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How Courts React, or Would React, When Faced with a Procedural Contract in Hungary?

Abstract

This article examines the legal nature and admissibility of procedural contracts under Hungarian civil procedure law, with particular attention to how courts respond when parties seek to regulate procedural aspects of litigation by agreement. While common law jurisdictions accept certain forms of procedural contracting, civil law systems remain resistant, emphasising judicial control and mandatory rules. The paper reviews the limited scope for party autonomy in Hungary under the Code of Civil Procedure, focusing on pre-dispute and post-dispute agreements, jurisdiction clauses, evidentiary pacts, cost-sharing arrangements, and class action agreements. It also considers comparative developments in EU and German case law, and the human rights constraints derived from Article 6 ECHR. The analysis concludes that, although Hungarian law acknowledges narrow exceptions – such as choice of court agreements, mediation settlements, or class action contracts – procedural autonomy remains tightly constrained. The study argues that this strict model is rooted in constitutional guarantees of due process and efficiency, but also notes recent legislative initiatives (eg the proposed simplified civil procedure) that cautiously extend the role of party agreements. Overall, the article highlights the tension between judicial control and contractual freedom, and maps the limited corridors where procedural contracting may gain legal relevance in Hungary.

Keywords: procedural contract, party autonomy, civil procedure, comparative civil procedure, due process, jurisdictional agreements

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DOI: 10.54148/ELTELJ.2026.1.163

I Introduction

This paper explores the legal nature and admissibility of procedural contracts under Hungarian civil procedure law, with particular attention to how courts may – or should – react when confronted with such agreements. Procedural contracts refer to agreements between parties that aim to regulate certain procedural aspects of litigation, either before a dispute arises or after proceedings have commenced. These agreements may address matters such as jurisdiction, evidentiary rules, the format of hearings, procedural costs, or the mutual suspension or termination of litigation. In essence, they represent an attempt to introduce elements of party autonomy into a field that is otherwise governed strictly by public law.[1]

The concept is broadly accepted in common law jurisdictions but not in Hungary or other civil law systems. An empirical study[2] of commercial contracts in common law systems shows that while parties often use autonomy through forum-selection clauses, arbitration agreements,[3] and fee-shifting provisions, they rarely alter core court procedures such as pleadings, discovery, or evidentiary rules. The article concludes that concerns about 'contracting for procedure' may be overstated, since such clauses are seldom invoked in practice, and calls for further explanation of why parties do not fully exercise their procedural autonomy.

Below, we will assess whether the same applies to civil law systems, where the concept of procedural contracts is generally less widely accepted. Comparatively, we can declare that while Hungarian civil procedure remains predominantly court-controlled, EU and comparative case law increasingly refines the outer limits of party autonomy. Two lines are particularly relevant for this paper's thesis: (i) jurisdiction agreements under Brussels Ia (incl. *Inkreal*[4] and *SIL*[5]), and (ii) the non-waivability (or only strictly waivable character) of fair-trial guarantees (*Poitrimol*,[6] *Sejdovic*[7]). These strands help calibrate when procedural contracts may be tolerated (eg forum selection, cost-sharing in settlements) and when they collide with public-law safeguards (eg interim measures, core evidentiary assessment).

Hungarian civil procedure, however, offers only narrow room for such contractualisation. Governed by the Civil Procedure Code (Act No. CXXX of 2016, hereinafter: 'CPC'), the procedural framework is classified as public law and falls largely outside the realm of party

1 Jaime Dodge, 'The Limits of Procedural Private Ordering' (2013) 97 (4) Virginia Law Review 723–804.

2 W. Mark C. Weidemaier, 'Customized Procedure in Theory and Reality' (2015) 72 (4) Washington & Lee Law Review 1865–1930.

3 Richard Schmidt, *A nemzetközi fórumválasztás szabadsága és korlátai [The Freedom and Limits of International Choice of Forum]* (PhD Thesis, Pázmány Péter Catholic University 2024, Budapest).

4 Case C-566/22 *Inkreal s.r.o. v Dúha reality s.r.o.*, EU:C:2024:102.

5 Case C-537/23 *SIL v Agora*, EU:C:2025:120.

6 *Poitrimol v France* App no 14032/88, ECHR (23 November 1993).

7 *Sejdovic v Italy* [GC] App no 56581/00, ECHR (1 March 2006).

autonomy.[8] Procedural law in Hungary is fundamentally court-controlled, with the CPC defining a rigid structure that limits the procedural discretion of litigants. As a result, while procedural contracts may formally be valid, they are often unenforceable in practice. Notwithstanding, there is one special type of procedure, which ultimately requires the parties' prior procedural contract: the class action lawsuits (see below II.3).

Nonetheless, this limitation does not negate all elements of party autonomy. Given that parties bear the primary burden of managing and presenting their cases, they are both entitled and obligated to take an active role in litigation. Moreover, some authors[9] argue that elevating party autonomy as a guiding principle in civil procedure, arguing that many procedural agreements (from choice-of-forum to evidentiary pacts) can make litigation more efficient and bridge the gap to arbitration. This opens a space – albeit narrow[10] – for certain types of procedural agreements, which can be grouped into two main categories:

1. Pre-dispute procedural contracts:[11] These are concluded before a dispute has formally arisen. While the CPC does not explicitly regulate such agreements, they are not uncommon in legal practice. Examples include jurisdiction or forum selection clauses, and more substantively, limitations of liability or waivers of certain claims – provisions that influence the scope and nature of any potential future litigation.

2. Post-dispute procedural contracts: These are concluded after a dispute has arisen, either before initiating litigation or during the course of ongoing proceedings. The CPC allows limited flexibility in this regard, permitting party agreements on issues such as procedural costs, evidentiary matters, and mutual requests for termination or suspension of proceedings. However, while such agreements may be formally valid, their enforceability by courts remains uncertain or inconsistent.

In addition to this temporal classification, procedural contracts may also be categorised according to their procedural function, encompassing pre-litigation negotiations; jurisdiction clauses; agreements on procedural specifics (such as *interim* measures, hearing formats, evidentiary rules or costs allocation); and class action waivers or class action agreements.

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8 Despite of the fact that the parties are entitled to act freely regarding their rights and reliefs sought in the proceedings, this right is limited to their right to initiate a proceedings and define its scope. See more: István Varga, Tamás Éless (eds), *Szakértői javaslat az új polgári perrendtartás kodifikációjához [Expert Proposal for the Codification of the New Code of Civil Procedure]* (HVG-ORAC 2016, Budapest) 33.

9 Gerhard Wagner, *Prozessverträge: Privatautonomie im Verfahrensrecht [Procedural Contracts: Private Autonomy in Procedural Law]* (Mohr Siebeck 1998, Tübingen).

10 According to Gerhard Wagner, the validity of procedural contracts should be judged by general contract fairness *(Vertragsgerechtigkeit)* and that public interest imposes only limited boundaries – leaving a broad scope for party agreements.

11 The term was first used to describe pre-dispute contracts that set procedural rules for any future litigation. See more: Kevin E. Davis, Helen Hershkoff, 'Contracting for Procedure' (2011) 53 (2) William & Mary Law Review 507; and 2017 Harvard Law Review follow-up blog: 'Contracting for Procedure, Redux' (Harvard Law Review Blog, 10 November 2017) <https://harvardlawreview.org/blog/2017/11/contracting-for-procedure-redux/#:~:text=Six%20years%20ago%2C%20we%20published,making> accessed 1 December 2025.

They may also be assessed from a subjective perspective, that is, based on the identity of the parties involved – for instance, consumer versus business actors, or employer versus employee disputes – each of which may trigger distinct public interest considerations or regulatory limitations.[12]

The central aim of this paper is to assess the permissibility of procedural contracts under Hungarian civil procedure law. Where such contracts are found inadmissible or unenforceable, the paper will explore the constitutional and human rights implications. Where they are permitted, the discussion will examine their scope, potential legal consequences of non-compliance, and the extent to which Hungarian judicial practice has evolved in its treatment of procedural autonomy.

II Admissibility of specific types of procedural contracts

1 Pre-dispute agreements

a) Pre-lawsuit negotiations

The enforceability of pre-litigation obligations agreed upon by the parties remains a contested issue in Hungarian procedural law. While dispute resolution clauses – often aiming to mandate negotiation or mediation – are regularly included in commercial contracts, their procedural weight before court proceedings is minimal. The following section outlines the current regulatory framework and judicial interpretation concerning such clauses and examines the formal limits of party autonomy under the Hungarian Code of Civil Procedure.

Although it is very common that parties to an agreement include a so-called 'amicable settlement of disputes clause' into their agreements, it is rather a lex imperfecta, because it cannot be enforced. The reasons why a court shall dismiss (reject without trial) a statement of claims has a closed number list, which does not include such provision, also cannot be amended by the parties [Section 176(1) of CPC]. See however point III.1 below for non-compliance with a procedural contract. In addition, there are some cases where the law requires a preliminary procedure in order to consider the statement of claims admissible (eg in press-correction claims), however, such requirement is based on law not on the parties'

[12] Scope clarification: This paper does not assess agreements of a primarily substantive legal nature, such as choice of law clauses or liability waivers, even though these may have direct procedural effects. While such clauses influence the scope of the lawsuit and, by extension, the court's procedural conduct, they pertain to the legal rights and obligations established under substantive law. These agreements affect the court's scope of decision-making rather than the procedural rights and duties of the parties themselves. As such, although the enforceability of the right in question is determined by substantive law and by the parties' underlying agreement, a full analysis of such clauses lies beyond the scope of this paper and will be addressed in future research.

agreement. These rather strict rules are actually welcomed by some authors. Owen Fiss[13] critiques the trend toward private settlement as a form of procedural contracting. He warns that excessive reliance on settlement and ADR may undermine the public role of courts by removing disputes from judicial scrutiny and its safeguards. Though not focused on custom procedural rules, the essay raised early concerns that party-driven resolutions risk sacrificing justice, transparency, and precedent for efficiency and autonomy – a theme later echoed in debates on contractualised procedure.

Notwithstanding, if the parties reach an agreement in the mediation procedure, either of the parties may request the court vested with competence and jurisdiction to be summoned to settlement negotiations before court proceedings are instituted for the purpose of approval of a negotiated settlement.[14] If the parties to the agreement jointly apply to be summoned to settlement negotiations, it may be conducted by any court of competence [Section 167(1) of the CPC]. Before court proceedings are instituted, the party may apply with the court vested with competence and jurisdiction to be summoned for the purpose of reaching a negotiated settlement even if the parties did not reach an agreement in a mediation procedure beforehand [Section 168(1) of the CPC]. If no agreement is reached for settlement by the prescribed deadline, the court shall inform the parties about the possibility of mediation. If all the parties declare their intention to resort to mediation, at their joint request the procedure shall be stayed, the proceedings stayed may be resumed only if the party who requested continuation in due time enclosed with the application the agreement between the parties reached during the mediation procedure. Otherwise, the court shall refuse the application for continuation and the proceedings shall remain in stay without interruption[15] [Section 168(4)–(5) of the CPC].

Under the old Civil Procedure Code, there was a specific requirement for business entities to negotiate prior to initiating a lawsuit; however, courts even interpreted that obligation narrowly. Section 121/A of the former Hungarian Civil Procedure Code (Act III of 1952) imposed a mandatory obligation on legal person business entities to attempt out-of-court resolution of their disputes before submitting a statement of claim. This requirement applied only if both parties qualified as legal persons with business organization status. The obligation could be waived if the parties jointly prepared a protocol documenting their disagreement, which had to be attached to the claim. Reintroduced into the procedural

13 Owen Fiss, 'Against Settlement' (1984) 93 Yale Law Journal 1073–1090.

14 Contrary to the Anglo-Saxon tendencies, the Hungarian regulation in this regard prefers party autonomy, ie the court's discretion on obliging parties to attend mediation is strictly limited to advising. See more István Varga, 'Perrendi szabályozási igények azonosítása jogösszehasonlító kitekintéssel' *[Identifying Procedural Regulatory Needs with a Comparative Outlook]* in István Varga (ed), *Codificatio Processualis Civilis – Studia in Honorem Németh János II* (ELTE Eötvös Kiadó 2013, Budapest) 509.

15 According to some authors, it should be revised whether mediation is actually ground for suspension or stay of the proceedings, given that the latter does not require pre-judicative actions. See more István Varga and Kristóf Szécsényi-Nagy, 'A perrend egyéb általános szabályai' [Other general rules of procedure] in János Németh and István Varga (eds), *Egy új perrendtartás alapjai [Foundations of a New Code of Civil Procedure]* (HVG-ORAC 2014, Budapest) 312.

system by the 2010 legislative reform, this rule reflected a revived effort to prioritise pre-litigation resolution between commercial entities. If no agreement was reached, the plaintiff was required to attach written records of prior communications and evidence of the attempted settlement to the statement of claim; otherwise, the court could dismiss the filing without issuing a summons. However, case law (BDT 2017.3708) clarified that such dismissal is not permissible solely on the basis that the claimant failed to communicate their legal position, provided the pre-litigation notice identified the claim amount and contractual basis. Furthermore, where a claimant knowingly initiated proceedings despite facts that clearly excluded the claim's validity without further proof, they could not claim litigation costs from a defendant who declined to settle out of court (BDT 2015.3371). Courts could impose cost liability on a defendant who unjustifiably failed to participate in the settlement process or refused to cooperate in preparing the protocol, even if that party prevailed in the litigation. Nevertheless, this pre-litigation obligation was inapplicable in cases subject to shorter statutory filing deadlines, special procedures, or high-priority litigation, thereby marking the boundaries of party autonomy in procedural planning under the earlier procedural regime.

In sum, while parties may express their intention to resolve disputes amicably, Hungarian procedural law grants little effect to such clauses unless grounded in statutory provisions. The courts maintain a strict interpretation of admissibility criteria and consistently reject efforts to elevate contractual pre-litigation steps to procedural preconditions. Even statutory obligations, such as those previously imposed on business entities, have been interpreted narrowly, confirming the dominance of procedural formalism over privately agreed dispute resolution mechanisms.

b) Choice of court clauses

The autonomy of parties to designate the forum for resolving their disputes is a key aspect of modern private international law. Hungarian law recognises this principle within clearly defined boundaries, particularly in the context of commercial relationships. The following section outlines the regulatory framework governing choice of court agreements under Hungarian and EU law, highlighting both the domestic limitations and evolving European jurisprudence that increasingly supports party autonomy.

The general rule is that parties may agree on the court of jurisdiction for their disputes, provided Hungarian jurisdiction is not excluded. Under Section 99(1)–(2) of Act No. XXVIII of 2017 on Private International Law (PIL), a choice of court agreement designates a court (domestic or foreign) to resolve property law disputes. Such agreements are invalid if they (a) assign jurisdiction to a foreign court in matters under the exclusive jurisdiction of Hungarian courts, or (b) assign Hungarian jurisdiction where Hungary has none.

Hungarian courts retain exclusive jurisdiction in cases involving real estate, company registration, and law enforcement. Choice of court is allowed only in commercial matters; it is prohibited in administrative and family law cases.

Beyond choosing a country's courts, parties may also select a specific regional court within Hungary in property-related disputes – unless restricted by law.[16] The designated court gains exclusive jurisdiction, unless otherwise provided or agreed. If validly concluded,[17] the selected court has exclusive authority over the case: all other courts must reject the statement of claim, or if exclusive jurisdiction becomes apparent later, the proceedings must be terminated. However, courts conferred with exclusive jurisdiction by statute (eg certain courts in Budapest) cannot be overridden by party agreement (Section 27 of the CPC). Similarly, no clause may limit a consumer's right to sue a business in their local court.

Choice of court agreements may be concluded before or after a dispute arises but apply solely in commercial contexts. Jurisdiction may be established even without being expressly provided by law, if it is not excluded and the defendant does not challenge it. If the defendant participates in the proceedings – such as by submitting a substantive defence – without explicitly objecting to the court's jurisdiction, jurisdiction is deemed to be established based on the parties' implicit agreement. It is also noteworthy that, under previous practice, parties were permitted to include a jurisdiction clause in their agreements only if a 'foreign element' was present in their legal relationship.[18] However, this approach appears to be shifting. In a recent decision, the Court of Justice of the European Union (CJEU) held that,[19] under the Brussels Ia Regulation, it is lawful for two parties domiciled in the same Member State to designate the courts of another Member State as having jurisdiction over their dispute.[20] This development reflects a move toward prioritizing party autonomy over a strict, formalistic interpretation of jurisdictional rules.[21]

In summary, while Hungarian law imposes specific constraints on the validity and scope of jurisdiction clauses – especially regarding exclusive jurisdiction and consumer protection – there is a discernible trend, both in domestic practice and EU case law, toward expanding the parties' ability to shape the procedural framework of their legal relationships. This shift underscores a broader movement toward balancing procedural safeguards with the principle of freedom of contract in cross-border and commercial litigation.

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16 Not every jurisdiction freely enforces choice-of-court clauses — there are limits grounded in fairness and protectionism. In the German Federal Supreme Court's decision (III ZR 42/19, 17 October 2019), the Court awarded damages for breach of a choice-of-court agreement: the defendant, though sued in the U.S. in violation of the agreed jurisdiction (Bonn, Germany), was entitled to recover the costs incurred, since the contract expressly provided for German law and jurisdiction, and the parties had an interest in legal certainty and avoiding forum shopping.

17 A statement of claim cannot be dismissed without summons solely on the basis of an invalid choice of court agreement (BDT 2019.3983).

18 BDT 2007. 1544.

19 Case C-566/22 *Inkreal s.r.o. v Dúha reality s.r.o.*, EU:C:2024:102 (8 February 2024).

20 Balázs Völcsey, 'Handling Jurisdictional Problems in Civil Procedure – Based on Hungarian and EU Legislation' (2025) (1) ELTE Law Journal 135–157.

21 Adél Köblös, *A joghatósági megállapodás [Jurisdiction Agreements]* (PhD Thesis, Szeged University, 2008).

2 Agreements related to specific procedural issues

As previously noted, procedural contracts have no binding effect on the court under Hungarian civil procedure law. Although such agreements may be formally valid – in the sense that no legal provision expressly prohibits their conclusion – they generally lack legal enforceability. This means that neither party can compel the court to adhere to the terms of the procedural contract, nor can one party legally enforce its application against the other. In practice, the court is not obligated to consider or follow such agreements, and their breach does not result in procedural sanctions. Nevertheless, voluntary compliance remains possible: parties may, by mutual consent, choose to refrain from exercising certain procedural rights, such as by agreeing not to request interim measures, or by waiving appellate rights. These arrangements, however, depend entirely on mutual good faith and cooperation, not on judicial enforcement.

The parties' ability to shape or design the procedure remains extremely limited.[22] Where such influence is permitted, it is typically exercised through individual procedural motions submitted during the litigation, rather than through pre-dispute or pre-trial contractual arrangements. For example, parties may agree during proceedings on the scheduling of hearings or jointly request the suspension or termination of the case – but these are evaluated by the court on a case-by-case basis and do not derive binding authority from prior agreement. Consequently, while party autonomy is not entirely absent, it plays only a marginal role in procedural design, and procedural contracts remain largely symbolic in effect.

a) Interim measures

The applied interim measures cannot be established by the parties' prior agreement. Although courts only order interim measures upon request, thus the parties may agree on not requesting such measures, if any party 'breaches' such agreement, it is not enforceable, it would not retain the court from granting the request if grounded.

Generally, the court shall order provisional measures conditional upon the provision of security if the applicant's adversary proves presumptively that he may be disadvantaged by the measure requested such that would serve basis, if successful, to demand compensation for damages or restitution from the applicant. The court shall order the provision of security if so requested by the applicant's adversary, along with presumptive proof of the disadvantage proportionate to the security requested; or it is offered by the applicant and accepted by the applicant's adversary [Section 106(1)-(2) of the CPC]. In the latter case – which can be deemed as a procedural agreement – the security shall be provided in

[22] Imre Szabó, 'Perhatékonyság és a percselekmények időszerűségének elve' [Efficiency of Litigation and the Timeliness of Procedural Acts] in István Varga (ed), *Codificatio Processuralis Civilis – Studia in Honorem Németh János II.* (ELTE Eötvös Kiadó 2013, Budapest) 365.

the amount offered by the applicant and accepted by his adversary. Although, accepting the security shall not constitute accession to the arguments presented in support of the introduction of provisional measures.

While parties may promise not to request interim relief, such arrangements cannot strip the court of its statutory power to grant provisional protection if the legal test is met. Under Brussels I(a), the Van Uden line construes 'provisional, including protective measures' narrowly and ties cross-border relief to a real link with the territorial jurisdiction; purely definitive orders fall outside the regime. This EU understanding supports a domestic reading that prevents contractual waivers from disabling interim protection where fairness or effectiveness so require.[23]

b) Document-based procedure vs in-person hearings

The parties cannot effectively agree on having an only document-based procedure. Although, it is in the court's discretion to decide whether the case can be decided solely based on the documents, the plaintiff and the defendant may request the court to close the case initiation process without a case initiation hearing in the statement of claim and the statement of defence, respectively. However, this does not require the agreement of the parties, but their individual motion. If the court is of the opinion that the parties defined the framework of the dispute by their statements made in the statement of claim and the written defence statement, it shall inform the parties that it intends to close the case initiation process without further case initiation documented in writing and case initiation hearing, and shall at the same time: *a)* deliver to the plaintiff the written defence statement, *b)* warn the parties concerning the consequences of closing the case initiation process, and *c)* inform the parties that it will hold a case initiation hearing if so requested by either of the parties in writing within fifteen days (Section 197 of CPC).

The parties may agree on the final judgement only contain summary statement of reasons. The summary statement of reasons shall contain only: *a)* the facts established by the court; *b)* the requests and/or statements made by the parties relating to the subject matter of the action, including a brief description of the underlying reasons; *c)* the laws on which the judgment is based; and *d)* reference to the statutory provisions on summary statements of reasons. In addition, if all the parties waive their rights to appeal [see point II.2 *f)* below], the judgement contains only summary statement of reasons without further consent of the parties. In such cases, it may be established, in the light of the circumstances of the case or the statements of the parties, that a full and detailed statement of reasons is not necessary and that it is sufficient to contain only certain elements which are sufficient to

[23] Case C-391/95 *Van Uden Maritime BV v Kommanditgesellschaft in Firma Deco-Line*, EU:C:1998:543, paras 37–49; see also Case C-125/79 *Denilauler v SNC Couchet Frères*, EU:C:1980:130; and Case C-616/10 *Solvay v Honeywell*, EU:C:2012:445.

ensure that the substantive res judicata effect and the admissibility of a new action based on new facts are properly assessed. It is important to note that the other structural elements of the judgment (introductory part, operative part, remedy part, final part) remain unchanged in such cases; the simplification - as the name of the legal instrument reflects – only concerns the statement of reasons (Section 347 of the CPC).

For comparison, the German system is worth mentioning: § 128(2) of the German ZPO provides that, with both parties' consent, courts may decide without oral hearing in a purely written procedure. German doctrine, however, stresses that this remains within judicial case management and cannot dilute Article 6 ECHR safeguards; consent must be informed and unequivocal. This mirrors the CPC's approach that party motions may guide, but do not bind, the court.[24]

c) Evidence

As a rule, allocation of the burden of proof follows substantive law and, in Hungarian proceedings, is not contractually alterable in a manner that binds the court. For comparative context, German case law recognises party agreements affecting proof (incl. burden-shifting) within dispositive law, but subjects any standard-form clause to strict § 307/§ 309(12) BGB control; [25] clauses that materially worsen a party's proof position in AGB are typically invalid.[26] The court's free evaluation of evidence remains non-contractual. Notwithstanding, if the parties agree on individual facts during the proceedings, such facts do not have to be proven further. Although, any agreement on this topic would be unenforceable by the parties. The same applies to the assessment of evidence: it is the court's exclusive right to decide, and it includes assessing the evidence.

The same applies to evidence rules: if the parties agree on not using witness evidence, the court would not force them to, however, if any party breaches the agreement, the other party cannot enforce it; the court will use the witness evidence nevertheless. Appointing a private expert is generally allowed in civil procedure of Hungary, however, it is usually requested by one of the parties (the one on who the burden of proof lays regarding the fact that is intended to be proven by an expert), and thus the agreement on engaging the same private expert is theoretically possible, although never happened in practice. Moreover, it would also be unenforceable, if one of the parties breached the agreement.

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24 *Zivilprozessordnung* (ZPO) § 128(2) (and commentary).

25 BGH, Beschluss vom 6 Februar 2014 – VII ZR 160/12, *NJW-RR* 2014, 456: The Court held that after acceptance *(Abnahme)* the burden of proof for defects lies with the client, and any contractual or judicial presumption extending the contractor's burden beyond that point is invalid under §§ 307, 309 Nr. 12 BGB.

26 BGH, Urteil vom 10 Januar 2019 – III ZR 109/17, *NJW-RR* 2019, 428: A pre-formulated investor's declaration of having fully read and acknowledged the risks in a prospectus was held void under § 309 Nr. 12(b) BGB, since even without a full burden-of-proof reversal it worsens the investor's evidentiary position, and such knowledge acknowledgments in AGB cannot be given evidentiary effect.

Regarding the forensic expert evidence, the parties' agreement may be relevant. Generally, an expert shall be engaged if specific expertise is considered necessary to define the framework of the dispute or for establishing, ascertaining facts considered material for the case. The parties may bring motion for private expert evidencing, or on proposal, the court shall appoint an expert if neither of the parties adducing evidence proposed to enter a private expert or an expert appointed for other proceedings, each private expert's report contains cause for concern, or it is necessary to receive information so as to address any concern that may exist with respect to the opinion of the expert appointed for other proceedings, or to receive answers for questions proposed to be asked [Section 307(1) of the CPC]. In case the court appoints the expert, the expert proposed by the parties jointly shall be appointed. In the absence of an agreement, the court shall decide as to the person of the expert [Section 308(1) of the CPC].

d) Procedural costs

The court decides about the procedural costs ex officio [ie procedural fees, evidence costs (expert's fees etc.)], however, the legal fees must be expressively requested by the parties. In case of a settlement, the parties may agree on covering their own procedural costs, or establish a different ratio, however, in case of a judgement, the court establishes the amount and the bearing of procedural costs based on the law, and it is not bound by the parties' agreement.

In the case of a court-approved settlement, the party agreed upon by the parties shall pay the opposing party's court costs. In the absence of an agreement, the court costs of the successful party to the settlement shall be covered by the unsuccessful party to the settlement. Where each party succeeds on some and fails on other heads according to the settlement the party shall cover the costs of the opposing party in proportion of his losing. If the ratio of winning and losing cannot be determined, neither of the parties shall be required to cover the court costs (Section 84 of the CPC).

If the proceedings are terminated the court costs of the defendant shall be covered by the plaintiff, unless otherwise agreed by the parties. Where proceedings are terminated due to withdrawal, if withdrawal took place for the defendant satisfied the defendant shall cover the claim after the opening of proceedings, the court costs of the plaintiff. Where proceedings are terminated due to withdrawal of the parties' joint application, the party agreed upon by the parties shall pay the opposing party's court costs. In the absence of an agreement, the plaintiff shall cover the court costs of the defendant. If, however, the application was submitted for the defendant acknowledged the right asserted by the action after the opening of proceedings, or satisfied the claim enforced by the action, the defendant shall cover the costs of the plaintiff (Section 85 of the CPC).

EU law adds a proportionality/adequacy overlay where specific regimes apply (eg IP enforcement). In United Video[27] and Koch Media,[28] the CJEU held that flat-rate scales are acceptable only if they allow recovery of a significant and appropriate part of reasonable costs, with case-by-case control. Comparatively, German law explicitly permits contractual allocation of costs in settlements (§ 98 ZPO), a widely used gateway for party-made cost rules – subject, of course, to court approval of the settlement text.

e) Termination and stay of proceedings based on the parties' mutual request, other requests

The parties' autonomy to shape the procedure is very limited, although, based on mutual requests (that can be deemed as procedural contracts concluded during the proceedings) they can establish the process of the lawsuit.

ea) **Termination and consolidation**

At any time during the proceedings the court may terminate the proceedings upon request, even before the statement of claim is delivered, if requested by the parties jointly ([Section 214(1)b) of the CPC]. This right is given until the proceedings is closed, however, if the parties intend to terminate the proceedings after the first instance decision is made, they need to file an appeal before doing so.[29] Also, the plaintiff may withdraw the action without the defendant's consent before the defendant's written defence statement is presented, thereafter only upon the defendant's consent, except if withdrawal took place for the defendant satisfied the claim after the opening of proceedings [Section 214(2)–(3) of the CPC].

Where the parties present a claim jointly, the court shall move to consolidate the actions if the conditions are satisfied [Section 117(4) of the CPC]. Once consolidated, the court is bound to such decision.

eb) **Stay and suspension**

Proceedings shall be stayed if the parties notify their agreement to that effect, from the date of delivery of said notification to the court [Section 121(1)a) of the CPC]. The proceedings may be stayed between the same parties not more than three times before the final conclusion of the proceedings. Parties usually use this opportunity to start negotiations and try to reach a settlement. At the request of either of the parties the proceedings shall be continued. During the period in which proceedings are stayed all time limits shall be discontinued, and

[27] Case C-57/15 *United Video Properties Inc v Telenet NV*, EU:C:2016:611, paras 24–36.

[28] Case C-559/20 *Koch Media GmbH v FU*, EU:C:2022:313, paras 40–54.

[29] BDT 2021.4296.

shall recommence when the stay is terminated. All court orders introduced during the period of stay, pertinent to the merits of the case, and all procedural acts made by the parties during the period of stay shall be of no effect, except for the court orders and procedural acts relating to the stay and continuation of proceedings, and/or to the declaration of termination of the proceedings [Section 122(1)–(2) of the CPC].

If the court orders the parties to submit to compulsory mediation [ie not the same as mentioned above in point II.1 *a)*, which is voluntary], it shall simultaneously suspend the proceedings. If the judicial proceedings was suspended on account of the opening of compulsory mediation, it shall be continued if either of the parties verify that the mediation process has been concluded, either of the parties verify of having participated in the first mediation hearing, however, the mediation process had not been opened, or two months have passed since the time of delivery of the decision ordering the parties to submit to compulsory mediation, during which time the parties failed to submit either of the above-mentioned presentments. If the mediation proceedings in progress is not expected to be concluded within two months from the time of delivery of the court decision ordering the parties to submit to compulsory mediation, and the parties jointly notify the court thereof eight days before the deadline at the latest, the judicial proceedings may not be continued insofar as the mediation procedure is concluded. Enclosed with the aforementioned notification the parties are to provide proof that the mediation process is ongoing (Section 124 of the CPC).

ec) Other requests

The CPC allows for limited instances of party autonomy during proceedings, particularly in matters of scheduling and procedural flexibility. Under Section 229(1) CPC, the court is required to postpone a scheduled hearing if both parties jointly request such postponement at least three days before the hearing, and provide a justified reason. If the request is made after this deadline, the court may grant it only in cases of particular importance, such as unforeseeable personal or procedural impediments. This provision reflects a narrowly defined opportunity for parties to influence the scheduling of hearings but remains subject to judicial discretion once the prescribed timeframe has lapsed.

Similarly, Section 148(3) CPC provides another rare example of consensual procedural modification: the parties may jointly waive the application of the judicial holiday, which suspends procedural deadlines between 15 July and 20 August each year. This allows the litigation to proceed uninterrupted during this traditionally inactive period, provided both parties agree. In practice, however, such waivers are uncommon, as most litigants prefer to preserve this statutory break unless time-sensitive commercial interests dictate otherwise.

Another provision allowing limited party-driven procedural adjustment is found in Section 127(2) CPC, which applies when the court has rendered an interlocutory judgment – a preliminary decision, typically establishing the existence of a legal basis for the claim, while deferring a ruling on the amount or quantity of the claim. If both parties submit a joint request, the court may suspend the continuation of the proceedings relating to the quantum of the claim pending the outcome of a review application (ie appeal) against the interlocutory judgment. This rule enables the parties to avoid unnecessary procedural steps until the fundamental question of liability is conclusively determined.

Despite the formal availability of these mechanisms, the actual exercise of party autonomy during litigation remains highly constrained. Mutual agreements of this kind are relatively rare in practice, primarily because they require cooperation between parties who are, by nature, in adversarial positions. Even though parties are expected to act in good faith throughout the proceedings, practical experience shows that such cooperation is seldom achieved once litigation has commenced. In adversarial proceedings, mutual trust is typically eroded, and strategic considerations often outweigh procedural pragmatism. As a result, although the CPC does allow for certain collaborative procedural decisions, these exceptions have limited real-world impact and do not amount to a general recognition of procedural contracts or party-driven case management within the Hungarian system.

f) Remedies

Any waiver of appeal must meet fair-trial standards: under the ECtHR, waiver of rights under Article 6 ECHR is valid only if unequivocal, voluntary and attended by minimum safeguards.[30] This frames CPC § 358–359 practice: ex post waivers following pronouncement are effective; general, blanket, ex ante waivers risk invalidity.

The person entitled to appeal shall have the right to waive his right to do so following publication of the decision or after delivery in the absence of publication. The waiver of the right to appeal may not be withdrawn. Waiver shall be considered valid only if notified by all entitled parties. If all entitled parties decided to waive their right to appeal following publication of the decision, the decision shall become final on the day of notification, or on the day following the date of receipt of the last notification by the court [Section 358(4) of the CPC].

Once a decision has become final, it may no longer be appealed. A decision that is subject to appeal shall become final from the day after the expiry of the time limit for appeal, if neither of the eligible parties have submitted an appeal, or if the court rejected by final decision all appeals which had been submitted [Section 359(3) of the CPC]. If the appeal is withdrawn, a decision shall become final on the day when the notice of withdrawal of the appeal is delivered to the court, if the time limit for appeal has already expired with respect to all other parties having the right to appeal. On the other hand, if the time limit for appeal has not yet expired vis-à-vis the other parties having the right to appeal, the decision shall become final on the day following the expiry of the time limit for appeal [Section 358 (6) of the CPC].

30 *Poitrimol v France* §§31–34; *Sejdovic v Italy* §§86–96.

g) Class action agreements

The new CPC introduced[31] the class action option in specific subject matter cases. It is a progressive novelty in Hungarian civil procedure law toward contractualization, however, it does not mean that the parties have the power to shape the proceedings, in the contrary, there are strict rules provided by the law regarding the class action lawsuits and class action agreements as well.[32] Notwithstanding, this is a classic form of contractualization, since such actions may not be brought without a class action contract at all.

At least ten plaintiffs shall be entitled to enforce one or several rights of the same cause for all plaintiffs (hereinafter referred to as 'representative right') in the form of class action if the facts underlying the representative right are the same as to substance with respect to all plaintiffs (hereinafter referred to as 'representative facts'), and the court approved the class action. A class action may only be brought in the following cases: *a)* for the purpose of enforcement of claims arising in connection with consumer contracts; *b)* in labour disputes; or *c)* for the enforcement of claims or damages stemming from health impairment resulting directly from unforeseeable environmental pollution caused by human activities or arising in consequence of negligence (Section 583 of the CPC).

Class action may only be brought in the above-mentioned cases, and it shall be based on a so-called class action agreement. Before the class action is instituted, the beneficiaries wishing to enforce their claim in this manner shall first enter into a class action agreement made out in writing. The class action agreement shall specify: *a)* the plaintiffs involved in the class action; *b)* delegation of the designated plaintiff; *c)* delegation of the deputy of the designated plaintiff; d) the legal counsel hired for the class action; *e)* the provisions relating to the expenses incurred by the conclusion of the class action agreement and by preparations for the class action, and for advancement, bearing and sharing court costs of the class action; *f)* the obligations of the parties in relation to making available the case files; *g)* the rules on the designated plaintiff's responsibilities, in particular the mode and the means of guarantees for damages resulting from inefficient conduct of the actions; *h)* the rules for allowing further parties to join the class action agreement after the class action has been initiated, and whether the parties to the agreement are permitted to withdraw from the contract individually; *i)* absolute ban on settlement or express authorization for negotiating a settlement, with the proviso that if an authorization is given for negotiating a settlement the minimum sum and other terms to be included in the settlement agreement must be specified; the parties may further stipulate that their consent must be obtained for a potential

31 Until 2018, under the old CPC, class actions were unknown to the Hungarian civil procedure. More claimants were entitled to initiate a lawsuit jointly under specific conditions, without being considered as a class. See more in Sándor Udvardy, 'Az amerikai class action elméleti háttere és jogi konstrukciója' [The theoretical background and legal structure of US class action lawsuits] in István Varga (ed), *Codificatio Processuralis Civilis – Studia in Honorem Németh János II.* (ELTE Eötvös Kiadó 2013, Budapest) 455.

32 Varga, 'Perrendi szabályozási igények…' 500.

settlement agreement upon receipt of a copy of the draft agreement; *j)* a clause that the prior consent of the parties is required for specific statements and pleadings, and procedural acts taken by the designated plaintiff; *k)* the rules and the method the designated plaintiff is liable to report to the parties about progress, and how the parties are given access to information and how they can monitor progress in the action; *l)* an indication that the plaintiffs will be entitled to a share from the sum of money awarded in the class action to the plaintiffs, or from the sum, other assets or rights granted under the approved settlement in the proportion of their original claim; *m)* information about the substantive force of the judgment given in the class action, indicating specifically the rights and the factual base covered; n) the cases and conditions of termination of the class action agreement (Section 586 of the CPC).

If the class action agreement does not contain the requirements set out above or if the agreement is contrary in content to any mandatory clause, the court shall reject the statement of claim. Consequently, the parties' contract is a necessary but insufficient precondition, which, aside from the mere fact of creating a class, does not shape the proceedings further.

3 The context of procedural contracts

Generally speaking, procedural contracts are deemed ineffective regardless of the form or context in which they are concluded. This applies whether the procedural arrangement is embedded in the parties' main (substantive) contract, incorporated into the general terms and conditions (GTCs), or established as a separate procedural agreement. Hungarian procedural law does not recognise such agreements as legally binding or enforceable. As a result, courts are neither required nor expected to follow the terms of a procedural contract, and a party cannot rely on such an agreement to compel either the opposing party or the court to act in accordance with its terms.

However, there are special statutory provisions applicable in specific personal or subject-matter contexts, particularly in relation to consumer contracts and employment relationships, which limit or regulate the use of choice of court clauses. In consumer disputes, for instance, any jurisdiction clause that deprives the consumer of the right to litigate in their place of residence is invalid. Similarly, in employment law, the employee's forum rights are protected against any contractual clause that would subject their claims to a foreign or distant court without sufficient justification. These exceptions reflect an underlying policy to protect the weaker party in structurally imbalanced relationships.

Outside of these protected settings, procedural contracts – whether between private individuals, companies, or mixed parties – are evaluated uniformly. As discussed in point II above, Hungarian courts maintain a strictly formalist approach, and party autonomy in procedural matters remains narrowly confined. Even in purely commercial contexts, procedural contracts other than choice of court clauses (which are themselves subject to limitations) are not afforded binding force.

a) Consumer to business claims

In Hungarian law, consumer protection usually means contractual limitations, which also applies to procedural contracts. Such rules are not only significant because they protect consumers in case they have a lawsuit against businesses, but also limits procedural contracts in a way that they cannot opt out from ordinary court jurisdictions, since arbitration in claims arising from consumer contracts is prohibited [Section 1(3) of the Act no. LX of 2017 on Arbitration].

The CPC only allows class actions in consumer and employment claims (see point II.3 above).

Choice of court clauses are limited in claims arising from consumer contracts. In actions brought by a business party against a consumer for the enforcement of a claim arising from a contractual relationship, the court within in whose jurisdiction the defendant's domestic residence is located shall have exclusive jurisdiction, unless otherwise provided for by an act, a binding legislation of the European Union or an international convention. If the defendant has no permanent residence in Hungary, said exclusive jurisdiction shall be determined according to the defendant's habitual residence in Hungary; if the defendant's habitual residence is not known, or if located abroad, the last known domestic residence shall apply. If the last domestic residence cannot be ascertained, jurisdiction shall be determined according to the general rules. In the case of joinder of defendants, the action may be brought against all defendants before the court of jurisdiction for either of the defendants who is a consumer [Section 26(1) of the CPC]. Moreover, no choice of court agreement is allowed if it precludes the consumer's right for the enforcement of a claim arising from a contractual relationship with a business party before a court within whose jurisdiction his own domestic residence, or his habitual residence in Hungary in the absence thereof, is located [Section 27(5) of the CPC]. Furthermore, in the absence of exclusive jurisdiction the plaintiff shall have the option to bring action for the enforcement of a consumer's claim arising from a contractual relationship with a business party before the court of jurisdiction for the place where the plaintiff's domestic residence, or his habitual residence in Hungary in the absence thereof, is located instead of the court of ordinary jurisdiction for the defendant [Section 28(1)d) of the CPC].

b) Labor disputes

The protection of employees against employers is similarly regulated as in consumer claims mentioned above (eg not subject to arbitration, specific rules apply).

There are also special choice of court rules applying to labour disputes:[33] the party may enforce his pecuniary claims by way of the order for payment procedure, except if the

[33] EBH 2019.M.9., EBH 2019.M.2.

action pertains to the sanctions applied as a consequence of any breach on the employer's part of the obligations stemming from the conclusion, amendment or termination of the employment relationship, or to sanctions applied on the grounds of disciplinary infraction [Section 508(6) of the CPC]. The employee as plaintiff shall be entitled to bring action before the court hearing labour disputes of jurisdiction by reference to his home address, or failing this, his habitual residence in Hungary, instead of the court of ordinary jurisdiction for the defendant [Section 513(2) of the CPC]. The employee as plaintiff shall also be entitled to bring action before the court hearing labour disputes in whose area of jurisdiction he or she is or has been working for any extended period of time, instead of the court of ordinary jurisdiction for the defendant [Section 513(3) of the CPC]. The employer as plaintiff shall bring action before the court of jurisdiction by reference to the employee's domestic home address, or domestic habitual residence if no home address is available, except in the case of joinder of defendants, if the employer lays claim to all defendants for damages or restitution, the action may be brought against all defendants before the court of jurisdiction for either of the defendants [Section 513(4)–(5) of the CPC].

The plaintiff may withdraw his action without the consent of the defendant at any time during the proceedings, although generally it is only possible until the defendant submits its defence statement (Section 518 of the CPC) [See point II.2 *ea)* above].

The court tries to settle the dispute with the parties at every stage of the proceedings, the parties are more intensively encouraged to come to a settlement than in general subject matter claims – however, such negotiations relate to the substantial legal issues, not to the procedure.

III Assessment of the enforceability, impact and the future of procedural contracts

1 Remedies for non-compliance with the procedural contract

With the exception of choice of court clauses – which are expressly recognised by law and may confer exclusive jurisdiction on the designated court – other types of procedural contracts remain ineffective and unenforceable under Hungarian civil procedure law (see point I.1 above). While parties are free to agree on certain procedural aspects, such agreements have no binding force on the court and cannot be enforced by either party. As a result, any contractual arrangement concerning, for example, evidentiary rules, hearing formats, or waiver of remedies will not be upheld by the court unless grounded in statutory provisions.

An important exception to this general ineffectiveness arises in the context of mediation. Pursuant to Section 86(3) of the CPC, if the parties reach a settlement agreement through mediation, and one of the parties later initiates court proceedings despite this agreement, the plaintiff shall be required to bear the defendant's court costs. However, if the lawsuit is brought solely due to the other party's failure to comply with the mediated agreement, the general rules on cost allocation apply, meaning that the initiating party may still recover costs if they prevail.

A similar rule applies under Section 86(6) CPC in the context of consumer disputes resolved by arbitration boards. If one party brings the case before the court after a statutory settlement agreement has been reached by the arbitration board via resolution, that party must bear the costs of the opposing party – except in proceedings that seek an enforcement clause due to the other party's non-compliance with the settlement. These limited exceptions reflect the legislator's intent to uphold the finality of mutually accepted resolutions and to discourage unnecessary litigation after successful alternative dispute resolution.

To a comparative note, the German Federal Court[34] accepted that breach of a forum-selection clause by suing in a non-agreed forum may entail damages (eg reasonable defence costs) under contract-law principles. This illustrates how certain procedural bargains can have substantive consequences – even if they do not bind the court's conduct.

2 Constitutional law and human rights

In Hungarian law, the principles of due process and the right to a fair trial are guaranteed by Article XXVIII of the Fundamental Law of Hungary, and are further elaborated and safeguarded within each procedural code – namely, the CPC, the Criminal Procedure Code, and the Administrative Litigation Code. These principles include, among others, the right to an impartial tribunal, the right to be heard, and the right to a judgment within a reasonable time. The enforcement of these guarantees is not left to the discretion of the litigants; rather, it is the exclusive responsibility of the courts to ensure that proceedings adhere to these constitutional standards. Parties to a dispute have no procedural autonomy to deviate from or waive these principles, even by mutual agreement.

However, the CPC provides that it does not mean to enforce these principles, but Article 25 of the Fundamental Law, which merely provides that in Hungary, courts of justice are entitled to decide in civil (and administrative and criminal) claims, thus applying a rather formalistic approach.

The principle of disposition (Hungarian: *rendelkezési elv*) refers to the party's right to initiate legal proceedings and, once initiated, to determine the personal and substantive scope, as well as to some extent the course, of the proceedings. The Constitutional Court of Hungary *(Alkotmánybíróság)* has addressed the definition of this principle in several decisions, including: 8/1990. (IV. 23.) AB decision, 9/1992. (I. 30.) AB decision, 1/1994. (I. 7.) AB decision. According to these rulings, the party's procedural right of disposition is an aspect of the constitutional right to self-determination – it represents its procedural

[34] BGH, Urteil vom 17 Oktober 2019 – III ZR 42/19.

dimension and is connected to individual autonomy. A party with an interest in the legal dispute has a constitutional right to bring their case before a court. This right to access the courts also includes the freedom not to exercise that right.[35] However, as discussed above, this does not cover the right to tailor the proceedings, but only to have their case handled by a court of justice within the legal framework provided.

As previously discussed, the new CPC elevated efficiency and procedural economy to the level of fundamental procedural principles, reinforcing the constitutional expectation of a trial being completed within a reasonable duration. This structural emphasis on judicial control and procedural effectiveness explains why procedural contracts are virtually non-existent in Hungarian law. Courts are vested with broad powers to manage the conduct of proceedings, including the ability to override or disregard any private procedural arrangement that would compromise fairness, efficiency, or legal certainty.

Moreover, the subject-matter-specific limitations on party autonomy – such as those governing consumer or employment disputes – are not incidental but derive directly from the constitutional obligation to protect vulnerable parties. This is reflected in special legal safeguards that prevent parties from circumventing protective procedural provisions through contractual means. In such settings, public interest and the structural imbalance between the parties justify additional restrictions on party autonomy, including limitations on jurisdiction clauses and enforceability of procedural agreements. Together, these doctrinal foundations reinforce a procedural system where state authority and judicial oversight prevail over contractual freedom in the shaping of litigation.

3 Shifting attitudes towards procedural contracts

Since the re-codification of Hungarian civil procedure in 2018, the new CPC has introduced a clear shift in the procedural structure, placing greater emphasis on the parties' responsibility to present their case. Under the new framework, the burden of asserting facts, presenting legal arguments, and submitting evidence rests primarily with the parties. Courts are now strictly bound by the claims, facts, and evidence submitted by the litigants, and may not go beyond what has been brought before them. This marks a deliberate move toward strengthening the principle of party presentation *(állítási és bizonyítási kötelezettség)*, aligning with the broader objective of enhancing procedural discipline and predictability.

However, despite this increased responsibility on the parties, the scope of procedural autonomy remains narrowly defined, much like under the previous CPC. While parties are expected to manage the substantive content of their case, they have little influence over the procedural structure of the litigation. Procedural rules continue to be mandatory and court-controlled, with limited opportunities for party agreements to alter deadlines, procedural steps, or other aspects of case management. Thus, while the new CPC reinforces the parties'

[35] Varga, Éless, *Szakértői javaslat...* 33.

central role in presenting their case, it maintains the traditionally restrictive stance toward private procedural autonomy. One of the central objectives of the new CPC is to enhance the effectiveness and timeliness of judicial proceedings. This is achieved through strict procedural deadlines prescribed either by law or set individually by the court, alongside the application of sanctioning mechanisms.

Under the CPC, the general rule is that parties must present all claims, factual allegations, legal arguments, and supporting evidence at the earliest possible stage of the proceedings. Any deviation from this duty – whether through delay, procedural gamesmanship, or strategic withholding of information – is subject to the above-mentioned sanctions. This reflects a clear shift from the more party-driven adversarial approach toward a strongly inquisitorial model, where the court plays an active and supervisory role in maintaining procedural discipline.

This trend toward tight procedural control was further reinforced in March 2020, during the first wave of the COVID-19 pandemic, when the Hungarian government introduced temporary procedural rules aimed at ensuring continuity of judicial proceedings while facilitating social distancing. These emergency measures had the practical effect of further limiting party autonomy: in-person hearings and public access to proceedings were largely replaced by document-based adjudication, and court hearings could not be conducted in person, even if both parties jointly requested it. While the emergency rules theoretically allowed for remote hearings via telecommunication tools, the lack of technical infrastructure in most Hungarian courts meant that such hearings remained rare and largely unimplemented. As a result, many cases were either decided solely on the basis of written submissions or experienced significant delays, pending the relaxation of pandemic-related restrictions.

The combined effect of these developments has been a further centralization of procedural control in the hands of the judiciary, a narrowing of party influence over the conduct of proceedings, and a reaffirmation of procedural efficiency and judicial management as core pillars of the modern Hungarian civil process.

IV Conclusion

This paper demonstrates that while Hungarian civil procedure law nominally allows for procedural contracts, their practical enforceability remains highly limited. Rooted in a public-law framework and governed by the CPC, Hungarian litigation is primarily court-controlled, offering only narrow windows for party autonomy. Choice of court clauses represent the only truly enforceable procedural agreements, and even these are subject to significant restrictions – particularly in consumer and employment disputes. Other forms of procedural contracts, including agreements on evidentiary rules, hearing formats, or cost allocation, may be valid in form but lack binding effect and judicial enforceability.

Despite the CPC's shift toward emphasizing party responsibility for case presentation, courts retain control over procedural structure, deadlines, and enforcement mechanisms. Limited exceptions – such as mediation settlements or class action agreements – are tightly regulated by statute and serve more to supplement than to displace judicial authority. Constitutional guarantees of due process and judicial oversight further constrain procedural flexibility, especially to protect structurally weaker parties. In sum, while Hungarian civil procedure reflects a modest evolution toward procedural responsibility, it remains fundamentally resistant to contractualization, prioritizing judicial control, legal certainty, and procedural fairness over party-driven litigation design.

EU case law widens party autonomy at the jurisdictional gateway, yet keeps robust public-law guardrails around interim protection, fair-trial rights and cost proportionality. For Hungary, these developments do not overturn the CPC's court-centred model, but they map the safe corridors where procedural contracting is legally meaningful (forum selection; cost-sharing in settlements; carefully drafted, non-AGB proof agreements) and where it is structurally limited (core evidence assessment; interim measures; blanket appeal waivers).

What is foreseen is that, although the prevailing judicial attitude and legal framework are not likely to shift dramatically in the near future – given their deep roots in the logic of the civil law tradition – the Hungarian legislator has taken a cautious step toward expanding procedural autonomy. In a recent legislative package submitted by the government,[36] an amendment to the Civil Procedure Code proposes the introduction of a new type of lawsuit: the simplified civil procedure *(egyszerűsített polgári per).* This form of litigation would be available only upon the parties' prior written agreement and aims to streamline contentious procedures in specific cases. Notably, it excludes disputes involving personal status, employment governed by Section 508(1) CPC, and consumer relationships. The simplified procedure entails several significant departures from the general rules: it requires mandatory legal representation, eliminates the bifurcation between preparatory and substantive phases, prohibits procedural acts such as counterclaims, joinders, or in-person hearings, and restricts evidentiary means to written and expert evidence only. Moreover, the court must proceed expeditiously, with statutory deadlines as short as eight days for certain procedural actions. Although this new model preserves the court's overarching control and limits its applicability to clearly defined legal relationships, it reflects a novel legislative willingness to acknowledge and operationalise party agreement as a procedural trigger. Should it be enacted and implemented effectively, the *egyszerűsített polgári per* may pave the way for a gradual reevaluation of the rigid dichotomy between public-law procedure and private autonomy within Hungarian civil litigation.

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[36] Bill no. T/11917., submitted on 13 May 2025.