

# The Legal Remedy System of the Hungarian Civil Procedural Code – Changes in the Act on the new Hungarian Code of Civil Procedure

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**Abstract.** The Hungarian legal society has been waiting for almost a decade for the legislator not to modify the Code of Civil Procedure in force but to find some time to adopt a new Code of Civil Procedure that meets the changed societal and economic expectations for a modern justice system. Their wish has been satisfied by the Hungarian Parliament, however, the new procedural code and its detailed rules will be heavily debated. This paper sets two aims: briefly presents the legal remedy system of the Hungarian Code of Civil Procedure in force, including the conceptual problems that have arisen during its application by the courts in the past 60 years, secondly, outlines the legal remedy system of the Bill on the new Hungarian Code of Civil Procedure and examines whether the conceptual problems presented could be successfully addressed by the new procedural code.

**Keywords:** court system, legal remedies, appeal, retrial, judicial review, constitutional complaint

## 1. INTRODUCTION

One of the major differences between the civil procedural codes of different countries is that their codes include diverging legal remedy systems. This divergence is based on several reasons: most countries have different court systems, distinct historical traditions and diverging legal literatures.<sup>1</sup> The starting point for the regulation of the legal remedy system is, however, based on common grounds: national legislations have to bring a fair balance between two important interests, as they have to ensure the correctness and well-foundedness of on-the-merits court decisions and to guarantee the conclusion of cases within a reasonable time. It may easily happen that neither the first nor the second instance decision meets the requirement of well-foundedness in an individual case, therefore the intervention of an additional judicial forum is needed to deliver a correct appellate decision, nevertheless, in most cases the parties to proceedings have no interest in turning to a third instance court at the cost of further delaying the final adjudication of their dispute, hence, the parties find themselves in an uncertain legal situation. This dilemma is particularly acute in today's fast-moving world where everything is promptly accessible and information is gained at a much faster rate, and the length of civil proceedings should be reduced to adapt to these changes. Time periods that were deemed to be short and reasonable only one generation ago are certainly regarded as too lengthy today. The legislator seeking to re-regulate the legal remedy system of the civil procedural code and to address the aforementioned legislative dilemma should take this rapidly changing environment into due consideration.

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<sup>1</sup> As regards this phenomenon, see in detail: Harsági (2014) 161–238.

In Hungary, there is a four-tier court system (district courts, high courts, regional appellate courts and the Curia) with a specific characteristic in relation to civil cases, since district courts and high courts have shared first instance competence in civil proceedings. District courts act as first instance forums in simple cases with lower amounts under litigation, while high courts, as courts of first instance, hear more complex cases requiring a higher level of expertise. First instance decisions delivered by district courts are to be appealed to high courts, whilst first instance decisions rendered by high courts are subject to appeal to regional appellate courts. In both cases, the Curia is entitled to act as a court of third instance within the framework of the so-called judicial review procedure.

The Constitutional Court does not form part of the Hungarian court system, nonetheless, its competencies have been extended to include the adjudication of the new types of constitutional complaints that can be lodged against final court decisions, which has brought the Constitutional Court closer to the ordinary courts. Section 26 of Act no. CLI of 2011 on the Constitutional Court retains the former type of constitutional complaint by stipulating that persons or organisations affected by a concrete case may submit a constitutional complaint to the Constitutional Court if, due to the application of a legal regulation contrary to the Fundamental Law in their judicial proceedings, their rights enshrined in the Fundamental Law were violated and the possibilities for legal remedy have already been exhausted or no possibility for legal remedy is available. Section 27 of the Constitutional Court Act introduces the new type of constitutional complaint by setting forth that persons or organisations affected by judicial decisions contrary to the Fundamental law may submit a constitutional complaint to the Constitutional Court if the decision made regarding the merits of the case or other decision terminating the judicial proceedings violates their rights laid down in the Fundamental Law and the possibilities for legal remedy have already been exhausted by the petitioner or no possibility for legal remedy is available for him. Section 28 of the Constitutional Court Act provides for the interoperability of the two types of constitutional complaints and stipulates the followings: in proceedings aimed at the review of a judicial decision defined in Section 27, the Constitutional Court may also carry out the examination of the conformity of the legal regulation with the Fundamental Law as described in Section 26, moreover, in proceedings initiated pursuant to Section 26, the Constitutional Court may also examine the constitutionality of a judicial decision.

Since the entry into force of Act no. III of 1952 on the Code of Civil Procedure (CCP), the country's civil procedural code in force, the Hungarian legal literature's position has remained nearly unchanged in that the Hungarian legal remedy system is sufficiently effective and meets the aforementioned challenges<sup>2</sup>. As a Curia judge, I have had different experiences.

With regard to the above, I decided to set a dual aim in my study paper: firstly, I briefly present the legal remedy system of the CCP in force, including the conceptual problems that have arisen during its application by the courts in the past 60 years, secondly, I outline the legal remedy system of the Bill on the new Hungarian Code of Civil Procedure (new CCP) and I examine whether the conceptual problems presented could be successfully addressed by the new procedural code.

<sup>2</sup> A discreet criticism is voiced by Varga et al. (2014) 570–77.

## 2. THE CCP'S LEGAL REMEDY SYSTEM AND ITS CONCEPTUAL PROBLEMS IN THE COURTS' CASE-LAW

### 1. Ordinary remedies

The CCP places the system of legal remedies in a transparent structure<sup>3</sup>. Appeals are a means of ordinary remedy that give full power to the appellate court to re-examine the decision of the court of first instance. Appeals – as ordinary remedies – can be lodged only against non-final decisions, irrespective of their type, which entails that – in accordance with section 212 of the CCP – both judgements and procedural orders may be subject to appeal. Contrary to the provisions on appeals of Act no. I of 1911 on the Code of Civil Procedure, the CCP does not use different names for appeals against judgements and appeals against procedural orders, the term “appeal” is applicable to both of them. (In the CCP’s terminology, the term “appeal” refers not only to the appellate proceedings, but to the petition instituting such proceedings as well.)<sup>4</sup>

Appeals are a means of remedy that refer the appealed case to a court other than the one that delivered the impugned decision, *i.e.* – based on section 10 of the CCP – to the superior appellate court for re-examination. As an exception to this rule, the court, on the basis of section 257, subsection (1) of the CCP, may change its own procedural order if, by virtue of section 227, subsection (2) of the CCP, the latter is a non-binding decision.

Appeals give full power to the appellate court to re-examine the first instance decision. This means that as a result of an appeal the competencies of the court of first instance are completely transferred to the court of second instance, and the latter becomes entitled, in all or certain cases, to substitute the former in delivering a correct decision in compliance with the procedural rules<sup>5</sup>. In some exceptional cases, the court of second instance may only be entitled to quash the first instance decision and order the court of first instance to reopen its proceedings. Such is the case when the court of second instance detects that there is an absolute ground for quashing the impugned decision or the court of first instance has breached the essential procedural requirements [section 252, subsections (1)–(2) of the CCP].

The court of second instance may re-examine the first instance decision within the framework of the parties’ appeals (cross-appeals) and counter-appeals and, as a result of its re-examination, it may quash the first instance decision and order the court of first instance to reopen its proceedings, or modify or uphold the first instance decision. The court of second instance, therefore, has both cassation and revision power.

Section 235 of the CCP provides for an important rule according to which new facts and evidence may be presented in the appeal if the appellant came into possession of the new fact or evidence after the delivery of the first instance decision, provided that such new fact or evidence would have been to his benefit had it been considered originally. The courts’ case-law has been contradictory regarding the above rule that is, in practice, perfectly suited to the protraction of proceedings: it is easy for the interested parties to

<sup>3</sup> To facilitate understanding of the system, my presentation is not exhaustive and does not cover each and every means of legal remedy listed in the CCP, hence, it does not include, for instance, the submission of statements of opposition against court orders, the correction and supplementation of court decisions and the submission of cross-appeals and cross-petitions for judicial review.

<sup>4</sup> Osztovits (2013) 26.

<sup>5</sup> Kiss (2016) 687.

evade to submit all their evidence in the first instance proceedings, as, on the basis of the aforementioned rule, they may try to bring them forward only in their appeal.

## 2. Extraordinary remedies

In the Hungarian legal literature, extraordinary remedies include motions for retrial and petitions for judicial review<sup>6</sup>. Both of them have in common that they may be submitted only against final judgements, the former seek to urge the re-examination of the case's factual background, while the latter request the legality review of the impugned decisions.

A motion for retrial has to be submitted to the court of first instance, on the other hand, a petition for judicial review is to be lodged with the Curia. If the motion for retrial is well-founded, the court is entitled to quash the final judgement and render a new decision. If the motion is ill-founded, the final judgement has to be upheld. The grounds for retrial are as follows: the party presents any fact or evidence, or any binding court or other official decision that the court did not take into consideration during the main proceedings, provided that it would have been to his benefit had it been considered originally (*novum*); the party lost the action in consequence of any criminal offence committed by a judge who took part in rendering the judgement, or by the opposing party or any other person, contrary to the law (*crimen*); a final judgement has previously been adopted relating to the same right (*res judicata*); the statement of claim or any other document was delivered to the party by way of public notification in violation of the provisions on service of process by public notification.

The rules on the judicial review procedure were introduced by Act no. LXVIII of 1992 into the legal remedy system of the CCP after the delivery of Constitutional Court decision no. 9/1992 of 30 January 1992 on declaring the legal instrument of veto in the interest of legality unconstitutional and annulling the provisions thereon as of 31 December 1992. Since their introduction, the provisions related to the judicial review procedure have been modified on multiple occasions, in particular with regard to the rules of procedure, the scope of court decisions subject to judicial review, the adjudication of judicial review cases, as a general rule, at a hearing or in camera, and the admissibility of the taking of evidence in judicial review cases<sup>7</sup>. The present form of judicial review was established by Act no. CXXX of 2005 subsequent to the adoption of Constitutional Court decision no. 42/2004 of 9 November 2004 on declaring the preceding rules on the judicial review procedure unconstitutional<sup>8</sup>.

Petitions for judicial review are a means of extraordinary remedy in relation to the preceding court proceedings, available for the parties only to a limited extent. Contrary to appeals, such petitions may be submitted only on the basis of alleged violations of the law. As a process of legal remedy, the judicial review procedure aims at assessing the veracity of the petitioner's allegations about legal violations and remedying the proven breaches of the law. Petitions for judicial review may be lodged in exceptional cases and to a limited extent, since they may be submitted only against final court decisions. The principle of *res judicata* originates from the citizens' confidence in the finality of court decisions, i.e. it is based on the principle of legal certainty. Due to being related to legal certainty, the authority of *res judicata* can be overridden only under extraordinary and limited circumstances, on an

<sup>6</sup> Németh and Kiss (2007) 1304.

<sup>7</sup> Uttó (2007) 52–57.

<sup>8</sup> Szécsényi-Nagy (2006) 357–71.

exceptional basis, for the purposes of ensuring the implementation of the law and personal rights generated by legislation and of remedying legal violations caused by the judiciary. Thus, the instrument of judicial review may be applied if the impugned final judgement has been delivered in an unlawful manner.

Petitions for judicial review are dealt with by the Curia's judicial panels consisting of three professional judges, however, in more complex cases, the Curia may decide to proceed in a panel composed of five professional judges [section 11, subsection (5) of the CCP].

As of 1 January 2012, judicial review cases have been heard by the Curia. Pursuant to section 188, subsection (1) of Act no. CLXI of 2011 on the Organisation and Administration of the Courts, the legal successor of the Supreme Court is the Curia for the purposes of activities related to the administration of justice. In line with the above, the earlier jurisprudence of the Supreme Court has remained guiding in the Curia's proceedings.

In the judicial review procedure, the Curia has both cassation and revision power: the Curia may decide to uphold the final judgement, or quash it and render a new decision or order the court of first or second instance to reopen its proceedings. Hence, the Curia's powers and the entire judicial review procedure are not so different from the rules of the appellate procedure.

As indicated in the introduction, a special characteristic of the Hungarian judicial system is that district courts and high courts have shared first instance competence. This regulation is due to a legal policy reason according to which certain types of legal actions require a higher level of professional knowledge and experience, and therefore such legal actions, as far as possible, should not be dealt with by junior judges appointed to district courts. I am convinced that this otherwise important reason could be appropriately taken into account in a one-tier structure as well by way of a suitable case allocation mechanism that would allocate the more complex types of cases to the experienced judges, while would allocate the remaining types of cases to their younger colleagues at the same court. Hence, the aforementioned legal policy reason does not justify in itself the duplication of first instance competences within the justice system.

This is particularly true for second instance proceedings. The duplication of first instance competences currently leads to the shared second instance competence of high courts and regional appellate courts. The result of duplicated competences, *inter alia*, is that there are 25 courts with appellate functions in Hungary, and their case-law is diverging even in the most basic procedural and substantive legal issues. The courts' second instance practice necessarily affects the unification of the courts' jurisprudence at national level, therefore the number of second instance judicial forums is not irrelevant. The higher that number is, the more likely it is both from theoretical and practical viewpoints that no unified case-law can be established.

The legal policy reason according to which certain types of cases should be heard by junior judges, while the more complex cases should be dealt with by the more experienced members of the judiciary is not applicable to second instance judges, since the latter are necessarily appointed from among the more experienced judges. Against this background, the legislator's decision to maintain the duplication of first instance competences does not automatically lead to the duplication of second instance competences. Appellate functions could be properly carried out in a single level appellate court system, provided that the latter is given the required number of judges and the required infrastructure. The advantage of this system would lie in making the courts' second instance case-law much more unified and transparent and preventing the appellate courts from establishing separate practices locally.

As regards the courts' jurisprudence concerning retrials, the most frequently invoked ground for retrial referred to by the parties from among the grounds for retrial listed in the CCP is that they could present a fact or piece of evidence, or a binding court or other official decision that the court did not take into consideration during the main proceedings. The legal policy aim behind this ground for retrial was to enable the parties to request the retrial court to render a new and favourable decision in the event that, despite the legal obligation incumbent on them, they had failed to provide the court with the necessary pieces of information in the main proceedings, but where no fault could be imputed to them in failing to do so. With regard to the fact that the CCP's provisions relating to first instance proceedings do not clearly regulate the parties' obligation to provide evidence, the assessment of whether the party motioning for retrial was at fault in failing to submit the facts and pieces of evidence available to him has been a persistent problem.

The constitutional task of the Curia, the supreme judicial forum of the Hungarian court system has remained unchanged in the past decades: it has been responsible for ensuring the uniformity of the courts' jurisprudence in Hungary. The harmonisation instruments available to the supreme judicial body have been varied in many aspects, but the most significant instrument has been the judicial review procedure. Petitions for judicial review are a means of legal remedy as a result of which individual cases can be brought to the Curia. As mentioned earlier, one of the special features of the judicial review procedure is that the rules and outcome of the adjudication of a judicial review case are essentially not that different from those of an appellate case. At present, the Curia is not in the position of being able to filter the cases lodged with it, hence, it has to decide on the merits of each and every petition for judicial review submitted in due time by the party entitled thereto. This necessarily entails that the Curia has been obliged to decide not only on disputes involving legal issues of principle, but also on many cases – that are equally important for the parties concerned – with minor legal issues having no relevance for the country's jurisprudence. The Curia's obligation to examine all the submitted cases prevents it from fully complying with its aforementioned constitutional task. It therefore became important to revise the methods, means and remedy rules on the basis of which the Curia could ensure the uniformity of the Hungarian courts' case-law in the most effective way possible.

The Constitutional Court has only a five years' judicial practice in respect of the new form of constitutional complaint that can be submitted against final court decisions, consequently, its application has raised more theoretical problems than practical issues. Within the framework of this type of remedy, the Constitutional Court may examine whether the impugned court decision violates any of the parties' constitutional rights enshrined in the Fundamental Law. If the Constitutional Court concludes that there has been a violation, it may annul the final court decision and order the court concerned to reopen its proceedings. The idea of introducing this highly specific means of legal remedy already emerged at the time of Hungary's democratic transition, but it was then dismissed due to professional reasons. This type of constitutional complaint has been functioning in its purest and longest-standing form in Germany, but those who follow the developments in the German legal literature know that there are now studies that seek to modify its present system, since, an important legal instrument as it is, it raises too many practical issues<sup>9</sup>. This form of legal remedy has been implemented in Hungary with some delays, and there is a risk that we will not be able to avoid its inherent difficulties, for instance, the excessive

<sup>9</sup> The relevant German legislation and jurisprudence are summarised by Csehi (2006) 100–10.

length of proceedings regularly raises concerns. The Constitutional Court has frequently been lenient on itself for not respecting the deadlines for the adjudication of constitutional complaints, which resulted in several year long delays in its proceedings. Section 30, subsection (5) of the Constitutional Court Act merely stipulates that the Constitutional Court shall decide on constitutional complaints within reasonable time. A somewhat more precise deadline would certainly urge the Constitutional Court to follow a stricter timetable.

### **3. THE LEGAL REMEDY SYSTEM OF THE NEW CCP**

On the whole, it can be stated that the concept of the new CCP and the legislative proposal on the new CCP did not notice the above issues, and they instead took the view that the legal remedy system of the CCP in force is functioning well in practice, therefore there is no need for a conceptual change. In the present chapter, I would like to demonstrate that, even in the absence of genuine conceptual changes, the legislative proposal on the new CCP has brought a number of essential modifications, many of which would be welcomed.

#### **1. The rules of the appellate procedure**

As a result of the division of the procedural phases of first instance proceedings, the new CCP introduces some changes to the appellate procedure as well. An important objective is to narrow, where possible, the possibility of quashing first instance judgements by the courts of second instance.

The new CCP sought to provide greater clarity on the scope of court decisions that may be subject to appeal. The relevant provisions set forth that, unless excluded by law, first instance judgements may be appealed in any case, while first instance procedural orders may be subject to appeal only if the new CCP specifically allows it. The latter rule is consistently applied throughout the entire text of the new CCP, which specifically indicates in each case whether the given procedural order may be appealed or not. The extent of the right to appeal is not limited, which means that an appeal may be lodged against the whole or part of a court decision, including only against the operative or reasoning part of a court decision.

The new CCP imposes more precise requirements concerning the justification of an appeal for the appealing party: he has to indicate the extent to which he requests the court of second instance to re-examine the impugned decision, he has to state the grounds on which he alleges a legal violation during the first instance proceedings or in the first instance judgement, and he also has to provide in-depth reasoning in that regard. For instance, if the appealing party complains that the taking of evidence led to the erroneous establishment of the case's facts, then he has to indicate that his appeal aims at reassessing the results of the taking of evidence and establishing a new factual background, in addition, he has to state the reasons on the basis of which the new facts could be proven. Based on the courts' relevant case-law, the new CCP also clarifies that, in his appeal, the party may request the appellate court to "only" quash the first instance judgement on the ground that the essential procedural requirements of the first instance proceedings have been breached in a way affecting the substance of the first instance judgement.

By virtue of the new CCP, the appellate procedure includes two separate phases. Since an appeal has to be submitted to the competent court of first instance, the latter is responsible for transmitting it to the court of second instance. Prior to the transmittal, the court of first instance is obliged to examine whether the appeal meets the relevant procedural

requirements, in particular whether the appeal has been lodged in due time by a party entitled thereto. In the event that the deficiencies of an appeal can be remedied, the court of first instance has to return the appeal to the party for remedying the identified deficiencies within a time limit prescribed by the court. If the party fails to comply with the above request in due time or in an adequate manner, the court of first instance becomes entitled to reject the appeal. It is important to note that the procedural order to reject the party's appeal may be subject to a separate appeal.

Subsequent to the transmittal of the appeal to the court of second instance, the head of the judicial panel seized with the case also becomes entitled to reject the appeal *ex officio*, if it does not meet the relevant legal requirements, moreover, the head of panel may also return the appeal to the party for remedying its deficiencies in accordance with the rules of first instance proceedings. In principle, the court of second instance deals with the appeal in camera, however, a hearing may be held to decide on the appeal if so requested by either of the parties or if the court deems it necessary. The parties are not entitled to request the appellate court to hold a hearing if their appeal pertains only to the bearing or the amount of court costs, or to the payment of any unpaid duty or the recovery of expenses advanced by the State, or to provisional enforceability, the deadline for performance or the authorisation of payment by instalments, or if their appeal is lodged only against the reasoning part of a judgement.

The appellate court's hearing has to be scheduled so as to allow at least fifteen days to elapse between the time the appeal is delivered to the opposing party and the date of the hearing, in addition, it should be ensured that the day of the hearing be set within a period of four months from the day when the documents of the case are delivered to the court of the second instance.

The division of the procedural phases of first instance proceedings raised a number of issues in relation to the elaboration of the new rules of the appellate procedure. The most important issue is the option of presenting new facts and evidence in proceedings at second instance, which is closely linked to the parties' right to change their legal action on appeal. The relevant provisions of the new CCP are somewhat controversial and ambiguous in that regard. Section 373 sets out in a general manner that the parties do not have the right to change their claim or counter-claim in proceedings at second instance. Nonetheless, section 373, subsection (2) allows for the parties to present new facts in their appeal if, for reasons beyond their control, they came into possession of the new facts only after the end of the last hearing at first instance, provided that such new facts would have been to their benefit had they been considered originally. Section 373, subsection (3) adds that the parties are entitled to submit a new motion for evidence or provide new pieces of evidence in their appeal, provided that they serve the purpose of proving facts that are referred to as a ground for lawfully changing the parties' legal action and they were produced after the end of the first instance proceedings or they became known to the parties belatedly for reasons beyond the parties' control. Moreover, the new CCP also allows for the parties to change their legal action in proceedings at second instance if the court of second instance informs them about new facts noticed on an *ex officio* basis or about its legal interpretation different from the one accepted by the parties and the court of first instance. Thus, it can be seen that, despite the general prohibition, the opportunities for the parties to change their legal action in proceedings at second instance have increased, which is slightly unusual for appellate proceedings. Nevertheless, this may have the advantage that, based on its different interpretation of the plaintiff's claim, the court of second instance, in contrast to the courts'



previous practice, will be able to decide on the merits of the case instead of simply quashing the first instance decision.

The change of legal action should be distinguished from the change of appeal. As regards the latter, section 375 of the new CCP contains that the parties may change their appeal prior to their adjudication, but they are not entitled to extend them to a part of the first instance judgement that had not been previously affected by their appeal.

In its provisions on the appellate procedure, the new CCP seeks to consistently implement the parties' right to dispose of their legal action, which is shown in the general rule that the court of second instance should proceed only on the basis and within the framework of the parties' appeal. The new CCP, however, lays down some exceptions to the above general rule in respect of the so-called substantive measures of organisation of procedure, e.g. requires the court of second instance to take notice of circumstances related to the substantive measures of organisation of procedure. In such a case, the court of second instance has to inform the parties about the results of taking notice of such circumstances which can then be taken into consideration only upon the appealing party's request. If the appealing party decides not to put forward such request, the court of second instance cannot re-examine the case in that regard and has to proceed within the limits of the party's original appeal.

In comparison with the CCP in force, the most problematic issues of the appellate rules of the new CCP will certainly be of how to interpret the substantive measures of organisation of procedure at second instance, how to reconcile such measures with the remedial function of appellate proceedings and how to prevent second instance proceedings from becoming repeated first instance proceedings. By virtue of the new CCP, the rules of first instance proceedings, including those related to the substantive measures of organisation of procedure, shall be applied to appellate proceedings as well. Based on the above, the court of second instance is entitled and obliged to put questions, provide information and issue appeals for the parties in relation to the preparation of second instance proceedings and the taking of evidence within the framework of the substantive measures of organisation of procedure. In addition, the new CCP stipulates that the court of second instance has to take the necessary substantive measures of organisation of procedure in respect of those legal circumstances that were noticed *ex officio* by the court of second instance, but had not been detected earlier by the court of first instance. It follows that the court of second instance is entitled and preferably obliged to take evidence in that regard. Within the scope of the substantive measures of organisation of procedure, the new CCP provides the opportunity for the court of second instance to authorise the parties to change their claim or counter-claim or to produce additional evidence.

The new CCP defines the high courts as the main first instance judicial forums and sets forth special rules for the district courts' first instance proceedings. It follows that the rules of the appellate procedure principally apply to the regional appellate courts, while the high courts' second instance proceedings are regulated by special provisions with two differences. If the party is not represented by a legal representative in proceedings at first instance, then he is entitled to state his appeal for the records and he is not obliged to specifically refer in his appeal to the legal provisions allegedly infringed by the court of first instance. As regards appealing against procedural orders, the new CCP brings no essential changes to the rules in force: if the court of first instance is not bound by its procedural order that has been appealed, the appeal may be decided by that court itself. Otherwise, an appeal against a procedural order is dealt with by the court of second instance without a formal hearing.

## 2. The rules of the retrial procedure

The new CCP brought no conceptual changes to the rules of the retrial procedure. The major issue during the codification was whether the case-law of the European Court of Human Rights (ECtHR) necessitates the rethinking or modification of the function of retrials. The relevant provisions of the CCP entail that retrial proceedings cannot be initiated with the exclusive aim of remedying only the errors of law of a final judgement delivered in the main proceedings. Retrial proceedings on the grounds of the ECtHR's judgement, however, seek to remedy fundamental rights violations committed by the courts in the main proceedings. Another argument in favour of the introduction of an additional ground for retrial was that, in its judgements finding a violation of the Convention committed by Hungary, the ECtHR explained in a number of cases that, in addition to the just satisfaction afforded by the ECtHR, the correction of an infringement suffered by the applicant necessitates the introduction of a "reopening" procedure (application no. 30789/05, case of Ferenc Rózsa and István Rózsa v Hungary).

Consequently, section 393, point c) of the new CCP provides for an additional ground for retrial according to which a motion for retrial may be submitted against the final judgement if the party refers to a judgement delivered in his own case by the ECtHR, finding a violation of the European Convention on Human Rights or one of the protocols to the Convention, provided that the final judgement to be retried is based on the same violation and the ECtHR did not afford any just satisfaction to the party or the infringement could not be corrected by way of reparation.

A motion for retrial has to be submitted within six months of the date the final judgement to be retried took effect or of the date the party gained knowledge of the ground for retrial, however, no retrial may be motioned after the expiry of a five-year long period following the date the final judgement to be retried took effect. As an exception to the above provisions, a motion for retrial on the grounds of the ECtHR's judgement has to be submitted within sixty days of the receipt of the ECtHR's judgement.

A motion for retrial is to be lodged with the court of first instance that dealt with the case at first instance in the main proceedings. Firstly, the court has to decide on the motion's admissibility without a formal hearing. The court's procedural order on the admissibility may be subject to appeal. Once the procedural order to admit a case for retrial takes effect, the court has to retrial the case on its merits within the limits of the motion for retrial. As a result of the case's retrial, the court may uphold the impugned final judgement or may partly or wholly quash it and render a new decision in compliance with the relevant pieces of legislation.

One of the most disputed issues of the retrial procedure is the change of legal action. In the admissibility phase, the court has to examine whether the motion for retrial contains any new claims. As a general rule, the new CCP prohibits the change of legal action in retrial proceedings, on the other hand, it refers to the relevant rules of the appellate procedure, which means that the latter are to be applied to the exceptional cases where the change of action is allowed during retrial proceedings.

## 3. Judicial review

As noted earlier, one of the problematic issues of the rules of judicial review was that certain types of cases – for instance, pecuniary actions in which the litigated amount does not exceed 3 000 000 HUF –were excluded from being subject to judicial review. Consequently, the Curia could not decide on many substantive and procedural legal issues

and could not properly fulfil its jurisprudence-unifying task. The other problem of the provisions in force is that the parties may submit a petition for judicial review on the basis of almost any kinds of procedural or substantive legal violations, which resulted in the Curia being rather a second appellate forum and being unable to deal only with legal issues of principle.

The new CCP addressed the first problem as explained hereunder. It increased the minimum threshold for judicial review from 3 000 000 HUF to 5 000 000 HUF, and left the rules of judicial review essentially unchanged for cases with a litigated amount of more than 5 000 000 HUF. On the other hand, it introduced an admissibility procedure for judicial review cases with a litigated amount of less than 5 000 000 HUF. In such cases, the party has to submit a request for the admissibility of judicial review along with his petition for judicial review. The party may request the admissibility of his petition from the Curia on four grounds, and he has to provide detailed reasons for such request. Section 409, subsection (2) of the new CCP enlists the four admissibility grounds as follows: i) the petition serves the purposes of ensuring the uniformity of or developing the courts' case-law, ii) the petition raises legal issues of particular importance or social significance, iii) the petition touches upon a legal issue to be referred to the European Court of Justice for a preliminary ruling, or iv) the petition is submitted against a final judgement that deviates from the Curia's published case-law.

The Curia decides on the admissibility of the petition for judicial review through a judicial panel composed of three judges without holding a formal hearing. The opposing party is given the opportunity to be involved in the proceedings, *i.e.* to submit a cross-petition for judicial review or a counter-plea only after the petition for judicial review is admitted by the Curia. By virtue of section 411 of the new CCP, the Curia shall provide reasons for refusing to admit a petition for judicial review, although its procedural orders on the admissibility of petitions cannot be contested.

The new CCP contains more precise and more detailed rules regarding the content of petitions for judicial review, hence, the Curia will be in a better position to filter out those petitions that are exceptionally incomplete or inaccurate as to their extent and justifications. The admitted petitions for judicial review shall, in principle, be dealt with by the Curia without a formal hearing, except in cases where the parties request the Curia to hold a hearing or the Curia deems it necessary. Thus, the new CCP brings no changes in that regard, despite the fact that the practice has shown that hearings simply delay the conclusion of judicial review proceedings and provide no additional guarantees, since no evidence can be taken and no new facts or pieces of evidence can be submitted in such proceedings. Petitions for judicial review cannot be modified after the expiry of the time limit to submit them.

As indicated earlier, the introduction of the new type of constitutional complaint and the relevant case-law of the Constitutional Court may have the effect of enabling the parties to submit both a petition for judicial review to the Curia and a constitutional complaint to the Constitutional Court against the very same final court decision. The pieces of legislation in force do not deal with the issue of the above duplication, which may lead to a strange procedural situation in which the same final judgement is examined by two different forums at the same time, based on divergent criteria. This risk has been detected by the new procedural code, therefore, section 418 of the new CCP requires the Curia to notify without delay the Constitutional Court of the commencement of judicial review proceedings. Pursuant to the Constitutional Court Act, the Constitutional Court may decide to stay its own proceedings with regard to the commencement of judicial review proceedings, which

enables the Constitutional Court to examine the constitutionality of the impugned court decision only after the adjudication of the case by all three judicial instances, including by the Curia as well.

The relationship between section 405 and section 423 of the new CCP regarding judicial review cases requires some legal interpretation. The former provides for the application of the rules of the appellate procedure to judicial review cases, and those rules also refer back to the provisions on first instance proceedings. The above references are of particular relevance for the purposes of deciding whether the Curia – similarly to the court of second instance – is obliged to take the necessary substantive measures of organisation of procedure in judicial review proceedings as well. Section 423 seems to give an answer to that question, since it stipulates that the Curia shall examine the legality of the final judgement only within the limits of the petition and cross-petition for judicial review and only with regard to the legal violations referred to by the petitioners. Section 423, subsection (2) adds that judicial review should extend only to those facts that had occurred prior to the delivery of the final judgement and had been assessed by the final judgement.

The Curia's scope of action in judicial review proceedings has, in essence, remained unchanged: it may uphold the impugned decision, quash it and render a new decision or order the court of first or second instance to reopen its proceedings.

#### 4. SUMMARY

The Hungarian legal society has been waiting for almost a decade for the legislator not to modify the CCP in force but to find some time to adopt a new Code of Civil Procedure that meets the changed societal and economic expectations for a modern justice system<sup>10</sup>. Their wish has been satisfied, however, the new procedural code and its detailed rules will be heavily debated, and it is primarily the courts that will be required to address the problematic issues by way of their interpretation of the law, *i.e.* by establishing their new case-law.

It is perhaps not completely unnecessary to recall that Act no. I of 1911 on the Code of Civil Procedure, drafted by Sándor Plósz had been an important standard not only for Hungarian lawyers, but for the European legal society as well. As Minister of Justice, Sándor Plósz spent several months in Germany and France, and studied their procedural codes and their relevant case-law. He drafted the aforementioned Hungarian procedural code on the basis of the knowledge gained in those countries<sup>11</sup>. Based on the currently known reference documents, it seems that the codification of the new Hungarian Code of Civil Procedure had not been preceded by such extensive comparative legal studies. Despite the fact that Hungary was the last country in the Central-Eastern European region to adopt a new civil procedural code, it could have perhaps paid greater attention to the progress made by other European countries in this field.

<sup>10</sup> Osztovits (2010) 158–163., Varga (2014) 19–49.

<sup>11</sup> On the codification led by Plósz see: Kengyel (2010) 61–63; Gáspárdy (2000) 11–15.

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