

# PROCEEDINGS IN COURT OF I. INSTANCE

## CONTENTIOUS AND NON-CONTENTIOUS PROCEEDINGS

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# LEGISLATION

- ▶ **Code of Civil Procedure** (No. 99/1963 Coll.) – „CCP“
- ▶ **Special Proceedings Act** (No. 292/2013 Coll.) „SPA“
- ▶ **Law on Courts and Judges** (No. 6/2002 Coll.)
- ▶ **Law on the Organization of the Judiciary in District and County Courts** (No. 90/1995 Coll.)



# CONTENTIOUS PROCEEDINGS IN THE COURT OF I. INSTANCE



COURSE OF THE PROCEEDINGS, COMMENCEMENT, PROCEDURAL  
CONDITIONS



# COURSE OF THE PROCEEDINGS

1. **ACTION** (commencement of the proceedings) →
2. **PROCEDURAL CONDITIONS** →
3. **CORRECTION** of action →
4. **COMMENT** of defendant on action →
5. **PREPARING OF HEARING** →
6. **HEARING** →
7. **EVIDENCE** →
8. **DECISION.**



# PRIOR TO COMMENCEMENT OF THE PROCEEDINGS

- ▶ **Settlement proceedings** (settlement of the conflict, agreement approval) - § 67 – 69 CCP
- ▶ **Protective measures** (temporary regulation of relationships, examination of judgement is endangered) - § 74 – 77a CCP
- ▶ **Securing evidence** (later cannot be carried out) - § 78 – 78g CCP

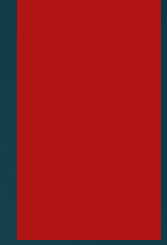
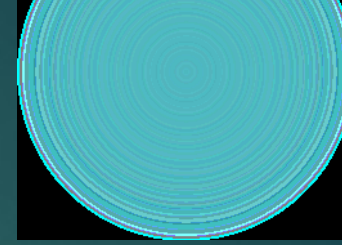


# COMMENCEMENT OF THE PROCEEDINGS

ACTION, GENERAL AND SPECIAL REQUISITES



# COMMENCEMENT



- ▶ **Action** (principle of autonomy/free disposition)

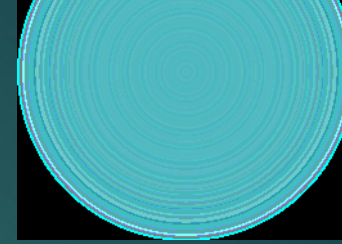


- ❖ General - § 42 CCP
- ❖ Special - § 79 (1) CCP





# ESSENTIALS I



## GENERAL

▶ **Form** (written: electronic, personally written, by fax) - § 42 (1 - 3) CCP

▶ **Content** (§ 42 / 4 / CCP)

- ❖ to which court
- ❖ by whom
- ❖ in what matter and for which purpose
- ❖ date, signature



# ESSENTIALS II

## SPECIAL (§ 79 /1/ CCP)

### ❖ Identification of the **parties**:

- Name, surname/name/identification of the state body entitled to act on it's behalf
- residence (seat)
- (identification number)

### ❖ (Identification of the **representatives**)

### ❖ Explanation of the **decisive facts**

### ❖ Identification of **evidence ivoked by plaintiff** (must be attached)

### ❖ Specification of **claim** (what is demanded)

# CORRECTION OF ACTION

▶ **Incomplete** action (defects, vague) - § 43 CCP

▶ Call for **correction** (including instructions)

▶ e.g.



# PROCEDURAL CONDITIONS

FUNDAMENTAL PRINCIPLES, JUDICIAL SYSTEM, COURTS HIERARCHY

# TERMINOLOGY

- ▶ **PROCEDURAL CONDITIONS** – formal conditions that must be fulfilled before court considers and decides a case (§ 103 CCP)
- ▶ Lack of the condition/s → cannot be/has not been removed → **discontinuation** of the proceedings



# CLASIFICACION I

## ▶ RELATING TO COURT (§ 104 – 105 CCP)

- ❖ **Jurisdiction** (court/other authority)
- ❖ **Material competence** (county/district court, subject matter of the case)
- ❖ **Level of competence** (particular court)

## ▶ RELATING TO PARTICIPANTS

- ❖ **Capacity**
  - to be a participant (§ 19 CCP) → procedural succession
  - **procedural capacity** (to act within the proceedings; § 20 CCP) → representation (advocate, guardian)

# CLASIFICACION II

## ▶ NEGATIVE PROCEDURAL CONDITIONS

- ❖ **Identical case** with same subject matter
- ❖ **Identical decision** (decision that came into force and that was issued in the same case)

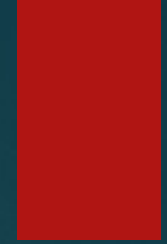
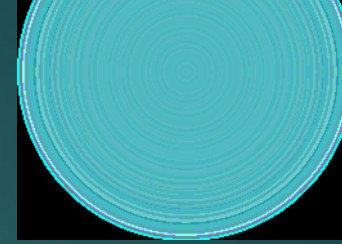
## ▶ COURT FEE



# PREPARATION OF HEARING

BASIC FACTS, ARRANGEMENT.

# BASIC FACTS



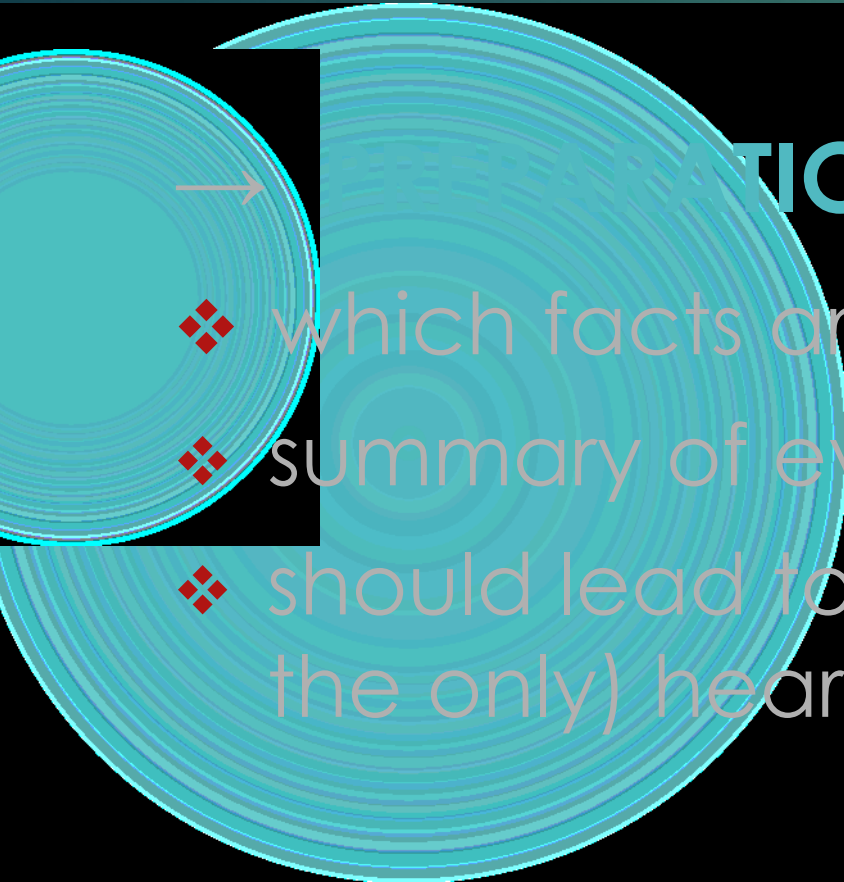
X discontinuation

X rejection of action

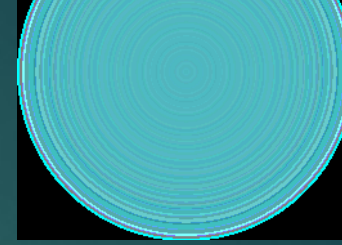


## STAGE OF HEARING

- ❖ which facts are disputed
- ❖ summary of evidence
- ❖ should lead to taking a decision within first (and the only) hearing



# ARRANGEMENTS



- ▶ **Call for written comment** of the defendant (including designation of evidence; § 114a CCP)
- ▶ **Ruling - call for written comment** of the defendant **under sanction of losing the case** (presumption of admitting the claim; § 114b CCP) → **judgement according to this** **on**
- ▶ **Preliminary hearing** (clarifying: procedural conditions, facts of the case; seeking settlement of a dispute; § 114c CCP)







# MEASURES FOR EXPEDITING THE PROCEEDINGS

BASIC FACTS AND PURPOSE

# BASIC FACTS AND PURPOSE

- ▶ Introduced by Act No. 7/2009 amending CCP
- ▶ **Purpose** – expediting the proceedings, effectivity, procedural economy

▶ Limitation of:

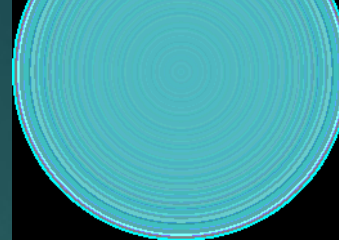
- ❖ **Statement of the fundamental facts**
- ❖ **Designation of evidence** to prove the facts

Until the end of the first hearing (preliminary hearing) - § 118b CCP

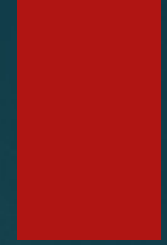
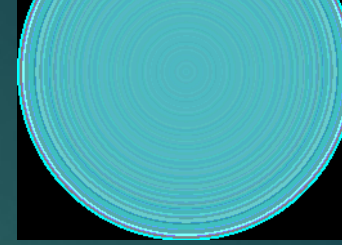


# HEARING

BASIC FACTS



# THE BASIC FACTS



- ▶ **General rule** - hearing takes place in every case (exemptions – agreement of the parties - § 115a CCP)
- ▶ Hearing is **public** (exemptions - § 116 CCP)
- ▶ **Both sides** for course of hearing - § 118 CCP
- ▶ Clarification of the **fundamental facts** (matter of fact, matter of dispute)
- ▶ Carrying out the **evidence**
- ▶ **Adversity** concerning legal qualification of the case, limitations according to § 118a CCP (statement and evidence obligation)





# NON - CONTENTIOUS PROCEEDINGS

LEGISLATION, DISTINCTION BETWEEN CONTENTIOUS AND NON – CONTENTIOUS  
PROCEEDINGS, FUNDAMENTAL PRINCIPLES, COMMENCEMENT





# LEGISLATION

▶ *Lex specialis* - Act on Special Proceedings (No. 292/2013 Coll.)

▶ *Lex generalis* (subsidiarity) – Code of Criminal Procedure

# DISTINCTION AND FUNDAMENTAL PRINCIPLES

## Contentious Proceedings

- ▶ **Dispute** between two parties
  - ❖ plaintiff
  - ❖ defendant
- ▶ **Principle of autonomy**/ free disposition with action, suit, claim

## Non – Contentious

- ▶ Protection of rights and modification of legal relationships among participants
- ▶ **Group of participants**
  - ❖ applicant
  - ❖ who's rights might be affected
  - ❖ who is called by the law

# DISTINCTION AND FUNDAMENTAL PRINCIPLES

## Contentious Proceedings

▶ **Evidence** (duty and burden of proof)

▶ **Decision** (declaratory)

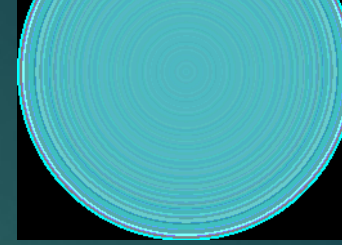
## Non – Contentious Proceedings

▶ **Court intervention** (*ex officio* commencement, investigation of the basic facts, no burden of proof..)

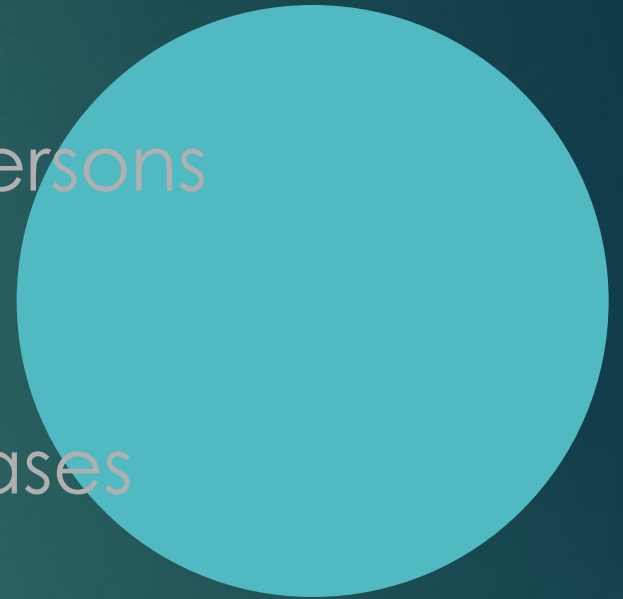
▶ **Limitation of participants' autonomy**

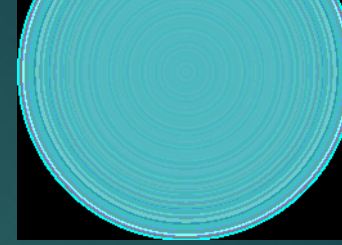
▶ **Decision** (termination/changes/establishment of legal relations)

# TYPES



- ▶ Listed in § 2 SPA:
  - ❖ Selected issues concerning legal persons
  - ❖ Detention proceedings
  - ❖ Inheritance proceedings
  - ❖ Marital and registered partnerhis cases
  - ❖ Cases concerning minors
  - ❖ Adoptions
  - ❖ Establishing parenthood
  - ❖ Etc.





**THANK YOU**

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