



Research Article

THE ROLE OF COURT DECISIONS AS A LEGAL SOURCE IN THE CRIMINAL LEGISLATION OF FOREIGN COUNTRIES

Submission Date: March 26, 2022, **Accepted Date:** April 04, 2022,

Published Date: April 16, 2022 |

Crossref doi: <https://doi.org/10.37547/tajpslc/Volume04Issue04-02>

Journal Website:
<https://theamericanjournals.com/index.php/tajpslc>

Copyright: Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

Musaev Umidbek Maksudbekovich

Master's student, High School of Judges under the Supreme Judicial Council of the Republic of Uzbekistan

ABSTRACT

One of the most important responsibilities of any jurisdiction the provision of fair punishment of persons who committed crimes. The ultimate purpose of judicial reform is to create all the essential conditions for the fair implementation of the guarantees of personal freedom of citizens. The country's attitude toward the individual's freedom and inviolability is reflected in the high level of legal protection it receives - the effective functioning of the judiciary in the country to protect the rights and interests of the individual.

KEYWORDS

Supreme Court, judicial practice, Romano-Germanic system's.

INTRODUCTION

The adoption of the "habeas corpus" institution in our country, which transfers the right to approve arrest as a measure of constraint from the prosecutor to the court, was a crucial step. It would not be an

exaggeration to claim that this decision was in a timely manner and with great thought fullness. When it comes to Uzbekistan's international authority, the country's position in the key international rankings



remains low. The fact that Uzbekistan is ranked 92nd in the Rule of Law Index, 72nd in the Civil Justice Indicator, and 66th in the Criminal Justice Indicator shows that the judicial system and its organizational and legal structure still need to be improved.

The Presidential Decrees "On additional measures to further improve the activities of the courts and increase the efficiency of justice" and "On measures to further strengthen guarantees for the protection of the rights and freedoms of the individual in judicial activity" are important documents in resolving the aforementioned issues.

Definitely it is needed to consult the Anglo-Saxon legal system when carrying out these tasks. Different perspectives on judicial review or comparative legal examination of judicial practice exist in the Anglo-Saxon legal system.

Although Western criminal justice systems have a wide range of national models, they are today ideologically homogenous. It is founded on human rights philosophy and core democratic principles, including the presumption of innocence, the right to a fair trial, the right of the accused to a lawyer, and the protection of individual rights while using procedural coercion.

The following are some of the characteristics of judicial oversight in the Anglo-Saxon legal system:

The function of the pre-trial proceedings is clearly defined, including the police's accusatory function;

Judicial oversight is based on the principle of adversarial proceedings of the parties;

Evidence gathered in violation of a person's constitutional rights is declared inadmissible in every case;

Judicial oversight is not a separate institution, but rather an inherent aspect of the criminal justice system, including pre-trial proceedings;

Judges not only consider and resolve specific issues related to the restriction of an individual's constitutional rights, but also develop and create legal norms;

In the oversight process, the court not only evaluates the legality and validity of decisions and actions, but also examines and discusses the evidence. The criminal prosecution is ended if there is inadequate evidence.

There are now differing viewpoints on whether judicial practice (case law) or the Plenum's decision should be regarded a source of law in other countries (members of a mixed legal system).

Although the terms "judicial practice" and "judicial precedent" are frequently used interchangeably in current legal literature, we can see that their meanings are identical. However, the following theories on the subject should be considered. To date, there is no single method for comprehending the court's precedent in a clear and straightforward manner.

According to Pavel Alexandrovich Guk, the professor of the Saratov State Law Academy, "Judicial precedent is a judicial decision of the highest body of the judiciary in a specific case, issued within the framework of a certain legal procedure (judicial production), which contains a normative-legal provision (judicial norm) published in official collections and having the imperative application for similar cases in the future".

In fact, in the Anglo-Saxon countries, such a practice was established, and scientific research was conducted on the subject.



In agreement with Guk P.A., Elena Gennadievna Lukyanova, professor of the Federal Research Sociological Center of the Russian Academy of Sciences, proposes that “a judicial precedent is a decision in a specific case, made in the Anglo-Saxon legal structure, where there are imperative rules for consideration of similar cases in the future, which is recognized as a source (form) of law in the doctrine and practice of states”.

The judicial precedent, in our opinion, is judgements on criminal cases based on the Supreme Court of the states of the Anglo-Saxon legal system's experience and their real application to lower courts.

As an explanation, the Supreme Court also forms the Plenum's rulings, which are binding on lower courts, contain explanations on past cases, and provide directions on how to resolve criminal matters that may emerge in the future. It is obvious that the formation, content, scope of its application are very similar to the judicial precedent. In the Romano-Germanic legal system, however, it is not regarded a source of law.

Although it is a source of law in the Anglo-Saxon legal system, it is not included in the Romano-Germanic system's source of law. This causes a lot of confusion. The preparation and promulgation of the decisions of the Plenum of the Supreme Court of the states of the Romano-Germanic legal system are similar to the process of announcing the precedent of the court.

The lines between these two legal systems are blurring. All states are transitioning to a mixed-system legal system. Kazakhstan, Ukraine, Belarus, Germany, Poland, and Azerbaijan are just a few examples. Despite the fact that these countries are part of the

Romano-Germanic legal family, the Anglo-Saxon legal family's principles are increasingly reflected in their national laws.

The Supreme Court of the Republic of Kazakhstan, for example, is working on a large-scale project to generalize judicial practice, refusing multiple types of practice in the execution of criminal and criminal procedure laws. However, the laws on judicial practice of the Supreme Court of the Republic of Kazakhstan provide only for the possibility of interpretation. It should be noted. that the decisions on judicial practice issued by the Supreme Court are not binding. This is because it is underlined that when imposing a sentence for a crime, the judge will make a decision based on his inner feelings and the degree of danger posed by the act¹.

If there are gaps in the legislation that only become apparent when they are applied in practice, the courts resort to the Supreme Court of the Republic of Kazakhstan for guidance (comments).

The Supreme Court establishes jurisprudence laws in response to the large number of such appeals that cause challenges in practice. The Chairman of the Supreme Court is subject to the right of legislative initiative, according to the Law "On the Judiciary and the Status of Judges of the Republic of Kazakhstan"².

Judicial precedents are acknowledged as a norm of law in the Anglo-Saxon source of law. The norm of law is established as a result of a single judicial decision and is binding on other courts dealing with similar cases. The Russian Federation is part of the Romano-Germanic legal family, which means that the law is the

1 The Constitution of the Republic of Kazakhstan dated August 30, 1995// <http://www.constitution.kz>

2 On the judicial system and the status of judges of the Republic of Kazakhstan: Law of the Rep. Kazakhstan from 25 Dec. 2000 N 132 // <http://adilet.zan.kz/rus/docs/Z000000132>.

only source of law. In recent years, the move to a "mixed" legal family has become more prevalent in the legislation of different countries of the world. The Anglo-Saxon legal family passes laws that must be followed, whereas the Romano-Germanic legal family's courts expand the quantity of court documents based on Supreme Court clarifications and, like the Anglo-Saxon countries, strictly enforce them.

The decisions made within the Plenum of higher judicial bodies influence the interpretation of the principles of law established by the courts of general jurisdiction while evaluating particular situations, which is a direct result of judicial practice.

In the Romano-Germanic countries, the execution of the rulings of the Plenum of the Supreme Court is obligatory. There is no requirement that the rulings of the Plenum of the Supreme Court be officially recognized as a source of law. In practice, however, the area of implementation of Supreme Court Plenum rulings is limited to the aspects of the source of law.

In conclusion, we can say that, despite the fact that a state's legal system is wholly based on Anglo-Saxon law, these states' national legislation acknowledges court decisions/rulings (judicial practice) as a source of law. However, if the Romano-Germanic norms are also reflected in the national legislation of a state belonging to the Anglo-Saxon legal family, then court decisions (judicial practice) are not officially recognized as a source of law. It should also be mentioned that, while judicial decisions from jurisdictions with a mixed system are not legally recognized as sources of law, they are used as such in practice.

REFERENCES

1. The Constitution of the Republic of Kazakhstan dated August 30, 1995// <http://www.constitution.kz>

2. On the judicial system and the status of judges of the Republic of Kazakhstan: Law of the Rep. Kazakhstan from 25 Dec. 2000 N 132 // <http://adilet.zan.kz/rus/docs/Z000000132>.