https://doi.org/10.31489/2026L1/96-107
UDC 340 Received: 09.12.2025 | Accepted: 12.01.2026 | Published online: 30.03.2026

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The Role and Significance of Judicial Precedent as a Source of Law

The article provides a comprehensive analysis of the theoretical nature of judicial precedent as a source of law, the historical stages of its formation, and its place in contemporary legal systems. The aim of the study is to determine the legal significance of judicial precedent in the Anglo-Saxon and Romano-Germanic legal systems, to reveal its distinctive features through a comparative-legal approach, and to assess the possibilities of applying precedent within national legal systems. In the course of the research, historical, systemic, formal-legal and comparative-legal methods were employed; these approaches made it possible to trace the evolution of the emergence of precedent, to identify its role as a form of law-making, and to clarify its relationship with judicial practice. The findings show that, although judicial precedent has been established as a binding source of law in the common law system, in continental law countries it generally has an auxiliary or guiding character. In the United Kingdom, the strict binding force of precedent is consolidated through the doctrine of stare decisis, whereas in the United States its application is more flexible. In the Romano-Germanic legal system, courts primarily act as appliers of statutory law, and the binding force of precedent is not formally recognised. In conclusion, the study argues that judicial precedent, while constituting an important element of the mechanism of legal regulation, can be applied effectively only to the extent that it corresponds to national legal traditions, the degree of independence of the judiciary, and the prevailing legal culture.

Keywords: sources of law; case law; legal systems; legal theory; judicial precedent; legality; common law legal system; Romano-Germanic (civil law) legal system; judicial decision.

Introduction

The role of judicial precedent as a source of law can be observed both within the established legal systems of developed countries and in the sphere of international legal relations, where its broad dissemination is evident. The manner in which judicial precedent functions within the broader framework of legal regulation shows that this institution is gradually taking on features of a universal legal mechanism in modern jurisdictions. In recent decades, this tendency has intensified due to the growing role of judicial interpretation, the increasing complexity of legal regulation, and the need for flexible mechanisms capable of responding promptly to social and economic change. Despite its ancient origins and long-standing recognition as a means through which legal norms may be shaped, judicial precedent continues to attract scholarly attention and remains a subject of systematic academic inquiry.

The relevance of the present study is determined by the fact that, in the context of globalization and the convergence of legal systems, the traditional opposition between precedent-based law and continental legal systems is gradually losing its rigidity. Judicial precedent increasingly influences legal regulation even in jurisdictions traditionally oriented toward statutory law, which raises complex theoretical and practical questions concerning its legal nature, limits of application, and compatibility with the fundamental principles of Romano-Germanic legal systems.

The term "judicial precedent", however, emerged comparatively later as a doctrinal concept. In various legal traditions, other expressions have been used to describe phenomena similar in essence to precedent-based law, including the term "common law". Historical sources indicate that within the nomadic Kazakh legal culture, the notion of bidiń biligi—the authoritative judgment of the biys—also played a significant role. Nevertheless, although such designations highlight certain aspects or features of precedent, they do not fully convey its original, substantive characteristics. This circumstance necessitates a more precise theoretical clarification of judicial precedent as an independent legal phenomenon, rather than its reduction to related or historically adjacent forms of law.

The aim of the study is to examine the theoretical and historical issues of judicial precedent as a form of legal source, to identify the specific features of precedent-based law in jurisdictions where it is applied, and to assess the possibilities of drawing on the experience of Anglo-Saxon countries in the legal regulation of

social relations within Romano-Germanic legal systems. The achievement of this aim allows for a more balanced assessment of the role of judicial precedent in modern legal systems and contributes to the development of a coherent conceptual framework for its analysis.

In accordance with this aim, the following research objectives may be formulated:

– to clarify the concepts of "source of law" and "judicial precedent", to determine the relationship between them within the broader discourse on the forms of law, and, on this basis, to distinguish the legal nature of judicial precedent;

– to analyse the historical development of judicial precedent and, by tracing this evolution, to examine the theoretical issues related to its content, including the differentiation of judicial precedent from analogous legal phenomena such as administrative precedent and other forms of law;

– to identify the place and role of judicial precedent within the Anglo-Saxon legal system and, on this basis, to characterise the particular features of its application in other jurisdictions;

– to determine the concrete place and function of judicial precedent in continental legal systems and, through an analysis of its legal definition and doctrinal understanding, to outline the prospects for its further development and refinement.

Issues related to judicial precedent at the conceptual and theoretical level have been examined in depth in the works of S.S. Alekseev. Certain aspects of judicial precedent have also been examined within the field of comparative legal studies, as well as in the context of analysing the legal history of various states. At present, the classical model of precedent-based law has taken shape in the common law legal system, where judicial precedent is recognised as a primary source of law. In this regard, the studies of such scholars as R. David, C.J. Spinosi, K. Zweigert, H. Kötz, Yu.A. Tikhomirov, A. Kh. Saidov, M.N. Marchenko, F.M. Reshetnikov and V.V. Oksamytniy have made a significant contribution.

The study of Kazakh customary law likewise provides valuable material for characterising the legal nature of judicial precedent. In this field, the works of such researchers as N.S. Akhmetova, Zh. Akbaev, S.O. Dauletova, N.O. Dulatbekov, A.Zh. Zhakipova, K.A. Zhirenchin, S.Z. Zimanov, B.K. Kenzhaliev, T.M. Kulteleev, G.S. Sapargaliev, S.S. Sartayev, A.N. Taukelev, S. Ozbekuly and N. Userov occupy a special place.

In the process of shaping the national legal system, a substantial body of scholarly research has emerged that draws on legal practice and judicial precedent. Such works are aimed at a comprehensive analysis of the role of judicial practice in law-making, its influence on the evolution of legal norms, and its place within the structure of the national legal system. It can be observed that issues of judicial precedent are studied not only within the framework of the theory of state and law, but also extensively examined by scholars in other branches of law, such as civil law, criminal law, administrative law, and constitutional law. This demonstrates the interdisciplinary character of the phenomenon of precedent-based law and underlines its growing significance within the legal system.

Methods and materials

As the methodological foundation of the study, key principles of materialist dialectics were employed. These principles made it possible to examine legal phenomena not in isolation, but in their development and in connection with broader social conditions. In addition, general scientific methods traditionally used for analysing social processes were applied. Throughout the study, methods of analysis and synthesis were used to refine theoretical approaches and to reveal the substantive features of judicial precedent as an independent element of the legal system. The findings obtained through these methods were subsequently organised and compared. The historical method was applied to trace the historical evolution of judicial precedent and to determine its place and role within legal systems at different stages of development. This method made it possible to reveal the contextual conditions in which precedent-based law emerged, and to uncover its relationship with legal consciousness and institutions of law-making. A systemic approach was adopted to explore the role of judicial precedent within the overall structure of legal regulation and to identify its interaction with other sources of law, including statutory provisions, legal custom and enacted legislation. This approach helped to demonstrate how precedent fits into the existing legal framework. The theoretical basis of the research was formed through the works of both foreign and domestic scholars whose studies address judicial law-making, the legal nature of precedent and its position within the legal system. Drawing on these sources ensured conceptual coherence and provided a sound methodological grounding for the analysis.

Results

Judicial precedent may be understood as a court decision of a competent body in a specific case which has entered into legal force and serves as an example of law-enforcement practice; possessing the authority of a source of law, it operates in practice as one of the mechanisms for ensuring the uniformity of judicial practice, since an identical legal position ought to be applied to identical factual circumstances [1; 113]. As a result of the conducted analysis, it may be observed that modern doctrinal approaches increasingly interpret judicial precedent not merely as an auxiliary instrument of law enforcement, but as an independent normative phenomenon whose legal significance depends on the structure of the legal system in which it operates.

According to S.S. Alekseev, the concepts of "sources of law" and "forms of law" are long-established notions that have been in use for several centuries. Research shows that over the years these concepts have been employed and discussed by legal scholars in many countries. Thus, when the generally accepted theoretical meaning of the term "sources of law" is considered, it becomes clear that in the legal sphere it should be understood as a law-creating force [2]. The analysis of these theoretical positions makes it possible to conclude that judicial precedent should be regarded not only as a product of judicial activity, but also as a manifestation of law-creating authority exercised by courts under specific institutional and doctrinal conditions.

G.F. Shershenevich conceptualises judicial precedent as court decisions which, in the form of a rule for resolving analogous cases in the future, acquire precedential significance [3]. According to scholars, a precedent may arise either in the process of creating a new norm of statute or custom, or in the course of interpreting the content of an existing norm.

Another Russian legal scholar and proponent of a natural-law conception of legal understanding, E.N. Trubetskoy, viewed judicial precedent as the resolution of individual cases which serves as the basis for a general legal norm applicable to all analogous situations. Trubetskoy showed that precedent is among the most ancient sources of law, noting that slavery in the United Kingdom was abolished on the basis of judicial precedent and that the principal organs of the state and constitutional procedures in England operate on a precedential foundation [4]. At the same time, effectively equating custom with precedent, he concludes that "in essence, custom is reduced to precedent: it is nothing other than a multitude of precedents; in other words, custom is a precedent repeated many times".

A comparison of these approaches allows the identification of a key theoretical divergence: while some scholars emphasise the derivative nature of precedent in relation to custom or statute, others attribute to it an autonomous normative capacity. This divergence underlies contemporary debates on the legitimacy of judicial law-making.

One of the founders of the social school in domestic legal scholarship, N.M. Korkunov, by contrast, argued that judicial practice as a source of law must be distinguished from custom both in terms of the manner of its emergence and the form in which it is expressed (whereas custom arises in oral form, judicial practice exists in the written form of court decisions).

A prominent representative of the history of Russian law, F.V. Taranovsky, wrote the following in his Encyclopaedia of Law: "On issues that are regulated neither by legal custom nor by statute, the first judicial decision may acquire the character of a judicial precedent, that is, subsequent judicial decisions will rely on it in situations where it has normative significance. Precedent also operates in the interpretation of customary and statutory norms; therefore, it may be described both as an autonomous and as a subsidiary source of law" [5].

A.B. Vengerov characterises judicial precedent as a special form of judicial custom which possesses model and binding force and is based on the uniform decisions of higher courts in similar cases [6]. A.A. Malinovskii defines judicial precedent as a court decision which remedies defects or lacunae in current legislation, or in which a definition is formulated, or a rule is established for interpreting the legal meaning of a given term. According to M.N. Marchenko, judicial precedent may be understood as general legal norms formulated by higher courts in the course of their normative, that is, law-making activity [7].

On the basis of the examined doctrinal positions, the present study identifies two analytically distinct categories of judicial precedent, reflecting different models of its functioning within legal systems.

Judicial precedent may be analysed in two principal categories. The first is domestic precedent, which is reflected in the decisions of higher judicial bodies arising from their law-making activity and aimed at standardising law-enforcement practice. Although such precedents are not formally recognised as a source of

law, they function as an important instrument for the interpretation of legislation and for the elimination of legal gaps. The second is the Anglo-American (foreign) precedent, under which, in accordance with the principle of analogy, decisions adopted in earlier cases must be applied as binding in subsequent similar situations. Within this model, precedent possesses binding force equivalent to that of a legal norm.

The novelty of this classification lies in its functional rather than formal approach: judicial precedent is differentiated not solely on the basis of its formal recognition as a source of law, but according to the scope and manner of its normative influence on judicial practice.

Therefore, it becomes evident that the place and role of judicial precedent within a particular legal system may vary considerably and be subject to significant change. However, before these differences can be fully understood, it is necessary to examine the general characteristics that distinguish judicial precedent from other forms of legal sources:

1. **Special role of the courts.** Irrespective of the legal family in which precedent operates, the courts occupy a particular position, since judges may hand down decisions or orders that acquire the status of legal norms. Some of these decisions simply reproduce and consolidate existing rules of law, others fill lacunae in legislation and generate new legal norms, while still others perform an interpretative function.

2. **Weak codification.** In systems of precedent-based law, the codification of legal acts is only weakly developed, and the systematic consolidation of legislation is, for the most part, virtually absent.

3. **Casuistic character.** The casuistic nature of precedent reflects the fact that it arises from the adjudication of a concrete case and is therefore more closely aligned with specific, real-life situations.

4. **Variability.** Owing to the multiplicity of precedents, the adjudicating authority may, in principle, rely on any existing precedent that it considers applicable.

5. The unwritten nature of judicial precedent also requires consideration of certain distinctive features: a) determining the moment at which a precedent acquires legal force is often difficult and constitutes a separate analytical challenge; (b) there are particularities in the methods by which precedents are published. In England, for example, they are reported by unofficial publishers, which may not be able to provide comprehensive coverage of all precedents [8; 138].

These characteristics collectively demonstrate that judicial precedent represents a flexible and adaptive legal mechanism, capable of supplementing statutory regulation while maintaining internal coherence within the legal system.

The essence of judicial precedent is manifested in the fact that, in deciding a concrete case, the court confers a normative character upon its ruling. What is binding on other courts is not the judgment or sentence in its entirety, but only the "core" of the case—that is, the substance of the legal position adopted by the deciding judge. In the terminology of specialists in the common law legal system, this is referred to as the ratio decidendi. It is also possible to derive compilations of legal rules from precedents. Although judicial precedent was traditionally viewed negatively as a source of law within the Soviet legal system, it may now be observed that such critical attitudes have gradually diminished. Nevertheless, a number of scholars continue to argue for the need to recognise judicial doctrine as a source of law. While this proposal may appear feasible, its implementation would require an independent judiciary, appropriate legal training that equips judges to perform such functions, and the development of judicial legal consciousness in a direction that would enable genuine law-making activity [9].

At the present stage, judicial precedent is regarded in general legal theory as one of the principal sources of law. Today, approximately one third of the world's population lives under legal systems whose regulation of social relations is guided by principles formed within this tradition. However, even among states belonging to the same legal family, judicial precedent is applied in different ways. In England, for example, there exists a strict rule of precedent expressed in the doctrine of stare decisis ("to stand by what has been decided"), a doctrine endowed with binding force. Under this doctrine, lower courts are required to follow previously established precedents and to be guided by them in other similar cases. In the United States, by contrast, owing to the particular features of the country's federal structure, the rule of precedent operates in a less rigid form.

Discussion

When judicial decisions operate as a source of law, not all judgments or orders are binding; what is of significance is only the legal position adopted by the judge that underpins the decision. Consequently, it does not follow that any given decision of one court is automatically binding upon another. The element of an earlier decision that must be taken into account is the ratio decidendi (the core reason for the decision). From

a historical perspective, judicial precedent—which first appeared in the legal system of Ancient Rome, inter alia in the form of the praetorian interdict—has traditionally been examined within the framework of English law, where it developed and was refined over a period of almost one thousand years and, by the beginning of the nineteenth century, had acquired its classical features. A review of historical developments shows that after William, Duke of Normandy, seized the English throne in 1066, a unified English kingdom emerged, and what came to be known as the common law began to develop as the body of law applicable throughout southern England [10].

This historical evolution may be conceptually explained through the theory of legal families developed in comparative legal scholarship, most notably in the works of René David. According to this approach, the fundamental distinction between legal systems is determined not solely by the content of legal norms, but by the sources of law, methods of legal reasoning, and the role attributed to judicial practice. Within this framework, judicial precedent functions as a defining structural element of the common law tradition, while in Romano-Germanic systems its normative influence is mediated through statutory interpretation [11].

The results obtained in the present study make it possible to clarify the functional nature of judicial precedent and to explain the diversity of its manifestations in different legal systems. The analysis demonstrates that the binding force and normative significance of precedent are not inherent qualities, but are determined by the institutional structure of the judiciary and the dominant legal tradition within a given system. From this perspective, judicial precedent should be interpreted not as a uniform legal phenomenon, but as a context-dependent mechanism of legal regulation.

Initially, this body of law emerged as the result of an interaction between Norman and Old English customary rules, royal enactments, and administrative acts. From the very outset of the development of the common law, one of the principles inherited from earlier legal traditions acquired fundamental importance in its formation and operation: a judicial decision that is binding upon a specific individual may, in the future, become binding for other persons in analogous situations. It has been demonstrated that this principle was actively applied from the time of the Curia regis, thereby forming the foundation of the precedent-based tradition of English law.

The interpretation of the obtained results is based on a comparative legal and institutional approach, combined with elements of legal positivism. Within this conceptual framework, judicial precedent is analysed as a form of law whose normative force derives from its recognition by the legal system and its integration into established mechanisms of legal regulation. This approach makes it possible to explain the differences in the role of precedent in common law and Romano-Germanic legal systems without reducing them to purely historical or doctrinal distinctions.

A judicial decision, judgment, or other judicial act constitutes the primary form through which any legally significant resolution rendered by a single judge or a panel of judges in the course of adjudicating a specific case or dispute is formalised. A judicial act is the instrument by which the judiciary, as an independent branch of state power operating under the principle of separation of powers, exercises its authority; this is expressly reflected in the content of the judgment itself. At the same time, a judicial decision does not, a priori, contain a legal norm, for as a rule it is an individual act of law application, and in many instances its role may be limited to resolving a particular dispute or factual situation arising within the sphere of public or private law [12]. Such a judicial decision, in accordance with the doctrine of res iudicata, may have binding force only for the persons with respect to whom it was rendered and has entered into legal effect, that is, only in relation to their subjective rights and legally significant obligations.

Judicial practice, as a legal phenomenon, consists of the decisions rendered by the courts and, having been formed over many years, reflects certain tendencies in its development. At the same time, judicial practice itself—including the generalisations produced by higher courts—does not constitute an official source of law. It is important to note, however, that judicial practice may include judicial precedents, and in such cases, the relevant portion of judicial practice may be recognised as a precedent [13; 105]. Moreover, given the traditionally rather “blurred” understanding of judicial practice, this category should be treated as a broader concept than judicial precedent.

A judicial precedent represents a source of law in the form of a binding decision rendered by a particular court in a particular case; it reflects a method of establishing, modifying, or abolishing legal norms and embodies the internal structure through which such law-making occurs. Within the framework of an established and formally recognised system of judicial procedure, decisions rendered in similar cases that fall within the permitted scope of such adjudication are regarded as judicial precedents. As T.V. Aparova notes, in a precedent it is only the “core” of the decision that is binding, taking into account the material facts of the

case, rather than every stage in the judge's reasoning. The arguments advanced "along the way" may or may not be taken into consideration; much depends on which court created the precedent [14].

A distinctive feature of judicial practice is that subsequent judicial acts may, to a certain extent, introduce modifications into an already established precedent, and these modifications, by enriching the content of the legal norm, contribute to its evolutionary development. This reveals the unwritten and dynamic nature of judicial practice as a source of law. Judicial precedent functions as a flexible and prompt mechanism for filling lacunae in the law. Where existing statutory provisions are insufficient to regulate specific social relations, supreme judicial bodies formulate legal positions that supplement and refine the current system of legal regulation. The weaknesses of judicial precedent include: the multiplicity and substantial volume of judicial acts; a comparatively lower level of authority and binding force when set against normative legal acts; the risk of subjectivism where the discretion of the law-applier is excessively broad; and the difficulty of delineating the precise boundaries of the legal norm. At the same time, judicial precedent has significant advantages: the capacity to regulate concrete situations as accurately and adequately as possible; a high degree of evidential and legal reasoning; the ability of law to adapt to changing social relations (its dynamic character); and the relatively high level of reliability and normativity of the decisions adopted.

Precedent, in relation to existing legislation, has a subordinate character. This is primarily reflected in the fact that the force of a judicial precedent may be directly overridden or modified by statute. Courts are also under an obligation to apply any normative legal act adopted by a competent authority and brought into force in accordance with the prescribed procedure. When forming a precedent, the judicial body itself must not depart from the requirements of the law; on the contrary, by clarifying those requirements it should contribute to strengthening the internal coherence of the legal system.

The doctrine of precedent defines the special role of the courts in the formation and development of law. Whereas on the European continent judges generally confine themselves to applying legal norms, under the common law, in delivering a judgment or order, courts simultaneously create law and, in effect, act as a legislator. In some instances they merely refer to an already existing judicial decision (a declaratory precedent), while in others they formulate an entirely new rule of law (a creative precedent) [10].

In a judicial decision, only that part which is referred to as the ratio decidendi is binding. This constitutes the principle underlying the decision, and it is this principle that judges are required to follow in future cases.

Another component of a judicial decision is the obiter dicta ("things said by the way"), that is, conclusions based either on facts that were not directly in issue before the court, or on facts established in the case but which do not form part of the essential reasoning of the decision. English law is characterised by a distinction between precedents that are binding and those that are merely persuasive. If the ratio decidendi constitutes the precedent, the obiter dicta can have, at most, persuasive authority. At the same time, distinguishing the ratio decidendi from the obiter dicta often proves difficult, since "a fully developed methodology for separating them has not yet been elaborated".

In considering the relationship between precedent and statute, at least three factors must be taken into account. Firstly, from the second half of the nineteenth century onwards, precedent has been significantly strengthened, to the point of achieving a dominant position within the legal system. Secondly, there exists an inconsistency in the relationship between statute and precedent, since statute holds priority over precedent and determines its further development and evolution, given that a precedent may be superseded by a statutory norm. At the same time, only those legislative provisions that have received judicial interpretation consistent with their content come to be regarded, through their active application, as part of the common law [15]. As a result, when adjudicating cases, judges apply not the statutory norm as such, but the norm that arises from its interpretation and contributes to the further development of the law.

Thus, the third factor is, in a certain sense, the supranational character of the common law that operates across a wide group of English-speaking countries. As a result, judges are, in some circumstances, obliged to apply foreign precedents, which contradicts both the principle of the supremacy of the Constitution—the fundamental law that defines the basic principles and structure of governance within the national system of legal sources—and the fluctuating dominance of national judicial jurisdiction. On this basis, once a court is authorised to apply such a precedent, it ceases to be regarded as foreign and becomes part of the national sources of law [16].

In the countries of the Romano-Germanic legal family, judicial practice—that is, the body of fundamental decisions of the supreme courts on issues of law application—is not traditionally regarded as a source of law.

This position is further supported by M.K. Suleimenov, who, analysing the prospects of introducing judicial precedent into the legal system of the Republic of Kazakhstan, emphasises that judicial precedent in the Anglo-Saxon sense represents not merely the binding force of court decisions, but a coherent legal system as a whole. In states with a continental legal tradition and a developed statutory framework, the author argues, it is methodologically incorrect to speak of the direct introduction of precedent as an independent source of law; at most, judicial decisions may acquire the significance of a precedent of statutory interpretation [17].

However, the law-making role of judicial practice in these jurisdictions is linked not so much to the nature of legal doctrine as to its evolution in the twentieth century. As a result, judicial practice has increasingly come to be recognised, in terms of its law-making character, as an autonomous source of law equivalent to statute. For this reason, reference is usually made only to the introduction of certain "elements" of case law, analogies with judicial practice, and similar constructions. Yet this approach also appears fundamentally flawed, since precedent, in any event, constitutes a source of law.

In comparison with courts in states belonging to the common law legal family, the powers of courts within the continental (civil law) legal family are considerably more restricted, since they are confined within the strict framework of constitutional and statutory norms and are not authorised to create such norms themselves [18]. Their competences are essentially limited to the interpretation of legal rules. In interpreting legislation, they are not entitled to modify the elements of legal regulation established by the legislature—in particular, the spatial, temporal and personal scope of the norm, the methods of legal regulation, the object of legal relations, and the content of rights and obligations, among others. Where these elements are not expressly defined in statutory provisions, they are determined by applying recognised methods of interpretation (literal, systematic, logical, historical and so forth).

Reference to the experience of countries belonging to the Romano-Germanic legal family is of limited analytical value, since that experience is highly diverse and conditioned by the particular historical circumstances in which their legal systems were formed. Nevertheless, in many states of the continental legal tradition there remains considerable caution with regard to conferring binding force on judicial decisions for other courts. It is therefore more appropriate to approach the analysis of the role of judicial precedent as a potential or actual source of law in the contemporary Russian legal system through the prism of the concrete differences between the above-mentioned models of precedent [19; 166].

When discussing the possibility of conferring precedential force on judicial decisions, reference is often made to the experience of Russia. This is unsurprising, given the shared legal heritage and the fact that the Russian legal system remains the one most closely aligned with that of Kazakhstan. However, Russian practice is not entirely applicable to our context, as the underlying circumstances differ fundamentally. While debates continue in the Russian Federation regarding the legal nature of the decisions of the Constitutional Court and the Plenum Resolutions of the Supreme Court—specifically, whether they should be treated as normative legal acts or as precedents—this issue has been resolved at the constitutional level in Kazakhstan. The Decisions of the Constitutional Council of the Republic of Kazakhstan and the Normative Resolutions of the Supreme Court, grounded in the ideas of justice and freedom, constitute the most authoritative and conceptually significant normative legal acts; they are binding in application and cannot be regarded as judicial precedents [20]. Accordingly, when drawing on Russian experience, it is appropriate to refer only to the decisions of courts rendered in concrete cases.

The foregoing analysis of the role of adjudication and judicial precedent in different legal systems demonstrates that this source of law functions effectively only in those states where precedent constitutes an integral element of the legal tradition and where the courts occupy a particularly authoritative position in society [21; 32].

By contrast, the introduction of judicial precedent as a source of law into the legal systems of states undergoing rapid and far-reaching changes in public administration and in society at large appears unwarranted and inappropriate. In such contexts, insufficient legal stability, the incomplete institutional consolidation of judicial independence and the absence of a firmly established legal tradition make reliance on the mechanism of precedent complex and potentially even dangerous. For the judiciary to perform the highly complex and exceptionally responsible function of law-making, society must ensure a stable legal culture, a high level of judicial authority, and continuity in legal practice. In the absence of these

preconditions, precedent may, instead of strengthening the legal system, lead to legal fragmentation and to a reduction in clarity and certainty in the application of law. The introduction of this institution should therefore be approached with particular care, in a gradual and incremental manner, and in a way that corresponds to the overall level of development of the legal system.

Against this background, the practical relevance of the foregoing distinctions lies not in "transplanting" precedent as such, but in improving the consistency of judicial reasoning and statutory interpretation. For adjudication, the distinction between the binding "core" of a decision (ratio decidendi) and non-binding reasoning provides a methodological basis for working with prior judicial decisions and established interpretative approaches: the court should (a) identify the materially relevant facts; (b) isolate the decisive legal proposition; (c) assess its authority in view of the judicial hierarchy and the applicable rules on binding or persuasive force; and (d) give reasons for following, distinguishing, or, where justified and institutionally permissible, departing from an earlier position. For law-making, recurrent interpretative patterns revealed in judicial practice may be treated as indicators of statutory gaps or ambiguity; where such patterns are stable, codification or clarification may be considered in order to enhance legal certainty and reduce interpretative divergence.

The reliability of the conclusions reached in this study is ensured by the use of well-established doctrinal sources, comparative analysis of different legal systems, and consistent interpretation of judicial practice. At the same time, the results obtained are limited by the theoretical nature of the research and by the diversity of national legal systems, which does not allow for a universal model of judicial precedent to be formulated. Nevertheless, these limitations do not diminish the analytical value of the study, but rather indicate directions for further research.

Conclusion

In summary, the analysis of the role of judicial precedent as a source of law demonstrates that its operation varies significantly across different legal systems; its normative character and specific modalities of application are directly conditioned by legal traditions and by the institutional development of the judiciary.

First, when judicial precedent is employed, not all judicial decisions possess binding force. The only element that is recognised as binding is the ratio decidendi, that is, the legal position adopted by the judge which forms the basis for the resolution of the case. Accordingly, courts do not apply earlier precedents in their entirety, but only the substance of the legal position they embody.

Second, the binding force of precedent is dependent upon the hierarchy of courts. In common law jurisdictions, decisions of higher courts are binding on lower instances (binding precedent), while a supreme court may depart from its own precedents only in exceptional circumstances. In the United States this principle operates in a more flexible manner, whereas in the continental legal tradition such binding force is, as a rule, absent, since courts are conceived primarily as bodies that apply statutory norms.

Third, the "subordinate" nature of precedent in relation to statute implies that it occupies a secondary level within the hierarchy of sources of law. Parliament may, through the adoption of new legislation, directly or indirectly abrogate, revise or modify the content of a precedent. Nevertheless, in the course of applying legislation, judges, by interpreting its provisions, formulate new interpretative norms, and in this way precedent continues to function as an important instrument for the interpretation of law rather than being entirely displaced.

Fourth, the doctrine of stare decisis constitutes a key instrument for ensuring legal certainty and predictability. This doctrine contributes to the prevention of disputes and to the reduction of the judicial caseload. At the same time, an error made by a higher court becomes binding on lower courts and may lead to the accumulation of conflicting precedents within the legal system. For this reason, some jurisdictions confer upon supreme courts the power to revise or abandon their earlier precedents.

The scientific value of the present study lies in the development of a functional approach to the analysis of judicial precedent, which allows precedent to be examined not solely as a formally recognised source of law, but as a context-dependent legal mechanism whose normative significance varies across legal systems. This approach contributes to a more nuanced understanding of the interaction between judicial practice and legislation.

The practical significance of the research consists in the possibility of applying its conclusions in the interpretation of judicial practice, in the improvement of law-making and law-enforcement activities, as well as in legal education. The results may be used by judges, legislators and legal practitioners when assessing

the role of judicial decisions in the regulation of social relations. The findings of the study may be applied in comparative legal research, in the analysis of national legal reforms, and in the further development of theoretical models concerning the sources of law.

For judges and legal practitioners, the findings provide a practical framework for working with prior decisions in a manner consistent with legal certainty: (1) isolating the ratio decidendi as the only potentially binding element; (2) assessing whether a prior position is binding or merely persuasive by reference to the judicial hierarchy; (3) using "distinguishing" (material factual differences) as the primary technique for avoiding mechanical citation; and (4) explicitly formulating the interpretative rule derived from statutory provisions and its rationale. In jurisdictions where precedent is not formally recognised, this framework supports consistent "precedent of interpretation" and reduces fragmentation of judicial practice by requiring courts to justify convergence or divergence of interpretative positions.

For legislators, the results may be used as a diagnostic instrument for identifying legislative gaps and interpretative conflicts: stable, repeatedly reproduced judicial interpretations indicate areas where statutory wording is insufficiently clear, while divergent interpretative lines signal the need for clarification or for explicit rules on the scope of discretion. For law-enforcement bodies, the framework may be applied in compliance and risk assessment: identifying whether a legal position is stable within the higher courts allows institutions to adjust enforcement strategies, reduce predictable litigation, and align internal guidelines with the dominant interpretative approach.

Taken as a whole, the study indicates that the effective use of judicial precedent as a source of law presupposes the existence of stable legal traditions, an independent judiciary, a highly professional corps of judges and a legal culture that has undergone a lengthy process of historical evolution. In states where these institutional foundations have not yet fully emerged and where the legal system is experiencing a period of rapid transformation, the conferral upon precedent of the status of a binding, normative source of law must be regarded as premature and not convincingly justified from a scholarly perspective.

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Құқықтың қайнар көзі ретіндегі сот прецедентінің рөлі мен мәні

Мақалада құқықтың қайнар көзі ретіндегі сот прецедентінің теориялық табиғаты, тарихи қалыптасуы және қазіргі құқықтық жүйелердегі орны жан-жақты талданған. Зерттеудің мақсаты — ағылшын-саксондық және роман-германдық құқықтық жүйелердегі сот прецедентінің құқықтық мәнін айқындау, оның ерекшеліктерін салыстырмалы-құқықтық тәсіл арқылы ашу және прецедентті ұлттық құқықтық жүйелерде қолдану мүмкіндіктерін бағалау. Зерттеу барысында тарихи, жүйелік, формальды-құқықтық және салыстырмалы-құқықтық әдістер қолданылды; бұл тәсілдер прецеденттің пайда болу эволюциясын, нормашығару ретіндегі оның рөлін және сот тәжірибесімен арақатынасын анықтауға мүмкіндік берді. Зерттеу нәтижелері көрсеткендей, сот прецеденті жалпы құқық жүйесінде міндетті құқық көзі ретінде қалыптасқанымен, континенталды құқық елдерінде ол негізінен қосымша немесе бағдарлық сипатқа ие. Ұлыбританияда прецеденттің қатаң міндетті күші *stare decisis* доктринасы арқылы бекітілсе, АҚШ-та оның қолданылуы маңызды болып келеді. Роман-германдық құқық жүйесінде соттар заңды қолданушы ретінде әрекет етеді және прецеденттің міндетті күші ресми түрде танылмайды. Қорытындылай келе, сот прецеденті құқықтық реттеу тетігінің маңызды элементі болып саналса да, оның тиімді қолданылуы ұлттық құқықтық дәстүрлерге, сот билігінің тәуелсіздігіне және құқықтық мәдениетке тікелей байланысты.

Кілт сөздер: құқықтың қайнар көздері, сот практикасы, құқықтық жүйелер, құқық теориясы, сот прецеденті, заңдылық, ағылшын-саксондық құқық жүйесі, роман-германдық құқық жүйесі, сот шешімі.

Л.М. Жунусова, С.И. Копжасарова

Роль и значение судебного прецедента как источника права

В статье всесторонне анализируются теоретическая природа судебного прецедента как источника права, исторические предпосылки его формирования, а также его место в современных правовых системах. Цель исследования — определить юридическое значение судебного прецедента в англосаксонской и романо-германской правовых системах, раскрыть его особенности с использованием сравнительно-правового подхода и оценить возможности применения прецедента в национальных правовых системах. В ходе исследования использованы исторический, системный, формально-правовой и сравнительно-правовой методы; это позволило выявить эволюцию возникновения прецедента, его роль в качестве формы нормотворчества и соотношение с судебной практикой. Результаты исследования показали, что, хотя в системе общего права судебный прецедент сформировался как обязательный источник права, в странах континентального права он в основном носит дополнительный или ориентирующий характер. В Великобритании строгая обязательная сила прецедента закрепляется через доктрину stare decisis, тогда как в США его применение отличается

большей гибкостью. В рамках романо-германской правовой системы суды выступают прежде всего в качестве правоприменителей, и обязательная сила прецедента официально не признаётся. В заключение делается вывод, что судебный прецедент, будучи важным элементом механизма правового регулирования, находит своё эффективное применение в зависимости от национальных правовых традиций, степени независимости судебной власти и уровня правовой культуры.

Ключевые слова: источники права, судебная практика, правовые системы, теория права, судебный прецедент, законность, англосаксонская правовая система, романо-германская правовая система, судебное решение.

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