



### Hungary: no specific developments

- Professional discussions as well as legislation and court practice seem to focus on public law issues
- Only 4 reported relevant cases by the Supreme Court
  - Medical malpractice and accidents
  - Some interesting issues raised, especially
    - calculation of pecuniary damages in claims for wrongful birth and
    - implications for the liability regime of the New Civil Code in medical malpractice cases



### Kúria Pfv. III. 20.069/2015. - Facts

- Child born with Down's syndrome
- Doctors failed to provide the correct diagnosis during pregnancy treatment
- Mother lost the chance of termination of pregnancy
- Negligence of doctors established
- Plaintiffs: the parents and the brothers of the child
- Claims for pecuniary and non-pecuniary damages



### Compensable loss – Lower courts

- The *difference* between the costs of bringing up a healthy child and the costs of bringing up a mentally handicapped child
  - i.e. the additional costs resulted from the mental handicap (medical treatment, costs of covering special needs, etc.)
  - Courts of the first and the second instance: the damage is not the *existence* of the child but having a *mentally handicapped* child



### Compensable loss – Supreme Court

- *All the costs* of bringing up the child
  - Supreme Court: the costs of bringing up the child is the loss caused by the doctors
  - such costs would not have occurred in absence of negligence of the doctors
  - all the costs in causal link with the birth of the child are to be compensated
    - either emerged in the past or to emerge in the future



### Implications as for the New Civil Code

- Hungarian Civil Code (2013) introduced non-cumul system
  - if there was a contractual relationship, liability for breach of contract is to apply
    - the victim is prevented from shifting to tort system
  - There is a cap for liability for breach of contract: it is limited by a foreseeability rule modelled on the CISG



### Consequence

- In medical malpractice cases different regimes apply for the claims of members of the family, although the protected interests are similar
- In wrongful birth cases:
  - *mother vs hospital* – liability for breach of contract
  - *father vs hospital* – liability in tort (?)
    - can a contract be assumed?
  - *siblings vs hospital* – liability in tort?
- Risks of a fragmentation