'The Past Is Unforgettable': Civil Procedural Law's Response to the Challenges of Pseudo-Modern Society and Economy in Hungary After 2010

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Abstract In this chapter I want to look at civil procedural law from a legal history perspective. My aim is to present one of the flagships of the post-2010 procedural reform, the Code of Civil Procedure, in a legal-historical context. In this context, I will describe the characteristics of pseudo-conservative legislation, with a focus on the merging of substantive and procedural law, and on dogmatic anomalies that not only theory but also practice have to face. In my view, knowledge of legal history can also bring us closer to understanding the presumed intentions of the legislator and to interpreting the resulting legislation. In this context, I will examine the process of what I call procedural law reform, after reviewing the legal and taxonomic antecedents. In the context of the latter, I will present the problems of pseudo-conservative legislation and the contradictions of legal historicism through the fundamental provisions of the Code. Also in this chapter, I intend to illustrate the consequences of centralisation and the abolition of special courts through the way in which labour courts were abolished. The chapter will conclude with a comparative and introspective evaluation of the new law.

1 Introduction: Traditions and Problems with Civil Procedure

The traditions and problems of civil procedure are complex. Civil procedure is one of the most conservative areas of law. Despite their many inflexibilities and socio-economic relations, which by their very nature change rapidly and apparently without specific reason, litigation systems respond slowly, only after significant delay. However, this also creates an advantage since it is precisely this so-called conservatism which, even a century later, allows principles, characteristics and

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traditions to emerge, resulting in some sort of stability. It is also necessary that the changes and needs justifying the regulation reach the critical mass that forces reform.

The roots of civil litigation stretch back millennia and its practice has evolved slowly, often over decades, but certain basic principles have remained unchanged since Roman law.

The conservatism of civil procedural law gives rise to its inevitably organic nature. When the Hungarian legislator needed to create a new code of civil procedure, there were two reasons for this. The first was Act IV of 1869, which separated the judiciary from public administration, including at the lower levels, and the second was Dualism itself. Since half of the Austro-Hungarian Monarchy's exports went to Germany, and this had a direct impact on the Hungarian economy,[1] it is no exaggeration to say that the nature of civil law relations in this way justified the creation of a code that would allow disputes to be settled in a Western way in Hungary. Even if the effect was indirect, the resulting change in commercial attitudes certainly justified the reform, and this was not in contradiction with the fact that the rules of civil litigation are fundamentally slower to respond to external stimuli than other areas of law.

As the application of the law evolves, so does judicial practice, which is sometimes stricter but sometimes more permissive towards the behaviour of litigants. By virtue of their position, legislators can only give the practitioner the means to comply with principles that are still so relevant today, such as the requirement to bring proceedings to a conclusion within a reasonable time. However, it should not be overlooked that the requirements of speed, professionalism, and fairness in litigation are a triad that can only be achieved at each other's expense.

A century after the last comprehensive and substantive reform, the legislature felt that the time had come to create a new code for the area of law that handles the bulk of disputes before the public judiciary. The conceptualization of Act CXXX of 2016 on the Code of Civil Procedure (CCP) identified a dozen objectives and principles that must be kept in mind during the codification process. These included, for example, the systemic achievement of efficiency in litigation; the formulation of new principles in the service of efficiency, including the emphasis on the principle of the concentration of litigation and the creation of different rules; the establishment of procedural rules that promote the separation of litigation and conciliation between the parties; and the introduction of a split structure, i.e. the division of the litigation procedure into a pre-trial phase and a trial phase.

It can be said that the legislator has identified the problems that have emerged in the civil justice system since 1989 and has had all the means to provide adequate responses to them. More than a century of domestic developments involving tried and tested principles and legal institutions were available and referred to by the legislator.[2] Given that this is the case, it is worth reviewing the solutions adopted in Act I of 1911 on the Code of Civil Procedure (CPC I) so that the yardstick defined by

[1] Katus (2012), p. 464.

[2] Wopera (2019), p. 3.

the Code of Civil Procedure applied to itself is one of the guiding principles for the analysis.

Accordingly, the present paper aims to outline the development of civil procedural law from 1868 to 1911, then from 1952 onwards, and finally (1c) in the decades after the regime change. It then examines the problems of pseudo-conservative legislation as a cornerstone of procedural reform and the problem of historicism through the lens of principles, in particular, the duty of truthfulness, verbosity and perception, and the counter-productivity of regulatory rigidities. In a striking example of taxonomic anomalies, and following the necessity of proof, it seeks to assess the success of Act CXXX of 2016 (CPC III) compared to CPC I on the one hand and as a stand-alone code on the other.

2 Outline of the Development of Modern Hungarian Civil Procedural Law

2.1 The First Steps of Professionalisation: Hungarian Regulation in the Dualist Era

Given that the Dualist era between 1867 and 1918 had, in practice, ended by the time CPC I came into force, it is worthwhile moving away from the period of public history in terms of the history of procedural law.

After Reunification in 1867 when Hungary gained almost full independence, two measures in the field of civil justice once again became urgent for Hungary. The first was establishing a system of judicial organisation and separating the judiciary from the public administration at the lower level, which was achieved by Act IV of 1869. The second was the creation of rules of civil procedure adapted to the new system.[3]

The Hungarian legislature had already regulated civil litigation in Act LIV of 1868, but this was based on the assumption that the regulation would only be temporary, and it was also clear that this Code was only able to meet the needs of the time to a limited extent. In the West, both French and German civil procedural law moved in the direction of the oral procedure. In contrast, our own procedural law was modelled on the Austrian Code of Civil Procedure. It is no coincidence, therefore, that the lower house of Parliament, even before the adoption of Act LIX of 1881, which was designed to remedy initial shortcomings, passed a resolution to prepare a code of civil procedure based on the principles of orality, immediacy and publicity. As a result, two drafts were prepared on behalf of the Minister of Justice, Tivadar Pauler. The proposal drafted by Kornél Emmer, Member of Parliament, covered the procedure before the courts, rules of evidence and the emergency procedure, while the one prepared by Professor Sándor Plósz covered the entire

[3] Fabinyi (1931), p. 1.

civil procedure except for the rules of evidence.[4] The thus-commissioned drafts were ready by 1893, with Kornél Emmer taking French civil procedure law as the basis for his, and Sándor Plósz German civil procedure law.[5] It was already clear then that there were fundamental differences between the two sets of rules of procedure, making it impossible to combine them.

2.2 *The Idea and Its Shadow: Socialist Procedural Law in Hungary*

Of course, the later legislation of the twentieth century was not free from the application of foreign models, but this time, the legislator's attention was turned more to the East. The process of codification was still being carried out and could be undertaken by legal scholars whose legal 'education' had been influenced by CPC I of the early twentieth century.[6] Since 1923, socialist trials had been characterised by the fact that the court had to take action on the motion to obtain evidence where appropriate since it was legally obliged to establish the 'material' truth.[7]

The tasks which the courts of a people's democracy in Hungary were called upon to perform could, in the opinion of the legislature, only be successfully accomplished if the procedural rules of our judicial system gave citizens full guarantees for the enforcement of their personal and property rights in civil law if they allowed the direct participation of a wide range of workers in the judiciary of labour courts, and if they made substantive justice the basis for litigation decisions. In the view of the legislator at the time, these requirements made it necessary to replace CPC I with a new, 'democratic' Code that fully implemented the guarantees of procedural law.[8] In this context, it should be noted that the need for attempts to ascertain the substantive truth, which Artúr Meszlényi had previously advocated, was—rightly—omitted from the previous legislation[9] but was now included here, only to be removed again in due course. It is true that, after 1957, the novel 'objective' interpretation of truth that had developed in legal literature gained ground—even though the law did not contain any references to the notion of truth..[10]

[4] General Explanation of Article I of Act I of 1911 on the Code of Civil Procedure.

[5] Kengyel (1989), p. 48.

[6] This is supported, among other things, by the fact that a special hybrid version of the obligation to serve process may have developed, i.e., Hungarian civil procedural law was free from the principle of investigation as such even in the 1950s, despite the fact that several socialist procedural institutions were incorporated into the new code, including the protest of legality, the reduction of the need for lawyers, and the institution of people's assessors. See Kengyel (2012), p. 62.

[7] Kengyel (1989), p. 57.

[8] General explanatory memorandum to the original text of Act III of 1952 on the Code of Civil Procedure.

[9] Kengyel (1989), p. 49.

[10] Kengyel (1989), p. 33.

2.3 The Market Economy and Litigation: Responses to the Social Challenges of Regime Change

After 1989, Hungary faced a task that was a particular challenge even for experienced states. The strengthening of private property and the diversification of civil law relations posed a number of challenges to the legislator, and the most far-reaching amendments to the RPC became necessary. The most important of these was Act LXVIII of 1992 on the establishment of a review procedure in Act III of 1952 on the Code of Civil Procedure (CPC II) and related legislation, which, although it was adopted because of the unconstitutionality of the prosecutor's challenge to the legality of the law, nevertheless contained the necessary innovations required for the change of economic system.[11]

Subsequently, the Supreme Court, and later the Curia, guided the development of civil procedural law in Hungary with several decisions and rulings.

3 The Cornerstone of Procedural Reforms After 2010

3.1 The Problems of Pseudo-Conservative Legislation

The Fundamental Law of Hungary professes faith in tradition and respect for past generations. Considering the place of the Fundamental Law in the hierarchy of legislation, it can be concluded that this respect for tradition, this classical conservative ideal, has permeated all legislation since its adoption and entry into force, especially the classical codes.

Since about two decades after 1989, a situation was restored whereby legislation became possible without compromise, and this is reflected more than ever in the Fundamental Law and the codes of procedural law reform.

This is a fortunate situation, as the process of drafting Act CXXX of 2016 on Civil Procedure Code (CPC III) is clearly traceable through government decisions and study volumes. The legislative revision aimed to produce a modern code of civil procedure, in line with international (presumably good) practice, which ensures the effective enforcement of substantive rights and, drawing on the results, or rather the acquis, of jurisprudence and legal practice, regulates litigation clearly and coherently, taking account of the latest technological developments, thus making life easier for clients and the related professions.

According to the general justification of the Civil Procedure Code, its regulatory solutions are based on the regulatory solutions of traditional European codes of procedural law, which can be considered models, in particular, the German Code of Civil Procedure of 1877 and the Austrian Code of Civil Procedure of 1895, as well as

[11] General Explanatory Memorandum to Act LXVIII of 1992 establishing the review procedure in Act III of 1952 on the Code of Civil Procedure and related legislation.

the provisions of the Swiss Federal Code of Civil Procedure, which was codified in 2008. It also takes into account the solutions provided by the codes of civil procedure of the Central and Eastern European countries that have been recodified in recent decades, such as the Slovenian Code of Civil Procedure and the Croatian Code of Civil Procedure.[12]

In principle, CPC III sought further to develop the existing traditions of Hungarian procedural law, preserving the split trial system introduced in Article I of CPC I, the definition of the tribunal as a court of general jurisdiction, the uniform procedure modelled on the tribunal, and the mandatory extension of legal representation to all tribunal cases. The question rightly arises to what extent such selection was necessary, i.e. to what extent was it fortunate to extract specific provisions from the coherent, unified approach and solutions, and also from the provisions of CPC I—thereby disrupting its uniformity—and to insert alongside them, even if only in principle, the rules of other nations whose legal development was nominally independent of Hungary's.

CPC III sought to achieve the main legislative objective of the Act by introducing a number of innovations, reviving legal institutions with a long tradition in Hungarian procedural law and, where necessary, adapting them to the requirements of the time: ensuring the efficiency of litigation at the systemic level. The realisation of this objective required systemic changes, in-depth reform or an outright break with pre-existing procedural solutions.[13] This may give rise to criticism in some quarters of the legal community that the legislator has sought to ignore the progress made by judicial practice and jurisprudence in the field of civil procedure over the last half-century or so. It should be noted here that the main objective of efficiency in litigation would have been achieved under the rules previously in force if the 'burden of disregard'[14] had been genuinely hanging over the heads of litigants in the practice of the courts, usually of second instance.

From the above, it is clear that the lens into the past, into an idealised era that never existed—is blurred—it was an era in which the problems of procedural law were similar. The period in the history of ideas that served as a model and is reflected in the above-quoted part of the Fundamental Law refers to an era that was only a shadow of an even earlier, even more idealised one.

While a century ago, after the lost war and two revolutions there was still concern about the unsustainability of authority[15] and the old establishment's place, this is no longer the case. Although the period of Plósz's practice of litigation has handed down to posterity a number of experiences, reference to these can be regarded as biblical[16] rather than real, since the legislation only held the words and gave away the meaning. As will be illustrated later in this study, the reference to the past, to

[12] General Explanation of Act CXXX of 2016 on the Code of Civil Procedure.

[13] General Explanation of Act CXXX of 2016 on the Code of Civil Procedure.

[14] Sections 3 (3) and 8 of Act III of 1952 on the Code of Civil Procedure.

[15] Szekfű (1989), p. 412.

[16] Gen 3, 7.

roots, has remained in most cases at the level of mere words, making the CPC III. An example of historicist legislation, a tradition without substance, which was drafted with the same possibilities as in the period it was intended to revive.

3.2 *Legal Historicism in Principles and Courts*

Of course, Article I of CPC I was not without its novel amendments, but these were typically the result of public history rather than due to the whims of the legislator. Royal power could not be asserted to the full given the privileges of the order, and there was also a lack of the declaration of the principle of due process of law, the immovability of judges, the independence of proceedings and the proper organisation of the courts.[17] The legislature had remedied some of these issues before the turn of the century, but the procedural principles were still to be found in the rules of civil procedure.

The obligation of the parties to provide truthful information is one such principle, despite the question of whether the parties have a duty to provide truthful information in civil proceedings, which is a recurring controversy. CPC I provided (in substance, in line with the current legislation) that a party or representative who, against their better knowledge, asserts a fact in a case which is manifestly untrue, denies a fact in a case which is manifestly true or relies on evidence which is manifestly unfounded, shall be fined by the court.[18] It is noticeable that while the turn-of-the-century legislation imposed an explicit obligation regarding all facts, the new legislation maintains it only regards ‘material’ facts, leaving it to the courts to decide what is material in a civil action. In particular, the obligation to tell the truth no longer derives from the requirement of good faith but from the parties’ obligation to support the proceedings and has been codified accordingly.

In addition to doctrinal clarity, the social costs of a civil action justify the emphasis on the responsibility of the party with respect to the veracity of the facts and statements made by them. The duty of truthfulness applies, as in CPC I, to the representative and the intervener when they make statements of fact. Since other participants in the proceedings—in particular, witnesses and experts considered to be providers of evidence—make statements of fact which are, from a doctrinal point of view, different from those of the party, the special rules and legal consequences that apply to them are applicable.

Throughout legal history, civil litigation has gradually shifted from the written to the oral form.[19] Article 5(1) of CPC II was clear when it said that the court shall decide disputes in open court. In my view, it follows that what is said orally has

[17] Magyary (1939), p. 27.
[18] Act I of 1911, § 222.
[19] Magyary (1939), p. 27.

significance, albeit not to the same extent as in criminal proceedings. However, the fact is that the oral statement had much greater significance in the system of CPC II.

The principle of verbality is even specifically mentioned in CPC I. Both the law's text and its explanatory memorandum specifically refer to it. The preparatory nature of the writ as a document to be cited is rooted in the nature of oral proceedings and is also rooted in our current law. The nature and purpose of the oral procedure required that the application, as the basis and subject matter of the proceedings, be capable of being presented at the oral hearing. Without the presentation of the claim, the oral hearing would have been a mere argument without direction, which would have been incomprehensible in itself and, in the legislature's view at the time, would not have been able to inform the court sufficiently of the state of the case. Therefore, if the action was to be brought at the oral hearing in any event, there was no reason why the court should consider the prior notice of the action, rather than the oral presentation, to be the operative part of the proceedings. The primacy of oral pleading was also supported by the fact that the plaintiff could amend the statement of claim on the day of the hearing, which they could do under Article 68 of Act LIV of 1868.[20]

CPC II regulated this issue so that the plaintiff was entitled to withdraw from the action as long as the defendant had not presented a counterclaim at the first hearing and was not restricted by the fact that a preparatory document was created after the receipt of the statement of claim.[21]

CPC III, on the other hand, actually takes a major step towards literacy by referring to the split structure. Declarations of *lis pendens*, which are recorded at the end of the proceedings, may be changed only in the cases and under the conditions laid down by law, and it has become a general rule that declarations of lis pendens may be made only on the summons of a court.[22] The only exception to this rule is the amendment of the statement of claim and statement of defence, which may be made without a specific invitation.[23] In connection with this, the legislator refers to practical experience in the application of the law, which has been identified as a frequent and significant cause of delays in litigation and a shortcoming of the current legislation, which does not or only partially restricts the right to amend the statement of claim, the defendant's right to change the defence at first instance being virtually unlimited and the parties being able to present their evidence and motions at almost any time.

The legislator, guided by the interest of ensuring the concentration of the litigation, bases the limitation of the amendment of the action on the fact that the defendant and the court may reasonably expect the plaintiff to prepare their action properly and, beyond a certain point, to consider the framework of the dispute as closed, without having to follow the plaintiff's new factual submissions, legal positions, arguments and requests. A related novelty is that it extends this limitation

[20] Explanation of Article 129 of Act I of 1911.

[21] BH 1998. 133.

[22] CPC III. Article 203 para. (1).

[23] CPC III. Article 202 para. (2).

to the amendment of the statement of defence. The law also limits the submission of motions and evidence in the statements of defence so that the closure of the statement of defence essentially fixes the scope of the evidence.[24]

Compared with the system of CPC I and the current legislation, this can be considered a step backwards, even if the objective to be achieved is otherwise desirable and in line with the requirement of a fair trial within a reasonable time. It is worth remembering that CPC I was clear that ‘[t]he plaintiff’s presentation of his claim is not bound by the content of the statement of claim served with the summons’.[25] In comparison, Article 183 of CPC III already introduces substantial limitations, e.g., it threatens to impose a fine in certain cases,[26] but even more explicit limitations are contained in CPC III Therefore, CPC I cannot be considered a model since its essence—verbality—disappeared with the entry into force of CPC III.

At the turn of the century, a particularly relevant and important innovation was the declaration of the judiciary as a state prerogative, with judgments being made in the name of the Holy Crown.[27] Until recently, the designation of the origin of the right to judge was an integral part of the Hungarian judiciary. However, with the entry into force of the Fundamental Law, the reference to the depository of sovereignty has been dropped.

CPC I provided that the Tribunal shall have jurisdiction over all suits not referred to the jurisdiction of the District Court.[28] CPC I, in regulating the jurisdiction of the district courts, was based on the premise that it should cover primarily cases defined according to the value of the subject matter of the action and those cases whose subject matter, irrespective of value, fitted the profile of the individual court, either because of its simplicity or because of the need for a speedier procedure. Given that only a very limited number of cases were assigned to the district court, which acted as a single court, it can be said that the model of the first instance court had already been introduced, with the addition that, in the absence of separate administrative and labour courts as we understand them today, the law also divided the cases falling under their jurisdiction between the courts of the time.

CPC III, on the other hand, clearly drew on the first instance jurisdiction of the court when it reformed the rules of recourse to the court while excluding trainee lawyers from the training required during their compulsory internship (effectively eliminating the internship required for the bar exam) by making legal representation compulsory,[29] also a major step towards addressing the overstaffing of the legal market.

[24] Explanation of § 214 of Act CXXX of 2016.

[25] CPC I. Article 178.

[26] CPC III Article 183(5).

[27] Fabinyi (1931), p. 8.

[28] Act I of 1911, § 2.

[29] Act CXXX of 2016, § 75 (3).

CPC III models the unified civil procedure as a professional procedural system and defines the tribunal as the court of first instance with general jurisdiction on the basis of the corresponding theoretical and doctrinal foundations. The codification of civil procedural law is based on the four-tier court organisation that was re-established at the turn of the millennium. Its task is to ensure the optimal allocation of groups of cases within this structure, with a division of labour in terms of content in accordance with the function of each level of court, using the rules governing jurisdiction and competence. The model of the single trial and the general jurisdiction of the tribunals expresses the essence of the four-tier court system in a clear and principled way: the courts of first instance, which have a general jurisdiction, are the counterpart of the courts of appeal, which have a purely appellate function. The legislator has rightly stated that the transfer of general jurisdiction to a tribunal is not alien to Hungarian procedural law and is mainly in line with procedural law traditions, although the four-tier system of organisation and the primary existence of a tribunal of first instance would not necessarily follow from each other but could nevertheless be given substance in practice.[30]

Another glaring difference in jurisdiction where the legislator did not want to return to the previous system is the system of special courts. CPC I provided for several other forums apart from ordinary courts. As an alternative to the state justice system, CPC I specifically mentioned the proceedings of two bodies.

Title XVII of Article I of CPC I contained all the rules applicable to arbitral tribunals, but there were also scattered rules in Article 2 (jurisdiction of the tribunal of first instance), Article 59 (disqualification) and Article 180 (objections to prevent litigation). Unlike the law in force, the rules of CPC I were subsidiary in nature, but their application by analogy required the agreement of the parties.[31] The principle of bilateral hearings was established as a basic principle, and the arbitral tribunal complied with this requirement, providing that and allowed the parties to have their trials by these rules.[32] The principle of negotiation did not prevail; the parties could present their case at their expense in the manner determined by the arbitral tribunal, and, of course, could be represented by a lawyer.[33] There was somewhat greater dependence on the state courts than at present; for example, the ordinary court could, at the request of either party, set a reasonable time limit for the delivery of the judgment at the unsuccessful expiry of which the arbitration agreement would be void in the proceedings.[34]

The only provision that seems specific is that the administrative and labour court has jurisdiction over labour cases within the scope of CPC III, except for the recent legislative period on administrative adjudication. Of course, recentralisation has also prevailed over time in relation to special courts, so under Act CXXVII of 2019, as of

[30] Explanatory memorandum to Article 20 of Act CXXX of 2016.

[31] Fabinyi (1926), p. 172.

[32] Fabinyi (1926), p. 174.

[33] Fabinyi (1926), p. 177.

[34] Act I of 1911, § 780.

1 April 2020, the tribunal will act as a labour court under Article 20(2) of the Labour Code.

The consequence of this provision is not only the abolition of the autonomous administrative and labour courts but also the fact that the courts of appeal in labour cases, which had previously played no role in labour adjudication, are now empowered to hear appeals from labour cases. However, it is also a fact that, due to legislative changes in recent years, the jurisdiction of labour courts has been steadily eroded, and an increasing number of disputes that would otherwise arise from employment relationships have been transferred to other judicial forums.

3.3 Systemic Anomaly: A Substantive Legal Provision in CPC III

One of the important innovations of CPC III is the new legal institution known as the necessity of proof, which has its roots in medical malpractice cases. According to the explanatory memorandum to CPC III, 'if the exact cause of the victim's injury cannot be established, all the possible causes connected with the hospital's activities must be examined. If the hospital cannot prove that it acted with due care in relation to a possible cause, its liability for damages may be established'.[35] The explanatory memorandum refers to several curia decisions, all of which have in common that they were taken by the same council, and raises the question of how a legal instrument creating a substantive hybrid of general and special rules of liability for damage in dangerous establishments could have been introduced into a procedural code. The starting point is to be found in the rules on general liability and the rules on liability for dangerous industrial accidents in Act V of 2013 on the Civil Code (CC). In principle, tort is prohibited by law,[36] and the tortfeasor is liable to pay compensation for the damage caused unless they can prove that their conduct was not attributable to their fault.[37] The exception, as previously drafted, was when the tortfeasor acted as could normally be expected in the circumstances.[38] In contrast, a person who carries out an activity involving an increased risk is liable to pay compensation for the resulting damage unless they prove that the damage was caused by an unavoidable cause outside the scope of the activity involving the increased risk.[39] A further substantive difference between the two forms of liability is that the former is subject to a limitation period of five years and the latter to three.

However, the specificity of the legal institution incorporated into CPC III is that it explicitly applies the rules of general liability for damages in terms of the limitation

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[35] Explanation of paragraph (3) of Article 265 of the Civil Code.

[36] CC Article 6:518.

[37] CC Article 6:519.

[38] Act IV of 1959, § 339.

[39] CC Article 6:535(1).

period and also makes the tort of wrongful act, the occurrence of the damage and the causality between the two the basis of liability for damages, thus practically replacing the obligation to excuse the fault (previously generally expected) with a move towards excluding the scope of activity. In concrete terms, the problem is that by introducing adequate causality into CPC III, the legislator has created a hybrid form of liability that reduces the possibility of exculpation for healthcare providers to zero.

Perhaps the most far-reaching 'innovation' appeared in a decision of a higher court that described the resulting obligation as an atypical contract between a woman giving birth and a healthcare institution, thus treating the harm to the newborn baby during birth as a breach of contract but giving the defendant the opportunity to prove that it was not at fault.[40] Here, the reasoning of the judgment underlines that it was sufficient for the plaintiffs to prove that the damage to health occurred during childbirth and that beyond that, the burden of proof was limited to the hospital's duty to discharge. The medical documentation is of particular importance in the proof, which, if incomplete, must be assessed against the hospital's argument the context of examining the imputability. The decision here shifts to an argument based on liability for damages caused by a breach of contract; in practice, incomplete documentation made it impossible to discharge this kind of legal responsibility. Here, the argumentation was introduced following the heightened standard of care inherent to the medical activity.

The court went even further, stating that '[i]f the exact cause of the injured party's injury cannot be established, all possible causes relating to the hospital's activities must be examined, and if the hospital cannot prove that it acted with due care, its liability for damages may be established'.[41] In this context, it should be stressed that, on the basis of the facts established, the experts appointed could not establish a causal link between the birth and the injury. Although they highlighted the shortcomings in the documentation, no evidence of a breach of the rules was found. It is interesting to note that in this context, the court sets the minimum level of liability at the level of what is normally expected. Although the judgment also stated, on the basis of an expert opinion, that the related malformation could have had a genetic and congenital cause, the High Court held that if the exact cause could not be determined, all those linked to the hospital's activities must be examined. This means that if there could have been more than one cause for the development of the impairment, the lower courts could not declare—despite expert opinion—that no cause could be established. And if this were the case, then if 'a cause related to the medical activity is possible and cannot be excluded, the defendant's excuse will prevail, i.e. he must prove that he acted with care as to the possible causes or that the injury could have occurred even if he had acted with care'.

The problem with this is not that CPC III imposes a burden of proof on healthcare providers that is impossible to meet in practice but that it goes against the very

[40] BDT 2010.2355.

[41] EBH 2009.1956.

essence of CPC III. According to the preamble of the legislation, CPC III is designed to ensure the fair resolution of private law disputes and the effective enforcement of substantive rights, and liability rules are rarely concerned with procedural law rather than substantive law.

4 Evaluation: The Value of CPC III. Compared to the System of CPC I

In its regulation, CPC III followed the so-called conservative principle of regulating and centralising everything, in contrast to CPC I, which laid down rules that were cogent yet kept in mind the rights and interests of the parties. Due to the nature of the rules of CPC III, the uncertainties of its initial application caused frustration in many areas of practical law. It is precisely because of the spirit of CPC III that the application of the law can sometimes go to such extremes, as when the court pointed out that ‘[a] defendant acting through legal representation may not be entitled to challenge a written counterclaim under CPC III (3)(b) of Article 199(3) of the Brussels Convention, the court did not indicate the place of the plaintiff’s seat, despite the court’s request to the plaintiff to do so, which included a time limit and legal consequences. The court, as a body administering the law, cannot disregard the fact that the written statement of defence does not comply with all the mandatory procedural rules in force despite the court’s detailed notice of deficiencies, and the court may, therefore, impose the legal consequence of that failure—in this case, the legal consequence of the failure to comply with the provisions of the Article 115(1) of CPC III—must be applied’.[42]

Sometimes, even a seemingly isolated decision shows that the rigid application of the law makes it impossible to achieve the primary objective of the application of the law, namely the swift and lawful resolution of a dispute between parties. This is the result of the centralised pseudo-baroque interior built up behind the walls of the former institutions with which CPC III has sought to evoke the innovation of the code that was considered its great predecessor. In this context, moreover, it is not only CPC I that has veto power, but also—once again—the forgotten achievements of legal history, since it dates back a thousand years to the *scire leges non hoc est, verba earum tenere, sed vim ac potestatem*,[43] although it is doubtful whether the cited case law would be of any help to us if we were to consider the law as a whole.[44]

The misunderstanding of this split personality and the narrowing of the scope of facts that can be orally presented hardly support the criterion of bringing a speedy conclusion to litigation. Given that CPC III has ignored the case law of almost half a century in this area, it has inflicted a wound in the application of the law from which

[42] Pest Central District Court, 18.G.303.408/2020.

[43] Földi and Hamza (2009), p. 72.

[44] Brósz and Pólay (1986), p. 65.

recovery is doubtful. In its present form, the so-called ‘split’ system is a solution which can only be regarded with goodwill as a step forward, given that it has lost its original meaning and has not even re-established the original function of the writ of summons.

It can be stated, however, that CPC III, among its many innovations, has typically fulfilled the task of changing the meaning of concepts. However, the nominal use of specific terms is a far cry from reintroducing or even confirming the legal concepts. We must also appreciate the fact that the new Code was drafted after a lengthy legislative process and that the solutions and instruments of judicial practice have been replaced by a need to prepare not only for changes in the legal environment but also for the fundamental changes in the body of legal knowledge that has become routine over decades.

5 Conclusion

The value of CPC III as a stand-alone code is not measurable. It would be a mistake, however, to judge CPC III only by the standard it sets for itself since it exists as an independent code and has its own value. There is no doubt that it has sought internal coherence and has consistently stood by its controversial dogmatic structural decisions. Its suitability for achieving the legislative objectives to be pursued may be demonstrated by the passage of time since, after only a few years of application (and one amendment), it cannot be said with certainty that procedures are completed more quickly, not only statistically but also in reality.

The shortcoming of CPC III is also noticeable in the fact that it intends to refer to both the German Code of Civil Procedure of 1877 and the Austrian Code of Civil Procedure of 1895 as precedents, omitting the fact that the latter was the result of the shortcomings of the former since its social conception requires a fundamentally different approach to the liberal civil procedure.[45] One of the most eclectic qualities of CPC III was that it was that it did not last half a decade, as soon after its entry into force, comprehensive reform became necessary, involving changes to a number of basic institutions that were justified precisely by the progressive, modern spirit.[46]

Therefore, it cannot be stated with absolute certainty that either CPC II or CPC I is more suitable for the concentrated, quick and professional resolution of cases, but it must also be seen that the creation of a single code cannot override the practice of several decades of law enforcement.[47] The legislator correctly identified the problem

[45] Kengyel (1989), p. 54. sk.

[46] Act CXIX of 2020 amending Act CXXX of 2016 on the Code of Civil Procedure, the explanatory memorandum of which states that ‘the experience of the enactment of the Code of Civil Procedure, the decisions of the Constitutional Court and the feedback of law enforcement bodies justify the refinement of the regulation of certain provisions of the Act, the simplification and flexibilisation of the procedural rules’.

[47] Osztovits (2023).

arising from confusion associated with CPC II, but in many cases, the response to it was more the ‘granite’ of pseudo-conservative ideology than a solution to actual problems. And the value of recalling the past lies in the fact that this does not remain at the level of words.

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