

The Practice of Leading Cases in the Hungarian High Court (Curia), with Special Attention to the Civil Procedure Act of 1911

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The initiation and protection of legal security is one of the most important tasks of the judicial legal services. In order to create legal unity, the legislation created several different directives on the responsibilities of judges in the field of legal improvement.¹ In my paper, I do not wish to focus on the origins of the leading cases (decision pleni) or their significant role before the Civilian Era.² My primary goal is to describe the changes inflicted by the Act 54 of 1912 (Ppé), which brought the Act 1 of 1911 (Pp) into effect, while also touching the subject of depicting the necessary antecedents which were of utmost importance in order to understand the subjects, up to the point to the introduction of the Act 34 of 1930, which is about the simplification of jurisdiction. First of all, we have to examine the method of defining a leading case, and what can be considered as a leading case?³

¹ Szladits Károly: *Jogszabálytan*. In: Szladits Károly (ed.): *Magyar magánjog. Általános rész, Személyi jog*. Grill Károly Könyvkiadó, Budapest, 1941. 124.

² See more from this period: Falsik Dezső: *A polgári perjog tankönyve*. (Magyar polgári törvénykezési rendtartás.) 1. Vol. Politzer-féle Könyvkiadó-vállalat, Budapest, 1908. 36-37., Fodor Ármin, Márkus Dezső: *A polgári törvénykezési rendtartás kézikönyve*. 1. Vol. Singer és Wolfner, Budapest, 1894. passim, Magyary Géza: *Magyar polgári perjog*. Franklin-társulat, Budapest, s.d., 43-44. History of Act 1 of 1911: Kengyel Miklós: *A bírói hatalom és felek rendelkezési joga a polgári perben*. Osiris Kiadó, Budapest, 2003.148-166., Császár Ferenc: *A magyarországi bírósági szervezet, - perlekedési rendelet, - telek- és betáblázási könyveket, - fenyítő-bírósági eljárást, - csődbírósági illetőséget és váltótörvénykezési megyei és városi eljárást ideiglenesen szabályozó rendeletek magyarázata*. Emich Gusztáv Könyvkereskedése, Pest, 1851.

³ Fehérváry Jenő: *Magyar magánjog kistükre*. Budai-Nyomda, Budapest, 1936. 30., Beck Salamon, Névai László (eds.): *Magyar polgári eljárásjog*. Tankönyvkiadó, Budapest, 1962. 33. See: Tripartitum, Prologue, Chapter Eleven: „custom has threefold value. Namely, explanatory, as it is the best interpreter of the law; so when have to refer to the custom of the peace, and if it is clear from that there is no need deviate from the meaning given by custom. Secondly, it has abrogatory value, because it supersedes law when it contradicts custom. Thirdly, it has substantive value, because it replaces law where this is deficient.” In: János M. Bak, Péter Banyó, Martyn

The Council of Legal Unity of the Hungarian High Court enacted the leading case of legal unity, or the complete sessions of the common or penal councils of the Curia (or, as a third option, the mixed full session of the aforementioned councils of the two legal fields in question) enacted the leading case of the full session if the Curia wished to deviate from the standing-point described in their previous leading case. By using the words of Jenő Fehérváry, we can consider any “administrative decision with a core of principality”, verdicts and injunctions viewed from a substantial (material) point of view as a leading case.⁴ The Curia, the social security committee on legal unity of the High Court of Justice established leading cases from the time the Act 54 of 1912 came into effect (January 1st, 1913). The leading cases of these jurisdictional offices had strength, for they were the “foundations”, the legal sources.⁵

The Curia could also invoke such decision which could decide matters in the field of principalities during certain legal cases. The doctrinal decision case accepted into the Repertoire of Civil Law Decision (PHT) did not have the power of obligation on the lower courts, they only bound the councils of the High Court.⁶ By examining the previous statement, we can establish that the councils of the Curia could not diverge from the decisions established in the PHT until the Curia changed these in a leading case of legal unity.

In general, we can say that a leading case can be viewed as a principal agreement of a higher court, which were bound to follow by the courts up to the point where they were changed.⁷ When did the necessity to come up with leading cases arise?

The High Court’s creation of leading cases in civil rights was regulated by the 4th Paragraph of the Act 59 of 1881 (in the object of modifying the regulation of civil jurisdiction in the Act 54 of 1868), which stated that in order to “keep the administration of justice unified”, which means that in order to create a unified jurisdiction, the Curia was going to decide

Rady (eds.): *The Customary Law of the Renowned Kingdom of Hungary: A Work in Three Parts Rendered by Stephen Werbőczy (The “Tripartitum”).* Charles Schlacks, Jr., Publisher, Idyllwild CA; Department of Medieval Studies, Central European University, Budapest, 2005. 35.; Szladits, 1941. 127.

⁴ Fehérváry, 1936. 30.

⁵ Fehérváry, 1936. 30.

⁶ Szladits, 1941. 124.

⁷ See: Gaár Vilmos: *Döntvény.* In: Márkus Dezső (ed.): *Magyar jogi Lexikon.* 3. Vol., Pallas Irodalmi és Nyomdai Részvénytársaság, Budapest, 1900. 84.

during the full sessions of their civil councils, if a certain case fell under the field of civil law.⁸

The point of establishing leading cases, according to Vilmos Gaár, was to create legal unity “by the courthouses without appeal, and their different councils would treat the similar cases that reach them on an equal legal principle”.⁹ However, the application of leading cases in the lower courts was obliged by the Act 54 of 1912, in order to establish and maintain a unified jurisdiction.

This was the most important difference between the acceptance of the law which brought the civil procedure into effect and the law regulating the creation of leading cases before that time.

Before we move any further, we should examine in which case the Curia did make a decision based on principality first, using a specific example:

During a case of copyright infringement, the Curia established a doctrinal decision based on principality on April 15th, 1909 (No. 56). The Curia declared that the duplication and the publication of musical pieces protected by law on phonograph barrels or ariston discs is qualified as infringement based on the following legal case. From the collection of facts written down in the PHT, we can find out that teacher Dr. K. P. sued the respondents S. Á. and Brother company on the first, S. Á. on the second, and S. D. on the third degrees, on the pretence of copyright infringement, for the six pieces of music composed by the plaintiff for the opera version of “János Vitéz” were duplicated and published by the respondents on phonograph barrels and ariston discs. In this lawsuit, it had to be decided whether or not the multiplication of pieces of music on phonograph barrels and ariston discs qualifies as the mechanical duplication described in the law on copyright infringement (Act 16 of 1884).

In connection to this case, the Royal Court of Justice of Budapest determined that the songs “The Stem of the Bean”, “The Introduction of János Kukoricza”, “The Song of Iluska”, “The Flute Song”, “One Single Rose” and “Blue Lake” composed by the plaintiff for the opera “János Vitéz” were published and duplicated by the respondents using the aforementioned methods, thus perpetrating the act of copyright infringement to the detriment of the plaintiff.

The Royal Appeal Court of Budapest approved this verdict. In the case of infringement, the Curia did not change the verdict of the second

⁸ Kovács Marcel: A Polgári Perrendtartás magyarázata. 12. Book., Atheneum Irodalmi és Nyomdai Részvénytársulat, Budapest, 1932. 1703., Gaár, 1900. 85.

⁹ Gaár, 1900. 85.

appeal court, and their reasoning was as follows: by using historical legal interpretation, the judges called upon the records of the preparation of the law, especially the reasoning of the minister on the passing of the bill, which stated that “the purpose of the law is to protect intellectual property, and to ensure the protection of intellectual products in all ways”. According to the opinion of the committee of justice, this can only be achieved by maintaining the right to the material use of intellectual products only to the author.¹⁰ First, the law enforcer took the intention of the legislator into account. The publication rights belong exclusively to the author, and if this occurs without the specific permission of the author, then it can be considered as infringement according to the 5th Paragraph of the Act 16 of 1884. The court was looking for the answer of whether the transition of protected musical compositions to phonograph barrels and ariston discs is equal to the artificial duplication mentioned in the act, first by using historical legal interpretation, and then, according to the analogy.

It can be found in the reasoning of the bill that the artificial duplication is the general expression of this suggestion. The legislators meant the collection of all inventions of the printing press except for the typography which can be used for duplication, and more to this, according to the 2nd Article of the 5th Paragraph, simply writing down a section without legal permission was also considered as infringement.

According to this, the court explained that the “statement of artificial duplication by mechanical methods without discrimination or exceptions draws the reasonable conclusion that the legislation does not consider the definition of the concept of artificial duplication detailed and definitely finite in the framework including this reasoning”.¹¹

The court elaborated and explained their decision even further by stating that the understanding of the law by the literally and by expanding the law would create more and more opportunities for someone to break the restriction stated in the act because of the constant technical development and the new methods of duplication. According to the court’s point of view, the transition of musical pieces to barrels or discs is nothing more or less than an impression created by mechanical methods of musical pieces written down with the means of notes. In this case, the vocalisation of musical pieces to the audience is not done by human hands, but rather by a machine capable of emitting sounds, “so it is obvious that the written

¹⁰ Polgári Jogi Határozatok Tára. (hereinafter: PHT) Magyar Királyi Igazságügyminisztérium, Budapest, 1918. 1. Vol., doctrinal decision (hereinafter: E. H.) No. 56. 119., Országgyűlési Irományok, 1881. 7. Vol. 225. and 19. Vol. 255., 259.

¹¹ PHT. E. H. No. 56. 121.

or printed notes are completely replaced by the discs and the barrels, and, as such, they vocalise the concept in question with the same purpose and importance”.¹² In their appeal, the respondents defended themselves by stating that the use of mechanical instruments became more and more widespread during the preceding years, and that the plaintiff did not step up against that, therefore they are not guilty of infringement. However, the court did not accept their reasoning.

I. The Council of Legal Unity

The Council of Legal Unity of the Curia decided the lawsuits in cases when the High Court wished to divert from a decision on a question of doctrinal decision of the Curia, one which was recorded in the official collection.¹³ In such cases, the court had to wait for a legally unified decision on these questions of doctrinal decision. If the High Court made a decision based on opposing principalities, or the royal appeal courts, or royal courts of justice, or royal district courts used different practices in these matters of principalities and the President of the Curia or the Minister of Justice suggested the uniformed decision on the questionable matter.¹⁴

The Curia created four councils (civilian; land registry, copyhold and land parcelling; bill, commercial and bankruptcy; penal) every year to decide on the matters of principalities.¹⁵

The Curia ordered the Council of Legal Unity to assemble in the following lawsuit. Composer Ferencz Lehár and publisher József Kleinberg sued Adolf Héberling, an innkeeper from Győr in a case of copyright infringement, based on the fact that the in the respondent's inn *To the White Boat* he had the musical piece *Walzer* by Rastelbinder performed without the specific consent of the plaintiffs. The performance rights of said music belonged to the plaintiff based on the 51st Paragraph of the Act 54 of 1884. They claimed a 25-penny fee to be paid by the respondent for copyright infringement, and also a proper penalty based on the 19th Paragraph of the act. The question arose whether innkeeper could be punished and could be forced to pay a fee for hiring the band playing in the inn (gipsy musicians) who had no previously established repertoire, yet

¹² PHT. E. H. No. 56. 122.

¹³ Kovács, 1932. 1704.

¹⁴ Kovács, 1932. 1704. cf. Fehérváry, 1936. 30., Szladits, 1941. 125.

¹⁵ Kovács, 1932. 1704.

played the piece without the consent of the plaintiffs. The Curia amerced the respondent.¹⁶

What is interesting about this lawsuit is that the Curia wished to divert from the doctrinal decision No. 57, which, in this case, could not be done any other way than to submit the case to the Council of Legal Unity. In order to understand the reason behind the creation of leading case in order to achieve legal unity, we must look at the aforementioned doctrinal decision No. 57, for in that lawsuit, the High Court's decision was the complete opposite, and exempted the innkeeper, reasoning that "only that person can be held responsible for playing a musical piece in public but without legal permission who made a specific request, or implicitly allowed the unauthorized performance to happen". Yet this could not be decided specifically.¹⁷

The person responsible for the performance is considered the perpetrator of the crime *sui generis*. The court also determined the amount of compensation.

II. Full Session of the Curia

During the full sessions of the Curia, controversial matters had to be settled, and also if one of the committees of the Curia wished to divert from a decision established by the Curia in order to safeguard legal unity (leading case of Legal Unity) or a decision established during a full session of the Curia.¹⁸ These sessions also had to be assembled in cases when the President of the Curia or the Minister of Justice deemed necessary to change a leading case formed with the intention of providing legal unity or created during a full session.¹⁹ In such cases, the High Court adjudicated a leading case of full session.²⁰ After these, we should look at how a full session decision was adjudicated in practice.

The Curia overruled their leading case of Legal Unity No. 13 in their leading case of Full Session No. 84, which stated that a person who subrogates someone else in order to attend to one of the person in question's business, is only responsible for the damage caused to a third party which were caused during the tasks fulfilled in the deputy's line of duty if said

¹⁶ PHT. leading case of the Council of Legal Unity of Curia (hereinafter: J. D.) No. 448. 94-95.

¹⁷ PHT. E. H. No. 657. 124.

¹⁸ Kovács, 1932. 1705.

¹⁹ Kovács, 1932. 1706., Szladits, 1941. 125.

²⁰ Fehérváry, 1936. 30. Kovács, 1932. 1703.

person's guiltiness is proved. There is no culpability if the constitutor is able to prove that during the selection of the deputy and the provision of tools necessary to perform said task he or she acted with the utmost diligence, or if the damage would have happened even if the task was performed with the utmost diligence. This rule could not be practiced in cases when a law or a judge states the responsibility without culpability for the reasons of hazardousness, magnitude or nature of the factory or the occupation. The Curia wished to overrule decision No. 13 for it stated that the aforementioned general rule does not apply in cases where the material responsibility is established by means of a separate law or judicial practice.²¹

With the assistance of regular understanding, the Curia established that it is a general rule in compensational law that a person who does not perpetrate a misdemeanour cannot be held responsible. The offence and the damage must have a causal connection to each other. It was also a general rule that a person can only be held responsible for his or her own actions. The constitutor can only be held responsible for the caused damage done by his or her deputy to a third party while performing the duties entrusted to him or her if the hiring person was indeed guilty.

For further information, see Géza Márton's study, who determined in "Obligations of Compensation Caused by Illicit Activities", by the words of Béni Grosschmidt, the rules of "behind the scenes" or indirect responsibility were taken over from the German example (BGB) to the Hungarian Private Law Bill (1928, Mtj, 1721th Paragraph), which the Curia followed to the letter in the process of outlining the new decisions. This meant none other than the responsibility of the constitutor can only be based on his or her own responsibilities, but based on the section of equity (2nd Section), the constitutor can be held responsible just like everybody else, and can also be held responsible in absolute cases of innocent responsibility (for example, dangerous factory).²²

With the help of historical understanding, the court elaborated that Hungarian law is based on the principle of responsibility founded on culpability. Responsibility without culpability was only introduced by legislators in exceptional cases (for example, Act 25 of 1836 [law on corpora-

²¹ PTH. J. D. No. 534. 262., cf. PTH leading case of the Full Session of Curia (hereinafter: T. H.) No. 535. 268-269.

²² Marton Géza: Kártérítési kötelek jogellenes magatartásból. In: Szladits Károly (ed.): Magyar magánjog. Kötelemi jog különös része. Grill Károly Könyvkiadóvállalata, Budapest, 1942. 914-915. See more: Dezső Gyula: Az objectív kártérítés tana. Függetlenség: az erkölcsi kár. Grill Károly Könyvkiadóvállalata, Budapest, 1917. 78-114.

tions, Act 18 of 1874 [law on railroads]). There is a difference between such cases and in cases where a person is under the supervision of another person, and, as such, causes damage to a third party. In these events, responsibility derives from the lack of adequate supervision (for example, Act 31 of 1879 [forest law], Act 12 of 1894 [law on country police]). The question of material responsibility only arises in cases of certain occupations and factories in judicial practice. “According to this, the full session of the Curia needs to state that as the general rule of our legal system, if a person orders someone else to fulfil a certain duty, such a person can only be held responsible for the damage caused illicitly to a third party by the deputy during the tasks he was to perform if the constitutor is culpable for the damage”.²³

III. The Obligating Force of the Leading Case

As we look at the new regulation, one of the most important questions remains: how did the obligating force of the decision change? According to the 70th Paragraph of the Act 54 of 1912, it can be stated that the lower courts were ordered to uphold the legal unity and full session decision of the High Court up to the point where these were changed during one of the full sessions of the Curia.

It took the decisions to come into effect on the 15th day, and this countdown began from the time they were made public in the official periodical.²⁴ There is a radical difference if we compare the previous regulations, for according to the 4th Paragraph of the Act 59 of 1881 (the modification of the Act 54 of 1896, the Civil Procedures) and the 3rd Paragraph of the Act 18 of 1907 (the modification of the Act 38 of 1896), the decisions of the Curia made during a full session provide only guidelines in court cases. According to the 13th Paragraph of the Act 25 of 1890 (The Establishment of Royal High Courts of Justice), only the courts are obliged to keep to the decisions established in order to solve legal unity problems, if problems would arise with the different decisions of court-houses.²⁵ Of course, this did not rule out the voluntary legal compliance of the lower courts, quite the opposite, for as István Czövek stated in his

²³ PTH. T. H. No. 535. 272.

²⁴ Bacsó Jenő: A polgári perrendtartás tankönyve. Grill Károly Könyvkiadóvállalata, Budapest, 1917. 12.

²⁵ Kovács, 1932. 1707.

book on Civil Law published in 1822: “they serve as measuring braids for lower judges”.²⁶

Should we follow this line of thought, we should ask the question whether a leading case of legal unity or of a full session was considered a new law? If we use legal practice as a basis of our answer, we can state that these decisions were seen as laws to uphold, for even courthouses were obliged to follow them.²⁷

The regulative parts of the leading case had an obligating power for lower courts, this had legal source properties, but the descriptive part of their reasoning did not. The rules established on the obligating force of legal unity decision referred only to the decisions of the law in question, for only that particular decision was considered a leading case. The leading case of legal unity, which was described before the law came into effect, did not have the same scope.²⁸

To sum it all up, please allow me to close my study with the words of one of the greatest minds in the field of civil law, Béni Grosschmidt: “The public conviction of law is in fact just like an ore mine, by which I mean that somehow the miner digs up gold and silver and brings them up from the bottom of the Earth, thus not creating anything new, but lifts up the things which were already at the bottom of the mineshaft, just like the judge who, so to say, inaugurates common law, and does not actually favours but only understands and expresses the echo of things which were already parts of legal common conviction, thus already parts of the consumer law, and ready as these may be, only a part of consumer law which saw the light of day as it was brought up from the deep when the judge first used it in a specific legal case”.²⁹

²⁶ Czövek István: A magyar hazai polgári magános törvényről írott tanítások. Nemes Petrózai Trattner János Tamás betűivel, Pest, 1922.67.

²⁷ Kovács, 1932. 1707.

²⁸ Kovács, 1932. 1708. cf. Beck Salamon, Névai László, 1962. 35.

²⁹ Grosschmidt Béni: Jogszabálytan. Athenaeum, 1905. 269., Szladits, 1941. 173.