

PLACE OF PRECEDENT IN MODERN CRIMINAL LAW

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This article is dedicated to the concept of precedent, in particular, to its place in modern criminal law. Also, the issue of judicial precedent as a source of criminal law in Ukraine.

Precedent, criminal law, sources of criminal law, precedent's features.

The need to ensure the priority of rights and freedoms in criminal proceedings, the establishment of mechanisms for their implementation led to increasing the role of the Court as an independent and impartial public body, shall carry out the function of justice, to ensure the rule of law and justice in criminal proceedings. The issue of judicial precedent as a source of criminal law in Ukraine, has become particularly relevant in the context of judicial reform, which continues in Ukraine. Even in Soviet times, scientists argued that precedent is a feature only of the Anglo-American legal system, that is why common law precedent officially recognized source of law. A detailed study of criminal law precedent in Ukraine engaged scholars such as: PP Andrushko, AA Voznyuk, Y. Grosheva, SS Zmeevskaya, DC Kuzembayev, VA Kotyuk, II Mitrofanov, VA Nawrocki, K. Obrazhyev, AL Stasiuk, V. Taci, D. Khoroshkovskaya, ON Sharmar and others. However, the problem space precedent in criminal law, Ukraine remains one of the most difficult and unsolved. The aim of the article is to research the role of precedent in modern criminal law in Ukraine. Some authors argue that the declaratory theory continues to exist in our time, meaning its relic - the practice of retrospective deviation precedent if the old solution is obviously absurd, do not say that the decision was bad law, but said that it did not was right. A retrospective cancellation of precedent in criminal proceedings may be the same wicked

deflection as a precedent for the future for those who are punished by imprisonment as a result of the entry into force of conviction . Precedent - is made in writing to a higher court decision that is required for use in dealing with such cases by the courts of lower instance . The most general definition , judicial precedent - a judgment in criminal proceedings in respect of certain procedural issues which formulated a rule that is mandatory for the Application of the same or a lower court in dealing with similar procedural matters in the course of criminal proceedings. Much debate arises as to what precedent is inefficient. On the one hand, scholars argue that the use of precedent deprives the judge, in considering a particular case, objective, complete and thorough investigation of the case , the consequence may be an unfair court decision. But on the other hand , if the judge would have a guiding principle at hand as a precedent , it contributed , as in our view, a more rapid response to a particular situation . Also, do not forget that judicial decisions which could act as a precedent, the judges shall be taken with a large store of experience. Another thing, when we speak as to ensure the effective application of precedent. Of course, in order to function effectively precedent , we believe it is necessary to hold a series of phased actions, aimed at: the consolidation of the courts of law-making function , the introduction of a mechanism by which judgments were assigned to as a precedent , and an agency that would determine whether the precedent of the realities of modern life, or to secure the right for the courts to change their practice, as, for example , exists in the United States. Definitely the last stage of the consolidation of the procedure should be legislative support actions listed above in the legal act . It is doubtless the fact that the current legislation of Ukraine has a large number of gaps and contradictions, which in many cases makes it difficult and sometimes impossible to make use of a law. Removing legal deficiencies in law - the process is rather complicated and lengthy, and therefore even a desire for lawmakers simply unable to timely address the gaps and ensure consistency between the state of society and the legal system . We agree with scholars who consider appropriate to consolidate the powers of the Supreme Court of Ukraine to provide opinions regarding the appropriate use of procedural and substantive law courts of general jurisdiction, which would allow for judges of local and appellate courts of appeal to the Supreme

Court of Ukraine to the uncertainty on the use of a other law. We believe it is necessary to support the opinion of those scholars who offer officially precedent to include sources of Ukrainian law. We believe that the material shows that although precedent is not quite the usual source of criminal law in Ukraine, but it is quite widely used, contributing to the development of criminal law as well as gaps in it, but at the same time, discussions regarding its regulatory consolidation has continuing. Thus, the precedent has now officially exist in the criminal law of Ukraine, but have not elaborated and confirmed by the respective procedures that allow for its use. Legislative resolution of this issue will provide a precedent for the effectiveness of the criminal law in Ukraine . However, whether the precedent seamlessly integrate into the Ukrainian legal system, time will tell.