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Judicial attitudes and litigation in civil proceedings. Examination of the subject-matter of the action and certain issues of evidence under the Civil Procedure Code 1952 and 2016.

Doctoral thesis PhD.

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I. OUTLINE OF THE RESEARCH OBJECTIVE

1. Premise of the research

The courts put an end to litigation with their decisions of disputes and their judgments are binding on all. The decisions of the courts must be accepted by all in order to achieve legal certainty and peace in society.[1] However, the admissibility of the substantive law on which judicial decisions are based is ensured if they are reached in a fair trial. And the members of society will voluntarily follow the law set out in a judicial decision if it carries the idea of justice as a community in its content and in the external forms of the law of the case.[2] On this basis, one of the assumptions of this thesis is that judicial justice is primarily a matter of faith in positive law;[3] another is that a just decision rests on a shared social belief that forms a network of trust beyond positive law.[4]

The finality of a judicial decision, however, does not guarantee that all decisions will conform to substantive justice. A judicial decision, however, does not mean that all judgments will be just. In order to end disputes, the legal system ensures that everyone must accept the final decision of the court as truth. This leads to a tension in procedural law:[5] decisions in civil litigation must be based on the real facts as defined by the substantive legal norm, and thus the judgment must represent reality, because the protection of individual private rights can only be guaranteed by a civil judgment based on reality. At the same time, a judgment based on reality presupposes the parties' responsible conduct of their case and the proper and effective exercise of their right to dispose of the case. The active judicial intervention that this entails, together with case management[6] that promotes impartiality and the enforcement of the rights of the parties, creates a new tension in the law of the case, in that the judge, through the discretionary power of material representation, is increasingly becoming a strategic player in the litigation process.[7] It is the belief of the members of the community in the just judgments of the judiciary

[1] Res iudicata pro veritate atcipitur. Ulpianus. D. 50, 17, 207.
[2] ARISZTOTELÉSZ: Nikomakhoszi Etika. 1987. Budapest. Európa Kiadó Ötödik könyv 1129b
[3] HARARI, Yuval Noah: Sapiens. Az emberiség rövid története. Animus Kiadó 2020.162-173.
[4] SIMON, Dan – SCURICH, Nicholas: Lay Judgements of judical Deceison making. Journal of Empirical legal Studies 2011. Vol. 8, issue 4. 709-727.
[5] ÉLESS Tamás: A tárgyalás szerkezete, perfelvétel, perhatékonyság. Közjegyzők Közlönye 2017. 5. 113-18.; Szerkezeti alapkérdések a polgári per kapcsán. Magyar Jog 2013.10. 613-616.
[6] CABRAL, ANTONIO: New trends and perspectives on case management: Proposals on contract procedure and case assignment management. 2019., 5-54.; https://www.tandfonline.com/doi/full/10.1080/20517483.2018.1603636?scroll=top&needAccess=true.
[7] BONE, Robert G.: Who Decides? A Critical Look at Procedural Discretion. 28, Cardozo Law Review, 2007. 1996-1997.

that creates the belief that the legal norm is also valid law.[8] In a guaranteed just world, it is worth taking responsibility for each other, in a trustworthy world, it is worth investing in a shared future or in an economic venture that pays off in the long run. The requirement of fairness in judicial decisions presupposes and reinforces a belief in a common justice among the members of society.

2. Hypotheses tested in the thesis

The thesis examines what ensures the fairness of judicial decisions, how it is perceived, and what attitudes judges have. This raises the epistemological question, from the point of view of litigation law, of the extent to which a party's request for a decision binds the court, the depth to which the judge must search for reality and justice, and the level of discretion and judicial belief at which the facts that ensure the reality of the case must or can be accepted as true by the judge.[9]

2.1. First hypothesis

In judicial practice, the general principle of Hungarian procedural law, the binding nature of a declaration of rights [Article 3(2) of the Civil Procedure Code (Pp.) and Article 2(1) of the Pp.], is identified as the binding nature of the rights asserted by the parties and as a guarantee of the fairness of procedural law.

2.2. Second hypothesis

Judges' attitudes are based on the equality of the parties to civil proceedings and the principle of due process, and consequently judges consider the enforcement of the parties' responsibility for their cases as one of the objectives of procedural law rather than an active judicial role in the search for substantive justice.

[8] JELINEK, G.: General State Theory. Julis Springer. Berlin 1922. 371. "*The ultimate basis of all law lies in the belief in its validity, which cannot be explained by anything else (...)*", quoted In: András JAKAB: A magyar jogrendszer alapelemei. jesz.ajk.elte.hu/jakab13.html#_ftn2;; JAKAB says: "*a norm becomes a norm by being believed to be a law.*"

[9] Paragraph (1) of Article 265 of the Civil Procedure Code requires "*the acceptance of the facts as true*", while Article 269 of Act I of 1911 I requires "*the asserted fact to be considered true*".

2.3. Third hypothesis

A judicial 'balancing test' can be identified and described in abstract terms on the basis of judicial practice; it is the test by which judges, within the framework of the institutions of procedural law, carry out the task of establishing the facts of the case and evaluating the evidence, and on the basis of which they determine the probative value of each piece of evidence.

II. DESCRIPTION OF THE RESEARCH

The attitudes of judges towards judicial regimes were investigated by means of a questionnaire survey. The term attitude is used in this thesis in the sense of a general and long-lasting positive or negative feeling towards a person, object or problem.[10] Consequently, the questionnaire survey reveals judges' opinions, perceptions (cognitive factor) and emotional attitudes (affective factor) towards the institutions of civil procedure, specifically their perception of formal (procedural) and substantive justice and their weighing of evidence.[11]

I also carried out a textual analysis of the judicial weighing of evidence by analysing the reasoning of judgments published in the Judicial Decisions Collection. In a legal-historical context, I used descriptive and comparative analysis methods to examine the Hungarian procedural solutions in the litigation section of the 1911, the 1952, the 2016 Civile Prodedure Code (Pp.) and the 2016 Expert Proposal. The focus of this analysis was the examination of the formalistic regulation of the Pp. and its structural solutions,[12] which focus on document changes and lead to excessive preclusion and consequently eventuality.[13] Furthermore, I have recorded the impact of the 2016 Pp. on the concentration of litigation, which elevates the goal of temporal

[10] PETTY, R. E., CACIOPPO, J. T., & GOLDMAN, R.: Persona involvement as a determinant of argument-based persuasion. *Journal of Personality and Social Psychology,* (1981). 41(5), 847–855.
[11] ROSENBERG, M.J. and HOVLAND, C.I. (1960): Cognitive, Affective and Behavioral Components of Attitudes. In M. J. ROSENBERG, C. I. HOVLAND (eds.), Attitude Organization and Change: An Analysis of Consistency Among Attitude Components. New Haven: Yale University Press
[12] ÉLESS Tamás: A tárgyalás szerkezete, perfelvétel, perhatékonyság Közjegyzők Közlönye 2017/5., 15-16.
[13] SZÍVÓS Kristóf: Az eventualitás elvének hatása a perfelvételi nyilatkozatok előterjesztésére. Magyar Jog, 2022/2., 65-75.

efficiency of litigation to a specific principle of procedural law, and thus caused problems in the application of the law[14] and a drastic decline in the number of cases.[15]

1. Separate research methodologies for the hypotheses and their sources

1.1. Empirical, questionnaire-based research

Based on the "Concept of the new Civil Procedure Code (Pp.)" published by the Ministerial Commissioner for Codification of Procedural Law of the Ministry of Justice (IM), the concept was discussed in a guided manner by 24 judicial colleges in the months of February and March 2015. The judges of the colleges filled in a questionnaire consisting of 17 questions and covering a total of 10 topics, indicating their attitudes towards the main issues of the concept.[16] 803 judges from courts, tribunals and curia returned the completed questionnaire, representing 80% of the members of the civil colleges. The aim of the survey was to obtain direct information on the judges' perception of the new Pp. and its main theses (including its innovations). The operationalised measurement method was used to measure the general content of the judges' evaluative attitudes and attitudes and to build up a picture of them. To get an insight into the judges' attitudes towards the IM concept of civil procedure, I used a direct measurement method, an attitude scaling questionnaire.[17] A five-point Likert scale measured the judges' attitudes towards each of the main elements of the concept as items. The members of the judge colleges of the courts were asked to rate on a five-point scale their favourable, unfavourable or neutral attitudes towards each of the elements of the concept – a total of 17 questions, aligned with the main chapters of the concept. The questionnaire was sent to the statutory members of the Judge College and was completed by 80% of the members of the Judge Colleges. 803 judges of courts, magistrates' courts and curia returned the completed questionnaire.

Following the Lickert scan survey of judicial attitudes towards the concept of the Pp., the results of the anonymous questionnaires were discussed by the professional bodies of the judiciary in a collegial meeting. The written record of the collegial meetings was kept by a

[14] https://kuria-birosag.hu/sites/default/files/joggyak/a_keresetlevel_visszautasitasanak_vizsgalata_osszefoglalo_velemeny.pdf
[15] https://birosag.hu/birosagokrol/statisztikai-adatok/ugyforgalmi-adatok
[16] The research was carried out by the Legislative Advice Unit of the National Office for the Judiciary (NOJ) with the approval of Tünde Handó, President of the NOJ
[17] BABBIE, Earl: A társadalomtudományi kutatás gyakorlata (6. kiadás). Budapest, (2003), Balassi Kiadó, 172-173.

minute-taker and included the majority position adopted at the meetings and the minority opinions against it. The written materials and minutes were thematized by headings and examined using quantitative analysis and presented in a detailed analysis.

1.2. Methodology of legal history and comparative analysis

The content of the claims of fact and of law which form the basis of the civil action and the requirement of their definiteness are illustrated by a legal-historical analysis of the Hungarian and the underlying German and Austrian civil procedural systems. The focus of this analysis is on the definition of the cause of action, because a lawsuit is essentially brought for legal claims, the subject matter of the lawsuit can be a claim which, if proven, can be enforced as a right.[18] I examined the logical process of the establishment of a lawsuit along the concept of the surrender of rights on the part of the plaintiff and the defendant, and in this context I presented the regulation of Hungary's first uniform law of procedure, the 1911 Civil Procedure Code (Pp.), followed by the construction of the socialist 1952. Pp., which aimed at achieving substantive justice, and finally the solution of the Pp., which was based on judicial intervention and substantive jurisdiction, using the method of descriptive, dogmatic analysis. The judicial practice and the relevant decisions of the Constitutional Court in the area of formal and substantive justice in civil litigation in the context of the aspects of enforceability and fair trial are presented.

A separate chapter of the thesis deals with the evidentiary procedure and the judicial assessment of evidence within it. In this context, the basic characteristics of the Anglo-Saxon adversarial and continental legal families, which to varying degrees contain elements of inquisitorial evidence, are the subject of comparative analysis.[19] In the comparative analysis, the German, Austrian, Swiss, French and English - and, in connection with the latter, partly the Scandinavian - procedural law traditions were presented in a point-by-point manner, along the lines of the procedural law doctrine under discussion.

1.3. Textual analysis of court judgments

[18] PLÓSZ Sándor: A keresetjogról: Két közlemény, in: Magyar Igazságügy 1876. évi 1-6. szám [V. kötet] 227-246
[19] KÖBLÖS Adél: Polgári eljárásjog itt és ott. Kontroll 2005/1. sz. 6-31. oldal és Angol polgári eljárásjog a csatornában? Jogtudományi Közlöny 2002/6. sz. 291-296.

An empirical study, using the technique of textual analysis, aimed to analyse the judicial practice of the principles of free proof and free consideration of evidence in civil procedure. The case decisions analysed were cases collected by the publisher in the Law Library® database[20] for Article 206 of the Pp. The analysis covered the full text corpus of all decisions published from 1990 to June 2021. Within the time frame, the reasoning of the published cases was processed using a text analysis method, attempting to independently index the judicial reasoning by two analysts. In doing so, I tried to identify identical arguments and legal justifications with my colleagues Balázs Völcsey and András Osztovits.[21]

We examined how the judges' decisions give content to the provisions of Article 206 (1) of the Pp., how and on the basis of what test judges in practice compare the evidence, evaluate the evidence as a whole and judge it according to their convictions. Independent control analyses of each thematic group were also carried out in the course of the study, in order to ensure their objective validity, and to filter out subjective determinations. To assess the results, the literature on substantive and procedural justice in litigation was reviewed, followed by an analysis of empirical research on organisational justice - applying their findings to the adversarial process of civil litigation.

III. SUMMARY OF NEW SCIENTIFIC RESULTS IN THESIS FORM

1. Thesis 1

The fact that the court is bound by the right asserted by the parties [Article 3 (2) of the Code of Civil Procedure (Pp.) and Article 2 (1) of the Pp.] is not in itself a guarantee of procedural justice, it is only absolute in formalistic litigation systems using the three-party concept of litigation.

The first hypothesis was only partially confirmed by the data revealed by legal theory, dogmatics and the Hungarian historical tradition of procedural law in the procedural system of

[20] https://uj.jogtar.hu /Wolters Kluwer/

[21] OSZTOVITS András – VIRÁG Csaba – VÖLCSEY Balázs: A bírói meggyőződés vizsgálata: A felek aktivitásának és peranyag-szolgáltatási kötelezettségének összefüggései alapján. In: Az ítéleti bizonyosság elméleti és gyakorlati kérdései - Joggyakorlat-elemző csoport összefoglaló véleménye. Kúria 2017.

the Hungarian Pp., which applied the two-part concept of the subject matter of the suit. The first thesis can be justified under the three-member concept of the 2016 Pp. [Article 170 (2) (a)-(c) of the Pp.] and the regulation of substantive litigation [Articles 6 and 237]. The soundness of this thesis is supported by an analysis of the concept of justice in legal theory.[22] From theoretical legal justice, the principles of absolute proceedings seeking substantive justice and fairness, which give priority to the enforcement of rights in a specific case, and of proceedings that are concluded within a reasonable time, can be deduced. In substance, formal justice makes the pragmatic aspect the primary objective of civil litigation. This approach is based on the principle of a litigation approach that requires the adjudication of all possible substantive claims and the objective discovery of all relevant and past facts necessary for this purpose.[23] The procedural system and the judicial approach, which is based on the primacy of substantive justice, require the provision of evidence which is complete and objective. This is, however, unattainable in principle if these past facts can be retrieved from human memory, and it is also contrary to the adversarial nature of procedural law.

The objective 'reality' of past events exists only in and through the cognitive activity of the subject. The subjective consciousness not only observes, 'photographs' and factually stores past events, but also necessarily shapes and constructs them.[24] The 'efficiency and accuracy' of the retrieval depends on the previous organisation of information and the context of retrieval (the similarity of the encoding environment). Memory is also shaped by recall, and its factuality can be significantly improved by the use of cognitive interviewing or field negotiation. Memory studies clearly show that eyewitness testimony is extremely unreliable. And in recalling specific events, witnesses or parties do not recall what they experienced, but what they have deduced from their impressions, what they have abstracted from their experiences.[25] To claim material justice as a requirement for the justice of a civil trial in a procedure based (also) on human memory is not an acceptable or sustainable view.

The availability of the truth in the establishment of the facts and the pursuit of objective truth go beyond the framework of the current Pp. in a litigation regime based on the parties' right to dispose. The Pp. has clarified the issue of the right to be indicated in the action as a

[22] GEKICZKY Tamás: A polgári peres bizonyítási eljárás és ítéleti tényállás néhány elméleti problémája. Jogtudományi Közlöny 2003.7-8. 285-295.
[23] MOLNÁR Ambrus: A bizonyításra vonatkozó tájékoztatási kötelezettség a polgári perben. Magyar Jog 2009/3. 129-139.
[24] SEIFERT, C.M., ROBERTSON, S.P., és BLACK, J.B.: Type of inferences generated during reading. Journal of Memory and Language 1985. 405-422.; LOFTUS, G.R. ÉS LOFTUS, E.F.: Human Memos: The processing of Information. New York 1975. Halstead Press
[25] RUBIN, D. C. – KONTIS, T. C.: A schema for common cents. Memory and Cognition, 1983.11., 335-341. in BADDELEY, A. (1990) 38-40.

declaration of rights in the proceedings: the court is bound by it, and the court may not derogate from the right of the party to self-determination in the proceedings, except by the acts provided for by law. This does not imply that the court cannot find that the parties' legal relations are in accordance with and based on the law. However, the framework and content of this may, as a general rule, be established in proceedings based on the parties' service of process and interpreted in the context of the facts placed before the court. To trade the difficulties and formal justice of this fair procedure for the unattainable ideal of knowable reality and objective truth does not seem justified in the light of the requirements of 21st century civil procedure.

The results of the research carried out on the basis of textual analysis of court decisions have demonstrated that the fairness of the final outcome of the evaluation, i.e. the success or failure of the case, does not significantly influence the perception of the fairness of the judiciary's action. This means that even in the case of a perceived unfair outcome (a lost or partially lost case), the parties perceive the decision and the court's discretion as fair and acceptable if it is counterbalanced by the decision-maker's fairness in the trial. Confidence in the process also increases the assessment of fairness (regardless of the outcome). The key elements of this confidence are openness, transparency and predictability of the proceedings. In other words, the interpersonal justice factor is a crucial determinant of the acceptability of judicial discretion. This is linked to the conduct of the judge acting in the case, his personal characteristics and the persuasiveness of his reasoning (impartiality, detail and competence of his explanations).[26]

The judge's attachment to the law as it stands has raised the need for a theoretical examination of judicial interpretation of the law. The application of the legal theory method of analysis made it possible to establish that, when interpreting the private law rules written by the legislature, the courts do not merely determine their content, but necessarily construct the law themselves. [27] In this 'real model' of the application of the law,[28] there is no separation between the creation and the application of the law: judicial application of the law does not imply subjection to the law. Judicial decisions reflect the values accepted in society, balancing the

[26] GERÁKNÉ Krasz Katalin: A teljesítményértékelés igazságossága 2008. Budapest, ELTE Doktori disszertáció 130-135., 187-198.
[27] 38/1993. (VI. 11.) AB határozat
[28] MENYHÁRD Attila: Szöveg, jog, értelmezés. In.: (szerk.: Chornowski Nóra – Smuk Péter- Szabó Zsolt-Szentmiklósy Zoltán) A szabadságszerető emberek – Lieber Amicorum István Kukorelli Gondolat, Budpest, 2017. 299-309.

interests carried by each of the facts in the search for the law.[29,30] The norms codified by the legislature give binding force to the basic value of the facts they regulate. The establishment and enunciation of the content of the right becomes alive in the context of the granting of individual legal capacity: 'the right as participation in the creation of law'.[31] The content of a given legal concept can be ascertained from judicial decisions in individual cases. The purpose of the wording of the law and the doctrine of the law is to model the court's decision in advance by means of hypothetical analysis, and to enable the parties to shape their private law rights in relation to the outcome of this expected decision. However, the interpretation of abstract legal norms and general clauses,[32] and the determination of their actual content, cannot be carried out by a textualist interpretation of the legal norm alone. The court necessarily produces the content of these norms, turning them into living law on the basis of the 'invisible' content behind the written text. In this activity, the personality of the judge and, extrapolating this to the judiciary as a whole, the attitude of the judiciary, is decisive.

And my research, involving 800 judges and representative of the opinions of the civil and economic court collegiums, has shown that the attitude of judges, contrary to the opinion of the judges of the Curia, is to accept a conception of litigation that emphasises the responsibility of the parties for their case, while the primary principle of the right to dispose is displayed. The judges identify with the approach which, within the narrow framework of the parties' requests, gives them a pure decision-making function with a minimum of material responsibility and obligation to intervene. The defining, characteristic consequence of this judicial role in civil litigation is the determinative character of formal justice - the detailed analysis of which is set out in the second thesis.

2. Thesis 2.

The attitude of the judiciary is to ensure that the principle of fair trial is a priority and fundamental principle. Judges see the essential characteristic of procedural law as the assertion of the responsibility of parties with equal procedural rights for their cases, rather than an active

[29] WILBURG Walter: Entwicklung eines beweglichen System im Bürgerlichen Recht. Kienreict, Graz 1950. In: Zusammenspiel der Kräfte im Aufbau des Shuldrechts. 163 AcP 1964. 364. és KOCH, Bernhard A.: Wilburg's Flexibile System in a Nutshell. in Helmut Koziol – Berbara C. Steininger: European Tort Law 2001. Springer, Wien – New York 2002. 545-548.
[30] JHERING, Rudolf: Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung. Leipzig, Breitkopf und Härtel, 1906, 339.
[31] KELSEN, Hans: *General Theory of Law and State*. Union, New Jersey: The Lawbook Exchange, 1999. 87.
[32] See the Curia decison BH2004. 21.

judicial role in the search for objective truth.

The results of my research, conducted through a questionnaire involving 800 judges, confirmed the second hypothesis regarding the – partly – new concept of the introduction of a professional procedure in the Civil Procedure Code (Pp.). Judges expressed a supportive and approving attitude towards the concept of being bound by the substantive right (title of the law) asserted and explicitly stated in the action. This solution emphasises the litigants' responsibility for their case and the constitutional freedom of the principal litigants to self-determination, embodied in the right to dispose of the case, and its protection from judicial arbitrariness. This attitude of the judges shows that they consider it essential to assert the power of the parties in the new Pp. in order to fix the substantive framework of the litigation, to enforce the split personality and its preclusive effect. This also means the adoption of a more passive case management of the judicial process, which is a feature of the Pp. This weakens and partially undermines the principle of judicial intervention as set out in Article 6 of the Pp. and its material means of protection as set out in Article 237 of the Pp.

The attitude of the judiciary shows an aversion to the obligation to instruct judges in substantive law, in view of the judicial approach which rejects substantive guidance and the obligation of judicial intervention. The rejection of a more active role for judges is linked to the concept of so-called professional litigation, namely that legal representation is mandatory for the parties in litigation. In the case of non-lay representatives, the judges consider it appropriate to marginalise the principle of iura novit curia, which is only justified in the case of a party without legal representation, according to the judges' position as expressed in their written opinions.

This judicial attitude, which sees litigation as a dispute between the parties and considers the responsibility of the parties for their case to be the defining characteristic of civil litigation, is not consistent with the level of assessment of evidence required. Judicial attainment of subjective absolute certainty is not based on the adversarial, on the data and proven facts of the case, but on the conformity to reality ("plausibility", "not plausible"), on the basis of a kind of absolutised truth and an expectation of objectivity. This inevitably creates a tension in the law of the case, one of the typical consequences of which has been the so-called surprise judgments in the 1952. Pp. system. As a counter-effect, the inflexible, formalistic solutions of the Pp. and the introduction of the three-part concept of the subject-matter of the action have had a preclusive effect, which has hindered and destroyed the assertion of private rights and, indirectly, has led to a drastic reduction in the number of cases brought.

3. Thesis 3.

On the basis of judicial practice, it is not possible to establish a judicial "balancing test" by which judges carry out the task of establishing the facts of the case and assessing the evidence, and by which they also determine the probative value of each piece of evidence.

The third hypothesis was not supported by the textual analysis of the court judgments. With regard to the logical, cognitive process of evidence, it could be established that judges carry out an evaluative, inferential activity when weighing the evidence in court. The court first of all considers the probative value of the evidence and then assesses the evidence as a whole and the trial material as a whole, judging it according to its convictions.[33] The reasoning and justification [Article 346(4) and (5) of the Pp.] which give an account of this process in the examination of case-by-case decisions are based on the judges' free conviction, which is largely subjective and apparently arbitrarily selected. The reasoning and the test used to support the objectivity of the assessment, the judge's subjective conviction beyond reasonable doubt, could not be established.

Judges' convictions are typically not or barely expressed within the framework of the reasons for the judgment. The judge's conviction can only be inferred - indirectly - from the methodology of the evaluation of the evidence and the reasoning technique of the reasoning. The adequate criteria for the degree of proof necessary or sufficient could not be determined from the judicial reasoning. The judge's subjective element of knowledge, which is a suitable instrument for achieving substantive justice as distributive justice, was of a decisive and almost exclusive nature. Judgment by conviction is determined by the personality of the judge with a decisively subjective evaluation.

The evidentiary acts are within the parties' pertactic power. Through these acts, the parties seek to provide evidence to support their own claims and opinions in the litigation. The presentation of the parties is of particular importance in this context, because its admission or exclusion is a decisive factor in determining the emotional and legal relationship of the parties to the litigation. In assessing the evidence, it is of the utmost importance to present it in an open manner, to reveal the elements of judicial discretion and conviction. This is what makes the

[33] GÁTOS György: Bizonyítás In: A polgári perrendtartás magyarázata (Szerk.: Németh János – Kiss Daisy) Complex kiadó, második, átdolgozott kiadás, Bp. 2007. 1140–1141.

proceedings fair: it allows the unsuccessful party to appreciate, to feel that his or her presentation and evidence have been considered, weighed and taken into account. If the assessment of the evidence is open, honest and transparent, it will give the party a basis for concluding that the proceedings are fair and just.

The interdisciplinary scientific findings, such as the organisational justice presented in the thesis and the scientific findings of cognitive psychology and memory research, suggest that the establishment of a true and fair factual record cannot be guaranteed by the congenial rules of procedural law alone. Their content depends essentially on the judge's personality, experience and knowledge outside the law. Since, according to the research results of the questionnaire, judicial attitudes favour the primacy of the parties' responsibility for their case and their right to dispose of it in an evidentiary procedure with little judicial intervention, procedural law must reflect this. Factual legal norms should help to create the conditions for a judgement that is in line with reality and perceived as fair by the members of society. In addition, the selection of judges and the continuous training of judges in law and jurisprudence are of outstanding importance.

4. De lege ferenda proposals based on the theses

For future legislation, the doctrinal and judicial attitude perspectives identified in my dissertation fundamentally preclude the formulation of pinpointed recommendations.[34] This is because the adherence to the law as applied, the adequacy level of the statement of claim, and the content of the preparatory phase touch upon the most fundamental structural issues of the Civil Code Procedure (Pp.). The results of my research lay the groundwork for a substantive, novella-level reconsideration of the initiation phase, and a fundamental, conceptual reevaluation of the preparatory phase.

The judicial logical and reasoning deficiencies identified within the evidentiary phase, particularly concerning judicial discretion, cannot be remedied through procedural codification. The absence of a test within the scope of judicial discretion and the lack of an analytical framework for judicial reasoning are issues that codification cannot resolve. Designing the evidentiary procedure requires the presence of essential logical abilities for evidence evaluation, which is fundamentally a matter of judicial training, education, and competence-based

[34] However, in order to make the summary easier to understand, I have formulated in the summary chapter of my thesis those nodes, those fundamental questions of perspectives and dogmatics, which would justify a conceptual revision.

selection. The resumption of the modern, scientifically based training programs initiated by the National Judicial Office (OBH) following the 2011 judicial reform, involving cognitive psychologists and which practically halted due to the COVID-19 pandemic, would be necessary. The competency-based judicial trainee competition exam, developed following the 2011 judicial reform, remains valid in practice; however, due to the uncertainty in judicial career appointments and the exceptionally low financial esteem of the profession, there is not even twice the number of applicants for a single trainee or secretary position.[35] Thus, the selection of the most suitable legal professionals for the judiciary cannot be realized. Restoring the prestige of the judicial profession and career, which is still present but continuously diminishing, is absolutely necessary to ensure the rule of law and social legal peace.[36] This is also because my examinations confirmed that the personality of the judge, and their attitude toward the law and just decision-making, have fundamentally determined and continue to determine the procedural and substantive fairness of civil proceedings, as well as the social acceptance of judicial decisions over the past century, across the three distinct procedural codes.

While retaining the tripartite concept of the subject matter of the lawsuit within the Pp., the substantiated identification of the legal basis of the claim in the statement of claim is unnecessary in professional, district court proceedings.[37] In the regulatory model of the I. Novellar Supplement of the Civile Pocedure Code, the law reintroduced, in terms of content, SArticle 121(1) c) of the 1952 Pp. Procedure for parties without legal representation, which requires the right being asserted by the claim to be presented with the relevant facts and evidence. The unification of this rule is justified at both levels of first-instance proceedings. The flexible structure of the preparatory phase can thus be reinstated, thereby necessitating a reduction in the overregulation of the Pp.

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[35] See Decision 20/2024 (26.II.) of the National Council of the Judiciary and its legislative proposal on the establishment of a remuneration for judges commensurate with the dignity of their profession and the weight of their responsibilities, and guaranteeing their independence. Bírósági Közlöny 2024/3. szám 17-19. https://birosag.hu/sites/default/files/2024-04/birosagi_kozlony_2024_3_0.pdf

[36] FÓNAI Mihály: A jogi és igazgatási képzési területen végzettek elhelyezkedésének presztízs szempontjai. 227-243. In: GARAI Orsolya. Diplomás pályakövetés IV: Frissdiplomások 2010. (2010) http://www.felvi.hu/pub_bin/dload/DPR/dprfuzet4/DPRfuzet4_teljes.pdf
FÓNAI Mihály: Státusz, professziókép és a felsőoktatási életút összefüggései. In: Oktatás és fenntarthatóság. (Szerk.: Fehérvári Anikó, Juhász Erika, Kiss Virág Ágnes, Kozma Tamás) Magyar Nevelés- és Oktatáskutatók Egyesülete (HERA), 2016. Debrecen, 246-263.

[37] The plaintiff is not precluded from stating the substance of the right he seeks to enforce in his application, because the subject-matter of his action may be indicated by reference to a specific legal provision. However, the imposition of this level of advocacy as a requirement, the classification of the legal relationship in this way, is unjustified and unnecessary in the non-litigation phase of the proceedings. The current level of requirements in the Civil Procedure Code is not in line with the adversarial nature of civil proceedings, the principle of verbality and the principle of active judicial intervention.

The plaintiff must specify the subjective right to be enforced as the subject matter of the claim in the statement of claim, together with its legal basis and content. However, contrary to the Pp.'s regulations, it would suffice to do so in an individualized manner, even in professional, district court proceedings. The plaintiff should substantiate the subject matter of the claim during the oral preparatory hearing, while it would suffice to preliminarily indicate any fact or circumstance during the preparatory phase that would enable the court to determine whether the statement of claim can be admitted or must be rejected due to the existence of any procedural impediments [Article 176(1) a)–k) of the Pp.].[38] At the same time, in this conception, the simplification of the statement of claim's formal requirements by the I. Novellar Supplement of the Civile Pocedure Code, with minor changes to the procedural structure, effectively reduces the function of the statement of claim—similar to the citation request in the 1911 Pp. —to a starting document in civil proceedings, primarily serving to ensure the suitability for establishing contradictio, apart from the issuance of a default judgment.[39]

It cannot be justified[40] that the statement of claim submitted by a plaintiff represented by a professional legal representative should require supplementation if it does not include a definite claim for the court's ruling or fails to identify the right to be enforced and the facts supporting the claim [Article 170(2) *a)–c)* of the Pp.]. [41] The statement of claim is unassessable without a definite request directed at a court ruling, while the second clause of the proposal requires the complete absence of both the right to be enforced and the underlying facts as a conjunctive condition. Without these, the subjective private right of the plaintiff is similarly unassessable. The failure to require these substantive elements in the case of a professional legal representative is incomprehensible and undermines the authority of the judiciary, as evidenced by this modification of the I. Novellar Supplement of the Civile Pocedure Code.

The subject matter of the claim must become fixed as the right being enforced during the oral preparatory hearing. At this stage of the proceedings, following the judge's active material guidance, it is appropriate to require the plaintiff's substantiation. This is because, based on the logical unity of the proceedings and the requirement for efficient judicial canalization of the factual and legal content of the case, the judge must discuss the matter with

[38] The plaintiff should be immediately ordered to pay the costs incurred by the postponement of the trial due to the lack of full individualization expected of the party in the proceedings.
[39] UDVARY Sándor: Az első Pp. novella hatása az elsőfokú eljárásra. In: Jogtudományi Közlöny 2021/3. 137.
[40] WOPERA Zsuzsa: Jogtudomány kontra jogalkalmazás? A polgári perrendtartás novelláris módosításának irányai. Miskolci Jogi Szemle 16. évfolyam (2021) 5. szám (3. különszám) 715-728.
[41] By stating the plea [Article 170 (2) (b) of the Pp.] or, as proposed de lege ferenda, by stating the entire content of the action, the facts on which it is based and the evidence on which it is based.

the parties—following the defendant's presentation of their defense—after the presentation of the claim and the defendant's counterclaim. This verbal exchange during the initial preparatory hearing should be informal and not recorded in the minutes. The purpose of this is mutual understanding, efficienc – separating facts and issues essential for deciding the case from irrelevant circumstances – and the full admission and adjudication of the parties' requests to achieve the final resolution of the legal dispute.

To avoid eventuality, the factual and legal basis of the claim should be concentrated and finalized (fixed) during the oral preparatory hearing with the judge's active material guidance. In this understanding, the court, using the tool of material guidance, must clarify with the parties, based on the fixed legal position, which facts are essential for adjudicating the legal dispute, and whether the claim is consistent with these, and whether its subject and content are compatible. This judicial intervention can effectively occur only orally during the preparatory hearing, as a general rule. This also means that after the initiation phase, the defendant can present their counterclaim orally at the first hearing, which may be a substantive defense against the claim or an objection that hinders the proceedings. The defendant would not be barred from submitting their counterclaim in writing before the preparatory hearing, but this would merely be an option. Efficient and swift conduct of the proceedings is facilitated if the parties do not inundate the court with a large amount of written material typical of the preparatory phase. This is achieved if the parties are concerned that they may not be able to submit their preparatory statements later in the proceedings, or only under the penalty of a fine. Another efficiency rule could be the shortening of the deadline for the court to examine the statement of claim, considering that in this concept – and within the system of the Pp. following the amendments by the I. Novellar Supplement of the Civile Pocedure Code – the statement of claim qualifies as a higher-standard citation request. Any modification to the case material presented in the statement of claim, which is so significant or substantive that it results in the postponement of the preparatory hearing, should be addressed by the sanction of cost specification within a flexible, permissive procedural solution.[42] These doctrinal requirements can be partially achieved within the Pp. system.

[42] The administrative rejection of a claim without a substantive assessment of the merits only generates new litigation, not only reducing the court workload, but increasing it. At the same time, this approach is an obstacle to the maintenance of legal peace in society.

IV. FULL LIST OF PUBLICATIONS

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