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Changes in the Concept and the Basic Principles of the Hungarian Civil Procedure During the Socialist Transition[1]

Abstract

After the Second World War, the Communist Party rose to power in Hungary with Soviet help. With the adoption of the new Constitution in 1949, the country became a socialist state. As part of the socialist transition, the country's civil procedure was reshaped in 1951 and 1952 respectively. This paper focuses on two main subjects. First, it examines the basic concepts and principles after codifying of the newly adopted civil procedure code. A permanent question of the procedural codification is the distribution of tasks between the parties and the judge, and the role of the court. Apart from this, principles emerged previously unknown in procedural law. Secondly, the paper also analyses the role of the public prosecutor in the procedure as a representative of the interest of the socialist state.

Keywords: acting in good faith, basic principles, civil procedure, codification, socialist state

Introduction

The first code of civil procedure was enacted as Act I of 1911, after thirty years of codification. With the adoption of Act I of 1911, the Hungarian procedural regulation turned to the principles of orality, immediacy, and publicity, and one of the most important consequences of this was the application of the principle of the unity of cause. According to this rule, the parties had the right to submit new allegations and proofs until the closure of the hearing (Section 221 sentence 2).[2] This meant that the Hungarian regulation, simi-

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[2] Szivós, "Das freie Vorbringen," 115–7.

larly to the German and Austrian ones, did not apply the so-called principle of contingent cumulation (as a main rule anymore). However, in some cases, this principle was still used in the new procedural regime as well (e.g., the dilatory defense of the defendant). Act XXXIV of 1930, however, brought significant changes to this approach since the principle of contingent cumulation prevailed in second-instance proceedings to avoid undue delay in litigation.[3]

Based on the relationship between the parties and the court and their tasks in civil litigation, Miklós Kengyel published a monograph,[4] in which he differentiated between three models of civil procedure: the liberal, the social, and the socialist models. The difference between each model is the extent to which the disposition of parties and the principle of party control of facts and the means of proof, and their opposites, the principle of proceeding *ex officio* and the principle of investigation by the court, prevail.

(1) The liberal procedure. When the French civil procedure was codified in 1806, it marked the beginning of the era of the so-called passive judges, which left "its mark on the nineteenth century civil procedural law of almost all European states."[5] The most important example of the liberal model, however, was the German Code of Civil Procedure (hereinafter abbreviated as dZPO), when it was enacted in 1877. The civil law of that time, true to its natural-legal starting points, considered the citizen as a rational person who has no social function and exists only for himself. Man is not given by his empirical concrete existence, but as a person, as an individualistic and isolated individual, as a general being that has no other characteristics than those which are peculiar to every human being. Social differences do not exist for this thinking; in it all the social differences of men are levelled.[6] The procedure was dominated by the party-prosecution (*Parteibetrieb*), which could submit new arguments until the end of the last oral hearing (without any possibility of precluding arguments), and they could adjourn the proceedings without any reason.[7]

(2) The social procedure. When the Austrian Code of Civil Procedure of 1895 (hereinafter abbreviated as öZPO) took effect in 1898, the era of the rather passive judges ended.[8] Perhaps the most perplexing task which Franz Klein ("the superb drafter of the Code")[9] faced in drafting the öZPO was the delineation of functions of the court and the parties in a system intended to combine features of party-presentation and court-prosecution.[10] The öZPO realised the idea that civil procedure is a social institution of the state (*Sozialfunktion*) where the judge should manage the case in a concentrated way to give a just judgment as early as possible.[11] Klein sought to introduce measures designed to speed up proceedings, for example, the restriction of procedural objections, the limita-

[3] Szivós, "Changes in the Right of Novelty," 253–5.
[4] Kengyel, *A bírói hatalom*.
[5] Van Rhee, "Civil Litigation," 307.
[6] Wassermann, *Der soziale Zivilprozeß*, 30.
[7] Gottwald, "Defeating Delay," 121.
[8] Van Rhee, "Civil Litigation," 307.
[9] Cappelletti, "Social and Political Aspects," 858.
[10] Homburger, "Functions of Orality," 24.
[11] Gottwald, "Defeating Delay," 122.

tion, if possible, to a single oral hearing, the shortening of time-limits and the prevention of the adjournment of the hearing by request of the parties.[12]

(3) The socialist procedure. According to Kengyel, the precursor of the socialist procedure was the Prussian General Judicial Ordinance of 1793 (hereinafter abbreviated as AGO).[13] The Prussian reformers and rulers of the 18th century were both concerned with finding out the substantive truth, and when they created the AGO, they thought that the court should have the power to determine the facts *ex officio* in order to reach a correct judgment.[14] The ultimate goal was to establish the truth, a very distant idea from today's notion that court hearings are aimed at establishing the formal truth.[15] Distrust of the legal profession was also an essential element. Its tasks were to be taken over by court officials. These ideas were accompanied by a principle of investigation with a duty of truth on the part of the parties. Above all, judges had far-reaching powers.[16]

The truth as the ultimate goal was also a feature of the Soviet civil procedure, but its aim was different: in the Prussian civil procedure, it was a question of judicial power replacing the principle of contingent cumulation, while in the Soviet one, it was a question of a concept that placed the seekers of rights as subordinate to the state interest.[17]

1. The impact of the new Constitution on the judicial system

The National Assembly adopted a new constitution on 20 August 1949 (Act XX of 1949 on the Constitution of the People's Republic of Hungary), which brought significant changes to the judicial system of Hungary. Previously, it had four levels: district courts, regional courts, regional courts of appeal, and the Curia as the supreme court. This four-level judicial system was based on the Austrian one, with names being similar (in Austria, the names of the ordinary courts: *Bezirksgericht*, *Gerichtshof*, *Oberlandesgericht*, *Oberster Gerichtshof*). According to Section 36 paragraph 1 of the Constitution, in the People's Republic of Hungary, justice was administered by the Supreme Court of the People's Republic of Hungary, the higher courts, the county courts and the district courts. Therefore, the parts of the judicial system were renamed, because the new communist regime intended to dispose the "old bourgeois names."[18]

The higher courts were abolished on 31 December 1950 with Act IV of 1950 to:

> [B]ring our judicial apparatus into organizational alignment with the council system and thereby create the organizational preconditions for cooperation between the councils and the judiciary conditions for the organization of the judiciary. This will involve abolishing the five higher courts and five higher offices of public prosecutor in the country, because the council system does not

[12] Oberhammer, "Speeding Up Civil Litigation," 225.
[13] Kengyel, *A bírói hatalom*, 191.
[14] *Ibid.*, 207.
[15] Ahrens, *Prozessreform und einheitlicher Zivilprozess*, 130.
[16] Ahrens, "Entwicklungslinien," 14.
[17] Szivós, "A perelhúzás," 96.
[18] Kengyel, *Magyar polgári eljárásjog*, 91.

have a territorial unit or council corresponding to the higher courts and higher offices of public prosecutor.[19]

Thus, the system of the ordinary court had three levels in the communist era: the district courts, the county court and the Supreme Court of the People's Republic of Hungary.

2. Changes in the principles of civil procedure

2.1. The significance of basic principles (in general)

Every legal system has certain principles and legal institutions that are crucial to its structure.[20] The principles of civil procedure lay down the general and fundamental methods of carrying out the tasks which are intended to achieve the purpose of the civil procedure and provide guarantees for the performance of such tasks. They overlay the other legal institutions of procedural law, the main provisions, and they set out the ideological content of the civil procedure.[21] They lay down fundamental rights and obligations which govern the procedural relations between litigants throughout the proceedings. They are also important in that they provide for direct legal consequences and sanctions in the event of a breach of certain principles. The principles guaranteeing the rule of law are indispensable for the legislator, the court and the parties.[22]

The basic principles of the socialist civil procedural law were developed by Soviet jurisprudence in the 1940s and 1950s. After World War II, the Central European countries were forced to adopt the Soviet legal system and the results of Soviet science.[23]

2.2. The substantive truth as the original aim of the socialist civil procedure

After the adoption of the Constitution, "our law drafters were faced with an extremely heavy burden, since they had to prepare new draft laws in all areas of law within a short time and almost without exception, which met the requirements of the democratic social order of the people in terms of content and form."[24] The changes after the Hungarian Communist Party acquired power resulted in the adoption of a new code of civil procedure (Act III of 1952), which had a radically different approach than the previous one (Act I of 1911).

The most significant change was the appearance of "truth" in the Code. According to its original wording, the purpose of the Act was to ensure that disputes arising in proceed-

[19] OGYI 1949. I. k. 46. ir. 228–9.
[20] Baur, "Vom Wert oder Unwert," 27.
[21] Névai, *A szocialista polgári*, 176.
[22] Baur, "Vom Wert oder Unwert," 32.
[23] Juhászné Zvolenszki, "Polgári eljárásjogunk egyes," 261.
[24] Németh, "A polgári perjogunk," 289.

ings before the courts in relation to the personal and property rights of citizens and the property rights of the State and other legal persons are settled based on substantive truth (Section 1). This was the first time that the Hungarian civil procedure regulated the role of truth in the litigation.[25] It is to be noted that while the law was in force (between 1953 and 2017), the element of its purpose "to ensure the resolution of disputes" had remained unchanged throughout; the way, however, it was achieved changed over the years.[26] The appearance of "truth" in the text had three main reasons. First, after the World War II, Hungary belonged – based on the decision of the Allies – to the Soviet sphere of influence. Secondly, based on the aforementioned, the emergence of the state apparatus of a proletarian dictatorship or people's democracy was also a key factor. Thirdly, the solution for the regulation of the Hungarian legal system adapted to the Soviet model.[27]

This paradigm shift is reflected in the part of the ministerial explanation that:

> [U]nder the old Code of Civil Procedure [Act I of 1911], courts were generally obliged to apply strict rules of law to the facts presented by the parties and the means of proof they indicated. The Bill [Act III of 1952], on the other hand, takes the principled position that in civil litigation, disputes must necessarily be settled by establishing the substantive truth and that it is therefore inadmissible that this should not be the case, whether for lack of proper submissions or for any other reason.[28]

One of the most striking proofs of this change of approach is the appearance of the chapter of basic principles and the aim that "generally accepted principles of procedural law, which had previously not been applied in practice, should now become living propositions."[29]

The legal literature has formulated this aim of civil litigation as the requirement of "objective truth" (factual situation)[30] and has made its finding the task of the court.[31] It is important to emphasize the pursuit of objective truth as an aim of the procedure, since this is what distinguishes the 1952 Code of Civil Procedure from the Western codes of litigation of the time, which, although they sought to achieve the substantive truth (contrary to the socialist positions of the time),[32] did not have to enforce it unconditionally. As György Bónis, Alajos Degré and Endre Varga pointed out in 1961, the Code "is not content with the bourgeois principle of formal truth but fully asserts the socialist principle of the right of the disposition of parties and the principle of the party control of facts and the means of proof, the publicity of negotiations, the equality of the parties, the orality, the immediacy, etc."[33]

However, the legislator had already amended the wording of Section 1 in Act VIII of 1957, and the aim of the lawsuit became "truth" instead of the substantive truth. As early as 1954, László Névai pointed out that the Code of Civil Procedure had overemphasized the substantive truth and acknowledged the role of jurisprudence in this problem:

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[25] Novák, "Az eltűnt «igazság»," 667.
[26] Juhászné Zvolenszki, "A Pp. I. fejezetének múltja," 263.
[27] Novák, "Az eltűnt «igazság»," 667.
[28] OGYI 1949. II. k. 56. ir. 68.
[29] *Ibid.*, 69.
[30] Névai, "A törvényesség," 387.
[31] Juhászné Zvolenszki, "A Pp. I. fejezetének múltja," 263.
[32] Névai, Szilbereky, *Polgári eljárásjog*, 36; Balázs, Szabó. "A felek igazmondási," 13.
[33] Bónis, Degré, Varga, *A magyar bírósági szervezet*, 267.

> The responsibility must be shared by all of us, because the errors of our jurisprudence in relation to so-called substantive truth were even more serious than the error discovered in Soviet science in this respect, […] we […] have considerably expanded the content of the concept and have added elements of evaluation and application of the law.[34]

2.3. Principles ensuring the prevalence of the substantive truth

Sections 3–6 of the Code of Civil Procedure contained those regulations whose aim was to ensure the prevalence the main purpose of the Code, the substantive truth. Névai enumerates those guarantees and methods, which are regulated under these Sections: (a) the court's obligation to instruct the parties; (b) the socialist interpretation of the principle of the right of the disposition of the parties and the principle of the party control of facts and the means of proof; (c) thoroughness; (d) speed; (e) acting in good faith; and (f) freedom in the methods of taking of evidence.[35]

2.3.1. The socialist interpretation of the principle of the right of the disposition of the parties and the principle of the party control of facts and the means of proof

According to Section 3 paragraph 1, the duty of the court was to seek to ascertain the substantive truth in accordance with the purpose of the Code (Section 1). The court had to also, of its own motion, ensure that the parties to the proceedings properly exercised their rights and fulfilled their obligations in the proceedings. The court had to provide the parties with the necessary information and warn them of their rights and obligations. As Tamás Földesi pointed out, the first sentence of the cited provision was partially in line with Section 1. According to Section 3, the court had to seek to ascertain the substantive truth, but Section 1 made the truth-finding an obligation of the court.[36] The duty to instruct was an important factor in the effective realization of the equality of the parties in litigation. It provided the parties with a serious guarantee that they would have equal opportunities to exercise their equal rights as declared in the Code of Civil Procedure, and that their possible lack of information and their inferior financial situation would not adversely affect their position in the proceedings.[37] The right of disposition was the most important principle of Hungary's previous code of civil procedure, with Act I of 1911. This was the principle which best suited the bourgeois economic and political aspirations, as it expressed and secured the classical liberal-bourgeois conception of *laissez-faire*, the bourgeois "will," in the perfect way.[38]

According to Section 3 paragraph 2, the court ensured that cases were heard thoroughly and quickly *ex officio*. As Névai pointed out in 1953, the thorough and quick procedure is not a basic principle of civil procedure: "The text of the law does not support their classification as a principle. They are merely subsidiary methods, the application of

[34] Névai, "A Pp. reformjának," 190–1; Balázs, Szabó, "A felek igazmondási," 14.
[35] Névai, "A magyar polgári," 27.
[36] Földesi, "A jogban alkalmazott igazság," 467; Horváth, *A szovjet típusú diktatúra*, 760.
[37] Névai, "Alapvető elvek," 131.
[38] Novák, "A rendelkezési elv," 159.

which promotes the objective truth and other principles of procedural law (the principle of party control of facts and the means of proof, the principle of good faith)."[39]

According to Section 4 of the Code, the court was generally bound by the requests and declarations made by the parties. However, a waiver of a right manifestly contrary to the party's legitimate interests was not required to be considered even if the party maintained it despite having been informed and warned by the court. The same applied to the recognition of a right and to an agreement. The ministerial explanation emphasized that the new Code of Civil Procedure "proposed that the court should ensure that the dispute before it can be decided be in accordance with the substantive law and that, therefore, the court has not only the right but also the duty to provide the parties with the necessary information and to make all the necessary arrangements, both in terms of the conduct of the proceedings and of the taking of evidence, to ensure that the substantive truth is established."[40] According to Bónis, Degré and Varga, the main feature of the new socialist procedural order, in contrast to the bourgeois procedural order:

> [I]s not only its simplicity and clarity, but also the fact that the court is obliged to warn the parties of their rights and obligations, including the defects of certain statements of law or of their agreement. The court is not only entitled but also obliged to order of its own motion such evidence as it considers appropriate, whether the parties have requested it or not. This active judicial procedure is a feature of the socialist principle of party control of facts and the means of proof.[41]

It is worth mentioning, however, that in contrast to the socialist transcription of the principle of the right of disposition of the parties, the socialist version of the principle of the party control of facts and the means of proof had not been established in the Hungarian Code of Civil Procedure. A very moderate combination of the obligation of the parties to provide evidence and the *ex officio* taking of evidence was developed, which protected Hungarian civil lawsuits from the application of the principle of investigation by the court even in the 1950s.[42] The Code of Civil Procedure avoided changing the nature of civil proceedings and giving them a character reminiscent of criminal proceedings by the predominance of *ex officio* taking of evidence.[43] The Supreme Court considered it necessary to conduct *ex officio* taking of evidence primarily in proceedings concerning the public interest.[44]

2.3.2. The principle of acting in good faith

The principle of acting in good faith was the most important principle ensuring the prevalence of substantive truth.[45] The principle of acting in good faith was a result of the development of civil procedural law based on a distinctively socialist legal concept.[46] The principle of the obligation of the parties to cooperate was based primarily on the requirement of good faith. This was the main means by which the party could be induced

[39] Névai, "A magyar polgári," 27.
[40] OGYI 1949. II. k. 56. ir. 68–9.
[41] Bónis, Degré, Varga, *A magyar bírósági szervezet*, 269.
[42] Kengyel, *Magyar polgári eljárásjog*, 63; Balázs, Szabó, "A felek igazmondási," 15.
[43] Juhászné Zvolenszki, "Polgári eljárásjogunk egyes," 279.
[44] Kengyel, "A rendelkezési és a tárgyalási elv," 283.
[45] Névai, *A szocialista polgári*, 215.
[46] Névai, "A bírói pervezetés," 519.

to state the facts of the case to the best of its knowledge and to contribute to their establishment. It was the principle of good faith that provided the basis for the sanctions, not only moral but also legal, and obliged the party to fulfil this obligation.[47]

According to Section 5 paragraph 1, the parties were obliged to exercise their rights in good faith. The court had to prevent any proceedings, acts or other conduct that were intended to delay or that could lead to the delay or frustration of the proceedings or the discovery of the substantive truth *ex officio*. The court had to warn the parties to exercise their rights in good faith in the proceedings, including repeatedly as necessary. The warning had to also cover the consequences of bad faith litigation.

The declaration of the principle of acting in good faith did not only mean the prohibition of acting in bad faith, since it would then only oblige the party to refrain from some conduct. The law also actively required the party, within the framework of the principle of good faith, to do everything in their power to enable the court to establish the true facts as soon as possible.[48] Socialist procedural law thus took a stand on the question of whether the parties to a civil action have only burdens or possibilities of action and whether they are only burdened by the consequences of not exercising or failing to exercise them, or whether they also have positive duties of action.[49] The law drew the judge's attention to the specific facts which are in conflict with those (acting in bad faith) by stating that the conduct is active.[50]

On the part of the court, the law stated that it was obliged *ex officio* to prevent any acts or other conduct that would or might lead to the delay of the trial or to the foil/full discovery of the substantive truth. The court could do this by various acts of obstruction, which Névai classified taxonomically under the category of obstruction, the primary purpose of which was to ensure the establishment of objective truth and the legality of the proceedings.[51] Acting in bad faith could also have an impact on the merits of the case, since the court also had to consider the conduct of the parties and assess how the positive or negative conduct of a party should be assessed for the purpose of determining the facts.[52]

According to Section 5 paragraph 2 of the Code of Civil Procedure, the court had to impose a fine on a party or representative who, either at the hearing or in a pleading, has acted against his or her better knowledge or with gross negligence: (a) stated a fact about the case which was proved to be false or denied a fact about the case which was proved to be true; (b) omitted a fact which it must have known was important for the outcome of the case; or (c) relied on manifestly unfounded evidence.

The socialist jurisprudence In the Eastern bloc was divided on the question of whether acting in good faith was a basic principle of civil procedure or not. László Névai and Jenő Szilbereky thought that it would be appropriate for the socialist procedural jurisprudence to draw a general conclusion from the broadly similar provisions of the codes of civil procedure and acknowledge the basic nature of the requirement of good faith in the socialist civil procedure.[53]

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47 Novák, "Bírságproblémák," 854.
48 Hámori, "A peres felek kötelezettségei," 650.
49 Névai, "A polgári per hatékonyságának," 523.
50 Ujlaki, "Visszaélés," 457.
51 Névai, "A bírói pervezetés," 519.
52 Balázs, Szabó, "A felek igazmondási," 16.
53 Névai, Szilbereky, *Polgári eljárásjog*, 103.

2.4. The role of the public prosecutor in civil proceedings

According to Section 2 paragraph 1, the court could only rule in a civil proceeding upon request. Such a request could usually be made by the party interested in the dispute. This first sentence was the declaration of the traditional procedural principle of the right of disposition of the parties. However, the public prosecutor was also entitled to bring a civil action or to intervene in the interests of the State or of individual employees, at any stage of the proceedings and in the interests of any party to the action. In the previous Code of Civil Procedure, Act I of 1911, the public prosecutor had no role in civil litigations.

The originality of the public prosecutor's office of the socialist states, its differences from the previously known institution of the public prosecutor's office, was primarily determined by the fact that the public prosecutor's office in the socialist countries was no longer exclusively an organ of law enforcement, but had been given additional, significant, new tasks which had substantially changed its former character.[54] According to Section 42 paragraph 1 of the Constitution, the Prosecutor General of the People's Republic of Hungary is responsible for upholding the rule of law. The Code of Civil Procedure provided a tool for the public prosecutor's office to fulfill its task proscribed in the Constitution. This conception of the public prosecutor's civil procedural functions brought together the functions of guarding the maintenance of socialist legality, the enforcement of substantive truth and the defense of the interests of the state and of individual workers.[55] The ideological basis of this provision was that "the bourgeois theory of the plaintiff's monopoly on the bringing of actions is incompatible with the socialist principle of the right of disposition."[56]

Conclusion

The new code of civil procedure was consisted of simplified versions of the old system. Regarding the short period between the communist takeover and the codification of the new law, the legislator did not have time to fulfill a more thorough legislation. Regarding civil procedure, it can be stated that it had a socialist form, which was influenced by the power of the court and the public prosecutor.

[54] Névai, *A szocialista polgári*, 138.
[55] Névai, "A magyar polgári," 28.
[56] *Ibid.*, 34.

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