

# Hearing in Contentious Procedure

## Abstract

This rigorous thesis deals with a hearing as a key phase of a contentious procedure in which the presiding judge, in cooperation with the parties, takes evidence and undertakes other appropriate measures in order to ensure complete and fair hearing without undue delay in the proceedings. The primary aim of this rigorous thesis is to describe the course of a hearing in the contentious procedure, as well as to analyse its legal basis governed by the provisions of § 115 et seq. of Act No. 99/1963 Coll., Code of Civil Procedure, as amended.

For the sake of clarity, the text of this rigorous thesis is divided into five parts marked with letters A to E, which then contain 11 chapters. Firstly, the essential concepts are defined in Part A. The concept of "contentious procedure" is defined, its parties and their adversarial positions are introduced, their procedural initiative is described, as well as the function of the contentious procedure itself. Subsequently, the key concept of a "hearing" and its purpose is defined. Part B outlines the fundamental principles of the civil procedure, in particular the adversarial principle, according to which the parties to the proceedings have the right to comment on all facts and all evidence; the principle of public hearing which guarantees the protection of the parties against the so-called wilful judiciary; the principle of oral hearing, according to which matters communicated orally to the court at a hearing are decisive; as well as the principle of directness, which together with the last two principles mentioned applies to the proceedings only at a hearing. Part C, which can be described as the key part of this thesis, contains the legal basis governing the discussion about the merits of a case. Firstly, the discussion about the merits of a case without a hearing is briefly described, then the emphasis is placed on the discussion about the merits of a case at a hearing. The course of a hearing is described from the moment it is ordered until the public announcement of the decision, while attention is paid to the hearing initiation and management by the court as well as to the procedural rights and obligations of the parties. Emphasis is placed on the court's obligation to decide a case without undue delay in the proceedings, as well as on its obligation to provide the parties with necessary procedural rights and obligations and to proceed in accordance with the principle of predictability. However, attention is also paid to the parties which should actively participate in the proceedings and, in accordance with the principle of *vigilantibus iura scripta sunt*, duly fulfil their procedural obligations. Part D presents the foreign legal basis governing a hearing, in particular the legal regulations contained in the Slovak Act No. 160/2015 Coll., The Civil Procedure Code, as amended. Finally, part E is concerned with the

evaluation of domestic legislation and reflections on future legislation contained in the draft of the new Civil Procedure Code.

Key words: **contentious procedure, hearing, principles of civil procedure**