

STUDII

PROCEDURAL ROUTES AND ALLOCATION
OF CASES IN HUNGARIAN CIVIL COURTS

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Abstract: During the codification process of the Hungarian Code of Civil Procedure, there was an open debate on whether the course of civil procedure should be unified, or some kind of differentiation would be more appropriate and efficient. There are various issues that arise if the legislator decides to have a number of different procedural routes in litigation. For instance, what should be the grounds of distinction, and what aspects of the procedure need to be regulated within these procedural routes. In addition, the choice between the routes can be given solely to the legal rule, or to the judge in the particular case, or to be discussed jointly by the parties and the judge in an early stage of the procedure.

This study examines the existing procedural routes in Act CXXX. of 2016. on the Hungarian Code of Civil Procedure, their characteristics and the main areas of future development. It aims to explain the underlying factors the judge may consider when choosing between these routes. It also points out the scope of discretion the rules allow for the judge in managing the case, and also the limits of judicial discretion. Besides, some applied and functioning solutions from certain European jurisdictions are taken into consideration.

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I. Procedural routes in the 2016 Code of Civil Procedure

The pandemic brought about significant development in procedural institutions and rules were introduced that does not require presence of the parties and other participants of the procedure such as witnesses or experts. Some of these rules remained in force even after the state of emergency because they proved to be beneficial for both the parties and the judge, saving considerable amount of time and costs with electronic hearings.

There has been an ongoing debate over the issue of a unified civil procedure that only maintains a distinction based on the type of the claim, such as family disputes, labour disputes, enforcement disputes etc., or creating a number of procedural routes based on other factors such as the

types of evidence required, the complexity of legal and factual aspects of the case, or the availability of electronical communication. Legislation is still in progress in these areas, thus the article gives insight into the current situation and possible implications of applying these differentiated routes in civil justice.

A. Unified or separate routes

According to the legal literature¹ and the preparatory working groups prior to the 2016 Code (further referred to as CCP), the basic premise was that the handling of cases should be differentiated according to the value of the case, the number of parties and the nature of the dispute, and that accelerated procedures should be established for less complex cases.²

However, the final version of the Code prescribes the aim of unified procedural rules, and no separate procedures, only certain procedural issues are regulated specifically, mainly based on the subject matter of the case. The legislator favoured uniformity of the procedure, emphasizing that neither the specific litigants nor the value of the claim cannot be considered as a criterion that would in itself justify the establishment of separate procedures.³ On the other hand, the special nature of the relationship underlying the claim to be enforced in a lawsuit does, as in the case of personal disputes.

¹ A. KÖBLÖS, *Mennyire lesz egységes vagy differenciált az új polgári perrendtartás?*, *Ügyvédvilág*, 2015/4. pp. 16-19.

² Draft No. T/11900. on the Act regulating the Code of Civil Procedure, Detailed explanation of Section 245.§.

³ S. UDVÁRY, *Obligation of the Parties, Lawyers and Judges*, *Hungarian Journal of Legal Studies Acta Juridica Hungarica* 58.1 (2017), <https://doi.org/10.1556/2052.2017.58.1.2>, p. 19-27.

At present, we can see that the legislator has maintained (and even differentiates within each type of case) specific rules that are widely used according to the subject matter of the case. However, it should also be borne in mind that this piecemeal approach of the regulation results in fragmented rules, and it is difficult even for legal professionals to adhere to such rules found in a hundred unjustifiably different places. For example, for claims rising out of violations of privacy and rights relating to personality, including defamation, one may use the ordinary rules, or the specific rules, based on what redress they seek. Some rules of procedure are found in separate acts (e.g. the deadline for filing the claim, and the redress they may seek), some are applied according to the general provisions of the CCP, and some are found in Chapter XXXVIII. on actions for the enforcement of certain rights relating to personality.⁴

The original version of the 2016 Code contained separate rules before the district courts which usually deals with family disputes, lower value money claims, and less complex cases. This distinction was later modified, and separation of procedural rules between county and district courts were not maintained. Instead, the Code now contains distinct rules for parties acting with or without a legal representative.

The advantage of a uniform procedure is undoubted for law enforcers, as there is no need to keep in mind a hundred different procedural deadlines, and formal requirements during daily work. The disadvantage, which is already apparent, is that some disputes stretch beyond the strict rules, and if the judge has no leeway to adjust to the circumstances of the case, because the law does not provide the framework for derogation, it may hinder the

⁴ CCP. Chapter XXXVIII, Actions for the enforcement of certain rights relating to personality, 493.§.

establishment of the facts and this is unfavorable not only for the judge but also for the parties.

In fact, we see that the principle of a uniform procedure has already been overturned when the Code has itself maintained different rules, depending on the subject matter of the case (personal litigation), the number of parties (group litigation) and whether the party acts with or without a legal representative. In these, only certain aspects of procedure are regulated differently, mostly the shortening of the deadlines, weighing differently between the written and oral preparation of the hearing, and prescribing electronic service of documents for legal representatives.

B. Other possible grounds of distinction

Another possible aspect, on the grounds of which the legislator has not yet differentiated, is the nature of the evidence to be conducted and the paper-based or electronic nature of the procedure. The roots of this distinction can already be found in the Code, as it contains a Chapter XLVI. on Electronic Communication, but these rules are applied in all cases where the parties are obligated to use electronic communication or where they have chosen to.⁵

In this respect, the change that allows evidence to be taken using an electronic communications network is welcomed, because it links these two very important areas that affect the efficiency of litigation, taking evidence and electronic procedure. The next step would be providing an entirely electronic procedural route, where also some cases could be dealt with without a hearing, and some could be dealt with through electronic hearings.

Significant progress has been achieved in electronic hearings during the pandemic, as all hearings on the merits of the case were conducted that

⁵ CCP. 277.§ (3).

way, where possible. On the other hand, preparatory hearings were not held at all, instead, all preparation took place in writing. Moreover, in appellate procedures, the judgments were given without hearing, based only on the documents.⁶

With regard to evidence, it would be possible to define a simplified accelerated procedure if the facts of the case can be easily proved (for example, to stipulate that in that case, only documentary evidence is possible / only electronic procedure is possible). This procedure would function as a positive discrimination if the parties are able or willing to meet these conditions, in return, the procedure could be significantly cheaper and faster for them, as well as for the state.

It would be advantageous to entrust the judge the decision to offer the transfer of the case to the parties, if it can already be seen from the pleadings that the given case is suitable for the accelerated procedure. Obviously, this requires full statements of case and defence from both parties, with full statements of fact and remedies sought.

C. What aspects of the procedure should be regulated?

In terms of the content of differentiated rules, our opinion is that, instead of the current special rules, which appear in a scattered and piecemeal manner, fewer procedural routes should be defined, but those should be covered by a coherent and comprehensive regulation from the filing of the claim form, to giving and service of first instance judgment. The starting points for these routes are already present in the Code, thus, they should be further elaborated. The rules should cover all types of monetary claims based on value, and the threshold could be defined in a fairly broad manner.

⁶ Decree No. 112/2021. (III. 6.) on the reintroduction of certain procedural measures in the event of an emergency.

There had been attempts to introduce such different procedural routes during the 2000s, in the era of the former Code of Civil Procedure (Act Nr. III. of 1952. on the Code of Civil Procedure). It is useful to look at the reasons why they could not provide the expected benefits.

The rules on accelerated business-to-business litigation, which never came into force, were aimed precisely at this.⁷ The rules have provoked sharp criticism, but the interesting thing is that some of the rules are back in the current Code. The same is true of small claims procedure and the rules for cases of high importance (basically meaning high value).⁸

The critics pointed out that these rules differentiated solely on the grounds of the value of the claim and has not taken into account the specific features of the case.⁹ The only discretion of the judge was to decide to transfer the case to the ordinary procedure. Also, this had to be done where the parties jointly asked for the transfer.

Furthermore, the problem of determining the scope of the dispute at the earliest possible stage of the proceedings was not resolved, nor were any tangible means provided to the judge for that purpose. It should be added that the small claim procedure had a very narrow scope, as the rules were only applicable in lawsuits following a disputed order for payment. The threshold

⁷ Act Nr. LXVIII. of 2009. on the Amendment of the Code of Civil Procedure to speed up the settlement of disputes between businesses.

⁸ ZS. WOPERA, *Az alfától az ómegáig: a kisértékűtől a kiemelt jelentőségű perekig*, Miskolci Jogi Szemle 6. évfolyam, 2011, különszám, p. 211-227. <http://midra.uni-miskolc.hu/document/12689/4764.pdf>, archive: <https://perma.cc/AL48-CLWX>.

⁹ I. SZABÓ, *Lehet-e perjogi módosításokkal segíteni a vállalkozásokon?* A Magyar Tudomány Napja a Délvidéken 2011, Újvidék 2012, p. 164-178. http://www.vmtt.org.rs/mtn2011/164_178_Szabo_A.pdf, archive: <https://perma.cc/4R58-RG4P>.

was also set low, the same as the compulsory order for payment procedure (1 million HUF at that time).

There have also been attempts in the opposite direction, to use a different procedural route in cases of high importance. However, experience has shown that shortening certain procedural deadlines drastically and mechanically for either the court or the parties, is not a good solution.¹⁰ Account must be taken of what is realistically achievable, which may be sufficient, and when the legislator goes below these deadlines, even with sanctions, the participants will not be able to comply with them in practice. It was unrealistic in more complex cases to work with much shorter procedural deadlines. Ordering more frequent hearings will not facilitate the conclusion of the lawsuit if the material of the case is not ready.

II. Decision on the choice of procedural route

At present, the judge may choose between the types of preliminary preparation of the case. There are three ways to prepare the case for the main hearing stage. Following the filing of a written defence against the claim, the court shall, depending on the circumstances of the case:

- (a) order a further written preparation before the preliminary hearing is scheduled,
- (b) schedule a preliminary hearing, or
- (c) proceeds to the merits of the case without a preliminary hearing.¹¹

In that regard, the choice between written and oral preliminary procedure is relevant. However, the legislation does not provide any guidance

¹⁰ G. CZOBOLY, *A perelhúzóadás megakadályozásának eljárásjogi eszközei*. [PhD-értekezés], Pécs: PTE ÁJK, 2014. p.150.

¹¹ CCP. 187. §.

as to the criteria on the basis of which a judge should make the classification. Therefore, the courts presumably share good practices, and each judge decides on this according to their preferred working method and the circumstances of the case, with information available from the pleadings. If the judge considers that the parties have defined the scope of the dispute through the statements made in the application and the written defence, he or she informs the parties that the preliminary stage will be closed without a hearing. Both parties may request a preliminary hearing in this case. The introduction of Section 197 (3) also enables the parties to initiate the closure the preliminary stage without a trial, the decision on which remains within the competence of the judge.¹²

As we have mentioned earlier, the allocation of the case can be done by the law, or by the law and the judge, and the parties may also be involved in this decision. In our proposed model, the first categorisation would be based on the subject matter of the case, and the Code determines the rules for distinction. This can be done at the formal inspection of the claim form. The second allocation would be done by the judge in the light of the examination of the content of the claim and the defence and would include consideration of the following factors:

- whether the facts of the case are simple or complex, which facts require and what type of evidence;
- whether personal presence of the participants is required or the proceedings can be conducted entirely electronically (e-litigation would not only appear as a set of technical rules, but would be a distinct procedural route);
- whether the case may be conducted in the accelerated procedure.

¹² Draft No. T/11900. on the Act regulating the Code of Civil Procedure, Detailed explanation of Section 17.§.

Accelerated litigation could be generally introduced in claims with a lower value, which do not involve complex legal reasoning, or where precedents of similar cases are clearly established. When deciding on the threshold, one may take into account the limit of the European small claims procedure which is €5,000. Another amount to consider, would be the limit of compulsory order for payment procedure, which is 3 million HUF. This way, the procedure would be limited to claims that fall outside of the scope of the order for payment procedure. However, the threshold may also be set significantly higher, in line with the jurisdiction of the district courts (30 million HUF). This would extend the scope of the procedure significantly.

The question arises, as to what extent shall the law enable the judge to freely determine the course of the proceedings. In terms of efficiency, time limits and deadlines within which procedural acts can and should be performed, are essential elements. This necessarily brings a formal character to the procedure, which may also hinder efficiency and a decision on the merits as soon as possible. It is for the legislature, on the one hand, to prevent practices of the defendant and plaintiff that induce delay by establishing appropriate civil procedure rules, which equips the judge with the means to do so, and, on the other hand, for the judge, who applies them properly. In this regard, one can observe a more permissive approach towards pleadings in the recent modification of the Code in effect from 1st January 2021.¹³

¹³ Act CXIX. of 2020. on amending the Act CXXX. of 2016. on the Code of Civil Procedure.

III. Procedural routes in some European jurisdictions

A. The German ZPO

The German Code of Civil Procedure of 1877 applied the fragmentation of the trial. The first part of the procedure consisted of an exchange of documents between the parties, while the second consisted of an oral hearing. The underlying principle is that questions of law and questions of fact must be divided between the court and the parties.¹⁴ The facts are presented to the judge only at the hearing in order to decide the questions of law on the basis of them, after all evidence has been taken. In most cases, the procedure consisted of several hearings. Thus, until the last hearing was closed, the parties were free to put forward new arguments without them being excluded. As a result, the preparatory written phase was insubstantial, and this opened the way for delaying the proceedings.¹⁵

The 1909 Amendment was the first to introduce local court case management tools followed by fierce resistance from the legal profession. The Amendment authorised the judge to discuss the dispute and the facts with the parties and prepare fact-finding, ask for official information, summon witnesses, instruct an expert and order the parties to appear in person. Obligation of the court to establish the facts was emphasised since the judge was obliged to discuss the facts of the case at the hearing, and he must guide the parties to fully declare all relevant facts and make sufficient motions for evidence.

¹⁴ P. GOTTWALD, *Simplified Civil Procedure in West Germany*, *The American Journal of Comparative Law*, 31/1983, pp. 687-701.

¹⁵ P. GOTTWALD, *Defeating Delay in German Civil Procedure*, In C.H. van RHEE (Ed.), *The Law's Delay. Essays on Undue Delay in Civil Litigation*, Intersentia, Tilburg, 2004, pp. 121-129.

The reforms of 1924 increased the judge's power to manage proceedings, limited the parties' right to request an adjournment of hearing "without good reason" and introduced the principle of concentrated procedure.¹⁶ It abolished the control of the parties over time limits and hearings. Applications and documents whose content was already known, did not have to be read at the hearing, it was enough to make a mention of them and the judge could concentrate on the disputed issues at the hearing. The judge set the trial date and could dismiss requests and defences which were submitted late for intentionally delaying the procedure. However, in practice this was rarely used by the judges, in a fear that unsubstantiated or incorrect judgments would be passed. The aim - already then - was to decide the matter within one hearing, but that was far from reality.¹⁷

In 1976, another reform took place to simplify the procedure (Vereinfachungsnovelle). According to this, the judge is obliged to prepare the hearing in writing, or hold a preliminary hearing (ZPO 275, 276 §) so that the case can be ready for judgment within one hearing on the merits. The legislator started from the idea that judges would be able to choose between the two alternatives adapted to the specificities of the case, thus ensuring flexibility in the procedure. At the same time, practice has shown that, in accordance with their own habits, judges apply one preparation method to all their cases. The function of preliminary hearing is twofold: on the one hand, to prepare for the subsequent main hearing, on the other hand, to decide on the merits in simple factual cases. In contrast to the discussion in the English pre-trial phase, this is a full-fledged trial in which the court can give a

¹⁶ R. ZÖLLER, *Zivilprozessordnung. Kommentar*. 30. neubearbeitete Auflage, Verlag Dr. Otto Schmidt, Köln, 2014, Vollkommer 2.

¹⁷ P. OBERHAMMER - T. Domej, *Germany, Switzerland, Austria*, in: Van RHEE, C.H.: *European Traditions in Civil Procedure*, Antwerpen, Intersentia, 2005, p. 103.

judgment. In practice, however, the first trial has only a preparatory role and a subsequent main trial is needed.¹⁸ According to Rottleuthner, the purpose of the preparation for the early first hearing is that the procedure in simple cases should not be longer than under the former procedural rules.¹⁹

German procedure does not distinguish between procedural stages. Trial is perceived as a continuous whole, with several hearings, which takes a longer timescale. As a rule, judgments cannot be rendered when there was no oral hearing. The procedure often deviates from this principle, however, with the consent of the parties, the court may base its decision almost entirely on written statements. The ZPO 128(2) § states that the court may decide without a hearing upon agreement of the parties, which may only be withdrawn at significant change in the circumstances of the case. In this case, the judge shall immediately set a time limit for the submission of statements and the announcement of the decision. A decision cannot be given without a hearing if more than three months elapsed since the parties gave the consent.²⁰

A significant change was the introduction of the principle “Prozessförderungspflicht”, which obliged the parties to act in support of the proceedings. Under Section 282, each party is required to present the means of proof and contradictions of their “offensive and defensive means,” in particular their allegations and denials, at a time that is consistent with due diligence and facilitation of the proceedings. A late submission will only be accepted by the court if it does not delay the settlement of the dispute or if

¹⁸ GOTTWALD *op. cit.* (1983), p. 694.

¹⁹ H. ROTTLEUTHNER – M. ROTTLEUTHNER-LUTTER, *Die Dauer von Gerichtsverfahren. Evaluation der ZPO- Vereinfachungsnovelle*. Nomos, Baden-Baden, 1990, p. 31.

²⁰ O. G. CHASE – H. HERSHKOFF (eds.), *Civil Litigation in Comparative Context*. ThomsonWest, 2007, p. 7.

failing to meet the deadline was beyond the party's fault.²¹ The current Hungarian Code clearly follows this path in the timing of submissions, but the problem is often that these provisions remain at a high level of abstraction and generality without specific detailed rules, which makes them hard to enforce.

B. The French CPC

The procedural reforms of 1958 and 1977 shifted from the right and freedom of the parties to judicial control over the course of the litigation. An obligation to cooperate between the court and the parties during the proceedings was prescribed.²² The purpose of flexible regulation is that the judge shall devote as much time and energy to each case as necessary due to the nature of the specific case.

French civil proceedings differentiate between cases on several levels. On the one hand, different courts act according to the subject matter of the lawsuit. In addition, different procedural routes can be distinguished in pre-trial proceedings. A distinction must be made between the Tribunal de Grande Instance, the General Court of First Instance and other courts of first instance, as well as special courts. In general, proceedings before ordinary courts are in writing, while proceedings before special courts are based on orality, faster, simpler and cheaper. In the proceedings at first instance, proceedings are

²¹ M. KENGYEL, *A bírói hatalom és a felek rendelkezési joga a polgári perben*, Osiris, 2003, p. 66.

²² J. BELL, *Judiciaries within Europe*, Cambridge University Press, 2006, p. 45.

based on an oral hearing before all courts (except the Tribunal de Grande Instance) and legal representation is not mandatory.²³

In French procedural law, the preparatory phase (l'instruction de l'affaire) is of paramount importance, as it requires the necessary procedural steps to be taken in order for the case to be suitable for trial and decision-making (mise en état). The preparation of a hearing is regulated differently by law before different courts.²⁴ While in cases before the Tribunal d'instance the court prepares and adjudicates the case in an undivided and oral procedure, in cases before the Tribunal de Grande Instance the preparation of the hearing takes place in a separate, mostly written procedural stage with the help of a designated judge.²⁵

The 'juge de la mise en état' may take binding decisions on the parties and penalize non-compliance. It can set deadlines and give instructions for preparation. When a witness is questioned, it determines the facts to be proved and also hears the witness.²⁶ By issuing the ordonnance de clôture, this judge is able to complete the preparatory procedure. In the case of short and medium procedural routes, this decision is issued by the president of the chamber, and in the case of long proceedings, by the judge responsible for preparing the hearing. In such a case, the preparatory phase of the hearing ends with his decision, which is taken when the case is properly prepared for the decision or if one of the parties fails to complete a procedural task within the time limit. In the latter case, this decision functions as a sanction. The

²³ L. CADIET, *Civil Justice Reform: Access, Cost, and Delay. The French Perspective*, in: A. A. S. ZUCKERMAN (Ed.): *Civil Justice in Crisis. Comparative Perspectives of Civil Procedure*, Oxford University Press, New York, 1999, pp. 291-346, p. 299.

²⁴ D. S. LARIVIERE, *Overview of the Problems of French Civil Procedure*, *The American Journal of Comparative Law*, 45/1997, pp. 737-746.

²⁵ L. CADIET, *op. cit.*, p. 299.

²⁶ J. A. JOLOWICZ, *Adversarial and Inquisitorial Models of Civil Procedure*, *International and Comparative Law Quarterly*, 52/2003, pp. 281-295.

decision has an important procedural effect: after that, no new written submission or new evidence can be submitted, and its invalidity is declared *ex officio* by the court. The decision of the preparatory judge may not be challenged on appeal. However, the law allows the court to refer the case back to the preparatory judge *ex officio* or at the request of a party for serious reasons that arise after the decision has been made.²⁷

The French procedure is considered to be the most formal in terms of applications and their submission, the procedure is regulated down to the smallest detail and there is a sanction of invalidity for non-compliance. Any omission in the content of the application makes it null and void (Article 648 NCPC).²⁸

In addition, there are different procedural routes available at the Tribunal de Grande Instance, given the complexity of the particular case, the procedure best suited to the specificities of the dispute is available to prepare the case. Proceedings may, in principle, be brought in two ways, on the one hand by the plaintiff's application (*assignation*) or, at the joint request of the parties (*requête conjointe*).²⁹

The president of the court summons the parties to a pre-hearing meeting and appoints a chamber (*fixation et distribution*). At the meeting, the president of the chamber will try to assess, with the help of lawyers, which course of procedure would best suit the case. In making this decision, it relies primarily on the case file and the evidence in the case. The president of the chamber may choose between three procedural paths. This is a purely

²⁷ S. SCHMIDT, *Civil Justice in France*, Nagoya University Comparative Study of Civil Justice, Vol. 7, Jigakusha Publishing, Tokyo, 2010, p. 118.

²⁸ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006411012 (21/01/2022).

²⁹ A. NYILAS, *Simplification and acceleration of civil justice in Europe: with special reference to small claims procedures*, LAP LAMBERT Academic Publishing, 2012, p. 70.

administrative decision (purement administrative) and therefore cannot be challenged on a separate appeal.³⁰

The court decides primarily on the basis of the procedural steps required to declare the preparatory phase closed (cloture d'instruction) and to open the case for trial. If the facts do not need to be clarified and the case can be decided, the court chooses the short route (circuit court). This is primarily done in simpler cases, if the facts are clear, the parties have duly informed each other of their claims and the evidence in support of them, or if the defendant has not appeared in court despite receiving the summons from the plaintiff. The purpose of flexible regulation is for the judge to devote as much time and energy to each case as is necessary due to the nature of the case.³¹

The court uses the medium route (circuit moyen), if, after meeting with the lawyers, the president of the chamber considers that it would be necessary to submit additional documents or evidence in order for the case to be heard. In such cases, the court will set up another preparatory hearing and invite the parties to submit new documents, or name further evidence. If this succeeds, the court will proceed as described above and close the preparatory phase. However, if the case is still more complicated than it seemed before, the president of the chamber may appoint a juge de la mise en état, and the case will go on the long track. The previous two routes have in common that the juge de la mise en état is not involved, but the president of the chamber

³⁰ W. FISCHER, *Die Beschleunigungsmechanismen des französischen Zivilprozesses*, Verlag Ernst und Werner Gieseking, Bielefeld, 1990, pp. 13-14.

³¹ F. FERRAND, *The respective role of the judge and the parties in the preparation of the case in France*, in: N. TROCKER – V. VARANO (Eds.), *The reforms of civil procedure in comparative perspective*, G. Giappichelli Editore, Torino, 2005, pp. 7-32.

prepares the case in cooperation with the lawyers. The long procedural route is for the proper preparation of complex disputes.³²

Also, the Justice de proximité plays a significant role, as it aims to bring litigants closer to the court, and to resolve small and frequent disputes in everyday life. These are not professional judges, but court clerks, appointed for 7 years, which cannot be repeated. The Juge de proximité has limited jurisdiction compared to judges of the Tribunal d'Instance. In civil cases, this includes minor disputes, where traditional judiciary has proved unsuitable to deal with. These courts allow for less formal proceedings and seek to reach an agreement. Their decisions are nonetheless enforceable. The decision of the juge de proximité cannot be challenged on appeal, only in cassation or revision. There is a possibility of devolution of the case to the Tribunal d'Instance, based on the complexity of the case, which in this case decides in accordance with the jurisdiction and procedure of the Juge de proximité.³³

C. The English CPR

Statements made at the pleadings stage are called “statements of case,” which includes the statement of claim, counterclaim, the relevant answers to the counterclaim and any part thereof. Based on these requests, the judge makes a number of management-type decisions, including the allocation of the case and the guidelines given to the parties.

After the submission of the defense, the parties receive a case allocation questionnaire (Directions Questionnaire) from the court, and based on the answers given to them, the judge assigns the case to one of the procedural tracks. It notifies the parties of the decision and provides further

³² G. CZOBOLY, *A perelhúzóadás megakadályozásának eljárásjogi eszközei* [PhD-értekezés], Pécs: PTE ÁJK, 2014, p. 44.

³³ C. TAHRI, *Procédure civile*, Editions Bréal, 2007, pp. 178-210.

guidance on the course of the proceedings. These are usually: disclosure of documents, testimonies, expert opinions, a pre-trial checklist and the deadline for its return, and finally the hearing date (approximately 30 weeks after the case has been assigned).

The three possible tracks are:

- small claims track (under £ 10,000);
- fast track (£ 10,000-25,000, simple judgment cases);
- multi-track (over 25,000 pounds or complex cases).³⁴

If the court is unable to allocate the case on this basis, it may request additional information or order a personal hearing of the parties.³⁵

The advantage of the system is that the range of facts is determined at an early stage of the proceedings, so which facts need to be proved, which are controversial and which are not disputed by the opponent. The limits of the evidence at the hearing are set, but this may mean that important evidence is left out of the assessment because its existence or relevance is only revealed after the allegation stage. On the other hand, if the statements made at the assertion stage are free to modify, their value and practical benefit are diminished.³⁶

Section 1.4. of the CPR contains the active case management obligations of judges:

- an early clarification of the nature of the dispute;
- deciding which issues require disclosure and evidence;
- to recommend to the parties to the ADR, if possible;

³⁴ J. BELL, *Judiciaries within Europe*, Cambridge University Press, 2006, p. 306.

³⁵ CPR Rule 16.3. at <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part16#16.3> (21/01/2022).

³⁶ A. A. S. ZUCKERMAN, *Civil procedure*, London, LexisNexis, 2003, p. 220.

- take all the procedural actions that do not require the presence of the parties;
- provide guidance to the parties so the matter is dealt with in a rapid and efficient way.³⁷

The new system placed the responsibility for the appropriate case progression from the litigants and their representatives on the court.³⁸ Within this responsibility, the courts determine the scope of content and the course of the process by standard guidelines or in more complex matters at the Case Management Conference.³⁹ The judge may take any action or make any decision in order to manage the process and fulfil the overriding objective. The judge may decide of his own motion, without the request of a party.⁴⁰ In addition, we find additional detailed judicial rights and obligations according to each procedural path.

Cases referred to the small claims track are typically consumer disputes, claims arising from a traffic accident, disputes arising from a lease contract (a separate procedure is also available for this, CPR Part 55), faulty performance, breach of contract e.g. in connection with construction work or other services. In the initial phase of small claims proceedings, the court prepares a procedural guideline and sets a hearing date. For a small claims track, the guidelines are usually:

- attaching additional documents;
- licensing of an expert;
- offering the possibility of mediation if either party has requested it or if the court deems it appropriate;

³⁷ CPR Rule 1. 4 (2).

³⁸ J. A. JOLOWICZ, *On Civil Procedure*. Cambridge University Press, 2000, p. 187.

³⁹ CPR Rule 3.1(m).

⁴⁰ CPR Rule 3.3.

- place and time of the substantive hearing.

In the small claims track, it is possible to hold a preliminary hearing if specific procedural steps are required and the judge wishes to communicate this to the parties in person, or if neither party has a duly substantiated request so that neither of them can be successful.⁴¹

It is not obligatory to hold a hearing, if the judge decides to deal with the case based solely on written motions and evidence, the court will send the parties a “Notice of allocation to small claims track [no hearing]” form. It sets a time-limit within which the claimant and the defendant may file an objection to a decision based solely on written evidence. If either party objects, a hearing will be held on the matter. Provided that neither party objects to the court's decision, the case will be settled in writing.⁴²

As preparation for the hearing, the law and specific pre-action protocols determine the actions to be taken by the parties, but the conduct of the hearing itself is quite informal and flexible. Usually, as the parties act here without a legal representative, the judge briefly explains the procedure and determines the main issues on the basis of the documents. Then hears the parties on all issues and examines their evidence. Meanwhile, in addition to the active role, the judge is the most important guarantee of the rights of the parties, making sure that both parties presented their evidence and had the opportunity to present their position and respond to the opponent's statement.

The fast track procedure has a special feature that the court sets a strict timetable for the preparatory phase. In the multi-track procedure, there is no

⁴¹ J. BALDWIN, *Monitoring the Rise of the Small Claims Limit: Litigants' Experiences of Different Forms of Adjudication*, London: Lord Chancellor's Department, 1997, pp. 74-75.

⁴² S. O'MALLEY, A. LAYTON, *European civil practice*, Volume 2., 2nd ed., London, Sweet & Maxwell, 2004, pp. 620-622.

fixed procedural order, it is entirely up to the judge to adjust to the specifics of the case. The timetable is set at a case management conference (CMC), which is a preliminary hearing with the participation of the parties' legal representatives and the judge.⁴³

There is also the procedure under Part 8, which the applicant may choose, and must state in the claim form that he intends to apply Part 8 and must be accompanied by all evidence.⁴⁴ It can be used in cases that do not involve a substantive factual dispute. The defendant does not file a counterclaim, only the acknowledgment of service and the testimony of witnesses. Upon receipt of the service, the defendant may object to the application of this Part if there is a substantive dispute of the facts. The court may then decide to continue the proceedings in accordance with Part 7 (General Rules). The three procedural paths (small claims, fast track, multi track) can also be used in Part 8, but it is not mandatory. It is also not obligatory to hold a hearing, the judge decides whether it is necessary.⁴⁵

IV. Conclusions

Differentiated handling of civil cases is an effective and appropriate form of enforcing the individual rights guaranteed by substantive law. However, it should also be borne in mind that the existence of too many different procedural routes and technical rules may break the coherence of the law and does not make things easier for legal professionals in their day-to-day work. The other extreme, when uniform rules apply to all cases, makes the procedure easier for all participants in this respect. In the study, we sought to

⁴³ J. A. JOLOWICZ, *op. cit.*, p. 58.

⁴⁴ <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part08>, (21/01/2022).

⁴⁵ CPR. PART 8 - Alternative procedure for claims.

answer whether the current differences in legislation are justified and what possible additional considerations could be taken into account when defining the applicable procedural rules.

Overall, we can conclude that the alterations from the general rules of procedure currently do not form coherent procedural routes, as they only regulate certain aspects of the litigation. It would be desirable to create a certain variety of procedural routes where the judge's procedural management tools would be fully regulated. The framework of the dispute would be established during the preparation phase on the basis of the parties' written statements and the attached documents, and then there would be a single hearing on the merits. If the parties do not object, a judgement may be given without a hearing.

Our next finding is that the differentiation of procedural routes is closely related to certain procedural principles. Currently, the Hungarian Code is still weighed around hearings, but the practical benefit of the principles of orality and immediacy would only show if the judge could complete the proceedings with a judgement on the merits within a relatively short period of time, about two to three months. This is due to the fact that the more time elapses, the harder it is to reconstruct the actual subject of the dispute in the case and the exact statements of the parties and witnesses from the case files. Thus, the two principles are only theoretical, in fact the decision will be based on the case files and the minutes of hearings in most cases.

Usually, it cannot be expected that the other party will react immediately on the merits to the complex issues of fact and law raised at the hearing. This is due to the complex factual and legal background of the disputes. Accordingly, it would be more appropriate to strengthen the requirement that the parties' preparatory documents and written pleadings be accurate and cover all relevant issues in detail. On the contrary, one can

observe a more permissive approach towards pleadings in the recent modification of the Code in effect from 1st January 2021. With regard to the limits of the principle of disposition, it must be stated that it cannot mean that either the plaintiff or the defendant can be in a position to obstruct the course of the proceedings or exercise their rights in an abusive way. This viewpoint creates an opportunity for active judicial case management, by further development of the rules created by the Code in force.