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Hungarian civil procedure law's response to the Covid challenge

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access to justice, e-trial, remote hearing, publicity of the hearing, injunction, enforcement proceedings, insolvency proceedings

Abstract

Civil procedural law had to react quickly to the Covid-19 pandemic to ensure that litigants had access to the court system despite the closure of court buildings. In Hungary, e-trials were made possible by special government decisions, which were interpreted by the Supreme Court (Kúria) to help lower courts to develop uniform case law. As a result of the Digital Courts Programme launched in 2018, the computerisation of courts and judges was in a good state at the time of the outbreak, which helped greatly to address the situation. The paper examines changes in Hungarian civil procedure law during the first three waves of the pandemic in a chronological manner. In its conclusions, it takes stock of the changes that can enhance access to the justice system and legal entities, even after the epidemic.

Introduction

The Covid-19 pandemic, in the first quarter of 2020, posed unexpected challenges to public services worldwide, including the judiciary system. It took days to consider how to ensure the right of access to justice in changed

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circumstances, while respecting the principles of justice and, at the same time, limiting them as necessary. There was no time for great theoretical debates and comparative legal research; solutions had to be found quickly and effectively. The Hungarian judiciary was no exception to this, but two peculiarities could be observed there. When specific legislation was adopted by the government, the Supreme Court (Kúria) helped the lower courts interpret it in order to develop the correct jurisprudence. In addition, as a result of the Digital Courts Programme launched in 2018,[1] the courts and judges were particularly well-equipped with information technology and tools.

Every crisis is also an opportunity. Under the circumstances, digital solutions could and had to be tried out, many of which had been previously rejected by lawyers. This time, it was possible to see in practice what really helps the work of those involved in the administration of justice, and what cannot replace, for example, a personal presence in the courtroom. Even before the pandemic, the literature had already confirmed the view that the judicial and procedural systems of modern democracies were too rigid, outdated and inadequate to the changing socio-economic challenges of the twenty-first century.[2] In order for the courts to fulfil their constitutional function unimpeded, digital technology must be allowed into the court building, and the relevant organisational procedural framework must be rethought.[3] The pandemic has therefore unwittingly put these ideas into practice.

In our study, we present, in chronological order, changes in Hungarian civil procedural law that occurred during the first three waves of the pandemic. In particular, we discuss the experience of e-trial, changes concerning injunctions in cases of violence between relatives, and changes in enforcement, bankruptcy and liquidation proceedings. In the conclusion, we take stock of developments that could help and enhance the right to justice for litigants in the aftermath of an epidemic.

[1] András Osztovits, ‚The future of judging in the digital world' in Péter Darák (ed.), *150th Anniversary of the creation of Article IV of the Judiciary Act of 1869* (HVG-ORAC 2019) 141-146.

[2] The most complete summary of this idea is provided by Richard Susskind, *Online Courts and the Future of Justice* (OUP 2019)

[3] András Osztovits, ‚Online Courts and the Right to Justice - Chance or Threat?' [2020] *Magyar Jog*/Hungarian Law 625, 632

I. Changes to litigation procedures

1.1. Immediate replies - rules on the extraordinary recess

The WHO's declaration of the state of emergency on 11 March 2020[4] opened the constitutional possibility[5] of introducing exceptional measures under the special legal order. The second in a series of government decrees containing extraordinary measures concerned the functioning of the courts. According to this, the government ordered an extraordinary judicial suspension[6] starting on 15 March 2020, which remained in force for 15 days.

The content of the exceptional judicial recess is laid down in the decisions[7] [8] of the President of the National Office for the Judiciary (NOJ), which are binding on the courts. The decisions defined what tasks were to be performed in and out of court, gave priority to the use of telehearing and defined the scope of the cases to be dealt with in court.

During the extraordinary recess, it was not possible to hold hearings, preparatory meetings or public sessions. Other procedural acts requiring personal presence had to be held primarily by remote hearing, or, if this was not possible, by personal presence, subject to the rules on distance and assessments of the current health risks.

1.2. Sustained responses - the special procedural rules

The scope of 'exceptional measures of a general nature' in civil and non-contentious proceedings is a two-tier system. The first level of regulation is Government Decree No 74/2020 (31.3.2020) on certain procedural measures applicable during an emergency (hereinafter "Veir."), the provisions of which were in effect from 31 March 2020 until 17 June 2020. The Veir. was replaced by Act LVIII of 2020 on Transitional Rules and Epidemic Preparedness in Connection with the End of an Emergency (hereinafter: the Exit Act) as the second level of regulation, which provided the main rules on the procedural law of emergency measures and came into effect on 18 June 2020. Government Decree No 112/2021 (6th March 2021), on the reintroduction of certain procedural measures during an emergency (hereinafter: Veir. II), established different rules from the provisions

4 Government Decree 40/2020. (III. 11.) § 1.

5 Article 53 of the Fundamental Law of Hungary

6 Government Decree 45/2020. (III. 14.) § 1 (1)

7 Act CLXI of 2011 - on the Organisation and Administration of Courts Section 76 (1) (b)

8 35.SZ./2020.(15.III.) and 37.SZ./2020.(17.III.) OBHE decisions

of the Exit Act for the period of so-called 'reinforced protection,' from 8 March 2021 to 19 April 2021.

It should be emphasised that some of the practices already introduced by the extraordinary measures, which will be detailed below, have become part of the amendment to the Civil Procedure Code,[9] and have therefore been incorporated into the general rules of the Code of Procedure.

1.2.1. E-negotiation

Under Veir. and Veir. II, it was not possible to hold hearings requiring in-person attendance. Instead, they had to be held by means of an electronic communications network or other means of electronic transmission of images and sound,[10] failing which, written statements had to be obtained.

The provisions of the Exit Act in the period between the two Veir. continued to allow the holding of hearings by means of electronic communications networks or other means of electronic image and sound transmission, conditional on an epidemiological justification.[11]

Hearings by means of electronic communications networks are governed by the Chapter XLVII of the Civil Procedure Code, which, due to its strict procedural requirements, is limited in the case of coronavirus-epidemic restrictions. The practical application is limited by the condition that it requires the presence of all participants, which it calls the 'endpoints,' on premises designed for this purpose.[12] Presence on the official premises ensures compliance with the technical conditions required by the statute, but requires physical presence in the court or other official building, and the involvement of additional court staff.

The detailed rules for negotiation by other means of electronic image and sound transmission were not specified in the exceptional measures. This led to legal uncertainty. This gap was filled by the Opinion of the Civil Chamber of the Curia No. 2/2020 (30.4.20),[13] hereinafter referred to as the 'Court Opinion.' It dubbed the new legal instrument the 'e-trial,' while setting out the framework for its uniform application.

The Court Opinion states that the e-trial is conditional on the availability of the technical conditions for all persons to be summoned to the hearing, in which case the e-trial is mandatory. There is no presumption that the conditions have

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

10 Article 21 (3) Veir., Veir. II. § 22 (3)

11 Exclusion Act § 138 (1)

12 Pp. § 624 (1)

13 2/2020 (IV. 30.) PK opinion on the conditions for holding a hearing by means of electronic sound and image transmission during an emergency

been met; it is for the court to verify them, which means obtaining the declarations of the persons concerned. The Court Opinion does not deal with the question of whether the truthfulness of the declaration can be called into question, i.e. how to filter out a negative declaration, which conduct can be misused for the purpose of delaying the proceedings.

The Court Opinion closes the debate on the applicable software and provides for the use of Skype for Business by the courts, while the rules of summons, and summons to appear, remain unchanged. Subpoenas will, of course, be accompanied by a contact link sent by e-mail, and the necessary technical information.

The Court Opinion deals in detail with the issue of the publicity of the e-trial, maintaining the rule of a 'traditional' hearing via electronic communication network,[14] in which 'publicity' means the presence of the judge. However, closed e-trials are also subject to the condition that the participants can declare that the conditions for a closed hearing have also been provided at their premises. In practice, this can be easily ensured by the use of a headset with a microphone. In this context, the Court Opinion touches upon, but does not explain, how other procedural requirements of the trial can be checked and ensured in relation to the participants' locations. Instead, the primary issue here is the control of the conditions for an unaffected presentation and testimony.

The Court Opinion is silent on how to actually conduct a public e-trial. This issue arises, in particular, in relation to the fact that access to court buildings is restricted. Thus, according to the regulations of each court building, the audience and the press cannot not enter the courtroom where the e-trial judge is present. In this context, it should be noted that in several countries it was possible to stream certain trials online in public or in private, or using a projector in another room within the court building.

In the case of e-trials, minutes must also be taken in accordance with the general rules of procedure, which means, if the conditions are met, continuous video and audio recording[15] or the use of a court reporter. The substantive requirements for minutes remain unchanged,[16] and therefore the participants' correct connection (i.e. free of technical problems), and the necessary information on the e-trial, must be recorded. The justification for the Court Opinion is concerned: it is necessary to draw attention to the fact that the legal effects of e-consultation are no different from those of face-to-face meetings.

If the e-trial has been successful and the case is ripe for judgment, the court shall, after the e-trial has ended, render the judgment out of court, dispense with the publication of the judgment, and provide notification by service of process.

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14 Pp. § 624 (2) paragraph

15 Pp. § 159 (4) paragraph

16 Pp. Paragraph 160 (1)-(2)

The possibility of e-talks offered by Veir. II was, and still is, provided for in the Exit Act, but the Court Opinion has created a unified interpretation of the law to facilitate the use of e-trials, specifically in relation to the Veir. The content of the e-trial as a legal instrument has not changed since the emergency on which the Veir. is based, and there is therefore no reason to deviate from the provisions of the Court Opinion.

Despite following the Court Opinion, the aforementioned shortcomings and uncertainties remain. It would have been appropriate, in particular in the case of the retention of the legal instrument, to provide guidance on how to verify the conditions for e-trial – for example, by commenting on them, or by allowing other parties or official bodies to provide a venue and means. It is also essential to clarify the expectations as to the location of the participants, and it would also seem sufficient to specify the relevance of the judicial doubt, since the presence of a third party should not be difficult for an experienced judge to detect.

With the relaxation of the epidemiological constraints, the condition of e-trial may need to be met only for some of the persons cited, and the proceedings thus become ‘hybrid’, with several persons present in the courtroom and others participating remotely. If the Via Video system is used, the situation seems manageable, but unregulated. The Exclusion Act only provides for the possibility of out-of-court judgments in Veir and Veir. II, and does not allow for e-trial.

In several countries, the coronavirus pandemic has brought to the fore the issue of conducting remote consultations using new online tools. The coronavirus has been a ‘grand experiment’ in determining the importance of, and alternatives to, in-person proceedings. The lasting consequences and their level are questionable.[17] There are several studies on the advantages and disadvantages of electronic communication, but not only legal considerations. Even within the EU, which can be considered a homogeneous region in global terms, the digital readiness of national courts varies considerably,[18] with Hungarian courts considered to be technologically well-prepared.[19]

The introduction of this legal instrument is well prepared-for by a large number of litigants. The increasingly online nature of litigation[20] also requires a

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[17] Zsolt Ződi, ‚The epidemic, the legal sphere and technology. How did legal systems survive the epidemic, how much of a role did technology play, and how lasting will the changes be?’ [2020] In Medias Res 339, 355

[18] Overview of digital tools in the Member States, https://e-justice.europa.eu/fileDownload.do?id=6230bdc7-aabe-4faa-a357-ee571f2c6e9c (20.01.2023)

[19] Szabolcs Kékedi, ‚How further digitalisation of the courts or how electronic communication became the key to judging in emergency situations?’ [2020] In Medias Res 308, 321

[20] András Osztovits, ‚Online Courts and the Right to Justice - Opportunity or Threat?’ [2020] Hungarian Law. 625, 632

digital way forward, but this still depends largely on the technical preparedness of the courts and, even more so, on the determinations of legislators.

1.2.2 Changes in decision-making

The Veir. has introduced a significant procedural relief for natural-person parties, which is in line with both the Exit Act and the Veir. II, and was retained by amendment to the Civil Procedure Code. For example, the mandatory use of the forms, which was introduced when the Civil Procedure Code came into effect, was not required, but has been retained as an option.[21]

A Veir. and Veir. II. did not affect the flow of time limits, but instead allowed for an unlimited number of breaks.[22] They also provide for a single judge in all first-instance proceedings[23] and allowed for out-of-court settlement approval and adjudication.[24] The legislator in the Exec. Law. of Veir. and Veir. II. provides for the conclusion of the record of the proceedings, the termination of the trial, and the approval of the settlement and judgment out of court.

In addition to the procedural facilitations, there are also restrictions, such as the suspension of the personal half-time reception, and the obligation of the courts to issue a full notice of deficiency, retained by the amendment to the Civil Procedure Code with regard to the statement of claims.[25]

1.2.3. Health and safety restrictions

In addition to the rules on the use of buildings, other restrictive measures have been introduced for procedural acts involving the personal appearance of the parties in civil cases.

Effective 17 November 2020, the President of the NOJ ordered the ventilation of courtrooms every 40 minutes for a period of five minutes,[26] which entails the interruption of negotiations with breaks in the proceedings.

The judge presiding over the trial is responsible for enforcing the rules on the use of the building, such as the use of masks and the rules on keeping a distance in the courtroom. The use of masks is not a new judicial power, but can

21 Veir. 24. §

22 Article 21 (5) Veir. and Veir. II § 22 (5)

23 Veir. § 23 and Veir. II. § 23

24 Article 28 (2) and (3) Veir. and Veir. II, § 26 (2) and (3)

25 Pp. Paragraph (6) of Article 175 of the P.P. effective from 1 January 2021

26 148.SZ/2020.(XI.17.) OBHE decision

be enforced by means of law enforcement.[27] The enforcement of restraining orders can be classified partly under the rules on the maintenance of order, and partly under the provisions of the emergency measures restricting the publicity of the hearing.

The issue of the publicity of trials arises partly in the context of e-trials, as already described, but also in the context of in-person trials and judgments handed down outside the trial. In the case of trials reopened in person, a closed hearing may also be ordered on the basis of exceptional measures if this is required in order to enforce the epidemiological measures in the courtroom.[28] At the same time, the public is affected by the legal provision already described above, under which the court may give its judgment out of court. The right to public pronouncement of judgments is part of the right to a fair trial, part of the publicity of the trial, and has been examined from various perspectives by both the European Court of Human Rights (ECtHR) and the Constitutional Court.[29] It should be noted that, according to the ECtHR's jurisprudence, making judgments public may be achieved not only by publication but also by other means, such as anonymised publication of judgments, which satisfies the need of democratic society to monitor the judgments.[30]

II. Changes concerning injunctions for violence between relatives

Restraining orders in cases of violence between family members are one of the most sensitive civil law institutions, given that they treat domestic violence, an act usually considered to be a private matter, as public[31] and sanction it immediately. Several authors internationally[32] have pointed out that the restrictive

27 Pp. 234-236. §§

28 The measure was introduced by Section 138(2) of the Export Act effective18 April 2020

29 György Ignáczy, Anna Madarasi, ‚The publicity of court trials in times of emergency,' In Medias Res (2020) 261, 279

30 *Moser v Austria*, 12643/02, 21.IX.2006, para 101.

31 Orsolya Szeibert, ‚From private to public: a decisive approach to domestic violence in Europe' Családi Jog/Family Law [2015/2] 2; Declaration proclaimed by UN General Assembly Resolution 48/104

32 European Commission for the efficiency of justice (CEPEJ), *Lessons learned and challenges faced by the judiciary during and after the Covid-19 pandemic*, https://rm.coe.int/declaration-en/16809ea1e2 (20. 01. 2023); Usher K., Navjot B., Durkon J., et. al, ‚Family violence and COVID-19: Increased vulnerability and reduced options for support' International Journal of Mental Health Nursing [2020] 29, 549, 552; Bradbury-Jones C., Isham L., ‚The pandemic paradox: The consequences of COVID-19 on domestic violence' Journal of Clinical Nursing [2020] Volume 29, 2047, 2049

measures introduced in the wake of the coronavirus pandemic have adversely affected vulnerable groups by causing unintended negative effects, an increase in domestic violence being one of them.[33]

Thus, the aims of health protection against disease, and restraint of abusers against vulnerable persons, have competed amid the restrictions introduced during COVID. States have consistently identified the latter as their primary aim.[34]

The special nature of the procedure was already reflected in the rules of the extraordinary recess; per the decision of the President of the NOJ,[35] the handling of restraint cases was one of the half-dozen court tasks to which the so-called 'document quarantine' could not be applied.[36]

There was no specific procedural provision on restraint cases; the "general procedural rules for exceptional measures"[37] applied, but this raised problems of interpretation. This was resolved by the Civil Chamber of the Curia in its Opinion 3/2020 (30.4.20) (hereinafter: PK Opinion). The Curia made it clear that in proceedings for injunctive relief, a personal interview must be attempted, either means of a written statement or using an electronic means of identification. The PK opinion interprets the concept of a 'written statement' broadly, concluding that it can even be established using e-mail. Conversely, conditions for a 'hearing by electronic means' were narrowed down in comparison with the legislation's wording to being inclusive of any means of transmitting electronic images and sounds, while excluding hearings conducted by means of voice call alone.

The PK opinion also addresses the material requirements for both procedures that were mentioned above. It states that, as a consequence of the requirement of the right to a fair hearing, both written statements and hearings by electronic means can only be conducted if the parties can guarantee that they have the necessary material conditions and technology. Failing this, a personal hearing may need to take place.

It should be noted that restraint is also a measure restricting personal liberty, in relation to which, in the absence of any other means, procedural acts have to be carried out, even in a place subject to epidemiological measures.[38]

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33 Bright C.F., Burton C, Kosky M, ‚Considerations of the impacts of COVID-19 on domestic violence in the United States' Social Sciences & Humanities Open [2020], Volume 2, 40

34 Krans B., Nylund A, et.al., ‚Civil Justice and Covid-19' Septentrio Reports [2020] 445

35 point V of OBHE Decision No 37.SZ/2020 (III. 17) on the performance of duties in litigation and extrajudicial cases during the extraordinary recess

36 Recommendation No V of the Emergency Cabinet on special rules for the handling of paper documents during the extraordinary recess, point 4

37 Veir. Title 11 provision

38 Art. 22 (3) Veir.

Taking into account epidemiological restrictions is an additional task for both the police and the court, in that the epidemiological relevance of the parties has to be assessed during the procedure, and any change of residence for the person affected by the epidemiological restriction and its follow-up had to be verified.[39]

It can be seen from the above rules that the epidemiological restrictions did not constitute an obstacle to the conduct and imposition of the injunction. The effect of the restrictions was felt by persons subject to the epidemiological restraint to the extent that the court and the police had to facilitate the implementation of the epidemiological restraints by providing appropriate information.

III. Changes affecting the implementation of the contact

With legislative changes adopted prior to the Covid-19 epidemic, which were effective as of 1st March 2020, the legislator fundamentally overhauled the procedures for contact resolution and its implementation. In order to ensure enhanced and more efficient procedural guarantees, the enforcement of contact orders has been removed from the competence of the guardianship authority and transformed into a civil non-contested procedure under the jurisdiction of the courts.[40]

An examination of fundamental rights affected by the Coronavirus Warrant restrictions, and the public perception of this issue, is presented in the Constitutional Court's decision 3067/2021 (II. 24.) AB (hereinafter: AB), which concerns the annulment of a court decision on the enforcement of a contact order based on a constitutional complaint. In this decision, the AB weighed and examined the relationship between the right of access and the right to education; the right to protection and care of a child; and the right to health. The decision states that the most basic rule of epidemiological protection,[41] social distance, does not apply to the maintenance of direct contact between a minor child and a parent, because it is considered to be the minimum level of human contact.[42]

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39 Exemption Act §§ 221-222

40 Erika Harmat, Balázs Völcsey, 'New non-contested proceedings in the jurisdiction of the courts: proceedings for the enforcement of a contact maintenance order' (2020) 56 *Családi Jog*/Family Law.

41 World Health Organization Advice for the public: Coronavirus disease (COVID-19) information (World Health Organization, updated 18 March 2023) < https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public> accessed 20 January 2023.

42 Explanatory Memorandum to AB Decision 3067/2021 (24.II.), paragraph 34

The requirement of equitable balancing based on the principle of proportionality in weighing these fundamental rights demands nuanced analysis. Among the aspects of the test, the AB has emphasised that the more specific the health risk, the greater its significance. Conversely, the more general, remote and abstract the risk is – based on subjective fears and assumptions – the less weight it can be given[43] .

It is worth making a summary of the issues discussed in relation to restraint and enforcement of contact in cases of family-member violence:

In restraint proceedings for intimate partner violence cases, the personal liberty of the abuser and the dignity of the abused, their right to life, their sexual self-determination, and their physical and mental health, are all assessed, and no account may be taken of restrictive measures. In the implementation of contact rulings, competing fundamental rights are substantially affected by the health risk, as set out above. The difference between the two examples is not only a matter of fundamental right; the different assessments are also justified by the manifestly different objectives of the two legal instruments. While in the case of restraint, the aim is the separation of persons, in the case of contact enforcement, the aim is to ensure personal contact between the child and the parent.

On the procedural side of the two legal instruments, the situation is less clear. The right to access to justice is paramount in the context of conducting non-contested proceedings for restraint of liberty. In a place subject to an epidemic measure during a public health emergency, procedural acts relating to measures restricting personal liberty must be carried out if there is no other way.[44] It should be noted that the court is under procedural obligation to maintain epidemiological restrictions during the order. In the case of proceedings for the enforcement of contact measures, the emergency measures do not impose a personal procedural obligation.

IV. Changes affecting implementation

4. 1. Changes to the enforcement procedure

Exceptional measures concerning enforcement procedures have affected contact with the bailiff – the order in which certain enforcement acts are carried out, and typically, the obstacles to them, as well as certain possibilities for postponement.

43 Explanatory Memorandum to AB Decision 3067/2021 (24.II.), paragraph 37

44 Art. 22 (3) Veir.

Bailiffs were not allowed to carry out any personal procedural acts during the period of heightened protection in a state of emergency – neither to effect bailiff service, nor to take any action with regard to the on-site procedure.[45] The personal reception of clients was suspended and information could be accepted by means any telecommunication device capable of identifying the party and maintaining a continuous voice and video link.[46]

Among the individual enforcement acts, the auction of residential property, the emptying of property, the immobilisation of motor vehicles, and the enforcement proceedings for specific acts were postponed.

The possibility of a reprieve was provided by the emergency measures in two directions. On the one hand, bailiffs were entitled to authorise payment by instalments at the debtor's request, without the involvement of the applicant for enforcement or the information provided by the service of the writ of execution.[47] The court of enforcement also had an additional equitable rationale for suspending enforcement – the debtor's situation in the context of pandemic measures. [48]

The only obstacle to domestic proceedings for the surrender and placement of a child was whether their location was affected by epidemiological measures; such executions could be carried out.[49] The above legislation also prevented return orders from being issued in cross-border enforcement cases involving children, such as those under the Brussels IIa Regulation (EC) No 2201/2003[50] and the Hague Convention on the Status of Children.[51, 52]

Both the EU and the Council of Europe have compiled a list of emergency measures taken by Member States and the contact details of the national contact point.[53] It should be emphasised that neither the Brussels IIa Regulation, nor the Hague Convention on child custody, have been amended during the coronavirus epidemic; rather, their enforcement, particularly in the enforcement of child

45 57/2020 (III. 23.) Government Decree § 2 (1), (4), § 3 (1), Veir. II (1), (4), § 5 (1)

46 57/2020 (III. 23.) Government Decree § 2 (4), Veir. II. § 4 (4),

47 57/2020 (III. 23.) Government Decree § 2 (2), Section 153 (1) of the Exit Act, Veir. II. § 4 (2),

48 57/2020 (III. 23.) Government Decree § 7 (2), Section 153 (7) of the Exit Act, Veir. II. § 10 (2),

49 57/2020 (III. 23.) Government Decree § 6 (2),

50 74/2020 (III. 31.) Government Decree § 5 (3)

51 Convention on the Civil Aspects of International Child Abduction, signed at The Hague on 25 October 1980

52 Veir. II. § 9.

53 For the EU: https://www.europarl.europa.eu/at-your-service/en/be-heard/coordinator-on-children-rights/covid-19-information (20. 01. 2023)

For the Council of Europe: https://www.coe.int/en/web/cepej/national-judiciaries-covid-19-emergency-measures-of-coe-member-states (20. 01. 2023)

custody cases, depends on particular restrictive measures taken by individual Member States.

4.2. Changes affecting insolvency procedures

Both the procedural and substantive rules of insolvency procedures have been affected by pandemic measures, which are presented together under this heading; the special subject regime for companies of strategic importance and operating under state influence is dealt with under a separate heading.

The most important change in the winding-up procedure was the limitation of creditors' applications for winding-up orders on the basis of time and value. Another significant indirect limitation on new winding-up cases was the restriction on due diligence procedures and the moratorium rules on debts under the interim financial regime.

During the time window between 11 March 2020 and 31 December 2020, the creditor and the liquidation proceedings could file an application [Art. 27 (2) (a) Cstv.] on the condition that 75 days had passed after the specified deadline for performance without performance, without dispute, and without result.[54] This extended time limit is a procedural barrier, because if 75 days have elapsed before the decision is taken, the debtor may be declared insolvent, even if the creditor had filed their application within 75 days of the expiry of the final deadline for payment of the debt.[55]

The value limitation is that the threshold for initiating liquidation [Art. 27 (2b) Cstv.] has risen to HUF 400,000.[56]

The exceptional measures also affected the legal supervision of companies.[57] The prohibition on declaring a company to be dissolved in the context of a supervision procedure; the suspension of winding-up proceedings due to a cancelled tax number and compulsory winding-up proceedings in accordance with the law; and the reversibility of compulsory winding-up proceedings[58] are all measures that prevent and postpone winding-up proceedings.

The payment moratorium has been instrumental in maintaining the quality of banks' portfolios, helping companies and households maintain liquidity. The moratorium temporarily prevented the emergence of new non-performing loans

54 Government Decree 249/2020 (28 May 2020) § 1 and Exit Act § 156

55 BDT2021. 4358

56 Government Decree 249/2020 (28.5.20), § 1, Exit Act, § 156, Government Decree 180/2021 (16.4.21), § 3,

57 Government Decree 249/2020 (28 May 2020), Section 2, Section 157 of the Exit Act

58 Judit Gál, ‚Insolvency, company law and rules affecting the operation of legal persons after the cessation of the emergency - Part I' (2020) 7 Céghírnök 1, 2

in arrears; it should also be borne in mind, however, that the sovereign debt crisis is expected to lead to a significant increase in credit risk and credit losses.[59] The indirect effect of the payment moratorium, and the moratorium on the obligation to pay the financial intermediary system, is also felt in winding-up proceedings, and can therefore be seen as a limiting factor in this context.

This provision was introduced with an exceptional measure[60] that provided for a moratorium on payments of principal, interest and charges already outstanding (as of 18 March 2020) on loans, borrowings and financial leases. It was extended to cover entities in general until 31 December 2020; after 1 January 2021, it was limited to include only entities in financial difficulty. All entities were protected from termination of a contract for non-payment of principal, interest or charges under the loan cancellation ban.[61]

These exceptional measures, both in civil and non-contentious proceedings and in the operation of companies, used electronic written procedures to regulate and bypass the need for procedural steps requiring personal presence. No similar provision has been made for bankruptcy and liquidation proceedings, despite the fact that procedural acts requiring a personal appearance also arise in these types of proceedings.

Although the law does not require attendance in the same room for composition hearings and creditors' meetings, the electronic participation method introduced by the extraordinary measure for court hearings can be used for these as well. A record of the proceedings can be attached to verify their legality before the court, as it serves as a basis for approving the arrangement. The lawfulness of the proceedings is conditional on the proper transmission of the required documents and the notice of bankruptcy, for which case law has already permitted both fax[62] and electronic[63] means. In conciliation hearing with the case of written proceedings, it appears that, in the light of the foregoing measures, tax declarations sent electronically, irrevocable and with a company declaration, are admissible.

V. Conclusion

In many ways, the exceptional circumstances resulting from the virus situation have highlighted the strengths and weaknesses of the Hungarian civil

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59 Dr. Bernadett Szekeres, ‚Moratorium on payments, Ex. Is. Will there be?' 32 *Számviteli Tanácsadó*/Accounting Advisor (2021).

60 Government Decree 47/2020. (III. 18.) § 1, Exit Act § 9

61 Exit Act. 5. §

62 BH2003.502.

63 BH2015.310.

justice system. The inflexible rules of civil procedure, the strong central administration, and the constantly changing legislation affecting the courts have been both a disadvantage and an advantage in adapting to the changed situation. Because the legislation in force did not allow courts to take the necessary measures at local level, even in individual cases, the need for legislative and central administrative action to respond to specific situations played a major role in the development of the often-contradictory rules discussed above. In a rapidly evolving emergency situation, it is natural that inconsistencies arise in the development of the rules. This leads us to the conclusion that, in the future, in order to prepare for any unforeseen crisis, it is advisable to leave flexibility in both procedural and administrative rules to facilitate the adaptation of the judicial system to unforeseen situations – for example, by including the necessary transition to e-trial in the transitional rules, or by allowing the declaration of a bar in individual cases in the Veir.

On the other hand, the centralised nature of civil justice was an advantage in emergency situations, because the same solutions were mostly adopted at national level, thus avoiding the situation of legal uncertainty that was observed in several European states that are organised under a federal system. Another advantage was that the courts were uniform in terms of technical equipment, IT systems and working hours. This meant that clients were not adversely affected by the court before which their case was pending. The conclusion can therefore be drawn from this emergency that the judiciary's uniform technical structure and human resource management is an explicit advantage.

From a strictly legal point of view, despite the wealth of experience, the full consequences of the virus situation are still unforeseeable. From a substantive legal point of view, the civil justice system is predicted to be burdened by disputes arising from the emergency, such as disputes arising from business, tenancy, insurance or even family law.

The legislative measures taken to mitigate the economic and social impact of the crisis will also affect civil justice. From a procedural law perspective, electronic means have been given a prominent role. Scholars have pointed out that the dangers of advancing modern technology in civil justice are both unstoppable and necessary. The development of procedural rules, and IT solutions to provide adequate procedural guarantees, has become an urgent issue that cannot be avoided in the near future.

Perhaps even more important than this, the viral situation is a testimony to the need for civil justice to keep pace with the evolution of the world. The rules of civil law, and hence civil adjudication, must be an area of law that responds and adapts effectively to real-life economic and social changes. The coronavirus situation has fundamentally shaken up the concept of the case-law on which civil justice was based. We can hope that this was a one-off, exceptional event that will

never happen again in our lifetime, or we can take it as a warning that calls for a change of approach in the civil justice system. Even the most carefully developed procedural background and the most sophisticated technical equipment cannot compensate if those involved in civil justice, including not only the judiciary but also lawyers, legal advisers, notaries, bailiffs and forensic experts, refuse to follow the path set by a changing world.

The virus has created a situation where it is as if we have leapt years forward in time in a matter of days. Our work has been done in front of screens from home, personal contacts have been made over the internet, the courtroom has moved into the digital space. We must use this insight not to try to block progress as effectively as possible, but to see how we can adapt our approach to the impact of what we have seen, so that we can put this progress at the service of effective justice.

References

Bradbury-Jones C., Isham L., ‚The pandemic paradox: The consequences of COVID-19 on domestic violence' Journal of Clinical Nursing [2020] Volume 29, 2047, 2049

Bright C.F., Burton C, Kosky M, ‚Considerations of the impacts of COVID-19 on domestic violence in the United States' Social Sciences & Humanities Open [2020], Volume 2, 40

Judit Gál, ‚Insolvency, company law and rules affecting the operation of legal persons after the cessation of the emergency - Part I' (2020) 7 Céghírnök 1, 2

Erika Harmat, Balázs Völcsey, 'New non-contested proceedings in the jurisdiction of the courts: proceedings for the enforcement of a contact maintenance order' (2020) 56 Családi Jog/Family Law

György Ignáczy, Anna Madarasi, ‚The publicity of court trials in times of emergency,' In Medias Res (2020) 261, 279

Szabolcs Kékedi, ‚How further digitalisation of the courts or how electronic communication became the key to judging in emergency situations?' [2020] In Medias Res 308, 321

Krans B., Nylund A, et.al., ‚Civil Justice and Covid-19' Septentrio Reports [2020] 445

András Osztovits, ‚The future of judging in the digital world' in Péter Darák (ed.), 150th Anniversary of the creation of Article IV of the Judiciary Act of 1869 (HVG-ORAC 2019) 141-146.

András Osztovits, ‚Online Courts and the Right to Justice - Chance or Threat?' [2020] Magyar Jog/Hungarian Law 625, 632

Richard Susskind, Online Courts and the Future of Justice (OUP 2019)

Orsolya Szeibert, ‚From private to public: a decisive approach to domestic violence in Europe' Családi Jog/Family Law [2015/2] 2

Bernadett Szekeres, ‚Moratorium on payments, Ex. Is. Will there be?' 32 Számviteli Tanácsadó/Accounting Advisor (2021)

Usher K., Navjot B., Durkon J., et. al, ‚Family violence and COVID-19: Increased vulnerability and reduced options for support' International Journal of Mental Health Nursing [2020] 29, 549, 552

Zsolt Ződi, ‚The epidemic, the legal sphere and technology. How did legal systems survive the epidemic, how much of a role did technology play, and how lasting will the changes be?' [2020] In Medias Res 339, 355