



PROSPECTS FOR IMPROVING THE SOURCES OF CRIMINAL LAW, TRENDS AND DYNAMICS

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ABSTRACT

The consideration of judicial practice as a formal (secondary) source of law has always been the subject of heated discussions among scientists, who recognized that from a legal point of view it is unacceptable, and from a practical point of view it is necessary and effective. At the moment, this discussion continues to gain momentum, as a result of which this topic does not lose its relevance. Therefore, in this scientific article, the author will make an attempt to comprehend the existing points of view in science regarding the issue raised, and express his own position.

The analysis of numerous modern views in the field of criminal justice allows us to say that at the moment one of the most pressing scientific and practical problems of criminal law is the lack of certainty about the role, degree of influence, imperative or dispositivity of the legal positions of the Supreme Court of the Republic of Uzbekistan, enshrined in the decisions of the plenum on the practice of applying the norms or institutions of the Criminal Code.

At present, the existence of the phenomenon of judicial law-making of the highest judicial instances is no longer in doubt and controversy. Taking into account the significant useful role that the resolutions of the Plenum of the Supreme Court of the Republic of Uzbekistan play in practical criminal law activities, the question of the theoretical and legal nature of these decisions, in particular, the admissibility of their

attribution to formal sources of criminal law, is very relevant and requires resolution.

Judicial practice is considered by most scientists as a social source of criminal law, since the legal positions formulated in its framework are: 1) generally form an idea of the norms of criminal law; 2) serve as an auxiliary tool for the correct resolution of cases. The results of the conducted social survey show that 70.5% of judges and 80.0% of researchers refer to the materials of law enforcement practice in order to use recommendations on the application of legal norms.

Scientific and practical disputes about the possibility and necessity of recognizing the resolution of the plenums of the Supreme Court of the Republic of Uzbekistan as sources of criminal law have not subsided for many decades. Conceptually, there are two directly opposite points of view. Representatives of the first position believe that the decisions of the Plenum have all the necessary properties and



features, including the elements of normativity, which are inherent in formal sources of criminal law[1]. Representatives of the second position believe that the decisions of the Supreme Court of the Republic of Uzbekistan not only cannot be, but under no circumstances should be included in the system of formal sources of criminal law, since they have an important, individual legal function[2].

Let us analyze in more detail the arguments and arguments of the representatives of the first point of view. The general body of scientific and practical views of the supporters of attributing the resolution of the Plenum to the sources of criminal law is the need to overcome two obstacles that hinder this transformation – it is about proving and identifying normative prescriptions and signs of formal general obligation.

Another argument in favor of general obligation is the fact that in the vast majority of judicial legal consciousness, the explanations of the Plenum of the Supreme Court of the Republic of Uzbekistan on criminal cases have the de facto force of law and in almost every second judicial act, especially in middle-level courts, you can find a reference in the reasoning part to the resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan[3].

The next argument consists in the presence of voluminous mandatory prescriptions, which by their nature develop, supplement or clarify the meaning of a particular norm, or a mandatory element of the corpus delicti[4]. It is noted that the resolutions of the Plenum of the Supreme Court of the Republic of Uzbekistan, establishing such legislative prescriptions, fill in the shortcomings of the legislator and thereby contribute to the speedy overcoming of legal uncertainty, which is especially unacceptable in public law, which is the criminal branch.

The most important argument of the proponents of this position is that if the decisions of the Plenum are not recognized as sources of criminal law, it is difficult and impossible to achieve their compliance with the criminal law[5].

Considering the legal nature of the decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan, many scientists tend to find it difficult to attribute the decisions to the system of formal sources of criminal law for a number of reasons. But even along with such opinions, there are reasons to doubt the indisputability of the conclusion that it is inappropriate to recognize judicial precedent as a source of law. The following arguments can be put forward in favor of such recognition. First of all, it is necessary to take into account the need for this source of law. There are reasons to agree with those who draw attention to the social conditionality of the need to recognize judicial precedent as a source of criminal law and to the urgent practical need for judicial rulemaking. At the same time, the unjustified denial of judicial practice as a source of law may indicate a gap between theory and practice.

There is another point of view. For example, V. N. Sinyukov insists on giving them the status of a judicial precedent[6]. The argumentation of this position is as follows: first, there is a clear lack of normative material, and second, the inconsistency of legislative provisions. Undoubtedly, the problems described above have a place to be, and the Criminal Law is no exception. However, giving the Decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan the status of a judicial precedent would mean that the judicial body is given legislative authority, which contradicts the foundations laid down in the Constitution of the Republic of Uzbekistan. The essence of these acts is to illustrate the negative trends of legislation by



summarizing court decisions, as well as explaining some provisions of the law, provided that its meaning is preserved[7].

The powers of the Supreme Court of the Republic of Uzbekistan are concentrated on giving explanations on the formation of judicial practice in criminal cases, which follows from the Constitution of the Republic of Uzbekistan, which recognizes the imperative indication of their generally binding force, and it is extremely important to understand and implement in practice.

Thus, according to article 110 of the Constitution of the Republic of Uzbekistan, the Supreme Court of the Republic of Uzbekistan is the highest body of judicial power and the acts adopted by it are final and binding on the entire territory of the Republic of Uzbekistan[8]. So, theoretically, the decisions of the Plenum of the Supreme Court are also binding in terms of formality and legal force.

It should be noted that in the modern sense, the phenomenon we are considering is understood as a precedent[9].

As we have already understood, the Constitution of the Republic of Uzbekistan has sufficiently established the status of the Supreme Court. But despite the legislative consolidation, the problem of mandatory rulings of the Plenum of the Supreme Court of the Republic of Uzbekistan, including those providing explanations on criminal law issues, worries the minds of scientists of the doctrine of criminal law to this day. The opinions of the authors are divided: some adhere to the point of view of the legislator[10]; others insist on the advisory nature of the acts of the highest judicial body of the country[11], others advocate the thesis on the interpretation of the criminal law in the Decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan, some authors advocate the normative and subordinate nature of these acts [12].

We consider it necessary to highlight the special role of the Decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan in the system of sources of law, because for the most accurate and complete qualification of a crime, it is not enough to be limited to knowledge of the disposition of the criminal law, there is a need to interpret the provisions contained, including if they are not disclosed in the Criminal Code of the Republic of Uzbekistan.

As we know, the legislator always follows the goal of presenting the normative material briefly. However, this is often not enough to effectively apply a certain legal norm in practice.

We must admit that in fact, a lot of scientists agree that judicial practice has and deserves to be defined as a source of law[13].

The question of the legal nature of the Decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan will remain relevant among legal theorists for a long time. At the same time, the law enforcement practice will be built in accordance with the explanations of the higher judicial instances until the legislative resolution of this issue.

It should be noted that the inclusion of precedents in the system of secondary sources of law at the official level will not contradict the unity of criminal law policy, the norms of the Constitution, because with the help of judicial practice, the meaning and significance of legal norms are actually understood, through their interpretation and application to situations. Therefore, the precedent, in our opinion, is a living embodiment of legal norms in practice.

The need to improve legislation implies the creation of a harmonized legal framework. An important role here is played by belonging to the legal family, since if countries belong to the same legal family, there may be differences between their national legal systems. These



differences (for example, the penetration of case law into Romano-Germanic law, etc.) should also be taken into account in the process of implementing international law into national law. Taking into account the above, we can conclude that it is advisable to recognize the decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan as a source of international law. At the moment, theoretically, these acts can be recognized as a source of law, but in fact they are of a recommendatory nature for a wide range of people, and mandatory – for a narrow circle of specialists working in this field. It should be noted that we consider ourselves supporters that these acts in the Republic of Uzbekistan deserve to become sources of law, since they supplement with practical effect the laws, by-laws and other rules established by the law-making and norm-making bodies.

At the same time, we tend to believe that from a practical point of view, this is necessary, and from a legal point of view, it will add elements of case law to the legal system of the Republic of Uzbekistan, where judicial practice will have an ambiguous, but influence. Here you need to take into account all aspects of the implementation of this proposal.

While we are not in favor of unilaterally including the decisions of the Plenum of the Supreme Court in the system of sources of criminal law, we would like to note that this, in general, should be done initially from a scientific point of view and from a different perspective of research. This perspective needs to be supplemented by practical research, with the goal of providing the courts with a method of precedent in the future, in order to reduce the burden on the work of judges.

References :

- [1] Obrazhiev K. V. Rulings of the Plenum of the Supreme Court of the Russian Federation as formal (legal) sources of Russian criminal Law. 2008. No. 4 // SPS "ConsultantPlus".
- [2] Rarog A. I. The legal significance of explanations of the Plenum of the Supreme Court of the Russian Federation // "State and Law". 2001. No. 2 // SPS "ConsultantPlus".
- [3] Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan " On the practice of applying legislation on the execution of court decisions in criminal cases " dated December 27, 2016, No. 27 // Source: <https://lex.uz/ru/docs/3122744>
- [4] Commentary to the Criminal Code of the Russian Federation. In 4 vols. The special part. Sections X - XII" (article-by-article) (volume 4) (ed. by V. M. Lebedev) ("Yurayt", 2017) // SPS "ConsultantPlus".
- [5] Obrazhiev K. V. Rulings of the Plenum of the Supreme Court of the Russian Federation as formal (legal) sources of Russian criminal Law. 2008. No. 4 // SPS "ConsultantPlus".
- [6] Sinyukov, V. N. The Russian legal system: introduction to general theory. - Saratov: Polygraphist, 1994 – - 495 p.
- [7] Popov A. N. Commentary to the Resolution of the Plenum of the Supreme Court of the Russian Federation "On judicial practice in cases of crimes against sexual inviolability and sexual freedom of the individual" / A. N. Popov. - St. Petersburg: Publishing House of St. Petersburg. in-ta (phil.) Acad. The Prosecutor General's Office of Ros. Feder., 2016 – - 40 p.



[8] Constitution of the Republic of Uzbekistan. Adopted on 08.12.1992 by the Supreme Council of the Republic of Uzbekistan. National Database of Legislation, 06.03.2019, No. 03/19/527/2706, 05.09.2019, No. 03/19/563/3685

[9] Precedent Of A / T. V. Kabyshev, N. M. Konin, N. A. Lopashenko, N. I. Matuzov // Legal encyclopedia / ed. by B. N. Topornin. – M.: Yurist, 2001. – 1267 S.

[10] Golunski, S. A. Theory of state and law / S. A. Golunski, M. S. Strogovich. – M., 1940. – 304 p.

[11] Nersesyants, V. S. The court does not legislate and does not govern, but applies the law (on the law-enforcement nature of judicial acts) / V. S. Nersesyants // Judicial practice as a source of law. - M., 1997. - pp. 34-41.

[12] Danielyan A. S. Rulings of the Plenum of the Supreme Court of the Russian Federation as a form of expression of judicial law-making / A. S. Danielyan, I. N. Gelieva // Yuridicheskaya nauka. - 2018. - No. 4. - p. 3-6.

[13] Trubetskoy E. N. Encyclopedia of Law. - Moscow: Publishing house: A. A. Livenson Skoropech Partnership, 1908. - 225 p.