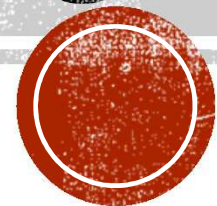


The Principle of Audiatur et Altera Pars and Taking of Evidence in Civil Proceedings

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Principle of audiatur et altera pars

- Civil Procedure Act, Art. 5: Right to be heard
- Constitution of Slovenia, Art. 22: Equal protection of rights
- Each party to the litigation must be granted the **opportunity to be heard** on the opposing party's claims and assertions.
- The claims in respect of which the opposing party has not been heard may only be decided upon if expressly allowed by the law.
- Each party must have the **opportunity to make a statement on any procedural materials** that could impact the court's decision.



Related principles

- **DISPOSITIVE PRINCIPLE** (Art. 3 CPA)
 - The parties are free in disposition of the claims which they raise in the proceedings.
 - The parties may relinquish their own claim, acknowledge the opposite party's claim and conclude a settlement.
- **ADVERSARIAL PRINCIPLE** (Art. 7 CPA)
 - The parties must state all facts giving rise to their cause of action and present evidence proving these facts.



The right to be heard in taking of evidence

- Each party must have the opportunity to **state the facts** upon which its claims are based and to **provide the evidence** for such facts
- Each party can **contest the facts stated and evidence adduced** by the opposing party.
- Equality of parties in taking of evidence is guaranteed.



The court's duty to take evidence

- Generally, the court is **obliged to take all evidence proposed** by a party in the proceedings.
- Refusal to take evidence provided by a party may constitute a **substantial procedural violation** under Art. 339 CPA
- Violation constitutes grounds for **refusal of recognition** of judgement under Art. 45 of Regulation (EU) 1215/2012



Exceptions from the duty to take evidence

- The courts duty to take evidence proposed by the parties is **not absolute**.
- The court must also protect the **right to trial without undue delay** guaranteed by Art. 23 of Constitution.



Grounds for refusal to take evidence

- Proves a legally **irrelevant** fact
 - Substantive law determines which facts are relevant
- **Inappropriate** to establish a certain fact
- Relates to an **already established** fact
 - Danger of anticipated evaluation of evidence
 - Should not be refused if proposed by a party denying the fact
- Attempts to **delay** the proceedings
- Proposed after the procedural **deadline**



Stating the grounds for refusal of evidence

- The court must state the reasons for its decision to refuse to examine an evidence proposed by a party.
- A flat statement that an evidence is not necessary for the proceedings is not sufficient.



Substantive conduct of proceedings

- The court only takes evidence proposed by the parties.
- However, Art. 285 CPA: The judge must **ask questions** and see that all relevant facts of the case are stated and all evidence is proposed and examined.
- The judge should act to ensure a **fair trial**.
 - Failure to do so constitutes a violation of the procedure.
 - The judge's violation can usually not be detected from the case file.



Classified information as evidence

- CPA lacks specific provisions on the parties' access to such evidence
- Constitutional court: The judge must determine to what extent the parties can access classified data, taking into account the principles of fair trial on one hand and the need to protect classified information on the other.
- No substantive criteria for the judge's decision are given.



Blind and visually impaired parties

- Constitutional court: CPA is unconstitutional because it does not regulate the right of blind and visually impaired persons to access court documents and submissions of the parties and other participants in proceedings in a form perceptible by such persons.
- Violates the constitutional provisions on equality before the law and on equal protection of rights



The experts' role in civil proceedings

- An expert institution that forms a part of a **law enforcement agency** cannot be nominated as a court expert in criminal proceedings.
 - → applies by analogy in civil proceedings when the state is one of the parties
- Expert opinion **commissioned by a party** can only be considered as a part of the party's submissions.
- Court expert's opinion **prepared in other proceedings** can be used in civil proceedings if the parties agree so or, exceptionally, without such agreement if the party was given full right to be heard concerning that evidence in the relevant proceedings.

