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Identification of Civil Procedure Regulatory Needs with a Comparative View**

I The Initial Steps towards the New Code of Civil Procedure in Hungary

The Government of Hungary launched the review process of the Code of Civil Procedure of 1952 currently in effect. Government Decree No. 1267/2013 (V. 17.) on the codification of civil procedure (the 'Government Decree') has ordered that a new Code of Civil Procedure, which satisfies the requirements of international standards regarding litigation in civil and commercial matters, while at the same time promotes the effective and timely enforcement of claims in such cases, be drawn up. The new Civil Code entered into force on March 15, 2014 and, in many ways, it reshapes Hungarian substantive civil law. This is another special driving factor behind the need for procedural reform to ensure a civil procedural environment with rules that enhance the enforcement of civil law claims.

The Government Decree expressly prescribes that

> [t]he concept and the theses shall be based on a survey of the needs of civil judicial practice, and on in-depth research, taking into consideration the Hungarian procedural law traditions, while utilising the achievements of modern foreign procedural law codifications. The Government Decree also emphasises that "[f]inally, they [i.e., the concept and the theses] shall comply with the requirements set forth by the European Union and international treaties.

The codification work is organised into a hierarchical structure, in which the highest decision making body is the Main Codification Committee (in Hungarian: 'Kodifikációs Főbizottság'). Its initial task is to decide upon a unified concept for the new code. The work of the Main Codification Committee is supported by the Drafting Committee (in Hungarian: '*Kodifikációs Szerkesztőbizottság*', the composition of which partially overlaps that of the Main Codification Committee), and a series of thematic and working committees. The Main Codification Committee was set up directly by Government Resolution. The head of the Main Codification Committee is

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János Németh, professor emeritus at ELTE University Faculty of Law Budapest. Its scientific secretary is *István Varga*, professor of civil procedure and Head of the Department of Civil Procedure at ELTE. The further – ex officio – members of the Main Codification Committee are the Minister of Public Administration and Justice, the President of the Supreme Court, the President of the Judiciary Office, the Attorney General, the President of the Hungarian Bar Association, the President of the Hungarian Notarial Chamber, the Secretary of State of the Prime Minister's Office responsible for Legal Affairs, the President of the Hungarian Lawyers Association and a high-ranking official of the Ministry of Public Administration and Justice, serving as the organisational secretary of the Main Codification Committee.

The methodology for the preparation of the codification is divided into two main phases: the governing principle in the first phase is a bottom-up approach; the second phase takes an opposite direction by following a top-down approach. Both phases are coordinated by the Drafting Committee, which established the thematic and working committees in its decision dated September 30 2013 (the 'Decision').

Pursuant to the Decision, in the first phase the

> […] thematic committees examining the legal dogmatics, practical problems, and modern trends in civil procedural law shall start their activities. The thematic committees shall–following the preparation of written materials and the discussion thereof at committee meetings–prepare a proposal to decide upon the preliminary issues that, as a result of survey and research activities in the thematic fields concerned, enable the Drafting Committee to present an appropriately established concept and theses, suitable for professional and public debate, to the Main Committee.

The eight ('A' through 'H') thematic committees are organised around the main topics of civil procedural law and certain current procedural issues and were established on September 30 2013 as follows:

A. Thematic Committee for the Structure of Litigation and the System of Remedies (headed by János Németh);
B. Thematic Committee for the Examination of the Role and Task Allocation between the Judge and the Parties to the Dispute (headed by Tamás Éless);
C. Thematic Committee for the Examination of Problems of Standing and Representation in Civil Law Disputes (headed by Viktória Harsági);
D. Thematic Committee for Costs of the Proceedings (headed by Edit Juhász);
E. Thematic Committee for the Examination of Different Procedural Tracks (headed by Zsuzsanna Wopera);
F. Thematic Committee for Taking Evidence (headed by Egon Haupt);
G. Thematic Committee for the Applicability of Modern Technologies in Civil Proceedings (headed by Miklós Kengyel);
H. Thematic Committee for International and European Civil Procedure and ADR (headed by István Varga and Imre Szabó).

Regarding the second phase, the Decision provides as follows:

> [f]ollowing the approval of the concept prepared […] by the thematic committees and the Drafting Committee, laying down the main content directions of the codification […] the full operation of the working committees becomes necessary, who may then act in the direction set by the concept. Due to the content overlaps and the continuity of the work, the majority of the working committees consist of experts who already participated in the thematic committees.

As for the timing, the Government Decree prescribes three main steps and three corresponding deadlines to be observed. According to these, the concept and the theses of the new Code of Civil Procedure shall be prepared by the second quarter of 2014. The public debate of the concept shall take place and be concluded by the first quarter of 2015, while the text of the new code shall be drawn up by the fourth quarter of 2016.

As the thematic committees have already started their work, and some major crossroads surfaced thereby, we briefly summarise below some of the main issues already at the heart of the discussion.

II The Methodological Placement of Comparative Analysis of Civil Procedure in the Codification Process of Procedural Law

One of the starting points of the codification of the new code of civil procedure is the preliminary assessment of those regulatory needs raised by theory and practice. On the theoretical side, the primary regulatory need manifests in the restoration of harmony with the changed substantive and procedural regulatory environment, especially the new Civil Code, as well as in the establishment of harmony with the regulatory content of non-contentious proceedings. This increases not only in numbers but also in significance, and in the elimination of theoretical gaps resulting from the procedural law legislation enacted in recent years. On the practical side, it is harder to provide a concise summary of regulatory needs; obviously here, in addition to processing the procedural law-related case law, the first task to effectuate is to make sure that the needs of each professional group within the legal community are addressed. This objective is served when the Drafting Committee, in determining the personal compositions of the thematic and working groups to be established in accordance with the Government decree,[1] does everything in its power to ensure that the representation of various groups within the legal profession – in addition to legal scholarship – is as wide and as balanced as possible.

For the optimal assessment of regulatory needs, in addition to the above-mentioned considerations, a comparative analysis of various procedural law regimes can prove to be useful.

[1] *A polgári perjogról szóló 1267/2013. (V. 17.) Korm. határozat* [Government Decree No. 1267/2013 (V. 17.) on the codification of civil procedure].

It must therefore be given an appropriate place, even if the codification is not simply the domestic synthesis of foreign regulatory precedents. Channelling certain foreign examples into the codification process may have a fertilising effect on the fine tuning of regulatory objects and directions determined by the needs of internal legal theoretical analysis and practice. It is also possible that, in response to a domestic legal issue, certain well-established foreign regulations can provide a ready-made answer, or at least can decisively influence the direction of the appropriate response. In general, in the area of procedural law legislation, the need for a comparative review of procedural law does not require extensive evidence based on codification traditions. There was no significant procedural law codification in the last century that would not have been inspired by some representative foreign codes, or the experiences or solutions of foreign jurisprudence. The options here cover a very broad scope, for example, from the Japanese reception of the German Code of Civil Procedure, the ZPO *(Zivilprozessordnung)* to the so-called Woolf reforms of the CPR of England and Wales, which, by keeping an eye on continental examples, distanced the English law of civil procedure from the Anglo-Saxon model in many respects. Naturally, we can mention here the entire twentieth century development and amendment history of the Hungarian Code of Civil Procedure, which – often to its advantage but many times to its disadvantage – can be traced back through comparative analyses. Finally, the comparative law approach has been a traditionally self-evident method for the icons of Hungarian law of civil procedure scholarship.[2]

The objective of the present study is based on the above introduced foundations, the thought-provoking, debate-inducing identification of certain potential civil procedure regulatory needs, enriching it on occasions with reference to certain notable foreign examples – because they can be utilised in the concept of the new Hungarian regulations. It is self-evident that at the present, initial phase of the codification, when we are collecting the basis for the developing a future conceptual proposed bill, an overview such as this cannot provide a detailed *micro*-comparison, concentrating on the details of specific legal institutions. At this phase, it is rather a *macro*-comparison, at the structural level of the various sources of law, starting from the fact of regulation or the lack thereof, as well as the placement of the regulation of certain civil procedure institutions within the statute that can fulfil the actual codification-support functions.[3] Accordingly, within the framework of preliminary research – and during the codification process, continuously expanding in the following, we will refer to the content, structure, and

[2] Cf. for example Gaár Vilmos, *A bizonyítás a polgári perben.* (Grill 1907, Budapest); essentially, the entire oeuvre of Sándor Plósz: *Plósz Sándor összegyűjtött dolgozatai* (MTA 1927, Budapest); Kovács Marcell, *A polgári perrendtartás magyarázata.* (2nd ed, Pesti Könyvnyomda Részvénytársaság 1927–1931, Budapest); Fabinyi Tihamér, *A választottbíráskodás.* 2. bőv. kiad. Budapest, 1926.; Sárffy Andor, *A végrehajtás megszüntetése iránti per.*(Gergely 1934, Budapest); several civil procedure related studies of Salamon Beck; Magyary Géza, *A perbeli beismerés.* (Franklin Társulat 1906, Budapest); Németh János, *Rendkívüli perorvoslatok a magyar polgári eljárásjogban.* (Akadémiai Kiadó 1975, Budapest) 11–52.

[3] Cf. for this distinction: Konrad Zweigert, Hein Kötz, *Einführung in die Rechtsvergleichung.* (3rd edn, Mohr Siebeck 1996, Tübingen) § 18, 251 and following pages.

chapter division of civil procedure laws of countries[4] that either traditionally influence Hungarian private law and civil procedure law thinking (thus, primarily the German law family), or they can be suitable and worthy examples because of their recent procedural law codification. Such preliminary research can be sufficient for the needs of a functional comparative study, which is not expressly built on the study of sources of law and serves the codification-support only at a conceptual level. In the examined countries, serving as authoritative examples, and in other countries also, the effective code of civil procedure is the primary source of the law of legal proceedings, which means that its structure is appropriate to illustrate the objects of modern regulatory needs. A second stage of a comparative analysis – from a different, but still from a *macro* perspective – will also extend, in addition to the codes of civil procedure, to the examination of other sources of law containing procedural rules (independent arbitration statutes, independent mediation statutes, and independent laws and regulation regulating special proceedings). As a first step, however, the present research will show previously assumed places of hiatus and/or potential need for change (arising on the theoretical and the practical side) compared with the effective Hungarian regulation, in connection with which we can find such structural and/or chapter organization differences in various sources of law in foreign examples, the latter of which show at the same time substantive differences and such additional regulatory control that are worth considering in the course of the Hungarian legislative process.

III The Judiciary and Civil Procedure; the Relationship between Civil Proceedings and Court Actions; Homogeneous Litigation or Unity Disrupted by Branching Rules

One imminent issue already identified in the initial phase of the debates is whether the codification of civil procedural law should take a uniform approach, meaning that there should only be one code of civil procedure governing every legal dispute, except for criminal proceedings, or whether the rules of certain special procedure currently regulated in the old code (e.g., administrative litigation, labour litigation) should be separated due to their specific features and unified in a separate code. Another crucial aspect of the 'uniformity-diversity' discussion relates to the internal structure of the new code, i.e., whether there should be one all-encompassing type of proceeding or there is a necessity to include in the code different procedural tracks with differing procedural standards (e.g., for small claims at one end and for substantial subject matter values at the other, or for certain specific subject matters and/or privileged groups of potential litigants).

Another conceptual question relates to the body of non-contentious matters (currently there are more than one hundred different procedural types with special regulations). Although the

[4] Australia, Austria, Belgium, Bulgaria, Canada, China, Croatia, the Czech Republic, England, Estonia, Finland, France, Germany, Italy, Japan, Latvia, Luxembourg, Mexico, the Netherlands, Quebec, Russia, Spain, Sweden, Switzerland and the United States.

new codification aims at concentrating primarily on the rules of legal disputes, it cannot be avoided that the process touches upon the topic of non-contentious cases. The main question in this respect is, on the one hand, the technique by which the rules of the new Code of Civil Procedure should be rendered as a subsidiary source on non-contentious matters, and on the other hand, deciding the extent to which the new code should contain detailed rules. Addressing the relationship between the numerous non-contentious matters and the main source of civil procedure has been one of the main needs articulated by basically all segments of legal practice.

1 The Relationship between the Judiciary Act and the Code of Civil Procedure

The separate regulation of *the effective organizational regulations of the courts and the code of civil procedure* can be said to be typical in an international comparative sense, and in Hungary it is also traditionally reflected in the relationship between the Judiciary Act and the Code of Civil Procedure.[5] The maintenance of independent regulation is appropriate, because, in the organisational act, it is possible to include a large number of administrative rules not having any procedural law and theoretical content without disturbing, to any extent, the theoretical 'edifice' of the Code of Civil Procedure. However, the Judiciary Act, which defines the court system and its organisational and institutional framework, must show, already at the early stage of the civil procedure codification, a certain finality which is also carried by the political will, as the details of the procedural rules are defined by the organisational framework in which they have to work effectively.[6] In the preparatory phase of the Concept, thus, three organisational questions have to be clarified with the need for finality: whether the legislature or the constituent assembly wishes to maintain: (1) the four-level organisation of the courts, (2) the organisational separation of the civil, administrative, and labour courts, and (3) the installation of general entry level jurisdiction at the district court level. While the former two are presently given, as they are regulated at the Fundamental Law level, the latter only appears at the level of legislation; nevertheless, it is a rule of similar importance, as the specification of general jurisdiction also means at the same time an organisational-budgetary development-related decision at the district court level. The four-level judiciary and the organisationally independent adjudication system of administrative and labour disputes fundamentally determines the structure of the Code of Civil Procedure and, not the least, its chapters regulating jurisdiction and competence, as well as appellate and special proceedings. Finally, the outcome of the decisions in relation to all three questions will have a fundamental effect on the answer that has to be given to that superior theoretical question during the codification process, as to whether a uniform code of civil procedures is what the legislature strives for, or they yield to the modern seduction that suggests the necessity for

[5] Cf., for example, Germany: *Gerichtsverfassungsgesetz/Zivilprozessordnung,* Austria: *Jurisdiktionsnorm/ Zivilprozessordnung.*

[6] Cf. for the dependence of procedural law to cultural and institutional systems Dieter Leipold, *Lex fori, Souveränität, Discovery – Grundfragen des Internationalen Zivilprozessrechts* (C.F. Müller 1989, Heidelberg).

the promulgation of regulations with different branches and routes based on the amount in controversy and the persons of the litigants (small claims procedures, high priority cases, litigation between business entities, cases involving consumers, etc.). Decision on all these preliminary questions at the time of the endorsement of the Concept can be expected if, prior to that, the following will become certain: whether the legislature is willing to move towards the simplification of the organisation system by amending the Fundamental Law, or the procedural rules must be promulgated in accordance with the organisation system designated by the Fundamental Law. When considering the pros and cons in the arguments for the simplification, an answer must be given in particular to the question[7] as to whether it makes sense to create, within the Code of Civil Procedure, several 'small procedure codes' with this breaking up the uniform procedural dogmatics. If so, is it a good idea to scatter and assign these small procedure codes to all entry points and appellate fora, or this should only be made possible at the district court level?[8] A potential decision that would allow the inclusion in the Code of Civil Procedure of several 'procedural orders' would, in addition to this, necessitate the re-weighting of the principles as procedural rules. All these, through the lenses of a conservative procedural legal scholar, do not seem desirable. It is worth considering, in this respect, the German example: the sharp differentiation between the procedures of the two entry fora *(Amtsgericht* and *Landgericht)* has essentially disappeared. Simultaneously with this, it makes the principles of party disposition and party presentation of evidence and negotiation relative, because the procedural legislature removed the cases subordinated to the subject matter of the litigation from the ZPO and regulated those, along with related non-contentious proceedings, in a separate statute, realising an independent procedural order.[9] One of the predominant motivations for this was actually the effort to avoid or minimise the fracture in the uniform procedural dogmatics within the leading code. This process seems to bring closer another, further-reaching organisational change in the German system of civil procedure law, which has special radiation within Europe and outside of Europe. Nothing justifies the maintenance of two different entry fora that operate essentially with identical procedural orders, and, therefore, the idea of merging the courts that can be viewed as functionally equivalent to the district court and the regional court level and, with this, achieve an only three-level civil law court system is being raised more and more frequently.[10] This German tendency – which traditionally provides guidelines for the Hungarian legislation of civil procedure – may be noteworthy in the course of the development of the Concept, because the reduction of the levels of the judiciary is on the agenda in a country where the scale of economic

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[7] We will discuss at a later point the question as to whether the rules governing the adjudication of administrative and labour disputes, which also carry the potential for simplification, should be treated separately or should be integrated into the rules governing the adjudication of civil cases.

[8] For the theoretical foundation of the issue, see: Max Vollkommer, 'Verfahrensvielfalt oder einheitlicher Zivilprozess?' [1987] Juristen Zeitung 105.

[9] *Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit ('FamFG').*

[10] Cf. most recently the wording of the leading German textbook: '[...] denn das Nebeneinander zweier Eingangsgerichte mit grundsätzlich gleicher Besetzung (*ein* Richter) und weitgehend gleichem Verfahren ist inzwischen rational kaum mehr begründbar' Othmar Jauernig, Burkhard Hess, *Zivilprozessrecht* 30. Auflage. München, 2011. § 69 Rn 2.

potential is orders of magnitude larger than that of Hungary and, as a consequence, the civil dispute resolution burden is at least as great, if not significantly larger, than that of Hungary. Looking through such lenses of a comparative legal approach, the focus of which is an increasingly differentiated court system and, in connection with this, the development of a procedural order which, based on the person of the litigants and the subject matter of the litigation, should be supposedly further differentiated too, the weight of such efforts becomes relative.

Finally, the need for uniform regulation in another sense holds another legislative task to be undertaken surely with respect to certain legal institutions that can be found in the intersection between the organisational statute and the Code of Civil Procedure. As such, it is especially problematic to place certain primary procedural rules in the Judiciary Act, as is currently the case in Sections 63–64 thereof. The cracking of the competence system with an individual judicial administrative act (which is problematic in itself, and, because of the related publication and appeal rules cannot be taken seriously, it is essentially sub rosa and therefore, one can hope, only temporarily) – unique from an international comparative aspect. If the legislature or, since the rule is embedded in the Fundamental Law, the Parliament sticks to supporting, with this method, the fundamental right to a speedy trial, (that is, the right to be tried within a reasonable time), then, despite the above criticism, such a rule that essentially results in a change of venue can be only imagined among the competence rules of the Code of Civil Procedure and at the end of the these rules. Here, both the professional and comparative law arguments unequivocally call for the amendment of the Fundamental Law and the repeal of the relevant rules of the Judiciary Act. Another conceptual question, although pointing in a different direction but also similarly reflecting the separation of the different legal branches, is the extent to which we can justify to keeping those rules presently included in the Code of Civil Procedure that are also covered by other laws and regulations. In other words, while it makes sense to give in to the forces of gravitation with respect to other primary procedural law-contents from the Judiciary Act (or other laws and regulations), at the same time, portfolio-cleaning is necessary within the Code of Civil Procedure. A typical example for this is Section 2(3) of the currently effective Code of Civil Procedure, which contains a civil substantive law (objective compensation) rule. From a sources of law perspective, such a rule should instead be included in the Civil Code or even in the Judiciary Act, which also regulates the legal personality of the courts. Of course, it can be also justified if the legislature wishes to emphasise (in a perhaps unnecessarily didactic manner) the substantive law fortification of certain procedural legal relationship parts by the integration of substantive law claims in the Code of Civil Procedure; however, in that case, it has to be implemented consistently in the course of the new codification through other procedural situations, too, and not to leave it at the level of eventuality or at highlighting the protection of the most placatory fundamental rights. There are relevant foreign examples for a solution when disputed actions, typically involving damages, are included in the procedural code in the provision regulating the disputed action supplemented by built-in civil law liability and compensation sanctions,[11] and several

[11] Cf., e.g., Sections 302, 717, and 945. Cf. in addition for the theoretical basis of this Ludwig Häsemeyer, *Schadenshaftung im Zivilrechtsstreit* (V. Decker 1979, Heidelberg).

renowned representatives of the theory of procedural legal relationship argue for a more general approach; namely, for the obligation-generating, typically compensation liability inducing nature of procedural legal relationship, not least, in order to take procedural legal relationships seriously.[12]

2 The Relationship between Contentious and Non-contentious Proceedings

The need for uniform regulation raises a regularly returning question of how the Code of Civil Procedure should relate to *non-contradictory proceedings, or, to proceedings that are not even dispute resolution proceedings in a broader sense.* In this question, the objective of the Concept is to determine the relationship between the Code and non-contentious proceedings, to which a comparative analysis of procedural law can serve with a starting point of abundant examples. Considering the legal systems we studied as reference points, it can be established that codes of civil procedure are typically not universal codifications of civil procedural law; in other words, beyond rules regarding contentious proceedings, they do not contain detailed rules governing non-contentious proceedings. Codes of civil procedure only serve as the backdrop legislation for non-contentious proceedings rules regulated in independent acts. Of course, there are countries that integrate a considerable number of non-contentious proceedings rules in their civil procedure code, but these are the exceptions,[13] and following them would lead to the unnecessary fracturing and swelling of the regulation, as well as the relativisation, of the traditional theoretical basis of procedural law. It is advisable in this context to stay with independent regulation, which is justified in itself by the often unbridgeable eclectic nature in the relationship between various non-contentious proceedings and the necessary regulatory scope of certain proceedings. The only exception that is more often embedded in civil procedure codes relates to enforcement proceedings.[14] From a sources of law perspective, the adoption of civil non-contentious proceedings into the Code of Civil Procedure can best be justified, but we should maintain our current regulation through independent sources of law because of the arguments raised in connection with other non-contentious proceedings. The example of Switzerland's new federal code of civil procedure, a good compromise between content and sources of law, could be considered: it integrates a few fundamental enforcement rules into the civil procedure code while it leaves the voluminous detailed rules in the independent, sectoral

[12] Thus, for example, Gerhard Lüke, 'Betrachtungen zum Prozessrechtsverhältnis' (1995) 108 Zeitschrift für Zivilprozess 427, 441.

[13] The recent codifications of Estonia and Latvia. There, the civil procedure code is also the non-contentious proceedings code, and includes a plethora of detailed rules of non-contentious proceedings; in the case of Switzerland – in addition to the integration of the enforcement proceedings in the code of civil procedure – several non-contentious proceedings had been generally included in the summary general procedure of the new federal level civil procedure code: *Schweizerische Zivilprozessordnung,* 5. Titel 'Summarisches Verfahren,' Section 248 and following sections. Cf. for legal policy and theoretical foundations Stephan Mazan, 'Summarische Verfahren' in Karl Spühler, Luca Tenchio, Dominik Infanger, *Basler Kommentar Schweizerische Zivilprozessordnung* (Helbing Lichtenhahn Verlag 2010, Basel) 1146 and following pages.

[14] For example, Germany, France, Spain, Italy and Bulgaria.

law (the Enforcement Act), as is the case in Hungary. In accordance with our regulatory system in force, as part of such a solution, enforcement lawsuits could remain in the Code of Civil Procedure in a theoretically even more valid and integrated manner.

3 Adjudication of Administrative and Labour Disputes

A question that will require an answer at the Concept level already is whether it makes sense to cling onto an organisation of administrative courts that stopped half way. This naturally raises the consequence-question, as to whether the asymmetric organisational solution would make it necessary to create an independent *code of administrative procedure,* with the possible second thought that the organisational and procedural innovations take turns in moving the entire process forward toward organisational and procedural independence of administrative adjudication. All this raises another, comparatively less significant question, regarding the justification and legitimacy of treating them together with the adjudication of labour disputes, which, in the long run, would obviously render the current regulation untenable, as the subject matters of lawsuits belonging to the two groups of cases have fundamentally different natures. Given the gradually increasing importance of administrative litigation, there are valid arguments supporting the regulation of both integrated into the Code of Civil Procedure and separate regulation in independent statutes. The solution of setting the course of independent regulation, however, would require additional, profound organisational reform of the judiciary, which, obviously, could not stop at the establishment of first instance, (partially) specialised administrative courts, but it would also demand an independent appellate level administrative court and perhaps even an independent administrative supreme court as well. It is also demonstrated by foreign examples that the development of administrative adjudication as an independent judicial path can be tied together with the creation of an independent procedural code.[15] Given the current, not entirely independent, Hungarian administrative court organisation system, where administrative litigation reintegrates into the ordinary court organisation system at the appellate level already, it would be difficult to justify the creation of an independent procedural code and, with this, the application of two sets of procedural rules within a single judicial organisation system. The current weaknesses and deficiencies of regulation integrated into the Code of Civil Procedure can be resolved by treating administrative litigation as special proceedings, which is the solution opted for by several new codifications of civil procedure law.[16] Of course, not touching the current Code of Civil Procedure-integrated regulation would further reinforce the treatment of administrative adjudication independently from the adjudication of labour disputes. The regulation of these latter, specifically private, law disputes would be also appropriate at the level of the special proceedings chapter of the Code of Civil Procedure, and its unified separation from administrative adjudication from the regular court

[15] See primarily the French and German regulations, as well as the newest results of comparative research: F. Rozsnyai Krisztina, Közigazgatási bíráskodás Prokrusztész-ágyban (Eötvös Kiadó 2010, Budapest).

[16] Most recently, for example, the Czech Republic chose this path.

system cannot be justified from a court organisational point of view. Foreign civil procedure systems that regulate the adjudication of labour disputes under independent organisational systems developed independent labour courts which, under no circumstances, are combined with administrative courts.[17] The Curia's administrative jurisprudence-analysis group is undertaking an ongoing and scientific documentation of case law, which will be crystallised in practical and theoretical preparatory material that will provide firm orientation and tremendous support for making decisions on the questions raised in this section.

4 Necessity of Branching Rules along the Line of Privileged Amounts in Controversy and Privileged Persons Involved in the Dispute?

Questions regarding the court system as well as the uniformity of procedural rules and the necessity of 'small procedure codes' within the scope of diversity must be answered at the level of the Concept. It was an unmistakable tendency of the procedural legislation of recent years to establish independent procedures within the Code of Civil Procedure that partially overrode its general rules and were promulgated in the name of expedition and simplification. These regulatory units drew their legitimacy either from the insignificant or especially high amounts in controversy ('small claims' proceedings and high priority cases),[18] or the type of litigants (lawsuits by business organisations between each other). Simultaneously, the legislature of the European Union has also taken the road toward the difficult-to-heal fragmentation of the civil procedures with a characteristically unnecessary and sometimes destructive activism (EU Small Claims Regulation, ADR Directive, and ODR Regulation). Behind the EU's acts is also a paradigm privileging on the basis of the person and/or amount in controversy, which is primarily consumer protection, the extent of which has already far exceeded the necessary level of EU civil procedure legislation. The guiding principle – both with regard to the jurisdiction rules previously in effect and those recently reinforced,[19] as well as the independent civil procedure of small claims and consumer (online) mediation – is the same: the ideal-typical, helpless European natural person, who was rendered helpless by the consumer society, is in need of protection.[20] The protection of typified parties considered more vulnerable and thus requiring protection (employees, insurance policy-holders, and consumers) in itself should not be rejected. It cannot be supported

[17] See, for example, in Germany, the duality of *Arbeitsgerichtsbarkeit* and *Verwaltungsgerichtsbarkeit*, representing the two independent judicial paths having separate input and completely separate appellate forum systems.

[18] The subsequent expansion amendment is more chiselled; it included in Section 386/A of the Code of Civil Procedure complaints initiated by governmental supervisory organs pointing in the direction of public interest.

[19] Cf. Articles 6 and 18 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters realizing the reform of the Brussels I. Regulation.

[20] We should distinguish this regulatory technique, based on a group of people typically considered more vulnerable (in addition to consumers, employees, and insurance policy-holders), from the unquestionable protective need for procedural regulation based not on typified but given, natural characteristics, such as children and incapacitated persons, as well as persons with limited capacity and persons with other disabilities. The civil procedures of the United Kingdom and Canada provide exemplary regulations for the protection of the latter.

with anything, however, as to why only a suspiciously simplified and expedited independent civil procedure – because it achieves this simplification and expedition by abandoning fundamental procedural rights, guarantees, and procedural principles – could only provide this protection. Going further, civil procedures (thus, primarily, the rules of small claim proceedings) and their reduced level of guarantees aiming at the protection of the more vulnerable party could easily backfire, as it is not statistically certain that this type of proceedings will be applied mostly with the more vulnerable party in the role of defendant (class action enforcement of small claims on consumers by the factoring company requiring perhaps less protection or perhaps by a multinational primary service provider). It is undisputable, at the same time, that with respect to small claims actions there are special procedures in several countries.[21] Finally, there are examples of countries where, regardless of the amount in controversy, they refer cases for simplified procedure based on other criteria[22] or, using a particularly complex solution, they try to consider the complexity of the case and the amount in controversy simultaneously.[23]

It is different with high priority cases. This is a de facto uniquely Hungarian feature, as only Japanese civil procedure, reformed recently in 2011, recognises similar amount in controversy-based special treatment (in a typical manner, Japanese regulation is also hand in hand with the system of rules regulating small claim actions). The unique nature of the regulations, from an international comparative perspective, is no accident: the fact that the amount in controversy is high does not render the case complicated per se or lend fundamental significance to it. Among other things, this realisation, the fundamental significance and, on occasion, the reflection of the concern of public interest, led the legislature when it released the condition system of high priority litigation from the bond of exclusive amount in controversy and extended it with the governmental supervisory body's right to initiate suit.[24] Beyond the lack of theoretical-dogmatic justifiability, the day-to-day experience of legal practitioners also shows that the promulgation of procedural rules pertaining to high priority cases did not result in the speedier adjudication of these cases: sometimes it was the opposite. The illusorily short deadlines and time intervals in relation to the complexity of these cases led to constant extensions of hearings and the stagnation of pending proceedings.

Finally, it is hard to figure why it is necessary to differentiate in any way among lawsuits with and without the participation of business entities under market economy conditions, especially, considering the requirement of uniform civil procedure dogmatics stemming from the Fundamental Law and the non-accidental lack of authoritative foreign examples in this area.[25]

When answering the question of the need for 'branching' independent civil procedures

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[21] Japan and Canada are good examples. Switzerland's new federal code of civil procedure has a simplified procedure, which in addition to small claim actions refers certain cases (for example rent) regardless of the amount in controversy to simplified procedure.

[22] In Spain, claims based on certain qualified documents belong in this group because of the supposedly simple nature of the evidentiary procedure.

[23] Cf. the small/fast/multi track system in England since the Woolf reform.

[24] Cf. the text effective as of December 15, 2012 of Section 386/A of the Code of Civil Procedure.

[25] Regulatory differentiation based on the person of the litigant is not entirely without example, but, obviously, the exotic solutions (for example in the civil procedure of Russia or China), which devote separate chapters, for example, to actions involving foreign parties, should not be followed.

aligned with both the persons of the litigants and the extent of the amount in controversy, a fundamental consideration is that the characteristics of the parties and the amount in controversy in themselves do not necessitate different civil procedure rules. Here, in part, a switch to a different mind-set may be necessary, as a final result of which the legislature must realise that the key to the expedition of proceedings actually should be looked for not in the special procedural rules but in the personal qualities of the judges and the organizational-structural facilities surrounding them. These have the potential to influence their workload positively. In some of the reference-countries of Western Europe, the average duration of trials is now only a few months. The opportunity for this was not created in any jurisdictions by a 'simplified' procedure, which disregards the individual specificities of cases and is filled with short deadlines, but the appropriate budgetary embeddedness of the courts, the appropriate scale of the infrastructural (IT) development of the judicial organisation and ensuring the judicial career path is made financially attractive in order to enable the judiciary to catch up with the other groups of the legal profession, and having the possibility to select its members from the pool of the best legal minds available. In sum, the primary token of rendering trials more effective and more expeditious is not the compulsive differentiation of case categories but the intellectually refined judicial persona, which is thus able to command authority and make decisions – (and which is, by the way, conspicuously absent from the vocabulary of the functionaries of the European Union's regulation-factory, predominated by a quantitative approach).

The considerations expressed – obviously not in full – in this Section II show that, even according to the most humble estimation of a litigator, simultaneously with the promulgation of the new Code of Civil Procedure, the several crucial partial areas of the law governing the judiciary (and within that the status of judges) must be rethought and regulated over a series of issues.

IV General Civil Procedure Rules and the First Instant Proceedings

Regarding the structure of the court system and the remedies available in the course of ordinary civil litigation, it has already been much debated which level of the judicial system should be rendered as the general first instance forum. In connection with this, the question where and subject to which conditions (if at all) the split between the two first instance types (currently: local and district) of court is necessary was also raised. Regarding remedies (especially extraordinary ones), a crucial point requiring a decision is how a balanced solution between disputed value-based and special importance-based admissibility can be reached in order to secure both traditional aims of extraordinary remedies, i.e., individual law enforcement and uniform case law.

In the context of parties and representation, the overwhelming subjects of the initial discussions have been standing to sue questions and the problem of class actions. This latter subject's regulatory preparation will be based on comparative analysis of different procedural traditions and on the yields of the European-level discussion of recent years, peaking in the recent Commission Communication 'Towards a European Horizontal Framework for Collective Redress.'

1 Basic Principles; Jurisdiction, Competence, and Venue

The legislation drafting technique, which had also been followed by the effective Code of Civil Procedure, following a multi-level structure – thus permeating the entire Code and the same time running through the individual parts and chapters as well – that proceeds from the general toward the specific part (general rules, first instance proceedings, appellate, and special proceedings) must be maintained. It also broadly reflects the structure of authoritative foreign codes. However, it is not clear-cut, even based on an international comparative review, as to whether there is a need for a code-level, general, introductory part; if so, what should be its characteristics of extent and content? The most important question to decide within this is that whether the basic principles of civil procedure law should be included in the legislation, as is – partially – the case with the effective Code of Civil Procedure. In this respect, only a short basic principle chapter containing three to four rules can be regarded typical of recent civil procedure codifications[26] with the caveat that here, the casting is surely the task of the code, including the definition of the role of the judge and the regulation of the extent of the judge's involvement and authority in procedure management.[27] Compared to this, it is more doubtful as to whether defining the objectives of a civil action is necessary in the code. Although the definition of the objective of the regulation at the beginning of the statute is apparently an entrenched Hungarian codification practice, at the same time such a definition at the beginning of the Code of Civil Procedure has an incomparably greater role than with regard to most laws: while in the majority of laws the definition of the objective is declarative, in the civil procedure code such a rule will determine the form of regulation, essentially affecting all of its details. Although repeating the provisions of the Fundamental Law is unnecessary,[28] the need to resolve the eternal tension between justice and the administration of justice [or, in other words, substantive truth versus finality (legal certainty)] at the beginning of the civil procedure code is justified. The Concept will have to make a recommendation for a wording – representing the essence of the law of civil procedure – that will resolve this tension-relationship. Taking into account leading foreign examples as well, it is hard to imagine that the key role in a mission statement like this is not played by the latter category. As another consequence of this, it is obvious that the principles of party disposition and party presentation of evidence must be considered as basic principles during the codification process. At the same time, we should not forget that there are also such authoritative legal systems that completely give up on the idea of special regulation of basic principles (and the objectives of statute and civil litigation) at the beginning of the statute, and they achieve their prevalence in that they consistently reflect this content of basic principles in the detailed procedural rules.[29] If such an example is followed, it is also possible to start the Code of Civil Procedure in medias res with the definition of the forum system undertaking the adjudi-

[26] For example, the new Federal Civil Procedure Code in Switzerland or the Bulgaria's new code of civil procedure.

[27] The reformed English civil procedure code contains an especially extensive regulation of this aspect.

[28] Cf. Section 1 and Section 2(1) of the Code of Civil Procedure on the one hand and Article XXVIII of the Fundamental Law on the other.

[29] Thus, for example, the German civil procedure code. Cf. Section 139 of the ZPO and the related case law.

cation of cases and the (jurisdiction, competence, and venue) rules governing the determination of the forum with authority to hear the case. In a system like this, judicial case law and procedural jurisprudence will necessarily play a leading role in the identification and detailed substantive description of basic principles.

The above idea leads to another theme that must be discussed within the scope of general rules, which is the problem of the development of the three-tier jurisdiction-competence-venue system of rules serving to determine the forum to adjudicate individual cases. In this context, it can be said that two sources of law solutions can be observed through international comparison: one of the models – on the basis of which stands the effective Hungarian regulatory system – starts from the implicit international law and international private law theoretical premise that the rules of civil procedure as a whole can and should be applied after, and on the basis that, it can be established: the sovereign state carrying the code of civil procedure has *facultas iurisdictionis* and, in a second step, competence.[30] From a starting point like this, it can be logically argued that the civil procedure code should only contain rules pertaining to competence and venue, but, as the implicit condition of its own applicability, it should not contain jurisdictional rules. The other model is less formalistic and starts from a more functional perspective. The essence of this can be pinpointed in that there is no substantial difference between the rules of venue and competence in a functional sense, as both, if the *facultas iurisdictionis* are established, provide only for territorial-based allocation and it is mostly based on overlapping connecting principles (competence/venue grounds). If this model prevails, the functional scope of the venue chapter of the civil procedure code will also extend to the regulation of jurisdiction; in other words, the rules governing venue in the civil procedure code will also govern the rules of jurisdiction.[31] At the level of the Concept, a decision has to be made as to whether the legislature wishes to move toward the implementation of this second model, because it would make[32] the amendment of effective international private law regulations necessary. The move toward this second model can be justified by several theoretical and practical reasons. We can mention among these the reform of the Brussels I Regulation and the related trend, constantly reinforced by the related EU regulations on judicial cooperation in civil matters[33] that can be captured in the derogating nature of European Union jurisdictional rules, which override parallel Member State rules and extend to third counties, too. Since the majority of the jurisdiction rules necessarily have venue-related regulatory contents, the national-level integrated regulation could simultaneously serve the objectives of harmonisation and the gradual termination of sources of law fragmentation.[34]

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[30] The *Gerichtsbarkeit – internationale Zuständigkeit* differentiation is absent from relevant Hungarian legal materials.

[31] Cf., for example, Section 12 and following sections of the ZPO, the Finnish code of civil procedure containing similar regulations, or Section 3 and following sections of the Japanese code of civil procedure. Cf. for the latter: Nishitani, Yuko, 'Die internationale Zuständigkeit japanischer Gerichte in Zivil- und Handelssachen' [2013] Praxis des Internationalen Privat- und Verfahrensrechts 289-295.

[32] Section 54 and following sections of Law-Decree No. 13 of 1979 on Private International Law.

[33] See above under footnote 19 on the 1215/2012/EU Regulation.

[34] Regarding the reference in the Code of Civil Procedure to EU sources of law that can be defined as a minimal objective, see in detail Section VIII.

2 Parties and Other Persons in the Litigation

In connection with the regulation of the parties and other persons in the litigation, two groups of problem can be identified, which definitely require a solution in the course of the codification of the Code of Civil Procedure and with regard to which the Concept must take a preliminary stance. These two areas are the issue of group litigation and the question of (mandatory) legal representation.

On the one hand, with regard to mass litigation of greater significance (environmental damage, group litigation stemming from consumer claims in product liability causes of action, or even lawsuits that can be brought based on membership of a group), some situations may arise which cannot be handled or could be disproportionately hard to handle under the current traditional group litigation formulas. These cases may require additional specialised regulatory forms of group litigation, with the caveat that we have to mention in advance that here the issue is primarily a substantive law issue and, in connection with that, simply the issue of the extension of res iudicata, and not the need for the development of a new type of action. The task of the procedural law codification in this respect is only to allow, in an efficient manner, the procedural canalisation of mass claims, exemplified by substantive law and surfaced by the situations of modern everyday life, and thus unequivocally provide rules especially for[35] the issues of authorisation to sue on one's behalf, such as the fact of the existence of the proceedings, dependency systems similar to a group of claimants, the collection of the monetary award, the escrow/fiduciary management of the award, settlement of accounts among 'class' members, and the subjective limitations of res iudicata. We can surely heavily draw functionally upon the regulatory environment and case law of the relevant traditional Anglo-Saxon legal institutions[36] even if, because of the fundamental differences in the legal-cultural and legal-sociological milieu, the opt-out model obviously cannot be the default model for our continental civil procedure law.[37] In accordance with this, a cautious procedural legislative tendency moving toward the opt-in model and bellwether trials, introduced along with res iudicata extension, can already be observed in certain authoritative and also recent European civil procedure codes.[38] It should be examined, since collective actions are connected to substantive law at numerous – and very different – points, whether collective actions can be regulated together at all. The subject matter of the complaint and the substantive law dispute is deterministic (public interest

[35] And not like the first, 2010 attempt of dilettante, deliquescent regulation based on some scarce familiarity with the Anglo-Saxon legal system derived from some stories.

[36] Class/derivative action (US), class/representative proceedings (Canada).

[37] This is confirmed by the most recent, June 11, 2013 Communication of the European Commission, which, as usual, was mistranslated into Hungarian (redress, *Rechtsschutz*), titled 'Towards a European Horizontal Framework for Collective Redress' which – in accordance with the preliminary estimates – basically does not find the opt-out type regulation adoptable. COM(2013) 401 final.

[38] Germany (introduced specifically, freshly reformed with the effective date of November 1, 2012, with respect to bellwether trials of capital market investor claims: *Kapitalanleger-Musterverfahrensgesetz, 'KapMuG'*), The Netherlands (where they established, for the first time on the continent, an institute specialising only in class action suits), and Bulgaria (as an independent type of action).

complaint and declaratory complaints of injunctive nature;[39] class action-type, collective actions are appropriate primarily in actions for damages[40]) and, in certain instances, decisions on common questions of law with a binding effect extended to all cases would be beneficial to avoid contradictory judgments.[41] No matter which regulatory model will be chosen, it has to be kept in mind that procedural law cannot take on the duty of substantive law in the regulation of the enforceability of claims, but its task is fundamentally the extension of res iudicata and the provision of procedure management appropriately legitimising it.[42]

The other set of problems indicated is the appropriate development of mandatory legal representation, the need of which is also raised by the obvious anomalies of the effective regulation. In addition to the fact that the effective Code of Civil Procedure contains a series of such illusory provisions that could be corrected by simple codification techniques,[43] the institution of legal representation and, within that, mandatory legal representation carries a more substantial, basic principle-level problem. In proceedings in which the parties are represented by counsel, nothing can justify the principles of party disposition and party presentation of evidence and their consequences, the relativity of the statement obligation and burden of proof through the various obligations to educate the court. In the course of the development of the Concept, treating the principles of party disposition and party presentation of evidence seriously, without compromise, could play the role of a guiding principle in this respect (also).

Finally, in connection with the persons involved in the litigation, we must discuss the role of the prosecutor. Modern codes of civil procedure – in contrast with other, more politically interwoven codes of civil procedure, which did not trust the parties and, thus, did not take the principle of party disposition seriously either – seemingly, as a tendency, do not cast the prosecutor in a real role in civil actions. In certain sub-areas, where the role of the prosecutor may remain intact (e.g., certain personal status lawsuits or standing to file a complaint provided under administrative oversight), the procedural law role of the prosecutor should be clarified briefly in the Code of Civil Procedure, taking into account the newest guidelines of the Curia.[44]

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[39] Section 209/B of the Civil Code, UKlaG in Germany.

[40] Thus, primarily the class action rules of the US: Federal Rules of Civil Procedure 23-23.1.

[41] Thus, e.g., in product liability or investor protection cases. For the latter, see the KapMuG in Germany or, in general, the multi district litigation in the US.

[42] Further group litigation problems that are not within the scope of class action claims are awaiting clarification during the codification process; we are just going to mention them here without further analysis: the unequivocal differentiation among the different intervention formulas *(Nebenintervention, Hauptintervention* and *Streitverkündung),* cross claim of parties in the same litigant position (cf. Section 11 of Opinion No. 2/2010. (VI. 28.) of the Civil Department of the Curia, etc.).

[43] Adjusting the amount in controversy with Section 23 or rather completely eliminating it from Section 73, fixing the system of exemptions built on an impossible-to-follow logic, defining the indeed significant cases requiring specialized knowledge other than as exceptions, etc. All this could be simply achieved by even the introduction of the requirement of mandatory attorney representation to a specific forum (e.g., the regional courts); cf. Section 78 of the ZPO.

[44] Cf. *Administrative-Labour-Civil Uniformity Decision No. 2/2012* of the Curia defining the prosecutor as an abstract public law legal entity and defining the prosecutor's role in civil actions also on the basis of comparative law.

Comparative civil procedure law will have a smaller role here for the reasons mentioned above. We have to add that this is also true because more and more rights to initiate action that typically have a public interest protection function, too (consumer protection or competition law violation sanctions), are viewed in both Anglo-Saxon and modern continental civil procedures as enforceable not through actions initiated by a state functionary but as private enforcement of rights.[45] The so-called *private law enforcement* concept still carries a lot of exploitable potential and, after building a scientific foundation and evaluating foreign experiences, it will be worth assigning it a role in the course of the development of the Concept.

3 Trial and Evidence

The most effective instrument to expedite proceedings and increase efficiency in general is not the overemphasised and preferred inclusion of more and newer short deadlines in the Code of Civil Procedure by the legislature. As we pointed out in several instances above, the guarantees of efficient and expeditious proceedings must appear briefly, chapter by chapter, in the substantive development of the specific procedural law legal institutions, and they must be enforced at the end by judges with the authority to do so. In the trial and evidentiary phase, one of the substantive guarantees with central significance is the appropriate preparation of the trial, which receives special attention in the representative codes of all legal families.[46] Further increases in efficiency can be achieved by joining this substantive preparatory hearing with a hearing where the parties appear; in other words, by conducting the hearing without interruption following the latter. A typically emphasised part of the pre-trial phase in leading legal systems is the evidence-preserving proceedings regulated generally – to further emphasise its importance – in a separate chapter.[47] It would be advisable already at the level of the Concept to agree on the fact, which can be easily accepted based on a comparative civil procedure law analysis, that the fact-finding proceedings preceding and preparing the trial (pre-trial discovery) represented by Anglo-Saxon and primarily US civil procedure codes, neither as a whole nor in their specific elements, can be implemented in a civil procedure code living in continental procedural law traditions. As we have already presented in other places in detail (and, therefore, we will not repeat it here),[48] any sort of adaptation of the institution of discovery would presume the simultaneous implementation of such a procedural law-culture and legal sociology conditions that determined the development of the detailed rules of discovery, namely the fact that

[45] Private attorney general. Cf. most recently, e.g., Matthias Weller, 'Kartellprivatrechtliche Klagen im Europäischen Prozessrecht: "Private Enforcement" und die Brüssel-I-VO.' [2013] Zeitschrift für Vergleichende Rechtswissenschaft 89-101.

[46] Cf., e.g., pre-trial conference (US and Canada), scheduling conference (Japan), and *früher erster Termin* (Germany).

[47] Pre-trial discovery (US, Canada and more recently, through Anglo-Saxon influence, Japan), but even within the continental legal family, we can find separate related chapters in several codes (especially, in more recent codes, Latvia, Croatia, Czech Republic, and Estonia).

[48] See, Varga István, 'Az összehasonlító polgári perjog alapjairól' Acta Facultatis Politico-Iuridicae ELTE, tomus XL. Budapest 2005. 113-131.

assigning different roles in the litigation is based on the clear predominance of the parties and their counsel and, parallel with this, the subordinate role of the court; the provision of the parties with rights of a public law-like nature to explore each other's evidentiary tools in the fact-finding phase taking place before the trial, as a general rule, without the involvement of the court or even without the awareness of the court of this process; the obligation of the parties to disclose evidentiary tools and evidence clearly disadvantageous to them, and the assurance of this through repressive sanctions; the maintenance of the strict temporal and qualitative bright line between the pre-trial and trial phase and, in the latter phase, the central role of the lay element (the jury), which makes the full completion of the fact-finding proceedings before the trial necessary; finally, accordingly, the integrated, even weeks-long trial, during which additional fact-finding is not allowed, and only substantive law rules (law of evidence, deliberation, burden of proof, provision of influence, etc.) play any role. From the moment the elements of the discovery are not sowed in the soil of procedural law that is based on the absolute prevalence of the adversaries and, with this, the far-reaching exclusion of the court's right to shape the proceedings,[49] (in other words, they are not utilized amidst the personal and, in a broader sense, social and sociological facilities of American civil procedure), they would generate results unacceptable for the continental approach. Hence, it is imperative to overrule the steps of the Hungarian legislature taken in these directions – and based on a far-reaching misinterpretation of Anglo-Saxon law.[50]

Besides evidence-preserving proceedings, we can find noteworthy examples for uniform regulation in separate chapters of other rules aimed at preserving the legal status-quo. We can thus find examples in several foreign civil procedure codes for the regulation of provisional measures (injunctive relief, protective measures, and registration of a legal action in the land register) in uniform chapters independent of the phase and function of the proceedings.[51] Finally, according to international litigation experience, the unequivocal, independent regulation or absence of distinction between certain evidentiary tools and evidence may raise problems. As such, the distinction between the statements of litigants and witnesses could be problematic[52] (Switzerland), and independent regulation may be justified.[53]

V Appeals

The unequivocal preliminary question of the development of the appellate system is the Concept-level response to the questions related to the organisational system of the judiciary raised in Section II above. A well-founded decision may be only made on the number of tiers the appellate system should have and the determination of whether fora with mixed first and

[49] Adversary system of procedure.

[50] Cf., e.g., the practice of cross examination surprisingly adopted in high priority cases or the Section 121/A, which is similarly an alien species in the system.

[51] Thus, e.g., the US, Sweden, Latvia, Russia, Canada, and Bulgaria.

[52] Thus, e.g., the Swiss federal code of civil procedure.

[53] Thus, e.g., Bulgaria.

second instance jurisdiction or exclusively appellate courts should be part of the system. Since, similarly to the Constitution, the Fundamental Law also requires (not so self-evidently at all, according to the international comparative analysis)[54] a regular appellate procedure, a fundamental revision of the effective structure of the appellate chapters of the code does not seem justified: it can be still organised along the regulation of appeals and extraordinary appeals. This template is followed by most foreign civil procedure codes, in which regulation is supplemented with the implementation of a few newer institutions that can be viewed, in a broader sense, as dispute resolution institutions, and so, primarily, with channelling fundamental rights violations into the civil procedure code.[55]

Conceptual questions arise mostly with respect to the permissibility of extraordinary appeals, and, in this respect, both the Anglo-Saxon and continental examples may be useful supplements to the brainstorming done in preparation of the development of the Concept.[56] Within the question of permissibility, it has to be clarified at the level of the Concept as to what roles the legislature envisages for the higher courts, especially the Curia, in the area of extraordinary appeals, in other words, what weight it wishes to assign to each of them when developing the dual task-totality of individual legal protection and legal uniformity. Since the relationship between the two can only be imagined as some sort of symbiosis and the issue is only achieving the aforementioned weight-assignment, the determination of the detailed rules of permissibility may be assigned a special role. Within the scope of permissibility, the separation of permissibility from the disputed amount as the only entry condition also requires a fundamental decision in itself. The amount in controversy and the disputed amount do not determine the significance of the case, and the latter is essentially independent from the value considerations. As such, the introduction of a chiselled permissibility criteria system is justified also with the utilisation of foreign examples extracted through international comparative analysis, in which the condition-nature of the disputed amount is not exclusive, and – precisely because of the central position of the assessment of the fundamental significance of the case – designating the permissibility decision as the subject matter of an independent appeal is not rare.[57] The most recent

[54] Cf. Varga, István, 'A jogorvoslathoz való jog – Alkotmány 57. § (5) bekezdés' in Jakab András (ed), *Az Alkotmány Kommentárja* (Századvég 2009, Budapest) 2088 and following pages.

[55] One of the existing models of solution is the definition of the direct effect of constitutional court decisions (Germany), and the other is the enforceability through independent legal remedies (effective Code of Civil Procedure: retrial). The handling in civil litigation of the decisions of the European Court of Human Rights and the Court of Justice of the European Union poses a functionally identical problem with this: the decisions of these fora are currently not built in the appellate system. In pending trials, there is a solution. (Section 155/A of the Code of Civil Procedure.) Following a final decision – if no review is available either –, however, the procedural law channelling still requires a solution (taxonomically via extraordinary appeal, cf. in addition with cause for review defined under Section 416(1)(g) of the Code of Criminal Procedure).

[56] Certiorari (US) and *Zulassung* (Germany).

[57] In German law, which is the closest in this respect also to Hungarian traditions, permissibility is decided on the basis of the disputed amount *or* (and not *and*!) fundamental significance, with the caveat that it is the judge rendering the order who makes a decision on permissibility *(iudex a quo),* and against this permissibility decision, there is a right to appeal to the reviewing forum *(iudex ad quem, Zulassungsrevision, Nichtzulassungsbeschwerde). A* similar solution in its direction could be in line with the constitutional requirements laid down earlier by the Constitutional Court.

amendment of the review rules, which can be considered forward-looking in this sense, points to such direction of a permissibility analysis, which only builds differentially on the disputed amount and fundamental significance, in which the legislature in actions for non-economic damages has unequivocally separated permissibility from the disputed amount as a condition.

VI Chapters Regulating Special Proceedings

Even a list-like presentation of the regulatory needs of certain special proceedings would exceed both the permitted length and the scope of this overview. Accordingly, here we only highlight a few special proceedings in view of the chapter division of foreign civil procedure codes subject to our review, the regulatory needs of which are clear, but its place in the sources of law – comparing the effective Code of Civil Procedure with foreign examples – raises questions that need to be answered at the level of the Concept.

Proceedings concerning the status or capacity of persons are typically included in the civil procedure codes, although the German regulations have undergone remarkable changes in recent years (considering the content of the basic principles, which is being significantly modified in these actions, as well as the multi-directional system of relationships that connects these actions to non-contentious proceedings) in which all of the status proceedings have been removed from the rules of special proceedings of the ZPO and were implanted in a statute that was also intended to serve as a code for non-contentious proceedings.[58] In addition, new chapters, induced by 'modern' substantive law legislation, have been thus codified, primarily with respect to disputes arising from various registered domestic partnerships.[59] The need for these chapters must be examined at the level of the Concept, and it must be decided if it is sufficient to deal with these cases together with family law actions, and if there is anything indeed that justifies the creation of a separate chapter (or it is worth waiting until diversity becomes less of an issue).

By providing for independent regulation of press rectification actions, the Hungarian regulatory system can be regarded as unique, because this type of action does not appear independently in any of the representative civil procedure codes we have examined. In Hungary, however, we can present several arguments for its maintenance, for example, in addition to Hungarian procedural law traditions and the voluminous judicial case law, the fact that the new Civil Code apparently regards the traditional Civil Code-Code of Civil Procedure division of labour as the starting point. (The Civil Code does not even mention press rectification, and, also, the Press Freedom Act seems to be of the same view, as it also started on the assumption that the relevant rules remain in the Code of Civil Procedure). Considering that the Press Freedom Act is a cardinal law, we can regard this system as a given, and there is no reason for changing it.

[58] See in footnote 9 above.
[59] Switzerland and Germany.

Finally, beyond the special proceedings currently regulated in the Code of Civil Procedure, the comparative analysis revealed a few subject matters, to which special proceedings are connected at the level of how chapters in the civil procedure code are organised in more than one country. These include, especially, actions related to promissory notes and other securities[60], actions aimed at the enforcement of claims arising from legal relationships related to intellectual property,[61] property disputes,[62] actions related to leases,[63] and actions for the return of illegally exported cultural objects.[64]

VII Modern Technology in Civil Actions

The codification process in its initial phase already addresses some technical issues. Special attention is paid to the possibilities of utilizing electronic means of communication between members of the judiciary as well as between the parties and the judiciary. There seems to be an implied agreement among professionals that a well-positioned introduction of such means into selected stages of the civil procedure could seriously contribute to the timely administration of cases. In this respect, the extensive experience piled up in recent years during the fully electronic administration of payment order proceedings may provide much-needed input. Another, partly technical, issue is the allocation and collection of litigation costs. It has been a recurring subject of discussion and will have to be decided now, at a conceptual level, whether the allocation and collection of costs should remain with the courts or placed with the tax authority. Various reasons have already been articulated on both sides, but consensus has not been achieved yet.

Modern technologies, primarily the use of electronic communications devices, cannot contribute to the speed and efficiency of a civil trial to an appreciable extent. With visions foretelling the opposite, certain practical foreign examples, as well as international arbitration practice, can be contrasted; however, in civil procedure systems comparable to ours, where electronic filing systems have been implemented,[65] the printing of all documents filed and filing hard copies remain the norm, and, what is more surprising, it is also required by court operation rules. This means that, to date, even in the systems usually depicted as the pioneers of modern litigation in a technological sense, we can only talk about the development of an electronic

[60] It is regulated in a separate chapter, e.g., in Germany, Austria, and Japan.

[61] It is regulated in separate chapters e.g., in The Netherlands and Latvia. The regulation of currently effective Hungarian rules, which are sporadic at times, but which can be found even today in the trademark law in a concentrated form, in a uniform manner in the Code of Civil Procedure could be justified.

[62] It is regulated in a separate chapter e.g., in Austria and Croatia.

[63] It is regulated in a separate chapter, e.g., in Austria and The Netherlands.

[64] It is regulated in a separate chapter, e.g., in The Netherlands. This solution should be considered because in Hungary, too, we can anticipate that more and more such claims – of rather significant magnitude – may arise, especially, because during the reform of the Brussels I Regulation, the EU legislature has expressed its preference of the *par excellence* regulation. Cf. the new jurisdiction rule under Article 7(4) of the Regulation 1215/2012/EU.

[65] E.g., Austria: WebERV *(elektronischer Rechtsverkehr),* which through an electronic single point customer gateway system operates with the filing of appropriately authenticated online forms.

alternative to mail delivery, and that experience shows that the system is unable to process larger, scanned exhibits, and, hence, filing is often duplicated and, with that, more cumbersome than it was in the pre-technology era. Practical experience is similar regarding the procedural practice at the major institutional fora of international arbitration: even in those institutions that are infrastructurally far better equipped than national courts, it is not the deployment of modern technology but rather the efficient development of procedural rules – also based on the consensus of the parties – and the skills of the arbitrators employed that are responsible for the better efficiency of the procedure. These examples show that the use of modern technologies in civil litigation is fundamentally a question of infrastructure and technological development, without any significant theoretical content. Hence, even the authoritative foreign civil procedure codes actually contain authorizing rules only sporadically and, in terms of the availability of technical conditions, so far only include electronic communications as an optional method. Based on these observations, there is no need to place special emphasis on the implementation of modern technologies at the level of the Code of Civil Procedure. The German ZPO, which can be hardly accused of theoretical vagueness, takes care of the question with altogether two authorization rules.[66] This regulatory technique can be adopted without further ado. With this, it can be recommended at the level of the Concept that the infrastructural questions concerned, among other things, the electronic system on the customers' side (e.g., with the appropriate development of the Customer Gateway), issues of the compatibility between the electronic fee payment system and electronic court file administration and archive maintenance obligations,[67] as well as the questions of authentication conforming with the current, latest safety levels should not burden the Code of Civil Procedure as a foreign body and with a bulky system of rules, but – just as the referenced German regulations – these questions should instead be regulated in a specialized manner at the level of regulations. The few questions with actual procedural law relevance should be regulated among the sub-rules of the traditional procedural institution concerned (e.g., the conditions when the electronic submission can be regarded as filed or the occurrence of the presumption of service in the case of electronic delivery).

[66] Section 130a and Section 130b of the ZPO, as well as the proposed Section 130c, which also would delegate to the regulation level the development of technical/electronic form-level development, whose proposed deadline in Germany is 2022.

[67] See with this regard and the technical organization, as well as, especially, the problems of data protection the latest source: Silkev Jandt, Maxi Nebel, 'Die elektronische Zukunft der Anwaltstätigkeit' [2013] Neue Juristische Wochenschrift 1570. With respect to the certain technological requirements and sub-areas and from a comparative perspective cf. Kengyel Miklós, Nemessányi Zoltán, *Electronic Technology and Civil Procedure. New Paths to Justice from Around the World* (Dordrecht 2012).

VIII Alternative Dispute Resolution Integrated in the Code of Civil Procedure

Regarding alternatives to ordinary state civil procedure, the revision of the regulation of arbitration, as the principal substitute for ordinary civil litigation, have already entered the discussion. While Hungarian arbitration law is in many instances in compliance with the UNCITRAL Model Law, its codification dates back to 1994. Furthermore, extensive judicial practice and respective recent legislation, as well as international and European developments, require the review and possibly an updating re-codification of this field of procedural law. In addition to arbitration, problems of mediation are also on the agenda – unsurprisingly also with a view to the evolving European legislative activity (ADR Directive, ODR Regulation). Various views have already been articulated regarding the introduction of mediation in the ordinary course of civil litigation, and opinions within the committees widely differ on the necessity and usefulness of court-integrated and out-of-court mediation and their respective regulatory needs. In this context, there is an ongoing comparative debate reflecting different regulatory approaches, such as a rather forced (e.g., United Kingdom) or a more relaxed (e.g., Germany) embedding of mediation in civil litigation.

1 Mediation

In part, under the many years of pressure from the EU directive and decree requirement,[68] which received a new push at the time of closing this manuscript, more countries have also integrated mediation rules in their civil procedure codes. Regarding this, two tendencies can be observed: the more aggressive regulation represented by the Anglo-Saxon legal tradition, compelling the parties of the already ongoing civil action to mediate, and the more considerate German regulation, which primarily bears in mind the essence of mediation; that it is the parties' own, joint decision, which does not allow the courts to compel the parties to mediate. In addition to this, foreign regulations typically regulate pre-trial mediation as well, mostly specifying pre-trial documented mediation and the verification thereof – with different degrees of enforceability – as the prerequisite for trial. We can find several specific solutions in different civil procedure codes, which mostly provide, within the framework of the trial, the option of mediation and primarily the opportunity for settlement that it can offer, and reflect on their legal effects and enforceability.[69] As regards the essence of the regulations, we can see mandatory mediation primarily within the Anglo-Saxon legal family,[70] which is attributable to the pre-trial phase that

[68] Published in No. L 165 of the Official Journal of the EU (June 18, 2013): Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer *('EU ODR-Regulation');* Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes *('EU ADR-Directive').*

[69] Thus, e.g., Austria, Switzerland, and France. See with an overview of the different regulatory options: Christian Fischer, Hannes Unberath, *Das neue Mediationsgesetz* (CH Beck 2013, München).

[70] E.g., England and Canada.

has a much more pronounced role in those countries.[71] Compared to the earlier EU Mediation Directive (which, fortunately, did not really contained tangible, concrete procedural rules),[72] with the ODR-Regulation and the ADR-Directive, however, a trend seems about to begin, the essence of which is apparently that mediation demands more space (enforceable in part independently of the parties will) in the civil justice system. Both the out-of-court version of mediation and the version integrated into the trial, though to different degrees, are fundamentally alien species in the system of civil trial regulation. The two latter mentioned acts, not surprisingly promulgated with a consumer protection objective, lead to the deliberate vulgarisation of an important segment of the civil justice system, and with that in the long run, it will detach larger and larger areas from the scope of the civil trial, secured by a procedural safety net and judicial legal expertise. This tendency also carries the danger that the system of civil legal protection/enforcement of claims will duplicate and at the same time, civil litigation will gradually lose its importance in favour of a system of inferior quality.[73] The modern, tendentious, compulsive imposition of court-mandated or intra-trial mediation is hard to understand through the eyes of a litigator, because the logics and corresponding basic structure of the pending civil action (or also, civil action that is about to begin!) are fundamentally different than those of mediation. Based on the observations, the commencement of the adversary proceedings to enforce claims implies the impossibility, or at least the low likelihood, of an amicable resolution of the dispute. To steer back the parties by judicial force in the direction of mediation will lead to judicial role confusion, waste of time and loss of efficiency. Hence, for all these reasons, it should be considered at the level of the Concept to stay with the gentlest level of regulation, which, in essence, only refers to the option of mediation and, in connection to this, to regulate a few procedural law institutions necessitated by the Directives: this would 'embed' mediation, to the extent necessary, in the system of adversary enforcement of claims (confidential treatment of agreements resulting from mediation and evidentiary tools, suspension of limitation and prescription period, etc.). Finally, in the light of the regulations pursuant to the Directive, it seems unavoidable that a lex imperfecta, serving to fulfil a notification function within the system of conditions of filing a proper complaint, in other words, regulating the substantive elements of the complaint, will be maintained.

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[71] Cf., e.g., in England: *Practice Direction on Pre-action Conduct*, which imposes in various way sanctions if mediation does not take place or is conducted in an inappropriate manner (stay of proceedings, fines, etc.) For the various mediation model-differences that can be explained with procedural law cultural differences with a comparative approach, cf.: Felix Steffek, 'Rechtsfragen der Mediation und des Güterichterverfahrens' [2013] Zeitschrift für Europäisches Privatrecht, 528-564.

[72] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters *('EU Mediation Directive').*

[73] See identically as one of the first reactions, the analysis, at places with acidic sarcasm, of a leading German litigator: Roth, Herbert, 'Bedeutungsverluste der Zivilgerichtsbarkeit durch Verbrauchermediation' [2013] Juristen Zeitung 637-644. (*'Das Verbraucherschutzrecht eignet sich … nicht für eine Anwendung durch den Verbraucher oder sonstige Laien.'* 638.).

2 Arbitration

The (in many respect unwarrantedly unquestioned) harmonisation of the Arbitration Act with the UNCITRAL may create the impression that the Hungarian legislature has nothing to do in the area of the primary alternative to litigation, arbitration. This view, in the light of the final, effective regulations and related judicial practice, is clearly unfounded, because the current regulatory environment of arbitration displays several dysfunctions, which – based also on the lessons of foreign examples – could be rectified through the codification of the Code of Civil Procedure. The following reasoning, which is in line with the regulations of all reference countries, can be considered as the starting point: it is the interest of both the institution of arbitration and the state that the alternative resolution of private law disputes through arbitration is practiced with the greatest possible support and coordination from and, at the same time, appropriate quality assurance by the legislature and state judicial administration of justice. A balanced effort to provide support, coordination, and quality assurance in this sense is manifested primarily in the structure of the actual text of the legislation. Accordingly, in international practice, regulations that define the extent of arbitrability (subjective and objective arbitrability), generously and, in essence, as identical to the boundaries of private-autonomous action, are typical. It can be considered typical that legal entities becoming the subjects of private law legal relationships may derogate, without any further conditions, state judicial dispute resolution and agree to conduct arbitration proceedings in legal disputes, over any matter in which they are free to make decisions in accordance with private law rules. A further manifestation of the support and coordination in general is the manifold legal assistance provided during the proceedings. In a broad sense, this includes the dismissal of the complaint without the issue of a summons if a valid arbitration clause exists, legal assistance provided during the establishment of the arbitration tribunal in charge and state judicial legal assistance provided in the area of provisional measures, as well as legal assistance provided for the evidentiary proceedings. Finally, on the common boundary of support, coordination, and quality assurance, we can find judicial review by state courts of positive jurisdictional decisions, the provision of the arbitral decisions with legal effect linked to the judgments of state courts and their definition as grounds for enforcement accordingly, and finally, specific appeal proceedings in the form of invalidation actions. Ideally, an addition to these rules is the state judicial practice, which stands on the grounds of favor arbitri that, recognising the national economy interests linked to arbitration as well, creates a balance between the support and quality assurance functions intended for these courts.

The above-mentioned equilibrium is extremely sensitive at the level of both the legislation and the related judicial practice. Typically, the balance may be disrupted with the unwarranted narrowing of (subjective and/or objective) arbitrability or the qualification of distinctly exceptional dispute resolution tools (invalidation actions or, analogous to those, reasons for denying enforcement), as ordinary appeals in terms of their contents. In the former case, the legal, cultural, and economic arguments, which ultimately render the derogability of ordinary state courts legitimate, become lost: there is mistrust by foreign parties regarding the state forum of the domestic party, mistrust of the decision in the event of the involvement of a state party in

the action to be made by the representative of that same state and of the actual expertise of the adjudicator relating to the specific dispute according to the parameters as defined by the parties. In the latter case (in other words, in the event of assigning partial appellate content to invalidation actions), the private-autonomous derogation of state judiciary proceedings, as the state dispute resolution forum, is vested with broad decision-making powers. The disruption of the equilibrium causes a series of unfavourable effects, of which we should highlight the weakening of the environment of international investment protection and the relativisation of, foreseeable options for the enforcement of claims and with this, ultimately, of legal certainty.

Several initiatives in the effective Hungarian regulations and related judicial practice (primarily the tendencies of narrowing arbitrability and broadening, as far as content goes, invalidation reasons) point to the fact that both the regulatory environment and the interpretation of the law have moved toward the disruption of the above described sensitive equilibrium, which poses no small danger.[74] In addition to this, the regulations in the Arbitration Act contain several anachronistic rules that have been left untouched since 1994, which increases the distance between the Hungarian arbitration procedure law and international standards.[75]

The codification of procedural law can present an opportunity to resolve these problems and, at the same time, to improve the quality of the Hungarian arbitration practice based on national economic interests. Several authoritative procedural law legal systems regulate arbitration in a separate chapter in their civil procedure code.[76] An arbitration chapter placed at the end of the Code of Civil Procedure, in addition to symbolising the nature of arbitration proceedings as the primary alternative to litigation, would contribute to the above-described and desirable harmony between state judicial proceedings and arbitration proceedings. This is also true, among other reasons, because a large portion of the regulatory content currently provided by the Arbitration Act primarily belongs in the civil procedure code; namely, every rule displaying state court contact points, from the dismissal of the complaint without the issue of a summons to legal assistance for the establishment of the arbitral tribunal and other instances of legal assistance, to the complete invalidation proceedings part. In Hungary, in addition to these sources of law reasons, the arbitration-related legitimacy deficit observed lately would also justify integration into the Code of Civil Procedure, which would thus contribute to the beneficial increase of the acceptability of arbitration. As such, it can be foreseen that the Concept will have to take a stance on this question. There are several available codification techniques that can be followed. In addition, the unitary perspective currently followed by the Arbitration Act could also still be utilised,[77] or even the regulation technique based on the analysis of domestic/international differences.[78]

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[74] Cf. in detail Varga István, Az objektív arbitrabilitás magyar szabályozásának története és töréspontjai in Máthé Gábor, Révész T. Mihály, Gosztonyi Gergely (eds), *Jogtörténeti Parerga* (Eötvös Kiadó 2013, Budapest) 363-378.

[75] Thus, primarily, the jurisdiction and venue rules that cannot be interpreted in an arbitration context.

[76] Thus, e.g., Germany, Austria, France, and Italy.

[77] Thus, e.g., the regulation of the German ZPO.

[78] E.g., Switzerland (federal code of civil procedure and independent law) or The Netherlands (distinction within the code of civil procedure).

IX International and European Law at the Chapter-level of the Code of Civil Procedure

Finally, numerous issues have already been raised regarding the way of handling necessary intersection points between domestic civil procedure and international (first and foremost EU law) instruments regulating certain fields of civil procedure, e.g., jurisdiction with regard to the Brussels I-recast, different levels of judicial assistance in the field of service and evidence-taking and, further the new, direct procedural instruments. These instruments will play a continuous crucial role in the codification process. In the current preparatory phase, the discussion focuses on the level of sources of law, e.g., on the need for the inclusion of a separate chapter in the new code defining the points of intersection between international, European, and domestic procedural regulatory instruments. Equally, questions on a conceptual level arise in connection with the nature of the 'new generation' of European civil procedural regulations with primary and direct regulatory content. In the respective thematic committee's initial view, one of the main tasks of the codification process will have to be to ensure the effective application of regulatory content relating to cross-border civil matters, both in a global and in a regional (European) sense. One possible way to achieve this – and thereby furthering the awareness of this dynamically evolving field of procedural law – could be the introduction of a specially prepared chapter in the new code dedicated to the respective international and European instruments and their interfaces with domestic procedural law.

In the last one and a half decades, civil justice cooperation, as one of the most dynamically developing area covered by EU legal materials, has put a very large amount of secondary[79] Community legal materials in direct interaction with the independent national procedural laws. The application of domestic civil procedure codes are increasingly permeated by decrees on jurisdiction, legal assistance, mutual recognition and enforcement, as well as new-generation, uniform proceedings. In reaction to the powerful EU influence and to the interaction we have mentioned above, several Member State codes devote a uniform (and as regards its objective too, a didactic) independent chapter to EU regulations, embedding them into the structure of the national procedural law. The prototype of this regulatory technique is Book 11 of the German ZPO, which contains only short references of application. Elsewhere, we find detailed regulations.[80] Finally, referencing EU law can also be envisaged as a part of a chapter synthesising broader, international regulations.[81] The advantage of the regulations in a separate chapter is that, instead of being sporadic, the currently applicable EU law could be easily located and reviewed by legal practitioners which, based on the experiences of practicing lawyers, would not be

[79] The relevant primary Community law, (thus, the preliminary decision-making proceedings and its details and procedural rules to be followed by the national judiciaries) have also been integrated into several national civil procedure codes (e.g., Bulgaria and Croatia). In this respect, there are unequivocal Community rules, and so it is in part only a question of legislative techniques and 'didactics' based on the examples of foreign regulations as to whether the Code of Civil Procedure should contain identical rules.

[80] Bulgaria and Croatia.

[81] See, thus, for example, in the regulation of Latvia, the separate chapter titled 'international civil procedure.'

superfluous regulatory content. Despite the fact that the centre of gravity of the cooperation falls on the area of mutual recognition/enforcement, in other words, it is concentrated in the phase after the completion of the proceedings and, thus, the connecting point of EU regulations is not the about to be filed or pending civil action, the ideal source of law placement of the integration of concentrated regulation is provided by the Code of Civil Procedure. With respect to EU sources primarily applicable to actions to be filed and pending actions, it would be appropriate to decide, at the level of the Concept, whether the concentrated, chapter-level integration of these rules into the Code of Civil Procedure should take place, and if so, whether only through periodically updated EU sources of law references or through a more explanatory and detailed substantive regulation.