



## THE ROLE OF PRECEDENTS IN THE DEVELOPMENT OF JUDICIAL PRACTICE: ANALYSIS AND PROSPECTS

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### ABSTRACT

*This article is devoted to the study of the role of precedents in the development of judicial practice. Precedents, as a part of the general legal system, play an important role in the formation and interpretation of legislation. The article analyzes the basic principles of working with precedents, their importance for law enforcement bodies, as well as the prospects for the use of case law in modern conditions.*

## РОЛЬ ПРЕЦЕДЕНТОВ В РАЗВИТИИ СУДЕБНОЙ ПРАКТИКИ: АНАЛИЗ И ПЕРСПЕКТИВЫ

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### ABSTRACT

*Данная статья посвящена исследованию роли прецедентов в развитии судебной практики. Прецеденты как часть общей правовой системы играют важную роль в формировании и толковании законодательства. В статье анализируются основные принципы работы с прецедентами, их значение для правоохранительных органов, а также перспективы использования прецедентного права в современных условиях.*

**Introduction.** Precedents, as part of the common law system, are an integral element of the judicial practice of many countries. They are court decisions on specific cases, which create a model for considering similar situations in the future. The role of precedents in the development of law and ensuring justice is undoubtedly significant.

The importance of precedents in law enforcement practice. Precedents serve as an important source of law that complements and clarifies legislation. They help to fill in the gaps in the law and clarify its norms in specific cases. Judicial decisions that have become precedents ensure the consistency and predictability of judicial practice, which is the basis of legal stability



in society. Principles of working with precedents. For the effective use of precedents, it is necessary to observe certain principles. First, precedents must be analysed for their relevance and social relevance. Secondly, it is necessary to take into account the context and circumstances of a particular case in order to avoid misapplication of case law. Finally, it is important to remember that precedents should not contradict the basic principles and values of the legal system.

Prospects for the use of case law. With the development of information technology and access to court decisions, the use of case law is becoming more accessible and effective. Electronic databases of judicial practice make it possible to quickly find similar cases and study them to make informed decisions. In addition, in some countries there is a tendency for the courts to make extensive use of precedents, which contributes to the development of the legal system and the strengthening of the rule of law. The court interprets the law, being itself under the influence of the interpreted norms, being a subject of the law enforcement process and a party to procedural legal relations. A judge as an interpreter has subjective rights and bears legal obligations as a participant in the process, he is not interested in any result in the case stipulated by law and factual circumstances, but only in the one that will bring him personal and professional satisfaction. The opinion that "all normative material is objectively real and does not depend on specific subjects who learn their meaning" does not take into account the importance of the human factor in law enforcement. The process of interpreting the law should be considered in the totality of objective and subjective aspects. Undoubtedly, interpretation is "a special cognition that has a scientific basis in the study of a normative prescription", but in an interpretative act, legal reality is always reflected through subjective, personal perception. The psycho-emotional method emphasizes the influence of individual factors on the process of interpreting the law, allowing to identify the patterns and interdependencies of the objective and the subjective.

The precedent method of interpretation is based on the use of official interpretative acts containing the so-called precedent of interpretation. It is necessary to distinguish a precedent of interpretation from a precedent in the strict sense. Precedent of interpretation is an act of interpretation of the norms of the law, which has binding or recommendatory force for law enforcers. The subjects of the formation of precedents of interpretation are usually the legislative and some executive bodies of public power, as well as the highest courts of the state.

Recognition of the prejudicial significance of a court decision, being aimed at ensuring the stability and universally binding nature of the court decision, excluding a possible conflict of judicial acts, implies that the facts established by the court during the consideration of one case, until they are refuted, are accepted by another court in another case in the same or another type of legal proceedings, if they are important for the resolution of this case. Thus, preciality serves as a means of maintaining the consistency of judicial acts and ensures the operation of the principle of legal certainty.

Precedent in the strict sense (judicial precedent) is an act of application of legal norms that resolves a specific case, contains the interpretation of normative acts in relation to the legal relations under consideration, and has binding or recommendatory force in similar cases. Precedent in the strict sense is denied by Russian legislation and the concept of interpretation. Despite the fact that domestic scientific and practical discussions are increasingly discussing



the prospects for the development of a precedent, in reality it is more about the development of a precedent rather than a precedent of interpretation. The discussion about the prospects of precedent cannot be constructive without dividing the subject of research into the above two classes of official interpretative acts. There is also a division into law-establishing and precedent-setting, into normative and non-normative interpretative acts. In the above-mentioned classifications, law-establishing (normative) interpretative acts are considered as sources of law, they include acts of authentic and delegated interpretation, containing clarifications and concretization of legislative provisions.

**Conclusion.** Precedents play a key role in the development of judicial practice and ensuring justice in society. Their proper use helps the courts to make informed and fair decisions, as well as contributes to the development of law and the strengthening of the rule of law. The concept of "judicial law" is in a certain way related to the development of state-monopoly capitalism, the strengthening of the position of the state and its apparatus and they even frighten them, because, on the one hand, they remember the sad experience of fascist total statehood, and on the other hand, they fear the use of state power to carry out consistently democratic reforms. This is largely due to the widespread use in modern ideology of the idea of "the primacy of law over the state", "the rule of law", and "the rule of law". As a kind of counterbalance to state power and bureaucracy, the idea of "judicial law" is put forward by some authors. Turning to the principle of "separation of powers", they greatly exaggerate the relative independence of justice in relation to the legislative and executive spheres of functional activity within the framework of a single mechanism of state power.

Another factor that determined the success of the concept of "judicial law" was the undoubted ideological influence of the Anglo-American models on the post-war Western European legal thought. At the same time, the model that has developed where there was no codified law is transferred to completely different conditions, where the presence of formed codified legal systems, the traditionally different ratio of sources of law, law-making and law enforcement activities lead to the fact that this kind of transplantation threatens the principle of legality.

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