

Learning from Common Law? The Binding Nature of the Hungarian Curia's Judgments

Abstract

This paper critically examines the Hungarian legal system's recent turn toward a limited precedent model, introduced by the 2019 Precedents Act. Originally presented at a conference celebrating Professor Vékás's 85th birthday, the study situates this development within the broader debate over the role of courts in shaping civil law and evaluates whether the new framework enhances legal certainty or instead obfuscates the applicable law. Through a detailed comparison with the English common law precedent system, the paper identifies structural weaknesses in Hungary's quasi-precedent regime, including the lack of clarity around binding elements, challenges in accessing and navigating a vast body of precedents, and the rigidity imposed on the Curia's jurisprudential development. The analysis raises fundamental questions about the viability and legitimacy of the Hungarian precedent system and calls for greater transparency, judicial infrastructure and professional engagement to ensure the rule of law. The paper concludes by reaffirming the importance of comparative legal dialogue, as advocated by Professor Vékás.

Keywords: precedent system, legal comparison, role of courts, legal uniformity, judicial reasoning

I Introduction

The recodification of Hungarian civil law presented a unique opportunity for significant reforms in private law. While many legal scholars advocated for extensive changes, Professor Vékás proposed a more restrained approach. He argued that codification should be rooted

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in the ‘law in action’ – the law as interpreted and applied by the courts – and that reforms should only be introduced when societal or economic changes necessitate them.¹

This paper focuses on ‘law in action’, or what Professor Vékás aptly termed ‘living law’. Presented at the conference celebrating Professor Vékás’s 85th birthday, this brief overview explores the complexities introduced by Hungary’s adoption of a quasi-precedent system.

I will argue that this development has made it difficult to tell what the law is. The discussion begins with an analysis of the Supreme Court’s role in maintaining the uniform interpretation of the law, followed by an overview of the Precedents Act of 2019. Finally, I will reflect on the key differences between the Hungarian and English precedent systems, highlighting the challenges posed by Hungary’s evolving legal framework.

II Background: unification by the Supreme Court

Courts have always played a major role in shaping Hungarian civil law. Before the adoption of the first Hungarian Civil Code in 1959,² the courts created law. Legal literature held that it is not the individual cases, but the consistency of judgments that create law.³ This is inevitably a cumbersome procedure. As Szász aptly put it: ‘It is striking how slowly, how difficultly, and at what cost to the parties seeking justice such a law comes into being, and how uncertain and unstable its validity remains thereafter.’⁴

This situation significantly changed with the adoption of Hungary’s Civil Code. Since 1960, the courts’ task has been to apply and interpret the Civil Code. The Hungarian Constitution has consistently stipulated, in various forms, that the Supreme Court is responsible for the uniform application of the law. To fulfil this mandate, the Supreme Court has traditionally had the authority to issue binding decisions for lower courts.⁵ This function underwent some modification in 1997 with the introduction of the four-tier court system, but the fundamental principle remained unchanged: the Supreme Court ensured the uniform interpretation of the law, with its so-called uniformity decisions being binding on the courts.⁶ This rule was subsequently reaffirmed in the Fundamental Law.⁷

¹ Lajos Vékás: Bevezetés [Introduction] in Lajos Vékás, Péter Gárdos (eds), *Nagykommentár a Polgári Törvénykönyvhöz* [Large Commentary on the Civil Code] (Wolters Kluwer 2020, Budapest) 25.

² Act IV of 1959 on the Civil Code that was in force between 1960 and 2014.

³ Gusztáv Schwarz, ‘Magánjogunk felépítése’ [Structure of our private law]. (1893) 8 (10) *Magyar Jogászegyleti Értekezések* (Franklin Budapest) 17. I am grateful to the anonymous reviewer for this reference.

⁴ Béla Szász, ‘Magyarország magánjogi törvénykönyvének törvényjavaslatáról’ [About the bill on Hungary’s Civil Code. (1928) 20 (98) *Magyar Jogászegyleti Értekezések* (Franklin, Budapest) 11.

⁵ Article 38 of Act XX of 1949 of the Constitution of the Republic of Hungary (hereinafter: Constitution), subsequently Article 47 (2) of the Constitution.

⁶ Section 27 of Act LXVI of 1997 on the Organisation and Administration of Courts (hereinafter: 1997 Court Administration Act).

⁷ Article 25 of the Fundamental Law.

The 1997 judicial reform also introduced an additional rule: a panel of the Supreme Court could only deviate from an earlier judgment of another panel of the Supreme Court after conducting a uniformity procedure that justified such deviation.⁸ This rule has only been infrequently used.⁹

The Supreme Court sparingly exercised the right to issue uniformity decisions. Between 1997 and 2022, only around 30 uniformity decisions were issued in the field of private law. Uniformity decisions became subject to constitutional review, as these decisions have normative force.¹⁰

Beyond uniformity decisions, the Supreme Court has provided both binding and non-binding interpretations of the law. Some judgments had binding force for lower courts, while others, in the form of non-binding opinions, offered abstract interpretations resembling the legal norms of the Civil Code. Although Professor Vékás has expressed critical views about these non-binding acts,¹¹ these guidelines undeniably influenced judicial practice.¹²

Until 2007, individual court judgments were not systematically published or made publicly accessible. Instead, selected and edited judgments were disseminated through journals of the Supreme Court and appellate courts, which played a crucial role in highlighting key rulings. However, the limited availability of judgments made it difficult to detect discrepancies in how courts – and sometimes even panels within the same court – interpreted the same legal norms. Such differences were typically brought to light only when journal editors intentionally highlighted them. To provide some examples, we refer to the conflicting judgments of regional courts of appeal and the various panels of the Supreme Court in the field of fiduciary securities¹³ as well as the scope of damages to which parents are entitled in the case of a child born with a genetic disorder.¹⁴

A pivotal change occurred in 2005 with the enactment of the Electronic Freedom of Information Act, which established the Collection of Judicial Decisions. This electronic database made nearly all appellate court decisions publicly accessible, enabling the easier

⁸ Section 29 of the 1997 Court Administration Act.

⁹ András Varga Zs., 'A jogegységi határozatok és az Alkotmány rendje' [Uniformity decisions and the order of the Constitution] (2004) (6) Magyar Jog [Hungarian Law] 333–338.

¹⁰ Mátyás Bencze, '42/2005. (XI. 14.) AB határozat – jogegységi határozatok felülvizsgálata' in Fruzsina Gárdos-Orosz, Kinga Zakariás (eds), *Az alkotmánybírói gyakorlat. Az Alkotmánybíróság 100 elvi jelentőségű határozata 1990–2020. [Constitutional Court decision 42/2005. (XI. 14.) – revision of uniformity decisions' Jurisprudence of the Constitutional Court – One Hundred Landmark Decisions of the Constitutional Court, 1990–2020]* (Vol I, Társadalomtudományi Kutatóközpont, HVG-ORAC 2021, Budapest) 629–646.

¹¹ Lajos Vékás, 'Az új Polgári Törvénykönyvről' [On the new Civil Code] (2013) (5) Jogtudományi Közlöny [Legal Studies Bulletin] 225–242, 241–242.

¹² Zsolt Zódi, 'Búcsú a kollégiumi véleményektől?' [Farewell to department opinions?] (2014) (11) Magyar Jog [Hungarian Law] 609–623.

¹³ See, eg, Péter Gárdos (ed), *Tanulmányok a fiduciárius biztosítékok köréből* [Studies from the field of fiduciary securities] (HVG-ORAC 2010, Budapest).

¹⁴ This issue was only settled in 2022, when the Curia published its decision [2/2022. JEH (Jpe.III.60.011/2022/15.)].

identification of inconsistencies in legal interpretation.¹⁵ For the first time, it became evident that different courts – and often even different chambers within the same court – frequently rendered divergent rulings on identical facts. Moreover, it also became apparent that, oftentimes, the various panels of the Supreme Court also interpreted the law differently.¹⁶ While this phenomenon was not new, its visibility was significantly enhanced after 2007.

In response to these observations, calls for more effective mechanisms to ensure legal unity grew louder. Some legal scholars even contended that the 1997 Court Administration Act implicitly granted normative force to all Supreme Court decisions.¹⁷

III Overview of the Precedents Act

The Hungarian legal system underwent a fundamental transformation in 2019 with the introduction of new legislation.¹⁸ This reform introduced significant changes to the rules governing civil procedure and the role of judicial precedents. The new structure rests on the following principles.

In first- and second-instance civil proceedings, the legislation imposed new requirements regarding the court's reasoning obligations. Courts are now mandated to explicitly justify any departure from decisions of the Curia (Supreme Court) that are published in the Collection of Judicial Decisions on matters of law. Additionally, judgments must explain why requests by parties to deviate from such published decisions were rejected.¹⁹

The legislation introduced the following three significant changes to the rules on extraordinary revision, a legal remedy available against certain final and binding judgments.²⁰

First, the legislator introduced an additional reason for seeking extraordinary revision. Under the new rules, parties may now request extraordinary revision not only on the basis of a legal error affecting the merits of the case but also if the court has departed from

¹⁵ The exact scope of the decision was listed in Section 17 of Act XC of 2005 on Freedom of Electronic Information. The Act provided that judgments of the Supreme Court and the regional courts of appeal have to be published in anonymised form with certain exceptions. Eg, court decisions made in payment order procedures, enforcement proceedings, company registration, bankruptcy, and liquidation cases did not need to be published. In other cases, such as marital cases, termination of parental custody, and guardianship, publication was not possible if any of the parties requested it. The Act was replaced in 2011 when Act CLXI of 2011 on the Organization and Administration of Courts (hereinafter: Court Administration Act) was introduced. The new rules can be found in Chapter 51 of the Court Administration Act.

¹⁶ See, eg, the examples in the previous paragraph.

¹⁷ László Kecskés, Péter Tilk, 'A jogegységi határozatok alkotmánybírósági kontrolljának tervezett törvényi szabályozásáról' [On the planned regulation of constitutional control of uniformity decisions] (2004) (1) Magyar Jog [Hungarian Law] 11–20; Varga Zs., 333–338.

¹⁸ Act CXXVII of 2019 amending certain acts in connection with the establishment of single-level district office procedures (hereinafter: Precedents Act).

¹⁹ Section 346 (5) of Act CXXX of 2016 on the Civil Procedure (hereinafter: Civil Procedure Code).

²⁰ Chapter XXIX of the Civil Procedure Code.

a published decision of the Curia on a matter of law.²¹ This implicitly limits second-instance courts' ability to deviate from Curia precedents, as such deviations can now be challenged through extraordinary revision.

Second, the general rule is that an extraordinary revision is excluded where the value in dispute is less than HUF 5 million or if the judgment of the first instance court has been upheld by the second instance court with the same legal reasoning.²² A Civil Procedure Code provides that the Curia may allow the review even in such cases, if it is required (*i*) for the unity or development of case law, (*ii*) due to the particular gravity or social importance of the legal issue raised or (*iii*) the need for a preliminary ruling by the Court of Justice of the European Union.²³ While in these cases, it is at the discretion of the Curia whether to allow the review, a new rule was introduced that provides that the Curia must allow the review if the judgment deviates on a matter of law from the published decision of the Curia.²⁴

The third rule on extraordinary revision concerns the Curia's right to deviate from its earlier precedent. If a panel of the Curia wishes to deviate from its earlier published decision on a matter of law, it must initiate a uniformity procedure.²⁵ The uniformity chamber is chaired by the President or Vice-President of the Curia. The chamber comprises the President or Vice-President and at least eight other judges from the Curia, appointed by the President. The law provides that at least one member from each department sits in the chamber.²⁶ The chamber may decide to hear the case either with all members of the given department of the Curia or by referring the case to the Full Bench of the Curia. The quorum of the supplemented uniformity chamber or of the Full Bench shall be constituted if more than two-thirds of its members are present; a decision of the full meeting shall require the vote of two-thirds of the members present.²⁷ According to the case allocation system of the Curia, there are currently two panels of 21 and 22 judges, respectively.²⁸ Both panels have nine civil judges, which means that matters requiring expertise in the field of civil law are decided by panels in which the majority of the judges do not handle civil law-related lawsuits.

²¹ Section 406 (1) of the Civil Procedure Code.

²² Section 408 of the Civil Procedure Code.

²³ Section 409 (2) of the Civil Procedure Code.

²⁴ Section 409 (1) of the Civil Procedure Code.

²⁵ Section 32 (1) (*b*) of the Court Administration Act.

²⁶ Section 41/A (1) of the Court Administration Act.

²⁷ Section 35 of the Court Administration Act. According to the case allocation system of the Curia, there are currently two panels of 21 and 22 judges respectively, each with 9 civil judges, so that civil law issues in the case-law proceedings are decided by panels in which the majority of the judges are not civil judges.

²⁸ The case allocation order of the Curia is available on its website. The most recent case allocation order is only available in Hungarian: <https://kuria-birosag.hu/sites/default/files/szabalyzatok/a_kuria_2024_november_1_napjato_l_hatalyos_ugyelosztasi_rendje_modositasokkal_egyseges_szerkezetben.pdf>, a previous version is also available in English: <https://kuria-birosag.hu/sites/default/files/Kuria_ugyelosztasi_rend_20230101_EN_AM.pdf> accessed 1 December 2025.

The Precedents Act also introduced a new form of legal remedy that substantially transformed the structure of legal remedies. Traditionally, the parties had the right to file an appeal in civil cases. The second instance judgment became final and binding.²⁹ As we have referred to above, in certain cases, the parties may request from the Curia the extraordinary revision of the final and binding judgment, but no further remedy was available against the judgment of the Curia.³⁰ The Precedents Act changed this structure by inserting an additional remedy against the judgment of the Curia. This remedy is available in two situations. First, a uniformity complaint can be filed against certain decisions of the Curia if the party that requested the extraordinary revision argues that the second instance judgment deviated from a published decision of the Curia on a matter of law, and the Curia had not remedied the infringement. Second, a uniformity complaint can also be filed if the Curia departed from a published decision of the Curia on a matter of law without initiating the uniformity procedure described above.³¹

Finally, the Precedents Act abolished the previous practice of publishing non-binding legal interpretations under the names of various judicial bodies, such as the department of courts, consultations of heads of departments etc. Moving forward, no interpretation of the law may be published in the name of a judicial body unless the law expressly provides the authority to do so.³² In the future, only uniformity decisions, opinions of the departments of the Curia, and summaries of case-law analysis groups established at the Curia can be published.³³

These rules show that the Precedents Act significantly impacted the civil procedure, from first instance proceedings to extraordinary remedies, and substantially affected the role of the parties involved in the procedure. In the sections that follow, I will argue that these procedural changes have profound implications not only for the procedural framework but also for substantive law.

IV Some thoughts on the comparison between the domestic and the English precedent system

The new system introduced by the Hungarian Precedents Act is often referred to as a ‘limited precedent system’, which might initially suggest an obvious comparison with the English precedent rules. However, a fundamental difference must be recognised: in the

²⁹ See Section 228 (4) of Act III of 1952 on the Civil Procedure Code and Section 385 (5) of the Civil Procedure Code.

³⁰ The Fundamental Law provides an additional remedy. Any party may request in a constitutional complaint that the Constitutional Court review whether the judgment is in conformity with the Fundamental Law [Article 24 (2) *d*] of the Fundamental Law].

³¹ Section 41/B (1)-(2) of the Court Administration Act.

³² Section 27/A of the Court Administration Act.

³³ Article 25 (3) of the Fundamental Law, Sections 27 (1), 30, and 32 of the Court Administration Act.

English common law system, the courts create law, whereas in the Hungarian system, the courts are confined to interpreting the laws enacted by the legislature. While this difference is undeniably significant, it does not render the comparison irrelevant. On the contrary, such an examination can shed light on critical challenges within the Hungarian system. To this end, I will focus on five major differences between the two systems.

The first key difference lies in the scope of decisions that qualify as precedents. In the English precedent system, nearly all court decisions may serve as precedents. By contrast, the Hungarian system limits precedents exclusively to decisions of the Curia. This limitation raises concerns about its effectiveness in achieving the goal of unifying the interpretations of the laws. Given that only a small fraction of civil cases reaches the Curia,³⁴ the capacity of this solution to ensure uniform legal interpretation across all courts is, at best, questionable. If the aim of the regulation is to unify the law, this solution raises at least some doubts since the number of civil cases that reach the Curia is negligible. For cases decided at the second instance and not brought before the Curia, their influence on judicial practice is limited to persuasive authority rather than binding force.

The second issue pertains to whether the UK Supreme Court and the Hungarian Curia have the authority to deviate from their own precedents. Since 1966, the House of Lords and later the UK Supreme Court have been able to depart from their precedent in justified cases.³⁵ In practice, however, this authority is exercised sparingly, reflecting a balance between the need for flexibility and the importance of maintaining legal certainty.³⁶ In contrast, the Hungarian Curia is strictly bound by its own decisions and may depart from them only through the specialised uniformity procedure described earlier.

The third question focuses on the binding nature of precedents. In English law, the lower courts are bound by the precedents of the higher courts.³⁷ Hungarian law has not adopted this solution. Although the Ministerial Explanatory Memorandum of the Precedents Act states that ‘the courts are obliged to follow the interpretation of the law of the Curia’ and may only deviate from it if the deviation is ‘necessary in the circumstances of the case or to comply with the Fundamental Law’,³⁸ this requirement is not reflected in the norm itself. The Civil Procedure Code only requires the judge to explain in the reasoning of the judgment

³⁴ In 2023, over 85% of first instance judgments in civil law matters became final and binding. Only less than 9,000 appeals were filed, and the Curia received a little over 1,700 requests for extraordinary revision in civil cases. For the detailed statistics, see <https://birosag.hu/sites/default/files/2024-04/ugyforgalom_2023.ev_.pdf> accessed 1 December 2025.

³⁵ Practice Statement [1966] 3 All ER 77.

³⁶ See, e.g., *Murphy v Brentwood* [1991] 1 AC 398, in which the House of Lords deviated from the *Anns v Merton* [1978] AC 728 judgment. [James W. Harris, ‘Murphy Makes It Eight – Overruling Comes to Negligence’ (1993) (3) *Oxford Journal of Legal Studies* 416–430.]

³⁷ See, eg, Simon Whittaker, ‘Precedent in English Law: A View from the Citadel’ (2006) (5–6) *European Review of Private Law* 705–746. For the fight between Lord Denning and the House of Lords concerning the Court of Appeal’s right to deviate from a judgment of the House of Lords, see, *Cassell v Broome* [1972] AC 1027, 1054.

³⁸ Ministerial explanatory memorandum to Sections 65–74 of the Precedents Act.

why the judge has departed from the published decision of the Curia.³⁹ However, the law does not impose any requirement regarding the limits of the judge’s right to derogate from the Curia’s decisions. Still, if we assume that it is relevant for the professional career of judges whether their decisions are upheld by higher courts, we can at least expect that the published decisions of the Curia will determine the practice of lower courts, even in the absence of an explicit norm stating that the Curia’s published decisions are binding on lower courts.

The fourth point I want to raise concerns the distinction between the mandatory content of a judgment and the findings and reasoning beyond it. English law distinguishes between the binding *ratio decidendi* (the legal reasoning essential to the decision) and non-binding *obiter dicta* (incidental comments). Although drawing this distinction is not always straightforward, English judges strive to clarify the core reasoning within judgments, aided by headnotes summarizing the *ratio decidendi*.⁴⁰

In Hungarian law, such a clear distinction is largely absent. The Civil Procedure Code refers to deviations ‘in matters of law’ without defining the term, leaving room for ambiguity. It seems plausible to infer from the wording of the Code that even *obiter dicta* statements are binding as long as they concern a matter of law. Striking the right balance in defining what constitutes a ‘deviation in matters of law’ is critical. Overly narrow definitions could render precedents irrelevant, while overly broad interpretations might undermine legal certainty.⁴¹

The Curia has already published several cases where it provided guidance on how it interprets this requirement, but its explanations remain vague: ‘Identity of cases is a complex legal concept influenced by multiple factors and must always be examined on a case-by-case basis. When the Curia examines the identity of decisions on matters of law, it must strictly consider the identity of the substantive legal provisions applied (validity, normative content) and the identity of facts relevant to legal interpretation in the compared judicial decisions.’⁴² While these statements offer some direction, they fall short of providing a robust framework for identifying binding elements within judgments.

The last point for my comparison concerns the ease with which precedents can be found. The accessibility of precedents also differs markedly between the two systems, influenced by both the volume of cases and the structure of judgments.

³⁹ See also András Osztovits, ‘Törvénymódosítás a bírósági joggyakorlat egységesítése érdekében – jó irányba tett rossz lépés?’ [Amendment of the law to harmonise judicial practice – A wrong step in the right direction?] (2020) (2) Magyar Jog [Hungarian Law] 72–80, 75; and Miklós Boronkay, ‘A “korlátozott precedensrendszer” ügyvédi szemmel’ [The “limited precedent system” from a lawyer’s perspective] (2022) (11–12) Polgári Jog [Civil Law] paragraphs [18]–[21], DOI: <http://dx.doi.org/10.55413/193.A2200601.POJ>

⁴⁰ Michael Zander, *The Law-Making Process* (6th edn, Cambridge 2004, Cambridge) 268–275; Rupert Cross & J. W. Harris, *Precedent in English Law* (4th edn, Clarendon Press 1991, Oxford, repr. in 2004) Chapter II.

⁴¹ Bence Rajkai, ‘A precedensek értéke és értéktelensége – a Kúria Jogegységi Panasz Tanácsának Jpe. II.60.054/2022/14. jogegységi hatályú határozata elemzése’ [The value and worthlessness of precedents – analysing the Jpe.II.60.054/2022/14. uniformity decision of the Uniformity Complaint Panel of the Curia] (2024) (5–6) Polgári Jog [Civil Law] DOI: 10.55413/193.A2400303.POJ

⁴² Paragraph [31] of Jpe.I.60.005/2021/5 judgment of the Uniformity Complaint Panel of the Curia.

Let us start with the number of judgments. The English Supreme Court delivered 52 judgments in 2023.⁴³ By contrast, the Curia delivered 5,000 judgments in the same period, of which about 2,000 were civil law cases.⁴⁴ In addition to the precedents of the Curia published since the Precedents Act entered into force, the law retroactively turned the judgments of the Curia delivered since 2012 into precedents.⁴⁵ As a result of this rule, some 40,000 decisions of the Curia became precedents overnight.⁴⁶ When these judgments were delivered, the judges did not know that their judgments would later become binding precedents. The sheer volume of these judgments makes identifying relevant precedents in Hungary an almost insurmountable challenge. However, it is not just the number of precedents that makes it virtually impossible to identify precedents in Hungary.

The English law reports contain a lot more information than the judgment itself.⁴⁷ They also include a subject heading of the judgment according to a predefined, consolidated index; they state the facts of the case concisely, and each case is accompanied by a headnote that sets out the rule laid down by the court. To ensure that the system works, publishers process the precedents cited in the judgment and the judgments that subsequently reflect on it. They do not simply list them but indicate the relationship between the two precedents (eg, upheld, departed from, distinguished). This ensures that one can identify whether a given precedent is still good law.

In the Hungarian system, such infrastructure is largely lacking. The typical wording of the Curia's uniformity decision is that the Curia's interpretation expressed in Decision X 'and any similar judgments' can no longer be relied upon. At a professional conference, the President of the Curia also admitted that he finds it problematic that, at present, it is impossible to identify whether a judgment is still good law, ie, whether it still binds the Curia.⁴⁸ Compounding this issue, Hungarian judgments lack headnotes comparable to those in English law and are challenging to search effectively. This lack of transparency and accessibility significantly undermines the practical utility of the precedent system in Hungary.

⁴³ The statistics are available at the website of the National Archives: <<https://caselaw.nationalarchives.gov.uk>> accessed 1 December 2025.

⁴⁴ The statistics for the case load of the various courts are available at the Courts of Hungary website: <https://birosag.hu/sites/default/files/2024-04/ugyforgalom_2023.ev_pdf> accessed 1 December 2025, see page 126 for the detailed statistics concerning the Curia.

⁴⁵ Section 41/B (1) of the Court Administration Act.

⁴⁶ György Wellmann, 'Kritikai észrevételek a jogegység biztosításának új rendszerével kapcsolatban' [Critical observations on the new system for ensuring legal uniformity] (2020) (11) Magyar Jog [Hungarian Law] 648–655, 653. No official statistics are available on the exact number of published decisions of the Curia. The Collection of Judicial Decisions does not indicate how many decisions it contains.

⁴⁷ Each law report follows a partially different structure. Here we describe the Law Report solution. The ICLR website shows the different parts of the law reports (<<https://www.iclr.co.uk/knowledge/case-law/whats-the-difference-between-a-law-report-and-a-transcript/>> 1 December 2025) through a case (<<https://www.iclr.co.uk/wp-content/uploads/media//2018/10/R-Evans.pdf>> accessed 1 December 2025).

⁴⁸ 'What is the law? The first experiences with the limited precedent system in Hungary.' A roundtable discussion organised by the Centre for Social Sciences Institute for Legal Studies and the Civil Law Department of ELTE Law School on 4 May 2023.

The comparative analysis of the Hungarian and English precedent systems highlights profound differences in their structure, scope and application. While the English system benefits from centuries of refinement and institutional support, the Hungarian system, as currently implemented, faces significant challenges in achieving its intended goals of legal uniformity and predictability. Addressing these issues will require not only technical improvements but also a shift in judicial culture and legislative clarity.

V Comments on the national legislation

Whether one finds this unique precedent system preferable depends on one's approach to law and the legal system.

There is no doubt that the new system, if it works well, could lead to more predictable outcomes. However, predictability comes at a cost. For instance, under the new rule, the Curia can only depart from its own decision through a uniformity decision. This eliminates the possibility of its legal interpretations gradually evolving as new cases are adjudicated.

The drawbacks of this rigidity become evident when we consider historical examples. One prominent case is the Curia's handling of foreign currency loan contracts following the 2008 financial crisis. Initially, for several years, the Curia upheld the validity of the disputed clauses in these contracts. Beginning around 2012, however, the court gradually shifted its position, ultimately recognizing the invalidity of many such clauses.⁴⁹

This iterative, adaptive process – crucial for addressing complex, evolving legal issues – will no longer be possible under the current system. Instead, the Curia's first decision on a legal question will settle the matter, with deviations permitted only through the cumbersome uniformity procedure.

It may not be a surprise to see that the legal literature has so far made very limited attempts to explore the published decisions of the Curia. Commentaries continue to follow traditional methods, analysing the legislative history, the intentions of lawmakers, and court decisions published in legal journals. University education similarly remains unchanged, focusing on journal-published cases rather than binding precedents. This disconnect creates a troubling paradox: tens of thousands of binding decisions define the current state of Hungarian civil law, yet there is no practical way for legal practitioners or scholars to familiarise themselves with these decisions comprehensively.

The President of the Curia has argued at several conferences that comparisons between the Hungarian and English precedent systems are fundamentally flawed. He contends that Hungary's system was deliberately designed to differ from the common law approach, making

⁴⁹ This interpretation might, once again, change, in light of the Court of Justice of the European Union's judgment of 30 April 2025, *AxFin Hungary*, C-630/23, ECLI:EU:C:2025:302, which describes the consequence of the invalidity of a financial lease agreement in a way that seems incompatible with the Civil Code.

such comparisons irrelevant – particularly regarding the volume of decisions, which courts' rulings are binding and other structural differences. While this argument may be formally correct, it misses the broader point. The point of such a comparison is to learn from foreign examples to create a more functional domestic solution.

If the criticisms and concerns I have expressed in my brief presentation are valid, there seems to be considerable doubt about the viability of the Hungarian precedent system. If the accessibility of the law is called into question, fundamental concerns about the rule of law arise.

At present, discussions about the Hungarian precedent system can best be described as a 'dialogue of the deaf'. However, there is always hope for constructive engagement. Professor Vékás has consistently emphasised the importance of professional dialogue, even amid contentious debates and differing opinions. In this spirit, I remain optimistic that there is room for meaningful discussion about the challenges of the precedent system to improve domestic regulation, and ultimately achieve a better legal framework for Hungary.