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The effects of modifying the structure of the civil trial

(PhD thesis' main statements)

Prepared by: dr. Bence Bartha

Supervisor: Dr. habil. Sándor Udvary

Károli Gáspár University of the Reformed Church in Hungary
Postgraduate Doctoral School of Law and Political Sciences
Head of the Postgraduate Doctoral School: Prof. Dr. Éva Jakab university professor, CSc, MTA
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Table of content

I. Defining the frame of the research 3

II. The foundation of the scope 5

III. The theses of the research 8

IV. The methodology of the research 9

V. Sources of research work 11

VI. Short summary of academic results 13

VII. List of publications 16

VII.1 Publications in connection with the disseration 16

VII.2 Further publications 17

I. Defining the frame of the research

The actuality, the reason and the frame of the research is determined by the new Hungarian civil procedure code, the Act CXXX of 2016 on the Code of Civil Procedure (Pp.) and its new structure of trial and its new regulations related to the first instance court procedure. Adopting a new civil procedure code is a highly significant event in the legal history of any country.[1] At the time of this legislation the whole society faces new challenges, and the court's duties are growing. For the justice system is not easy to leave behind the old-fashioned habits and mindset furthermore apply and adopt the new regulations.[2]

In 2013 the Government adopted the Government Decision No. 1267/2013 (V. 17.) on the codification of the civil procedure (Decision). In this Decision the Government summarized the necessity and the aim of the codification as follows: The Government order the overall modernization of the civil procedural law including the old civil procedure code, the Act III of 1952 on the Code of Civil Procedure (1952-es Pp.). The direct aim is to create a new, up-to-dated civil procedure code which relies on the achievements of jurisdiction and court practice, and meets the expectation and practice of international practices, and which efficiently ensures the assertion of substantive laws.

The further aims are that the new civil procedural code facilitate the situation of the citizens and the professionals thereby being regulated transparently, coherently and technically advanced and relies on the results of the jurisprudence and the court practice. *From the content of the Decision the structure and the subject of the dissertation derivable.*

The I. Chapter utilize the *result of the jurisprudence,* thereby define the academic terminology, the matter, and the role of the civil trial. During this examination the dissertation clarifies the general terminology of the civil trial, its matter and the function of it. In addition to this, based on the Hungarian legal terminology demarcates the different structures of the civil trial. This gives sufficient theoretical bases to the further examined concrete provisions of any civil procedural code.

The II. Chapter deals with the so-called *main hearing model* and its presence in some particular Nordic country as Norway, Sweden, and Finland, moreover with the model rules of the

[1] László Pribula: A rendelkezési elv az új polgári perrendtartásban. In: Gyula Balázs Csáki- Hatalovics – Krisztián Szabó (szerk.): *Eljárásjogi kodifikáció – nemzetközi hatások*. Budapest, Patrocinium, 2018. 25.
László Pribula further explains his idea as follows: No matter how thorough and detailed substantive law exist, without proper and well functioned, tradition respecting, but modern procedural law. In the absence of this procedural law the citizens cannot enforce their claims effectively and efficiently.

[2] Csaba Virág: Az új polgári perrendtartás alkalmazásának kihívásai. Bírói attitűdök a perrend egyes új jogintézményeivel kapcsolatban. *Bírósági Szemle*, 2021/1. 14.

Principles of Transnational Civil Procedure. This examination serves the international aspect related to the Decision.

The aim of the III. Chapter is to revive the Hungarian *civil procedural traditions,* which was a significant manner in the codification[3], herewith the dissertation uses the results of the jurisprudence in aforetime. At this point it is necessary to underline that the dissertation dedicates essential role to the historical background. It is sorely needed to understand the legislation in nowadays.

This retrospection is launched with the first modern Hungarian civil procedure code, Act I of 1911 on the Code of Civil Procedure (Tc.) based on the idea of Sándor Plósz. The examination prior to the Tc. due to the significant difference in temporal and principal manner is not relevant. Along with that some provisions of the Act LIV of 1868 the Code of Civil Procedure (Ptr.) and its legal literature will be presented.

The IV. Chapter deals with the 1952-es Pp. Under the effect of this code the first instance procedure went through some serious amendments which will be explained. This also serves the examination of the historical background and the academic aspect of the dissertation derived from the Decision. Although, in the 1950s the structural changes were opposite to the changes in nowadays, nonetheless the reasons of the modification were appeared at that time are gives a fundamental bases to the examination of the new civil procedure code. Additionally, adopting the Pp. was a reaction to the anomaly of the earlier regulation (1952-es Pp).

The V. Chapter deals with the circumstances of the newly adopted Pp., and its provisions in detail to the full spectrum of the codification. This examination divided into two parts, first process some alternative argue, second the final text of the code and its legal literature. The explanation of the splitting also takes place in the Chapter.

Summarizing the mentioned above, the fundamental aim of the dissertation is *to process and analyse the structure of the civil trial in the applicable code,* identify its theoretical foundations and practical experiences. The legal literature based on the new code (Pp.) is just evolving. Concerning to the year of 2013 which was the start point of the codification gives sufficient literature to the examination nevertheless the literature is not processed the full spectrum of the provisions related to the first instance court procedure.

In a wider sense the aim of the dissertation is to *settle the Pp*. as the latest legislation in the procedural law, its principles, and its provisions in detail in the Hungarian procedural law history. Furthermore, to compare with some similar foreign procedural codes.

[3] Vö.: Zsuzsa Wopera: Az új polgári perrendtartás elvi alapjai. *Jogtudományi Közlöny*, 2017/4. 153-161.

The topics hereinafter will not be discussed. The aim of the civil procedure, the evidentiary procedure. In general, the benefits and disadvantages of any structure of trial. Furthermore, among the provisions of the 1952-es Pp. the "small claim procedures" and the "high profile actions" also not being examined.

Last but not least it is required to note that the numerous and serious new provisions in the Pp. make a whole new and complex package, thereby it is difficult to establish what effects caused directly by the modification of the structure and what effects caused by other indirect re-regulated provisions.

II. The foundation of the scope

According to Jenő Bacsó the relevance of the jurisprudence just like the court practice related to the procedural law is equal as in other territory of the law, since the duty of the jurisprudence is to establish the legal institutions, to state the deficiencies or irregularities. By this function the jurisprudence is able to lead the judges and the legislator.[4] Adding to this idea this duty has a special significance when a new procedural code enters into force. Especially, if the new code introduces new terminology or the formerly used terminology reinterpreted by it.

In this term the jurisprudence operates with a few in number of articles, studies, commentaries created by the authors who participated in the legislation as experts.

Among these circumstances the dissertation elaborates the key element of the first instance court procedure, primarily along the Hungarian terminology. Through these, *examines the structure of the civil trial in the modern Hungarian procedural codes.* By this outlines the real structure of the trial in the new and applicable procedural code, over and above its historical background. The relevance of the historical aspect phrased by László Gáspárdy is the following: "the ongoing condition of the procedural law cannot be valuated properly and the direction of the developments cannot be pointed without counts some historical aspects."[5] By this also can be seen that different societies created different procedural regulations.[6]

In the dissertation the procedural structure (in Hungarian: *eljárási szerkezet)* and the structure of the civil trial *(in Hungarian: tárgyalási szerkezet)* terminologies are approached from two sides. First, related to the procedural structure the technical segmentation used by the procedural codes, like the chapters, titles, paragraphs of them, and their effects on each other, further within

[4] Jenő Bacsó: *Tudományos Perjog*. Debrecen, Stúdium Könyvkiadó Rt., 1937.
[5] László Gáspárdy: Polgári perjogunk az V. Novella után. *Bírák Lapja*, 1993/1. 59.
[6] Tamás Éless – Zsolt Farkas: A polgári perről a tárgyalási elv megközelítésének változásai tükrében. *Magyar Jog*, 2010/1. 1.

these chapters and titles which are the relevant procedural acts, and which chapter contains them will be discussed. Related to the structure of the trial the segmentation of the trial phase and its procedural acts and the relation among them will be discussed.

This is summarized by Jenő Szilbereky as follows: "The structure of the procedure means that what sort of section, parts, stages or phases constitute it."[7] Using the theory of Géza Magyary the dissertation examines the civil procedure as split into pieces, and after put it together. The dissertation is going to examine how different ways can be put these pieces together, this is what called the structure of the procedure."[8] This structural segmentation end examination named by Ferenc Bacsó as the *dynamics of the structural question*, besides the statics question of the structure which is the relation between the parties and the judge.[9]

Second, related to the procedural structure and the structure of the trial the theoretical segmentation used by the jurisprudence will be discussed. Mihály Herczegh in 1871 in his book on the basis of the Ptr.'s provisions segmented the procedure into three phases: preparatory phase (in Hungarian: *fölszerelési)*, phase of the resolution, the phase of the execution. In the view of the dissertation the first phase is the most relevant. In this phase the parties must present their claims and defences. Upon these statements and the material of the hearing the court will be able to settle the case.[10] Another book, published in 1882, he changed the terminology of the first phase from the preparatory phase (in Hungarian: *fölszerelési)* to the hearing phase (in Hungarian: *tárgyalási)*.[11]

Sándor Plósz based on the Tc., marked with his name segmented the procedure into two main phases, first the preparatory hearing phase, second the main hearing phase. But before these two phases there are the statement of claim and the summon of the defendant.[12]

Going forward in the analysis, according to Imre Szabó the procedure itself consists of the first instance court procedure, which includes the presentation of the statement of claim, preparation for the trial, and the trial. These followed by the ordinary and extraordinary legal remedies in front of the higher courts, where holding a trial is optional.[13]

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[7] Jenő Szilbereky: *A polgári eljárás funkciója és hatékonysága*. Budapest, Közigazgatási és Jogi Könyvkiadó, 1977. 235.

[8] Géza Magyary: *A magyar polgári peres eljárás alaptanai*. Budapest, Franklin Társulat, 1898. 22. és 94.

[9] Ferenc Bacsó: A polgári per szerkezete. In: *A magyar polgári perjog főbb kérdései*. Budapest, Jogi- és Államigazgatási Könyv és Folyóiratkiadó, 1953. 44.

[10] Mihály Herczegh*: Magyar törvénykezési rendtartás*. Pest, Heckenast Gusztáv, 1871. 276.

[11] Mihály Herczegh*: Magyar törvénykezési rendtartás*. 1. köt., 2. kiad., Budapest, Franklin Társulat, 1882. 112.

[12] Sándor Plósz: A polgári per szerkezete az uj perrendtartásban. In: *Plósz Sándor Összegyűjtött dolgozatai*. Budapest, Magyar Tudományos Akadémia, 1927. 118.

[13] Imre Szabó: A tárgyalás és határozatok. In: András Osztovits (szerk.): *Polgári eljárásjog I. – A Polgári per általános szabályai*. Budapest, HVG-Orac, 2013. 236.

The dissertation also uses the theory of Tamás Éless, who in 2013 marked the fundamental structure of the civil procedure as follows: it begins with lodging the statement of claim, the court decides if it is acceptable, after delivers the statement of claim to the defendant and sets the legal effects of bringing the action or rejects it. Thereafter, the defendant presents his own statement regarding the statement of claim. After all, the court gets into the position where it is able to brief the parties of the relevant facts shall be proved.[14] Amend this theory after these duties going forward in the procedure it takes place the evidentiary procedure and the court decision, finally the optional legal remedies. This theory created by Tamás Éless, is fits all kind of civil procedure. It is considered as a *basic or fundamental structure of the civil procedure*. The legislator during a codification needed to improve this to create the final and detailed structure of the code.

In addition to the above mentioned and the further research it is required to illustrate the structure of the civil procedure with two metaphors. These visualizations considered as a fundamental element of the research and the approach of the inquiry. First, the theory of Gergely Czoboly, who described the jurisdiction as a *domino*. This metaphor is also adequate to the structure of the civil procedure. In case of the legislator vary one piece of the system it affects the rest of the structural elements. Further, only one malicious element may ruin the whole system. At the same time one appropriate piece is not enough to the proper functioning.[15] Second, the theory of Sándor Udvary who paraphrased the civil procedure *bricks are laid on one another*. Plus, this frame is filled up by the procedural acts of the parties and the court.[16]

The diverse interpretations related to the structure of civil trial, the dissertation cites László Ujlaki who thought that despite of all kind of intention in good faith there are legal issues, like procedural issues when different courts, moreover the same court but different judges adjudge differently among the same circumstances. Despite of the disadvantages of this, the different interpretations give a foundation to the legislator at the time of a legislation to reinforce or reconsider its intention.[17]

Moreover, the different interpretations create the possibility to examine possible options by the legal practice and the jurisprudence. Upon this examination they may offer the proper alternative to the legislator.

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[14] Tamás Éless: Szerkezeti alapkérdések a polgári per kapcsán. *Magyar Jog*, 2013/10. 615.

[15] Gergely Czoboly: A polgári perek elhúzódása. In: András Jakab és György Gajduschek (szerk.): *A magyar jogrendszer állapota*. Budapest, Magyar Tudományos Akadémia, 2016. 772.

[16] Sándor Udvary: Obligation of the Parties, Lawyers and Judges. *Acta Juridica (Hungarica Hungarian Journal of Legal Studies)*, 2017/1. 22.

[17] László Ujlaki: A keresetlevél-elutasítás és a permegszüntetés jogintézményeinek szembeállítása. *Jogtudományi Közlöny*, 1997/10. 444.

By closing this title, the dissertation related to the importance of the civil trial cites the thought of Bálint Ökröss, who described the civil trial as the *centre of the procedure,* where the parties and the judge contact in person. *Everything before the trial is prologue or preface and everything after the trial is consequence.*[18]

III. The theses of the research

To summarize the above mentioned, the aim of the research is to examine the structure of the first instance court procedure in the civil procedure, including the structure of the civil trial. By this reveal the structure of the Pp., establish the historical background of it, and compare with the *main hearing model* used by foreign procedural codes. During this research the dissertation examine the terminology of civil trial, the structure of the Tc., the 1952-es Pp., and the Pp., over and above the three Nordic civil procedural codes' structure (Norway, Sweden, Finland). In the beginning of the research the dissertation *formulates the following theses:*

(1) All three latest Hungarian procedural codes the Tc., the 1952-es Pp., and the Pp. were created based on a true social, political and procedural legal claim and the actual provisions of them based on this claim. Study them one after another the interaction between them detectable. The dissertation wants to prove that the interaction in the field of the structure of the procedure detectable and it can describe with a *pendulum analogy.*

(2) The Pp. to meet with the international expectations and practice adopts the main hearing model which corresponding with the Nordic procedural codes. However, the Pp. involves the results of the development of the domestic procedural law. The difference between the Nordic model and the Pp. emerges in the provisions of the statement of claim and in the expanded written elements.

(3) The *divided structure* of the civil trial is not identical with the *main hearing model (structure).* The Pp. with its structure created a partly unique structure which is hitherto unknown in the Hungarian procedural literature. The conceptual basis of this structure can be found in the literature while the structure itself is unique.

(4) The structure of the civil trial as an issue may be the sole subject of a research based on the facts that the civil trial itself only a phase of the whole procedure, therefore it shall be decolonized. Even so the regulations of the particular phases cannot be absolutely independent from each other, referring to the Introduction Chapter (The foundations of the scope). As a

[18] Bálint Ökröss: *A törvénykezés reformja, A szóbeliség, közvetlenség és nyilvánosság alapján javaslatul a polgári perrendtartáshoz*. Budapest, Franklin Társulat, 1880.

thesis the dissertation affirms and wants to prove that the regulation of the particular phases partly variable independently, however partly connected to each other, they have some serious connection points, so they variable together.

(5) The regulation of the first phase chosen by the Pp. called bringing the action or pleading stage [in Hungarian: in the 1952-es Pp. *keresetindítás,* in the Pp. *perindítás)*] so the appreciation of its role and the reinforce its rules is a standpoint of a requirement what developing in the Hungarian court practice and jurisprudence from the 1950s.

The requirement of the personal hearing before the trial follows the same path as the bringing the action phase. It also begun in the 1950s and nowadays the Pp. realized with the preparatory hearing. The dissertation wants to prove that the desire of the *intense role of the bringing the action phase* and *the sole preparatory phase* are derivable from the Hungarian court practice and from the jurisprudence.

(6) The continuity between the particular provisions of the Tc. and the Pp. barely detectable. During the codification of the Pp. despite of the large number of citations to the Tc.'s provision the actual provisions of the two procedural codes are far away from each other. The chosen structure of the procedures, and the utilization of them are diverse despite of the identity of the theoretical aim. The dissertation wants to prove the difference in the provisions between the two codes with the similarity in theoretical basis.

(7) The Pp. implements the so-called *front-loaded procedure*. In the jurisprudence this terminology is used in a negative sense. By the dissertation this terminology is used in a different sense. In this context it is wants to phrase that the legislator with the Pp. created a procedure when in the time-line of the procedure *some procedural acts became forward* as much as possible. The dissertation wants to prove that this became forward effect is also a fulfilment of a claim, derived from the jurisprudence and from the legal practice.

IV. The methodology of the research

The dissertation to prove the theses defined above, is going to use the following research methodologies. Extendedly applies the *historical- comprehensive method.* By researching different structures of procedure, the timely and territorial comparing shall not be bypassed. With this method the dissertation validates the above-mentioned historical background and up-dating the 1952-es Pp., see Decision. Which Decision otherwise determines not just the structure of the dissertation but the methodology of the research. These make it necessary and reasonable to explain the historical aspect.

The jurisprudence nowadays cites the jurisprudence related to the Tc. It is used as "self-justification" and the jurisprudence related to the 1952-es Pp. used as a "counter-example" therefore this effect, this method is such significant in the dissertation. With this method the dissertation *visualizes a linearity* to the Pp., starting with the Tc., across the 1952-es Pp. From this picture the actual changes in the codes and the cause of them, or the provisions stayed changeless during the legislations are detectable.

The dissertation applies the *normative-analytical method.* The bigger part of the dissertation is strongly related to the provisions of the code under research. The civil procedural law as part of the *public law* less much tolerates legal interpretation than the private law and the court practice strongly connected to the text of the procedural code in force. With this method the dissertation examines the terminology of the procedural codes from grammatical, historical and taxonomical aspects. The support of this method the modification of the procedural terminology can be detectable in the field of temporal manner and in content manner.

The dissertation applies the *comparative method.* Although the main aim of the dissertation is not the comparison, along with that it has a significant role of it. Thus, studied the international expectations and the international practices as the aspect of the Pp. codification, see in the Decision.

By using this method, study foreign procedural codes and model rules deals with unification of law it is important to note the differences between the terminology used by domestic legislator and foreign legislators and authorities. The foreigners use different terminology, thereby use different structuration of the first instance court procedure. By the examination and description of the foreign law and putting beside the Pp. conclusions can be derived, which in the end shall serve as a serious precedent for the legislation in the future.

The dissertation applies the *dogmatic-analytical method.* The jurisprudence has an important role in the structuring of the civil procedure as defined in the above-mentioned Chapter. By using this method, the dissertation examines that how the jurisprudence ads its standpoints to the structure of the procedure. How fragments and separates the phases of the procedure, how describes the phases, what deems the substance of the phases and how builds the phases together further up on each other. With this method the strength of the above-mentioned important role, and the influence of the jurisprudence to the legislator and the court practice in the time of adopting a new procedural code are detectable.

The above-mentioned methods are going to be used in the research, on the other hand it is required to refer another method which is not going to be used because certain reasons, mentioned below. The dissertation disregards the using of the *quantitative- analytical method.*

Therefore, the statistics made by the Hungarian National Court Office, and courts are not going to be examined. In the time of adopting a new procedural code or highly relevant modification by using this method *the conclusions easily may be misguided* in the field of the length of the procedure and the quantity of cases.

Related to the length of the procedure the dissertation cites László Gáspárdy, whose theory says that the rules of the court administration and the statistics made upon these rules deem differently the *length of the procedures* than the civil procedure law and the jurisprudence. The objects of the two approaches are diverse, therefore these statistics are inadequate for measuring the length of the procedure in the perspective of the civil procedural law.[19]

In the field of the quantity of cases notes that behind a statistical row there are several effects, which render more different to evaluate the effect of a single modification. Related to this the dissertation cites László Pribula, who said that the decrease of the incoming cases in 2018 when the Pp. enter into force is correct, while there is another effect related to the decrease of the cases, called "foreign currency lending cases" (in Hungarian: *devizahiteles perek*). In the end the *statistics was distorted* by this second mentioned effect.[20]

V. Sources of research work

In the dissertation the reference to the procedural code in question appears in the *main text*, not by footnotes, thereby the dissertation avoids the burden of the footnotes. Thus, the number of the chapter, section, paragraph, in question gets into a parenthesis behind the provision. Do not mark the name of the procedural code, it is derivable from the chapter of the dissertation. When it has an important role, the dissertation marks by parenthesis the time of the entering into force or the abolition of a provision. In certain cases, *the year of publication* of the cited opus is also marked. It is important when the author's later position is contrary to the earlier or the theory of him is related to the provision which is no longer in force or it is just entered into force.

While cites the opus published by different authors the dissertation seeks to use the opus written in the period of the effect of the procedural code under examination. During the long term of the codification of the Tc. the jurisprudence made several opuses. In 1885 Sándor Plósz and Kornél Emmer were published their own proposal of civil procedure code by these the codification started. These and the further proposals at that time resulted a sparkling legal

[19] László Gáspárdy: A polgári perek tartamát meghatározó tényezők rendszerének alapjai. *Publicationes Universitatis Rerum Polytechnicarum Miskolciensis. Series juridica et politica*. Tomus 2. Fasc. 1-8. 1987. 105.

[20] László Pribula: A polgári perrendtartás megvalósult hatásköri modelljének értékelése – a történeti fejlődés tükrében. *Jogtudományi Közlöny*, 2020/1. 23.

literature. Several authors published their own theses in the periodical called *Jogtudományi Közlöny*, *Jogállam* and further journals of law. Furthermore, published the written version of the lectures of the Hungarian Lawyers Association sessions. These are also cited by the dissertation. During this codification the jurisprudence is expanded and strengthened. The most significant authors, as Géza Magyargy, Sándor Plósz, Marcel Kovács, Tihamér Fabinyi, Gyula Térfi, Dezső Falcsik, József Pap and their articles, books, academic textbooks and commentaries also cited by the dissertation.

After the Second World War among the transformation of the legal system the legislator adopted the 1952-es Pp. and modified the structure of the trial. By this, the legal literature in the 1950s is accelerated in this topic. At that time Pál Schleiffer, Mihály Móra, Ferenc Bacsó and László Névai published in periodicals and law books. Afterwards the legal literature concerning to the modification of the first instance court procedure, further the significant commentaries, and academic textbooks are also cited by the dissertation.

The dissertation refers to the 1980s in the literature of the recodification published in the periodical called *Magyar Jog*. In the 1990s, after the political regime has changed, the ongoing modification of the 1952-es Pp. provides sufficient legal literature, and further academic textbooks for the dissertation.

In 2013 when the codification of the Pp. has begun, the legal literature revived again. Several authors who participated in the codification published their own study and article, like Zsuzsa Wopera, Imre Szabó, Sándor Udvary, Adél Köblös, Tamás Éless, István Varga. Besides these above-mentioned texts, the *Egy új polgári perrendtártás alapjai* and the *Szakértői Javaslat* were published by the professionals participated in the codification. Further, around 2018 when the Pp. was entered into force the commentaries of it were also published, moreover the academic textbooks related to it.

While examines the foreign procedural codes or model rules the dissertation exclusively uses primer sources published in English language. Even so in the Nordic countries the English is not the official language. The cited authors well known the English language, they publish studies in English and their official language as well. During this examination the dissertation cites several foreign authors with special attention to the work of Anna Nylund and Laura Ervo. During the examination in the dissertation the ministerial or the submitters justification of the procedural code or the amending act is also used. In case these are not available in print approached by using the online database called “Jogtár”.

VI. Short summary of academic results

(1) Examined the three latest Hungarian civil procedure codes the continuity and the connection among them are detectable. The Tc. adopted as a reaction to the written procedure applied by the Ptr., thereby the reinforce of the oral procedure in Hungary. In the codification of the 1952-es Pp. the main aim was to *"cut back formalism"* and to simplify the regulation, so the legislator along with its own principles extracted the Tc., leaved several important elements of the first instance court procedure, in the end reached the piecemeal trial model, the unified system (in Hungarian: *egységes tárgyalási szerkezet*). Although, the socialist principles the survival of the Tc.'s intellectuality is detectable.

When the Pp. entered into force it is occurred fundamental modification in the structure of procedure just like in the 1950s the 1952-es Pp. resulted the same with its own entering into force. In 2013 when the codification had begun it is created an opportunity to step beyond the level of the former modifications. The legislator took the opportunity and modified the structure of the first instance court procedure, made some fundamental modification in every phase of it, examining these and the desire for them, further their fundamental basis, these derivable from the court practice and the jurisprudence.

(2) All three examined Nordic civil procedure codes apply the so-called *main hearing model*. The segmentation of the structure is similar, it contains three phases. Although the subject of the phases partly diverse, the fundamental basis of them is similar.

It is required to note that in the Pp., which also applies the main hearing model, the substance of the statement of claim and the substance of the first phase has a higher role than in the Nordic codes. However, the Act CXIX of 2021 on modifying the Act CXXX of 2016 on civil procedure code (Úppn.) eased this significant role. In the preparatory phase the similarity is detectable in the field of the flexibility of the procedure, like conduct this phase oral, written or mixed chosen by the acting court. Furthermore, the active role of the court by using the case management power, given by the procedural code.

In the Nordic procedural codes, the final phase (*main hearing stage*) begins with the presentation of the claims by the parties but in the Pp. the main hearing does not require to present them again. The further subject of this phase is equal in the examined codes, it contains the evidentiary procedure and the court decision. The main principles of this phase are the orality and immediacy. The success of the fundamental aim of the legislator with this structure manifest here, which is that the civil case and its trial shall be conduct in a single well-prepared session.

(3) The Pp. with the applied structure passed the former terminology and structurization used by the former domestic jurisprudence and the former procedural codes. Prior the Pp. a conceptual purity existed. This based on the Tc. and its *divided structure* of the first instance court procedure. Existed two main phases the pre-trial section, and the trial, within the preparatory trial and main hearing trial. This conceptual base related to the divided structure has *obscured and passed by the main hearing model* and with its three phases and the possibility of the exclusively written conduction of the preparatory phase.

The main hearing model by regulates also the first phase of the procedure (pleadings phase) creates a three phases structure in the first instance court procedure in which all three stages strongly connected to each other. *Therefore, defining this structure the former applied divided structure terminology is no longer used*. The preparatory phase is essentially pulled out under the trial and approached to the pleadings phase by the legislator. In the solely written conducted preparatory phase, the court shall close this phase without taking trial or conference if the parties do not motion to hold it. Thus, the preparatory stage does not classify as the part of the trial. Hence for the demarcation of the phases in the Pp., it is required to use the three phases solution, which gives a structurally bright picture.

With all these the dissertation declares that the central role of the trial existed during the Tc., and the 1952-es Pp. *even if not devaluated but being re-evaluated by the Pp.* Although, the main hearing and its stage is remained an important stage in the whole procedure, but the *main tone* of the first instance court procedure is shifted into the preparation conduct in the pleadings stage and in the preparatory stage.

(4) The theoretical segmentation of the first instance court procedure is timely and territorially diverse just like the terminology and the substance of the trial. These, as discussed in the dissertation most significantly, determined by the procedural code in force. The pattern of the procedural code, is how the chapters, paragraphs and titles build up. Besides this the jurisprudence has an important role in it by adding its own aspect.

The dissertation proved that the regulation of the phases and its principles are independent to a certain point, however beyond this point, they significantly dependent from each other.

The substance of the pleadings phase or the preparation for the trial (understand these terminologies regardless of any code) may slightly variable without modifying the structure of the civil trial. This proves *independency*. By this the dissertation states that purely the vary of the requirement of the oral or written preparation, further slightly expanding the preparation actions will not necessarily cause the modification of the trial's structure. In the view of the dissertation, modifying the structure of civil trial is necessarily caused by adopting substantially

large number of new provisions or introduce the preclusion (in Hungarian: *percezúra*), thereby separate the first instance court procedure including the civil trial into phases and divide the substance and the function of the phases.

Related to the *dependency* the dissertation proved that significantly modifying the phases is effects to the structure of the trial. Thus, creating an independent phase (see preparation) and distinguish as a chapter of the code is also resulting a structure revision and a new legislation.

In the first instance court procedure the presence of the preclusion separates certain procedural acts in time and content. The introduction or the abolition of the preclusion is a significant change in the procedural code, so necessarily results the modification of the civil trial structure.

(5) In the fields of the audience of the personally appeared parties before the trial and the written preparation before the trial from the defendant a development is detectable begins with the 1955s ends with the provisions of the Pp.

Firstly, after the change of the political regime in the 1989s, the jurisprudence demanded the written statement of defence before the trial. Nonetheless, in the 1952-es Pp. it was a possible procedural act or the court may called up the defendant to do it so. Secondly, the personal hearing of the parties before trial, as a preparation action which despite the wishes of the jurisprudence also was an option during the force of the 1952-es Pp. Over and above, it was a rarely used procedural act.

If we seek these two expectations on the side of the jurisprudence, it is detectable that the Pp. accomplished them. By the reinforcing of the written elements accomplished the obligation or rather the interest of the submitting written statement of defence from the defendant and install the preparatory phase as the territory of the personal audience of the parties combined with case management as a preparation for the main hearing.

(6) As an expeditious summary the common point of the Tc. and the Pp. is the divided structure of the trial, which improved and modernized by the Pp. *The dissertation proved that in these two codes the structure of the trial stand far away from each other.*

It is common that the chosen structure of trial is a fundamental base of a high-volume legislation, namely the ground of the further pieces of the structure and the actual provisions. In the early 1900s the Tc. wanted to reinforce the oral element and abolish the natural growing of the written element, and wishing to separate the establishment of the procedure from the merit of the case. The Pp. with its own main hearing model seeks to realize the desires not feasible among the provisions of the 1952-es Pp., like fixing the legal and factual frame of the case in the earliest stage of the procedure.

(7) The first instance court procedure in the Pp. is *front-loaded.* This terminology is used in an unfavourable sense by Anna Nylund an Adél Köblös.[21] According to the scope of the dissertation this concept is being used without this negative sense, thereby it is describing properly the regulation of the first instance court procedure.

During the codification of the Pp. one of the main aim was to fix the legal and factual frame of the case in the earliest stage of the procedure. *Archiving this, resulted that the early phases of the procedure and its scope expanded.* Thus, the Pp. in timeline of the procedure put forward several procedural acts related to the statement of claim and the proposing evidence and in the later phases allows the possibility to modify them in an increasingly limited way. In addition to that, the Pp. is maintaining the right to the exceptional modification due to certain reasons regulated in itself.

In the first few years of the court practice, the aim of the legislator was misinterpreted. *The court practice made the procedure much more front-loaded than it was expected.* This harshness was eased by the Úppn. as the latest modification of the Pp.

VII. List of publications

VII.1 Publications in connection with the disseration

1. Bartha Bence: Az 1952. évi polgári perrendtartás rendszerváltozást követő tárgyalási szerkezetet érintő változásai. *GLOSSA IURIDICA*, 2021/1-2. 79-94.
2. Bartha Bence: Peralapítást előkészítő cselekmények a Plósz Pp.-ben. In: Miskolczi Bodnár Péter (szerk.): *XVI. Jogász Doktoranduszok Országos Szakmai Találkozója*. Budapest, Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar, 2020. 25-34.
3. Bartha Bence: Az érdemleges tárgyalás és a szóbeliség elve a Plósz Pp.-ben. In: Miskolczi Bodnár Péter (szerk.): *XVII. Jogász Doktoranduszok Országos Szakmai Találkozója.* Budapest, Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar, 2020. 27-40.
4. Bartha Bence: Az 1952. évi polgári perrendtartás tárgyalási szerkezete a szocialista perjog idején. *Közjegyzők Közlönye*, 2020/1. 29-60.
5. Bartha Bence: A főtárgyalási modell és megjelenése egyes skandináv államok perrendtartásában. *Jogtudományi Közlöny*, 2020/12. 589-599.

[21] See in the Dissertation Chapter II.

6. Bartha Bence: A keresetlevél és az ellenkérelem érdemi része. *Közjegyzők Közlönye,* 2020/4 39-57.
7. Bartha Bence: A Plósz-Pp. és az új Polgári Perrendtartás osztott tárgyalási rendszerének összevetése. In: Miskolczi Bodnár Péter (szerk.): *XIV. Jogász Doktoranduszok Országos Szakmai Találkozója.* Budapest, Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar, 2019. 51-62.
8. Bartha Bence: Az elsőfokú eljárás szerkezete és fogalmai a polgári perben. Közjegyzők Közlönye. 2019/1. 60-78.
9. Bartha Bence: Peralapító cselekmények a Plósz Pp.-ben. *KRE-DIt, a KRE-DÖK online tudományos folyóirata,* 2019/2. http://www.kre-dit.hu/tanulmanyok/bartha-bence-peralapito-cselekmenyek-a-plosz-pp-ben/ (2021. február 07.).
10. Bartha Bence: A római peres eljárás és a Polgári Perrendtartás néhány szerkezeti összefüggése In: Erdős Csaba (szerk.): *Doktori Műhelytanulmányok 2019 - Doctoral Working Papers 2019*. Budapest, Gondolat Kiadó, 2019. 236-249.
11. Bartha Bence: A tárgyalási szerkezet változásainak hatásai – témaindító. *KRE-DIt, a KRE-DÖK online tudományos folyóirata,* 2018/2. http://www.kre-dit.hu/tanulmanyok/bartha-bence-a-targyalasi-szerkezet-valtozasainak-hatasai-temaindito/ (2021. február 07.).
12. A bírósági meghagyás intézménye az 1952-es polgári perrendtartásban (absztrakt), In: XXIII. Tavaszi Szél Konferencia absztraktkötet. Budapest, Doktoranduszok Országos Szövetsége, 2020. 58.

VII.2 Further publications

1. Bartha Bence: A hálózatbiztonság Európai Uniós szabályozásának folyamata a NIS irányelv elfogadásáig. In: Bogárdi Dóra; Kocsis Gergő (szerk.): *Jog és innováció tanulmánykötet.* Budapest, Stádium Intézet, 2017. 56-70.