Analysis of Citation Patterns of Hungarian Judicial Decisions[1]

Is Hungarian Legal System Really Converging to Case Laws?
Results of a Computer Based Citation Analysis of Hungarian Judicial Decisions

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It is one of the most popular leitmotif of 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 civilian legal systems, while statutory law's importance is growing in common law. As McCormick states in the Introduction of 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 research on more than 60 000 Hungarian judicial decisions, published on the website of State Office of Courts,[4] (Országos Bírósági Hivatal) in order to explore an important aspect of the "precedential character" of the 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 four additional aspects in a database. This paper shows the results of both, and divided into three main chapters.
The first chapter will describe the theoretical and methodological background of the research; the theoretical framework of precedent we worked with, including the differences between common law and civilian 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, and 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 form different angles, and contains more than a dozen tables and charts. Following the tables, I am trying to give explanations and conclusions I have drawn from them. Analysis comprises the number of citations in different courts, (court levels and court branches), case-types, and legal fields. We observed the

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[2] David, René –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

dynamics of citations over the years, showing the change in time. We compared the use of different "precedent-types", and so on.
The third chapter contains the results of the qualitative research, and some final conclusions. It tries to answer questions, where machine made statistics is simply not enough: questions which can be properly analysed only 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, the existence of distinguishing, and so on.

I. Theoretical background of the research

1. The theory of precedent in common law

In common law systems judicial decisions are the primary sources of law. The idea of judicial precedent[5], as a central element in legal reasoning, in my view rests upon four interconnected pillars:

- The notion of *stare decisis*
- The distinction between *ratio decidendi*, and *obiter dicta*,
- The method 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". This notion is also formulated in a form, that precedents are not 'saying' but 'doing' something.

The first constituent part of the theory of precedent is the concept of *stare decisis*, - the binding power of it, the idea, that courts must follow the decisions of the upper courts. Although we know, that the modern notion of *stare decisis* was not solidified before the middle of the 19th century[6], the *stare decisis* is the real distinctive feature of the case law systems. This is the element, what is really missing in the civilian systems. Cases, even the most important decisions of the Supreme Court can be ignored by a civilian court – or at least this is, what theory says.

The second pillar, on which the theory of precedent rests, and which is in very close interaction with the previous, is the differentiation of *ratio decidendi* and *obiter dicta*. It says, that only the *ratio* what is binding, and this should be separated from the incidental explications, "tangential observations"[7] and arguments within the reasoning. Already 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 *Ratio decidendi*[8]

[5] The notion of precedent, ratio decidendi, and stare decisis has 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 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

[6] Kempin (see supra note 5) 31-32;

[7] Duxbury (see supra note 5) 26

[8] Goodhard (see supra note 5) cites Austin, John: Lectures on Jurisprudence, etc. (1885), 627, in note 2. 161

What is particularly interesting in this quotation is, the 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 abandon certain circumstances, in order to set up a proper rule. Later, (especially in America, as we will see later) *ratio decidendi*, as opposed to *obiter dicta* was theorized as different parts within the reasoning, separate textual elements: elements, that are important, and should be followed, and unimportant, that are not parts of the rule itself. Morover Julius Stone states: "this 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;" [9]

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 text) of the decision, the judge have to exercise the art of distinguishing. This is a process, when the actors of 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"[10]. When using the analogy, we disregard any dissimilarities between the two cases, while using the distinction we attach relevance to them.

And finally the most general consideration is, - also as a consequence of the previous three, is that precedents are rather 'doing' something than they 'say' 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" [11]

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."[12] Duxbury in his book also argues, that "lawyers and judges will commonly refer to as a 'rule', even though this rule might not have been expressly formulated in the case law"[13]. Thus, in case-law text has a secondary importance.

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, what really counts. Judges have to follow the ratio, the principles[14] behind the decision, and not the wording, what these decisions are using.

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

My preliminary hypothesis is, that *if these four pillars are not present* in the judicial process, we cannot talk about case law, and proper theory of precedent. Let's see it one by one.

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 on one hand, if they do it,

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[9] Stone (see supra note 5) 607

[10] Siltala (see supra note 5) 94

[11] This is the argument of Hart, (see supra note 5), but plays a central role in Tiersma's argumentation either, Tiersma, Peter, M: The Textualization of Precedent, 82 Notre Dame L. Rev. 1187 (2006-2007), 1202

[12] Holdsworth, W. S: Case Law, 50 L. Q. Rev. 180 (1934), 184

[13] Duxbury, (see supra note 5) 23

[14] 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."

within the reasoning they handle precedents differently. On the other, if they do not follow them, normally the upper courts have no right to criticize them for this. Even if in some legal systems, (like in Hungarian) there are certain types of instruments, issued by the Supreme Court which are obligatory, these instruments are dealing with isolated problems, and are formulated as a statutory amendment.

The ratio-obiter distinction is also missing. The ideology of statutory law is incompatible with any idea that there are important, and less important parts within any 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*. Even if courts are citing a case, in 95% they cite only the headnote, and build the text in their reasoning similarly to law-amendments.

In close connection with the abovementioned two features, distinguishing 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 interpret the text of the norm. It is not only about "penumbra" and "core" meaning[15], but has something to do with the *theory of coherence*. Interpretation should be performed in the light of other amendments, because amendments form a system. [16] Interpretation should be done in a systematic way, one amendment standing alone has practically no meaning. [17]

And finally it is clear, that civilian systems are textual – they are bound, evolving, and stick to authoritative texts. Interpretation should ultimately stick to the wording, the text of the law. What counts is what the law 'says', and not what it 'does'. If we take a short look to the history of civil law, it is clear, that already the genesis of these systems are hopelessly bound to texts – to Digesta, than to Corpus Iuris,[18] and to the great Civil Codes of France, Prussia, Germany, Switzerland, and Austria. Therefore the primary tool of handling of alike 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 operations with, and manipulations of texts. This has two additional consequence.

It seems that *reasoning* in general is different in civilian 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*, then a rhetorical effort, where the result (the decision) is *directly coming* from the premises, and is not aiming to persuasion. Following Szabó's arguments[19] we can distinguish in this respect four types, how two texts (the text of the norm, and the text of the decision) can be connected. These types are representing a certain "grades of closeness". According to his theory[20], the judicial process can be viewed as an ongoing process of "linguistic conversions", and there are differences, how these texts are "converted" to each other. The tightest connection is "inference", when the two texts are in a logical connection. The second is the "justification" which only demonstrates that the two texts are (without logical controversy) can be inosculated. The third type is "reasoning": this connects the two texts not in a logical, but in a rhetorical way, and its final goal is the persuasion. We might add, that, during the analysis of the Hungarian decisions, it turned out, that there is a fourth type, (which can be categorized as the extreme version of the first one): the "demonstration". It is the way, when there is a reference to authoritative texts without even citing

[15] Hart (see supra note 5) 134

[16] Savigny Savigny, Friedrich Carl von: System des heutigen römischen Rechts, Berlin, 1840, 262

[17] Somló, Felix: Juristische Grundlehre, Verlag von Felix Meiner, Leipzig, 1917, 97

[18] Berman, Harold J: Law and Revolution, The Formation of the Weestern Legal Tradition, Harvard University Press, Cambridge Mass., etc. 1983, 127-131

[19] Szabó, Miklós: A jogászi érvelés változása, (Change in Legal Reasoning): Szabadfalvi (ed.): *Facultas nata*, Miskolc, Bíbor, 400-401

[20] Szabó, Miklós: Nyelvi átfordítások a jogban, (Lingusitic Conversions in Law) in: Szabó, Miklós. (ed.): *Nyelvében a jog, nyelvhasználat a jogi eljárásban*, Bíbor, Miskolc, 2010., 9-28.; English version: Law as Translation. *Archiv für Rechts- und Sozialphilosophie.* (ARSP Beiheft Nr. 91) 2004, 60-68

the text. This type, when courts only mention the "long standing judicial practice" without any further explanation, is surprisingly frequent in Hungarian judicial decisions.
From a broader perspective this also has a close relation with certain sociological and institutional factors. These are the hierarchical structure of the courts, the authority, and style of judicial decision, and the structure of the profession of judges. The hierarchy of courts has a significance mainly because on the top of the judicial system the Supreme Court stands, which, in most of the civilian systems has a task of "ensure the unity" of the judicial decisions. Supreme Court – besides its cassation right in individual cases, has an additional tool to ensure unity. It is issuing different types of instruments, summaries of cassation cases in case journals, and "guidances", in a form of "unification decision", or in other "Abstract Opinion" forms[21]. A further sociological factor is the style, and the authority of the judicial decisions. Since the decisions tend to show themselves as a result of a logical process, they are normally short, and less explanatory as in common law systems. They rarely speak to the laymen, and their overall respect 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.[22]
The attitude towards the judicial decisions as sources of law can be classified to two groups in the Hungarian judicial practice. The first is, the judge made law *is not allowed*, (and it is not existing), since only the law-maker can create new law. This was the official point of view of the early communist jurisprudence[23]. Later the ideology became slightly more permissive, and another idea was articulated, which can be called the "restricted role of judge-made law". According to this, the judge-made law is a "bad necessity", and only a temporary phenomenon. Since the text of the laws can be adjusted to the changing socio-economical needs slowly, the first steps might be taken by the courts. But the legislation must build in the legal solutions elaborated by the courts to the text of the statutes, as soon as possible[24]. Since new problems and needs are continuously emerging, this whole process is cyclical.

3. Signs of convergence

All, what was said before seem to be rebuttals of the convergence. But there are strong pro arguments either.
From the end of the 19th century Supreme Courts all around Europe were granted a right to ensure legal unity[25]. Actually the concept of legal unity is the civilian counterpart of *stare decisis*, since with the unification process the supreme courts can overrule the diverging practice of a particular court. After the 2nd World War in civil law countries Constitutional Courts were established, which followed a case-law method[26], further strengthening the culture of precedents within the civilian systems. A third factor was, that from the end of the '50s, an extensive publication of judicial decisions was

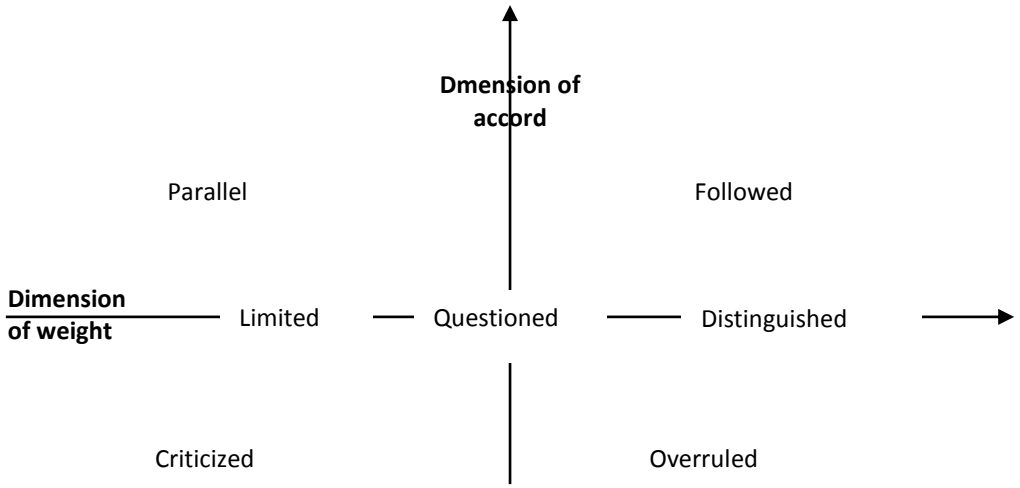
[21] The "abstract resolution" is also existing in Poland. See Morawski, Lech– Zirk-Sadowsky, Marek: Precedent in Poland, in: MacCormick - Summers (see supra note 5) 220.
[22] David, (see supra note 2), 140
[23] See e.g. Szamel, Lajos: A jogforrások, (Sources of Law) Budapest, KJK, 1958. 130-132. (in Hungarian)
[24] 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)
[25] 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.
[26] 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 5) 17.

started by the commercial publishers, and by the courts themselves[27]. And finally Internet initiated dramatic changes, when – partly as a consequence of Freedom of Information legislation, huge amount of (unedited) judicial decisions were published on the internet, and effective search engines further increase the visibility of these decisions.
All these developments were pointing to one direction: the number of citations in judicial decisions started to increase in civilian systems. I think this has driven certain authors[28] to develop a theory, which argues, that civilian systems has their own method of handling cases, namely the "reasoning with previous cases" which could be the equivalent of the "case-law method". I will be arguing in this article, that *there is no such method*, at least not in Hungarian law. The use of precedents in basic outlines is similar to the use of statutory amendments.

4. The cognitive importance of citations

As it was shown in the previous part, the mystical notion of the binding power of the "unwritten principles" behind the law has been slowly superseded by the textualization of the precedent, both in England, and in the U.S, albeit with a different intensity. The speciality of America was, contrary to England, that at the end of the 19th century, right after the invention of the type-writer, the number of published cases increased dramatically[29]. This caused turbulence in several fields[30], but one of the most spectacular was, that separating the "good" law from "bad" proven to be harder, and harder. This was the reason of emergence of Citators. These are tables that show the later mentioning, and also the context of mentioning of a decision in other decisions. The best known amongst these citators was the one published by Frank Shepard in 1875. The Shepard is based on a very simple idea: if a certain decision is mentioned in a later one, it is recorded and shown after the decision, together with the context. The context of the citation is measured basically by two parameters: the first is indicating the agreement, (from totally negative to totally positive mentioning: the dimension of accord), while the second is showing the impact of the citation to the decision, (the dimension of weight[31]).

[27] 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 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)
[28] Jan Komárek: Reasoning with Previous Decisions: Beyond the Doctrine of Precedent. *Americal Journal of Comparative Law*, Vol. 61. (2013), 149-171, 156-157
[29] 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
[30] 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
[31] Rombauer: *Legal Problem Solving*, p. 154



It is more than an interesting coincidence, that the method of the Shepard inspired Eugene Garfield[32], to create the Science Citation Index, which later became the most popular method of measuring the impact, the importance of a scientific work.[33] Nowadays the primary tool for measuring the importance of an article, a publication forum (journal), and a scientist is based on that method. The frequency, and the context of citations, as well as the importance of the citing authorities became also a very important (if not the most important) part of the Google-algorithm, the PageRank. Search engines before Google were all based of two methods: the free-text search, and the meta-tags put on webpages. But it turned out very quickly, that the data published on internet exceeds the amount, that can be handled this way, and the only usable method is, if relevance ranking is based *on measurable traces of cognitive authority*, generated by human knowledge – hyperlinks, *citations*.[34]

5. Background, methodology and scope of the research

5.1. 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 (the 19 counties, and the Capital Court). There are four Appellate Courts. On the top of the judicial system is the Supreme Court (Curia).
Courts are organized into three departments, and further to branches. The main departments are civil department, (subdivided into normal civil branch, dealing with cases between private parties, and business branch, dealing with cases between business organisations), penal department, and

[32] 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

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

[34] 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)

administrative and labour department, (subdivided into an administrative branch, dealing with the supervision of the decisions of the administrative organs, and labour, dealing with labour law cases). Supreme Court has a double function: it functions as a Court of Cassation in finished cases, (as a court of third instance), and, similarly to the German system has a legal unification role, i.e. its task is to monitor the jurisdiction of lower courts, and in case of divergence issue certain instruments.
Appellate courts' (Táblabíróságok, 4) main function is to decide cases on the second instance, that were started on the county level. (Normally the 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.) They also decide administrative cases on the second instance. They have no labour branch, because labour issues are decided on the county level on the first instance, and on the second instance too – the appellate cases are in the appellate division, while the first instance labour suits are on the first instance labour courts, which are organised only per county.
County courts (Törvényszékek, formerly Megyei bíróságok - 20) are deciding civil, and penal cases having an "important" or high value subject matter on the first instance, and appellate suits in cases started at local level. They are the first instance courts for administrative and labour issues.

Local courts (Járásbíróságok, formerly Helyi bíróságok - 111) are the courts of first instance. Consequently, they are competent in minor issues, and they do not have a labour and administrative branch.

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

5.2.1. Unedited decisions – the analysed citing documents

For our research we sharply differentiated the citing and the cited documents (precedents). Recently cca. 500 000 lawsuits are in a year on Hungarian courts, and cca. 11 000 is published. More than 90% of these cases are published under the FOI act[35], in an unedited, original form, (only the data of the parties are deleted from the decision.) This was the database for the research of the *citing documents*, because this shows the day-to-day practice of the courts in the original form. Since the publication started at 2007, and the research was made on the database closed at 2012, the number of analysed decisions was 61 512.

	Civil	Business	Labour	Administrative	Penal	Total
Supreme Court	4873	867	1465	5496	1166	**13867**
Appellate Courts	9907	3548	0	1172	2704	**17331**
County Courts	10705	4297	1588	7934	3066	**27590**
Local Courts	1396	314	0	0	1014	**2724**
Total	**26881**	**9026**	**3053**	**14602**	**7950**	**61512**

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

5.2.2. Edited decisions – cited documents

We analysed in this pile the citations *to* edited "precedents" that are the 10% of the published decisions. In this case we went back to as early as possible. The different journals were started at

[35] 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.

different times, and it is also varying how long in time the decisions are available in the databases. The structure of the precedents, and the date they are published from are the following.

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	**1162**
Principal Decisions of the Curia (PD)	Supreme Court	Official	1999	**2441**
Court Decisions of the Curia (CD)	Supreme Court	Official	1975	**20118**
Decisions from Collection of Court Decisions Journal (CCD)	Appellate Courts	Private	2002	**2722**
Decisions from Administrative and Business Cases Collection (ABC)	Supreme Court	Private	1992	**5636**
Constitutional Court Decisions (CC)	Constitutional Court	Official	1990	**2870**
Total				**35118**

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

The main issuer of precedents is the Supreme Court. It is publishing four types of instruments.
The first is the *Uniformity Decision* (UD) (before 1990 these had different names) which is deciding a controversial legal question, which led to conflicting decisions. It is formulated like a decision, and – apart from some rare examples – it is deciding only one debated legal question. This form of act *has a binding power* on lower courts.
On the second level there are non-binding explanatory documents: A*bstract Opinions* (AO) of the professional branches, which are passed by the body of judges working in the same branch, called College: therefore they have a slightly misleading name of "College Opinions", in Hungarian jargon. This type has a great importance. These quasi-norms are not deciding one particular restricted legal problem, but normally they are dealing with a bulk of controversial legal questions *within a field of law* (like the problems of joint property, or legal aspects of libel cases, etc.). Though these acts has no legal binding power, courts do follow, and use them.
Finally on the third level there are two 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 court decision – CD) while the other is selected because of its "principal importance". (Principal decision - PD). Both of these two are again not abstract ones, because they are restricted to one particular legal question.
All of the abovementioned four types of instruments of the Supreme Court are published in the Official Journal of the Supreme Court. (Decisions of the Curia – Kúriai Döntések, formerly Bírósági Határozatok, BH)
Commercial publishers are also publishing decisions. There are two influential journal, both published by Wolters Kluwer Hungary, the Collection of Court Decisions, (CCD), publishing some 400 cases per year, and the Administrative and Business Cases Collection (ABC), publishing cca. the same amount.
Besides the abovementioned types, there is one additional type of "precedent-type" which is frequently cited, the decisions of the Constitutional Court. Constitutional Court was established in 1989, and it is publishing cca. 100 decisions in a year. It has its own official journal, but the most important ones are published in the Official Gazette (Magyar Közlöny) too.
All of the abovementioned decision-types (except constitutional court decisions) have one in common: they have an *edited headnote*, which is typically one-two, (UD, PD, CD, CCD, ABC) or more (in case of AO 5-15) *amendments*. These amendments are formulated like rules of an Act. They normally have a hypothesis, and a disposition, in this way:

> "If the amount collected during the enforcement procedure does not cover the whole amount of the enforcement costs defined in Paragraph 1 Article 164 of the Vht. (Act on Judicial Execution), firstly the unpaid enforcement duties and enforcement costs paid by the state have to be settled from the amount described above.
> The amount left after the above shall be used to proportionally settle - if there is not further privileged costs - the further costs arising in connection with the initiation, ordering and conducting of the enforcement."[36]

5.3. The operative methodology of the research

The operative methodology of the research was the following. We took a commercial legal database, which contains both the citing and the cited documents. Within the database there are metadata attached to the documents, like type of document, department and branch, issuing court, date of issue, subject of the decision, etc. Further, the citations are also stored in a database in a form of hyperlinks, where the starting point of the link, and the end point of the link is exactly identified. We simply made queries from different angles, - that is how the tables are created. (For example, how many documents contain a citation to a precedent, how these citations is spread per court level, per branch, per subject of case, per time, and so on.)
Here I have to mention certain limits of a computer based analysis of this type. Machines do not understand the text, 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 data-sets, (like a vocabulary and a text), count certain data, as a result of a query. Therefore machine made statistics have certain limits. The first, and most important is, that it will not recognize any string, which is not written in the defined format. The second is, that it does not understand even the basic context of the mentioning. It makes a huge difference if a decision is mentioned in a 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". The machine cannot understand who proposed, mentioned the case at the first time. Overall, the machine made statistics can give a superficial, quantitative picture about some simple, measurable parameters of the judicial practice. For any contextual analysis the decisions should be read and understood by humans. This does not exclude, that with the development of IT, and Artificial Intelligence more and more of these problems can be eliminated, and more and more contextual questions can be answered by machines too.

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

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

The first simple question which was observed, that how many of the citing documents, (unedited judgments) is containing *any* citations, references to *any* edited decisions. We made the statistics for all court levels. The following tables are showing the figures per court level. In the rows there are the branches, and in the columns there are 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 of two different types of precedents.

[36] Civil Law Uniformity Decision Nr. 2/2013

1.1. Supreme Court (Curia)

Number of documents	Total published	UD	AO	PD	CD	CCD	ABC	CC	Total containing citation
Civil branch	4873	62	569	291	1045	78	13	98	1791
Business branch	867	41	68	94	144	22	5	8	275
Labour branch	1465	19	156	135	569	8	4	56	731
Administrative branch	5496	109	171	144	610	5	166	197	1146
Penal branch	1166	130	88	44	291	2	2	27	485
Curia total	**13867**	**361**	**1052**	**708**	**2659**	**115**	**190**	**386**	**4428**

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	9907	154	1869	663	1962	739	45	829	4088
Business branch	3548	161	386	368	810	462	23	34	1304
Labour branch	0	0	0	0	0	0	0	0	0
Administrative branch	1172	48	113	22	41	3	20	44	238
Penal branch	2704	211	275	41	511	1	2	40	873
Appellate courts total	**17331**	**574**	**2643**	**1094**	**3324**	**1205**	**90**	**947**	**6503**

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	10705	103	1761	434	1522	577	24	777	3578
Business branch	4297	110	332	257	584	302	14	32	1051
Labour branch	1588	31	346	188	474	4	4	63	903
Administrative branch	7934	110	1644	181	275	11	207	276	2220
Penal branch	3066	200	212	46	369	6	0	35	702
County courts total	**27590**	**554**	**4295**	**1106**	**3224**	**900**	**249**	**1183**	**8454**

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	1396	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	1014	23	25	11	80	0	0	12	142
Local courts total	**2724**	**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	26881	326	4370	1449	4727	1440	88	1734	9868
Business branch	9026	314	812	728	1565	799	42	75	2685
Labour branch	3053	50	502	323	1043	12	8	119	1634
Administrative branch	14602	267	1928	347	926	19	393	517	3604
Penal branch	7950	564	600	142	1251	9	4	114	2202
All courts total	**61512**	**1521**	**8212**	**2989**	**9512**	**2279**	**535**	**2559**	**19993**

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 more 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, with their total number available in databases. (Table 7a total figures divided by table 2 total figures).

	Number of decisions in total	**Number of documents citing the decision type**	**Impact ratio**
Uniformity Decisions (UD)	169	1521	9
Abstract Opinions	1162	8212	7,1
Principal Decisions of the Curia	2441	2989	1,2
Court Decisions of the Curia (CD)	20118	9512	0,5
Decision from Collection of Court Decisions Journal (CCD) – private collection	2722	2279	0,8
Decision from Administrative and Business Cases Collection (ABC) – private collection	5636	535	0,1
Constitutional Court Decisions	2870	2559	0,9%
Total	**35118**	**27607**	

Table 8 – Impact of different precedent types

1.7. Conclusions

We can see, that nearly exactly 1/3 of the published 61 512 judgements contain a citation to precedents. But this overall figure varies both per branch, and per court level.
What concerns court level, Curia and county courts are on the average level, while appellate courts are above, local courts are below this average. The plus of the appellate court is coming from the citations to their own decisions published in their own journal. What is surprising, that they cite the decisions of the Curia more frequently than of other courts too, or, by the Curia itself, and this surplus is generated by all branches. If we take into account, that the Abstract Opinions' citation index is growing, going downwards, than the explanation could be, that citations are not just a contribution to the legal reasoning towards the parties, but it is also a tool of compliance towards the upper courts.
The analysis per branch shows an even greater dispersion. Labour branch overtops with its 50%, followed by the other two civil branches, the civil, and the business branch. Penal law is the fourth in the row, while administrative is the last one. But if we examine the branches *together* with the court level, the picture is more mixed, because citation willingness is fluctuating across the court levels. For

example the citation in penal branch at Curia is quite high, even higher than civil law branches', and this plus is equally caused by all precedent types. Uniformity decisions for example are very popular authorities at Curia, and cited significantly more frequently compared to 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 is further restricting the available interpretative and argumentative space of the judge. But the Curia's citation activism on penal field seem to contradict to this. The explanation could be, that in penal field the space for interpretation, and possibility to rely on precedents remains the monopoly of the Curia, which is reinforcing from time to time its own practice.
Tables show the popularity of different types of precedents too. Court Decisions (CD) are the most popular case-types. We can find a citation to these type of precedents in 20% of all published cases, and more than the half of the citations is a CD citation. Here there is a sharp difference: upper courts (Curia, Appellate Courts) cite around 25%, while lower courts (County and Local courts) around 15%. But at lower courts, and especially at County courts this lower number is counterbalanced by the more frequent use of Abstract Opinions. Lower courts use the AO more frequently than precedents. Further deepens the picture, if we see the *relative importance (impact)* of the precedent types. (The impact is 1 if one decision is cited in one document) Uniformity decision's 8 is not surprising: this is the only obligatory instrument. But Abstract Opinion's high impact (7,1) shows, that this a very widely used , and popular precedent-type. What is surprising, is that the privately published CCD has the same high impact ratio, which is even higher than the CD's, the official collection's) The explanation is , that courts more willingly cite the fresher decisions. The nearly 10 000 CD 's majority is in a "sleeping" mode, while the fresher ones are cited even more frequently than CCD.[37]

[37] We 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		Összes	
	Total	**Citing**	**Total**	**Citing**	**Total**	**Citing**	**Total**	**Citing**	**Total**	**Citing**	**Total**	**Citing**	**Total**	**Citing**
Curia	931	231	2255	576	2547	717	2772	948	2905	981	2457	882	13867	4335
Appellate Courts	1477	452	2918	963	3021	1069	3435	1275	3776	1435	2704	1153	17331	6347
County Courts	4955	1366	5648	1613	6031	1822	5809	2024	4169	1495	978	399	27590	8719
Local Courts	754	161	666	147	631	151	422	88	223	33	28	4	2724	584
Total	8117	2210	11487	3299	12230	3759	12438	4335	11073	3944	6167	2438	61512	19985

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

2.2. Percentages

	2007	**2008**	**2009**	**2010**	**2011**	**2012**	**Összes**
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

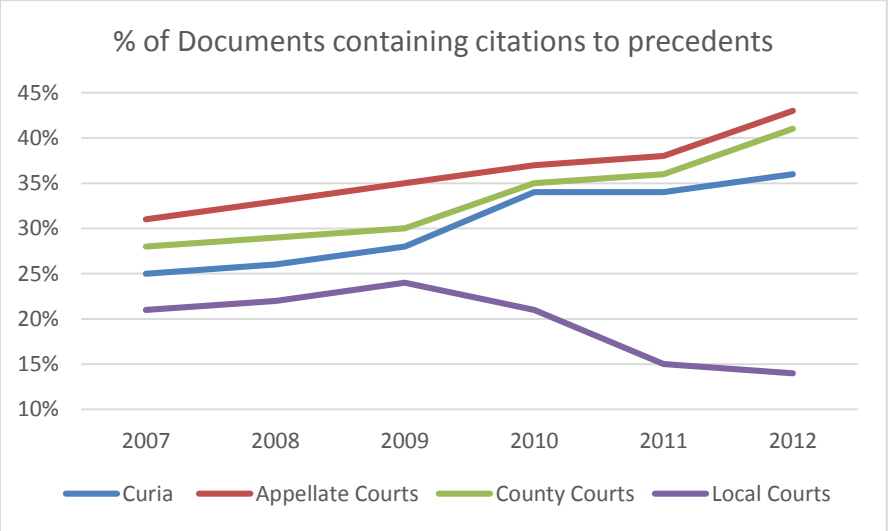


Chart to table 9

2.3. Conclusions

These tables show a clear picture. Apart from the local courts[38] the number of citations is increasing in time. The growth is unbroken, minimum 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 has something to do with the change in attitudes, and I assume this is a self-reinforcing process. The availability of the decisions, precedents, cases, and especially the more and more effective search engines, and publication methods[39], the electronic publication is generating more citations to them. 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.
However this, in itself not a decisive argument, that Hungarian law is converging to case-laws, because these, as other statistical figures should be interpreted together with the results of the 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 hypothesis was, that the field of law (case-type) is strongly influencing the precedent intensity, and 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 per field of law (case-type). We prepared statistics only for the most frequent case-types.[40] Within one row, on the left side, there are 7 data, 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).

[38] 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.
[39] 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.
[40] 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	2327	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	2588	1377	10	1310	289	1051	1686	**53%**	1%	95%	21%	76%	122%
Invalidity of contract	1724	761	229	458	276	1032	25	**44%**	30%	60%	36%	136%	3%
Determination of ownership	1004	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)	5903	1564	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	**14512**	**5739**	**596**	**6120**	**1165**	**4643**	**2774**	**40%**	10%	107%	20%	81%	48%

Table 11 – Number of precedent-types, and ratios per case-type at 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)	1241	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	**3901**	**1169**	**295**	**632**	**404**	**1190**	**38**	**30%**	25%	54%	35%	102%	3%

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

3.3. Labour 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
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	1077	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	**2134**	**738**	**20**	**356**	**189**	**951**	**41**	**35%**	3%	48%	26%	129%	6%

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

3.4. Administrative 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
Excise cases	181	72	0	37	7	66	0	**40%**	0%	51%	10%	92%	0%
Tax cases	2603	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	1022	145	0	145	0	1	0	**14%**	0%	100%	0%	1%	0%
Total	**6501**	**1678**	**100**	**1028**	**228**	**1100**	**264**	**26%**	6%	61%	14%	66%	16%

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

3.5. Penal 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
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	1575	299	57	136	11	476	8	**19%**	19%	45%	4%	159%	3%
Total	**5142**	**1262**	**553**	**620**	**99**	**1529**	**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 already the court level, and department has an impact on the use of precedents. (Upper courts and private law branches are citing more frequently precedents in their judgements.) These tables further deepen the picture.
The first visible phenomenon is, that though the civil branches (civil, business, and labour) show a higher citation rate, their dispersion rate 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 of the public law branches is not so high, since the highest and the lowest rate in administrative court is 40 and 14%, and in penal 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 instrument, (Uniformity Decision, UD), 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 is no citation at all to uniformity decisions. This could have more reasons.
One is, that the number of uniformity decision is low, and the "corpus" it is casuistic: there are a lot of fields, where there is no uniformity decision at all.
Another reason becomes visible, if we observe the case of Constitutional Court decisions, (CC column 14.), where there are extreme citation rates both in the positive, and in the negative range. Here the cause is visible: all the case types, where constitutional court decisions are popular, have some (or a great) connection with the basic rights, (Libel cases (73%), infringement of personal rights (122%) in civil branch, broadcasting cases (107%) in administrative branch, defamation (138%) in penal branch).
A third reason is that if a certain precedent type is extremely popular, than other types' citation ratio 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 Uniformity Decisions (UD) are obligatory. Abstract Opinions (AO) are not, but they are longer in text, and they are comprising a broader topic. (Like a legal act). Court Decisions are, in format very similar to Principal Decisions, and Uniformity Decisions, but their number is very high (deciding one particular, narrow legal dilemma).
But this all seems unimportant for the 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 are preferring this: this is the situation in joint property cases, libel cases, personal rights infringement cases – these are all filed, 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.
At chapter III I will analyse the context of the citations, and other quantitative features, but it is already important to note, that Abstract Opinions are the kind of precedents that are the closer in format, and wording to the structure and logic of a traditional code. They are really law-replacement 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, it needs no further justification, that the precedential character of a legal system cannot be analysed only by automatic, statistical tools. Therefore, we selected a random sample from the decisions of the Capital Appellate Court (Appellate level), and the Supreme Court (Curia). Our method was very simple – we listed all the judgments of the three abovementioned court, and from the result lists, where 20 items were visible, we selected from every second result list the first items, from all departments. (That is we selected every 40th decision).
The excel contains 520 upper court cases (with the preceding case) , which we read:

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 spreadheet, 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 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)

The first two viewpoint is the same that was observed also in the quantitative research, and we only wanted to check the statistical data with manual tools. Other parameters are all such, that can be explored only after reading the text of the judgments.

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

At this point I have to admit, that after knowing the results of the research I would put another point to the survey. This is “what part of the precedent is cited: anything form reasoning, only the headnote, or only the title (number) of the case”, and I would do the 6th question only for those, which cite the reasoning. I will explain this later.
The reason of 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%) is either containing the 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 CD 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. 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 chain of arguments was developed based on previous cases, and this case was one applying EU law, and analysed the practice 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, in a way, how for example English courts often do it. The reasoning in Hungarian decisions is either a demonstration. (Citation of the precedent without even citing any text), or shown as a logical inference, where headnote is cited as a quotation, and result (conclusion) is shown as a logical consequence of the decision.

3. Results of the quantitative research

3.1. Value of the case

Value	**All judgements**	**Number of citations**[41]	**%**
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[42]	103	184	179%
Total	**520**	**297**	**57%**

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

One of our hypothesis was, that value of the case, the "money in stake" has an effect on the "cognitive battle" and it is influencing the number of citations. This is not justifiable. Though the number of citations is increasing slightly as the value is growing, this is not the decisive factor: the frequency of citations is determined mostly by the field of law, or the case type.

[41] Note, that this figure is not the number of documents, (like e.g. Table 3-7), but ratio of citations, similar to Table 10-14s column 10-14.
[42] 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 is 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 partly following from the above-mentioned facts, that precedents in 95% are cited in a positive context. If the court is distinguishing the case, it does it in a very mechanical way, mostly using the same stereotypical phrases. We have not found any cases, where there was an explicit overruling.

3.3. Treatment of citations of 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**
Citation mentioned in a positive context by the upper court	**51**
"Agreement ratio" in precedents	**49%**
No. affirmed cases[43]	**377**
Affirmation ratio	**73%**

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

As it was stated before lower courts are citing less precedents than upper courts. (In our case, 297 citations in 520 judgments, vs. 104 citations by the lower courts.) The surprising result of the table is, that typically *they do not cite the same precedents* as lower courts, because from the 297 citations of the upper courts, only 51 cited the same precedent. Or, to put it in another way, only the half of the citations of the lower courts are cited by the upper courts, (half of them is ignored), but another 246, totally different citations are inserted on the second (third) instance. Thus, typically the story is, that from two citations of the lower court one is ignored, and two more newly inserted. This number is even more surprising, if we compare it with the affirmation ratio of the upper courts, which is overall 73%.

[43] Just for the sake of completeness, the overall treatment of cases by the upper courts (question 6. at the beginning of Chapter III.) within the total pile was the following:

Affirmed in cassation procedure	184
Affirmed in appellate procedure	193
Dismissed in cassation procedure	37
Dismissed in appellate procedure	7
Modified	99
Total	520

3.4. By whom the precedent is cited, taken into the argumentation?

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

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

It was an important question for us, that who has taken the citation into the procedure. Who initiated the use of a precedent. Unfortunately for this question we have not found a clear answer. The initiator of the precedent does not turn out clearly from the text of the decision. In most of the cases there is no sing of the source. In some 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…."). In this particular question, for 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 valid for the Hungarian judicial system – but I think, it has a lot to do with all civilian legal systems. Hereby I would 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 citations to the precedents is significantly increasing in time. (From 27% to 40%, between 2007 and 2012; in average 33%) If trends will 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, 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 different precedent types, and these are legally, and in their binding force are very different, the everyday judicial practice of the courts handle them as interchangeable. If there is a binding Uniformity Decision, the court will use that, but if there is no such, it cites the Abstract Opinions, or the Court Decisions from the official collection, or even uses the cases published in the private collections.
Though there is no stare decisis, if the particular 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 is existing in a very strange form. Courts are nearly exclusively citing 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 similarly to law-texts.
Reasoning – reflecting the long standing tradition of civilian systems - is not a rhetorical effort, but shows itself as a logical inference.

There is no distinguishing, and no any other sophisticated approaches to a case, what we can see in on the 6th page. Approach to cases is binary. If the case cited by the party does not fit to the "inference" of the court it simply ignores it. If it fits, the court will cite it like a text from a law. The outstanding 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 as the "spirit of the rule what counts, and not the wording". Hungarian law is textual, text-based, and text bound. The importance of precedents is growing *in number*, and if this is a sign of convergence, than there is a convergence. But the textual tradition of the civilian law is very strong, and the sophisticated ways of precedent handling, and reasoning is simply not present in Hungarian law. What happens, I think is, that it is not that the *whole legal system* (including legal method) is slowly getting a precedential character. It is rather, that more and more precedents are published, these are more and more widely used, and there is a quantitative change: but these precedents are used with the traditional method of logical inference-like style: the style of statutory text usage of the civilian systems.