JUDGE-MADE LAW AND THE EFFECTIVE LEGAL SYSTEM[1]

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Abstract

There is no doubt that each legal system has to face the fact of the role of judicial practice in the legal changes[2] and the Central-Eastern European region is no exception.

Judicial practice in Central-Eastern Europe develops the legal system in two ways. In the strict sense, by producing congruence between the changing social-economic relations and the corresponding, unchanged legal regulation. In the broad sense, judicial practice develops the legal system by bringing the already regulated and unchanged conditions of life into harmony with legal norms reflecting them in a inadequate – too narrow or too broad – form.[3]

The main spheres and forms of the judicial development of law are the interpretation, the concretization, and the individualization of legal rules, the filling of legal gaps by way of analogy, and the setting of examples of equity. The means of the judicial development of law are the interpretation of legal rules and the so-called analogia legis and iuris.

The main conclusion which can be drawn from the above said is, that judicial practice – by means of its law-developing role – may contribute to the advancement of the effectiveness of law to a great extent.

On the basis of all these, we believe that the perspectives of the development of Central Eastern European legal systems lie in the conscious combination of the legislative and judicial development of law.

Key Words: legal development, judicial law-making, civil and criminal law, effectiveness of legal system

1. Introduction

Legal development can be continuous and periodical. Continuous legal development is the result of judicial activity, periodical development is that of codification or legislation.

There is no doubt that each legal system has to face the fact of the role of *judicial practice* in the legal changes[4] and the Central-Eastern European region is no

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[2] Cf. e. g. René David – John E. C. Brierley: *Major Legal Systems in the World Today*. London, 1985 – Konrad Zweigert – Hein Kötz: Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts. Tübingen, 1971 – Jerzy Wróblewski: The Judicial Application of Law. Dordrecht/Boston/London, 1992.

[3] See A. Visegrády: *A bírói gyakorlat jogfejlesztő szerepe* (The Law-developing Role of Judicial Practice) Budapest, 1998.

[4] Cf. e. g. René David – John E. C. Brierley: *Major Legal Systems in the World Today*. London, 1985 – Konrad Zweigert – Hein Kötz: Einführung in die Rechtsvergleichung auf dem Gebiete des

exception.

In the historical development of Hungarian law both customary law and the judge-made law played an important role, and they had several meeting points in the course of time.

The so-called *Tripartitum* (1514), the summary of live feudal common law, which as a result of royal assent, never became a statute of legal force, began to applied by the courts all over the country, thus becoming legally binding by way of custom. Later it was included in Corpus Iuris Hungarici, too (1629).

Judicial practice remained the broadest field of the enforcement of common law, mainly the judgements of the supreme courts with that of the Royal Kuria, in the first place. A collection called *Planum Tabulare* (1800) containing rules of procedure, decisions of the royal board, the practice of legal proceedings instituted by the country courts, the judicial administration of justice in towns, the practice of legal proceedings instituted by manor courts as well as decisions concerning it, practised considerable influence on the judicial administration.

Following the 8-year-long rule (1853-61) of the Austrian Allgemeines Bürgerliches Gesetzbuch (1811) in Hungary, the Council of the Lord Chief-Justice, summoned in 1861, created the so-called *Provisionary Rules of the Administration of Justice*. Like the Tripartitum, though, these never became statutes of legal force. In fact, they became part of the legal system through judicial application, through decisions made in concrete legal cases.

Hungarian judicial practice, in this way, acquired a very considerable role in the creation and development of law, mainly in the field of *civil law*. It united common law as it existed before 1848, legal regulation introduced and maintained mainly in connection with cadastral land registration, and the short orders of the above mentioned Provisionary Rules.

Following the creation of *Commercial Code* (1875), judicial practice developed the rules of modern goods relations in the field of trade law, on the basis of German Commercial Code and on that of the Austrian ABGB.

From the turn of the century on, judicial practice has been considerably influenced by the Civil Code Bill, the fifth draft of which (1928) never came to be of legal force. Most parts of it, however, through legal practice and as common law maxims, became part of our legal system. Naturally, this code contained several legal principles and had developed by judicial practice which survived in the judicial administration of justice in this form. In the non-codified fields of civil law, judicial practice continued to be the source of law till 1959 and even later, in questions regulated by statutes, it was judicial practice which made the initiative steps.

2. The ways, forms and means of judicial law-making

Judicial practice in Central-Eastern Europe develops the legal system in two ways. In the strict sense, by producing congruence between the changing social-economic relations and the corresponding, unchanged legal regulation. In the broad

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sense, judicial practice develops the legal system by bringing the already regulated and unchanged conditions of life into harmony with legal norms reflecting them in a inadequate – too narrow or too broad – form.[5]

The *main spheres and forms* of the judicial development of law are the interpretation, the concretization, and the individualization of legal rules, the filling of legal gaps by way of analogy, and the setting of examples of equity.

The means of the judicial development of law are the interpretation of legal rules and the so-called analogia legis and iuris. The law-developing role of judicial practice comprehends nearly all the fields and levels of the legal system. Within the mechanism of the judicial development of law we can distinguish between the *direct* and the *indirect* judicial development of law which cannot be easily marked off in practice. The essential characteristic feature of the former is that the law-developing effect is the result of judicial practice itself, and not only that of the practice of the supreme courts but also the result of the activity of lower courts.

In the case of the indirect model the judicial development of law is the result of solutions elaborated by the judicial authorities and by legal sciences as well as in the course of attorneys', solicitors' and legal counsels practice.

Thus the judicial development of law is to be conceived as a *complex process*.

2.1. In the Hungarian law-developing process the decisions of fundamental importance of the *Supreme Court* play dominant role.

Courts do not merely "implement", but also interpret and apply the law**,** and thereby they also necessarily develop it. The Roman legal principle of "praetor ius facere non potest" is a living principle even today, at least, in a formal sense based on the Acts on Legislation. However, in a specific case, when passing judgment, with regard to the choice, interpretation and application of a legal norm (its individual elements), as a matter of fact, the judge also makes "case-law" ("praetor ius facit inter partes"). Therefore, the permanent and uniform judicial practice of courts, the individual decisions of "precedental value" developing it and certain Supreme Court decisions may be considered as norms having the character of sources of law.

In accordance with Section 27 of Act of 1997 on the Organization and Administration of Courts, the Supreme Court shall ensure the uniformity of the application of law by the courts, and within the framework of performing this duty, it shall adopt uniformity decisions binding on courts, which shall be published in the Hungarian Official Gazette. The law uniformity procedure – which may also be initiated by a court division – may take place if it is required for the further development of judicial practice or for ensuring the uniformity of judicial practice.

In order to ensure the uniformity of judicial practice, the divisions of the Supreme Court, the Regional Courts of Appeal and the county courts analyze the practice of courts and may – even without initiating a law uniformity procedure – express an opinion or take a divisional stand, which is then published and will be followed by the courts.

Examples for this include – without the provision of an exhaustive list – (Civil Division stand № 10), which deals with disputed issues arising concerning the

[5] See A. Visegrády: *A bírói gyakorlat jogfejlesztő szerepe* (The Law-developing Role of Judicial Practice) Budapest, 1998.

termination of joint property, PK. № 32, which resolves the question of integrum restitutio resulting from an invalid contract, or Economic Division stand GK. № 66., which among others, settles the rules relating to the performance of money debts (capital and late payment interest) in relations between economic operators, but mention should also be made of Administrative Division stand KK № 2, which deals with factors to be taken into consideration by the court when registering foundations.[6]

Divisional Opinions and stands are not pro forma binding on the proceeding court chambers; however, it may be proved statistically that the number of opposing decisions taken in individual cases is insignificant.

Although individual decisions and judgments published in the columns of "Court Decisions" or other publications "(Decisions of the Regional Courts of Appeal)" or the "Collection of Court Decisions" – which also contains judgments of the Regional Courts of Appeal – do not (officially) form part of the control exercised by the Supreme Court relating to matters of principle, their guiding role is hardly debatable. They are not binding on lower courts either, to put it in another way, following them is "compulsorily recommended", courts of second instance like to see them being applied, litigants (or their legal representatives) often refer to them in their submissions, just like trial courts often cite them in their decisions to support their reasoning.

Instead of law-developing interpretation it could in essence be regarded as contra legem judicial law-making[7] when, in the field of non-pecuniary damages, Supreme Court Directive № 16 laid down pre-conditions whereby it re-qualified alternative conditions into joint conditions (instead of rendering life "lastingly or seriously" difficult it required rendering life "lastingly and seriously" difficult) and thereby it changed the applicability of a specific piece of legislation.

Let's see some statistical data on the number of Supreme Court divisional opinions and uniformity decisions, between 2008 and 2010.

In Criminal Division: 31 divisional opinions and 15 uniformity decisions
In Administrative Division: 24 divisional opinions and 13 uniformity decisions
In Civil Division: 10 divisional opinions and 14 uniformity decisions

2.2. With regard to our topic, decisions of the Constitutional Court play a special role. The decisions of the Constitutional Court are rather important for the different branches of law, e.g. in the fields of the freedom of contract, protection of secrets, the constitutional prohibition of unjustified discrimination of legal subjects and the requirement of legal security. The activity of the Constitutional Court does **not** extend to the application of law, this (special) body cannot resolve specific legal disputes, its primary role is "negative law-making", the "weeding out" of norms that are in conflict with the fundamental law by annulling them (norm-control as it is called), and its secondary role is the authentic interpretation of the constitution. The "Constitution as interpreted" by the Constitutional Court is directly binding on the courts and through them, it is also indirectly binding on the participants of proceedings.

[6] Cf. György Bíró – Barnabás Lenkovics: *Magyar Polgári jog. Általános tanok* (Hungarian Civil Law. General Doctrines). Miskolc, 2010.

[7] See on this Jerzy Wróblewski: *Interpratatio secundum, prater et contra legem*. Panstwo i Prawo 1961. No. 4-5.

The Constitutional Court also plays a significant role in developing law by the reasoning provided by it for its decisions about annulment. It plays an even more direct role in law development through its decisions urging the elimination of a constitutional omission. For if the Constitutional Court establishes a "constitutional omission" on the part of legislature, it calls upon Parliament to "perform its legislative duty". This was the case when the Constitutional Court annulled §685 point c) of the Civil Code laying down a definition for economic operators because it did not include sole traders. It has also occurred on many occasions that the Constitutional Court provided directly applicable instructions with regard to the new norm that was to be created (see: Data protection).

3. The main fields of judicial law-making

Further on, let us consider a few specific examples from various branches of law, firstly from the civil law.

Earlier judicial practice had taken the position that a service contract concluded by a *bungler* was void. Compared to this, some changes could be observed in the 1990s. A special guiding role may be attributed to the case, concerning which the Supreme Court pointed out that it could be decided based on specific legal regulations relating to the exercise of trade whether the governing regulation would qualify the contract invalid in the absence of an appropriate licence. The lack of licence itself does not render the contract void if the service constituting the subject-matter of the contract is not prohibited by law. In accordance with other new legal regulations as well, which reflect the social and economic changes, such contracts give rise to the same legal consequences as if the contractor had had the required licence, in other words, the contractor has warranty obligations and the principal is obliged to pay the contractor's fee.

A similar role of judicial law-development can be noticed in changing the term "unreasonable and extensive difference in value" to "unreasonable and extensive disproportion in value". Based on § 201 (2) of the Civil Code, a contract may be found invalid only if there is an unreasonable and extensive difference in value between the provided service and the consideration due. Court practice has replaced the expression "difference in value"– for the very reason of the impossibility of objective measurement of the difference – with the term "disproportion in value". The rule of the Civil Code does not provide a precise basis for determining what extent of difference could be considered unreasonable and extensive. Detailed elaboration of this has fallen on judicial practice, and despite the rich jurisprudence developed in this field, only a general definition may be given for it, in other words, it is not possible to define a specific percentage serving as the standard, one must examine the circumstances of each specific case individually. Judicial practice does not generally qualify even a 20-30% difference in value as unreasonably disproportionate. On the other hand, the Supreme Court has found that in a contract of sale, the agreed purchase price differing by 40% from the market value constituted an unreasonable and extensive difference in value, having regard also to the fact that in the particular case there was no such extraordinary circumstance that would have justified a disproportion of such measure. Consequently, judicial practice makes a subjective

decision about the unreasonable and extensive disproportion between the provided service and the consideration due on weighing every circumstance of the case.

On January 1st, 1989, the Companies Act of 1988/VI came into force in Hungary. The statute having been created in a very short time, based on Austrian, German and Swiss juristic materials was intended, in the light of the initial practical experiences and in consideration of the Hungarian legal, political and economical demands, to be modified later. The above legislative deliberation was, from the very beginning, well-known to the judges of the Court of Registration who made the best of opportunity to practice their law-developing function.

This law-developing role of the Registry Court body – having been upgraded due to the change of the régime – was taken into consideration in the new Companies Act modified by the Act of 1991/LXV. Let it be illustrated with the following examples.[8]

At the beginning of the operation of Registry Courts such a convention was established that the capitalized rental right of immovable property could be also reckoned in the assets of the company. In such cases the right of use or the rent were accepted as contribution in kind which appeared as pecuniary value in the primary capital. These emergency measures raised various, hardly resolvable, debatable issues though.

Because a practically never paid nominal rent was calculated as the value of contribution, the property of the company became increased by a fictitious sum of money already at the start. As opposed to this, it is a general interest that only marketable property possessing actual cash value and also seizable if necessary, is accepted as contribution in kind [Companies Act, Art. 22., par. (2)].

The Supreme Court decided in a rather extraordinary case pertinent to this question. According to the facts the then forming company intended to contribute to their property about 2600 m^2 water surface belonging to the boat landing stage in the harbour of Balatonföldvár. The Court pronounced in their judgement that a specific area of the natural water surface of the Lake Balaton cannot be rendered into company property, with regard to point (a) of paragraph 173 of the Civil Code, according to which state property cannot be considered to be negotiable.

Negotiability always has to be examined in relation to enforceability, that is, it must be examined whether the contributed chattels are suitable for the indemnification of the creditors in case the company ceases to exist.

The justification of the Supreme Court in this individual case pointed out that the partial or entire assignment of the right of use would substantially mean the acceptance of official license as contribution in kind.

Contributed real property passes into the ownership of the company only when the proprietary rights have been registered to the benefit of the company. Statute LXV/1991 declared that registry court practice according to which a real estate debited with some kind of right such as the right of enjoyment, for example, cannot be accepted as contribution and even the announcement of the agreement of the party entitled makes no difference in this respect. Another such right is mortgage,

[8] Cf. A. Visegrády: *Judicial Practice as an Element of Legal Development.* Rechtstheorie1995. No. 3.

because on the basis of this the creditor may put up the property to auction regardless is being a contribution to the capital of a company. Inalienability and the prohibition of encumbrance are reasons for exclusion as well.

In the field of criminal law – since analogy is not permitted – judicial law-development has a more restricted role than in other branches of law. However, consistent judicial practice has led to remarkable results.[9] The **unit of continuity**, introduced by Act IV of 1978, had been elaborated by judicial practice beginning from the 19th century. It has also been referred to as "judicial unit". In today's dogmatics, the unit of continuity (delictum continuatum) constitutes an independent instance of statutory or artificial unit created by legislature. It is hard to understand why this institution had been set aside for one and a half centuries.

The evaluation of **indirect perpetration** has a peculiar history, too. Although it had been laid down by the Austrian Criminal Code of 1952 already, in Hungary the term of indirect perpetration was introduced only by Act LXXX of 2009. Nevertheless, in the practice of courts, indirect perpetration had continuously been recognized and upheld beginning from the 19th century. The reason for the non-application of the term was probably that perpetrator is a person who realizes the legal facts of a crime, however, the indirect perpetrator does not realize the objective elements of the crime, he realizes the subjective elements only.

Concerning this question, judicial practice did not wait for theoretical debates to come to rest.

According to Criminal Division Opinion BKv № 10 (BK 24.), if the pregnant woman loses her foetus as a result of physical assault, the perpetrator's action *shall be classified* as bodily harm causing permanent disability and serious deterioration of health.

A persistent problem is constituted by the parallelism and delimitation of fraud and tax fraud. At present Criminal Law Uniformity Decision No. 1/2006 is attempting to make a distinction between the legal facts of the two crimes:

*"1./ The criminal offence of **fraud** is committed by a person who applies for the refund of value-added tax on the basis of accounting documents made out while not being a subject of taxation, or while being a subject of taxation but not carrying out real economic activity. The damage forming the basis for legal classification is the amount of value-added tax that has been reclaimed and refunded or otherwise accounted.*

2./ The felony of tax fraud is committed by a person subject to the payment of value-added tax, if – either with regard to the payable tax that has been charged by him or the indication of the amount of deductable tax that another subject of taxation has preliminarily charged to him – he provides the tax authorities with false data based on fictitious accounting documents, provided that the result of his act remains within the confines of the legally prescribed tax liability. The perpetration value serving as the basis for the legal classification of the act is the amount of tax reduction"

[9] See on this Ágnes Balogh – László Kőhalmi: Büntetőjog. *Általános rész* (Criminal Law. General Part). Budapest/Pécs, 2010 – Emil Erdősy – József Földvári – Mihály Tóth: Büntetőjog. *Különös rész* (Criminal Law. Special Part) Budapest/Pécs, 2007.

It would be useful to amend the statutory text on tax fraud in accordance with these statements of the Criminal Law Uniformity Decision.

Similarly useful is the statement made in Criminal Law Uniformity Decision No. 1/2005 that the crime of embezzlement cannot be committed in relation to immovable property.

According to Criminal Division Opinion No. 34 (BK 93) *"While the display of violent conduct required for disorderly conduct does not necessarily presuppose the infliction of actual bodily harm, at the same time, there are crimes in case of which one cannot speak of the display of violent conduct but rather of violent commission. Violence laid down by statute in the legal facts of such crimes means the exertion of physical force directly affecting some person, which breaks the resistance of that person.*

In comparison, violence exerted during the commission of these crimes – as opposed to the display of disorderly conduct, which is also of aggressive nature, but which means milder behaviour – is most of the time accompanied, also according to common views of life, by the infliction of actual bodily harm on the injured party."

As a result of this, § 11(1) of Act LXXIX of 2008 supplemented § 271 with the definition of violence.

"§ 271(5) Under this Section, the exertion of physical influence of aggressive nature on another person is also classified as violent conduct even if it is not capable of causing bodily harm."

In labour law the role of judicature has been increased as the effect of the regulative conception of the Labour Code (promulgation in 1992). With the assistance of the stands of the Supreme Court's Labour Division the nominally traditional, in their content renewed legal institutions, in practice tried to envolve an integrated interpretation.[10]

The Labour Code contains new legal institutions as well, their proper interpretation was facilitated by the practice of the courts. Finally we should not underestimate the smooth introduction to the legal practice of the fields that were not regulated in the Labour Code.

The so-called Transfer Directive shows the change of conception in the European Union's social politics. The substance of the directive is the so-called concern concentration, is to compensate dangers that concern the employees in social politics. The adaptation of the directive in each member state cause heated debates and until now many interpreting problems remain.

The change of subject in the person of the employer is significant in Hungarian Labour Law, because in 1992 – in the year of promulgation of current Labour Code – there was a privatizational process in progress that necessarily comes with the employer's change of subject.

The facts of the case have not been regulated by the legislator; we can say that the employer's change of subject has been left out of the circle of minimal standard considered by the legislator. The silence of the legislator created a critical situation. In 1992 the Labour Division of the Supreme Court published stand No. 154, and they attempted to create a unified point of view for judicatures.

[10] Cf. György Kiss: Munkajog (Labour Law). Budapest, 2005.

The stand in compliance with the directive clearly states that an occurred succession in the change of the employer's person does not affect the employment relationship. In comparison to the employment relationship established with the predecessor, the employment relationship with the successor remains unchanged, specifically in the aspect of notice period and severance pay the time spend in the employment relationship count together.

The Supreme Court emphasized, that the change in the employer's person does not lead to dissolve the employment relationship and does not create a new one, but the employment relationship – in lack of modification based on consensus – remains unchanged between the successor employer and the employee.

On the part of the employer the exercised voluntary termination of employment the most important fact is the validity of argument. Stand No. 95 of the Supreme Court's Labour Division applies to this case. The resolution details what the authenticity of the argument's content is and compared to this what reasonableness means.

According to the stand the requirement of conformity to the reality means, that the facts in case of inappropriate justification the voluntary termination of employment cannot be accepted. The grounds for resignation have to be authentic and also they given case the employee's job is not necessary, therefore the employment relationship should be determined.

The resolution emphasizes that justified dismissal cannot be annulled neither on the grounds of equity nor in consideration of such circumstances that are outside of the scope of litigation.

The explanation of dismissal ha to define the reason of the voluntary termination of employment clearly.

Stand No. 95 emphasizes that it is not relevant whether the dismissal has a detailed explanation, but it is relevant that out of the reasons the employer stated as the reasons of dismissal could be established why the employer needs the work of employee not.

According to the stand the employee's reference for inaptitude in job does not accomplish the requirements in so far a detailed, factual circumstance that caused the inaptitude is not clear.

4. Concluding remarks

The major differences between the Anglo-Saxon and Continental judge-made law may be summed up as follows.

4.1. *The role of elaboration by legal dogmatics.*[11] As much as the elaboration and application of statutes is based on legal dogmatic notional systematization in continental legal systems, the activity of legal scholars becomes entwined in the effect of precedents too. Continuous commenting on the decisions of superior courts,

[11] Cf. Lech Morawski – Marek Zirk – Sadowski: Precedent in Poland. In: McCormick – Summers (eds.): Interpreting Precedents. Dartmouth, 1997. – Robert Alexy – Rolf Dreier: Precedent in the Federal Republic of Germany. In: McCormick – Summers (eds.): Interpreting Precedents. op. cit. – Massimo la Torre – Michele Taruffo: Precedent in Italy. In. McCormick – Summers (eds.): Interpreting Precedents *op. cit.*

highlighting judgments of key importance and elaborating on them in essays play a determinative role regarding which precedents will have a wider effect and which ones will fade away later on.

4.2. *Precedents reported with brief summaries of facts.* As a result of this and also the influence of Continental-Roman legal culture, following precedents manifests itself rather in the form of following abstract rules than in the form of following legal positions based on the thorough and detailed elaboration of facts.

4.3. *Following judicial practice instead of individual precedents*.[12]

4.4. In recent decades, *interpretive precedents* have acquired rather an important role in the legal systems of continental countries: as a matter of fact, the increasing role of case-law has led to the expansion of the mass of interpretive precedents and not to the appearance of primarily regulatory precedents.

Finally the following question arises: how to evaluate the judicial development of law from the point of view of the effectiveness of law?[13]

On answering this question it is serviceable to start from a relation revealed by legal theory, namely, that the optimal nature of legislation constitutes the basis of the effective enforcement of legal rules. This suggests that the effectiveness of law, too, can be regarded as a function of the sphere of legislation. This, however, is not true in an absolute sense, since the law-developing activity of the judicial organs affords the possibility of correcting the shortcomings of legislation both from the point of view of techniques and content, and it also affords the possibility of producing congruence between legal norms and social relations constituting their basis.

Thus the judicial development of law not only improves valid law but also makes judicial activity more even and smooth by way of applying legal rules to concrete cases.

The conclusion which can be drawn from the above said is, that judicial practice – by means of its law-developing role – may contribute to the advancement of the effectiveness of law to a great extent.

Our research has cast a new light upon the relationship between judicial practice and legislation.

Judicial practice, on the one hand, has a *de lege ferenda function* towards legislation: it points out aspects of disintegration of congruence between legal regulation and social relations constituting its basis. In this way judicial practice calls attention to the necessity of creating new law or to the modification of the old one.

Judicial organs serve, at the same time, as *assistants of legislation* in so far as they "offer' temporary solutions of the related problems having jelled in the course of their administration of justice which legal principles, being of normative conciseness sometimes, can be weighed together with other important information as essential proof consistent with the conditions of life.

To understand the value and significance of these alternatives anticipating the direction and content of legal regulation, we saw several examples, that the legal

[12] Cf. e. g. Bela Pokol: Jogelmélet (Theory of Law). Budapest, 2005.

[13] Antal Visegrády: Zur Effektivität des Rechts. In: Legal Philosophy: General Aspects. ARSP-Beiheft 82., Stuttgart, 2002.

principles elaborated by judicial practice are transformed, mostly word by word, into legal norms in the course of modification.

Even if these legal principles offered by judicial organs are not identical with ready-made legal rules, they serve as *models* for legal regulation in the making.

Since the legislator is free to decide whether or not to realize these models, judicial practice – through its law-developing role – may seem to impair the process of legislation. This is not so, of course, since in the end it is the legislator who decides whether he transforms the legal principle elaborated by judicial practice into legal norm or not.

Legislation usually utilizes the result of the judicial development of law, in other cases it intentionally deviates from the suggested solutions, thus also having a *role of control* over it.

We hope to have proven that *in the Central Eastern European legal systems the judicial development of law* cannot be regarded as an unhealthy phenomenon, on the contrary, it is a necessary and desirable thing which eases the burdens of the legislator by making the connection with life-conditions more natural and realistic without decreasing the role and significance of legislation itself. The veracity of this thesis can be best illustrated by the fact that legal principles and judicial practice are already reckoned in the codices.

On the basis of all these, we believe that the perspectives of the development of Central Eastern European legal systems lie in the *conscious combination of the legislative and judicial development of law*.