Is the Hungarian Legal System Converging to a Case Law System?[1]

Results of a Computer-Based Citation Analysis of Hungarian Judicial Decisions

Zsolt Ződi
Research Fellow,
Hungarian Academy of Sciences, Centre for Social Sciences, Legal Studies Institute

It is one of the most popular leitmotifs in comparative legal science that civil and common legal systems are converging.[2] The primary consideration behind this is that the role of "precedents" are increasing in civil legal systems, while statutory law's importance is growing in common law jurisdictions. As McCormick states in the Introduction to a comparative study of precedent:

> To differentiate 'civilian' to 'common law' systems is a commonplace among lawyers. It is trite learning that precedents count for less in civilian legal systems than in those of the common law, and it has sometimes been doubted whether they stand for anything much at all in civilian systems. The present work shows the doubt to be groundless. Here it is shown that precedent counts for a great deal in civilian systems. The tendency to convergence between systems of the two types is a salient fact of the later twentieth century, although there remain real differences, some of great importance.[3]

In 2012 we performed a study with a help of a database consisting of more than 60,000 Hungarian judicial decisions, published on the website of the State Office of Courts (*Országos Bírósági Hivatal*),[4] in order to explore an important aspect of the "precedential character" of Hungarian law. The first (quantitative) part of the research was computer-based: we collected and analysed all the *citations* to precedents within the text of the decisions and analysed the *citation patterns*. In the second (qualitative) phase, we selected 520 decisions randomly, read them, and recorded five additional aspects in a database.[5]

The inspiration to prepare statistics on citations, represented by links in the database, came from Citators. At the end of the 19th century the number of published cases in America increased dramatically.[6] There was no selection, almost every decision was published. This caused turbulence in several fields[7], but one of the most dramatic instances was that separating the "good" law from "bad" became harder and harder.

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[1] The author thanks the following persons [this is fine as is, but "people" would be more common here]: Tamás GRÓSZ for the preparation of the computer-based statistics; Miklós SZABÓ for supporting the research in University of Miskolc; Zsolt CZÉKMANN, for coordinating the research in the qualitative part. When I say 'we' in this article, I am referring to this small team. I am also grateful to Péter DARÁK, for supporting the project and hosting the discussion of the first version of this paper at Curia in 27 November 2013. I am also grateful for all of my colleagues who took part in this discussion and made valuable contributions to the text.

[2] DAVID, René and BRIERLEY, John, E.C: *Major Legal Systems in the World Today, An Introduction to the Comparative Study of Law*, Steven and Sons, London, 133; MERRYMAN, John Henry: On the Convergence (and Divergence) of the Civil Law and the Common Law, 357-388 17 *Stan. J. Int'l L.* 357 (1981) 358, and footnote 3.,

[3] MACCORMICK, D. Neil – SUMMERS, Robert S: *Interpreting Precedents*, A Comparative Study, Ashgate, Dartmouth, 1997. 2

[4] http://www.birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara

[5] See the list below at III.1.

[6] Mr. John West, the founder of the West Publishing Company himself regards this incidence a turning point in the history of law reports. WEST, John B.: The Multiplicity of Reports, 2 *Law Libr. J.* 1 (1909-1910) 45

[7] Here I just mention the problem of indices, the uniform numbering of cases, and the efforts of establishing a centralised law reporter instead of the „multiplicity of reports." WEST (1909), 5

This was the reason for the emergence of Citators. These are tables that show the citations, and also the context of a citation. The best known amongst these citators was that published by Frank Shepard in 1875. The so-called Shepard's Citations is based on a very simple idea: if a certain decision is mentioned in a later one, it is recorded together with the context in the citator. The more a case is cited in a positive context the more it is important.
It is more than an interesting coincidence that Shephard's method inspired Eugene Garfield[8] to create the Science Citation Index, which later became the most widely used method of measuring the impact or importance of a scientific work.[9] Even nowadays the primary tool for measuring the importance of an article, a publication forum (journal), or a scientist is still based on this method. The frequency and the context of citations, as well as the importance of the citing authorities, also became a very important (if not the most important) part of the Google-algorithm, PageRank[10]. Search engines before Google were all based on two methods: the free-text search and meta-tags put on webpages. But it turned out very quickly that the data published on the internet exceeds the amount that can be handled through these two processes, and the only usable method is, if relevance ranking is to be based *on measurable traces of cognitive authority*, generated by human knowledge – in other words, hyperlinks and *citations*.[11]

This paper shows the results of both of the quantitative and the qualitative analyses and is divided into three main chapters.
The first chapter will describe the theoretical and methodological background of the research, including the theoretical framework we worked with, the differences between common law and civil law systems, and the importance of citations. For a better understanding, I sketch the institutional background, structure, and types of the courts and "precedents" in Hungarian law, as well as the characteristics of the raw material we worked with. I will also describe the methodological and technical considerations behind the computer-based analysis.
The second chapter shows the results of the computer-based citation analysis we prepared from them. In the text that follows the tables, I attempt to give explanations and conclusions I have drawn from them, and later from all. The analysis is comprised of the number of citations used/made by different courts, court levels and court branches, case types, and legal fields. We observed the dynamics of citations over the years, showing the change in time. We compared a number of factors, such as the use of different 'precedent types'.
The third chapter contains the results of the qualitative research and some final conclusions. It tries to tackle questions for which machine-made statistics cannot answer – questions which can only be properly analysed contextually. These are, for example: the role and status of precedent in legal reasoning, the link between use of precedent and the value of the case, and the existence of "distinguishing" – explicitly using the rule within a previous case in a different way in a recent case, when the facts of the cases are different.

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[8] Eugene GARFIELD himself was telling the story of Science Citation Index in a video interview: "People don't even simply know this: there was no citation index at that time for larger rules. It came later. That came out, that Shepard produced that citation index long before we started SCI, because librarians started to complain, that why don't they have a citation index for journals. (…) And I went down to the reference room, and that's when I saw what Shepard Citation was, and I literally screamed, (…) When I saw Shepard, I realized, that the index had to be inverted, because they had the document as the focus, and the statements to be followed." http://www.webofstories.com/play/eugene.garfield/25;jsessionid=1C696C9302267E140AE26CB1273D2833

[9] And it cannot be a simple coincidence, that later Google, which revolutionized the Internet search, is also based on citation, hyperlinks and it is also measuring the importance of the place of publication either with different tools.

[10] http://searchengineland.com/what-is-google-pagerank-a-guide-for-searchers-webmasters-11068#definition

[11] ZŐDI, Zsolt: A Google, a jogi adatbázisok és a szöveg számítógépes uralásának három módja (Google, legal databases and the three ways of text control by computers*) Infokommunikáció és jog*, 46/2011., 175-178 (in Hungarian)

I. Theoretical background of the research

1. The theory of precedent in common law

In common law systems, judicial decisions form the primary sources of law. The idea of judicial precedent[12], as a central element in legal reasoning, rests upon four interconnected pillars:

- The principle/doctrine of stare decisis;
- The distinction between ratio decidendi, and obiter dicta*;*
- The method ('the art') of *distinguishing*; and finally
- A general idea that the "rule" is not the one that is explicitly written in the decision, but what makes law is the "spirit". Precedents are not "saying": but "doing" something[13].

The first constituent part of the theory of precedent is the concept of stare decisis - the principle that courts must follow the decisions of the upper courts, as these are binding. Though the modern doctrine of stare decisis was not explicitly formulated before the middle of the 19th century[14], stare decisis is the main/primary distinguishing feature of the common law systems. With a few exceptions, cases, even the most important decisions of the Supreme Court, are never formally binding in a continental system – or at least this is what theory says.

The second pillar on which the theory of precedent rests, and which interacts very closely with the previous, is the differentiation of ratio decidendi and obiter dicta. This distinction says that only the *ratio* is binding, whereas dicta is not. To this end, ratio decidendi should be separated from the incidental explications, "tangential observations"[15] and arguments employed within the reasoning. As John Austin stated:

> Since no two cases are precisely alike, the decision of a specific case may partly turn upon reasons which are suggested to the judge by its specific peculiarities or differences. And that part of the decision which turns on those differences (or that part of the decision which consists of those special reasons), cannot serve as a precedent for subsequent decisions, and cannot serve as a rule or guide of conduct. The general reasons or principles of a judicial decision (as thus abstracted from any peculiarities of the case) are commonly styled, by writers on jurisprudence, the [r]atio decidendi.[16]

What is particularly interesting in this quotation is that Austin is not speaking about different parts of *the texts*: what he is talking about is rather a distinction between a relationship of facts and rules of the case. Cases are alike, and if we create a rule, we have to ignore certain circumstances, in order to set up a legally proper rule. Later (especially in America, as we will see), ratio decidendi and obiter dicta were theorized as different parts within the reasoning, separate textual elements. The former were considered as important and as something that should be followed; the latter was understood

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[12] The concepts of precedent, ratio decidendi, and stare decisis have an enormous literature. I cite here only those which I used to formulate my ideas: HART, H.L.A: *The Concept of Law*, Clarendon Press, Oxford, 1961. 134; SCHAUER, Frederick: Precedent, 39 *Stan. L. Rev.* 571 (1986-1987), 573-574., and especially footnote 5.; KEMPIN, Frederick: Precedent and Stare Decisis, the Critical Years, 1800 to 1850, 3 *Am. J. Legal Hist.* 28 (1959) 30; DUXBURY, Neil: *The Nature and Authority of Precedent*, Cambridge University Press, 2008; STONE, Julius: The Ratio of the Ratio Decidendi, 3 *Am. J. Legal Hist*. 28 (1959) 597; GOODHARD, Arthur L.: Determining the Ratio Decidendi of a Case 40 *Yale L. J.* 161 (1930-1931); 10.; SILTALA, Raimo: *A Theory of Precedent, From Analytical Positivism to a Post-Analitical Philosophy of Law*, Hart Publishing, Oxford- Portland, Oregon, 2000

[13] HART (see supra note 12.) 134. – the "hat" example

[14] KEMPIN (see supra note 12) 31-32;

[15] DUXBURY (see supra note 12) 26

[16] GOODHARD (see supra note 12) cites AUSTIN, John: *Lectures on Jurisprudence*, etc. (1885), 627, in note 2. 161

to be less important and not a part of the rule itself that is supported or created by the case. Moreover, Julius Stone states: "[T]his can mean is that the scope of the ratio decidendi of the precedent case will frequently not be determined or determinable until further decisions have been made;" [17]

The third pillar is that for the proper and wise handling of the precedent, in order to "create" a right ratio out of the spirit (and not the specific wording of the text) of the decision, the judge has to exercise the art of distinguishing. This is a process, whereby the actors in the judicial process are recognizing what are the similarities and differences between two or more cases, and argue, that the differences have an effect on the legal consequences. The method is closely connected to the method of analogy. In fact, Siltala states, that "the use of analogy, and distinguishing are the two sides of the same coin"[18]. When using the analogy, we disregard any dissimilarities between the two cases, while using the distinction we attach relevance to similarities.
And finally, the fourth pillar is the most general consideration and also a consequence of the previous three: precedents are "doing" something rather than simply "saying' something. As Tiersma states:

> As a consequence, the common law remained conceptually distinct from statutory law. What mattered was the court's decision and the general principle that underlay it, and not the precise words in which the decision was expressed. As Mansfield said: "The law does not consist of particular cases, but of general principles, which are illustrated and explained by these cases." Mansfield also noted that "[t]he reason and spirit of cases make law; not the letter of particular precedents" [19]

To put this in another way, Holdsworth, when writing about the evolution of case law and citing Coke, Hale and Blackstone finally concludes that "cases do not make law, but are only the best evidence of what the law is."[20] Duxbury in his book also argues that "Sometimes, furthermore, the authority of precedent will rest not in a specific decision, but in a series of decisions, which sediment to form something which lawyers and judges will commonly refer to as a 'rule', even though this rule might not have been expressly formulated in the case law".[21]

Although Tiersma argues that there is a huge difference between the law of Britain and the U.S., and one of the main point of difference is that in the U.S. there is an ongoing process of "textualization" of the precedent, there is still an important presumption in common law systems that it is the "spirit" of the decision that really counts. Judges have to follow the *ratio*, the principles[22] behind the decision, and not just the wording that these decisions are using.

2. The theory of judicial practice, and the role of courts in civil law systems

My preliminary hypothesis is that *if these four pillars are not present* in the judicial process, we cannot talk about case law and theory of precedent. Let us examine them one by one in the context of a civil law system.

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[17] STONE (see supra note 12) 607
[18] Siltala (see supra note 12) 94
[19] This is the argument of Hart, (see supra note 5), but plays a central role in Tiersma's argumentation as well. See, TIERSMA, Peter, M: The Textualization of Precedent, 82 *Notre Dame L. Rev.* 1187 (2006-2007), 1202
[20] HOLDSWORTH, W. S: Case Law, 50 *L. Q. Rev*. 180 (1934), 184
[21] DUXBURY, (see supra note 12) 23
[22] HOLDSWORTH, (see supra note 12) quotes Frederick POLLOCK: "Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles recognised and applied as necessary grounds of the decision."

The lack of stare decisis is clear. In civil law systems, it is not obligatory to follow previous cases. This does not mean that courts do not follow *de facto* previous cases. But, even when they do, courts handle precedents differently within the reasoning. On the other hand, if they do not follow precedent, normally the upper courts have no right to take action against this. Even if in some legal systems, like that in Hungary, there are certain types of documents issued by the Supreme Court which are obligatory, these instruments deal with isolated problems, and are formulated as a statutory amendment.

The ratio-obiter distinction is also missing. The ideology behind a statutory law system is incompatible with any idea that there are important, and less important parts within any particular legal text. This applies for judicial decisions too. As we will see later, in Hungarian judicial practice the ratio of the judicial decision is formulated in a form of a "headnote", and this headnote *functions as a legal amendment, as a kind of "executive", or "interpretative" supplement to the law*. Even if courts are citing a case, in most of the cases they cite only the headnote, like amendments of an Act.
In close connection with the abovementioned two features, the practice of distinguishing cases does not exist. It is substituted with interpretation. If a factual situation does not entirely fit to the original model of the general norm, judges have to reinterpret the text of the norm. It is not only about "penumbra" and "core" meaning[23], but has something to do with the *theory of coherence*. Interpretation should be performed in the light of other amendments, because legal amendments form a system.[24] Interpretation should be done in a systematic way; one amendment standing alone has practically no meaning. [25]
Finally, it is clear that civil law systems are textual. Interpretation should ultimately follow the wording, the text of the law. In this way, what counts is what the law "says", and not what it "does". If we take a short look at the history of civil law, it is clear that the genesis of these systems is also hopelessly bound to texts – to Digesta, than to Corpus Iuris,[26] and to the great Civil Codes of France, Prussia, Germany, Switzerland, and Austria.
Therefore, the primary tool of handling of similar cases, and the adaptation of the law to the changing socio-cultural and economic circumstances *is the interpretation of texts*. The work of the judge is, at least on an ideological level, mainly manipulations of texts. This has two additional consequences.
It seems that *reasoning* is different in civil law systems. These systems are based on norms, which are abstract and general in wording, and judicial decisions tend to show themselves rather as *logical operations*, than rhetorical efforts. Here the result (the judgment) is *directly coming* from the premises, and is not aiming toward persuasion. According to a recent theory[27] the judicial decision can be viewed as an ongoing process of "linguistic conversions", and there are differences in the ways these texts are "translated" to one another. [28] The tightest connection is "inference", when the two texts are in a logical connection. The second is "justification", which only demonstrates that the two texts can be inosculated (without logical controversy). The third type is "reasoning", which connects the two texts in a rhetorical rather than logical way, with the ultimate goal of persuasion. During the research, I identified a fourth type of connection (which can be categorized as an extreme version of the first one): the "demonstration". This type involves referencing official texts without even citing them, for example, when courts only mention a "long standing judicial practice" without any further explanation. The "demonstration" is surprisingly frequent in Hungarian judicial decisions.

[23] HART (see supra note 12) 134
[24] SAVIGNY, Friedrich Carl von: System des heutigen römischen Rechts, Berlin, 1840, 262
[25] SOMLÓ, Felix: *Juristische Grundlehre*, Verlag von Felix Meiner, Leipzig, 1917, 97
[26] BERMAN, Harold J: *Law and Revolution, The Formation of the Weestern Legal Tradition,* Harvard University Press, Cambridge Mass., etc. 1983, 127-131
[27] SZABÓ, Miklós: Law as Translation. *Archiv für Rechts- und Sozialphilosophie.* (ARSP Beiheft Nr. 91) 2004, 60-68
[28] SZABÓ, Miklós: 'A jogászi érvelés változása', (Change in Legal Reasoning [after 1990]): Szabadfalvi (ed.): *Facultas nata*, Miskolc, Bíbor, 400-401

From a broader perspective, this phenomenon also has a close relation to certain sociological and institutional factors. These are the hierarchical structure of the courts, the authority and style of judicial decisions, and the structure of the profession of judges. The hierarchy of courts has significance, because the Supreme Court, while "ensuringing the unity" of the judicial decisions is issuing two different types of documents. First it issues the summaries of cassation cases in case journals, and second, "guidance", in the form of "unification decisions" or other "Abstract Opinions".[29] The style and the authority of judicial decisions also have a significance. Since the decisions tend to show themselves as the result of a logical process, they are normally shorter and less explanatory than in common law systems. They rarely speak to the layman, and their overall respect they are granted is a lot lower than in common law. Finally, there is the authority of the judiciary. This is in close connection with the "career type", life-long appointed, bureaucratic character of the profession.[30]
The attitude towards judicial decisions as sources of law can be classified into two groups in Hungarian judicial practice. In the first, judge made law *is not allowed* (and is not recognized as existing), as only the lawmaker or legislature can create new law. This was the official point of view of early communist jurisprudence.[31] Later, the ideology became slightly more permissive, and another concept was articulated, which could be called a "restricted role of judge-made law". According to this idea, judge-made law is a "unfortunate necessity" and only a temporary phenomenon. Since the text of the laws can be adjusted to meet the changing socio-economical needs slowly, the first steps might be taken by the courts. But the legislation must incorporate the legal solutions elaborated by the courts to the text of the statutes as soon as possible.[32] Since new problems and needs are continuously emerging, this whole process is cyclical.

3. Signs of convergence

From the end of the 19th century, supreme courts all around Europe were granted the right to ensure legal unity.[33] This concept of legal unity is the civilian counterpart of stare decisis, since, through the unification process, the supreme courts can overrule the diverging practice of a particular court. After the Second World War, constitutional courts were established in civil law countries, which followed a case law method[34], further strengthening the culture of precedents within the civilian systems. A third factor was that from the end of the 1950s, an extensive publication of judicial decisions was started in Europe, both by commercial publishers and by the courts themselves.[35] And

[29] The "abstract resolution" also exists in Poland. See MORAWSKI, Lech– ZIRK-SADOWSKY, Marek: 'Precedent in Poland', in: MACCORMICK - SUMMERS (see supra note 12) 220. The Hungarian situation's peculiarity is that abstract opinions issued by the chambers (civil, penal, etc.) of the Supreme Court played a very important role in the past, and these are still cited very frequently.
[30] David, (see supra note 3), 140
[31] See e.g. SZAMEL, Lajos: *A jogforrások*, *(Sources of Law)* Budapest, KJK, 1958. 130-132. (in Hungarian)
[32] See e.g. OROSZ, Árpád: Az egyedi ügyekhez igazodás magyar gyakorlata a polgári ügyszakban, (The Practice of Following Individual Cases in Hungary in Civil Law Branch) *Jogesetek Magyarázata* 2012/3 79 – 82 (in Hungarian)
[33] E.g. Art 95 (3) of the German Grundgesetz says: (3) Zur Wahrung der Einheitlichkeit der Rechtsprechung ist ein Gemeinsamer Senat der in Absatz 1 genannten Gerichte zu bilden. Das Nähere regelt ein Bundesgesetz. The Act mentioned is the *Gesetz zur Wahrung der Einheitlichkeit der Rechtsprechung der obersten Gerichtshöfe des Bundes.* The Hungarian solution is very similar to this.
[34] On the history of German Constitutional Court see: KOMMERS, Donald P.; MILLER, Russell A.: Das Bundesverfassungsgericht: Procedure, Practice and Policy of the German Federal Constitutional Court 3 *Journal of Comparative Law* (2008), 194-211. On the case-law of the Court see: ALEXY, Robert – DREIER, Ralph: 'Precedent in the Federal Republic of Germany'. in: MACCORMICK –SUMMERS (see supra note 12) 17.
[35] KAVASS, Igor I.: Law Reporting: Comparisons between Western Europe and Common Law Countries, 5 *International Journal of Law Libraries* (1977), 104-120 o. „An increasing number of experts on this subject (…) have observed for some time a gradual drift towards a more extensive publication and use of judicial decisions

finally, the Internet initiated dramatic changes, when – partly as a consequence of Freedom of Information legislation – a huge number of (unedited) judicial decisions were published online, and effective search engines further increased the visibility of these decisions.
All these developments were pointing in one direction: the number of citations in judicial decisions started to increase in civilian systems. I think this has driven Komárek[36] to develop a theory, which argues that civil law systems have their own method of handling cases, namely "reasoning with previous cases", which is the equivalent of the "case-law method". I argue in Part III of this article that *there is no such method*, at least not in Hungarian law. Rather, the use of previous cases is basically similar to the use of statutory amendments.

4. Background, methodology and scope of the research

4.1. The structure of the Hungarian court system

The Hungarian Court system has four levels. The 111 local courts are the courts of first instance. The second level courts are the County Courts, of which there are 20 (one in each of the 19 counties and the Capital Court). There are also four Appellate Courts. At the top of the judicial system is the Supreme Court (Curia).
Local courts (111 - *járásbíróságok*, formerly *helyi bíróságok*) are the courts of first instance. Consequently, they are competent in minor issues. There are separate labour and administrative courts as courts of first instance but there are only 20 of them. They are all located in the county courts' city.
County courts (20 - *törvényszékek*, formerly *megyei bíróságok*) decide civil and penal cases having "important" or high value subject matter at the first instance and appellate suits in cases started at the local level. They are the second instance courts for administrative and labour issues.
The appellate courts' (4 - *táblabíróságok*) main function is to serve as a second instance court on cases which were decided at the county level. (Normally local courts are the courts of first instance, so cases started at county level are special because of their subject matter - e.g. copyright - or because of the value of the lawsuit.
All County and Appellate Courts are organized into three departments and further into branches. The main departments are the civil department (subdivided into the normal civil branch, which deals with cases between private parties, and the business branch, which deals with cases between business organisations); the penal department; and – at County Court -- the administrative and labour department (subdivided into an administrative branch, dealing with the supervision of the decisions of the administrative organs, and a labour branch).
The Supreme Court has a double function: it serves as a Court of Cassation in decided cases (as a court of third instance), and has a legal unification role – i.e. its task is to monitor the jurisdiction of lower courts, and in case of divergence issue certain acts.

4.2. Types of decisions - unedited decisions (citing documents) and edited precedents (cited documents)

in Western European countries. (…) They do (…) perform several important socio political functions which are not different form similar developments in the use of judicial decisions in other economically advanced countries, irrespective of whether their legal systems are based on Common Law or not." (105)
[36] KOMÁREK, Jan: Reasoning with Previous Decisions: Beyond the Doctrine of Precedent. 61 *Am. J. Comp. L.* , (2013), 149-171, 156-157

4.2.1. *Unedited decisions – the analysed citing documents*

For the research, we split the data into two parts: to *citing* and *cited* documents (precedents). Presently, around 500,000 lawsuits are heard per year in Hungarian courts, and around 11,000 resulting decisions are published. More than 90% of these latter cases are published under the FOI act[37], in their unedited, original form; only the data of the parties are deleted for privacy reasons from the decision. This database was the one for the research of the *citing documents*. This database represents the day-to-day practice of the courts in a raw, unedited form. From the beginning of the publication of the decisions in 2007 to the time this research closed in 2012, the number of items in this database was 61,512.

	Civil	Business	Labour	Administrative	Penal	Total
Supreme Court	4,873	867	1,465	5,496	1,166	**13,867**
Appellate Courts	9,907	3,548	0	1,172	2,704	**17,331**
County Courts	10,705	4,297	1,588	7,934	3,066	**27,590**
Local Courts	1,396	314	0	0	1,014	**2,724**
Total	**26,881**	**9,026**	**3,053**	**14,602**	**7,950**	**61,512**

Table 1 – Unedited judgments (UEJ) in the CJD – Citing documents database

4.2.2. *Edited decisions – cited documents*

In the abovementioned group, we analysed the citations of "precedents" that are mainly published in official and private case journals. We went back as early as possible. The different journals were started at different times. The structure of the cases and the starting date of publication can be found in Table 2 below.

Type of edited case	Issuer of decisions	Publisher	Start date of collection	Number of decisions in total
Uniformity Decisions (UD)	Supreme Court	Official	1999 (1977)	**169**
Abstract Opinions (AO)	Supreme Court	Official	1975	**1,162**
Principal Decisions of the Curia (PD)	Supreme Court	Official	1999	**2,441**
Court Decisions of the Curia (CD)	Supreme Court	Official	1975	**20,118**
Decisions from Collection of Court Decisions Journal (CCD)	Appellate Courts	Private	2002	**2,722**
Decisions from Administrative and Business Cases Collection (ABC)	Supreme Court	Private	1992	**5,636**
Constitutional Court Decisions (CC)	Constitutional Court	Official	1990	**2,870**
Total				**35,118**

Table 2 – Edited decisions, "precedents" – Cited documents

The main issuer of precedents is the Supreme Court. It regularly publishes four types of documents. The first is the *Uniformity Decision* (UD) (before 1997 these had different names, (*Elvi döntés*) which decides a controversial legal question that had led to conflicting decisions in lower courts. The UD is formulated like a decision, and – apart from some rare examples – it only decides the debated legal question before the court. This form of decision *has a binding power* on lower courts.

[37] The Act on Electronic Freedom of Information (Act XC. of 2005. § 16.) introduced the Collection of Judicial Decisions, and publication was started at 2007. Recently the Act on the Organisation and Administration of Courts, (Act CLXI. of 2011. § 163.) is regulating the issue.

In the second type there are non-binding explanatory documents, the A*bstract Opinions* (AO) of the professional branches (civil branch with civil and business departments, penal branch, and labour and administrative branch with labour and administrative departments) of Curia, which are passed by the body of judges working in the same chamber, called College. Therefore they have the slightly misleading name of "College Opinions" in Hungarian jargon. AOs have great importance in the Hungarian legal system. These quasi-norms are not deciding one particular restricted legal problem, but normally they deal with a set of controversial legal questions *within a field of law* (such as problems of cases regarding joint property or the legal aspects of libel cases). Though these acts has no legal binding power, courts do follow and use them.
Finally, third type contains two sub-types of "precedents". Both are individual cases selected from the practice of the Supreme Court as a Court of Cassation. The first type is the normal decision, called a court decision – CD), while the other is selected because of its "principal importance" (Principal decision - PD). Both of these are individual decisions, and restricted to one particular legal question.
All of the abovementioned types of documents are published in the *official journal of the supreme court* (Decisions of the Curia – *Kúriai Döntések*, formerly *Bírósági Határozatok*, BH).
Private publishers also publish decisions. There are two influential journals, both published by Wolters Kluwer, Hungary: *the Collection of Court Decisions* (CCD), containing some 400 cases per year, and the *Administrative and Business Cases Collection* (ABC), with around the same amount.
Besides the abovementioned types, there is one additional of "precedent type" which is frequently cited, the decisions of the Constitutional Court. The Constitutional Court was established in 1989, and currently publishes about 100 decisions per year. It has its own official journal, but the most important decisions are also published in the *Official Gazette* (*Magyar Közlöny*).
All of the abovementioned decision-types (except constitutional court decisions) have one thing in common: they have an *edited headnote*, which is typically one or two (in the cases of UD, PD, CD, CCD, or ABC) or more (in the case of AO 5-15) *amendments*. These amendments are formulated like rules of an Act.

4.3. The operative methodology of the research

The operative methodology of this research was the following. We used a commercial legal database, which contains *both the citing and the cited documents*. Within the database there are metadata attached to the documents, such as the type of document, department and branch, issuing court, date of issue, and the subject of the decision. Further, the citations are also stored in a database as hyperlinks, where the starting point of the link and the end point of the link are exactly identified. We then made queries from different angles, and prepared tables. For example, we looked at how many documents contain a citation to a precedent, how these citations are distributed across court level, per branch, per subject of case, per time.
Here I have to mention certain peculiarities of a computer-based analysis of this type. Machines do not understand the text or the context. They perform logical and mathematical operations with strings, no matter how complex these mathematical operations and the underlying rules are. They compare two datasets (like a vocabulary and a text) and count certain data, as a result of a query. Therefore, machine-made statistics have certain limitations. The first, and most important, is that the computer will not recognize any string that is not written in the defined format. The second is, that it does not understand even the basic context of the mentioning. For example It makes a huge difference if a decision is mentioned in another decision this way, that "the court followed the XY decision", or like this, "the court ignored the plaintiff's reference to XY decision, because its facts are different from the case under investigation". Furthermore, computers cannot understand who proposed or mentioned the case for the first time. In short, machine made statistics can only a quantitative picture about some simple, measurable parameters of judicial practice. For any contextual analysis, the decisions must be read and understood by humans. This does not exclude the possibility that with the development of IT and Artificial Intelligence, more and more of these

problems can be eliminated and that machines will ultimately be capable of answering increasingly contextual questions.

II. Computer based analysis of the citations (qualitative research)

1. The frequency of citations, court levels, branches, document types

The first simple question observed was that of how many of the citing documents (unedited judgments) contain *any* citations, references to *any* edited decisions. We created the following tables for all court levels. The rows of each table lists the various court branches, while the columns list the cited decision types. It is important to mention that the "sum of documents containing citation" is not the sum of the previous columns, because one document can contain a citation to two or more different types of precedents.

1.1. Supreme Court (Curia)

Number of documents	Total published	UD	AO	PD	CD	CCD	ABC	CC	Total containing citation
Civil branch	4,873	62	569	291	1,045	78	13	98	1,791
Business branch	867	41	68	94	144	22	5	8	275
Labour branch	1,465	19	156	135	569	8	4	56	731
Administrative branch	5,496	109	171	144	610	5	166	197	1,146
Penal branch	1,166	130	88	44	291	2	2	27	485
Curia total	**13867**	**361**	**1,052**	**708**	**2,659**	**115**	**190**	**386**	**4,428**

Table 3a – Citations to edited precedents – Curia, figures

	UD	AO	PD	CD	CCD	ABC	CC	Total containing citation
Civil branch	1%	12%	6%	21%	2%	0%	2%	37%
Business branch	5%	8%	11%	17%	3%	1%	1%	32%
Labour branch	1%	11%	9%	39%	1%	0%	4%	50%
Administrative branch	2%	3%	3%	11%	0%	3%	4%	21%
Penal branch	11%	8%	4%	25%	0%	0%	2%	42%
Curia total	**3%**	**8%**	**5%**	**19%**	**1%**	**1%**	**3%**	**32%**

Table 3b – Citations to edited precedents – Curia, percentages

1.2. Appellate courts

Number of documents	Total published	UD	AO	PD	CD	CCD	ABC	CC	Total containing citation
Civil branch	9,907	154	1,869	663	1,962	739	45	829	4,088
Business branch	3,548	161	386	368	810	462	23	34	1,304
Labour branch	0	0	0	0	0	0	0	0	0
Administrative branch	1,172	48	113	22	41	3	20	44	238
Penal branch	2,704	211	275	41	511	1	2	40	873
Appellate courts total	**17,331**	**574**	**2,643**	**1,094**	**3,324**	**1,205**	**90**	**947**	**6,503**

Table 4a – Citations to edited precedents – Appellate courts, figures

	UD	AO	PD	CD	CCD	ABC	CC	Total containing citation
Civil branch	2%	19%	7%	20%	7%	0%	8%	41%
Business branch	5%	11%	10%	23%	13%	1%	1%	37%
Labour branch	na.	na.	na.	na.	na.	na.	na.	na.
Administrative branch	4%	10%	2%	3%	0%	2%	4%	20%
Penal branch	8%	10%	2%	19%	0%	0%	1%	32%
Appellate courts total	**3%**	**15%**	**6%**	**19%**	**7%**	**1%**	**5%**	**38%**

Table 4b – Citations to edited precedents – Appellate courts, percentages

1.3. County courts

Number of documents	Total published	UD	AO	PD	CD	CCD	ABC	CC	Total containing citation
Civil branch	10,705	103	1,761	434	1,522	577	24	777	3,578
Business branch	4,297	110	332	257	584	302	14	32	1,051
Labour branch	1,588	31	346	188	474	4	4	63	903
Administrative branch	7,934	110	1,644	181	275	11	207	276	2,220
Penal branch	3,066	200	212	46	369	6	0	35	702
County courts total	**27,590**	**554**	**4,295**	**1,106**	**3,224**	**900**	**249**	**1,183**	**8,454**

Table 5a – Citations to edited precedents – County courts, figures

	UD	AO	PD	CD	CCD	ABC	CC	Total containing citation
Civil branch	1%	16%	4%	14%	5%	0%	7%	33%
Business branch	3%	8%	6%	14%	7%	0%	1%	24%
Labour branch	2%	22%	12%	30%	0%	0%	4%	57%
Administrative branch	1%	21%	2%	3%	0%	3%	3%	28%
Penal branch	7%	7%	2%	12%	0%	0%	1%	23%
County courts total	**2%**	**16%**	**4%**	**12%**	**3%**	**1%**	**4%**	**31%**

Table 5b – Citations to edited precedents – County courts, percentages

1.4. Local courts

Number of documents	Total published	UD	AO	PD	CD	CCD	ABC	CC	Total containing citation
Civil branch	1,396	7	171	61	198	46	6	30	411
Business branch	314	2	26	9	27	13	0	1	55
Labour branch	0	0	0	0	0	0	0	0	0
Administrative branch	0	0	0	0	0	0	0	0	0
Penal branch	1,014	23	25	11	80	0	0	12	142
Local courts total	**2,724**	**32**	**222**	**81**	**305**	**59**	**6**	**43**	**608**

Table 6a – Citations to edited precedents – Local courts, figures

	UD	AO	PD	CD	CCD	ABC	CC	Total containing citation
Civil branch	1%	3%	4%	14%	3%	0%	2%	29%
Business branch	1%	2%	3%	9%	4%	0%	0%	18%
Labour branch	na.	na.	na.	na.	na.	na.	na.	na.
Administrative branch	na.	na.	na.	na.	na.	na.	na.	na.
Penal branch	2%	1%	1%	8%	0%	0%	1%	14%
Local courts total	**1%**	**2%**	**3%**	**11%**	**2%**	**0%**	**2%**	**22%**

Table 6b – Citations to edited precedents – Local courts, percentages

1.5. Total

Number of documents	Total published	UD	AO	PD	CD	CCD	ABC	CC	Total containing citation
Civil branch	26,881	326	4,370	1,449	4,727	1,440	88	1,734	9,868
Business branch	9,026	314	812	728	1,565	799	42	75	2,685
Labour branch	3,053	50	502	323	1,043	12	8	119	1,634
Administrative branch	14,602	267	1,928	347	926	19	393	517	3,604
Penal branch	7,950	564	600	142	1,251	9	4	114	2,202
All courts total	**61,512**	**1,521**	**8,212**	**2,989**	**9,512**	**2,279**	**535**	**2,559**	**19,993**

Table 7a – Citations to edited precedents – all courts, figures

	UD	AO	PD	CD	CCD	ABC	CC	Total containing citation
Civil branch	1%	16%	5%	18%	5%	0%	6%	37%
Business branch	3%	9%	8%	17%	9%	0%	1%	30%
Labour branch	2%	16%	11%	34%	0%	0%	4%	54%
Administrative branch	2%	13%	2%	6%	0%	3%	4%	25%
Penal branch	7%	8%	2%	16%	0%	0%	1%	28%
All courts total	**2%**	**13%**	**5%**	**15%**	**4%**	**1%**	**4%**	**33%**

Table 7b – Citations to edited precedents – all courts, percentages

1.6. Relative popularity of the precedent types

We created one additional simple figure. We wanted to know the "impact factor" of the individual precedent types. For this, we simply divided the number of citations to different precedent types, by the total number of all (cited) documents available in databases. (Table 8 represent Table 7a totals divided by Table 2 totals).

	Number of decisions in total	**Number of documents citing the decision type**	**Impact ratio**
Uniformity Decisions (UD)	169	1,521	9
Abstract Opinions	1,162	8,212	7,1
Principal Decisions of the Curia	2,441	2,989	1,2
Court Decisions of the Curia (CD)	20,118	9,512	0,5
Decision from Collection of Court Decisions Journal (CCD) – Journal of Appellate Courts (private collection)	2,722	2,279	0,8
Decision from Administrative and Business Cases Collection (ABC) – private collection	5,636	535	0,1
Constitutional Court Decisions	2,870	2,559	0,9%
Total	**35,118**	**27,607**	

Table 8 – Impact of different precedent types

1.7. Conclusions

We can see, that one-third of the published 61,512 judgements contain a citation to previous cases. But this overall figure varies both by branch and court level.
Regarding the court level, the Curia and county courts are on the average, while appellate courts are above this average and local courts fall below. The higher number of the appellate court is coming from citations to their own decisions published in their own journal, (CCD) published by a private publisher. They cite the decisions of the Curia more frequently than lower courts, or by the Curia itself. This surplus is also generated by all branches of the appellate courts. Inserting the documents of Curia into the decisions serves a tool of compliance with the upper courts.
An analysis per branch shows an even greater dispersion of citation frequency. The labour branch tops the list with its 50% of frequency, followed by the other two civil branches. Penal law is the fourth in the list, while administrative law scores lowest. But if we examine the branches *together* with the court level, the picture is more mixed, because the number of citations fluctuates across the court levels. For example, the number of citations in the penal branch at Curia is quite high, even

higher than found in civil law branches, and this surplus is comprised of all precedent types equally. Uniformity decisions, for example, are very popular authorities at Curia, and cited with significantly more frequency when compared with other branches.
An obvious explanation could be that differences are caused mainly by the civil law–public law distinction. Rules are typically dispositive in civil law, and cogent in public law branches, and in penal law the *nullum crimen sine lege* principle further restricts the available interpretative and argumentative space of the judge. But the Curia's citation activism in the penal field seems to contradict this assumption/idea. Another explanation could be that in penal law, the space for interpretation and the possibility to rely on precedents remains under the monopoly of the Curia, which is reinforcing its own practice.
All tables (3-7) show the popularity of different precedent types as well. Court Decisions (CD) are the most popular case types referenced. We can find a citation to this type of precedents in 20% of all cases in average, and more than the half of all citations are CD citations. Here there is a sharp difference: upper courts (Curia, appellate courts) cite around 25% of CDs, while lower courts (the county and local courts) around 15% of CDs. But within the lower courts – especially the county courts – this lower percentage is counterbalanced by the more frequent reference to Abstract Opinions. Lower courts use AOs more frequently than individual precedent-types.
It further deepens the picture, if we look at the *relative importance (impact)* of the precedent types. Here I used a very simple number: the impact is 1 if one decision is cited in one document. Uniformity decision's impact number of 9 is not surprising: this is the only obligatory instrument. But Abstract Opinion's high impact value (7.1) shows, that this a very widely used and popular document type. What is surprising, is that privately published CCDs have the same high impact ratio, which is even higher than the CD's impact ratio. The explanation is that courts more willingly cite fresher decisions. The nearly 10,000 CDs majority are overlooked.[38]

[38] I have a chart on the age of the cited precedents too. For reference, see the Hungarian version of this text: http://jog.tk.mta.hu/uploads/files/mtalwp/2014_01_Zodi_Zsolt.pdf p. 42.

2. The change of citations of precedents in time

2.1. Values

	2007		2008		2009		2010		2011		2012		Total	
	Total	**Citing**	**Total**	**Citing**	**Total**	**Citing**	**Total**	**Citing**	**Total**	**Citing**	**Total**	**Citing**	**Total**	**Citing**
Curia	931	231	2,255	576	2,547	717	2,772	948	2,905	981	2,457	882	13,867	4,335
Appellate Courts	1,477	452	2,918	963	3,021	1,069	3,435	1,275	3,776	1,435	2,704	1,153	17,331	6,347
County Courts	4,955	1,366	5,648	1,613	6,031	1,822	5,809	2,024	4,169	1,495	978	399	27,590	8,719
Local Courts	754	161	666	147	631	151	422	88	223	33	28	4	2,724	584
Total	8,117	2,210	11,487	3,299	12,230	3,759	12,438	4,335	11,073	3,944	6,167	2,438	61,512	19,985

Table 9 –Number of total judgments and citing documents between 2007 and 2012

2.2. Percentages

	2007	**2008**	**2009**	**2010**	**2011**	**2012**	**Total**
Curia	25%	26%	28%	34%	34%	36%	31%
Appellate Courts	31%	33%	35%	37%	38%	43%	37%
County Courts	28%	29%	30%	35%	36%	41%	32%
Local Courts	21%	22%	24%	21%	15%	14%	21%
Total	**27%**	**29%**	**31%**	**35%**	**36%**	**40%**	**32%**

Table 10 – Changes of documents containing citations in percentage per court level

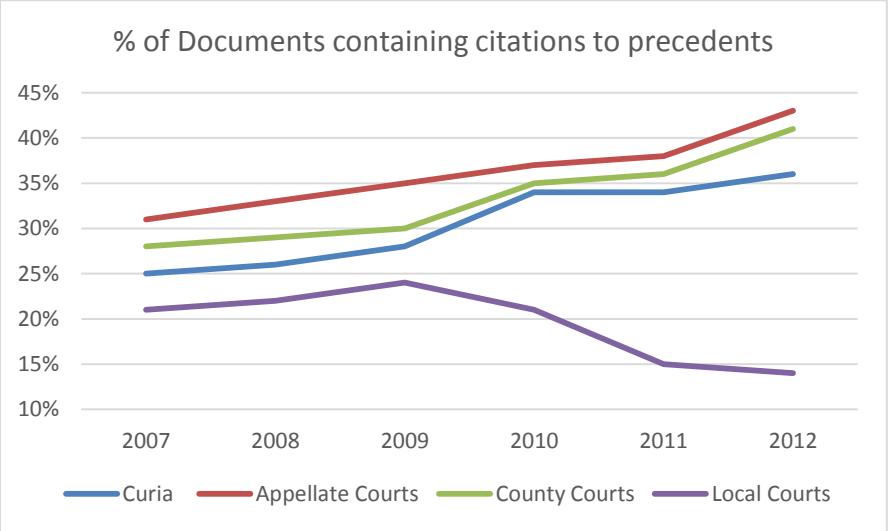

Chart to table 9

2.3. Conclusions

These tables show a clear picture. Apart from in local courts[39], the number of citations used in Hungarian court decisions is increasing over time. The growth is minimum yearly 1%, but in some years 2-4%. The difference between the court levels stays stable. We have no data from the previous years, but I assume this was the picture before the start of the database.
This growth has something to do with the change in attitudes of judges and parties towards the precedents, and I assume this is a self-reinforcing process. The availability of decisions, precedents, cases, and especially the increasingly effective search engines and publication methods[40] are generating more and more citations to precedents. The parties want to win the case, and reasoning with previous cases is one tool for this. If a party cites a precedent, the counterparty should also argue with something, and the judges must somehow reflect on the citations. More published decision results more citations, and the habit of frequent citation involves a greater need for publishing more cases.
However this, in itself, is not a decisive argument that Hungarian law is becoming a case law system. Rather, these, as all statistical figure should be interpreted together with the results of qualitative research, which shows a different picture.

3. The impact of fields of law, and sub-fields of law to citations of precedents

3.1. Some methodological remarks to the tables

One of our hypotheses was that the field of law (case type) strongly influences the precedent intensity and that there is a great difference between case-types. The following tables present the number of citations to precedents per court department (business, civil, labour, administrative and penal) and by field of law (case type). We prepared statistics only for the most frequent case types.[41] Within one row, on the left side, there are 7 entries, namely the total number of judgments within the database, (2 column) and the number of precedent-citing documents within the field, (3 column) followed by the number of citing documents per precedent type (4-8 columns). The right part of the table shows some ratios, like the percentage of citing documents within the whole, (column 9 - column 3 divided by column 2) and the percentage of the citing documents per precedent type within citing documents. (Column 10-14 – columns 4-8 divided by column 3). All of the 5 tables are sorted by the ratio of citing documents (column 9).

[39] The published judgments of the local courts are not representative, and especially not from years 2011 and 2012. The reason is twofold: 1. The publication mechanism of the court website. The main rule is that the final judgments of the Curia and the Appellate Courts should be published, *together with the connected first, (and in case of supervisory – cassation - decisions of the Curia, second*) instance decisions. In case of normal appellate (final) decisions of the Appellate Courts, the first instance is the County Court. Therefore, from this pile there is no Local Court decision at all from the database. Local Court decisions can get into the database, if a second instance final County Court decision is attacked in a supervisory (cassation) procedure at Curia, and it is published as a background of the cassation decision of it, as the first instance decision. 2. Furthermore, as local decisions are the first decisions in time, and the average time of procedure is 1 -1,5 years, a cassation decision of the Curia published in 2012 is typically finishing a case started in 2010 at a local court. This is the reason why there are so few local court decisions from 2011 and 2012.

[40] In the most widely used legal databases the important case-types, (in some, all case types except CC), can be inserted into the text of the law, visually offering a connected case.

[41] Since the tables show only the most frequent case types, there is a difference in the ratio of citing documents, compared to tables 3-7. For example the civil branch's ratio in the summary table (7) is 37, while in table 10 40%. The difference is coming from the less frequent case types.

3.2. Civil department

	Total judgments	Judgments with citations to precedents	UD	AO	PD	CD	CC	**Ratio of citing documents**	Ratio of UD	Ratio of AO	Ratio of PD	Ratio of CD	Ratio of CC
Libel cases	958	788	10	2,327	17	136	576	**82%**	1%	295%	2%	17%	73%
Termination of joint property	583	320	5	611	13	173	1	**55%**	2%	191%	4%	54%	0%
Infringement of personal rights	2,588	1,377	10	1,310	289	1,051	1,686	**53%**	1%	95%	21%	76%	122%
Invalidity of contract	1,724	761	229	458	276	1,032	25	**44%**	30%	60%	36%	136%	3%
Determination of ownership	1,004	426	125	310	71	466	60	**42%**	29%	73%	17%	109%	14%
Payment of contractual price	370	145	8	42	23	175	0	**39%**	6%	29%	16%	121%	0%
Damage caused while exercising public powers	542	171	9	84	48	179	34	**32%**	5%	49%	28%	105%	20%
Damage compensation (Torts)	5,903	1,564	181	897	372	1253	385	**26%**	12%	57%	24%	80%	25%
Repayment of loan	840	187	19	81	56	178	7	**22%**	10%	43%	30%	95%	4%
Total	**14,512**	**5,739**	**596**	**6,120**	**1,165**	**4,643**	**2,774**	**40%**	10%	107%	20%	81%	48%

Table 11 – Number of precedent types and ratios per case type at the civil department

3.2. Business department

	Total judgments	Judgments with citations to precedents	UD	AO	PD	CD	CC	**Ratio of citing documents**	Ratio of UD	Ratio of AO	Ratio of PD	Ratio of CD	Ratio of CC
Invalidity of contract	436	217	94	160	90	228	16	**50%**	43%	74%	41%	105%	7%
Determination of ownership	117	50	9	62	13	47	2	**43%**	18%	124%	26%	94%	4%
Payment of contractual price	865	270	17	169	69	258	4	**31%**	6%	63%	26%	96%	1%
Damage compensation (Torts)	1,241	335	87	143	155	334	13	**27%**	26%	43%	46%	100%	4%
Unfair market practices	121	32	7	0	20	29	0	**26%**	22%	0%	63%	91%	0%
Repayment of debt	526	132	41	51	24	156	1	**25%**	31%	39%	18%	118%	1%
Payment of purchase price	401	95	28	37	21	95	0	**24%**	29%	39%	22%	100%	0%
Invalidity of a shareholders' meeting resolution	194	38	12	10	12	43	2	**20%**	32%	26%	32%	113%	5%
Total	**3,901**	**1,169**	**295**	**632**	**404**	**1,190**	**38**	**30%**	25%	54%	35%	102%	3%

Table 12 – Number of precedent types and ratios per case type at the business department

3.3. Labour branch

	Total judgments	Judgments with citations to precedents	UD	AO	PD	CD	CC	Ratio of citing documents	Ratio of UD	Ratio of AO	Ratio of PD	Ratio of CD	Ratio of CC
Unlawful termination with immediate effect	542	210	5	70	69	312	10	**39%**	2%	33%	33%	149%	5%
Damage compensation payment	258	95	3	80	14	104	21	**37%**	3%	84%	15%	109%	22%
Unlawful termination of employment contract	1,077	373	8	185	88	486	10	**35%**	2%	50%	24%	130%	3%
Revision of Social Insurance Authority decisions	257	60	4	21	18	49	0	**23%**	7%	35%	30%	82%	0%
Total	**2,134**	**738**	**20**	**356**	**189**	**951**	**41**	**35%**	3%	48%	26%	129%	6%

Table 13 – Number of precedent types and ratios per case type at the labour department

3.4. Administrative branch

	Total judgments	Judgments with citations to precedents	UD	AO	PD	CD	CC	Ratio of citing documents	Ratio of UD	Ratio of AO	Ratio of PD	Ratio of CD	Ratio of CC
Excise cases	181	72	0	37	7	66	0	**40%**	0%	51%	10%	92%	0%
Tax cases	2,603	849	43	316	177	894	93	**33%**	5%	37%	21%	105%	11%
Expropriation cases	566	163	4	201	6	13	24	**29%**	2%	123%	4%	8%	15%
Public procurement cases	750	195	9	182	9	33	6	**26%**	5%	93%	5%	17%	3%
Broadcasting cases	395	96	9	59	7	16	103	**24%**	9%	61%	7%	17%	107%
Construction permission cases	565	91	24	36	12	53	18	**16%**	26%	40%	13%	58%	20%
Land registry cases	419	67	11	52	10	24	20	**16%**	16%	78%	15%	36%	30%
Refugee cases	1,022	145	0	145	0	1	0	**14%**	0%	100%	0%	1%	0%
Total	**6,501**	**1,678**	**100**	**1,028**	**228**	**1,100**	**264**	**26%**	6%	61%	14%	66%	16%

Table 14 – Number of precedent types and ratios per case type at the administrative department

3.5. Penal branch

	Total judgments	Judgments with citations to precedents	UD	AO	PD	CD	CC	Ratio of citing documents	Ratio of UD	Ratio of AO	Ratio of PD	Ratio of CD	Ratio of CC
Defamation	193	72	1	3	9	88	99	**37%**	1%	4%	13%	122%	138%
Theft	340	115	107	53	11	102	3	**34%**	93%	46%	10%	89%	3%
Forgery of public deeds	211	71	85	24	9	62	7	**34%**	120%	34%	13%	87%	10%
Forgery of private deeds	458	139	139	87	14	126	5	**30%**	100%	63%	10%	91%	4%
Robbery	368	99	48	25	11	104	5	**27%**	48%	25%	11%	105%	5%
Bribery	473	127	39	89	7	126	24	**27%**	31%	70%	6%	99%	19%
Fraud	321	82	10	52	13	109	2	**26%**	12%	63%	16%	133%	2%
Misappropriation	332	79	32	36	6	75	2	**24%**	41%	46%	8%	95%	3%
Homicide	871	179	35	115	8	261	1	**21%**	20%	64%	4%	146%	1%
Battery	1,575	299	57	136	11	476	8	**19%**	19%	45%	4%	159%	3%
Total	**5,142**	**1,262**	**553**	**620**	**99**	**1,529**	**156**	**25%**	44%	49%	8%	121%	12%

Table 15 – Number of precedent-types, and ratios per case type at penal department

3.6. Conclusions

Above, at II.1., I showed that the court level and department have an impact on the use of precedents. (Upper courts and private law branches are citing more frequently than any others.) Tables 11-15 add further information to this.
The first visible phenomenon is that though the civil branches (civil, business, and labour) show a higher citation rate, their distribution is extreme: there are some case types, where the citation ratio is 90%, while there are some where it is around 20%. The dispersion rate in the public law branches is not so high, since the highest and the lowest rates in administrative court are 40% and 14%, respectively, and in the penal law branches, these figures are 37% and 19%, respectively.
This means, that there are case types where practically *every decision* is citing a precedent.
It is even more interesting to observe this together with the *precedent types* that the courts are citing. Since there is an obligatory document (the Uniformity Decision), which is officially more important than other types, one would think that this is the most frequent citation type, but that is not the case. In certain case types, there are no citations at all to UDs. This could be for a number of reasons.
One is that the number of UDs is low and the "corpus" is casuistic: UD's don't exist in certain areas of law at all.
Another reason becomes visible if we observe Constitutional Court decisions (CC column 14), in which there are extreme citation rates both in the positive and in the negative ranges. Here the cause is visible: all the case types in which constitutional court decisions are popular, have some (or a great) connection with the basic rights – e.g., libel cases, (73%) infringement of personal rights, (122%) the in civil branch, broadcasting cases in the administrative branch, (107%) and defamation in penal branch. (138%).
A third reason is that if a certain precedent type is extremely popular, then the citation ratio of other types drops. It seems that the precedent types are *interchangeable*. This is a surprising fact, since these types are legally, and in their form, very different. As I indicated above, it is obligatory for courts to Uniformity Decisions (UDs). This is not the case with Abstract Opinions (AOs), but these are longer in text, and they comprise a broader legal topic (such as a legal act). Court Decisions (CDs) are, in format, very similar to Principal Decisions, and Uniformity Decisions, but their number is very high (as they decide one particular, narrow legal dilemma). But this all seems unimportant for everyday practice. The authority of a decision is independent from its intended "legal force" or from its place in the hierarchy of decisions. However, it seems that if there is an Abstract Opinion, courts prefer this: this is the situation in joint property cases (191%), libel cases (295%), personal rights infringement cases (95%)– these are all fields, where there is a "strong" Abstract Opinion. Where there is no AO, the practice uses CD and PD on the second place. Constitutional Court decisions are cited independently from the Supreme Court acts, in that field we do not see this correlation.
In Chapter III, I will analyze the context of the citations, and other qualitative features, but it is important to note that Abstract Opinions are the kind of documents that are the closer in format and wording to the structure and logic of a traditional code. They are really law-like tools.

III. The qualitative research

1. Methodology

Though the number, structure and dispersion of the citations to precedents already can tell a lot about the use of precedents, the precedential character of a legal system cannot be analysed only by automatic, statistical tools. Therefore, I selected a random sample from the decisions of the Capital Appellate Court (Appellate level) and the Supreme Court (Curia).
The sample contains 520 upper court cases (with the preceding case), which were broken down as follows:

Year of case	Capital Appellate Court	Curia	Total
2007	19	29	48
2008	36	61	97
2009	34	81	115
2010	38	49	87
2011	38	78	116
2012	32	25	57
Total	**197**	**323**	**520**

Table 16 – Cases observed in the qualitative research

We then filled out an Excel spreadsheet, with the following data:

1. The subject of the decision
2. Citations
3. History of the case (affirmed, dismissed, modified)
4. The value of the case (if applicable)
5. Treatment of the cited precedent (followed, distinguished, overruled)
6. Treatment of citations of the lower court decision in appellate decision (ignore them, use them, or cite a new one.)
7. Who cited first the decision? (court or parties, if available)

The first two points are the same that were observed also in the quantitative research, and we only wanted to check the statistical data with manual tools. All other parameters can be explored only after reading the text of the judgments.

2. Some remarks on the style of the decisions (demonstration, inference, justification, reasoning)

The reason for this is because one of the conclusions of the survey was that, in most of the cases, the precedents are cited very formally and mechanically. Sometimes even the text of the headnote is missing and only the number of the case is cited. ("The court took the CD No. …. into consideration"), but in most of the cases courts are only citing the headnote of the cases *as if these were texts of a statute*. We have no exact data on this, but my estimation is that the great majority of the citations (more than 90%) either contain a headnote as a quotation, or parts of (sentences from) the headnote without explicit quotation, and less than 10% of the citations quote anything from the reasoning. As we will see later even if the case is distinguished, it is done with a stereotypical introductory formula. ("The court has not taken the Court Decision No. … into consideration, because its facts are different

from the recent case"). If the court analyses the reasoning, its reasoning is no longer than one paragraph, but rather typically a sentence.
Moreover courts do not do two things. First, they do not see and use the precedents *as a network* of arguments. I have seen only one case (out of the 520) where a whole chain of arguments was developed in a case-law-like way. This case was one applying EU law, and analysed the jurisdiction of the General Court of EU. Further, courts do not *reformulate* the ratio decidendi of the case in order to adapt it to the case in hand, as, for example, English courts often do. The justification of an average Hungarian decisions seems like a logical operation, where the judgment (conclusion) is shown as a logical consequence of the facts, and the text of law.

3. Results of the quantitative research

3.1. Value of the case

Value	**All judgements**	**Number of citations[42]**	**%**
Small (under 1M HUF)	220	55	25%
Medium (between 1 and 10 M HUF)	126	36	29%
Big (more than 10M HUF)	71	22	31%
Undetermined[43]	103	184	179%
Total	**520**	**297**	**57%**

Table 17 – The value of the case, and the citations

One of our hypotheses was that the value of the case – the money at stake – has an effect on the reasoning effort employed by the parties and that this influences the number of citations. This is not justifiable. Though the number of citations increases slightly as the value grows, this is not the decisive factor: the frequency of citations is determined mostly by the field of law or the case type in question.

[42] Note that this figure is not the number of documents (like e.g. Table 3-7), but the ratio of citations, similar to Table 10-14s column 10-14.
[43] Most of the "undetermined value" cases are: criminal, administrative (where the subject of the case is the supervision of a decision of a state organ), or labour (where the illicit termination of the labour contract is in question), or infringement of personal rights. The latter two are very precedent-intensive – that is why the undetermined group has the highest citation ratio.

3.2. Distinguishing

Number of decisions	520
Contains citation	157
Number of all citations	297
Precedent followed	**283**
Precedent distinguished	**14**

Table 18 – Number of precedents distinguished

It is not surprising, and it partly follows from the above mentioned facts, that 95% or precedents are cited in an affirmative, i.e. positive, context. If the court is distinguishing the case, it does so in a very mechanical way, mostly using the same stereotypical phrases, like "the facts in case XXX are different; therefore, the reasoning/holding/precedent should not be applied in this case". We have not found any cases, where there was an explicit overruling.

3.3. Treatment of citations by the lower court

Number of decisions	520
Contains citation	157
Number of all citations by the upper court	297
Number of all citations by the lower court	**104**
Citations mentioned in a positive context by the upper court	**51**
"Agreement ratio" in precedents	**49%**
Number affirmed cases	**377**
Affirmation ratio	**73%**

Table 19 – Treatment of citations of the lower courts in the context of the history of the case

As was stated before, lower courts are citing fewer precedents than upper courts. In our sample, we found 297 citations in 520 judgments vs. 104 citations by the lower courts. The surprising result of the table is that typically the upper courts *do not cite the same precedents* as lower courts. Of the 297 citations made by the upper courts, only 51 were also used/cited by the lower courts. Or, to put it another way, only the half of the citations used/made by the lower courts are also cited by the upper courts at appeal; another 246 totally different citations are inserted on the second (third) instance. Thus, typically the story is that if the lower court uses two citations, one is ignored, the second retained, and two more are newly inserted. This number is even more surprising if we compare it with the affirmation ratio of the upper courts, which is 73% overall.

3.4. By whom is the precedent cited and brought into the argumentation?

At lower courts		
By the court	83	80%
By the parties	21	20%
Total	**104**	**100%**
At upper courts		
By the lower court, and the upper court agrees	51	17%
By the upper court	190	64%
Parties	56	19%
Total	**297**	**100%**

Table 20 - By whom the precedent was brought into the reasoning

An important question for us was who had introduced the citation into the procedure. Who initiated the use of a precedent? Unfortunately, [we] did not find a clear answer for this. In most of the cases there is no sign of the source. In other cases the court indicates that this was proposed by the party ("Defendant cited the CD No ……,") or was used by the lower court ("The first instance court cited properly CD No…."). For this particular question, to get a better picture, the text of the petitions should have been studied too.

4. Final conclusions

First, I have to state that everything which is written above is primarily applicable for the Hungarian judicial system. However, I believe it has wider relevance to all civilian legal systems. Here, I will only repeat those statements, which could have a general significance.
Precedents seem to be an important part of the legal reasoning of the Hungarian courts, and the number of citations to precedents is significantly increasing over time. (From 27% to 40%, between 2007 and 2012; on average 33%)[44] If trends continue, within a few years more than half of all decisions will contain a precedent citation.
Upper courts and private law branches cite more frequently than other courts, but the basic determining factor of precedent frequency is the case type. In certain case types, practically all decisions contain a citation to a precedent.
Though there are in length, topic and even in binding force different precedent types, the everyday judicial practice of courts treats them as interchangeable. If there is a binding Uniformity Decision, the courts – especially on lower levels - will use that, but if there is no such precedent, it will cite applicable Abstract Opinions, Court Decisions from the official collection, or even those cases published in the private collections.
Though there is no stare decisis in the Hungarian/civil law system, if the particular case, or case type requires, courts do use the precedents without binding force. Therefore, from this point of view, stare decisis is not a decisive factor when courts are citing a precedent. The other side of this coin is that courts do not have to reflect on the proposals of the parties – they can simply ignore them.
The ratio – dicta distinction exists in a very strange form. Courts almost exclusively cite the official headnotes of the decisions, and it is very rare that they cite anything else. One can say that this headnote is the ratio of the precedent. But since the wording of the headnote is very similar to the wording of an amendment in a statute, these texts are cited exactly like law texts. Judicial reasoning – reflecting the long-standing tradition of civil law systems – is not a rhetorical effort, but shows itself as a logical process.
There is neither distinguishing, nor any other sophisticated approach to a case used, as we can see in section III.3.2. Rather, the approach of courts to cases is binary. If the case cited by the party does not fit to the "inference" of the court, the court simply ignores it, and will not waste time of distingushing. If it fits, the court will cite it like an amendment of a law. The overwhelming popularity of Abstract Decisions, which are regulating a particular field of law, and their statute-like wording illustrates this tendency.
Consequently, there is no such tenet that the "spirit of the rule counts and not the wording". Hungarian law is textual, text-based, and text bound. The importance of precedents is growing *quantitatively*, and if this is a sign of convergence to case law, then there is a type of convergence. But the textual tradition of the civilian law is very strong, and the sophisticated ways of handling precedent and reasoning found in common law systems are simply not present in Hungarian law. In other words it is not that the legal system, as a whole, evolving to be more precedential in nature/character. Rather, more precedents are being published and are used increasingly widely within all branches of law.

[44] see II.2.2.