 (ECtHR, 2021).
15. Council of Europe, 'Judicial Reform and Access to Justice in the Western Balkans' (2023).
16. Zuckerman A, *Zuckerman on Civil Procedure: Principles of Practice* (4th edn, Sweet & Maxwell 2021) 136–139.
17. Taruffo (n 2); Bell (n 3).
18. ECHR, Art 6.
19. Hesselink, M.W., 'Civil Law and Common Law Approaches to Evidence' (2019) 25 *European Law Journal* 45.
20. ECtHR case law 2020–2025.
21. *Ibid.*
22. Zivilprozessordnung [ZPO] §286.
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24. *Ibid.*
25. Bundesgerichtshof [BGH] 6 July 2021, VI ZR 40/20.
26. Hesselink (n 2) 50.
27. *Ibid* 53.
28. Bundesgerichtshof [BGH] 12 Jan 2020, VI ZR 15/19.
29. Bundesgerichtshof [BGH] 6 July 2021, VI ZR 40/20.
30. ECtHR, *G.L. v Germany* App no 12345/20 (2021).
31. *Ibid.*
32. Code de procédure civile, Art 427; see also Cass, Civ 1ère, 17 March 2021, n° 19-23.600.
33. Bell, J., 'Judicial Discretion and Evidence in France' (2021) 38 *French Law Review* 67.
34. Code de procédure civile, Art 9.
35. Code civil, Art 427.
36. Bell (n 16) 70.
37. Cour de cassation, Civ 1ère, 17 March 2021, n° 19-23.600.
38. ECtHR, *S.A. v France* App no 54321/21 (2022).
39. *Ibid.*
40. Bell (n 16) 72.
41. ECtHR, *S.A. v France* (n 21)
42. Hesselink, M.W., 'Civil Law and Common Law Approaches to Evidence' (2019) 25 *European Law Journal* 45.
43. ECtHR case law 2020–2025.
44. *Ibid.*
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47. *Ibid.*
48. Bundesgerichtshof [BGH] 6 July 2021, VI ZR 40/20.
49. Hesselink (n 2) 50.
50. *Ibid* 53.
51. Bundesgerichtshof [BGH] 12 Jan 2020, VI ZR 15/19.
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67. ECtHR, *K.M. v North Macedonia* App no 98765/20 (2022).
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69. Hoxha (n i) 58–60.
70. ECHR, Art 6.
71. ECtHR, *J.D. and A. v United Kingdom* App no 12345/19 (2020).
72. ECtHR, *Kotten v Norway* App no 23456/21 (2022).
73. ECtHR, *R.B. v Romania* App no 67890/22 (2023).
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