

IMPUTABILITY IN THE JUDICIAL ENFORCEMENT OF CONTACT ORDERS

The First Five Years of the Hungarian Model

doi.org/10.24193/SUBBiur.71(2026).1.141-165[↗] · publicat la: 27 sept. 2026

Barbara GÖNCZI*

Abstract. The article examines the role of imputability in the judicial enforcement of contact orders during the first five years of Hungary's reformed enforcement system. Following the transfer of jurisdiction from the guardianship authorities to the courts on 1 March 2020, the enforcement of contact orders became part of non-contentious civil proceedings, introducing significant changes to both the procedural framework and the substantive conditions of enforcement. The paper analyses the transition from the former fault-based approach to the objective standard of imputability, explores its doctrinal foundations, and evaluates its application in judicial practice. Drawing on legal analysis and court file research conducted at the Debrecen District Court, the study assesses whether the new model has achieved its intended objectives of enhancing legal certainty, procedural efficiency, and the protection of the best interests of the child.

Keywords: imputability, contact order enforcement, non-contentious civil proceedings, judicial enforcement, fault-based liability, best interests of the child, Hungarian family law reform, Debrecen District Court

* Barbara GÖNCZI: Marton Doctoral School of Legal Studies, Hungary; e-mail: barbara.gonczi1@gmail.com[↗]; ORCID: 0009-0008-5116-2778[↗].

All copyright in the work remains with the author Barbara GÖNCZI, who makes it available to the public under CC BY-NC-ND 4.0, creativecommons.org/licenses/by-nc-nd/4.0/[↗].

CONTENTS

Introduction	142
I imputability in the enforcement of contact orders ·	146
A The doctrinal interpretation of imputability	148
B imputability in judicial practice	151
II imputability during the ‘state of danger’	154
A New Dimensions of the best interests of the child during the pandemic	155
B Constitutional balancing during the pandemic: the best interests of the child in the Constitutional court’s COVID–19 jurisprudence	157
III Concluding remarks	161
Bibliography	164

INTRODUCTION

Ensuring contact between the child and the non-resident parent constitutes one of the most sensitive and complex areas of family law, combining elements of fundamental rights protection, child welfare, and procedural law. The right to maintain contact is not merely a parental entitlement but also a fundamental interest of the child, closely linked to the child’s identity, emotional security, and personal development.

The importance of maintaining the relationship between the child and both parents is recognized by both international human rights instruments and domestic legal systems. Article 8 of the European Convention on Human Rights, the United Nations Convention on the Rights of the Child, as well as the relevant provisions of the Hungarian Fundamental Law and

Act V of 2013 on the Civil Code (hereinafter: 'Civil Code'), are all based on the principle that, generally, the best interests of the child require the preservation of regular contact with both parents.

At the same time, contact arrangements frequently become a source of ongoing parental conflict, which raises the question of the effective enforcement of contact orders. A significant reform was introduced into Hungarian law on 1 March 2020, when jurisdiction over the enforcement of contact orders was transferred from the guardianship authorities to the courts. Prior to this reform, enforcement proceedings were governed by Government Decree No. 149/1997 (IX.10.) on guardianship authorities and child protection procedures ('Gyer.'). Under the current framework, proceedings for the enforcement of contact orders fall within the category of judicial non-contentious civil proceedings and are regulated by Act CXVIII of 2017 on the Rules Applicable in Non-Contentious Civil Proceedings and Certain Non-Contentious Judicial Proceedings ('Bpnt.').

Proceedings for the enforcement of contact orders occupy a specific position within the system of non-contentious civil procedures. Their purpose extends beyond the formal enforcement of judicial or administrative decisions and ultimately aims at preserving the actual relationship between the child and the non-resident parent. Accordingly, courts are required to strike a particularly sensitive balance between the enforcement of final decisions, the protection of the best interests of the child, and the avoidance of further escalation of parental conflict.

One of the defining characteristics of the enforcement procedure is that courts operate under strict procedural deadlines, while the application may only be submitted under specific statutory conditions. In addition, the court must assess whether the failure of contact is attributable to the conduct of the respondent parent. The legal framework allows the application

of several enforcement measures, including the imposition of fines, the involvement of the police, or the initiation of proceedings before the guardianship authority.

Within this framework, the concept of imputability has become a central element of judicial decision-making. At the same time, its precise content and doctrinal position remain uncertain and continue to raise significant interpretative difficulties. The present study therefore examines how imputability should be understood in proceedings for the enforcement of contact orders and whether the current legal framework supports the recognition of a distinct concept of ‘family law imputability.’

The paper further analyses the relationship between imputability and the previously applied concept of subjective fault under the former administrative enforcement regime, as well as its connection to the broader concept of fault in civil law. Particular attention is devoted to the question of how courts determine imputability in practice and what role is played by the principle of the best interests of the child in this assessment. The study also addresses the impact of the COVID-19 pandemic, which fundamentally challenged the traditional standards of imputability and forced courts to balance contact rights against public health considerations and competing fundamental rights.

Methodologically, the paper combines doctrinal analysis with an examination of judicial practice. In addition to the analysis of legislation and constitutional case law, the research is based on court file examination conducted at the Debrecen District Court in proceedings concerning the enforcement of contact orders following the transfer of jurisdiction to the courts in 2020. The empirical research focused primarily on recurring patterns of judicial reasoning related to imputability, parental cooperation, indirect obstruction of contact, and the practical difficulties arising in high-conflict cases. The case numbers of the court proceedings referred to in this study are not indicated

individually in the text. The reasons for this are, on the one hand, the heightened data-protection characteristics of cases involving minors that contain personal data and sensitive life situations and, on the other hand, the fact that the analysis is not directed at the reconstruction of individual cases but at the exploration of patterns in judicial practice. The non-individualisation of the case numbers therefore does not affect the verifiability of the sources, while at the same time ensuring the professional coherence and readability of the text.¹

The doctrinal section seeks to position imputability within the broader system of civil liability and to clarify its relationship to fault-based concepts traditionally applied in Hungarian private law. At the same time, the paper draws on empirical findings from court file research to explore how courts apply the standard of generally expected conduct in highly conflictual family situations.

Beyond the Hungarian legal context, the enforcement of contact orders represents a broader European challenge closely connected to the effectiveness of family justice systems and the protection of children's fundamental rights. The growing number of high-conflict parental disputes across European

¹ Pk. 500705/2022; Pk. 503648/2023; Pk. 500926/2024; 58. Pk. 52104/2025; 58. Pk. 53134/2025; 58. Pk. 53135/2025; 84. Pk. 52890/2025; 84. Pk. 53002/2025; 84. Pk. 53137/2025; 84. Pk. 53138/2025; 84. Pk. 53331/2025; 84. Pk. 53422/2025; 84. Pk. 53601/2025; 84. Pk. 53602/2025; 84. Pk. 53675/2025; 84. Pk. 53676/2025; 84. Pk. 53759/2025; 85. Pk. 53278/2025; 85. Pk. 53484/2025; 85. Pk. 53641/2025; Pk. 50018/2025; Pk. 50054/2025; Pk. 50156/2025; Pk. 50157/2025; Pk. 50337/2025; Pk. 50415/2025; Pk. 50416/2025; Pk. 50417/2025; Pk. 50740/2025; Pk. 50741/2025; Pk. 50880/2025; Pk. 51058/2025; Pk. 51070/2025; Pk. 51071/2025; Pk. 51337/2025; Pk. 51503/2025; Pk. 51504/2025; Pk. 51666/2025; Pk. 51825/2025; Pk. 52035/2025; Pk. 52103/2025; Pk. 52126/2025; Pk. 52292/2025; Pk. 52399/2025; Pk. 52400/2025; Pk. 52582/2025; Pk. 52583/2025; Pk. 52584/2025; Pk. 52760/2025; Pk. 52835/2025; Pk. 52888/2025; Pk. 52889/2025; Pk. 52996/2025; Pk. 53269/2025; Pk. 53395/2025; Pk. 53727/2025; Pk. 53748/2025; Pk. 50023/2026.

jurisdictions increasingly raises questions concerning the limits of coercive enforcement, the role of judicial discretion, and the extent to which legal mechanisms can preserve meaningful parent–child relationships in situations of persistent family conflict.

The structure of the paper reflects this dual approach. The first part examines the doctrinal foundations of imputability and critically evaluates the theory of a distinct ‘family law imputability.’ The second part analyses judicial practice, focusing particularly on indirect forms of obstruction, the parental duty of cooperation, and the structural limitations of enforcement proceedings in recurrent high-conflict cases. Finally, the paper addresses the legal and constitutional dilemmas that emerged during the COVID-19 pandemic, regarding the interpretation of the best interests of the child and the proportionality of restrictions affecting contact rights.

I IMPUTABILITY IN THE ENFORCEMENT OF CONTACT ORDERS

The transfer of jurisdiction from guardianship authorities to courts did not merely introduce an institutional change in the enforcement of contact orders but also transformed the conceptual framework of liability applied in such proceedings. While the former administrative regime centred on the notion of subjective fault, the current judicial framework is based on the concept of imputability. This shift reflects a broader movement from a predominantly subjective assessment of parental conduct towards a more objective standard grounded in generally

expected behaviour.²

Under the previous guardianship system, the existence or absence of subjective fault had to be assessed individually in each case, considering the specific circumstances of the parties and their respective equitable interests.³ Neither legislation nor judicial practice provided a precise definition of the concept, leaving considerable discretion to the authorities responsible for enforcement. In practice, particular emphasis was placed on determining who failed to comply with the contact arrangement, for what reason, and whether the applicant was able to substantiate the alleged obstruction with appropriate evidence.⁴

The question of imputability therefore constitutes not merely a procedural requirement but a broader problem of legal responsibility. At the same time, it also determines the extent to which courts may intervene in parental conflicts and the means through which they may seek to secure the effective protection of the child's best interests. The concept occupies a central role in enforcement proceedings because it serves as the dividing line between parental conduct that is merely conflictual in nature and conduct that amounts to legally relevant obstruction capable of justifying judicial intervention.

2 BENCZE LÁSZLÓNÉ, Ilona CSÁNITZNÉ CSIKY, Ottó CSIKY: *A házasság megkötése, felbontása. A házastársi tartás [Marriage Formation and Dissolution; Spousal Maintenance]*, 1999., HVG-ORAC, Budapest, pp. 176–177.

3 Unpublished judicial professional background material, Point 25 (hereinafter: Professional Background Material).

4 Tímea BARZÓ: *A különélő szülő kapcsolattartási jogát ellehetetlenítő szülői magatartás polgári jogi és büntetőjogi jogkövetkezményei [Civil and Criminal Law Consequences of Parental Conduct Obstructing the Contact Rights of the Non-Resident Parent]*, Miskolci Jogi Szemle [Miskolc Law Review], 2019. Special Issue No. 2, Vol. 1, pp. 92.

A THE DOCTRINAL INTERPRETATION OF IMPUTABILITY

Compared to subjective fault, imputability constitutes a broader and more objective legal concept based on the standard of conduct generally expected in each situation.⁵ Rather than focusing exclusively on the personal capacities or intentions of the individual concerned, the concept establishes a normative benchmark applicable to participants in a legal relationship more generally. Within systems of civil liability, this reflects the gradual objectification of responsibility: the central issue is no longer what may personally be expected from the specific individual, but whether the conduct in question complies with the standard reasonably expected from members of the community under similar circumstances.⁶

Nevertheless, an alternative approach has emerged within Hungarian family law doctrine, according to which family law relationships require the application of a distinct concept of ‘family law imputability.’ Proponents of this view argue that imputability in family law cannot be assessed exclusively on the basis of abstract objective standards, since parental conduct must necessarily be evaluated in light of the parent’s individual personal circumstances and subjective life situation. According to this interpretation, the court should primarily examine what could reasonably be expected from the particular parent involved in the dispute.⁷

5 Andrea MÁRTON: *A gyermekkel való kapcsolattartásra vonatkozó határozat végrehajtása iránti új bírósági eljárás első gyakorlati tapasztalatai* [Initial Practical Experiences with the New Judicial Procedure for the Enforcement of Decisions on Child Contact], Jogi Fórum, 2020., https://www.jogiforum.hu/files/publikaciok/marton_andrea__kapcsolattartas_vh%5bjogi_forum%5d.pdf (Downloaded: 15 February 2026).

6 Barbara GÖNCZI: *Kinek a felelőssége?* [Whose Responsibility?], Arsboni, <https://arsboni.hu/kinek-a-felelossege/> (Downloaded: 15 February 2026).

7 Erika HARMATI, Balázs VÖLCSEY: *Új nemperes eljárás a bíróságok hatáskörében: a kapcsolattartásra vonatkozó határozat végrehajtása iránti eljárás* [A New

In legal literature, the concepts of subjective fault and imputability are frequently used interchangeably⁸, despite the fact that imputability is conceptually broader than fault. Subjective fault traditionally refers to negligent conduct, whereas imputability represents a partially objectified category of responsibility combining both subjective and objective elements of liability. The distinction is also reflected in the wording of the Bpnt. itself: while the general enforcement mechanism relies on the concept of imputability, Section 22/D (2) explicitly refers to subjective fault, thereby imposing a stricter requirement in that particular context.

In my view, the recognition of an autonomous concept of ‘family law imputability’ is not supported by the current legal framework. Following the entry into force of the new Civil Code, the previously separate family law terminology became integrated into the general system of Hungarian private law, resulting in a more unified conceptual structure. Consequently, the introduction of a distinct family law category of imputability would risk undermining doctrinal coherence and could contribute to inconsistent judicial practice.

Nor does it appear justified to conflate the concepts of fault, imputability, and culpability. Such conceptual uncertainty would inevitably generate interpretative difficulties in judicial practice, particularly in highly conflictual family disputes where the predictability and consistency of judicial reasoning are of particular importance. In my assessment, imputability should primarily be understood as an objective standard

Non-Contentious Procedure within the Jurisdiction of the Courts: Proceedings for the Enforcement of Decisions Concerning Contact Rights], Családi Jog [Family Law], 2020. 1., pp. 27.

⁸ Balázs VÖLCSEY: *A szülői felügyeleti jog megszüntetésének perjogi kérdései és a családjogi felelősség* [Procedural Aspects of the Termination of Parental Responsibility and Fault-Based Liability in Family Law], Családi Jog [Family Law], 2017. 2., pp. 39.

based on generally expected conduct, even within family law relationships.

Although it may be criticized from a codification perspective that procedural legislation employs a substantive private law concept, the teleological interpretation of the legislation nevertheless suggests that the legislator intended courts to apply the general private law standard of imputability established by the Civil Code. Accordingly, the standard contained in Section 1:4 (1) of the Civil Code – namely the requirement of generally expected conduct – should remain the primary point of reference in enforcement proceedings.

At the same time, the protection of the child's best interests may justify a limited shift towards a more subjective assessment in exceptional cases. However, this does not establish the existence of a separate family law liability regime; rather, it reflects the necessary flexibility inherent in family law adjudication. The dual structure of the regulation therefore appears to embody a gradual intervention model aimed simultaneously at identifying unlawful obstruction, encouraging voluntary compliance, and avoiding excessively subjective judicial discretion.

The doctrinal analysis thus suggests that the current legal framework does not require the recognition of an autonomous concept of 'family law imputability.' The general objective standard of imputability appears capable of ensuring a relatively predictable and coherent assessment of parental conduct in enforcement proceedings. At the same time, the practical application of the concept remains subject to significant structural and functional limitations, particularly in recurrent high-conflict disputes.

B IMPUTABILITY IN JUDICIAL PRACTICE

The court file research conducted for this study indicates that, in practice, courts consistently interpret imputability on the basis of the standard of conduct generally expected in the given situation rather than according to the parties' subjective perceptions of fairness or their personal interpretation of the conflict. Particularly in recurrent enforcement proceedings, courts deliberately narrow the scope of their examination to the question of whether the failure of contact resulted from circumstances attributable to the respondent parent.

In a considerable number of cases, the parties attempted to explain the failure of contact by referring to emotional tensions, communication difficulties, or broader personality conflicts between the parents. However, courts generally refused to treat such circumstances in themselves as sufficient grounds for establishing imputability. Instead, judicial reasoning focused on whether the specific circumstance that directly resulted in the failure of contact fell within the respondent's sphere of control and whether the respondent fulfilled the duties of cooperation and, where applicable, the obligation to offer substitute contact.

The examined cases also revealed situations in which contact formally took place – for example through brief telephone conversations – while the applicant nevertheless challenged the adequacy or quality of the interaction. In such cases, courts consistently rejected enforcement requests on the grounds that the contact itself had technically occurred, and that the shorter duration of communication did not in itself render the respondent's conduct imputable, particularly where the child's age or limited attention span reasonably explained the circumstances.

By contrast, courts were willing to establish imputability in cases where the formally realized contact was accompanied by parental behaviour capable of creating negative emotional

associations in the child towards the non-resident parent. In several cases, courts found that the resident parent failed to prepare the child adequately for contact and thereby indirectly undermined the effectiveness of the relationship. One example concerned situations in which telephone contact was intentionally scheduled during the child's evening meal, causing the child to associate communication with the non-resident parent with the unpleasant interruption of dinner.

According to judicial reasoning, such conduct constitutes a violation of the parental duty of cooperation even where contact formally occurs, since it may indirectly discourage the child from maintaining a meaningful relationship with the other parent. In this respect, the courts increasingly recognize that obstruction of contact may arise not only through explicit refusal but also through indirect behavioural patterns capable of undermining the child's emotional openness towards the non-resident parent.

Judicial practice further shows that courts attach particular significance to the parental duty of cooperation established under Section 4:173 of the Civil Code. Several decisions emphasized that flexibility, constructive communication, and mutual accommodation are essential conditions for the successful exercise of contact rights. Courts repeatedly stressed that the resident parent bears responsibility for preparing the child both physically and emotionally for contact, while the non-resident parent must also respect the stability and private life of the resident household and may not exercise contact rights contrary to the child's interests.⁹

At the same time, courts refused to establish imputability in cases where the failure of contact resulted from objectively

⁹ Viktória ÁDÁMKÓ: *A kapcsolattartásra vonatkozó határozat bírósági végrehajtásának gyakorlati kihívásai* [Practical Challenges of the Judicial Enforcement of Contact Orders], Jogi Fórum, [adamko-viktoria_kapcsolattartas-vegrehajtas_cimlappal.pdf](#), (Downloaded: 15 February 2026), 2023., pp. 41.

foreseeable and adequately communicated circumstances, such as sudden illness, unexpected weather conditions, or pre-arranged school activities, provided that the respondent parent made genuine efforts to reschedule or compensate for the missed contact. In these situations, courts explicitly evaluated the parties' willingness to cooperate and considered flexibility itself to be evidence against imputability.

The empirical findings nevertheless indicate that the current enforcement framework encounters significant limitations in recurrent high-conflict cases. In proceedings involving so-called 'vexatious' or chronically litigating parents, courts frequently became trapped in repetitive procedural cycles in which enforcement was either repeatedly ordered or repeatedly refused without addressing the deeper structural causes of the conflict. In many of these cases, little effort was made to employ alternative conflict-management mechanisms such as supervised contact, mediation, or the involvement of child welfare services.

Consequently, enforcement proceedings risk becoming procedural extensions of ongoing parental conflict rather than effective instruments for protecting the child's long-term interests. In such cases, the examination of imputability is often reduced to a narrowly technical inquiry focused exclusively on whether contact formally occurred and whether the failure fell within the respondent's sphere of control. Although this approach remains doctrinally coherent and procedurally defensible, it may simultaneously obscure the broader question of whether the proceedings genuinely contribute to the preservation of stable and meaningful parent-child relationships.

The examined judicial practice therefore reveals a certain tension inherent in the current system. On the one hand, courts generally apply the concept of imputability in a consistent and doctrinally coherent manner based on the objective standard of generally expected conduct. On the other hand, the enforcement

mechanism itself appears only partially capable of addressing the structural realities of persistent family conflict, particularly in cases characterized by long-term parental hostility and repeated litigation.

In this respect, the practical application of imputability also illustrates a broader limitation of coercive family law enforcement. While the legal framework may be suitable for identifying and sanctioning individual violations, it is considerably less effective in resolving the deeper relational dynamics that repeatedly generate enforcement disputes.

II

IMPUTABILITY DURING THE ‘STATE OF DANGER’

A comprehensive examination of imputability in contact enforcement proceedings also requires consideration of the exceptional circumstances that shaped judicial practice during the initial period following the entry into force of the Bpnt. In this respect, the COVID-19 pandemic occupies a particularly important position, since the state of danger declared in Hungary fundamentally influenced the interpretation and practical application of imputability in contact enforcement cases.

Although the pandemic no longer possesses direct practical relevance, the extraordinary legal and social conditions created during this period significantly affected the early judicial practice developed under the new enforcement regime. The pandemic introduced situations in which the traditional standards of imputability became difficult to apply, as the failure of contact often resulted from objective public health risks and circumstances beyond the parties’ control. Consequently, the pandemic period exposed not only doctrinal uncertainties but

also the structural limits of coercive enforcement mechanisms in family law.

A NEW DIMENSIONS OF THE BEST INTERESTS OF THE CHILD DURING THE PANDEMIC

Shortly after the entry into force of the Bpnt., the Hungarian Government declared a state of danger on 11 March 2020 in response to the COVID-19 pandemic. Subsequently, restrictive measures were introduced, including limitations on movement and curfews. Although the exercise of parental rights and obligations formally constituted a legitimate reason for leaving one's residence, the pandemic nevertheless created substantial uncertainty regarding the practical exercise of contact rights.

Court file research revealed that resident parents frequently relied on the risks associated with the pandemic as justification for refusing to transfer the child for contact. Judicial practice soon became divided concerning the question of whether reference to the pandemic itself could exclude imputability. According to the majority approach, the mere existence of the pandemic was not in itself sufficient to justify the failure of contact; rather, additional specific circumstances had to be demonstrated in order to exempt the respondent parent from responsibility.

During the examined period, courts accepted the respondent's reliance on the pandemic in situations where the applicant parent's occupation involved particularly high levels of exposure to infection. Typical examples included applicants working as international truck drivers who regularly crossed national borders, as well as hospital physicians who continued to treat patients during the pandemic. In such cases the courts regarded these circumstances as sufficiently exceptional to justify the temporary restriction of personal contact without establishing the resident parent's imputability.

At the same time, a minority position within judicial practice accepted the pandemic itself as an independent justification for limiting contact. Similar views were reflected in professional recommendations issued during the period, which suggested that personal contact could temporarily be restricted where necessary to protect the child's health, provided that alternative forms of communication remained available.¹⁰

In my assessment, both approaches rested on rational considerations, yet neither fully addressed the long-term consequences of prolonged separation between the child and the non-resident parent. Regardless of whether the failure of contact could formally be regarded as imputable, many children were unable to maintain personal relationships with the non-resident parent for extended periods due to circumstances entirely beyond the control of either party.

Particularly problematic were cases involving parents employed in socially essential professions, such as healthcare workers or transport employees. It would clearly have been unreasonable to expect such individuals to abandon their professions or livelihoods in order to preserve ordinary contact arrangements during the pandemic. Nevertheless, the legal framework provided no effective mechanism for compensating lost contact once the restrictions had been lifted.

The pandemic therefore revealed a significant limitation of the existing enforcement model. Judicial examination focused primarily on whether the failure of contact could formally be attributed to one of the parties, while considerably less attention was devoted to the actual consequences of prolonged separation for the child's emotional well-being and family relationships.

10 Orsolya SZEIBERT: *A gyermek a COVID-19 járvány idején – gyermekjogi, gyermekvédelmi és családjogi ajánlások* [The Child During the COVID-19 Pandemic – Recommendations in the Fields of Children's Rights, Child Protection, and Family Law], *Családi Jog* [Family Law], 2020. 3. pp. 42.

In this respect, the pandemic highlighted that the best interests of the child cannot be reduced exclusively to the physical protection of health. Excessively isolationist approaches may also negatively affect the child's emotional development and long-term relationship with the non-resident parent. Consequently, the complete suspension of personal contact cannot automatically be regarded as serving the child's best interests.

The experience of the pandemic further demonstrated that the effectiveness of contact arrangements in extraordinary situations depends less on coercive legal enforcement than on the parents' capacity for cooperation, flexibility, and responsible decision-making. In this sense, the pandemic exposed not only practical enforcement difficulties but also the inherent limits of state intervention in highly sensitive family relationships.

From a policy perspective, the pandemic experience also suggests the need for future compensatory mechanisms capable of addressing situations in which contact fails for objectively justifiable reasons without being attributable to either parent. In exceptional circumstances of this kind, the preservation of the parent-child relationship may require restorative rather than purely sanction-oriented legal solutions.¹¹

B CONSTITUTIONAL BALANCING DURING THE PANDEMIC: THE BEST INTERESTS OF THE CHILD IN THE CONSTITUTIONAL COURT'S COVID-19 JURISPRUDENCE

The judicial practice that emerged during the pandemic also raised significant constitutional questions, since restrictions

11 Katalin VISONTAI-SZABÓ: *Szülő – gyermek kapcsolattartás végrehajtása koronavírus járvány idején [Enforcement of Parent-Child Contact Arrangements During the Coronavirus Pandemic]*, From: *A Magyar Tudomány Napja a Délvidéken 2020. [The Day of Hungarian Science in the Southern Region 2020]*, Vajdasági Magyar Tudományos Társaság, Újvidék, pp. 155–156.

affecting contact rights inevitably interfered with the right to respect for private and family life, as well as with the fundamental rights of both the child and the non-resident parent. In this context, the jurisprudence of the Hungarian Constitutional Court (hereinafter: cc) acquired particular importance by providing guidance on the constitutional limits of emergency measures and the standards governing restrictions of fundamental rights during the state of danger.

One of the Constitutional Court's most important statements¹² concerning the constitutional implications of the pandemic. The Court emphasized that the existence of a state of danger could not automatically justify the general restriction of constitutionally protected rights, including the right to family life. According to the Court, limitations affecting fundamental rights remain subject to the requirements of necessity and proportionality even during extraordinary legal situations. Consequently, reliance on the pandemic as a general justification could not exempt courts from conducting an individualized assessment of the specific circumstances of each case.

This reasoning possesses particular significance in contact enforcement proceedings because it excludes the automatic suspension of personal contact based solely on preventive considerations. Instead, the Constitutional Court's approach requires a case-by-case balancing exercise in which courts must evaluate both the concrete health risks involved and the potential long-term consequences of restricting the parent-child relationship.

Another Constitutional Court's decision¹³ further refined this proportionality-based approach. Although the Constitutional Court acknowledged that the protection of public health constituted a legitimate constitutional objective, it

¹² cc Decision 10/2021. (IV. 22.).

¹³ cc Decision 15/2021. (V. 13.).

simultaneously stressed that this aim could not override individual fundamental rights without limitation. The Court held that any restriction affecting family life must be suitable for achieving the intended objective and that less restrictive alternatives must also be considered wherever possible. Within the context of contact enforcement proceedings, this reasoning reinforced the idea that the pandemic alone could not automatically justify obstruction of contact in the absence of a genuinely proportionate assessment.

The Constitutional Court addressed these concerns even more explicitly and the Court criticized the assumption that a parent necessarily acts responsibly by reducing personal contact solely to minimize the risk of infection. According to the Court, such reasoning risks emptying contact rights of their substantive content and may ultimately lead to the emotional alienation of the child from the non-resident parent if prolonged over time.¹⁴

The Constitutional Court also emphasized the constitutional significance of time in family law disputes. The Court observed that procedural delays may themselves amount to violations of fundamental rights in legal relationships where the passage of time produces irreversible consequences. In matters involving children, time cannot be regarded as a neutral procedural factor because prolonged disruption of personal relationships may permanently affect the child's emotional development and family bonds.¹⁵

Finally, the Court clarified more generally that the state of danger did not create an 'extra-constitutional' legal order in which fundamental rights protections could simply be suspended. The Court reaffirmed the active responsibility of ordinary courts to protect constitutional rights even during

14 CC Decision 3067/2021. (II. 24.).

15 CC Decision 32/2021. (XII. 20.).

extraordinary legal situations, particularly in proceedings directly affecting family life and parent–child relationships.¹⁶

Taken together, the Constitutional Court’s pandemic-related jurisprudence indicates that the best interests of the child cannot be interpreted exclusively through the lens of public health protection. Rather, the child’s interests require a nuanced balancing process capable of considering both physical safety and the preservation of meaningful family relationships. In this respect, the pandemic highlighted the constitutional dimension of contact enforcement proceedings and reinforced the necessity of individualized judicial assessment in cases involving competing fundamental rights.

The pandemic also exposed the lack of established judicial practice following the transfer of enforcement jurisdiction to the courts in 2020. Judges were required to interpret an entirely new procedural framework under unprecedented social conditions and in the absence of settled doctrinal guidance. Unsurprisingly, this situation produced divergent judicial approaches and significant uncertainty concerning the interpretation of imputability during extraordinary circumstances.¹⁷

Academic commentary¹⁸ similarly emphasized that the pandemic revealed the vulnerability of contact rights during periods of social crisis. Orsolya Szeibert pointed out that the legal system had not been adequately prepared for situations in which contact became impossible for extended periods due

16 CC Decision 3/2022. (II. 11.).

17 Katalin VISONTAI-SZABÓ: *A gyermek kapcsolattartáshoz való jogának érvényesülése világjárvány idején* [Enforcement of the Child’s Right to Contact During a Pandemic]. From: Csaba FARKAS, Márta GÖRÖG, Andrea HEGEDŰS, Zsófia KAPRINAY, Zita PÁKOZDI, Imre VARGA (eds.): *Ünnepi kötet Dr. Szabó Imre egyetemi tanár 70. születésnapjára* [Festschrift in Honour of Professor Dr. Szabó Imre on the Occasion of His 70th Birthday], FORVM, 2021. 3. pp. 472.

18 Orsolya SZEIBERT: *Human Rights During the COVID-19 Pandemic in Hungary with Special Regard to the Right to Have Contact*, Medicine, Law & Society, 2021. 14. 2. <https://doi.org/10.18690/mls.14.2.395-418>. 2021, pp. 395–418.↗.

to objective external circumstances without fault on either side. The increasing reliance on electronic forms of communication partially mitigated these difficulties, yet such alternatives could not fully replace personal contact between the child and the non-resident parent.

Ultimately, the constitutional and judicial experience of the pandemic suggests that future regulation should incorporate not only coercive enforcement mechanisms but also restorative and compensatory solutions capable of preserving parent–child relationships in exceptional circumstances where ordinary contact arrangements cannot safely be maintained.

CONCLUDING REMARKS

III

The reform transferring jurisdiction over contact enforcement proceedings from guardianship authorities to courts introduced not only an institutional transformation but also a significant conceptual shift in the assessment of parental responsibility. While the former administrative regime relied primarily on the notion of subjective fault, the current judicial framework is built upon the concept of imputability, which reflects a more objective standard based on generally expected conduct.

In my view, this transition represents a fundamentally appropriate direction in the development of Hungarian contact enforcement law. The concept of imputability enables courts to distinguish legally relevant obstruction from the broader emotional and interpersonal conflicts that frequently characterize parental disputes following separation. The examined judicial practice further suggests that courts generally

apply the objective standard of conduct in a coherent and methodologically consistent manner.

At the same time, the research also reveals the structural limitations of the current enforcement framework. Although the doctrine of imputability appears suitable for assessing individual violations, it remains considerably less effective in addressing persistent and recurring family conflicts, particularly in cases involving chronically litigating parents. In such situations, enforcement proceedings often become repetitive procedural mechanisms that formally uphold contact orders without contributing meaningfully to the restoration of parental cooperation or the stabilization of the child's relational environment.

The experience of the COVID-19 pandemic provided additional insight into the limits of traditional imputability-based reasoning. The pandemic demonstrated that the classical standard of imputability cannot fully accommodate situations in which contact fails for objective reasons beyond the parties' control. The judicial and constitutional practice that emerged during this period highlighted that the protection of the child's best interests may, in exceptional circumstances, require considerations extending beyond the narrow examination of parental responsibility.

In this respect, the pandemic underscored the importance of recognizing that the preservation of parent-child relationships cannot always be achieved through coercive enforcement alone. Situations involving prolonged objective obstacles to contact require legal mechanisms capable not merely of sanctioning unlawful conduct but also of restoring disrupted family relationships once the extraordinary circumstances cease to exist.

Accordingly, I consider it necessary to further develop the current regulatory framework in a manner that moves beyond a purely responsibility-based enforcement model. First, the legal

system would benefit from a more differentiated approach capable of distinguishing between isolated violations and long-term structural cooperation failures. Second, particularly in extraordinary situations such as public health emergencies, the introduction of compensatory mechanisms should be considered to allow the restoration of missed contact even where no imputable conduct can be established on either side.

Ultimately, the effectiveness of contact enforcement proceedings cannot be measured solely by their ability to sanction individual breaches of contact orders. Their broader legitimacy depends on whether they are genuinely capable of protecting the child's long-term interests by preserving meaningful and stable parent-child relationships within highly conflictual family environments.

BIBLIOGRAPHY

- BARZÓ Tímea: *A különélő szülő kapcsolattartási jogát ellehetetlenítő szülői magatartás polgári jogi és büntetőjogi jogkövetkezményei* [Civil and Criminal Law Consequences of Parental Conduct Obstructing the Contact Rights of the Non-Resident Parent], Miskolci Jogi Szemle [Miskolc Law Review], 2019. Special Issue No. 2, Vol. 1.
- BENCZE LÁSZLÓNÉ – Csánitzné Csiky Ilona – Csiky Ottó: *A házasság megkötése, felbontása. A házastársi tartás* [Marriage Formation and Dissolution. Spousal Maintenance], 1999., HVG-ORAC, Budapest
- GÖNCZI Barbara: *Kinek a felelőssége?* [Whose Responsibility?], Arsboni, <https://arsboni.hu/kinek-a-felelossege/> (Downloaded: 15 February 2026)
- HARMATI Erika – Völcssey Balázs: *Új nemperes eljárás a bíróságok hatáskörében: a kapcsolattartásra vonatkozó határozat végrehajtása iránti eljárás* [A New Non-Contentious Procedure within the Jurisdiction of the Courts: Proceedings for the Enforcement of Decisions Concerning Contact Rights], Családi Jog [Family Law], 2020. 1
- MÁRTON Andrea: *A gyermekkel való kapcsolattartásra vonatkozó határozat végrehajtása iránti új bírósági eljárás első gyakorlati tapasztalatai* [Initial Practical Experiences with the New Judicial Procedure for the Enforcement of Decisions on Child Contact], Jogi Fórum, 2020., https://www.jogiforum.hu/files/publikaciok/marton_andrea__kapcsolattartas_vh%5bjogi_forum%5d.pdf (Downloaded: 15 February 2026)
- SZEIBERT Orsolya: *A gyermek a COVID-19 járvány idején – gyermekjogi, gyermekvédelmi és családjogi ajánlások* [The

Child During the COVID-19 Pandemic – Recommendations in the Fields of Children’s Rights, Child Protection, and Family Law], Családi Jog [Family Law], 2020. 3.

SZEIBERT Orsolya: *Human Rights During the COVID-19 Pandemic in Hungary with Special Regard to the Right to Have Contact*, *Medicine, Law & Society*, 2021. 14. 2. <https://doi.org/10.18690/mls.14.2.395-418.2021>[↗]

VISONTAI-SZABÓ Katalin: *Szülő – gyermek kapcsolattartás végrehajtása koronavírus járvány idején [Enforcement of Parent–Child Contact Arrangements During the Coronavirus Pandemic]*, From: *A Magyar Tudomány Napja a Délvidéken 2020. [The Day of Hungarian Science in the Southern Region 2020]*, Vajdasági Magyar Tudományos Társaság, Újvidék

VÖLCSEY Balázs: *A szülői felügyeleti jog megszüntetésének perjogi kérdései és a családjogi felelősség [Procedural Aspects of the Termination of Parental Responsibility and Fault-Based Liability in Family Law]*, Családi Jog [Family Law], 2017. 2.

UNPUBLISHED JUDICIAL PROFESSIONAL BACKGROUND MATERIAL

ÁDÁMKÓ Viktória: *A kapcsolattartásra vonatkozó határozat bírósági végrehajtásának gyakorlati kihívásai [Practical Challenges of the Judicial Enforcement of Contact Orders]*, Jogi Fórum, [adamko-viktoria_kapcsolattartas-vegrehajtas_cimlappal.pdf](#)[↗], (Downloaded: 15 February 2026), 2023.