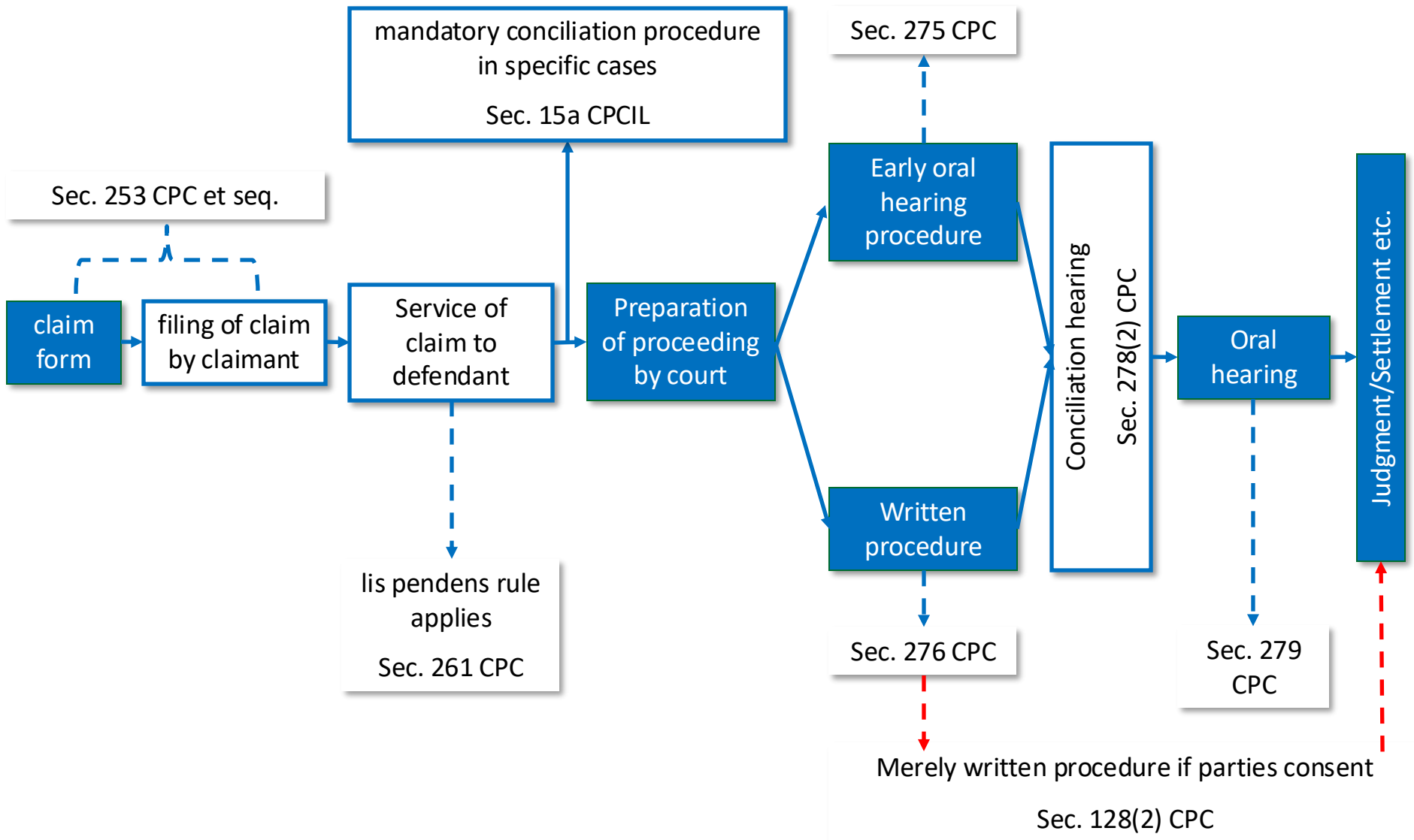


# Oral Hearing

## Course of civil court proceedings



# Principle of Orality (1)

- Rationale of orality of proceedings
  - Procedural economy
  - Effective dispute resolution
  - Maxim of Concentration
- Requires **verbal expression**
  - i.e. speaking, physical presence (exception: Sec. 128a CPC)
- Exceptions
  - Mutual consent of the parties, sec. 128 Para 2 CPC
    - Rational: procedural economy
    - Discretion of the court
    - Inadmissible if consent of parties was given more than three months ago
  - Settlement already in written proceedings possible, Sec. 278 Para 6 CPC
  - Decisions on costs and other incidental claims (interest), Sec. 128 Para 3 CPC

## Principle of Orality (2)

- Violation

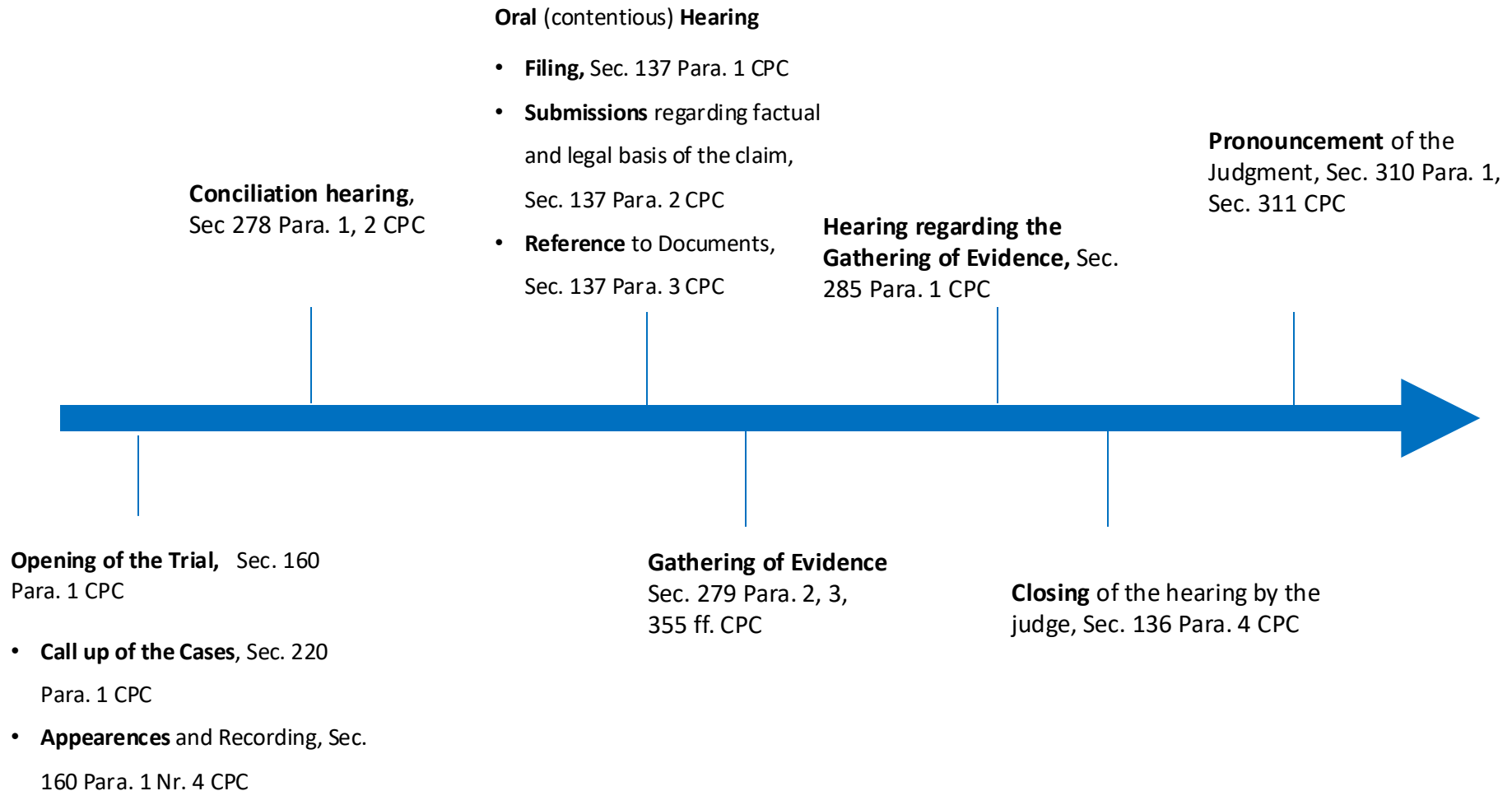
- Appellate proceedings

- Sec. 513 Para 1, 538 Para 2 S. 1 Nr. 1 CPC (Appeal on issues of fact and law) = *Berufung*

- Sec. 545 Para 1, 562 Para 2 CPC (appeal on issues of law) = *Revision*

- Complaint on not being heard, Sec. 321a CPC (Gehörsrüge)

# Course of the Oral Hearing (main hearing, “Haupttermin”)



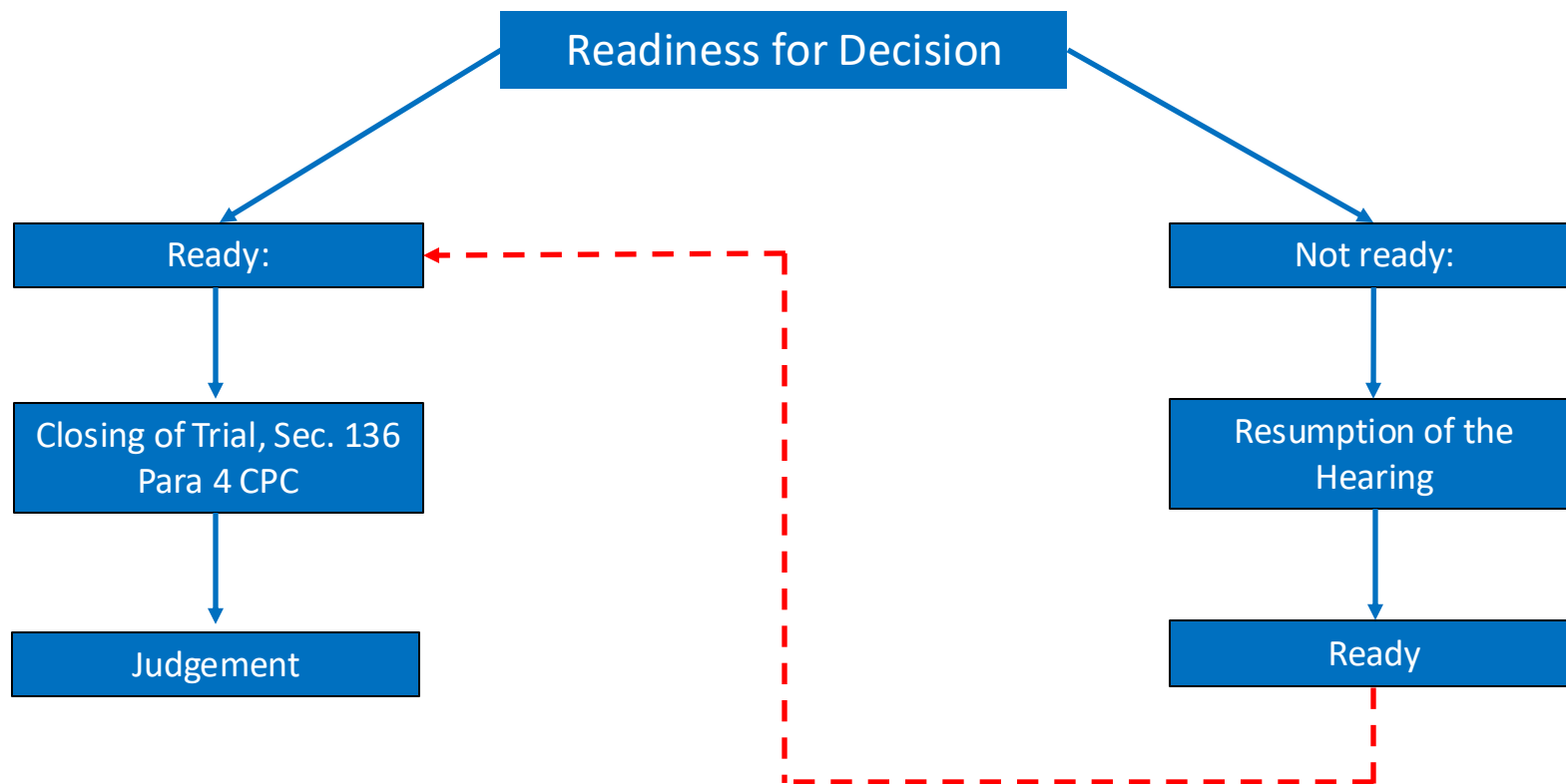
## Conciliation Hearing, Sec. 278 Para 1 and 2 CPC

- Purpose: find an amicable solution to the legal dispute
- Mandatory
  - Exceptionally omissible e.g. when a settlement has already been attempted before an alternative dispute-resolution entity
- Parties must appear in person, unless special circumstances require otherwise
- The court (the conciliation judge) may suggest that the parties pursue mediation or other alternative dispute resolution procedures, Sec. 278a CPC
- If the conciliation hearing is not successful, it is immediately followed by the oral hearing either through an early oral hearing or the main hearing for oral argument

## Main hearing for oral argument, Sec. 279 CPC (1)

- Following the conciliation hearing, unless parties have agreed upon a written procedure, Sec. 276 CPC
- Hearing starts with the Cause being called up, Sec. 220 Para. 1 CPC
- Unless already done during the conciliation hearing, the court shall discuss the circumstances and facts as well as the status of the dispute
- If the claim is admissible, the parties may file their petitions, Sec. 137 CPC
  - Principle of Disposition, but: court has to encourage substantive motions, Sec. 139 Para 1 CPC
- The taking of evidence also takes place during the hearing for oral argument (Sessions 8 and 9)

## Main Hearing for oral argument, Sec. 279 CPC (2)





# Summary

- Course of civil court proceedings
- Principle of Orality
- Course of the oral hearing
- Conciliation hearing
- Main hearing for oral argument