O precedente e como ler uma decisão de Singapura

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland and Germany),
Solicitor (England & Wales and Hong Kong)
Of Counsel, KGP Legal LLC
alexander.ressos@kgplegal.com.sg
www.ressos.com.sg

A doutrina do precedente vinculante opera verticalmente. As decisões do Court of Appeal vinculam a Appellate Division, a General Division e as State Courts. As decisões da Appellate Division vinculam a General Division e as State Courts. O Court of Appeal declarou, em um Practice Statement de 1994, que deixaria de se considerar vinculado por suas próprias decisões anteriores ou pelas do Privy Council. Desde então, afastou-se de precedentes anteriores quando entendeu que segui-los causaria injustiça ou restringiria o desenvolvimento do direito.[1] As decisões de tribunais de fora de Singapura, incluindo os tribunais ingleses cujo direito foi recebido, são persuasivas e nunca vinculantes. Na prática, são citadas constantemente. A decisão ByBit sobre o caráter proprietário do USDT apoiou-se na decisão inglesa AA v Persons Unknown e na decisão de Hong Kong Re Gatecoin Ltd, ambas discutidas na Parte J. Tratou também os trabalhos da Law Commission of England and Wales sobre ativos digitais como material de argumentação.[2]

O leitor suíço precisa aprender a separar a ratio decidendi, a proposição jurídica necessária para decidir os fatos, dos obiter dicta, as observações feitas de passagem. Só a ratio vincula. Uma decisão da General Division de Singapura costuma ter cinquenta ou cem parágrafos, expõe os fatos longamente, apresenta as alegações das

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partes, analisa os precedentes e só então aplica a conclusão. A proposição vinculante pode ocupar dois parágrafos. O instinto do jurista continental de ler uma decisão como uma breve exposição fundamentada da regra, tal como se lê a ementa de um BGE, leva a erro aqui, porque o tribunal muitas vezes decide de forma restrita e deixa a questão mais ampla em aberto de propósito. O tribunal do caso ByBit decidiu que o USDT mantido em uma carteira específica era um thing in action suscetível de ser detido em trust. Não decidiu que todo token é propriedade em qualquer contexto. Um tribunal que, mais tarde, se depare com um token de governança ou um NFT partirá desse raciocínio e avançará a partir dele.

Notas

1. Practice Statement (Judicial Precedent) de 11 de julho de 1994, Court of Appeal, publicado em 1994 2 SLR 689. ↩
2. ByBit Fintech Ltd v Ho Kai Xin, 2023 SGHC 199, §§ 29–36, citando AA v Persons Unknown, 2019 EWHC 3556 (Comm), e Re Gatecoin Ltd, 2023 HKCFI 914. ↩

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Author contact: Dr Alexander Ressos, TEP · contact@ressos.com

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