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COMPLEXITY OF TRANSNATIONAL SOURCES

LA COMPLEXITÉ DES SOURCES TRANSNATIONALES

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HUNGARY

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With the editorial assistance of Laura Lasagna

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1) Question 1 Is the concern about fragmentation of international sources (regional v. universal conventions, codes of conduct and usages of the trade) expressed in your country? By whom (literature, case-law, executive branch of the State, professional association of the Bar)?

There is currently no registered professional organization or institution dealing with this issue in detail. The most important professional forum (although, an unofficial) dealing with this question is the annual national meeting of instructors of private international law and the law of international economic relations[1]. However it must be noted that the purpose of these meetings is to discuss teaching issues. [2]

The topic receives more attention in legal literature. But, regarding the phrase transnational law in title of the questionnaire, it can be stated that no complete monograph was published in the last decade in Hungary that would focus on this problem *i.e.* the fragmentation of the sources of international law. Nevertheless, some monographs, handbooks or educational books tangentially deal with this question. Fragmentation becomes a question in

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[1] The division between these two subjects may be considered as traditional in Hungary and originates from Ferenc MADL in the 1970s. (Decision of the Civilian Subject-Group Committee of December 2nd, 1977) In: Gabor BANREVY: Introduction http://www.uni-miskolc.hu/~eujog/banrevy.htm . One may qualify this latter as transnational law in the narrow sense.

[2] These meetings were organized to review the content of the academic subject and the method of its teaching in accordance with the developments of the legal and the social environment. The first meeting was organized in 2003 and its title was "New Developments of the Law of International Economic Relations" In: European Conflict of Laws of Obligations Ed. By Dr. Gábor Palásri and Dr. Imre Vörös, Krim Bt 2009.

respect of the regulation of particular branches and is being discussed together with norms of international origin in relation to the interpretation, complexity, contradictions of domestic laws or the difficulties of getting access to the relevant legal literature. Articles that deal with questions of transnational law only discuss the problem in an indirect way relating to a particular issue, but these articles are still the most direct sources of this discussion. One must primarily mention those articles that deal with transnational law on the merits or analyze the system of the sources of the laws of international economic relations or particular legal institutions.[3]

Although there are no institutional frames in Hungary for resolving these issues; Hungarian scholars and elite professionals were always at the forefront in resolving such problems in international context. Thus, the UNCITRAL was founded by suggestion of Hungarian diplomats in 1966 in order to facilitate the harmonization and unification of the international commercial law. The final version of Vienna Convention (CISG) was drafted in the frame of UNCITRAL, with active participation of Hungary. Moreover, Prof. Gyula Eörsi was presiding over the Vienna diplomatic conference in 1980 and Hungary was among the first countries to sign the CISG. This involvement has its traditions, because Hungary (as part of the Austro-Hungarian Monarchy) has participated in the work of the Hague Conference On Private International Law from its beginnings. On behalf of the Hungarian professors, the participation is still active in many similar organisations.

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[3] *E.g.* Imre Vörös: The System of Legal Sources in International Economic Relations, In: Jogtudományi Közlöny, September 2003, pp. 358-369.; Katalin Székely: Is the international commercial law unified? Parts I. and II., In: Külgazdaság Jogi Melléklete 4/96 pp. 49-61., 5/96 pp 65-76.; László Burián: The Application of the UNIDROIT Principles to International Commercial Contracts, In: Jogtudományi Közlöny, November 1996 november, pp- 441-450.; Gábor Palásti: Lex mercatoria the Principles of International Law and Similar Choice of Law Provisions, In: Külgazdaság Jogi Melléklete 11-12/2005. pp 133-148.; Gábor Palásti: Special Models for the Choice of Laws – Self Governing Contracts In: Gazdaság és Jog 2/2006 pp. 7-10.; Imre Vörös: The Subject of the Laws of International Economic Relations, Method of the Regulation. (http://www.uni-miskolc.hu/~eujog/voros1.htm).

Question 2. Which proposals have been put forward in your legal system to cope with the problem, and by whom?

There have not been any provisions or action plans issued to handle problems relating to the fragmentation of transnational law or its sources because of two main reasons. Firstly, this problem has not yet been identified and expressed widely. Secondly, this problem is currently less important than others relating to the obligatory harmonization of laws and the accomplishment of similar international obligations.

Partial steps were made in relation to norms of international source, such as international conventions hosted by the state and the implementation of the law of the European Union and other relating tasks.

There are no such official provisions relating to a-national norms, the recognition and/or enforcement of such norms are subject to the efforts of the relevant commercial branch or NGOs. These are nevertheless of accidental nature.

Question 3 Has the executive power in your country kept a strict monitoring of all international engagements which were undertaken and made use of clauses of exemption/reservation (to preserve previous international engagements) when signing new instruments?

During the execution of an international convention, the ministry being responsible for foreign tasks has the most important role[4]. The Ministry of Foreign Affairs is mandated to represent Hungary in international organizations, to coordinate the proceedings relating to international conventions, determine the reciprocity based on international law and to provide judicial assistance. It complies with the tasks mentioned above within the framework of these tasks.

We must mention a relatively new statute, Act No L of 2005 about the Proceedings relating to International Treaties[5] Treaties

[4] Instruction No 4/2009 (II.13) of the Minister of Foreign Affaires provides in its Schedule 3 that the Division for Treaties is responsible for concerting international obligations.

[5] The statute has replaced Law-decree 27 of 1982 on the proceedings relating to international conventions with a considerable delay according to its reasoning.

Act) in this context. The purpose of the statute, according to its preamble, is to determine unified and modern rules to efficiently support the diplomatic interests and efforts of Hungary, to coordinate the harmony of international legal obligations and domestic rules taking into consideration the multilateral treaties relating to the laws of international conventions and the generally acknowledged principles and rules of international laws by the execution of international treaties on behalf of Hungary.

The Act contains provisions for the Republic of Hungary in relation to by- or multilateral treaties, especially for the preparation, creation, determination of their final texts, empowerment for the acknowledgement of their binding effect, acknowledgement of their binding effect, their amendment, their temporary application, termination, cancellation, exit from them, termination of the application, derogations, exceptions, declarations and communications and acceptance relating to state succession in treaties.[6]

The Treaties Act obliges the minister responsible for foreign policy to maintain a register of international treaties and conventions to which Hungary have acceded, and keep the original copies thereof. The register of treaties contains all data specified in the Treaties Act. In addition, the register contains the texts of the derogations, exceptions and declarations and the exact dates and times thereof. Derogations, exceptions and declarations that were withdrawn, have expired, or by the time of the entry into force regarding the Republic of Hungary were no longer in force, or did not have an effect on the Republic of Hungary for any reason. It is an important rule of the Treaties Act that the minister responsible

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On one hand, Hungary has executed the Vienna Convention on the Law of Treaties on 19 June 1987 of 23 May 1969 (also called "Vienna Convention"), that was published by Law-decree 12 of 1987. According to Art. 46 of the Vienna Convention, no accession to a treaty may be cancelled because the domestic legal regulations were violated while executing a treaty. On the other hand, Act No XXXI of 1989 on the amendment of the Constitution has fundamentally modified the duties of the constitutional institutions in relation of the execution of international treaties, but the Law-decree 27 of 1982 was not amended accordingly.

[6] Section 1 of Act No V of 2005.

for foreign policy is obliged to publish the register on the homepage of its ministry[7].

The responsible departments of the Ministry of Justice are obliged to follow the duties of legislation resulting from international obligations in close cooperation with the Ministry of Foreign affairs. The Ministry of Justice has a special role among the ministries. The Minister of Justice has a full overview of the complete legislative procedure and all draft legislation must go through his office; accordingly, also texts of international treaties. This control function makes the role of Hungarian Ministry of Justice special. This ministry reviews all draft legislation to comply with constitutional, codification, systematic and international law aspects. During the so called public administrative conciliation all competent special ministries, administrative bodies and non-governmental organizations (as the case may be) control the process of legislation. This. however, is unlikely to qualify as monitoring activity. Moreover, the ministries review, from time to time, the norms of their branch, but not within a formalized framework.

Question 4 Has the judiciary in your country provided special training for judges to increase their ease and proficiency in dealing with sources of law which were not generated in their legal system?

Except for the law of the European Union and human rights conventions, there is currently no special training for judges for international legal sources. It seems to be nevertheless inevitable to provide the below analysis to present the full picture in order to express the positive tendencies in the education of the Hungarian judiciaries and to highlight reasons of the difficulties of the application of international norms in the judges' attitude and professional knowledge. (However, there are judges who have exceptional professional knowledge, but this usually results from their personal ambitions.)

[7] http://www.kulugyminiszterium.hu/ szerzodes/main.aspx

Education of judges without an institutional framework

In Hungary, the development of an integrated knowledge base and the education of the judges received more attention in the second half of the 1990s, due to Hungary's upcoming accession to the European Union. Considering this idea, the government of the Republic of Hungary by its decisions No 2282/1996 (X.25.) and 2212/1998 (IX.30.) has set out the training of judges for community law. The National Judicial Council has paid also special attention to trainings of community laws especially in respect of administrative leaders in the last years, with special attention to this decision and the new, important tasks the judges were to receive with the EU accession. As of 1998, community law trainings were organized for the leaders of the courts to underline the importance of such trainings and to assist in providing an efficient education to the judges. Until the end of January 2003, all judges have participated on trainings regarding the basis of community laws. In Follow up to that supporting trainings were organized, in which numerous (1296) judges have participated.[8]

The National Judicial Council decided that, simultaneously with these fundamental measures, a legal educational-advisor team must also be trained.[9] This institution that was established in the summer 2002 currently employs 57 judges. These judges received special European community law training to be able act as instructors, training advisors and to perform tasks relating to the member status of the Republic of Hungary following its accession to the European Union; and, to support the judges' everyday tasks[10].

[8] Erika BANICZ: The preparation of Hungarian judges for the tasks relating to the European Union . In: Romániai Magyar Jogtudományi Közlöny 2006/1 p. 25.

[9] The national trainers operated until the beginning of 2009 without a regulated form. The National Judicial Council has accepted the regulation on the European Legal Advisory Service on February 3rd, 2009.

[10] The national trainers only perform their activities in the interest of the courts and only judges or judicial administration staff may turn to them. The national advisor judges don't interpret the community law; they do not give guidance in ongoing cases, but act as advisors.

Training within the institutional framework

Three professionals from other member states (French, German and Dutch) prepared a feasibility study of the institutionalized training, that study was taken as a basis in preparation of the Hungarian Judicial Academy. The other study of similar importance was prepared in relation with the Information and Documentation Centre of the Hungarian Judicial Academy. The Hungarian Judicial Academy was established on September 1st, 2006 and in the framework of the Academy, the mentioned training and research laboratory was also set up[11]. Although in the past, courts have educated their judges in decentralized manner, the Hungarian Judicial Academy is the first formal central educational institution in the history of the Hungarian judicial system.

The National Judicial Council has formed its Educational Scientific Council. The purpose of this latter is to serve as an advisory body during the preparation of decisions relating to the Hungarian Judicial Academy. It is lead by the chairpersons of the Supreme Court and the president of the National Judicial Council. The Hungarian Judicial Academy works as a part of the office of the National Judicial Council. It operates according to the Central Training Plan that is approved by the National Judicial Council. The majority of the available trainings are a two or three-days event.

The curriculum of the Hungarian Magistrates Academy is defined by the judges themselves, while external third parties may only have informal and non-binding comments on the curriculum. This solution is accepted by the related Hungarian literature[12] and it is considered to be the right solution in the long run. Nevertheless, for now it could be more beneficial, if external opinions would have more effect. The Central Training Plan is far from perfect, but it is similar every year. Thus, the danger that the centralized training will only be a reflection of the prior decentralized trainings, under a new brand, does exist. Moreover,

[11] Erika BANICZ: The preparation of Hungarian judges for the tasks relating to the European Union; In: Romániai Magyar Jogtudományi Közlöny 2006/1 pp. 27-29.

[12] Zoltán FLECK: Courts on the Scale; Pallas Tudástár, 2008. pp 47. and 305.

the training itself is voluntary, without any expectations and has no effect on the promotion of the judges.

Based on historical developments, it is not surprising that all education relating to foreign laws covers the law of the European Union. As an exception, one must mention the foreign legal language training courses (English and German), the lectures on the English legal procedure in English language and the human rights lectures. One may mention here the trainings on transport law and intellectual property law, only due to the title of the trainings but without knowing exactly the subject-matter of these course. Foreign language trainings usually deal with the laws of the European Union (in point of fact, trainings relating to European Contract Law was organized). As a summary, it can be said that currently there are no lectures on the international sources of law in question, but a tendency may be identified in that direction. A real change may only be expected if courts could be forced to change their attitudes by external factors.

Referring back to the Information and Documentation Centre of the Hungarian Magistrates Academy, it is worth mentioning that prior to this; Hungarian courts did not have a unified library system. The Information and Documentation Centre provides the Academy with information and documents and at the same time it serves as a legal library and coordination centre for the cooperation of legal libraries. Its primary task is to support the judges and judicial staff with training and research material. Its aim is to cover the most important Hungarian and European Union legal literature; and to a minor extent, international literature. Also, there is a plan to set up an information part (ongoing) through which judges may access the important legal databases such as periodicals and law compilations.

Question 5 Does the fact that in some countries a specialized judicial institution deals with international commercial cases affect the functioning of justice under this profile? Would you assess the records of these judicial institutions as an improvement?

There is no state administrated special judicial institution in Hungary to deal with international commercial cases. The Hungarian ordinary courts have jurisdiction over an international

commercial dispute; the proceedings of the court does not differ from their ordinary proceedings.

In the first place however, international commercial cases are decided on the basis of an arbitration clause by an arbitration body. The Permanent Arbitration Court, attached to the Hungarian Chamber of Commerce and Industry, is the most frequently used and most well-known arbitration court in Hungary. Although its proceedings and awards are not public, but some of its decisions are published in the legal literature in form of summaries without names. Accordingly, the most important decisions of this arbitration court are available in form of summaries and have an effect on legal professionals. Parties of a state court trial would cite such decisions in their filings as legal argumentation.

Nevertheless, such foreign or international specialized judicial institutions could affect the decision making process in international commercial cases. Primarily, in case of material rules that have international origins (such as CISG), the method of interpretation of foreign judicial institutions is well respected by Hungarian legal professionals. It is a different question if, and to what extent such professionals can get access to such sources. If they can, such information improves their functioning. In judicial practice, parties would draw the attention of the court to such records in particular cases.

Question 6 Is there a difference in attitude towards transnational sources among administrative courts (where they exist), courts dealing with civil law matters, criminal law and commercial courts in your country?

Only labour courts are separated from the general courts in Hungary. Nevertheless, similar cases will usually be assigned to the same judges and higher courts have so called judicial colleges. Accordingly, we cannot identify any discrepancy in transnational sources among courts. Labour courts have special jurisdiction and; accordingly, the scope of their dealing with international sources is limited and focused on special problems.

Ordinary courts dealing with a criminal case would be reluctant to make use of transnational sources (such as human rights) unless they are forced to do so by a domestic material or procedural rule. Courts dealing with criminal cases tend to cite

international (human rights) principles more often, but their decisions are not based on these. A study has been conducted in support of this theory in relation to the European Court of Human Rights (Strasbourg), because its most important case law is available in Hungarian. Also, the Ministry of Justice has a Division relating to the Representation at the European Court of Human Rights, which also performs monitoring tasks. There is a visible reluctance to apply this case law; in certain cases, judges refuse the application of these.[13] Nevertheless this attitude also finds justification in the nature of criminal law and in the Hungarian legal culture. (See the answer to question 8.)

Courts dealing with administrative, civil or commercial matters would likely be open towards transnational sources, if the reliance on such sources is justifiable in light of the particular case. It is not easy to establish whether there is a difference in the attitude among the particular judges. Nevertheless, judges dealing with commercial matters face transnational sources more often, it makes them more open towards such sources. Even among these judges, one may identify a special legal culture, a legal formalism that is typical for post-communist states. Because of this, one can hardly find cases and only relating to certain international conventions where a judge bases his or her decision only on an international norm, although these conventions are made national law by their publication in Hungary. (See questions 7 and 8 in detail).

Question 7 Do you think that the efficiency of judges in dealing with cases raising complex interaction of sources may be affected by the fact that the judge himself/herself has to find the applicable law (iura novit curia) in opposition to the situation in which the parties themselves have to plead and prove the law to the court?

The court knows the law *ex officio* (*iura novit curia*), but in the practice this obligation of the court is likely only to cover written national law. The hungarian law is based on a dualistic system; therefore, all international and similar conventions must be

[13] See: Vanda LAMM, Zoltán FLECK: Ten more years of the courts – What did the judicial reform want and what did it achieve? Magyar Tudományos Akadémia Jogtudományi Intézete, ELTE Állam- és Jogtudományi Kar.

published by a Hungarian statute having full binding force. Accordingly, courts must know these sources of law and apply them. The efficiency of the courts in such application should not differ from the efficiency in case of other national written sources.

International sources nevertheless, may have interpretations and/or precedents in foreign countries that were not discovered by Hungarian national courts. In this relation, parties may plead and prove the content and/or the interpretation of a statute to the court, but the court won't be bound by such interpretation.

Other not written sources of law need to be proven at court. This could be the case in purely domestic relations, when trade usage, or similar rules of profession, is referred to by the parties being part of the legal relationship. For example, in case of a dispute relating to a contract of a certain profession, the expected diligence of dealing in the given profession may be a question that needs evidencing. The parties must prove that said rules became part of the legal relationship, the content of the applicable rule and argue for the judgment.

The same may be applicable to international sources other than conventions. If a party argues that international codes of conduct, business usage etc. have special provisions applicable to the given legal relationship, it must prove the reason why the given source is applicable, what its exact content is and how it is to be applied to the given case. If the judge accepts such sources, then he/she does so only as part of the contract that is the basis of the dispute. Although, the broadly accepted usage (of a certain profession) should be applied by the judge *ex officio*, contrary to the usance that must be provided and proved by the parties. In practice however, this is hardly the case. Judges only apply such sources if the use in question may be deduced from written national law, or in case of gaps, provided that the use conforms to the spirit of national laws. The situation is not very different in case of other written norms, codes of conducts etc. Judges view these as provisions of the contract at most. The Supreme Court has applied the ICC Uniform Customs and Practice for Documentary Credits in two published cases[14], but the use of these Usance is based on the domestic rule on financial transactions [according to Section

[14] See Courts' Decisions. BH2002.274; BH1998.189 .

14 Paragraph (5) of Regulation 6/1997 (MK. 61.) of the Hungarian National Bank], where the application of this usance is set out.

There are only a minimal number of international commercial cases decided by ordinary courts in Hungary. This is one of the reasons, why it is disappointing to read cases like the following.

One of the most well known handbooks cites: "in the Hungarian judicial practice unfortunately, there are cases where the court forgot about the obvious application duty of the CISG (Legf. B. Pf. III. 20.998/1995.) In a dispute over a sale and purchase agreement between a Hungarian and an Austrian party the court applied the rules of the Austrian ABGB at a time when the CISG has already entered into force in both Hungary (January 1st, 1988) and Austria (January 1st, 1989)[15]".

The Somogy County Court in its decision G…/2006/30 (*sic*!) reasoned its decision regarding the applicable law: "The parties did not choose a law. According to Section 25 point a) of the Law-Decree on Private International law […] the Plaintiff was the seller in the dispute, accordingly, its domicile provides for the application of the Polish law. The court simultaneously makes reference to the fact that the CISG may be applied if both parties' countries are signatories thereof. According to the publications 8001/1990 and 8002/1990 of the Ministry of International Economic Relations, Poland is not party to the CISG." (Noted, the CISG has entered into force as 1st January 1996 in Poland and the contract in question was concluded in 2004).

In an other published case of the Supreme Court, the UNIDROIT Convention on International Financial Leasing (Ottawa, 28th May 1988) contains: " general principles of law that were elaborated by the courts well before the entry into force of the convention, accordingly, its provisions may not be disregarded".[16] Noted, the court does not say that the provisions are to be applicable (however, Hungary is party to the Leasing Convention), but that the provisions may not be disregarded; that is very different. This wording suggests a court practice in which

[15] Tamás SÁNDOR–Lajos VÉKÁS: International Sale of Goods ; Budapest 2005. HVG-ORAC; p. 36.

[16] Court Decisions: BH1999.468.

used international legal sources are not taken into consideration, but no judgments are based on these.

There are some problems with the wording of the cases. The Metropolitan Court of Appeals issued a decision stating: "Because both Germany and Hungary have ratified the CISG, based on the conflict of laws rules, German law is applicable".[17] After this misleading explanation, the court applied the CISG in the given dispute.

Despite of what has been said here, a tendency may be identified showing that the strict formal approach is dissolving. This might result from the fact that with Hungary's accession to the European Union the courts must give up the exclusive application of the domestic rules. Also, the increasing criticism towards courts and the new attitude of the university instructors and young lawyers, who received an international education, have an effect on the decision making process.

Question 8 Are there detectable common strategies that the judges seem to use to elude complexity (e.g. by the presumption that the foreign law is the same as the local law/by a presumed waiver of foreign sources if the party has not pleaded their applicability immediately)?

The response to this question correlates to a great extent with what has been said in relation of the other questions, that is why a brief excursion is necessary here.

To what extent a judge is ready to go into an in-depth argumentation in a case correlates with his/her professionalism. Those judges, who became judges before the political system has changed, may decide complex commercial cases without any obligatory additional training. An additional argument is usually that they have too many cases to deal with at the same time. Furthermore, it is a question how easily a judge may access foreign norms and adhering literature, which usually is only available in a foreign language, which older judges may not speak.

One may conclude that judges with lower personal ambitions are reluctant to deal with complex cases with international elements. The case-law cited under question 7 is a good example

[17] Metropolitan Court of Appeals: 14.Gf.40.537/2008/3.

for this. In many cases, it takes a while until we notice that judges tend to simplify cases. This results in wrong or insufficient argumentation or non-discovery of all circumstances of the case and the applicable norms.[18] A slight tendency may be identified which shows that courts identify and deal with such cases well. Nevertheless, there is no statistic on this tendency yet. This tendency however, may be identified in the first place relating to the European Human Rights Convention, because organizations exercise strong professional control and, therefore high quality legal literature is available.

What are the origins of these problems? According to a general principle of the Hungarian Constitution, courts may not take over the tasks of the legislature and may not deviate from the wording of the statutes to an extent that would override the legislator's will. This principle reflects one of the most important requisite of European legal systems, the legal formalism, which to a great extent limits the activity of judges. The expectation that court decisions should be justified by the statutes receives special attention in post-communist countries, where legal formalism is represented to an extreme; a certain "legal textualism". The other problem relates to the principle *iura novit curia*. A judge in such system feels him/herself omnipotent and tends to disregard the pleadings of the parties. The "court knows the law" rule is accompanied with the view that only the court (and no one else) knows the law. In addition, in Hungary, such behavior is in many cases accompanied by insufficient professional knowledge.

One may easily draw the conclusion that judges in many cases tend towards an easier solution of cases and try to reduce the issues to some of the provisions of Hungarian law. So, the Hungarian adherence to statutes and accepted standards simplifies the judges' task. Moreover, one may not only identify a simplification, but judges tend to apply the most relevant rules of domestic law

[18] Moreover, there was even a case in which the appellate court decided finally to apply domestic law exclusively: Metropolitan Court of Appeals judgment No 5. Pf.20.961/2007/6 . Particular problems of the Hungarian higher courts' practice in.: Zoltán FLECK (ed.): Courts on the scale II.; Pallas Tudástár, 2008. p. 171. This case is luckily rare. There are examples when the court applied CISG despite of the contrary argumentation of the defendant; moreover at the first instance proceedings: Csongrád County Court: 6. G. 40.008/2007/10.

without considering broader contexts. Of course, this is a tendency that may not be true to all judges.

The other important factor is the time. Even those international norms that are made part of the domestic law (especially in respect of legal principles) need time until courts apply these. Even more time is necessary until the interpretation of such norms is made in international context instead of by purely domestic rules. Limitations in a given legal culture, tools that may be applied by decision making may only be amended slowly. The judicial system – as all big systems – has its own "force of gravity". The judicial system is even slower, and more difficult to influence, because of its late and insufficient reform, problems of the education and the lack of technical support. As a general formula, one can state that the longer the given rule is part of domestic law and the more often judges have to apply the international convention, judges tend to base their judgments only on these conventions. As an example, one may state CMR, which has the most developed case law, but COTIF/CIM are similar. One must add that the decades of case law was supported by the fact that these topics are free from ideologies. In this relation accordingly, case law is well founded.

As an example, in a case the Supreme Court declared that in a dispute governed by the COTIF, domestic rules may only be applied to an extent the convention does not have any provisions in relation of the issue in question.[19] The same firmness is not identifiable in the case mentioned above relating to the UNIDROIT Convention on International Financial Leasing. The *per se* application of the provisions of the COTIF/CIM as well as the CMR is well identifiable in many decisions of the Supreme Court.

Question 9 Is it possible to measure the efficiency of courts in dealing with such issues?

Prior to the judicial reform of 1997, it was practically impossible to perform any research relating to the courts' activity.

[19] Courts' Decisions BH1999.21.

Not only decisions were inaccessible[20], but no statistics or reviews were published about the work of the courts. Following the reform of 1997, there was an improvement, because a number of ongoing cases and closed cases were published as of 1998.

At the same time judgments may not fully be researched. The Act No XC of 2005 on the freedom of electronic information provides in Section 17 Paragraph (1)-(3) that the decisions of the Supreme Court and the Appellate Courts on the merits of the cases must be published in the Court Decisions Compilation, together with the first instance decisions serving as basis of these, in digital anonym version. It has started to be launched as of July 1st, 2007. Decisions made after July 1st, 2007 are available and researchable in a digital archive by anyone. Decisions prior to that date are not accessible. Researchers, who receive special permissions to research court decisions, would find a paper based archive without any systematic, but chronological order.

It is also a problem that today, only high-court decisions are published on the Internet. Neither older decisions, nor decisions of lower courts are available for professionals to research. Scientific research on these judgments is subject to the sole discretion of the chairpersons of the courts.

Accordingly, researches state that tendencies relating to the given topic are relevant, but not well founded due to the difficulties of access to the decisions. It is not surprising that not many articles are published in Hungary that deal with court decisions with criticism; and even less articles dare to analyze a complete field of law. [21]

The response is clear: the efficiency of the courts until 1997 may not be measured. Thereafter, the general figures relating to efficiency (on closed and ongoing cases) were available from statistical data. As of July 1st, 2007, published decisions may be analyzed in a limited manner in as much as a complete analysis is only available relating to higher courts.

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[20] The most relevant decisions of the Supreme Court were published as a selection with simplified content prior to this date "for enabling the unified decision making".

[21] Ld.: Mátyás BENCE: Usual problems of the Hungarian higher courts practice. In.: Zoltán FLECK (ed.): Courts on the Scale II.; Pallas Tudástár, 2008. p. 185.