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**Collective disputes  
(Multi-party Actions)**

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International and European Civil Procedure,  
**Pécs**  
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## Civil procedure

- “General, legal and basic method for the protection of subjective civil rights which have been threatened or violated, provided by the state judiciary”
- 2 legal families:
  - The civil law
  - The common law

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## Procedural principles

- Civil law
- Source of the rules is the Constitution
- Party control
- Right to be heard (access to justice, equality of arms, adversarial proceeding)
- Common law
- Source of the rules is the jurisprudence (“case law system”)
- Due process
- Trial by jury
- The contingency fees

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## *Collective legal protection*

- Class actions, group actions, mass claims or representative actions, *Verbandsklage*
- “A legal procedure which enables the claims (or part of the claims) of a number of persons against the same defendant to be determined in the one suit.”
- “**Representative plaintiff**”(one or more persons) may sue on his/behalf of the other persons...
- “**The class**” members have a claim to a remedy for the same or a similar alleged wrong...
- “**Common issue**” claims share questions of law or fact in common with those of the representative plaintiff

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## ***The purpose of collective legal protection***

- Cost-effective conduct of the proceedings
- Facilitating *access to justice*
- Mechanisms were required whereby **groups** could press their claims or defend their legal rights:
- Groups: indigenous people, victims of disasters, consumer groups
- **Reduction** of the number of essentially duplicative proceedings
- **Increase** of *access to justice* for individual claims which do not economically justify incurring the cost of litigation
- Legal aid
- An effective means for the development of multi-party action

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## Differences between the traditional and collective dispute resolution

- The legal interest (for the initiation of the procedure)
- Parties to the procedure (the plaintiff, the defendant)
- The subject matter (types of the disputes)
- Rules on discovery
- Costs of the procedure
- Types of the judgement and the binding effect of the judgement

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## *Multi-party Actions in the EU*

Traditional civil procedure-a two party procedure between two individual parties

- Mass production, mass distribution and mass consumption of goods and services-negative effect on a large number of people (an apparent problem in consumer, environmental, commercial and industrial law)
- EU context- Commission paper of 1984
- **13 Member States** have collective legal protection (mechanisms in which some elements work and others do not)

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## *Current position of the EU*

- Although there is a widespread initiative from the EU to introduce a common EU collective legal protection mechanism, there are opposite reactions:
- Plenary session of the Council of Bars and Law Societies of Europe (CCBE) which included participants from 31 Member State (May, 2011)

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## TITLE

- Positive
- The French, Italian, Spanish, Portuguese and Luxembourg delegations in favour
- **Only** condition; provided it respected ‘certain prerequisites and principles in order to fit into the European legal culture’.
- Negative
- UK delegation
- **Criticism**;
- ‘The time is not right for a one-size-fits-all pan-European collective procedure. We need to build on a process.’

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## Common conclusion

- Both sides acknowledged the importance of *access to justice*, but noted;
- Consumer organisations were likely to support an EU-wide **compensation** scheme
- Businesses would fear ‘abusive litigation’

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## ***Representative Models of the Multi-party Actions in the EU***

### ***○ The Dutch Model***

#### ***○ Legal sources:***

***○ The Dutch Act on collective settlements of 2005 (WCAM)***

***○ Collective action of Rule 3:305a-c of the Dutch Civil Code (DCC)***

***○ DCC rules***-public interest and group interest collective actions ('representative' proceedings)

***○ WCAM Act***-settlements in mass damage claims

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- ***The Scandinavian Model***
- Legal sources:
- Sweden: Lag 2002:599 Group Action Proceedings of 2003
- Norway and Denmark: laws on group proceedings entered into force January, 1st 2008
- Finland: The Finnish law on class actions ('group actions') entered into force January, 1st 2008

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- ***The German Model***
- Legal sources:
- Capital Markets Model Case Act (KapMuG) of 2005
- An experimental law
- Designed to strengthen the position of investors under securities law:
- Effective pursuing of damage claims/reducing the risks of cost

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## TITLE

- ***The UK Model***
- Legal sources:
- Group Litigation Order (GLO) (Civil Procedure Rules (CPR) Part 19.10 of 1999)
- The representative action (CPR) Part 19.6
- GLO-used for a number of similar claims that “give rise to common or related issues of fact or law”
- Representative action-”where more than one person who allege claims against the same defendant has the same interest in a claim”

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## *Multi-Party Actions in Hungary*

- Legal sources:
- The Bill (T/11332) to the Parliament on 22 February 2010
- Collective action by any private or legal person who has a direct interest in the outcome of the litigation
- Members of the group can be represented by a legal representative

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- **Criticism** from the Budapest Bar Association:
- The introduction of the law is highly risky in terms of legal security-there were no impact studies performed in the course of codification
- The opt out rule which enables the members to withdraw themselves from the effect of the decision
- The concept of the ‘collective’ is not clearly defined; no definition of the concepts ‘significantly numerous’ and ‘similar factual basis’

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- ***The US model***
- Legal sources:
- Rule 23 of the Federal Rules of Civil Procedure (FRCP)
- Class Action Fairness Act of 2005 (CAFA)
- **Prerequisites:** *numerosity, commonality, typicality, adequacy of representation*

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- ***Contemporary class action in the US:***
- **Injunctive and Declaratory Relief Class Actions-**  
civil rights cases
- **Monetary Class Actions-**mass torts, securities &  
shareholders, financial injury claims, consumer  
claims, antitrust cases
- **Hybrids-**single class action with multiple bases for  
certification

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## ***Multi-Party Actions in Croatia***

- Legal sources:
- Consumer Protection Act of 2003
- Anti-discrimination Act of 2008
- Class (representative) action /joint action (Verbandsklage)-for abstract consumer protection and realization of their collective interests
- Joint action-persons and associations which themselves do not claim to be victim of discrimination can initiate court proceedings

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**Solutions** introduced into the Croatian legislation adequate to achieve economic and social effects of collective legal protection

○ **Economic interests;**

- The state /efficiency of the court proceedings-saving time and resources
- The individual /possibility of participating in a lawsuit in cases where they alone could not bear the costs

○ **Social interests;**

- The state / legal certainty in terms of reconciliation practice of the courts in making decisions
- The individual /access to court to individuals as members of a particular vulnerable group of the society

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- **Joint action** in Croatian legislation
- (Consumer Protection act)-economic interests
- (Anti-discrimination Act)-social interests

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- **Thank you for your attention!**
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