THEORETICAL-LEGAL DESCRIPTION OF LEGAL PRECEDENTS AS A SOURCE OF LAW

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Abstract

Forms of expression and strengthening of legal norms among the general theoretical problems of legal science are determined as a source of law in formal-legal content. The source of law is known as a basic concept that is important in demonstrating consistency and precision in the expression of legal norms. This understanding provides an opportunity to understand the content of legal norms through social factors, forces that directly create law, and sources of information about law. Although we do not include precedent as a source of law in our national legal system, theoretically, the issues of study show that there is a significant gap in the theory of law, the need to pay attention to precedents as a source of law has not been sufficiently studied. It is no exaggeration to say that this article theoretically bases the concept of legal precedent, analyzes the opinions of scientists, and contributes to the theory of law in a small way.

Key words: precedent, ratio decedendi, stare decisis, source of law, court precedent.

Introduction

With the development of society, the state and legal forms also developed and changed together. First of all, it should be noted that among the general theoretical problems of legal science, the forms of expression and strengthening of legal norms are defined as the source of law in official-legal content. Such an interpretation of the source of law is conditional to a certain extent, and this concept may have a different meaning. For example, the source of law refers to social factors that determine the content of legal norms; the state, which is the power that directly creates the right; sources of information about law can be understood[1]. "Source of law" is one of the most important for describing the normative aspect of law[2]. Recognition of this means not only the definition of the concept itself, but also the need to study the phenomena of legal reality combined with it. In this sense, it can be said that there is a significant gap in knowledge in the theory of local law, because a very common source of law, such as precedent, has not been widely studied as a source of law in the Republic of Uzbekistan.

Methodology

In this article, the researcher mainly analyzed the theoretical views of various scientists and identified broad theoretical concepts.

For example, the Great Soviet Encyclopedia has the following definition of a precedent: "Judicial precedent is any legal rule that contains or provides an interpretation of a controversial issue or resolves an issue that is not provided for in a certain sense, and when considering a case a court decision (judgment) that is binding on outgoing courts[3]. In this definition, there is an opinion that contradicts one of the main rules of judicial practice, that is, usually a court decision or sentence is issued in a mandatory manner to an individual who is a participant in the court or to whom the court case is directed, and cannot compel non-participants to do anything. Here, it is said that the decision issued by the court will be binding in the future. In fact, the original meaning of the word precedent comes from this. That is, "precedent" is derived from the Latin language, which means praecedens - "the previous one". In the broadest sense, a precedent is understood to mean that something that happened before in a certain situation means how to behave when a similar situation occurs again, and it is understood as a unique example[4].

According to the Russian scientist A.F. Shebanov, a precedent is a principle established by a court as a basis for a decision on a specific case and used by this and other courts as a mandatory model in solving all similar cases in the future[5]. A.Kh. Saidov describes the precedent in the same way and states that the precedent is a part of the court decision called ratio decedenti (proportional decision) only since the time of Austin. In our legal system, we cannot accept such a concept, because in our country, the court is a law-enforcing body, which can issue documents on the application and interpretation of the law. It is also contrary to the rule of law in the courts.

The book "Precedents in international public and private law" contains the following definition: "Precedent in international law means solving a specific issue of international relations within and on the basis of international law by any means and means"[6]. Due to the significant diversity of solving various problems of international relations both through the court and through negotiations and concluding treaties, it is clear that the concept of "precedent" in international law has a wider meaning than usual. However, from the point of view of the theory of legal sources, such an expansion seems inappropriate, as it leads to the erosion of established concepts. International agreements, documents defining the results of negotiations are an independent source of law, and their "precedent" character can be spoken of only by using this term in a general sense, not as a special legal term.

Results

It should also be noted that Y. N. Trubetskoy also defined the concept of precedent in a very broad sense. In his opinion, not only a court decision, but in general, any

solution to a controversial issue can become a precedent. He wrote: "The importance of the source of law does not belong only to the precedent of the court: legal norms are generally created through the precedent of the activity of all state bodies"[7]. As evidence, he cited a number of principles of British parliamentarism, such as the resignation of the prime minister when parliament passes a vote of no confidence. In addition, E.N. Trubetskoy emphasized that the concept of law does not correspond to the concept of law in the official sense, and noted that the scope of the precedent is wider than the scope of the activities of state bodies. According to him, most of the rules adopted in various human communities, including those that act against the will of the state (various illegal associations), were created precisely as a precedent. Even custom is considered by this author as a precedent[8].

However, the modern view of the main features of the British constitution is to distinguish between principles established by constitutional customs (majority parliamentary procedures, monarchical state), just and therefore absolutely legally binding, and constitutional norms. are highly binding, but not legal norms. And it is these last ones that include the obligation of the Prime Minister to resign after a vote of no confidence in the House of Commons[9]. So, in this case, we can not talk about legal obligation, but only about political obligation. Since the content of the source of law is the legal state, there is no reason to talk about the precedent (in the sense of the source of law) nature of these principles.

Legal scholar Z.M.Islamov said that a legal precedent is a written or oral decision of a court or an administrative body that becomes a model (rule of conduct) in considering all cases similar to the previous one[10]. H.T. Odilqoriyev calls it not a legal precedent, but a legal precedent, and defines it as follows: "Legal precedent is a written or oral decision of an administrative or judicial body issued on a specific case, similar to it in the future. it is said that it will be used as a basis for the consideration of cases[11]. If there is a difference between these two concepts, it seems that both of them are used in the same sense compared to the definition. But should these two concepts really be used in the same sense? Or which one is better to use? To make it more clear, it is necessary to study foreign literature.

R. Cross, noting that the basic principle of justice is to make a decision as it has been made before, he noted that it has become almost universal and almost everywhere judicial precedent has a persuasive effect to one degree or another. Emphasizes[12]. In a system like the English one based on precedent, that is, law created by judges in the process of decision-making, this principle is purely coercive.

There are judicial and administrative forms of legal precedent. The judicial precedent form of legal precedent is widely used as a source of law in common law countries such as the United States, Australia, Great Britain, Canada, and New Zealand.

In the broadest sense, a precedent is understood to mean that what happened before in a certain situation means how to behave when a similar situation occurs again, and it is understood as a unique example. A precedent related to court cases is considered a court precedent. Court precedent is such a decision of the court on a specific case that it shows other judges what decision should be made in solving similar cases in the future[13].

Legal norms related to the court decision are included in the precedent law (case law) in English law. In this sense, the term "precedent" does not mean anything else than a court case, that is, it is a procedural proceeding that can be terminated by the court (in a civil case) or should be (in a criminal case) or the discussion of this or that case directly in the court session. Therefore, court decisions are considered as precedent rights.

The principle of precedent applies on the basis of a vertical order that determines the obligation of judges to follow the decisions of the relevant higher courts. Decisions of higher courts are binding on all lower courts, but they do not bind the higher courts. For example, the decisions of the English House of Lords (the Supreme Court that presides over English courts) are binding on all lower courts. Decisions of the Court of Appeal (Court of Cassation) are binding on all courts except the House of Lords.

Thus, taking into account that the source of law is not the rule of law itself, but a method of strengthening its objectivity, we can give the following definition to the precedent: a precedent is a binding decision in a disputed case for use in similar cases in the future is understood as the adoption of the decision.

Analysis of results

If we move on to consider the types of precedent, first of all we should dwell on the description of the structure of the precedent decision. The Scottish scientist N. McCormick wrote that "without a theoretical understanding of the basic concepts such as precedent and ratio decidendi, it is impossible to implement any legal doctrine about precedent[14]". Understanding case law is understanding how a specific decision of an individual judge in a particular case is translated into the construction of a general rule that affects all people.

In the Middle Ages, court decisions were taken as orders of the king and therefore did not always have reasons. Modern judges almost always justify their decisions in a case. A reasoned court decision includes several parts. First, to determine the main and derivative facts of the case. Second, a statement of legal principles to be applied to resolve legal issues arising from specific situations. Third, a conclusion based on the combination of the first two actions. In fact, such a structure corresponds to the division of the law enforcement process into stages, which is also accepted in the science of our country[15]. Thus, it would be incorrect to say that any court decision is binding or that the decision is rejected. In fact, only the norm contained in the decision, that is, the

principles established by the judge as a basis for solving legal issues, will be binding. In addition, only the evidence arising from the facts established in the case is recognized as binding. This part of the decision is called ratio decidendi. Nowadays, ratio is often used in the sense of what is accepted in this capacity by a court deciding a case using previous precedent[16]. This approach seems more objective, since the facts of the first and subsequent cases may not be exactly the same. In the system of judicial practice, the importance of ratio is extremely high. ord Devlin, describing it, wrote: "What makes a ratio is as harmless as a toothless bee, it can only make a noise. A list of cases solved in one way - a list of those solved in another way is like a list of irregular verbs, they do not make grammar"[17].

Discussion

As a source of law, precedent has some features like other sources of law, such as normative content and state recognition. However, there are some major differences and disparities.

Firstly, compared to the law (in the broadest sense), the precedent rule is narrower in nature, because it is formed in connection with the decision of a specific case, and unlike customs, its influence is not limited to any specific legal framework.

Secondly, the sign of general knowledge is manifested by the development of the system of court reports, which, according to a number of researchers, is related to the development of the professional legal training system.

Thirdly, recognition by the state is expressed in the formation of the principle of star decisis, which determines the procedure of precedent and its binding nature. The development of this principle is closely related to the development of the judicial system and is actually an expression of the judicial hierarchy.

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