UDC: 347.91/.95(439)

CERIF: H240, H300, S130, S149

DOI: 10.51204/HLH_24204A

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REVIVAL OF HUNGARIAN PROCEDURAL TRADITIONS: THE DIVIDED STRUCTURE OF LITIGATION ONE HUNDRED YEARS AGO AND NOW

The study focuses on the question of the current structure of the Hungarian judicial process, the revival of the divided trial. A characteristic feature of the 20th century in the history of Hungarian law was the „lack of legitimacy" for the creation of legal rules. This has led to the revival of past traditions in contemporary codification in an attempt to break with the past half century. The objective of this study is to conduct a historical and comparative analysis of the civil procedural tradition that gave rise to the procedural laws of the civil era, and to consider how these findings correlate with modern legislation. The innovations in Hungarian procedural law can be summarised as follows: firstly, the revival of the „divided" type of procedure; secondly, the transposition of the liberal Western procedural model and the Austrian judicial system. Furthermore, there is a correspondence in important points between the unified summary procedure of 1893 and the divided procedure of 1911, which is one of the subjects of the analysis; also, the 1911 procedure served as a model for the present system.

Keywords: *Revival; Divided Trial; Procedural Law; Hungarian Judicial Process*

1. INTRODUCTION

On the occasion of the one hundred and twelfth anniversary of the promulgation of the Plósz Code of Civil Procedure, the goal of this paper is to pay homage to the Old Code of Civil Procedure and examine the transposition of the divided procedural structure into modern legislation. Act I of 1911 (hereinafter referred to as the RPp.) and its enacting Act LIV of 1912 (hereinafter referred to as the Ppe.) were counted by the progres-

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sive civil lawyers of the time among the most successful pieces of legislation, and, as such, aimed at achieving the fullest possible protection of the individual and the public interest, benefiting the civil justice system even during World War I.[1]

The roots of the current procedural innovations can be found in the process of transposition of Western principles, with the Hungarian oral, public and direct summary procedure playing a unique role in this process. The oral summary procedure, which was already regulated in 1836, provided the legislators of the time with a framework that proved to be adequate for transposing Western principles and split systems into the entire civil procedure. Thus, the summary procedure, as codified by Plósz in Act XVIII of 1893, was used as a „test law"[2] for approximately two decades to enforce the divided structure and Western principles.

The present Code of Civil Procedure is heavily influenced by the tradition of procedural law, therefore it is essential to have a comprehensive understanding of the history of law. Furthermore, the history of litigation must be viewed in a continuous context, as the political, social, and economic circumstances have evolved over time, thus influencing the role of the judge and the parties involved in litigation. There have been instances where the role of the judge has been amplified, and conversely, periods where the parties have exerted significant control over the proceedings. This is a pivotal aspect of civil litigation, namely the relationship between the parties and the court with regard to the merits of the case, the procedural jurisdiction of the parties and the authority of the judge to preside.

During the 19th century, both extremes occurred in Europe, a Western-style liberal litigation model in which the parties dominated the proceedings and the judge had virtually no procedural power to limit the parties' rights of disposal. It is exemplified by the French procedural law of 1806 (Code de procédure civile) and the German procedural law of 1877 (deutsche Zivilprozessordnung, dZPO). In contrast, the Austrian Code of Civil Procedure upheld the principle of investigation, with ex officio evidence being the responsibility of the judge (1895: Franz Klein, the creator of the Austrian Civil Procedure Code (ÖZPO).

The codification processes of Hungarian civil procedure reflect the direction of European legal development, therefore the research also included an analysis of European trends. The aim is to gain a better understanding of the processes and dynamics of litigation by comparing the new and the former civil law practice.

1 Vilmos Szepesváraljai Haendel, „A polgári eljárási jog, főként a Pp. alakulása a csonka országban 1918-tól 1938-ig", *Miskolci jogászélet* 15/1939, 160.

2 Miklós Kengyel: *Magyar polgári eljárásjog*, Osiris Press, Budapest 2014, 59.

2. TRANSPOSITION OF THE AUSTRIAN COURT ORGANISATIONAL SYSTEM

In the decade following the defeat of the War of Independence of 1848-49, the idea of maintaining the Austrian legal system imposed on the Hungarians was the subject of indignation even before the „Assembly of National Judges" held in 1861, since it was already burdensome and unpleasant for the people, not least because it was unwittingly imposed on the nation by foreign „potestas".

Clarifying the organisation of justice in this way was crucial in a country whose political leadership also recognised that its partner country, Austria, and its representatives were not thinking in terms of a personal union, but were striving for unification of the law. To the great detriment of Hungarian citizens, they even allowed themselves to summon and condemn Hungarian respondents in Austrian courts, far from their place of residence, on the grounds of Austrian jurisdiction, based on unconditional reciprocity, because the Hungarian respondents preferred to remain in their place of residence rather than pay the expensive travel costs unnecessarily.[3]

The reforms of the civil legislation aimed at restoring the old conditions officially started in 1860 under the heading of the restoration of Hungarian national continuity. The October Diploma, issued on 20 October 1860, one of the supreme decrees aimed at rebuilding the institutions of Hungarian law, ordered the temporary organisation of Hungarian law, with the prospect of restoring the courts that had been in existence until March 1848. As a result of the Diploma, on 20 January 1861 the members of the Hungarian Supreme Court of Justice were appointed, and on 1 February 1861 the jurisdiction of the Imperial Royal Supreme Court of Vienna over Hungary was abolished, and the „Hungarian Royal Seven-Man Board" began to operate in Pest.[4]

With the approval of the Emperor, a 60-member committee, famously known as the „Assembly of National Judges", was convened on the basis of the nomination of the Lord Chief Justice. The committee met from 23 January to 4 March 1861, and the outcome of their deliberations was the „Provisional Legislative Rules" (hereinafter referred to as: PLR), which were put before the National Assembly in the spring: the House of Representatives accepted them on 22 June 1861, and the House of Lords on 1

3 *Az 1910. évi június hó 21-ére hirdetett országgyűlés képviselőházának naplója*, Volume XXVII, Az Athenaeum Irodalmi és Nyomdai Részvénytársulat Könyvnyomdája, Budapest 1914, 486.

4 Gusztáv Groisz, *Magyar polgári törvénykezési rendtartás. (1868: LIV. törvényczikk.),* Stein János Erdélyi Muz.-Egyleti Könyvárus Bizománya, Kolozsvár 1870, 14.

July. At the same time, they unanimously left in place the relevant thesis that the PLR could be used „as a temporary auxiliary" until new laws were enacted for those legal relationships that the restored Hungarian private law could not be applied to because of „(the abolition of the aviticity) Act XV of 1848 and the newer legal relationships that cannot be overlooked".[5] PLR may have been preserved as customary law because of the premature dissolution of Parliament.

As far as the judiciary was concerned, the provisional rules (PLR §§ 24-29) restored the former Hungarian feudal courts, with the exception of the manorial courts. The new legal system, built partly on the basis of regulations from 1723, was thus regulated by the laws of the German-Roman emperor Charles VI, who reigned as a foreign Habsburg monarch on the Hungarian royal throne under the name of Charles III. Starting with the innovations enacted in 1869, the organisation of the judiciary was reformed by the last decade of the 19th century, and in the process, of course, the „slow, thousand-varied, privilege-asserting tangle of feudal judiciary",[6] that had impeded the development of capitalist and bourgeois society, was abandoned.

The regulation of Act LIV of 1868 on the Code of Civil Procedure (hereinafter referred to as Ptrt.) was basically modelled on the system of the past, but it included innovations in the organisation of civil courts, on the one hand, in comparison with the feudal lower courts restored in 1861, and on the other hand, with respect to the restored higher courts.

Under the Act, all permanent lower courts were, from the date of its enactment, to sit only as courts of first instance, thus enforcing the principle that all courts could only sit as courts of first instance or courts of appeal,[7] with the aim of resolving the legislative chaos of the time.

According to the Ptrt., after 1869, the following ordinary and special subordinate courts of the former feudal courts (not counting the ecclesiastical courts), served exclusively as courts of first instance: in municipalities without a regular council, the municipal 'court'; in free royal and field towns with a regular council, the town „court" (town council, magistrates); in counties, the „district judge" and sedria; the courts of privileged districts (such as Jászkun, Hajdú and Szepes); as separate courts, the so-called „courts of exchange", the courts of fair, and the royal mining courts. From the absolutist era, the courts of lordship were maintained (Art. 25 Ptrt.).

5 Artúr Meszlény (ed.), *Magyar magánjog. Törvények, rendeletek, szokásjog, joggyakorlat, magánjogi törvénykönyv szövegével és rendszerében,* Volume I, *Jogforrások, személyi és családi jog*, Grill Károly Könyvkiadóvállalata, Budapest 1928, 60–61.

6 Lajos Degré, „Jogszolgáltatási szervezet*",* Varga Endre (ed.), *A magyar bírósági szervezet és perjog története*, Levéltárak országos központja, Budapest 1961, 151–153.

7 G. Groisz, 13–14.

Based on the Ptrt., the unity of the Royal High Court of Pest, the Royal Court of Seven Judges and the Royal Court of Bills of Exchange (collectively known as the Curia), was dissolved, resulting in the separation of the central courts. Under the name of the Royal Hungarian Curia, the „seven-man board" continued as a court of third instance, as a supreme court of justice and a court of nullity. The second instance jurisdiction was exercised by the Royal High Court of Pest for the area of jurisdiction (Hungary), which was previously covered by the Royal High Court of Pest, and by the Royal High Court of Târgu Mures for Transylvania, which was previously covered by the Royal Court of Târgu Mures and the General Court of Sibiu. In the year 1870 the separate Royal Court of Bills of Exchange was merged into the Royal High Court of Pest.

The subsequent reform of the ordinary lower courts, which reinstated the „Austrian" courts, was founded upon the tenets set forth in Act IV of 1869. In § 1, the legislature declared the separation of the judiciary from the administration. In § 2 and § 3, it was established that judicial power was to be exercised in the name of the King by judges appointed by the Majesty.

With the preparation of the Austro-Hungarian Compromise, non-interference in domestic affairs was stipulated by both the Austrian and the Hungarian side – and then the exclusion of external actors from Hungarian structures was in principle achieved; as a rule, the sovereignty of the Holy Crown in domestic affairs was not questioned in the dualist state either, but the „proportional" differences were subject to the „more equal than equal" clause, which was mentioned above. Consequently, the need arose, once again after 1848, to establish order in the organisational system of the Hungarian judiciary and administration (counties) on the one hand, and to regulate civil procedure law, on the other.

The Hungarian royal courts were established in accordance with the following fundamental principles: in cases of minor or urgent nature, a single judge should preside over the proceedings; in all other instances, the court should be constituted of a panel of judges; the courts are subject to permanent seats; and the maintenance of judicial forums of legislative authorities as non-royal forums is no longer permitted.[8] The system of organisation of the royal courts of first instance – the royal district courts and the royal courts of law – was thus set up according to the present aspects: the Austrian „Josephine" legislation was reintroduced into Hungarian legislation by the Acts of 1871 (VIII, IX, XXXI, XXXII), Act XXIX of 1890; Act LIX of 1881, and Act XXV of 1890. With the enactment of these laws, the ordinary organisation of the higher courts was also established,

8 General Explanation of Act XXXI of 1871, Points 2–3.

with the creation of the Curia and the establishment of nine additional courts in addition to the two Royal High Courts.

According to § 30 of Act XXXI of 1871, the courts of first instance existing at the time of the order of the Minister of Justice ceased to exist in their former structure, and all the cases had to be transferred to the new courts. The law also settled the rules of jurisdiction in a „simple" way, transferring to the jurisdiction of the royal district courts the civil and extrajudicial functions which, according to the rules, were assigned to the individual courts (namely the district judge, the municipal judge, the district chief judge). (§ 15) In addition, it transferred to the royal tribunals, as courts of general jurisdiction, all those civil and extrajudicial matters which, according to the Ptrt., belonged to the corporate courts of first instance (municipal, town, district, and provincial courts). (§ 18)

The construction of courts of law, which had commenced on a nationwide basis, was initiated in accordance with the Minister of Justice's typical practice of acquiring the premises and buildings necessary for the administration of justice by expropriation. This was done in instances where the premises and buildings were not available free of charge from the municipalities of the tribunals or district courts. The expropriation procedure was regulated by a specific legislative act, namely Chapters V to VIII of the General Expropriation Act (Act LV of 1868).

The legislator's ill-considered, though at the time considered useful, step in civil legislation, according to which all permanent lower courts could only judge as courts of first instance, was partly, although only for summary cases, restored in the field of appellate reforms by the 1893 Act XVIII of 1893 (hereinafter referred to as Se.), after the second instance judgement in summary cases was transferred from the overburdened Royal High Courts to the royal tribunals, as set out in the 1893 Act XVIII of 1893 (hereinafter referred to as Se.). Furthermore, the Rpp transferred the second instance proceedings of all summary procedure to the royal tribunals.

The four-tier Hungarian royal court system, modelled on the Austrian system, was structured as follows: the lower level was occupied by the royal district courts, which were exclusively courts of first instance; also found at the lower level were the royal tribunals, situated one level above the royal district courts and serving the Hungarian civil justice system as courts of mixed jurisdiction. As higher boards, the Royal High Courts were exclusively appellate courts, receiving cases for appeal from the royal tribunals. The Curia was intended to represent the „seven-judge board" already known from the previous structure, as the apex body of Hungarian judiciary.

Thus „transposed", the Austrian organisational system – which also formed the basis of the existing legislative structure – could provide a suitable background for the implementation of civil procedural reforms and serve as a model for the judicial administration in the future.

The current codification of procedural law was also based on the four-tier court organisation, which provided an effective division of the groups of cases between the different levels of the organisation, by means of the rules regarding jurisdiction and competence. The Hungarian legal system is characterised by a strong tradition of a four-tier court system, which was disrupted by historical events following the Second World War.

Finally, the transfer of general jurisdiction to the tribunals is consistent with established procedural traditions. The delegation of general authority to a higher court is common practice in foreign jurisdictions; for example, in Austria, Germany, France and Italy, the higher court has general authority.[9]

3. TRANSPOSITION OF WESTERN LEGAL PRINCIPLES IN THE PROCESS OF CODIFYING PROCEDURAL LAW

The codification of the Hungarian Code of Civil Procedure in the 19th century lasted more than half a century. In 1861, the PLR brought back the old Hungarian procedural law, and the Austrian Code of Civil Procedure was kept in force only for cases that were already pending, in order to ensure continuity of law. Article 174 of Part I of the PLR was already based on the general rule that the lawsuit was to be decided in accordance with the procedural laws that were in force at the time the lawsuit was filed.[10]

Article 43 of the PLR distinguished between three types of procedure: summary, ordinary oral and ordinary written procedure. For the summary procedure, the PLR was based on Act No. 20 of 1836, §§ 2-6 of which categorised the jurisdiction of each forum according to the type of case, depending on whether there was an organised council in the municipality; however, landlords, who regarded themselves as superior, could obviously not act as a forum after 1861. The PLR served the purpose of efficiency and brevity of litigation, for example, by the fact that the judge did not make a separate formal ruling on the rejection of the defendant's defence, but could refer to its inadequacy in the judgment.

9 Detailed Explanation of Art. 20 of Act CXXX of 2016.

10 Ede Külley, „Érvényben van-e még az osztrák polgári perrendtartás?", *Törvényszéki csarnok* 18/1871, 70..

The ordinary oral procedure was approached as a cautious experiment, with the goal of improving the efficiency of litigation in those cases not subject to the accelerated procedure. Under Article 58 of the PLR, however, the defendant could request at the first hearing that the case be transferred to the ordinary written procedure, typically in order to delay the litigation, so the use of the ordinary oral procedure was not universal.

In a case referred to the ordinary written procedure, there were several possible scenarios. If the plaintiff does not file a response, there may be a single exchange of documents (application and „reply"). Alternatively, there may be two exchanges of documents, to be supplemented by the plaintiff's response and the defendant's „reply". Another possibility is that there is one exchange of documents (application and „reply") and one response from the plaintiff, if the court did not invite the defendant to file a reply or invited the defendant but did not file. In accordance with Article 68 of the PLR, a third exchange of documents („final document" and „counter final document") was also conditionally permitted, which led to the designation of the so-called triple exchange model.

The first Hungarian civil procedural code was promulgated as Act LIV of 1868 (Ptrt.), which entered into force on 1 June 1869; it was intended to be temporary, modelling litigation on the „old" court system. Except for the summary oral procedure, the Ptrt. was essentially based on the principle of written procedure and a bound system of evidence, and was more similar to the Austrian Code of Procedure.

Article I of the Decree of the Minister of Justice enacting the Ptrt repealed – by incorporating all provisions into the unified code – in the territory of the Royal High Court of Pest: chapters I-XIV of the PLR (particularly important in this provision on courts, gender of proceedings and transitional measures), Law No. 20 of 1836 and Law No. 11 of 1840 on summary suits; Law No. 15 of 1836 on execution and Law No. 1836 on fairground adjudication, Ptrt. thus incorporating fairground cases.[11] Article III of the decree – in contrast to Article 174 of the PLR – ordered the continuation of the trials pending on 1 June 1869 in accordance with the Ptrt.[12]

The Ptrt. eliminated the ordinary oral procedure and distinguished only two types of procedure: the oral summary and the ordinary written procedure. The threefold system of ordinary proceedings was retained. The oral procedure and practice, which had been regulated in 1836, were incorporated into the summary procedure, the principles of oral and direct procedure were laid down in 1868, and only in the appeal procedure was the written procedure, which had dominated the ordinary procedure,

11 G. Groisz, 19.

12 G. Groisz, 22.

restored. Therefore, the summary procedure was the appropriate field for the development of Western principles and the complete transition.[13] Already in 1868, the judicial reforms had made litigation based on the principles of orality and immediacy the ultimate goal.[14]

Even then, the legal circles of the dualist era, the lawyers' associations, and among them the most prominent in Oradea, Kassa and Budapest, were constantly trying to find ways to explain the then „newly" promulgated first Civil Procedure Code in their own words, preparing at the same time to fill the new judges' posts. The fourth section in Budapest, chaired by Károly Pósfay, discussed the civil proposals to be sent to the Ministry. For example, „in the fifth session, the proposal of the Oradea Lawyers' Association for a system of summaries and without summaries was submitted to Dr. Gyula Schnierer, the bill on 'justices of the peace' to Dr. Ede Környei, the bill on bailiffs to Mr. Gusztáv Deszkás, and the bill on the settlement of first instance courts to Dr. István Apáthy for an opinion."[15] Following this, amendments were proposed in 1871, 1873 and 1874.

In 1877-78, the House of Representatives was presented with two readings of the amendments to the Code of Procedure, both aimed at increasing the importance of the verbal procedure (drafts of the Ministers of Justice Béla Perczel and Tivadar Pauler). The fourth amendment proposal was ready by 1880, but the House of Lords did not even leave the seeds of the verbal: they accepted Pauler's draft, but the verbal was singled out (1881: Act LIX).[16]

In 1880, Bálint Ökrös prepared the fifth proposal, which was based on the principles of verbality, publicity and immediacy.[17] In April of the same year, the House of Representatives, while simultaneously expressing its indignation, demanded (No. 3579 document) that the entirety of the Code of Civil Procedure be amended to include verbality and immediacy.

Dr. Tivadar Pauler, Minister of Justice, entrusted Dr. Kornél Emmer and Dr. Sándor Plósz with the preparation of a Hungarian civil procedure based on the principles of publicity, immediacy and verbality, based on the norms of modern legal states (Swiss – of all cantonal codes of pro-

13 General Explanation of Act XVIII of 1893, Title I.

14 Mihály Herczegh, *Magyar sommás eljárás és fizetési meghagyás. 1893: XVIII. és XIX. Törvényczikkek,*. Franklin Társulat, Budapest 1894, 6–8.

15 „*Titkári jelentés a budapesti ügyvédi egylet 1870. évi működéséről*", Vilmos Siegmund (ed.): Magyar Themis. Egyetemes jogi közlöny. Year 2, No 4., Rudnyánszky A. Könyvnyomdája, Pest 1871, 4–5.

16 Gyula Térfi: „A polgári perrendtartás előkészítő munkálatai", Nándor Baumgarten, Zsigmond Gyomai, Károly Edvi Illés (eds.): *Jogállam, Jog- és Államtudományi Szemle* 1/1902, 308.

17 M. Herczegh, 1–3.

cedure, the best example was the Basel Stadt SchZPO of 1875 – French, Belgian, Frankfurt, German).[18] In 1885, the press published the drafts (the sixth and seventh), from which point onwards unpleasant skirmishes began between the two lawyers, now also before the House of Representatives. With Plósz's proposal, the Hungarian Code of Civil Procedure took the German direction, and by 1885 the entire draft of the Code of Civil Procedure was 'on the table'. Emmer would have brought a French influence, but he did not prepare a complete draft; he mainly worked out some aspects of the evidence part.

However, not even these proposals became law, they remained experimental. Further work was based on the work of Sándor Plósz for the complete reform of litigation. Following the request of Dezső Szilágyi, Minister of Justice, and revising his draft law of 1885, Plósz prepared a new proposal by 1890, this time narrowing it down to summary proceedings, which, with radical amendments, formed the basis of the law on summary proceedings (Se.) promulgated in 1893. The summary procedure was the mediation between the oral and written procedural system towards the RPp., one of the main stages of the transition, and one of the starting points of the procedural reforms. As a special type of procedure, the summary procedure therefore had to be regulated in detail, based on the Western principles that were to be followed in the procedural reform.

Following the revision of the draft law of 1885, Plósz had also submitted to the Minister the draft bill on the Hungarian Code of Civil Procedure by 1893, which, with the exception of the enforcement procedure, regulated the entire civil procedure.[19] And in 1902, as Minister of Justice, Plósz put his life's work before the House of Representatives for discussion, the later Rpp., which included the special procedures in the Code of Procedure, and by which he enforced the verbality, publicity, immediacy, free judicial discretion in the entire Hungarian civil procedure, strengthened the judicial process and eliminated excessive liberalism. The öZPO (österreichische Zivilprozessordnung) of 1895 had a beneficial effect: it offered a reasonable balance with the parties' rights of disposal. Miklós Kengyel, an eminent procedural lawyer, also referred to the öZPO as the best balanced code of civil procedure in Europe. For „litigation is not a battle of the parties"; it is in the interest of the state to find the truth, and the parties and the judge must cooperate in this, and a balance must therefore be found between the parties' right to dispose and the power of the judge. Moreover, the excessive liberality of the dZPO (German Code of Civil Procedure) of 1877 served as a warning to Plósz.

18 *Az 1878. évi október 17-ére hirdetett Országgyűlés Képviselőházának naplója*, Volume XV, Pesti Könyvnyomda-Részvény Társaság, Budapest 1880, 242.

19 *Az 1910. évi junius hó 25-ére hirdetett Országgyűlés Főrendiházának irományai*, Volume III, Pesti Könyvnyomda-Részvény Társaság, Budapest 1911, 204.

The new Code of Procedure entered into force on 1 January 1915, with a delay.

> „The Minister of Justice has paid an old debt and fulfilled an old ambition when he laid the proposal for the Code of Civil Procedure on the table of the House of Representatives on 29 January 1902, and thus gave the legislature the opportunity to replace the provisional and partial rules of procedure with a uniform, lasting, honest and high standard of procedure."[20] (dr. Gyula Térfi)

4. RPP. – AND THE RESTORED DIVIDED TRIAL ORDER

It is hard to ignore the fact that the new Civil Procedure Code, which entered into force on 1 January 2018, begins its general justification by stating that it was drafted with regard to the Hungarian procedural traditions and the latest acquis. If the legislator has decided to draw on Hungarian procedural traditions, it is appropriate to examine the extent to which it has gone back to them.

In terms of regulatory solutions, the legislator has taken into account the structures defined in other European codes of procedural law, in particular the German Code of Civil Procedure (Zivilprozessordnung, ZPO) of 1877, the Austrian Code of Civil Procedure (Zivilprozessordnung, öZPO) of 1895 and the Swiss Federal Code of Civil Procedure (schZPO), which entered into force on 1 January 2011.[21]

The Hungarian procedural law in force, in order to facilitate the enforcement of the party's will, has restored and adapted to the needs of modern times the divided Hungarian system of litigation (4.1.) and the related model of the main trial, which has a history of more than a century, since the law divides the first instance proceedings into two separate sections, both in function and in time (4.2.).

4.1. Main Sections of the New Civil Procedure Code

The new Civil Procedure Code divides the lawsuit into two sections, a preparatory section and a substantive section. However, the proceedings in the first instance, not explicitly stated in law, are nevertheless divided into three sections.

1. Section for initiating a lawsuit – this includes, on the one hand, the presentation of the statement of claim itself; the judicial measures to be tak-

20 G. Térfi, 306.

21 General Explanation of Act CXXX of 2016, Title II, Point 3.

en in connection with the examination of the statement of claim are also part of this section, and, as part of this, the court relates to the defendant the statement of claim that can be examined on its merits and its admisibles.

One of the most important legal concepts in the resolution of civil disputes before the courts is the right to sue. In line with international documents and the provisions of the Hungarian Fundamental Law on the right to bring an action, the innovative concept adopted by the Government on 14 January 2015 following Government Decision 1267/2013 (17 May 2013) prompted the legislator to modernise the terms and definitions related to the commencement of proceedings with the new Code of Civil Procedure (hereinafter referred to as Cp.), introduced by Act CXXX of 2016. The Cp. entered into force on 1 January 2018, replacing Act III of 1952 on the Code of Civil Procedure (hereinafter referred to as the old Cp.), one of the leading laws of the 1950s.

By adapting the legal framework to the new needs of society (cf. Act V of 2013) and to the new legal practices, the Act represents a significant step towards the modernisation of the Hungarian civil procedure. The purpose of the changes introduced by the codification is clear: to ensure that both the court and the parties have all the information necessary to ensure that civil disputes can be dealt with professionally and in a short time, thereby increasing the speed and efficiency of justice.

The statement of claim is the basis of the proceedings. The Cp. therefore imposes strict formalistic conditions on the content of this kind of special application, also because the court must first of all be familiar with the specific relief sought, the right sought to be enforced and the relevant facts and data in order to decide whether to refer, reject, rectify or admit the application.

It was similar in the RPp. system. However, the statement of claim, as the „writ of summons", was used to prepare the case for the main hearing, since all preparatory acts were focused on the trial. Therefore, if the statement of claim lacked an essential legal requirement, such as the designation of the court and the parties and/or the presentation of the action capable of being brought, and the plaintiff did not remedy the deficiencies even if the claim was posted for correction, the court would reject the claim before sending the statement of claim and the writ of summons to the defendant; and the existence of a circumstance preventing the action from being brought also led to the rejection of the writ of summons (§ 180.), the existence of which the court was otherwise obliged to take into account of its own motion[22] when deciding on the application in order to ensure that the summons was effective.

22 Tihamér Fabinyi, *A polgári perrendtartás törvénye és joggyakorlata. 1911:I. t.-c., 1912:LIV. t.-c., 1925:VIII. t.-c. és 1930:XXXIV. t.-c.,* Volume I, Grill Károly Könyvkiadóvállalata, Budapest 1931, 238.

2. The first section of the proceedings is followed by the „trial admission" section; in this context it is the second stage, while in the split system it is the first stage if there is a defence by the defendant. Otherwise, in the absence of a defendant's defence, there is no trial, because there is no contradiction between the parties, so that the proceedings remain between the court and the plaintiff, and before the court has even begun to examine the merits of the action, that is to say, before the proceedings have become a lawsuit, the court will issue an order for the defendant to be held in contempt. If there is a defence, with which the defendant will object and the framework of the dispute has been precisely defined – the plaintiff's side of the action has been clarified, the defendant's side of the defence has been clarified and the case is now also clear before the court, the facts alleged by the plaintiff and disputed by the defendant, the means by which the plaintiff intends to prove the facts alleged and the means by which the defendant intends to defend himself – the court will conclude this stage by way of an order. The consequence of this is that a caesura is established, which separates the trial from the third (and, in this respect, directly from the second) and final stage of the proceedings at first instance.

In contrast to the Plósz Code of Procedure, the concept of the Cp. places the emphasis on the „trial admission" phase. This is due to the fact that the concentrated procedure and the negotiation principle as procedural principles require the parties to fix the framework of the substantive hearing with the court's intervention in this phase, rectifying the trial documents if necessary. The opening of proceedings is not merely the reading out of the plaintiff's claim and the defendant's defence; it also establishes the structure of the case. The defendant did not have to state reasons for his counterclaim then and does not have to do so now, but even then the legislator insisted on a high degree of formality, requiring that the defendant at least attach his defence, with which he objected to the claim, to the trial record.

3. The second and final stage of the first instance procedure in a split trial is the so-called „main hearing", i.e. the substantive trial, where the court incorporates the evidence requested in the evidence already submitted, as a rule, and always ends with a decision. The „main trial" was already prepared during the trial admission phase, when the framework of the dispute was drawn up.

However, in the RPp. system, the actual preparation of the main hearing took place during the „interlocutory period"; the parties would exchange preparatory documents, communicating the documents subsequently to the court (§ 200), and the court would act accordingly (§ 204). The interlocutory period in this respect was the period between the publi-

cation of the order setting the deadline for the main hearing and its communication to the defendant, and the deadline for the main hearing itself. The preparatory documents were similar to the pleadings in that they also allowed the parties to include statements of fact, evidence, motions, references to law and requests, in the shortest possible form and in a limited number of copies.

The focus was on the substantive oral trials, with all preparations concentrated on the single oral negotiation and its success. The parties were free to present their facts orally and to amend them orally, to make a motion for evidence and to present their evidence at the hearing until the main hearing was closed. The RPp sanctioned a party's tactics only to the extent that a party who, by submitting arguments which the court was convinced could have been asserted earlier, gave rise to a postponement of the trial, had to be ordered to pay the costs incurred by the court even if they were ultimately successful in the litigation (§ 221).

4.2. 'Preparatory Submissions' (Comparative Study)

In this respect, the new Cp., modelled on the Rpp., models the general rules on tribunal proceedings. The regulations pertaining to proceedings in both the court and district courts are consistent. In instances where a rule is not applicable or is applied in a different manner in the district court, the relevant reference is highlighted in the legislation.[23] In the tribunal cases, the written system predominates in cases where professional litigation requires legal representation, and the legal representative must file the statement of claim electronically, which is also provided for in the Civil Procedure Code, and the rules of Act CCXXII of 2015 (hereinafter referred to as: e-Administration Act) must be complied with. In comparison, the district court procedure is a simplified procedure, because the party may proceed before the district court without a legal representative – the verbality is more emphasised, but, for the sake of litigation efficiency, the law provides that certain statements in the litigation may be made on a form, so it is worthwhile to do so.

According to the Plósz Pp., the simplest, „petty" proceedings[24], according to the classification by value, were in the first instance before the municipal court as an alternative. The proceedings before the royal district court were somewhat more complex than this, and there was also the procedure before the royal tribunal as a court of first instance. As today,

23 Bence Bartha, *A tárgyalási szerkezet változásainak hatásai a polgári perben,* Közjegyzői Akadémiai Kiadó, Budapest 2022, 122–125.

24 Tamás Antal: *A Magyar Királyi Igazságügyminisztérium története (1867–1944/45).* Iurisperitus Kiadó, Szeged 2022, 69–70.

the plaintiff could state his claim on the record before the district court (RPp. § 135, Cp. § 246).

Procedural declarations in preparation for the main trial on the merits under the Cp. basically show a dichotomy: on the one hand, a statement of claim, which is the document instituting the proceedings, is needed to start the engine of the proceedings, and on the other hand, there are pleadings, which come mostly from the defendant's side. The first of the latter must be a written statement of defence reflecting the statement of claim; other documents that may be included in the document instituting the proceedings are the counterclaim (in the counterclaim letter), the compensation (in the compensation document) and, in the case of the documents instituting the proceedings, which are already bilateral and presuppose at least one exchange of documents between the parties, the response and the „rejoinder" (Art. 7), preparatory documents. This category of document is strictly regulated by the Cp., since it is conceivable that, if the court decides not to hold a hearing in the trial admission section and neither of the parties request a „pre-hearing", the details of the dispute may be clarified before the court on the basis of these pleadings. This is why the first two stages of the proceedings (the initiating of proceedings and the trial admission) are fully litigated in a written and formalistic manner, to the detriment of the oral statements, and why there are detailed rules on the content and formality of the documents that may be submitted at each specific stage of the proceedings.

In comparison, under the RPp, the procedure was focused on the oral hearing, so the court could only strictly take into account what the parties orally presented at the hearing, and the court had to exhaust the orally presented strong claim in the judgment. In practice, this could not be otherwise. A significant difference with the existing procedural law is that the defendant presented his defence orally at the first hearing, during the trial admission phase. What was said at the hearing was generally recorded;[25] however, in order to avoid the risk that the careful recording of trials might reinforce the written form and compromise the advantages of the oral proceedings,[26] subsequent legislatures have also tended to require that the facts of the case be recorded in the judgment. Going even further, in the district court proceedings, the court could also refer in its judgment to facts revealed by the parties' submissions and the evidence taken which were not included in the record of the proceedings (§ 246).[27] This was, in fact, the purpose of the trial model envisaged in the current

25 István Csanády, „Törvényjavaslat a sommás eljárásról", *A Jog*, Year 12, No. 20., Budapest 1893, 153.

26 Detailed Explanation of Arts 42–44 of Act XVIII of 1893.

27 T. Fabinyi, 234.

Code of Procedure, whereby the court would decide the case on the basis of a single main hearing, in order to avoid unnecessary delays and the loss of any detail.

All the preparatory documents for the main hearing were therefore purely for the information of the parties and the court.[28] The parties were not bound by the contents of the preparatory documents, which could be taken into account in deciding the case only to the extent that they were verbally presented at the hearing (§ 203.);[29] therefore, the court could not decide on the basis of the documents, but only on the basis of what was said at the oral trial. However, the RPp. required the parties, in the first instance, to duly prepare for the oral hearing not only with the goal of informing each other but also to inform the court,[30] by „depositing" the preparatory documents and their annexes in the court office before the oral hearing, but immediately after the communication, for attachment to the court file.[31]

The aim was not only to prepare the parties for the trial, but also to allow the court to prepare for it. However, the use to which the preparatory documents should be put remained undecided. The RPp. did not specify in concrete terms whether the preparatory documents could be used or whether the court had to be familiar with their contents at all. Contrary to this, the referred Swiss Code of Procedure required that all members of the council must be aware of the documents[32] – which is reflected in our current procedural law by the fact that, in the event of a change in the composition of the council, the president must describe all preparatory documents.

The fact that the usability of the documents was not concretised can in principle be explained by the fact that the trial in the hands of the court, concentrated on the oral hearing and mixed with the written proceedings, could only be suitable for solving the judicial tasks in a satisfying manner if the procedure and the procedural law were truly elastic and flexible.[33] In other words, there is a formal and material „litigation framework" for the judge, within which it was left to the parties to decide how to shape the proceedings, how to make them their own – for example, when to present the facts. Accordingly, in the plaintiff's statement of claim – which was some-

28 „Lecture by József Pap", Károly Szladits (ed.), *Magyar Jogászegyleti értekezések,* Volume 24, Booklets 201–205, Budapest 1902, 203–205.

29 M. Herczegh, 77.

30 József Papp, „Az uj polgári perrendtartásról", *Jogállam* 8/1907, 630.

31 Detailed Explanation of Article 200 of Law I of 1911.

32 T. Fabinyi, 232.

33 Béla Richter, „A polgári per elaszticitása", *Magyar Jogi Szemle*, Year XX, Budapest 1939, 196.

what similar to a request for summons at the time, seeing how the court would schedule a hearing as soon as it was received – the plaintiff only had to state the right sought to be enforced and the relevant request, and the facts only had to be provided in the statement of claim to the extent that the right sought to be enforced could in fact be separated from all other rights, in order to enable the court to deal with the essence of the matter.[34]

An important difference, as already explained, is that the defendant was summoned to the hearing by receiving the statement of claim and a summons issued by the court, which meant that the defendant did not have to argue in the preparatory document, but had to read out his defence orally at the hearing.

By contrast, according to the Cp., the court does not summon the defendant and set the first hearing on the agenda at the same time as the statement of claim, but may do so at the earliest after the written statement of defence has been filed, because this way the proceedings become bilateral, creating a contradiction in the relationship between the parties.[35] Thus, while under the Plósz Code of Civil Procedure the lawsuit was founded at the first hearing by the parties orally presenting their claims before the court, the current procedural law requires that the dispute be known before the court at the first hearing and that all facts and evidence be available at such a time that the dispute can be decided within a single hearing date (concentration of proceedings).

In comparison, under the Plósz Code of Civil Procedure, the lawsuit itself was first established with the trial admission phase; the written preparation for the main trial on the merits then needed to concentrate only on the statements of facts, evidence, motions for evidence, and other motions, since at the time of the establishment of the lawsuit, i.e. at the trial admission phase, the judge was in principle already aware of the right to be asserted and the definite request, and it was unnecessary to clarify it again.

However, the court could also do what had become typical in the proceedings before the royal district courts, i.e. it could dispense with written preparation if the interval between the commencement of the proceedings and the deadline for the hearing on the merits was less than fifteen days, and it was also relevant, of course, when the hearing on the merits took place after the pre-hearing (195. §).

The Cp. also sets a more binding structure for the presentation of the documents in the proceedings, and the court is bound by their content.

34 Géza Magyary, *Magyar polgári perjog,* Franklin-Társulat, Budapest 1913, 476.

35 Zsuzsa Wopera (ed.), *Kommentár a polgári perrendtartásról szóló 2016. évi CXXX. törvényhez.* Magyar Közlöny Lap- és Könyvkiadó Kft., Budapest 2017, 368.

Such documents that precede the main hearing are considered as „admission statements" of the case, and, as a rule, can only be submitted at the trial admission stage of the divided procedure (§ 183). In other words, statements of fact must in principle be made in the opening phase of the proceedings; once the opening phase of the proceedings has been completed and the trial admission has been concluded, it is no longer possible, as a general rule, to make new statements of fact or to change previous statements of fact in the substantive phase of the proceedings, irrespective of the fact that this will no longer constitute a change of claim from 1 January 2021 – in accordance with the Rpp. However, there may of course be cases where it is reasonable to allow the parties to amend facts already established during the trial on the merits – if the party, through no fault of their own, became aware of a fact after the order closing the proceedings was made, or if the fact itself occurred after the order closing the proceedings was made, or if the fact that the party wishes to allege becomes relevant to the outcome of the proceedings in view of another fact that has come to their knowledge or subsequently arose.

Similarly, statements of evidence are also „admission statements". Art. 183 (1) states that an admission statement is a statement concerning the provision of evidence or the presentation of a motion for the production of evidence and a statement concerning the assessment of the opposing party's motion for the production of evidence. These statements are also recorded at the conclusion of the pre-hearing and, as a general rule, no further motion for evidence may be adduced during the substantive phase of the hearing, contrary to the RPp.

However, with regard to the statements of evidence, it should be noted that the statement of claim was not only a writ of summons[36] and a preparatory document for the institution of proceedings, but was also intended to prepare the substantive hearing. In other words, the obligation of the party to prepare for the main trial has also resulted in case law where the evidence and motions in support of the claim must be submitted in the statement of claim.[37] Especially before the royal district courts, it could happen that the court summoned the opposing party not only for the pre-trial, but also for the main hearing, which meant that the caesura was not fully respected (Rpp. § 142).[38] And if the claimant failed to produce the material and was therefore not allowed to proceed to the main hearing, he was ordered to pay the costs caused by his failure (§ 179, § 203.)

36 Imre Borsitzky, „A tárgyalási elnök jogköre a polgári perrendtartásban. [1.r.]", *Jogállam* 1–2/1915, 84.

37 Marczel Kovács, „A polgári törvénykönyv törvényjavaslata", *Jogállam* 6/1915, 436–437.

38 T. Fabinyi, 304.

It is clear from the above that under the RPp. system, caesura was only applied in the tribunal procedure. In the current procedural law, however, as a general rule, the sections cannot overlap, even in the simplified district court procedure, and there can be no question of changing the pleadings in the main hearing section.

5. BRIEF CONCLUSION

By studying this short article, the reader will have gained a general, descriptive – but, nevertheless, comprehensive view, which traces the historical framework of the current Code of Civil Procedure from the October Diploma of 1860 onwards, while at the same time outlining the main stages of the modern Hungarian judicial system and the codification of the civil procedure law.

The revolutionary events of the 19th century transformed Hungary from a traditional feudal state into a parliamentary state, a constitutional monarchy. And the symbolic power of civil transformation is extremely strong – it symbolises the Reform Era, the struggle for freedom, the Austro-Hungarian Compromise and the transformation, modernising Hungary. The process of civilisation necessarily involved the reform of organisation and legal rules, which together formed the fascinating experience through which the modern bourgeois Hungarian nation was born.

The modernisation process began with the introduction of Western legal principles and split systems into the Hungarian Civil Procedure Code. The reform of the civil procedure law, which began in 1869, culminated in the establishment of a four-tier court system of the Western type, finally abandoning the feudal courts, which constantly hindered the implementation of reforms. The transplantation of the Western organisation and established legal practice of foreign countries such as Austria, Germany, Italy and France was in line with the model of general jurisdiction in the courts, while at the same time placing strong emphasis on the consideration that the Tribunals, rather than the District Courts, should be the courts of first instance with general jurisdiction, in addition to the Royal High Courts, which were exclusively courts of appeal. It was important to emphasise this point, if only because in Hungarian jurisprudence the Tribunals, which functioned exclusively as royal courts of first instance, did not function as mixed appellate courts in civil cases until the 1890s, and therefore all district court cases were appealed to the Royal High Courts of Appeal and not to the Tribunals.

However, the Hungarian legislators' strategy was that only reforms at the lowest level could lead to a breakthrough in practical achievements.

They were right. The results of the presented codification drafts, which always emphasised the importance of the full implementation of the principles of verbality, publicity and immediacy, were concentrated in 1893 in the development of a complete regulation of the summary procedure. The summary procedure, under the jurisdiction of the District Court, was in every respect suitable for the implementation of Western legal principles and practice. The implementation of the main principles of procedural law – equality before the law, equality of arms, the principle of trial, the free system of evidence, publicity, verbality, immediacy, the unity of the trial – continued with the regulation of the summary procedure in 1893 and the unification of the higher courts based on the work of Plósz.

For almost two decades, a procedural structure that would correspond to a four-tier organisation was attempted at the lowest levels. In civil matters, the appellate jurisdiction was now vested in the Tribunals, which gradually became familiar with, and in some respects conjoined with, modern legal principles. And the methodology acquired by the Tribunals was channeled through the appellate system to the Royal High Courts – in this way, at the lowest level, the summary procedure was the vehicle for Western reforms.

The Se. as a „test law" and the later Rpp. regulation based on it – as components of Plósz's codification work – were also aimed at the implementation of perconcentration in accordance with the principles of the Enlightenment. In the summary structure (1893), the first-instance proceedings were still divided into only two stages: (1) the stage of filing the action, (2) the stage of a unified substantive trial; but already at this point all preparations were concentrated on the unified trial, and it was therefore necessary to attach to the statement of claim all the exhibits and motions that could be viewed, if possible. And the concept of the unified oral trial formed the basis of the split structure of 1911 (the main trial model). Although in both systems the trial was a unified whole, in the split order, for reasons of concentration, Plósz not only divided the first-instance procedure into two elements, but also provided for three stages for a rapid trial: the „initiation of a lawsuit", the „trial admission" and the substantive (evidence) stage, the latter two being separated by the „caesura".

The rich history of Hungarian civil procedure law also includes the transition from the old civil procedure code to the modern system, as the divided procedural structure is once again found at the basis of the Hungarian procedural structure with the introduction of the current civil procedure code. Looking at the historical roots of Hungarian civil procedural law and the development of procedural principles, it can be seen that the current legal framework has been shaped by a combination of traditional Hungarian practices and contemporary European legal norms. The differ-

ences between the Rpp. and the existing procedural law are thus, as a brief conclusion of the thesis, most conspicuously reflected in 1. the „trial-caesura", 2. the principles, 3. the content of the statement of claim, and 4. the jurisdiction of a judge.

1. In the new Cp., the parties are given the opportunity to present their arguments and requests in the form of statements of case during the „trial admission" stage. As a general rule, the parties may no longer amend their statements of case after the order closing the proceedings has been issued. Emphasis is placed on the „trial admission" because the principle of concentrated procedure and the principle of trial require the parties to set the framework for the substantive hearing through the admission of pleadings, supported by the intervention of the court at this stage.

2. In the tribunal procedure, the written form prevails: professional trial requires that the legal representative submit the statement of claim electronically, observing the rules of the Cp. and the e-Administration Act. With the entry into force of the new Cp., electronic correspondence with the court has become widely used due to its mandatory nature, in addition to the traditional paper filing of actions, either by parties acting through a legal representative or by businesses. The Cp. contains a separate chapter on electronic communication, which, in accordance with the e-Administration Act, contains special provisions that are necessary due to its specific nature; in view of this, the legislator did not intend to introduce a separate procedure depending on whether the communication in the given proceedings is made by paper or electronic means.

In comparison, the District Court procedure is a simplified procedure, with a greater emphasis on the verbal, but, for the sake of efficiency, the law provides that the statement of claim and certain statements of case may be made on a form.

3. In accordance with the Plósz „two-part" concept of the claim (the petition and the statement of facts must be consistent as to the ascertainability of the right), the district judge „invented" the „alleged" right based on the plaintiff's pleading. The new rules provide for a „three-part" concept of the claim (the pleading must contain the petition, the statement of claim and the statement of facts) and strict formalism.[39] The statement of the claim forms the basis of the whole procedure. Hence, the most important thing is to be able to start the proceedings in accordance with the statutory criteria, and in this context it is essential that the person representing the party is able to draft a professional statement of claim, since the formalism of the new law may result in a procedure of proof in the

39 Zita Pákozdi, „A perindítás és a keresetlevél szabályai az új Pp.-ben", *Jogtudományi közlöny* 7–8/2017, 345–350.

case which reveals that the plaintiff has a claim against the defendant, but has asserted the right in a wrong way, and has understood it to mean a different right.

4. The trial is managed by the judge in a scheduled way.[40] The new Cp., however, maintained the investigative principle, but only in a very narrow context. The court can only really decide the dispute, can only really make a just decision on the basis of the relevant substantive law, if it has the full facts of the case and can only ascertain the „material" truth. This is what must always be sought, although it is an impossible task for the judge to find out exactly what happened between the parties. Therefore, in the process of ascertaining the procedural – not the „material" – truth,[41] the tribunal must bring to the attention of the parties the right to be heard, the right to a fair trial, equality of arms, equality before the law, must conduct the proceedings in accordance with the rules of the tribunal and must, as far as possible, on the basis of the motions of the parties, investigate the facts in accordance with the right of the parties to be heard. Procedural justice is the result of a fair and just proceeding conducted in accordance with procedural law and principles.

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Анет ЂЕРИ*

ОЖИВЉАВАЊЕ ПРОЦЕСНИХ ТРАДИЦИЈА У МАЂАРСКОЈ: ПОДЕЉЕНА СТРУКТУРА ЛИТИГАЦИЈЕ, ПРЕ СТО ГОДИНА И ДАНАС

Сажетак

Рад се бави тренутном структуром мађарског судског поступка, то јест поновним увођењем подељеног суђења. Карактеристика која је обележила двадесети век у историји мађарског права била је „недостатак легитимитета" за стварање правних правила. Ово је довело до враћања прошлим традицијама и њиховом препороду у савременом законодавству у покушају да се њиме замени нежељено стање настало у другој пословини двадесетог века. Циљ ове студије је историјска и компаративна анализа грађанске процесне традиције која је утицала на доношење процесних закона Мађарске из грађанског доба, као и разматрање утицаја који су процесни закони из грађанског периода имали на савремено процесно законодавство Мађарске. Сумарно гледано у мађарском процесном праву могу се приметити два новитета: први, оживљавање „подељеног" типа поступка и други, транспозиција либералног западног процесног модела и аустријског судског система. Аутор истиче да постоји подударност у важним тачкама између јединственог сажетог поступка према прописима из 1893. и подељеног поступка према прописима из 1911. године, који је један од главних предмета анализе. Рад такође указује да су процесни прописи из 1911. послужили је као модел за садашње законодавство.

Кључне речи: *Подељени поступак, Процесно право, Мађарски судски поступак*

Рад приспео / Paper received: 12. 8. 2024.
Прихваћен за објављивање / Accepted for publication: 15. 9. 2024.

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