



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Reduction and limitation of the hearing: directive powers and the power-duty of the judge in trial

Isabel Maria Matos Namora

Judge President of the first instance Court of
Coimbra

CIVIL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

Course of the proceedings at the final hearing:

- attempt to reach a settlement between the parties
- testimony of the parties
- experts' verbal explanations
- witnesses' evidence
- closing statements presented by both parties

CIVIL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

Three basic principles that guide the judge's intervention at the final hearing which reflects the directive powers and the power-duty of the judge in trial:

1. Inquisitorial
2. Undelayable final hearing
3. Continuity of the final hearing

CIVIL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

Inquisitorial principle

- modify the order for evidence to be taken,
- order that a party appear in person in order to clear up the circumstances of the case,
- inquire other persons who had not been heard as witnesses and to cross-examine the witnesses,
- order that visual evidence is taken on site if necessary to decide the case,
- reopen the hearing after the closing statements, if the judge does not consider oneself sufficiently informed.

CIVIL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

Inquisitorial principle

As a general rule, the final hearing cannot be postponed.

Except in cases of:

- Court impediment
- absence of a lawyer, when the hearing has not been scheduled by the judge through a prior agreement or there is a reasonable impediment.

CIVIL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

Principle of Continuity of the Hearing

During the final hearing the judge has a duty to:

- accept the presentation of documents if the party submitting them justifies the reason - accept the production of documents whose presence has become necessary due to the evidence being produced at a hearing.

When this happens, the final hearing will be not interrupted, but the lawyer is allowed to examine the document.

CIVIL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

Power of direction of the hearing:

- make the necessary arrangements for the cause to be discussed with elevation and serenity,
- asking witnesses, experts or the parties themselves the questions necessary to establish the truth,
- requesting information, opinions or documents and rejecting all that is impertinent or merely dilatory

CIVIL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

Power of direction of the hearing:

- ordering the first or second expert's report,
- taking the initiative of producing new evidence or the complement of production acts carried out,
- ordering the statements by the parties when a party requests up to the beginning of the oral arguments,

CIVIL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

Power of direction of the hearing:

- interrupting the lawyer to make the discussion useful and brief in order to clarify or rectify any statement,
- urging lawyers to abbreviate when they are manifestly excessive and to restrict themselves to the subject-matter of the case.

CIVIL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

- **Each party may present 10 witnesses and 10 additional witnesses in the case of a counterclaim.**
- **The oral arguments cannot exceed for each of the lawyers one hour and the replies thirty minutes.**
- **In cases of value not exceeding the first instance appeal, the time periods for the oral arguments are reduced by half and the maximum number of witnesses is reduced to 5.**

CIVIL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

- **The judge hands down the judgment within 30 days.**

CRIMINAL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

- **The presiding judge is expected to take an active truth-finding role in court and has the authority to take all measures he deems useful to discover the truth.**
- **The final arguments cannot exceed, for each of the parties, one hour and the replies twenty minutes (in the ordinary proceeding).**
- **When the trial has come to an end, the judge delivers a judgment.**

CRIMINAL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

Portuguese law provides several alternative procedures to an ordinary trial:

Summary proceeding/ abbreviated proceeding

- The summary proceedings usually take place immediately after arrest and detention by the police.
- On the other hand, the abbreviated proceeding is only used in simple and straightforward cases.

CRIMINAL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

Summary proceeding/ abbreviated proceeding

- In the summary proceedings, trial takes place within 48 hours after the arrest of the defendant. The hearing can be postponed for only 20 days after the arrest.
- In both proceedings, once the production of evidence has finished, the oral arguments cannot exceed, for the prosecutor and each of the lawyers, 30 minutes.
- The trial will be completed with a recorded oral sentence (*recorded by the court's internal recording system*).

CRIMINAL JURISDICTION - DIRECTIVE POWERS AND THE POWER-DUTY OF THE JUDGE IN TRIAL

“Processo sumarissimo”

- If the judge accepts the extent of the penalty proposed by the Public Prosecutor with the agreement of the defendant there is no oral trial.
- This is a simplified procedure which finalises with a decision of conviction handed down by the judge.