QUESTIONS ABOUT THE PRINCIPLE OF CONCENTRATION OF PROCEEDINGS[1]

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Abstract

The Hungarian National Assembly enacted a new Code of Civil Procedure in 2016 (Act CXXX of 2016), which transformed the chapter of basic principles. It also consisted of the introduction of three new principles as well: the concentration of proceedings, the parties' obligation to facilitate the proceeding and the court's duty to manage the case. These principles are derived from a common ground – to guarantee the efficiency of the civil procedure. The paper examines the concentration of proceedings since it is the most disputed principle in the Hungarian jurisprudence. This examination is also justified by the fact that the concentration of the proceedings emerges in the regulation of the other two new principles as well. The main questions of the paper are: 1. Is the concentration of proceedings a principle? and 2. Has the legislature codified it properly at the beginning of the Code?

Keywords: *Code of Civil Procedure, concentration of proceedings, efficiency, principles*

Rezumat

Adunarea Națională a Ungariei a adoptat un nou Cod de procedură civilă în 2016 (Legea CXXX din 2016), care a transformat capitolul referitor la principiilor fundamentale. Aceasta a introdus și trei noi principii: celeritatea procedurilor, obligația părților de a contribui la desfășurarea fără întârziere a procedurilor și obligația instanței de a primi și soluționa cauza. Aceste principii au un scop comun – acela de a garanța eficiența procedurii civile. Prezenta lucrarea analizează celeritatea procedurilor, având în vedere că acest principiu este cel mai controversat în jurisprudența maghiară. Această analiză este, de asemenea, justificată de faptul că celeritatea procedurilor se regăsește și din reglementarea celorlalte două noi principii. Întrebările principale prezentate în lucrarea sunt: 1. Reprezintă celeritatea procedurilor un principiu? și 2. Este potrivită codificarea acestui principiu de către legiuitor la începutul codului?

Cuvinte-cheie: *Cod de procedură civilă, celeritatea procedurilor, eficiență, principii*

1. Introductory thoughts

1.1. Efficiency as a main value

The new Code disposes of the efficiency *expressis verbis* only in the Preamble, when it declares that the National Assembly adopted the Code *inter alia* "with a view to resolving civil law disputes following the principle of fair trial and to enforcing substantive rights in an efficient manner". Based on this legislative aim, the principle of efficiency ought to be divided into two elements, such as

1) material efficiency („to enforcing substantive rights in an efficient manner")
2) procedural efficiency („to resolving civil law disputes following the principle of fair trial")[3]

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[3] Virág, Cs: *A jogcímhez kötöttség egyes kérdései a polgári perben*, In. Magyar Jog 2013. (Vol. 60.) No. 1. p. 31.; Virág, Cs: *Az alaki igazságosságot előtérbe helyező fair eljárás nem zárja ki a jó és helyes döntés lehetőségét*, In. Németh, J – Varga, I (eds.): *Egy új polgári perrendtartás alapjai*, Budapest: HVG-Orac, 2014. p. 374.

Ad 1) An activity is efficient *from the point of view of the result* if the desired result is fulfilled in the expected way[4]. The result of the civil litigation is the judgment which decides the dispute based on substantive law. Therefore, we can conclude that material efficiency has a connection with the material truth[5]. Truth is an ethic category, the requirement that during the solution of a conflict between people or the group of people, the decision shall take the different, what is more contradictory interests into account in an appropriate extension[6]. The civil procedure is initiated if the plaintiff wishes to vindicate his right against the defendant with the help of the court.[7] The civil procedure is efficient from the point of view of the party if he could vindicate his right, so when the court administered justice[8].

Consequently, the material efficiency is a *subjective factor* since the losing party will not regard the procedure as efficient from the point of view of the result. This argumentation justifies that efficiency is not equal to the reasonable time because result is also a part of it. Moreover, the result does not have a direct relation with the reasonable time, although the passage of time could devaluate it at some point. However, this is a personal, subjective circumstance. That practice of the Constitutional Court must be highlighted which emphasises that the Fundamental Law of Hungary (in other words the constitution) could not guarantee the right for neither to prevail material truth nor that no judgment will violate the law[9]. The courts, however, shall strain after the detection of the truth (principle of the detection of the truth)[10].

Ad 2) The procedural efficiency has a close connection with the procedural truth, which embodies the requirement that the basic rights prevailed by the Fundamental Law must be guaranteed during the procedure. The Code of Civil Procedure shall guarantee the procedure to be fair. The requirement of fair trial presumes the judicial neutrality as well as the state support providing the equality of rights (see for example the rules of cost exemption or patron lawyer)[11]. Since the reasonable time is a right prevailed by the Fundamental Law (derived from the right to fair trial), it is the immanent element of the procedural efficiency influencing it directly[12].

To sum the arguments, I believe that the division of efficiency into two separate elements is irremissible to make the image complete about the legislative aims of the codification. The legislature interpreted efficiency as a notion which describes the connection between the expenditure and the result, so strengthening the efficiency means the best possible outcome with the least possible or the same expenditure[13].

The two elements of efficiency are together the main principle of the new Code of Civil Procedure. Procedural efficiency alone ought not to be interpreted as the aim of the civil procedure, since it puts the dominance of the court forward in a way that meanwhile it seemingly brings the interests of the parties to the fore. The legislature tried to increase material and procedural efficiency as well. The prior is guaranteed by the case management (*materielle Prozessleitung*) since the aim of it is to settle substantive law disputes, while the main tool of the ulterior is the preclusion (*Präklusion*).

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[4] Szabó, I: *Perhatékonyság és a percselekmények időszerűségének elve*, In Varga, I (ed.): *Codificatio processualis civilis. Studia in Honorem Németh János II.*, Budapest: ELTE Eötvös, 2013. p. 367.

[5] Éless, T: *Szerkezeti alapkérdések a polgári per kapcsán*, In. Magyar Jog 2013. (Vol. 60.) No. 10. p. 613.

[6] Bócz, E: *A bíráskodás tekintélye és a jogpolitika*, In. Magyar Jog 2011. (Vol. 58.) No. 8. p. 449.

[7] Szabó I: *A polgári peres eljárás hatékonysága*, In. Uő (ed.): *Tanulmányok Dr. Besenyei Lajos egyetemi tanár 70. születésnapjára*, Acta Jur. et Pol. Szeged, Tomus LXIX. (2007) Fasc. 1-48., pp. 632-633.

[8] Ibidem.

[9] Decision No. 9/1992. (I. 30.) of the Constitutional Court.

[10] Éless, T – Döme, A: *Alapvetések a polgári per szerkezetéhez*, In. Németh, J – Varga, I (eds.): *Egy új polgári perrendtartás alapjai*, Budapest: HVG-Orac, 2014. p. 52.

[11] Bill no. T/1472. Ministerial explanation to Section 2.

[12] Névai, L: *A polgári perbeli tárgyalás hatékonyságának problémái – különös tekintettel a tárgyalás előkészítésére*, In. Jogtudományi Közlöny, 1979. (Vol. 34.) No. 10. p. 623.

[13] Bill No. T/11900. on the Code of Civil Procedure, General Explanation; Wopera, Zs: *Az új polgári perrendtartás elvi alapjai*, In. Jogtudományi Közlöny 2017. (Vol. 72.) No. 4. p. 154.

1.2. Is efficiency a procedural principle?

As I mentioned, the efficiency is part of the right to fair trial, and as a national comparison, the German *Grundgesetz* does not declare that the judicial procedure, especially the civil procedure ought to be efficient[14]. Before the overview of the concentration of proceedings, we must answer the question whether efficiency is a basic principle itself.

The concept of the new Code (furthermore: Concept) emphasised that those judicial and procedural principles which effected the procedure shall remain in effect. Moreorver, it enumerated efficiency as a judicial principle[15], so it was not highlighted as a procedural one. Efficiency ought not to be regarded as a procedural principle since it is an aim of the procedure which means on one hand the right, lawful judgment (material side) and, on the other hand the sequence of lawful procedural actions (procedural side).[16] This justifies the aforementioned articulation of efficiency as well.

Since the principles have normative content[17], it is not possible to count efficiency here because of its metaheuristic origin which also encumbers to give a unified definition to it[18]. A single procedural code could not guarantee the efficiency (neither the duration nor the result) itself, structural, infrastructural and personal conditions are also required[19].

1.3. Features of the chapter of principles in the new Code

It was disputed during the codification whether a chapter of principles is needed and if it is, then which principles should the new Code contain. The principles of the civil procedure determine the general and essential methods to execute the duties which serve the realisation of the aim of the procedure. The principles pervade the institutions of the procedure, the main procedural acts and emphasise the content of the proceedings[20]. They also determine such basic rights and obligations which arrange the relation among the procedural parties, and their infringement is sanctioned[21].

The principles of the Code may be divided into three groups. Chapter One consists of the main principles (Sections 2-6), the General Provisions also contain several principles (for example the right to use the mother tongue in the procedure) and there are also principles in the regulation of each sections of the procedure (for example the principle of establishing the factual situation freely)[22]. The main organising aim of the procedure is the efficiency, from which three procedural principles may be derivated (the „pillars" of

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[14] Eidenmüller, H: *Effizienz als Rechtsprinzip. Möglichkeiten und Grenzen der ökonomischen Analyse des Rechts*, Tübingen: Mohr Siebeck, 2015. p. 443.

[15] Concept of the new Code of Civil Procedure, p. 10.

[16] Szabó, I: *A hatékonyság: megvalósítható cél vagy eljárási elv?*, In. Harsági, V – Wopera, Zs (eds.): *Az igazságszolgáltatás kihívásai a XXI. században. Tanulmánykötet Gáspárdy László professzor emlékére*, Budapest: HVG-Orac, 2007. p. 369.

[17] Németh, J: *Alapvető elvek*, In. Németh, J – Kiss, D (eds.): *A polgári perrendtartás magyarázata 1.*, Budapest: Complex, 2010. p. 58.

[18] Gáspárdy, L: *A polgári per időtdimenziója*, Budapest: Akadémiai Kiadó, 1989. pp. 48-49.

[19] Szabó, I: *Útban egy új polgári perrendtartás felé*, In. Fejes, Zs – Török, B (eds.): *Suum quique. Ünnepi tanulmányok Paczolay Péter 60. születésnapja tiszteletére,* Szeged: Pólay Elemér Alapítvány, 2016. p. 446.; Szabó, I: *A megújult polgári perrendtartás hatékonysági rendelkezései*, In. Görög, M – Hegedűs, A (eds.): *Lege duce, comite familia. Ünnepi tanulmányok Tóthné Fábián Eszter tiszteletére, jogászi pályafutásának 60. évfordulójára*, Szeged: Pólay Elemér Alapítvány, 2017. p. 471. See similarly Varga, I: *Perrendi szabályozási igények azonosítása jogösszehasonlító kitekintéssel*, In. Varga, I (ed.): *Codificatio processualis civilis. Studia in Honorem Németh János II.*, Budapest: ELTE Eötvös, 2013. p. 498.

[20] Névai, L: *A szocialista polgári eljárásjog elméleti alapkérdései*, Budapest: Akadémiai Kiadó, 1987. p. 176.

[21] Concept of the new Code of Civil Procedure, p. 63.

[22] Zvolenszki, A: *A Pp. I. fejezetének múltja, jelene, jövője, avagy a törvény célja és alapelvei a kodifikációk tükrében*, In. Gellén, K – Görög, M (eds.): *Lege et fide. Ünnepi tanulmányok Szabó Imre 65. születésnapjára*, Szeged: Iurisperitus, 2016. pp. 270-272.

efficiency)[23] – the concentration of proceedings, the parties' obligation to facilitate the proceedings and the court's duty to manage the case. The main organising principles in Chapter One are determined in a concentrated way, which guarantees the „highest abstraction level"[24] of them.

2. The content of concentration of proceedings

According to the Code of Civil Procedure, the court and the parties shall strive to make available at the appropriate time all facts and evidence necessary to deliver the judgment, so that the legal dispute can be adjudicated, if possible, during a single hearing. In my opinion, this principle should be divided into two elements, the concentration of the structure of procedure and the concentration of litigation documents

2.1. The concentration of the structure

The concentration of the structure is not included in the text of the statute. In my opinion, however, it is as important as the concentration of litigation documents, which the text is built on. One of the main novelty of the new Code is the introduction of the *divided structure of litigation*, according to which the first instance proceeding is divided into two parts: the preparatory stage and the main hearing. These are separated with a court order (*caesura*). During the preparation, the parties shall present their facts and produce the proofs, while during the main hearing, the court shall take evidence and deliver a judgment. The emphasis of the procedure shifted to the preparatory stage.

Regarding the *caesura*, it shall be highlighted that it emerges in the form of a judicial order (*order closing the preparatory stage*), against which an appeal could not be filed and even the court shall be bound by this order. This solution is unique in the history of the civil procedure, and as a result, this order 'freezes' the substance of the dispute[25]. Since the order is an essential element of the procedure (maybe more important than the judgment itself), the opportunity of filing an appeal should have been made possible. The prohibition of appealing raises constitutional questions, such as the infringement of the right to remedy and the unconstitutionality of this provision.

The possibility of filing an appeal has its effects from the point of view of efficiency as well, since it is easier to amend this order by the second instance court (or the first instance court in its jurisdiction) than supplementing the preparatory stage during the main hearing since the latter has strict conditions which are difficult for the party to fulfil (Sections 215-216 and Section 222 of the Code).

The following theoretical example justifies the dangers of this order: After the submission of a statement of claim and a written statement of defence against the claim, the preparation may be continued in three ways – 1. the court shall order further preparations to be made in writing before scheduling a preparatory hearing, 2. schedule a preparatory hearing, or 3. proceed without ordering further preparations to be made in writing or scheduling a preparatory hearing (Section 187 of the Code). At the beginning of the preparatory hearing, the court shall summarise all statements that are significant with respect to the legal dispute. The parties may make observations regarding the summary (Section 191 subsection 1 of the Code). This is an important part of the case management to avoid 'surprising judgments' (*Überraschungsurteil*). However, should the court proceed without ordering further preparation, the question emerges: *when does the court summarise?* In my opinion, in this case the parties face the court's point of view in the order closing the

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[23] Ibidem; Zvolenszki, A.: *Az új polgári perrendtartás alapelvei*, In. Görög, M – Hegedűs, A (eds.): *Lege duce, comite familia. Ünnepi tanulmányok Tóthné Fábián Eszter tiszteletére, jogászi pályafutásának 60. évfordulójára*, Szeged: Pólay Elemér Alapítvány, 2017. p. 217.

[24] Bill No. T/11900. on the Code of Civil Procedure, General Explanation; Wopera, Zs: *A törvény hatálya és az alapelvek*, In. Wopera, Zs (ed.): *A polgári perrendtartásról szóló 2016. évi CXXX. törvény magyarázata*, Budapest: Wolters Kluwer, 2017. p. 19.

[25] Köblös, A: *Hungary: Towards More Efficient Preparatory Proceedings.* In: Evro, Laura – Nylund, Anna (eds.): *Current Trends in Preparatory Proceedings. A Comperative Study of Nordic and Former Communist Countries*, Switzerland: Springer International Publishing, 2016. p. 203.

preparation having not avoided the possibility of an *Überraschungsurteil*, since an appeal may not be filed against the order, so the parties have no possibility for a remedy, just in the judgment. This example itself justifies the reasons for the possibility of appealing, and in my opinion the legislature should make a modification to this rule[26].

2.2. The concentration of litigation documents

It seems from the text of Section 3 that the Code considers only this element to be part of the concentration of proceedings. As I have mentioned, the parties shall present their facts and produce the proofs in the *preparatory stage*, so this element prevails during the preparation. How does the Code aspire to attain the concentrated in this stage of the proceeding?

Before answering the question, I touch upon two general rules of the preparation, such as 1.) before the order closing the preparatory stage is adopted, a party may change his preparatory statements without the consent of the opposing party (Section 183 subsection 4 of the Code) and 2.) the court shall impose a fine upon the party if he makes or changes a preparatory statement, even though he had the opportunity to do so earlier in the preparatory document or hearing during the preparatory stage (Section 183 subsection 5 of the Code). Regarding the fine we see the court has discretion in deciding whether the party had the opportunity to make or change his preparatory document earlier. However, it has no such right regarding the *application of the sanction: he shall impose the fine.* The Act wishes to make it necessary for the parties to propose a document on due course in such a way that the possibility of fine hangs like the sword of Damocles over the parties' heads.

The Code applies several other measures to guarantee the concentration of litigation documents. This tool bar, however are different in case of written preparation and during a preparatory hearing. The prior is materialised through *preparatory documents*, and in this case, the principle of contingent cumulation (*Eventualmaxime*) is applied to realise the concentration. The *Eventualmaxime* is the principle which obliges the parties to submit all available facts and proofs in a single preparatory document and if the party fails to do so, separate sanctions are applied. For example, if a party fails to include a preparatory statement specified in the Code or requested by the court in the preparatory document, it shall be construed, until a statement is made by the party, that 1.) he/she does not dispute the respective statement of fact, statement of law, or evidence of the opposing party, and does not object the respective request or motion of the opposing party being granted, unless he earlier made a statement to the contrary, and 2.) he/she does not wish or cannot submit a statement of fact, statement of law, request, evidence, or motion to present evidence regarding the respective preparatory statement to support his action or statement of defence (Section 203 subsection 2 of the Code)[27].

In case of a preparatory hearing, the case management (*materielle Prozessleitung*) of the court may facilitate the concentration of litigation documents. Although this measure is applied during the written preparation (for example, the plaintiff is *called upon* to submit a reply document within an appropriate deadline if the court orders further preparations to be made in writing after a written statement of defence – Section 188 of the Code), it is more effective during an oral hearing.

3. Foreign solutions for the legislature – comparative thoughts

The ministerial explanation adduces foreign codes regarding the concentration of proceeding like the German and the Lithuanian codes.

The German Code of Civil Procedure (ZPO) prescribes that as a general rule, the legal dispute is to be dealt with and terminated in a hearing for oral argument that has been comprehensively prepared for

[26] Döme, A: *A perkoncentráció kulcsa: a közbenszóló határozat*, In. Németh, J – Varga, I (eds.): *Egy új polgári perrendtartás alapjai*, Budapest: HVG-Orac, 2014. p. 399.

[27] For the *Eventualmaxime*, see Szivós, K: *The Eventualmaxime in the Hungarian Civil Procedure – A Historical Perspective*, in Frenkel, D – Varga, N (eds.): *New Studies in History and Law*, Athens: ATINER, 2019. pp. 79-90.

(Section 272 subsection 1 of ZPO). The concentration is fulfilled through a *main hearing* (*Haupttermin*)[28], which is an essential element of the civil procedure (Note: our new Code is also based on the model of main hearing).

This provision serves the concentration, the rationalisation, acceleration and intensification (*Intensivierung*) of the procedure[29]. In the German procedural literature, the concentration of proceedings is named as a principle (*Konzentrationsgrundsatz*),[30] which includes the court's and the parties' obligation to facilitate the proceeding[31]. This obligation was strengthened in the ZPO novel of 1976, although it appeared in 1933[32].

The feature of the Lithuanian civil procedure is that during the 20th century, they did not have a national code. The socialist Code of Civil Procedure was still in effect after the end of communism, and it shall be highlighted that the reform of civil procedure materialised in two steps: firstly, they modified the Soviet code of 1964, then they created a new code in 2002 (CPK)[33].

They enacted a separated chapter of basic principles into the Code, *inter alia* the process concentration and economy (Article 7 subsection 1 of CPK), according to which the court takes efforts to prevent legal proceedings from delays and aspires the case to be heard during *one court session*, unless it *prevents from proper hearing* of a case. The regulation highlights the reasonable time as well as the proper hearing.

4. Answering the questions of the paper

The paper had the aim to answer two questions: 1. Is the concentration of proceedings a basic principle? and 2. Has the legislature codified it properly at the beginning of the Code?

4.1. Is the concentration of proceedings a basic principle?

I agree with that opinion, according to which the concentration of the proceeding is not a basic principle but an important *result*[34]. If we accept that the efficiency is not a principle but an *aim* of the procedure, we come to the conclusion that the concentration of proceeding cannot be a principle as well, since it is derived from the efficiency (with the application of *a maiore ad minus*).

Its character as a basic principle cannot be justified with the reason of having an 'emitter nature to the whole civil procedure'[35]. As a comparison, several provisions of the Code could be derived from the principle of free disposition, for example bringing an action, abandoning it or the possibility to enter into a settlement. In case of the concentration of proceedings, an opposite 'emission' may be noticed. For example, concentration *is derived from* the structure of the procedure or the written preparation and the *Eventualmaxime* serves as a tool to *reach* the concentration. Furthermore, the text of the two new other principles justifies this statement. Regarding the parties' obligation to facilitate the proceeding, the Code prescribes that the parties shall be obliged to enable the proceedings *to be conducted and completed in a*

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[28] Schilken, E: *Zivilprozessrecht*, Munich: Vahlen, 2010. p. 182.

[29] Thomas, H – Putzo, H: *Zivilprozessordnung*, Munich: C.H. Beck, 2013. p. 489.; Saenger, I: (ed.): *ZPO*, Baden: Nomos, 2015. p. 758.

[30] Wallimann, M: *Der Unmittelbarkeitsgrundsatz im Zivilprozess*, Tübingen: Mohr Siebeck, 2016. p. 240.; Schönke, A – Schröder, H – Niese, W: *Lehrbuch des Zivilprozessrechts*, Karlsruhe: C. F. Müller, 1956. pp. 49-50.

[31] Wallimann, M *op. cit.* p. 240.

[32] Czoboly, G: *A késedelmes eljárási cselekmények szankcionálása. Preklúziós rendelkezések a német polgári perrendtartás 1976. évi novellájában*, In. Ádám, A (ed.): *PhD-tanulmányok 10.*, Pécs: 2011., p. 52. and footnote 7.

[33] VZ 2002, Nr. 36-1340.; Nekrosius, V – Vébraité, V: *Zivilverfahrens- und Insolvenzrecht*, In. Galginaitis, J – Himmelreich, A – Vrubliauskaité, R (eds.): *Einführung in das litauische Recht*, Berlin: Berliner-Wissenschafts-Verlag, 2010. p. 226.

[34] Varga, I: *Alapvetések*, In. Varga I (ed.): *A polgári perrendtartás és a kapcsolódó jogszabályok kommentárja I.,* 2018, Budapest: HVG-Orac, 2018. p. 25.

[35] Molnár, T: *Az új polgári perrendtartás alapelveinek értékelése, a perjogi kodifikáció hatása a polgári eljárás sajátos alapelveire*, In. Közjegyzők Közlönye 2017. (Vol. 64.) No. 6. p. 19.

concentrated manner (Section 4 subsection 1 of the Code). According to the other principle (the court's duty to manage the case), the court shall contribute to enabling the parties to perform their procedural obligations with a view to *ensuring the concentration of proceedings* (Section 6 of the Code).

To sum up, in my opinion, the concentration of proceedings does not have such a character in the Hungarian law to be considered as a basic principle.

4.2. Has the legislature codified it properly at the beginning of the Code?

Although I gave a negating answer to the first question, we shall answer the second one as well since it is not possible to deviate from the rules of the Code of Civil Procedure (contrary to the Civil Code). I would like to highlight three problems related to the text of the norm.

1. I agree with that opinion, according to which the regulation suggests that the aim of the procedure is not to conduct such a procedure which is suitable for a decision being appropriate from the point of view of the substantive law, but to close the procedure quickly[36]. Apart from the rapidity, the accuracy is also important[37]. This solution does not correspond with the foreign codes referred to in the ministerial explanation of the Code. We saw either that in the ZPO (*in einem umfassend vorbereiteten Termin*) or in the CPK emphasised (*jeigu tai nekenkia tinkamai išnagrinėti bylą*) preparation has a high importance, moreover, the appropriate decision is the boundary of a single court session in the Lithuanian procedure.

2. The structure of divided litigation does not appear in the text; the Code uses the phrase 'a single hearing'. Although according to a new provision of our Fundamental Law, when interpreting the laws, it shall be presumed that they serve moral and economic purposes which are in accordance with *common sense and the public good* (Article 28 of the Fundamental Law), the word 'main' should have been used between the words of 'single' and 'hearing' like the text of the ZPO, which contains the term *Haupttermin*. It is obvious from the common sense that the dispute is terminated in a main hearing. However, if the attorney brings such an action in which he asks (as an explicit claim) the court to adjudicate the dispute in *a single preparatory hearing*, it is appropriate according to the concentration of proceeding.

3. *The adjudication in a single hearing is almost impossible.* Although I examined the phrase 'a single hearing' in the previous point, we shall use another point of view as well. A recommendation of the Council of Europe emphasised that normally, the proceedings should consist of *not more than two hearings*, the first of which might be a preliminary hearing of a preparatory nature and the second for taking evidence, hearing arguments and, if possible, giving judgment. The court should ensure that all steps necessary for the second hearing are taken in good time and, in principle, no adjournment should be allowed except when new facts appear or in other exceptional and important circumstances[38].

In the system of the Code, as I have mentioned, the preparation may be continued in three ways after the written statement of defence (Section 187 of the Code). Should the court order further written preparation or schedule a preparatory hearing immediately, *two hearings are held at least* (a preparatory and a main hearing)[39]. A single hearing is only possible when the court proceeds without ordering further preparations to be made in writing or scheduling a preparatory hearing [Section 187 point c) of the Code], in the least difficult cases when for example the defendant confesses in his/her written statement of defence. Nevertheless, the court schedules a preparatory hearing in most cases. This legislative anomaly could be avoided with inserting the word 'main' between the words 'single' and 'hearing'.

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[36] Varga *op. cit.* (2018) p. 26.

[37] Herczegh, M: *Magyar polgári törvénykezési rendtartás*, Budapest: Franklin, 1891. pp. 3-5.

[38] Recommendation No. R (84) 5 of the Committee of Ministers to Member States on the principles of civil procedure designed to improve the functioning of justice.

[39] It is not possible for the court to close the preparation without a preparatory hearing if it ordered further written preparation. See Section 189 subsection 1 point a) of the Code.

Based on the aforementioned, I believe that the normative text of the concentration of proceeding is not appropriate since it over-emphasises the importance of the rapidity of the procedure and the phrase 'a single hearing' is misleading as well. The text should be modified or eliminated on the basis of not being a basic principle[40].

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