

## **JUDICIAL PRECEDENT AS A SOURCE OF CRIMINAL LAW**

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*In work revealed the use of judicial precedent (practice) in the national system of criminal law. For this purpose the analysis by the writings of scholars, places legal precedent in the sources of criminal law of Ukraine. It is concluded that the sources of criminal law is not the acts which are contained and required for the application of the criminal law legal opinions relevant authorities in the form of legal regulations or legal position and the relevant legal position. Acts, in which are set out the respective legal positions, are documents – the physical media on which are recorded information on the legal assessment the relevant authority in certain circumstances, legal phenomena. Judicial precedent is advisory or mandatory nature of the application, whose main purpose is filling gaps in the law of criminal responsibility, which were formed during the rulemaking.*

***Judicial precedent, the source of law, criminal code, criminal law, criminal liability.***

The collapse of the Soviet Union in Ukraine began changes in the economic and political life of society. Ukraine became an independent state with its own laws. Before lawyers raised the issue of "recognition of judicial precedent as a source of law in Ukraine." It is known that Ukraine belongs to the family of civil law, which recognized primary source of legal act, because judicial precedent can not be the source of such a legal family.

From judicial reform, increased interest in the study of the sources of criminal law, including litigation. This problem involved P.Andrushko, Y. Drozdov, T. Gurova, A. Kaplina, V. Kotyuk, A. Kuzembayev, D. Kuhnyuk, J. Mahazyner, I. Mitrofanov, N. Nor, O. Onishchenko, N. Parkhomenko, P. Pilipchuk, A. Savchenko, O. Skakun, M. Havronyuk, D. Khoroshkovska, S. Shevchuk and others.

However, the problem of recognition of judicial precedent (practice) remains controversial to this day, there is no consensus about whether it is necessary to refer to the jurisprudence of sources of law in Ukraine as a whole, including, and criminal law.

The objective is analyze of the works of scientists place legal precedent in the sources of criminal law in Ukraine.

The term «sources of law» has many meanings: it is understood as forces that create the right; materials form the basis of a law; historical monuments that once had value of existing law; means of knowledge (V. Kotyuk). The sources of law generally include: legal act; judicial precedent; regulatory agreement; legal custom; legal doctrine; religious and legal norms; international legal instrument (O. Skakun).

Judicial precedent is a court decision in a criminal case relating to certain procedural issues, which outlines the rules that are obligatory for use by the courts of the same or a lower court in resolving these procedural issues in the course of criminal proceedings.

N. Nor determines the decision of the Constitutional Court of Ukraine as a legal precedent, which in turn is a source of law. According to T. Gurova, judicial precedent on judicial senior management should be considered as an additional source of law, acquires importance in the legal system, which can be characterized as integrative, that combines features of both the Roman-Germanic and Anglo-Saxon legal systems.

With the adoption in 2010 of the Law of Ukraine "About the Judicial System and Status of Judges" began a fundamental shift of judiciary in Ukraine. Specifically, these changes have taken place since the Supreme Court of Ukraine, which has lost the authority to provide clarification on the application of law to the Plenum. According to M. Havronyuk, Decision of the Plenum after the new law invalid because such authority is not inherent to the Supreme Court of Ukraine.

But in the future judges continue use the courts clarify the Supreme Court of Ukraine in the administration of justice, referring to them in their decisions. According to statistics, analyzed, M. Havronyuk, papers, other lawyers, we can conclude that the decision of the Supreme Court of Ukraine will continue to remain a source of criminal law in Ukraine, but again there is debate about this.

After the reform of the judicial system of Ukraine, the High Specialized Court of Ukraine for Civil and Criminal Cases began publishing information letters that were novel to the jurisprudence. Information letters indicate the correct application of an adopted or supplemented normative legal act.

Generally it should be noted that the business of creating judicial precedent include the European Court of Human Rights, a practice which, in the form of legal positions is mandatory for use by the courts in Ukraine in accordance with Art. 46 European Convention on Human Rights(1950).

So it must be concluded that the judicial precedent is a source of criminal law. Judicial precedent is advisory or mandatory nature of the application, the primary purpose of which, in our opinion, is to fill the gaps in the law of criminal responsibility, which were formed during the rulemaking.