

1.The instruction of the case

1.1.1 Preamble:The system of evidence

Are all kinds of evidence admissible? Are the testimonies (opinions of witnesses) admissible?

The burden of proof: who must prove : the claimant, the administration or the judge?

The system of evidence consists of written and oral proves, on-site examinations, audio- and video-recordings, witness testimonies, explanations of persons participating in the case. All kinds of evidence are admissible in administrative proses .

Administrative body, which adopted the disputed administrative act, shall prove the availability of factual conditions necessitating the adoption of the same act. For claims concerning the defence from administrative body's illegal interference, which has no connection to adoption of administrative act and directly violates the rights and freedoms of a person, the relevant administrative body shall bear the burden of proof with regard to availability of factual conditions necessitating such interference. For claims (on compulsion) requiring the adoption of administrative act, the claimant shall bear the burden of proof with regard to availability of factual conditions that necessitate adoption of the same act. Nevertheless, the administrative body shall bear the responsibility to prove the existence of such conditions, when the administrative body refers to existence of factual conditions that exclude the adoption of administrative act desired by claimant in that specific case. (adm article 14)

1.1.2. The role of the parties :

The content of the file and the debate: can the parties freely define what they communicate to the judge?

Can the parties, at any time, introduce new elements into the debate?

Is a replica always possible? Has the opposing party a minimum duration to answer?

Legislative system allows parties freely define what they communicate to the judge. Replica is possible after speeches and legislative system allows to give time to the opposing party for answering. Following court pleadings of all parties, parties shall have the right to plead with respect to contents of initial speeches. Right of last retort shall belong to respondent and his representative.(civil 211)

1.1.3. The role of the judge :

Some parties are weak, others are powerful : is this issue taken into account in defining the applicable rules?

Does the judge have a purely passive role or can he/she (or should he/she) require the production of information to a party to the dispute?

Can the judge involve third parties in the debate? Do these third parties have the same rights in this debate?

Can the judge freely decide to ask opinion to an expert?

Because of having weak and powerful parties in administrative proses Court shall be bound to support the participants of procedure in eliminating formal offences committed with regard to claims filed, specifying unclear claims, replacing improper claims with acceptable ones, supplementing incomplete factual information, as well as providing explanations, which are significant in determining and evaluating the merits of the case.

The judge doesn't have a purely passive role. Court shall be bound to investigate all factual merits that are significant in proper settlement of a dispute, having been not content with explanations, applications and proposals of participants of judicial procedure, the evidence provided by them and other materials available in case.

The judge can involve third parties in the debate. Third party shall be certainly involved in administrative court proceeding as a participant (necessary involvement), when the nature of third party's participation on disputed legal relations stipulates making a common decision on participants of administrative court proceeding and the third party. These third parties have the same rights in this debate. Third parties shall be entitled to independently use possible legal remedies and exercise procedural actions upon request of one of the parties, aiming at protection of private interests. Third parties involved in the order of necessary involvement may put in distinct claims upon request of parties.

According to the principle of investigating merits of a case the judge can freely decide to ask opinion to an expert

1.2. THE PRINCIPLE OF CONTRADICTION AND ITS LIMITS

Can the judge ask to a public authority to provide a secret information ?

These secret informations provided to a court by public authorities has to be communicated to the parties or not? Can the judge supply documents or other materials produced by a party (or a third party) to the opposing party? How does this mechanism apply ?

Is the principle of the adversarial specially adapted in certain areas?

Must the judge respect secrets? What are these secrets? The secret of privacy? The secret of business? The secret of defence and public safety?

Yes, the judge can ask to a public authority to provide a secret information. But that secret information is not sent to the parties by court. In close session it is investigated by the participation of parties. Court hearing or any portion thereof may be conducted in a close session in the event open hearing of case affects purposes of justice due to ethics principles of a democratic society, public order, state security, as well as other reasons. Personal correspondence and personal telegraphic information shall be revealed in course of open court session only upon consent of recipient of such correspondence and information. Said provisions shall also apply to voice and video recording of a private nature. (civil 10.3, 10.10)

In administrative process the judge can work with secrets of privacy, business, defence and public safety. But the judge has to respect to this secret information.

2. THE CLOSURE OF THE INSTRUCTION

2.1. How and when does the closing of the instruction of a case takes place: before the hearing, at the time of the hearing or after the hearing?

The closing of the instruction of a case takes place at any time. before the hearing, after the hearing and at the time of hearing. Ассординэ то тще principle of transparency of trial court session shall be open to public. Бут Court may hold private sessions on a motion of participants of the process or on its own initiative when disclosure of any information, secret protected by law is not

allowed, protection of inviolability of participants' private or family life is required, protection of private interests of the minors is necessary, also when there is a threat to the life, health or freedom of participants of process and other persons.

2.2. Can the judge reopen the investigations or the debate between parties about a case at any time?

Where in course of or following court pleadings court recognises the necessity to clarify new circumstances pertinent to case or to investigate new evidence, court shall render a ruling on reopening of review of case on its merits, with registration of such ruling in protocol of court session. Following completion of hearing of the case on its merits, court pleadings shall be proceeding under general procedures. (civil 212)

3. THE HEARING

3.1. Possibility of a judicial decision without a hearing?

Court may also resolve the dispute without oral trial (oral hearings) by mutual consent of parties. Court rulings that don't resolve the dispute on its merits may also be adopted without holding oral trial.

3.2. Possibility of an hearing without the presence of the parties?

Court shall be obliged to notify the participants of the process about the time and venue of court session related to oral trial. Court summons shall be submitted to participants of the process at least 10 days prior to the time (day) of court session related to oral hearing. Particularly in urgent circumstances, the presiding judge may reduce this time-limit. The participant, who doesn't appear at session upon court summons, shall be notified about the possibility of reviewing the case and issuing a judgement at his/her absence.

3.3. Possibility of an in camera hearing?

Yes, тще ехсептион оф ълосе ъоурт шеаринэ court may allow to audio-video record and take pictures of the court session on a motion by one of the parties or on its own initiative. is possible to use a camera in hearing.

3.4. Possibility of a hearing in a closed court ?

All courts shall hear cases in open hearings, except disclosure of any information, secret protected by law is not allowed, protection of inviolability of participants' private or family life is required, protection of private interests of the minors is necessary, also when there is a threat to the life, health or freedom of participants of process and other persons for instances of disclosure of state, professional, commercial secret, dissemination of personal and family secrets, pursuing interests of minors.