

Analysis of the Material Scope of Substantive Finality Based on the Hungarian Codes of Civil Procedure

Abstract

The regulation of finality is based on the fact that the main purpose of any procedural law, whether at domestic or international level, is to strive for finality; namely that courts decide on the dispute brought to them finally, thus ensuring the legally regulated order of social relations. That is, the need for finality is the common core of the procedural law of each country.

Finality necessarily incorporates the tension that every legal system (and its constituent civil procedural law) has to face: the fact that the legislator cannot aim for the facts reflected in the final judgment at the end of the proceedings to be the same as the actual historical facts.

Instead, the state may commit itself to ensuring that claimants have the right to a fair trial.

This task necessarily implies that the State must establish a procedural order, in which even the inability to establish the facts (as the case may be) may not prevent the adoption of a substantive decision. This is most manifest in the standard of the burden of proof and substantive finality.

In my study, I will search the material scope of finality with regard to judgments dismissing or upholding the action.

Keywords: finality, substantive finality, right enforced by an action, judgments dismissing the action, judgments upholding the action

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I The Concept of Substantive Finality in the Aspect of Public Law and Constitutional Law

The regulation of finality is based on the fact that the main purpose of any procedural law, whether at domestic or international level, is to strive for finality; namely that courts decide on the dispute brought to them finally, thus ensuring the legally regulated order of social relations. That is, the need for finality is the common core of the procedural law of each country.

Finality necessarily incorporates the tension that every legal system (and its constituent civil procedural law) has to face: the fact that the legislator cannot aim for the facts reflected in the final judgment at the end of the proceedings to be the same as the actual historical facts. In civil lawsuits, the principles of disposition and trial prevail; in other words, what facts are presented and what motion for taking evidence is made depend on the will of the parties. In view of the fact that, in a civil procedure, there is only a very limited scope wherein the court acts *ex officio*, there is no legal possibility for the court to ‘investigate’ facts that the parties do not intend to present.

Instead, the state may commit itself to ensuring that claimants have the right to a *fair trial*. This is a requirement that appears internationally and globally in Article 6 para (1) of the Rome Convention,¹ Article 47 para (1) of the Charter of Fundamental Rights of the European Union, and Article XXVIII para (1) of the Fundamental Law of Hungary.

In addition, the content of a fair procedure has been interpreted in several cases in the practice of the Hungarian Constitutional Court. Accordingly, the essence of the right to a fair trial is that

all the requirements detailed in the Constitution – the constitutionality, independence and impartiality of the court, that trials should be fair (using the specific wording of international conventions: *fair, équitement, in billiger Weise*) and public – serves this purpose; only by fulfilling these requirements may a decision on the merits be delivered that qualifies as constitutionally final and establishes a subjective right.²

The right to a fair trial enforced through *finality* is not only of significance in constitutional law and legal theory but also gives effect to legal certainty, and legal certainty, as one of the basic prerequisites for the rule of law, is in the fundamental interest of both natural and non-natural persons. Legal certainty and the right to a fair trial are also essential for the efficient

¹ Act XXXI of 1993 on the promulgation of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and the eight additional protocols thereto.

² Decision 7/2013. (III. 1) AB of the Constitutional Court of the Republic of Hungary, ABH 2013, 293–311.; Statement of Reasons [24] – with reference to Decision 39/1997. (VII. 1) AB of the Constitutional Court of the Republic of Hungary, ABH 1997, 263–281., also with identical content: Decision 6/1998. (III. 11) AB of the Constitutional Court of the Republic of Hungary, ABH 1998, 91–101; Decision 34/2014. (XI. 14) AB of the Constitutional Court of the Republic of Hungary, ABH 2014, 964–1063, Statement of reasons [142]; Decision 8/2015. (IV. 17) AB of the Constitutional Court of the Republic of Hungary, ABH 2015, 195–232, Statement of reasons [65].

functioning of a market economy, as it is also important for economic operators that their legal dispute, if any, is finally (!) and fairly settled within a reasonable time.

In addition to legal certainty, which is part of the rule of law, the institution of finality is also protected by the right to a fair trial.³ The right to a fair trial manifests itself not only in the formal guarantee of access to the courts, but also in the fulfilment of the safeguards through which the court may deliver a decision on the merits with the need for finality.⁴

Civil procedure serves two purposes, to enforce specific individual subjective rights and to provide the objective, abstract protection of rights; that is, to protect the legal institutions defined by the substantive legislation. The individual level ensures the protection of subjective rights rooted in private law, the possibility to settle disputes related to them in a definitive way, and thus the right of recourse to courts [Article XXVIII (1) of the Fundamental Law]. The implementation of the objective, abstract protection of rights, as an aim, is already ensured by the existence of civil procedure, since the awareness of enforceability motivates compliance while deterring any infringement.⁵

Ideally, these two purposes (functions) are accomplished at the same time and affect each other; therefore, civil procedure must establish a procedure that guarantees the fulfilment of both functions. However, there is necessarily a conflict between these two, since, for the reasons explained above, the State cannot, through its courts, assume responsibility for ensuring that the facts reflected in the final judgment correspond to the actual historical facts of the case.

In contrast, the ultimate requirement of legal certainty stemming from the rule of law is the final settlement of disputes and thus guaranteeing legal peace. ‘Substantial justice⁶ and the requirement of legal certainty are reconciled by the institution of finality.’⁷

³ Decision 3027/2018. (II. 6) AB of the Constitutional Court of the Republic of Hungary, ABH 2018, 127–145, Statement of Reasons [59] – with reference to Decision 30/2014. (IX. 30.) AB of the Constitutional Court of the Republic of Hungary, ABH 2014, 863–908, Statement of reasons [81].

⁴ Varga István, ‘Preambulum’ in Varga István (ed), *A polgári perrendtartás és a kapcsolódó jogszabályok kommentárja (Commentary on the Code of Civil Procedure and Related Legislation)* (HVG-ORAC 2018, Budapest) 4, paragraph 6.

⁵ Ibid, 6, paragraph 10.

⁶ In this dissertation, I do not intend to deal in detail with the pair of concepts of substantial truth and formal truth and their significance. This may be set as a task for an independent dissertation. For details on this issue, see in detail: Plósz Sándor, ‘A keresetjogról’ (On the capacity to bring proceedings) (1876) 5 Magyar Igazságügy; Kiss Daisy, ‘A fair eljárás’ (A fair procedure) in Papp Zsuzsanna (ed), *A magyar polgári eljárásjog a kilencvenes években (Hungarian Civil Procedural Law in the 1990s)* (ELTE Eötvös Kiadó 2003, Budapest); Kengyel Miklós, *Bírói hatalom és a felek rendelkezési joga a polgári perben (Judicial Power and the Parties’ Rights of Disposal in Civil Litigation)* (Academic Doctoral Dissertation 2003, Pécs); Gadó Gábor ‘Az eljárási igazságosság a polgári perben’ (Procedural Justice in Civil Procedure) (2000) 1 Magyar Jog 18–43; Czoboly Gergely, *A perelhúzás megakadályozásának eljárási eszközei (Procedural Tools for Preventing Delays in litigation)* (2013 Pécs); Virág Csaba ‘Az alaki igazságosságot előtérbe helyező fair eljárás nem zárja ki a jó és helyes döntés lehetőségét’ (A Fair Trial that Promotes Formal Justice does not Exclude the Possibility of a Good and Correct Decision) in Varga István (ed), *Egy új polgári perrendtartás alapjai (Foundations of a New Code of Civil Procedure)* (HVG-ORAC 2014, Budapest) 362–376.

⁷ Decision 5/1999. (III. 31.) AB of the Constitutional Court of the Republic of Hungary, ABH 1999, 75–89, – referring to Decision 9/1992. (I. 30) AB of the Constitutional Court of the Republic of Hungary, ABH 1992, 59–71.

It follows from the above that there is a conflict between these two functions, for which the Code of Civil Procedure must propose a resolution.

From this, it is reasonable to conclude that the State must develop a civil procedure and, within that framework, a rule on finality that provides for a fair compromise in order to settle disputes with the intention of finality. This requirement includes the establishment of a procedural order that, having regard to the fundamental right to a fair hearing within a reasonable time [Article XXVIII (1) of the Fundamental Law], allows the parties to make their statements of law, claims, statements of fact and motions for evidence-taking.

In this context, it must be borne in mind that

civil justice must be based on reality. However, this is not a question of procedural law, but follows from the hypothesis of a substantive civil law rule: the hypothesis of a civil law rule governing a subjective right defines the legal facts which open, change or terminate the subjective right. Given that the civil procedural law serves the purpose of enforcing substantive legislation, any legal system that separates the basis of judgment from reality, that is to say from the facts, is defective.⁸

At the same time, however, even if the actual facts cannot be established for any reason, the Code of Civil Procedure must guarantee that each dispute will calm down (to be closed with final effect) and that legal peace may be resumed.

The case law of the Constitutional Court also confirms this interpretation:

The precise definition of the institution of finality as formal and substantive finality is a constitutional requirement as part of the rule of law. [...] Respect for finality serves the security of the entire legal order. [...] If the conditions for reaching finality are satisfied, it will be effective irrespective of the correctness of the decision in terms of its content.⁹

Accordingly, it may be stated that the ultimate aim of a civil action must be to ensure the protection of rights. From the plaintiff's point of view, protection of rights appears against the defendant who infringes the law while, from the defendant's point of view, it is against the plaintiff who is suing baselessly.¹⁰

⁸ Éless Tamás, 'A tárgyalás szerkezete, perfelvétel, perhatékonyság' (Structure of Trial, Preparation of Trial, Efficiency of Litigation) (2017) 5 *Közjegyzők Közlönye* 17.

⁹ Decision 9/1992. (I. 30) AB of the Constitutional Court of the Republic of Hungary, ABH 1992, 59–71, – Following the entry into force of the Fundamental Law, the same principle was confirmed by Decision 30/2014. (IX. 30.) AB of the Constitutional Court of the Republic of Hungary, ABH 2014, 863–908, Statement of reasons [76].

¹⁰ Éless (n 8) 13.

This task necessarily implies that the State must establish a procedural order, in which even the inability to establish the facts (as the case may be) may not prevent the adoption of a substantive decision. This is most manifest in the standard of the burden of proof.

Final settlement also requires the regulation of finality (substantive finality). The institution of the burden of proof guarantees the absolute establishment of the finality and the legal effects connected with it (that is to say, the definitive nature of the substantial finality effect).¹¹

In addition to the burden of proof, finality has a close correlation with the concept of the subject matter of the action, which gives the essence and characteristic feature of procedural law, since finality (effect of substantive finality) means the sameness of parties-facts-rights. The notions of law and statements of facts are decisively influenced by the concept of the subject matter of the action (monomial, binominal or trinomial), which in turn influences the definitions of the amendment of the action or the joinder of claims. With regard to the material scope of finality (effect of substantive finality), defining statements of law and statements of fact is unavoidable.

The scope of the most important legal effect, the scope of the effect of substantive finality in the Hungarian Code of Civil Procedure, is also related to the changed procedural law concept of set-off.

However, the notions of finality and the subject matter of the action is also an unavoidable legal institution, not only in the procedural law of Hungary, but also in the German and Swiss codes of civil procedure that played a decisive role in the Hungarian codification. Indeed, the German procedural law literature has consistently held that the notion of the subject matter of the action also determines the interpretation of the amendment of the action, the joinder of claims and the effect of substantive finality.

Furthermore, the intention to settle disputes with a view to bringing them to an end is also apparent at EU level, as the European Court of Justice (ECJ) has, in several judgments, sought to define the concept of subject matter of the claim that applies at EU level.

Following the above summary, it may be concluded that finality is one of the most important legal institutions of civil procedural law, the basis of the legal order [BH 2015. 14]. Namely, the regulation of finality fundamentally determines the regulations governing civil contentious and non-contentious proceedings.

In my essay, I use the term 'finality' to refer in general to finality, without distinguishing between formal and substantive finality. The term of the effect of finality is applied when the legal effect specifically related to the (formal or substantive) finality is relevant.

The precise definition of the institution of finality as formal and substantive finality is a constitutional requirement, as part of the rule of law. Respect for the finality that occurred subject to the remedies provided for in accordance with the Constitution serves the security of the legal system as a whole. (Constitutional Court Decision No. 9/1992. (I. 30).

¹¹ Varga 'Preambulum' (n 4) 6–7, paragraphs 10 to 12.

The above cited decision of the Constitutional Court also points out that finality and its precise definition is a fundamental guarantee element in civil procedural law. In addition to this definition, the material scope of the effect of substantive finality, i.e. which parts and provisions of the individual decisions may become final, is also of key importance.

II Finality in Hungarian Legal Environment

Before the analysis of the material scope of substantive finality, it is practical to give an overview of the Hungarian legal framework, which leads to the following main conclusions:

1. Only judgments and decisions that have the effect of a judgment may have the effect of substantive finality. Orders may have it only in the specific case¹² where that order is the only lawful decision; that is, any judgment that may be rendered would have purely pretence finality.

2. With regard to the concept of the effect of substantive finality, it should be noted that, in my view, it does not include enforceability, but this is a different legal effect, which in most cases pertains to judgments with an effect of substantive finality.

3. Under the temporal scope of the 1952 Pp.,¹³ there was a lively debate in the legal literature on the meaning of the concepts of cause of action-title-right enforced. Section 7 para (1) item 11. of the Pp.¹⁴ provides some normative guidance in this debate, with the proviso that, in my opinion, the statutory definition is not entirely correct.

According to the 2016 Code of Civil Procedure, the right enforced by an action is the subjective right; the enforcement is ensured by the law. The grammatical meaning of this wording is positive (enforcement is ensured), i.e. it assumes that if the plaintiff (in the case of a counterclaim, the defendant) is successful, the court will decide according to his claim, because this is the only way to ensure enforcement. Conversely, the plaintiff may have a subjective right granted by the objective legislation (such as damages), but its enforcement will not be successful, and the court will dismiss the action.

For all these reasons, and also from a dogmatic point of view, it would have been more fortunate if the Code of Civil Procedure did not contain a specific interpretative provision or definition in connection with the term 'right enforced by an action'.

However, if the legislator decides that a normative definition of this term is warranted, then, in my view, in light of the above, Section 7 para (1) item 11. of the Pp. would need to be reasonably drafted as that the right enforced through an action is the subjective right, for which *the possibility* of enforcement is provided by the substantive legislation. By including the word 'possibility', the law would not say anything more than something occurring in numerous cases, namely that the plaintiff has a right granted by substantive legislation (such as for damages), so it is possible to enforce it, but it does not necessarily follow that it will be

¹² I deliberately used the term 'case' as there is no litigation in these cases, and no claim has been communicated.

¹³ Act III of 1952 on the Code of Civil Procedure.

¹⁴ Act CXXX of 2016 on the Code of Civil Procedure.

successful, since it is also possible that the claim may be dismissed by the court, for example because of an objection on the ground of statute of limitation.

Based on the above, I would consider reasonable the following wording for Section 7 para (1) item 11. of the Pp: '*right enforced by an action*: means a subjective right, the enforcement *possibility* of which is secured by a provision of substantive legislation'.

With this in mind – *de lege ferenda* –, I have tried to create my own concept of title, i.e. it is a substantive concept, which may be interpreted in the system of substantive law. From a procedural law point of view, this means that the title appears in procedural law terms in the statements and statements of law. The rights to be enforced may be identified and defined through making statements of law, also in view of Section 7 para (1) item 8. of the Pp.

4. In my opinion, in the Pp.'s system, it is necessary to consider whether the legal literature reference to the subject of the action being 'the right enforced, which may be a substantive law claim or another right or a legal relationship' will continue to prevail.¹⁵ To be specific, the legal relationship is not equal to the right enforced;¹⁶ i.e. the subject of an action cannot be a legal relationship, since the action stems from the legal relationship [cf. Pp., Section 173 para (1)].

5. The effect of substantive finality, its concept and its material scope are largely determined by the fact that, as of 1 January 2018, the Hungarian system of the law of civil procedure follows the trinomial concept of subject matter of the action (statement of law, application, statement of fact).

6. The notion of a trinomial subject matter of the action not only entails a substantive change in connection with the material scope of the effect of substantive finality, but in parallel the legislator changed the concept of an amendment of the action (amendment of the counterclaim) [cf. Pp., Section 7 para (1) item 4.¹⁷ and item 12.¹⁸].

¹⁵ Kiss Daisy, *A polgári per titkai – Kérdések és válaszok a polgári perrendtartás Általános Részéből (Secrets of civil procedure – Questions and Answers from the General Part of the Code of Civil Procedure)* (2nd edn, HVG-ORAC 2009, Budapest) 418, with identical content: Kengyel Miklós 'A felek és más perbeli személyek' (The parties and other litigants) in Németh János, Kiss Daisy (eds), *A polgári perrendtartás magyarázata (Explanation of the Code of Civil Procedure)* (Complex 2007, Budapest) 488.

¹⁶ Dr. Mátyás Parlagi's lecture on 20 February 2018.

¹⁷ 4. 'change of defence' shall mean where the party – in connection with his defence, including the defense against a counterclaim and set-off,

a) offers different or further facts relative to his factual claims previously presented,

b) presents different or further substantive objections and/or legal arguments relative to his previous legal allegations or legal arguments, or

c) has withdrawn his statement issued in acknowledgment of the factual claim, legal allegation, application in part or in whole, or not to contest them, including if an uncontested or unchallenged factual claim, legal allegation or application is later contested.

¹⁸ 12. 'change of action' shall mean where the party – in connection with his action – including a counterclaim and set-off,

a) offers different or further facts relative to his factual claims previously presented,

b) presents different or further pursued rights and/or legal arguments relative to his previous legal allegations or legal arguments, or

c) changes the amount or the contents of the application, and/or any part thereof, or submits further applications relative to his claims.

7. It is relevant that Section 342 para (3) clearly establishes the principle of title limitation, which in turn restricts the material scope of the effect of substantive finality, since, if the plaintiff invokes a different statement of law compared to the one invoked in the first case then Section 360 para (1) of the Pp. is no longer applicable, because the sameness of rights cannot be established in the two cases.

8. The conceptual innovation, which clearly applies to set-off decided on in the merit, also substantially affects the effect of substantive finality. In addition to content criteria, its significance is also relevant from a formal approach.

Thus, the submission of set-off, in view of Section 242 para (1) of the Pp., does not qualify as initiation of an independent procedure, in that the submission of a document containing set-off is not subject to court fee payment. On the set-off – due to its application nature [Section 342 para (1) of the Pp.] – the court must rule in all cases in the operative part of its judgment. Given the substantive law and procedural law specificities of set-off, a conditional set-off may not be interpreted (a set-off is dismissed in the operative part, not in the statement of reasons).

9. The Hungarian legal literature has always and still emphasises the formal approach, namely which structural element of the judgment is covered by the effect of substantive finality. With this in mind, I tried to analyse – hereinafter – the individual decisions of first instance, which have the ability to produce a substantive finality effect, and their structural units, and to draw conclusions.¹⁹

1 Judgments Dismissing the Action

In this case, the operative part shall contain the following statement: “The court dismisses the action.”²⁰

Because of the negative content of the operative part, both the relevant facts (statements of fact) and the statements of law must necessarily be contained only in the statement of reasons: the statements of fact are in the factual part of the statement of reasons and the statements of law are in the legal arguments.

It should be noted, however, that this does not mean that the factual and legal argument parts of the statement of reasons may be capable of producing the effect of substantive finality in their entirety; the material scope of the effect of substantive finality may only be interpreted in connection with the statements of fact and law that are relevant in terms of the right enforced.

¹⁹ Regarding proceedings of second instance and review procedures see: Balázs István Völcsey, *Comparative analysis of the material scope of substantive finality, based on the Hungarian, German and Swiss codes of civil procedure* (ELTE Eötvös Kiadó 2021, Budapest).

²⁰ To this effect, see the judgments of the Fővárosi Törvényszék 8.G.43.185/2015/19.; Fővárosi Bíróság P.20.136/2011/17.; Debreceni Törvényszék P.21.678/2015/8.; Pesti Központi Kerületi Bíróság 24.P.85.045/2008/47.; Veszprémi Törvényszék 1.G.40.107/2010/46.; Veszprémi Törvényszék 1.P.20.505/2012/10.; Miskolci Törvényszék P.22.942/2015/12.; Tatabányai Törvényszék 9.G.40.001/2014/51.; Szigetvári Járásbíróság 3.P.20.259/2013/27.

2 Judgments Upholding the Action

a) In the case of an the judgment granting the claim, the operative part of the judgment contains an order to the defendant (“The court orders the defendant to pay the applicant HUF 5,000,000 within 15 days”), without specifying the facts and title serving as a basis for condemnation).²¹ That is, the statements of fact and statements of law relevant to the later litigation (for the purposes of establishing the sameness of facts and rights) are not identifiable on the basis of the operative part alone.

In my view, however, a restrictive interpretation should be adopted in this regard; in other words, the effect of substantive finality may only cover the most necessary elements of the facts and the legal arguments, in order to avoid unjustified factual elements or legal conclusions having the effect of substantive finality.

b) In the case of an *action for declaration*, it is necessary to distinguish the *sui generis* declaration *petitum* from the content of Section 172 para (3) of the Pp.

A glaring example of a *sui generis* declaration claim is:²²

ba) declaration of the invalidity of a contract [Civil Code,²³ Section 6:108 para (2)],

bb) in the context of personality rights cases, the declaration of the infringement by the court [Civil Code, Section 2:51 para (1) item *a)*] *petitum* [BH 2018. 332.], and

bc) the declaration of the invalidity of a will (Civil Code, Section 7:37).

(ba) The operative part of a judgment declaring a contract invalid states that the (specific provision of a) contract concluded under the number XY *or on the* date ZV is²⁴ invalid.²⁵

It follows from this that, apart from the operative part, the legal justification of the statement of reasons (which is necessarily linked to that operative part) may have material scope with the effect of substantive finality.

²¹ Veszprémi Törvényszék 1.P. 20.526/2014/47.; Fővárosi Bíróság P.28.493/2005/11.; Miskolci Törvényszék 21.G.40.084/2013/13.; Fővárosi Bíróság 22.G.41.768/2009/18.; Veszprémi Törvényszék 1.G.40.022/2013/17.; Pesti Központi Kerületi Bíróság 10.P. 88.616/2011/114.; Tatabányai Törvényszék 4.P.21.579/2011/4.; Miskolci Törvényszék P.20.787/2012/75.; Pesti Központi Kerületi Bíróság 2.P.93.919/2013/11.; Pécsi Városi Bíróság P.20.707/2007/11.; Pécsi Törvényszék P.20.289/2015/17.; Fővárosi Bíróság 11.G.41.774/2007/5.; Pesti Központi Kerületi Bíróság 41.P.90.886/2006/49.

²² A number of additional *sui generis* declaration *petita* are known in the legal system (e.g. copyright cases); in this dissertation I highlight only the examples occurring the most frequently in practice.

²³ Act V of 2013 on the Civil Code.

²⁴ This is included in the operative part only in the case of the declaration of partial invalidity.

²⁵ So for example: Budapest Környéki Törvényszék 25.P.25.224/2010/27.; Zalaegerszegi Törvényszék 4.P.20.094/2014/38. Fővárosi Törvényszék 30.G.41.702/2015/33.; Győr-Moson-Sopron Megyei Bíróság 16.P.20725/2006/57.; Szegedi Városi Bíróság 26.P.21.742/2007/14.; Fővárosi Törvényszék P.25.603/2010/20.; Tatabányai Törvényszék 20.P.20.645/2011/12.; Pesti Központi Kerületi Bíróság 17.P.91.935/2013/9.; Szegedi Törvényszék 7.G.40.179/2012/23.; Hajdú-Bihar-Megyei Bíróság 7.G.40.162/2005/21.; Fővárosi Törvényszék 10.G.43230/2013/13.

A similar approach is followed in the case of claims for annulment of a general meeting resolution in condominium lawsuits (BH 2016. 15). As such, the above may also be relevant *mutatis mutandis* in these cases.

(*bb*) If the plaintiff seeks only the declaration of the violation of his personality rights, the court will declare in the operative part that the defendant has violated the plaintiff's particular personality right(s) on a specified date, by a specified course of action.²⁶

This content limitation of the operative part follows partly from Section 172 para (3) of the Pp., and partly from the title limitation set out in Section 342 para (3); that is, the court may decide on a personality right infringement claimed by the plaintiff.

It also follows that, in this case, the operative part clearly sets out both the factual and cause of action, that is to say, the scope of the effect of substantive finality may only (!) extend to the operative part and none of the elements of the statement of reasons.

(*bc*) In the event of the declaration of a will's invalidity, under Section 7:37 para (3) of the Civil Code, the invalidity or ineffectiveness of the will may be declared on the basis of the right enforced in the challenge and to the benefit of the challenging person.

This means that the operative part of the upholding judgment contains, in addition to the particulars necessary for the unequivocal identification of the will, also the reason for invalidity(!).²⁷ In other words, not only the factual basis but also the cause of action may be identified solely from the operative part.

Again, in my view, we must conclude that only the operative part may have the effect of substantive finality, and none of the elements of the statement of reasons.

However, in addition to the *sui generis* declaration claims, there are *petita*, for which the existence of conditions set out in Section 172 para (3) of the Pp. must be assessed. Thus, for example, there is no legal impediment to a party seeking the declaration of invalidity of an already terminated contract (BH 2013. 221); in the same way, the declaration of the non-establishment of a contract may also be requested [BH 2012. 294].

With regard to these types of lawsuits, the stricter requirements detailed above for the operative part are not generally identifiable and, consequently, no general conclusions may be drawn for the material scope.

²⁶ Miskolci Törvényszék P.22.643/2011/5.; Fővárosi Törvényszék 33.P.23.274/2016/6.; Kaposvári Törvényszék 8.P.21.562/2015/9.; Budapest Környéki Törvényszék 20.P.20.291/2015/72.; Fővárosi Törvényszék P.20.723/2015/6.; Fővárosi Törvényszék P.25.003/2014/6.; Fővárosi Törvényszék P.24.324/2015/4.; Fővárosi Törvényszék P.20.229/2015/3.; Fővárosi Törvényszék P.24.933/2015/13.; Miskolci Törvényszék P.22.113/2015/15.

²⁷ Fővárosi Bíróság P.27.299/2009/16.; Borsod-Abaúj-Zemplén Megyei Bíróság 23.P.21.943/2009/37.; Kiskunhalasi Városi Bíróság P.20.743/2010/8., Győri Városi Bíróság P.20.541/2010/10.; Fővárosi Törvényszék P.25.524/2010/32.; Fővárosi Bíróság P.24.561/2006/77.

c) A classic example of claim for constituting a right are claims submitted in actions related to personal status (Section 429 of the Pp.). The essence of the right constitution judgments adopted at the end of these lawsuits is that 'the creation, modification or termination of a legal relationship or status shall constitute the establishing degree of the judgment [...] that is, the judgment of the court shall be a fact that creates, amend or terminates a right'.²⁸

A common feature of these cases is that the judgment clearly defines the factual basis and the cause of action. For example, in paternity lawsuits, the court declares that the child of a specified mother registered on a given day by a particular registrar under a registration number, with a specified name, originates from the specific defendant (personal data). In an action brought to settle the exercise of parental responsibility, the operative part of the judgment contains the name of the child, for which one of the parties is authorised by the court to exercise parental responsibility.²⁹

In my view, it follows from this that, in the case of a constitutive *petitum*, only the *operative part* may become final, but not the statement of reasons.

III Summary

It should be highlighted that the interpretation of the substantive force has appeared in the Hungarian legal literature more emphatically which, in connection with its material scope, has definitely aimed to find the optimal solution between the operative part and statement of reasons.³⁰

In my opinion, this interpretation can involve, in countless cases, practical solutions for law enforcement.

Of course, this does not mean that the Hungarian legal literature and legal practice did not deal with the material scope of substantive finality in content. In this study, this issue is not discussed for reasons of length.

As such, on this basis, it can be concluded that a uniform definition of substantive finality that may be applied to all judgments cannot be given, but it can be argued that, in certain cases, certain parts of the statement of reasons also have an equivalent effect.

²⁸ Bajory Pál, 'A jogalakító ítéletek' [Judgment constituting a right] (1978) 9 Jogtudományi Közlöny 540.

²⁹ Budai Központi Kerületi Bíróság P.30.971/2014/41.

³⁰ From this mind – partly – different view represents the German civil procedure. In detail: Völckey (n 19).