

*The Changes in the Right of Novelty in Hungarian Civil Procedure in the Interwar Period**

Abstract

As a result of the codification of Hungarian civil procedure, the first modern code of civil procedure was enacted in 1911. It was characterised by the principles of orality, immediacy, and publicity. An important question of the legislation was to decide to which extent should the parties be allowed to propose new allegations and proofs in the second instance proceedings. Furthermore, the legislative reforms of the interwar period amended the regulation of the appeal as well. The study examines these questions with the help of the primary sources of the era.

Keywords: appeal, civil procedure, Hungary, interwar period, orality, right of novelty

1. General Introduction

The regulation regarding the remedies has the same importance in civil procedure as in the first instance. Famous Hungarian procedural lawyer Imre Zlinszky highlighted in 1880 that Hungarian jurisdiction has two critical features: “the endless itchy feeling of litigation and the procurement of procedural remedies as long as possible.”¹

With the adoption of Act I of 1911 (hereinafter referred to as the Code), the Hungarian procedural regulation turned to the principles of orality, immediacy, and publicity, and one of its most important consequences was the application of the principle of unity of

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¹ Zlinszky, “Beneficium novorum”, 173.

the cause. According to this rule, the parties had the right to submit new allegations and proofs until the closure of the hearing (Section 221, sentence 2 of the Code). This meant that the Hungarian regulation, similar to the German and Austrian ones, did not apply the so-called principle of contingent cumulation (in German *Eventualmaxime*) as the main rule anymore. However, in some cases, this principle was still used in the new procedural regime as well (e.g. the dilatory defence of the defendant). Act XXXIV of 1930 (hereinafter referred to as the 1930 Amendment of the Code), however, brought significant changes to this approach since the principle of contingent cumulation prevailed in second instance proceedings to avoid undue delay in litigation.

The central legal institution of the present study is the right of novelty (in Latin *beneficium novorum*) which means the right of the parties in civil litigation to propose such allegations and proofs in the second instance that they did not do so in the first instance.² The study examines the question: under which conditions and extent did the parties have this right in Hungary? Before answering the question, however, a short comparative introduction is necessary to highlight the German and Austrian approaches. In the procedural legislation of the 19th century, there were two opposing models to choose from regarding the appeal: on the one hand, the appeal as a complete re-trial of the case, and, on the other, the appeal as a review of the procedure and, if necessary, correction of the decision of the first instance.³ German and Austrian civil procedural reforms chose different models.

2. Comparative Introduction

The former German common law allowed novelties only exceptionally.⁴ The unified German civil procedure had a different concept, i.e. the model in which the appeal was the re-trial of the case. According to the original version of the Imperial Code of Civil Procedure (hereinafter referred to as CPO) of 1877,⁵ the right to introduce allegations and proof not presented in the lower court (Section 491 § 1 CPO).⁶ Interestingly, the German and Hungarian regulations were almost identical.

The Austrian law, however, had a completely different approach regarding the appeal. The legislator of the Austrian Code of Civil Procedure of 1895 (hereinafter referred to as öZPO),⁷ Franz Klein intended to achieve the concentration of proceedings. On the largest scale, this idea was realised in the relationship between the first instance and the appeal proceedings.⁸ In the appeal proceedings, allegations and proofs that, according to the content of the judgement and the other trial files, did not appear in the first instance may only be presented by the parties in the appeal proceedings to demonstrate or refute the grounds of appeal (Section 482 § 2 öZPO) – this is the rule of the so-called prohibi-

² Engelman *et al.*, “Germany and Austria”, 571, fn. 1.

³ Nörr, *Geschichtlicher Abriss*, 168.

⁴ Struckmann, Koch, *Civilprozeßordnung*, 395.

⁵ German Code of Civil Procedure of 30 January 1877. RGBl., no. 6/1877, no. 1166.

⁶ Engelman *et al.*, “Germany and Austria”, 610.

⁷ Austrian Code of Civil procedure of 1 August 1895. RGBl., no. 113/1895.

⁸ Klein, Engel, *Zivilprozess Oesterreichs*, 273.

tion of novelties. The submission of novelties was not possible if they were intended to support the statement of claim or the defence⁹ because the aim of the appeal was the revision of the first instance judgement, not the claim.¹⁰ There was no difference between allegations that had existed at the time of the first instance proceedings or they arose after the first instance judgement;¹¹ all of them were novelties, and as such, they were excluded from the second instance proceeding as the main rule.

The aforementioned, however, were not the “inventions” of Klein since, as Walter H. Rechberger pointed out, the former Code, the Austrian General Judicial Ordinance (hereinafter referred to as: AGO) of Joseph II had a similar rule regarding the novelties (Section 257 AGO).¹² Moreover, the prohibition of novelties in the Austrian law was loosened compared to the AGO because the latter did not allow any novelties at all.¹³ The strict ban on novelties in appeal proceedings is the mean of avoiding delay, which, by its nature, was the most controversial¹⁴ but, according to Winfried Kralik, it has brought the expected success without damaging the quality of the decision when used correctly.¹⁵

3. The Original Concept of Appeal in the Hungarian Oral Civil Procedure

3.1. Introduction: Background of the Codification of Civil Procedure in Hungary

From the history of codification of Hungarian civil procedure in the 19th century, two important aspects shall be highlighted.

(1) First of all, the General Judicial Ordinance of Joseph II was introduced to Hungary in 1852.¹⁶ This Code was set aside in 1861 by the Judex-Curial Conference and the Provisional Judicial Rules¹⁷ but was still applied by the courts. After the Austro-Hungarian Compromise of 1867, the questions of the reform of judicial organisation and procedural law emerged. The Hungarian legislator adopted a Judicial Ordinance in Civil Cases temporarily (Act LIV of 1868) until procedural law could be reformed based on the principles of orality, immediacy, and publicity.¹⁸ This Act remained in force until

⁹ Neumann, *Kommentar*, 1271.

¹⁰ Goldschmidt, *Zivilprozessrecht*, 30.

¹¹ Neumann, *Kommentar*, 1271.

¹² Rechberger, “Verfahrenskonzentration”, 6; Böhm, “Neuerungsverbot”, 239. Winfried Kralik, on the contrary, defines the prohibition of novelties as ‘the independent invention’ of Klein. Kralik, “Verwirklichung”, 95.

¹³ Böhm, “Neuerungsverbot”, 239.

¹⁴ Rechberger, “Weiterentwicklung”, 109.

¹⁵ Kralik, “Verwirklichung”, 95.

¹⁶ It was introduced under the name of “Die provisorische Civilprozeßordnung für Siebenbürgen, Ungarn, Kroatien, Slavonien, die serbische Woiewodschaft und das Temeser Banat”.

¹⁷ For the Judex-Curial Conference and its Provisional Judicial Rules see Gábriš, “Judex-Curial Conference”, 170–79.

¹⁸ Szivós, “1911. évi I. törvénycikk”, 201.

1915¹⁹ and was based on mediacy, secrecy, and literacy, similarly to the Austrian Judicial Ordinance (the jurisdiction got used to it in the previous decade).²⁰ Neither the AGO nor the Judicial Ordinance of 1868 allowed the submission of new allegations and proofs on second instance proceedings.

(2) Secondly, the procedural reforms had two ways after adopting the Judicial Ordinance of 1868 (similarly to Austria, after the adoption of the AGO). The legislator, on the one hand, tried to reform the ordinary procedure. The start of the codification of civil procedure dates back to 1880, when Sándor Plósz (or, as he was known in German territories, Alexander von Plosz) and Kornél Emmer were entrusted by the House of Representatives of the Hungarian Parliament to pursue foreign studies for a new Code of civil procedure based on orality, immediacy, and publicity.²¹ Apart from that, the Judicial Ordinance of 1868 was amended in 1881 (Act LIX of 1881). On the other hand, since the reforms of the ordinary procedure were not successful, the legislator tried to reform the summary proceedings by widening the jurisdiction of district courts – the court of the lowest instance – in Hungary and thus replacing the ordinary procedure in most of the cases.²² As a result, according to Ármin Fodor, more than 90% of the cases were dealt with by the district courts in 1881.²³

A remarkable result of the latter way of reform was the Act on the summary procedure of 1893 (Act XVIII of 1893) being the first major work of Sándor Plósz, the legislator of the Code of Civil Procedure of 1911. It is important to highlight this summary procedure since many of its solutions were applied in the final Code of Civil Procedure as well. The courts had the possibility to “try out” the oral litigation before adopting it in the ordinary procedure as well. Apart from that, the courts could give valuable “feedback” to the legislator about specific rules.²⁴ Thus, the concept of appeal was the same in both procedures.²⁵

3.2. The Right of Novelty after the Codification

According to József Pap, the appeal belongs to one of the most difficult tasks of the oral procedure.²⁶ However, the Code sought to fulfil it since it handled the appeal similar to the appellation of Roman law. The ministerial explanation of the Code highlighted that the appellation was the new hearing of the case before the court of second instance. The aim was not to find out whether the court of first instance was right or wrong but whether the right enforced by action is grounded or not. The court of second instance continued

¹⁹ After the breakout of the First World War, one of the main question was whether the Code should enter into force in 1915 or not. The War effected other areas of civil procedure as well. Pétervári, „A kivételes hatalom magánjogi hatása”, 149–83; Pétervári, „A kivételes hatalomról rendelkező törvény”, 25–39.

²⁰ Kengyel, *Bírói hatalom*, 148.

²¹ Szivós, “Sándor Plósz”, 169.

²² The same happened in Austria in the 19th century. Oberhammer, Domej, “Germany, Switzerland, and Austria”, 118–9.

²³ Fodor, “Ungarische Zivilprozeßordnung”, 36.

²⁴ Szivós, “Sándor Plósz”, 169–70.

²⁵ Although the study is about the Code, I will refer to several cases from the years when the summary procedure of 1893 was in force because the rules were the same in general. On the importance of high court decisions, see Varga, “Kúria”, 171–90.

²⁶ Pap, “Polgári perrendtartás”, 44.

the hearing from the point where the first instance had had its judgement. The principle of contingent cumulation was excluded there as well: the parties could propose such submissions that they omitted in the first instance.²⁷ Thus, the aim of the appeal was not the revision of the decision but to find the substantive truth. Making the right of novelty possible supports that the second instance proceeding was the continuation of the first instance.²⁸

Mihály Herczegh – professor of civil procedure at the University of Budapest – criticised this new approach. In his opinion, the aim of the appeal was to correct the mistakes of the court but not the omissions of the parties,²⁹ so if the court did not take the submission of the parties into consideration in the first instance. He thought that if the parties omitted the submission of an allegation or proof, he should not have the right to submit it in the second instance.³⁰ He pointed out that the right of novelty opposed the two main principles of jurisdiction: rapidity and cheapness. Surprises of the parties and postponements would occur all the time.³¹ According to Sándor Plósz, the threat is real if one party could surprise the other with new allegations and proofs, but this also could happen in the first instance, so novelties shall not be refused.³²

3.3. Administering the Appeal in the Code

The Code regulated two ways of administering the appeal: the oral hearing and the decision outside the oral hearing.³³ In the case of the latter, the assessment of the right of novelty was not difficult since the principle of literacy prevailed and the circumstances ascertainable from the minutes and their annexes served as the basis of the second instance decision. Therefore, new allegations and proofs were possible exceptionally (Section 515 of the Code).

The oral hearing, however, was the widest possibility of appeal, which made the factual and legal correction as well as the submission of new allegations and proofs possible.³⁴ In case of an oral hearing, the case had to be reheard within the frames of the appeal and the counter-appeal; the parties could submit such allegations and proofs and could raise new rights – except for the amendment of the statement of claim – that had not been submitted on the first instance (Section 498 §§ 1–2 of the Code). It is worth mentioning that the appeal hearing was the continuation of the first instance proceeding only if its judgement was challenged by the appeal of a party,³⁵ so the appeal and the counter-appeal had to be highlighted in the judgement of the second instance court.³⁶

²⁷ KI 1910. IV. k. 73. ir. 405.

²⁸ Hamar, “A fellebbezett perekről”, 6; Fodor, “Sommás eljárás”, 422.

²⁹ Herczegh, *Vélemény*, 47.

³⁰ *Ibid.*, 48.

³¹ *Ibid.*, 50. The opinions of the author were criticised by Fodor, “Beneficium novorum”, 2–4.

³² Plósz, “Szóbeli közvetlen eljárás”, 339.

³³ Meszlény, *Bevezető*, 344.

³⁴ Sárffy, *Magyar polgári perjog*, 37.

³⁵ Decision No. 1909 jun. 23. G. 289. sz. of the Royal Regional Court of Appeal of Budapest. T XIII. (1911) 385.

³⁶ Decision No. 1909 jan. 25. 1908. G. 261. sz. of the Royal Regional Court of Appeal of Cluj-Napoca. T XIII. (1911) 669.

3.4. The Written Preparation of the Oral Hearing in the Second Instance

The preparatory document meant the document with which the party communicated such allegations and proofs to the court and the opposing party that he wished to submit to the oral hearing.³⁷ The Act on the summary procedure prescribed that in case of an oral hearing, the appeal was a preparatory document as well. The allegations and proofs which were submitted in a written form could only be taken into consideration by the court if they were submitted during the oral hearing as well (Section 142 of Act XVIII of 1893). For instance, if the party challenged the whole judgement in his appeal but he mentioned just some aspects of the oral hearing, only the latter ones had relevance.³⁸ A judicial decision highlighted that only the oral submission complied with the provisions of civil procedure.³⁹

The Code did not contain these rules in the chapter of appeal. The reason for it was that the summary procedure was a Code for the district courts, where regional courts proceeded in the second instance (so it regulated the proceeding before regional courts). However, the Code was based on the procedure before the regional courts, so the previously mentioned rules were transferred to the chapter of first instance proceedings since they were not only applied in second but in the first instance as well.

If the opponent of the appellant wished to submit new allegations and proofs in the oral hearing second instance, he should propose them in a preparatory document (Section 489 of the Code). Although the Code mentioned only the opponent, there were no legal boundaries for the appellant to submit a preparatory document as well.⁴⁰ Since the appeal was only a preparatory document, such submission of the appellant suited the provisions of the Code that “I will give the reasons of my appeal on the oral hearing”⁴¹ because the court could take them into consideration only if they were submitted on the oral hearing as well. According to Artúr Meszlény, the main difference between appeal and revision was that the former meant reviewing the factual and legal, and the latter meant only reviewing only the legal questions.⁴²

³⁷ Obetkó, *Perorvoslatok*, 71.

³⁸ Decision No. II. C. 77/95. 1895 december 18. of the Royal Curia F I. (1897) LVI. See similarly Decision No. I. G. 247/1900. 1900 augusztus 28. of the Royal Curia F VII. (1902) 1143. For the lack of oral submission of the content of the preparatory document, see Decision No. 1904 április 21. G. 17. sz. of the Royal Regional Court of Appeal of Budapest T VIII. (1905) 56; Decision No. 1905 március 17. 1905. II. G. 10. sz. of the Royal Regional Court of Appeal of Budapest T IX. (1906) 83; Decision No. 1906 szeptember 13. II. G. 86. sz. of the Royal Regional Court of Appeal of Budapest T XI. (1909) 34; Decision No. 1907 márcz. 18. G. 24. sz. of the Royal Regional Court of Appeal of Cluj-Napoca T XI. (1909) 543; Decision No. 1911 nov. 14. Fs. 243. sz. of the Royal Regional Court of Appeal of Timisoara T XVI. (1913) 1046.

³⁹ Decision No. 1908 máj 21. G. II. 64. sz. of the Royal Regional Court of Appeal of Debrecen T XII. (1909) 388.

⁴⁰ MNL PML VII. 1-b. 9. d. 445/1916; Obetkó, *Perorvoslatok*, 73.

⁴¹ MNL PML VII. 1-b. 7. d. 313/1916. MNL PML VII. 1-b. 23. d. 1202/1916.

⁴² Meszlény, *Bevezető*, 346.

3.5. Novelties in the Judicial Practice

3.5.1. New Allegations and Proofs

The submission of new allegations and proofs in the second instance can be divided into two groups: **(a)** the submission of such allegations and proofs that had been submitted in the first instance, but the court – as a sanction – refused to accept them;⁴³ or **(b)** if the party had not even submitted them on the first instance.

Ad (a). In the appeal proceeding, allegations and proofs which were refused to accept by the court of first instance and, in general, allegations that were refused to validate in the first instance (because of irrelevancy) and proofs based on them could be submitted.⁴⁴ Let us see an example of this: the defendant disputed the claim in the preparatory hearing, but he did not submit any preparatory document during the written preparation.⁴⁵ As a result, the first hearing on merit had to be postponed because of the lack of preparation. The defendant intended to propose his defence (allegations and proofs) in the second hearing. Still, the court refused to accept them (Section 222 § 1 of the Code) due to the intention of delaying the procedure (so the defendant did not have any allegation and proof as defence, and he became the losing party). However, since the allegations and proofs refused could be submitted in the second instance as novelties, the defendant became a winning party after the appeal in a way that he did not have any defence in the first instance.⁴⁶ As Olivér Markos pointed out, making the right of novelty possible without boundaries meant in the judicial practice that the parties often did not prepare for the hearing properly, and – because of dilatory tactics – they submitted their allegations and proofs only on the second instance.⁴⁷

Ad (b). The freedom of submission also applied if the party submitted a new allegation or proof without having done so before the court of first instance,⁴⁸ so he “surprised” the opposing party and the court during the appeal proceeding. A submission could also be made when the new allegation became known only after the first instance proceeding. The refusal to accept due to the intention of delaying the procedure (Section 222 § 1 of the Code) could not be applied on the first hearing in the appeal proceeding;⁴⁹ it had to be postponed.

⁴³ Sections 222, 275, 283, 292, 293, 295, 331 and 349 of the Code. Kovács, *Polgári perrendtartás*, 1033.

⁴⁴ *Ibid.*, 1033.

⁴⁵ The only aim of the preparatory hearing was the foundation of the procedure, which occurred when the defendant proposed his defence on merit, but he could not give his reasons for it (in fact, he could only acknowledge or dispute the claim) since they belonged to the hearing on the merit (*meritorische Verhandlung*). At the end of the preparatory hearing, the court set a date for the hearing on merit. In the interval between the two, the parties could submit the preparatory document, just like I mentioned under 3.4. For the structure of the first instance proceeding see Plósz, “Bau”, 47–80.

⁴⁶ MNL CsML VII. 1-b. 699. d. 28/1923.

⁴⁷ Markos, “Törvénykezés egyszerűsítése”, 424–5.

⁴⁸ Decision No. I. G. 426/96. 1897 márczius 3. of the Royal Curia F II. (1897) 364.; Decision No. I. G. 37/97. 1897 márczius 19. of the Royal Curia F II. (1897) 380.; Decision No. I. G. 512/1906. 1906 október 10. of the Royal Curia F XII. (1908) 2523.; Decision No. I. G. 287/1906. 1906 október 20. of the Royal Curia F XII. (1908) 2530.; Decision No. 1903 december 3. II. G. 114. sz. of the Royal Regional Court of Appeal of Budapest T VIII. (1905) 194.

⁴⁹ Decision No. 1922 máj. 24. P. IV. 5119/1921. sz. of the Royal Curia PD VII. (1923) 121.

3.5.2. Raising New Rights

It is important to mention the possibility of raising new rights because those allegations could be submitted in the second instance, which aimed to declare the right enforced by an action without its amendment.⁵⁰ The most important boundary of raising new rights was the prohibition of the amendment of the statement of claim. One of the consequences of the defence on the merit submitted during the preparatory hearing was that the amendment of the statement of claim was only possible with the consent of the defendant (Section 188 § 1 of the Code). The rules were even stricter in the second instance since the Act prohibited the amendment of a statement of claim absolutely, so it was not possible even if the defendant consented to it (Section 494 § 1 of the Code). If the plaintiff amended the statement of claim at the first instance with the consent of the defendant, the prohibition applied to that amended claim.⁵¹

Thus, in addition to the absolute freedom to submit allegations and proofs in the appeal proceeding, a new right could be raised only if it did not result in an amendment in the statement of claim. Apart from this, however, the parties could “raise new rights in defence and challenge which had not been brought before or raised before the court of first instance.”⁵² The Act prohibited the filing of counterclaims (Section 494 § 2 of the Code), so the defendant could only raise his claim against the plaintiff in the form of a set-off. Its possibility, however, was not restricted in the appeal proceeding.⁵³

4. The Simplification of Jurisdiction through Applying the Principle of Contingent Cumulation?

4.1. Introductory Thoughts: The Aims of the Reform

In the 1920s, one of the most critical problems of the judicial system was the slow adjudication of civil cases and the increase in the number of unsettled disputes.⁵⁴ Ármin Fodor had already pointed out in 1920 that the date of the first hearing on merit was set

⁵⁰ Decision No. I. G. 512/98. 1898 január 30 of the Royal Curia F IV. (1900) 800; Decision No. 1909 jan. 22. 1908. G. 674. sz. of the Royal Regional Court of Appeal of Budapest T XIII. (1911) 205.

⁵¹ Decision No. 1910 márcz. 2. 1909 G. 262. sz. of the Royal Regional Court of Appeal of Bratislava T XIV. (1911) 836.

⁵² Decision No. 1904 október 21. II. G. 106. sz. of the Royal Regional Court of Appeal of Budapest T IX. (1906) 61.

⁵³ Decision No. I. G. 210/96. 1896 október 13. of the Royal Curia F II. (1897) 249; Decision No. I. G. 402/96. 1897 január 22 of the Royal Curia F II. (1897) 325; Decision No. I. G. 98/1902. 1902 szeptember 4. of the Royal Curia F VIII. (1904) 1623; Decision No. 1899 június 15 1899. G. 44. sz. of the Royal Regional Court of Appeal of Kosice T III. (1900) 376; Decision No. 1901. okt. 10. 1901. G. 79. sz. of the Regional Court of Appeal of Kosice T VI. (1903) 373; Decision No. 1910 jul. 11. G. 117. sz. of the Regional Court of Appeal of Cluj-Napoca T XV. (1912) 612.

⁵⁴ Markos, “Törvénykezés egyszerűsítése”, 421.

for eight months.⁵⁵ Consequently, the overload of judges was a significant problem.⁵⁶ Thrift was another aim of the reforms, and it appeared in several ways. The judicial committee of the House of Representatives highlighted that thrift had a secondary role when it came to proper judgement and the interest of justice. It noted, however, that when it comes to the interests of citizens, it plays a more important role⁵⁷ since the great global economic crisis had led to a deterioration in the financial situation of its citizens. The aim of the reform was not only to cut the expenses but also to relieve the courts of their burden while ensuring that a case was dealt with as quickly as possible. Another aim was the “elimination of congestion of cases” before the Royal Curia.⁵⁸

As a result, Act XXXIV of 1930 was enacted, whose final content was significantly different from the original bill. Many amendments served other aims than the simplification of jurisdiction.⁵⁹

4.2. The New Regulation Regarding the Right of Novelty

One of the most significant changes of the 1930 Amendment of the Code regarded the restriction of the submission of the novelties. According to the new provision, the parties may submit such allegations, proofs, and pleas before the court of appeal that had not been proposed in the first instance proceeding only if they submitted them in the appeal or the counter-appeal. (new Section 498 § 2 sentence 1 of the Code). This one written submission could be two for the parties if both appealed (then both could submit a counter-appeal for the appeal of the other).⁶⁰

The Act set a time limit to submitting novelties in the appeal proceedings with the application of the principle of contingent cumulation.⁶¹ The ministerial explanation also highlighted that there were no reasons to allow the parties to withhold the new allegations and proofs in the appeal and counter-appeal and to “surprise” the court and the opponent on the oral appeal hearing (or on the last hearing if more hearings would be necessary) so that they could delay the adjudication of the case.⁶² The theoretical nature of the appeal and the counter-appeal changed with the reintroduction of the principle of contingent cumulation as well because – as I have pointed out – the appeal had been only a preparatory document, which could be considered by the court if the party proposed it on the oral appeal hearing too. In the concept of the 1930 Amendment, however, the appeal was not a preparatory document but a determinative one, which was to be settled without an oral hearing.⁶³ With the strengthening role of literacy in appeal proceedings,

⁵⁵ Fodor, “A törvényszéki egyesbíráskodás”, 89.

⁵⁶ Olchváry, “A törvénykezés egyszerűsítése”, 217–9.; Hajdu, “Igazságügyi ankét”, 94.

⁵⁷ KI 1927. XXII. k. 999. ir. 156–7.

⁵⁸ Halász, “Hozzászólás”, 83; König, “Megoldatlan jogi problémák”, 230.

⁵⁹ Sárffy, “A törvénykezés egyszerűsítése”, 3.

⁶⁰ MNL BaML VII. 1-b. 2289. d. 16/1932.

⁶¹ Juhász, “A törvénykezés egyszerűsítéséről”, 224.

⁶² KI 1927. XX. k. 929. ir. 357.

⁶³ Sárffy, *Magyar polgári perjog*, 386.

orality had a supplementary role.⁶⁴ The parties could, however, give the reasons for their pleas in the oral appeal hearing (new Section 498 § 1. of the Code).

We can see that the legislator intended to respect the concept of *Plósz* as much as possible to give the parties the opportunity to submit new allegations and proofs. It did not regulate **under which conditions** the parties could do that,⁶⁵ so they could propose anything (this aspect of the appeal remained unchanged).⁶⁶ However, it was restricted **temporally** since they could submit the appeal or the counter-appeal.

The Act eased much of the formalism that characterises the principle of contingent cumulation⁶⁷ with the rules that made the submission on the oral hearing possible in two cases, i.e. **(a)** when the consideration of the submission did not make the postponement necessary, **or (b)** when the party substantiated immediately that he could not propose them earlier in the absence of any fault (new Section 498 § 2 sentence 2 of the Code). It is worth highlighting that the two cases were joint conditions originally. However, Andor Juhász pointed out that in the case of *nova* which does not give rise to a postponement of a hearing, the speed of the procedure cannot justify their disregard. Based on these, the party would only be obliged to substantiate the absence of fault of the delay immediately if the raised *nova* necessitates the postponement of the hearing.⁶⁸ The judicial committee of the House of Representatives defined the two conditions as alternatives since it would be equitable to take the *nova* into consideration if any of the cases prevailed.⁶⁹

As we have seen, the court had to disregard the submission if it had not been proposed in the appeal or counter-appeal previously. However, it is unclear whether the judgement had to include the provisions of the decision of disregard or not. Theoretically, the answer “no” is acceptable since the preclusion of *Eventualmaxime* was an objective sanction; the court did not have to rule about it. There were archive sources, however, in which the court ruled in the judgement about the disregard.⁷⁰

The absence of fault had to be examined only if the latter submission made the postponement necessary (**subsidiarity**). If submitted such novelties which had no effect on the course of the proceedings (i.e. the hearing did not have to be postponed), the court did not have to authorise it separately, and it was not highlighted in the minutes.⁷¹

The principle of contingent cumulation imposes stricter responsibilities on the parties by limiting their ability to perform in time. However, this legal institution will not help to shorten the length of the proceedings if the court does not prepare the hearing, e.g. by not

⁶⁴ Bacsó, “A fellebbvitel újabb szabályozása”, 31.

⁶⁵ The current Hungarian civil procedure has such provisions with the application of *nova producta* and *nova reperta*.

⁶⁶ Bacsó, “A fellebbvitel újabb szabályozása”, 31.

⁶⁷ The case when the law breaches the preclusive nature of the principle of contingent cumulation by allowing new submissions in the latter part of the procedure is called the “relativisation of the principle of contingent cumulation”. Klingler, *Eventualmaxime*, 50.

⁶⁸ Juhász, “A törvénykezés egyszerűsítéséről”, 224.

⁶⁹ KI 1927. XXII. k. 999. ir. 163.

⁷⁰ MNL BaML VII. 1-b. 2467. d. 183/1934.

⁷¹ MNL BaML VII. 1-b. 2190. d. 2/1931.; MNL BaML VII. 1-b. 53/1931.; MNL BaML VII. 1-b. 2290. d. 82/1932.

summoning the witness named in the appeal to the first appeal hearing, and the hearing should therefore be postponed.⁷²

5. Summary

The reintroduction of the principle of contingent cumulation divided the legal scholars. For example, Géza Jablonkay did not agree with the restriction. In his opinion, the parties often only saw from the statement of reasons of the judgement at first instance the circumstances they had to prove to a greater extent. Thus it was unfair that in the event of a possible win before the court of second instance, the winning party should bear the costs of submitting such additional evidence.⁷³ Contrary to this, Lajos Szlezák thought contingent cumulation should be applied even in the first instance because the lack of it and the principle of unity of the cause were “the most secure hiding spots of acting in bad faith.”⁷⁴ The 1930 Amendment of the Code proved that the submission of novelties during the appeal could be restricted without any significant disadvantages so that it could be introduced in the first instance proceedings as well.⁷⁵

The legislature wanted to speed up the appeal proceedings and reduce the workload of the courts by limiting the possibility of submitting novelties in time. It is without a doubt that it did not introduce a restriction on the content of the appeal (insisting on the original concept of *Plósz*). Based on my research, the legislative reforms were, in my view, largely successful; the courts could adjudicate most of the appeals in a single hearing.

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⁷² MNL BaML VII. 1-b. 2289. d. 14/1932.

⁷³ Jablonkay, “Megjegyzések”, 240.

⁷⁴ Szlezák, *A perrendi reform*, 24.

⁷⁵ *Ibid.*, 24–5.

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