



LAW, POLICY AND SECURITY

Journal homepage: <https://lpas.com.ua/>

Law, Policy and Security, 2(1), 58-73

Received: 02.02.2024 Revised: 09.05.2024 Accepted: 30.06.2024

UDC 347

DOI: 10.62566/lps/1.2024.58

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The impact of precedent on the development of Ukrainian Private Law

Abstract. The relevance of the research is determined by the search for a flexible legal mechanism that would contribute to the development of private law under the influence of technology. The use of precedent as a source of law can create opportunities for the formation of such an instrument that will not violate the traditions of continental law, but will expand the horizons of thought under the influence of current and future innovations. The purpose of the research was to determine the place and role of precedent in the legal system of Ukraine and its influence on the development of private law. The research is based on a complex approach, which includes several main methods, namely: methods of analysis and synthesis, systemic-structural, formal-logical, and the method of legal hermeneutics. The article highlights the role of precedent in the development of private law in Ukraine. The influence of the decisions of the Constitutional Court of Ukraine, the Supreme Court and the European Court of Human Rights on the country's legal system is considered, especially in the context of European integration processes and the constant development of legal standards. It is highlighted how legal norms are formed and applied in Ukrainian justice, as well as how court decisions affect legal practice and the legislative process. It is noted that the decisions of the Constitutional Court of Ukraine, the Supreme Court and the European Court of Human Rights play a key role in the formation of legal doctrine and practice in Ukraine. It is emphasized that in Ukraine there is a form of precedent law, the nature of which differs from the classical understanding of precedent in the Anglo-Saxon systems. Decisions of the Supreme Court can be considered a continental form of law enforcement precedent, although they formally do not have the status of directly binding precedents. This allows us to state that case law in its Ukrainian model functions and is focused on the development of the legal system, the main role of which is the formation of a unified and effective legal practice. It is concluded that the development of technology not only changes the paradigm in the economy and society, but also poses new challenges to the legal environment. In this context, judicial precedent acts as an important tool for adapting legal regulation to modern realities, ensuring stability and progress in the field of private law. The results of the research can be used for further scientific developments in the field of development of private law aimed at the development of new legal concepts and tools, as well as for application in law enforcement practice

Keywords: court decision; Supreme Court; Constitutional Court; European Court of Human Rights; case law; the Anglo-Saxon legal system; continental legal system

INTRODUCTION

The modern private law of Ukraine is defined as a complex and dynamic system that constantly evolves under the influence of many factors and covers various

spheres of social life, including but not limited to civil, labor, economic, natural resource and other relations. Taking into account the potential of prospects caused

Suggested Citation:

Tsvigun, I. (2024). The impact of precedent on the development of Ukrainian Private Law. *Law, Policy & Security*, 2(1), 58-73. doi: 10.62566/lps/1.2024.58.

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by the development of digital technologies, adaptation to changes, the search for new solutions and ensuring the stability of the legal system become especially relevant. The development of digital technologies significantly affects the sphere of private law, changing the conditions and methods of doing business, interaction between legal entities, and data and information management. Adaptation to these changes becomes necessary to ensure efficiency and competitiveness in a global environment. At the same time, the search for new solutions in the legal space plays a key role in ensuring transparency, protecting the rights and interests of all participants in legal relations.

Under such conditions, the development of private law goes beyond the usual forms of legal relations and contributes to the formation of new legal concepts, standards and practices. Only flexibility and openness to innovation allows developing private law, forming an effective innovative sphere of legal relations, while the use of various tools in development remains an advantage. In the context of the above, it is important to note the role of precedents. Precedents have the ability to create legal forms that influence the formation and development of legal norms and the legal system as a whole. Case law is a significant source of law that complements legislation and sets standards for the interpretation of laws and regulations. An important feature of precedents is their influence on the development of law, adaptation to changes in society, its technological progress and values. Precedents play a decisive role in European and international law, establishing standards for the interpretation of laws and regulating relations between legal subjects, taking into account their contextual significance, and are the basis of legislative decisions.

With Ukraine receiving the status of a candidate for membership in the European Union in June 2022¹ and the approval by the Council of the European Union on December 4, 2023 of the decision to start negotiations on Ukraine's accession to the European Union², the development of the legal system and Ukrainian private law, in particular, is moving to a new stage of its development. Incidentally, this is not only the need for compliance of Ukrainian legislation with European standards, but also the development of new approaches in law-making activities and law enforcement practice.

The transformation of Ukrainian private law is primarily related to the formation of legal understanding in European traditions and the formation of a strategy for the development of Ukrainian private law focused on the future. This is especially relevant, since the system of Ukrainian law is based on the methodology of Soviet law, which complicates, as R.A. Maidanyk (2016) notes, "the formation of a liberal understanding of law". Therefore, the creation of a foundation that meets international democratic standards is key to Ukraine's successful integration into the European legal space, and will contribute to the development of the legal system and private law in particular. Coincidentally, the world's focus on the constant development of technology has a huge impact on this process. The modern period defines new prospects for the development of private law, caused by the development of technologies that change the usual models of legal regulation. A characteristic feature of Ukrainian private law is that it evolves and develops not in isolation, but in the process of relentless integration of the best practices and institutions from world jurisprudence. Such convergence of legal systems is natural for open societies. One of the results of the said convergence in law can be considered the spread of judicial precedent among the sources of private law. Judicial precedent is a court decision that establishes a rule or principle that can be used by a court or other legal authority when deciding future cases with similar circumstances (Zapara, 2021).

D. Verbytskyi (2019) focuses on the analysis of judicial precedent, focusing on conceptual aspects and notes that in common law countries, judicial precedent takes precedence over the law. The author notes that in such countries, courts often resolve disputes, even when the law is ambiguous, outdated or absent at all, and points to the importance of judicial awareness in this process. Instead, in the continental legal system, judicial precedent is treated as case law or customary law, which is not binding on lower courts when deciding similar cases. V.A. Kroitor (2023) examines the use of case law created by judges of the European Court of Human Rights in the decision-making process of Ukrainian courts. The author focuses on the analysis of the impact of the practice of the European Court of Human Rights (ECtHR) on domestic justice, pointing out the specifics of the integration of international

¹Joint Statement of the President of Ukraine Volodymyr Zelenskyy, Chairman of the Verkhovna Rada of Ukraine Ruslan Stefanchuk, Prime Minister of Ukraine Denys Shmygal "On the Decision of the European Council to Grant Ukraine the Status of a Candidate for Membership in the European Union, Adopted at the Meeting of the European Council". (2022, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/n0001100-22#Text>.

²Statement of the Ministry of Foreign Affairs of Ukraine "On the Decisions of the European Council". (2023, December). Retrieved from <https://mfa.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-rishen-yevropejskoyi-radi>.

standards into the national legal system. As a result of the research, it is concluded that the implementation of precedent practice of the European Court on the basis of the European Convention on Human Rights into the legal environment of Ukraine will contribute not only to the approximation of the Ukrainian state to European standards of human rights, but will also ensure the protection of human rights and freedoms in all intrastate relations, which positively will affect the implementation of the principles of the rule of law, which are specified at the constitutional level.

O. Shakirova (2019) studies the foreign experience of applying court precedent as a source of law, this work reflected different approaches to the application of precedent in world practice. The author states that in the countries of the Anglo-Saxon legal system, court precedent is considered a source of law, which is mandatory for courts in solving similar cases. This follows from the principle “to adhere to what has already been decided and not to disturb what is quiet” (*stare decisis et non quiescere*). This approach has been successfully adopted by the USA, Canada and Australia, which proves its effectiveness. M. Sharenko (2019) studies the role of judicial precedent in the system of legal sources of Ukraine. The researcher emphasized the importance of understanding court precedent as one of the key elements of the country’s legal system. K. Tokaryeva (2019) focused on the scientific discussion regarding the fundamental rethinking of the role of precedent as a source of law in the legal systems of the countries of the Romano-Germanic legal tradition. The author notes that earlier in these legal systems, the possibility of the existence of legal norms in any other form, apart from official normative legal acts, was rejected.

Continuing the scientific discourse, it is important to note that precedent plays a key role in legal systems based on the principles of common law, where decisions of higher courts are a source of law and binding for use in similar cases by lower courts. And although the precedent is an atypical form of law for the continental legal family, it has taken a prominent place in the system of sources of European and national law. By updating the idea of using precedent as a source of law, it is possible to create opportunities for the formation of a flexible instrument of change, while not allowing the risk of departure from the traditions of continental law, but only to expand the range of opinions in the context of current

and future transformations. Considering that the development of private law is taking a new shape, focusing on the influence of precedent is an obvious and strategically considered step for the development of effective legal constructions. Although the article deals primarily with the influence of the precedent on the development of Ukrainian private law, an additional analysis of the significance of the precedent in international practice will contribute to a comprehensive approach to revealing the essence of its application in accordance with the trends of the modern world. The purpose of the study is to study the meaning of the court decision, the conditions for the transformation of the court decision to the role of a precedent, and to determine the influence of the precedent on legal practice and the formation of legal doctrine in the private law system of Ukraine.

The methodology of this study is based on an integrated approach, which includes several main methods: system analysis, as well as methods of analysis and synthesis. This methodology makes it possible to comprehensively investigate the influence of decisions of the Supreme Court, the Constitutional Court of Ukraine and the European Court of Human Rights on the development of private law in Ukraine. The precedent nature of these decisions is enshrined in the national legislation of Ukraine¹, part 5 and 6 of Article 13 of the Law of Ukraine No. 1402-VIII², as well as Article 17 of the Law of Ukraine No. 3477-IV³. The system-structural method made it possible to analyze the main concepts related to the subject of research, namely “judgment”, “private law”, “precedent”. Along with the system-structural method, the formal-logical method and the method of legal hermeneutics were used in the study, with the help of which normative-legal acts of national significance, as well as theoretical developments in the relevant field, were investigated. Comparative analysis has become useful for clarifying approaches to judicial precedent in Ukraine and in other countries, in order to determine how this tool is used in different legal systems and how it affects the development of private law, in particular in the countries of the European Union and the Anglo-Saxon type. In the study, the problems of applying precedent in the system of Ukrainian law are also determined by the method of analysis. The method of synthesis has become useful for researching the effectiveness of the influence of precedent on the development of private

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

² Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

³ Law of Ukraine No. 3477-IV “On Implementation of Decisions and Application of Practice of the European Court of Human Rights”. (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3477-15#Text>.

law. The forecasting method helped to outline the significance of the precedent in the system of development of private law under the influence of introduced technologies and innovative changes.

Comparative review of scientific research by Ukrainian and foreign authors. Conducted research in the field of private law in national and international circles highlights various issues, including the modernization and harmonization of private law in accordance with modern standards. They also emphasize the importance of studying the evolution and overcoming of past problems, pointing to the role of the rule of law in the development of a quality legal system and the formation of precedents. Special attention is paid primarily to highlighting the role and place of judicial precedent from the standpoint of application in the Anglo-Saxon and continental legal systems.

M.V. Belova and I.Ye. Peresh (2023) examine the influence of Roman law on the modern legal paradigm shift. Their research focuses on the historical roots and influence of Roman law on modern legal systems, especially in the context of the development of case law. M.A. Tikhonova (2022) analyzes judicial precedent as a source of sports private law. The author examines in detail how court decisions affect the development of sports law, in particular, the formation of legal norms in this area. O.I. Kharitonova (2021) studies the concept of “actio” and the implementation of private law in ancient Rome. This study provides an important historical context for understanding the development of legal systems and their modern interpretation. S.O. Shipko (2022) draws attention to the peculiarities of subjects of private international law. The author examines the criteria for recognizing the functional legal personality of transnational companies, considering the importance of their role in international legal relations. S.I. Zapara (2021) continued the study of the influence of judicial law-making on the formation of precedent law in Ukraine. The author analyzed the role of courts in the formation of the procedural legal model and their influence on the national legal system, and comes to the conclusion that “the external influence of judicial precedents, which are formed by the ECHR and the Supreme Court’s rulings in the field of extended interpretation of the norms of the European Convention on Human Rights, actually affects on legislation and judicial practice of Ukraine”. E. Gramatskiy (2019) expanded this topic by studying the role of judicial and arbitration practice in the context of private international law. The author emphasized the importance of precedents in the international context, pointing to their influence on the formation of legal norms. S.S. Panchenko (2021) explores European Union law as a source of civil contract law. The author considered the impact of

European legislation on national contract law, pointing out the trends and prospects of its development. A.M. Melnyk (2021) studies the genesis of judicial practice and judicial precedent. The author drew attention to the historical development of judicial practice and its influence on the formation of judicial precedent. R. Babanli and P. Pushkar (2019) discuss the (non)relevant application of ECtHR jurisprudence, providing practical advice. This article examines the complexities of incorporating international standards into national justice.

O. Vladykin and O. Grachova (2023) consider the peculiarities of the application of judicial precedent in the civil process of Ukraine. The authors analyzed how court decisions affect the civil process, and also consider the interaction of precedent with legislative norms. In this context, D.M. Yasinok (2019) analyzes the judicial precedents of the European Court of Human Rights as a source of civil procedural law of Ukraine, demonstrating the importance of international standards in national legislation and draws attention to the relevance of scientific research for the development and formation of case law in Ukraine. The author emphasizes the need for a deep theoretical analysis of case law for its further development. Authors A.V. Kisil *et al.* (2022) study the place of ECtHR precedent in the system of sources of criminal law. The authors analyzed how the decisions of the ECtHR affect criminal law, considering them as an important element of the legal system. R. Sabodash (2019) examines the influence of the publication of court decisions on the formation of “persuasive precedent”. The author points out the importance of the availability of court decisions for the formation of legal practice. L.V. Dundych (2019) examines judicial precedent in the legal norms of foreign countries, providing a comparative legal characterization. This study is important for understanding international practice and its impact on the Ukrainian legal system.

The arguments expressed by national researchers are primarily based on the principles of observation, while the authors of this work definitely support the achievement of legal stability and predictability, the development of a unified judicial practice of law enforcement, and the need to maintain agreed positions in the application of legal norms. The analysis of the historical roots of Roman law and the study of its influence on the modern legal paradigm demonstrate that precedents have deep roots and can influence the formation of legal norms in modern legal systems. It is also affirmative that precedent traditions are important in the development of legal science and practice, they contribute to the formation of legal culture and ensure the connection between past and modern law, which results from the understanding of precedent as judicial practice or customary law.

Highlighting the role of precedent is primarily due to its fundamental place in the law-making sphere, despite the differences in application in the Anglo-Saxon and continental legal systems. Turning to the positions of foreign scientists who study the logic and theory of the application of judicial precedent in various legal systems, we will first of all turn to the considerations of F.P. Shecaira (2014) on the difference in approaches “between two forms of legal reasoning, namely, reasoning about the law and reasoning according to law” (Shecaira, 2014). Studying the order of the same legal system, K.N. Llewellyn (2015) noted that a particular court case contributes to the development of traditions and approaches to the formation of judicial precedents, and emphasized that the search for effective solutions requires a review of the legacy and constant renewal of the doctrine.

K.M. Ehrenberg (2023) developed the theory of the artifactual nature of precedent, noting that “once we start thinking clearly about precedent, custom seems to have an outsized role (...). Those decisions then form the basis of further decisions that maintain the authority of that custom, even as the later decisions now cite the precedent rather than the custom directly”. C. Günzl (2021) examines German law through the lens of a historical excursion into a nineteenth-century collection to understand the apparent contradiction in German law between the clear doctrine that previous decisions have no binding legal force and the facts of practice that show about the influence of past cases on future decisions. Describing the structure of the courts at the time, the author argues that although each state had its own highest court and was not legally bound to the others, mutual respect between the courts for approved decisions contributed to the unification of civil law without the incentive of the German Union or individual lands.

Examining the historical role and authority of precedent under statutory provisions in Germany, England and Wales, Sweden, and the United States, Th. Lundmark (2012) points out that, with few exceptions, judicial overturning of precedents is rare. In their work, P. Craig and G. de Búrca (2020) examine the role of judicial precedent in the European Union system and also consider the application of the doctrine of direct effect in European law. They note that although provisions of European Union law in national courts may not have horizontal direct effect, their influence on decisions of the Court of Justice of the European Union is allowed through the principles of indirect effect and harmonious interpretation. L. Leszczyński (2020) analyzes the use of previous court decisions in the countries of the continental legal system. The author points to the development of a precedent type of judicial practice, which, according to the researcher, depends on changes in the composition of

the judicial panel and the absence of relevant provisions in the legislation. M. Durovic and T. Tridimas (2021) study new directions of private law development under the influence of technological development and innovative changes. The authors noted the historical value of the precedents that were approved in the era of industrial revolutions and recognized them as a tool for better understanding of modern phenomena and the possibilities of ensuring the stable development of society. Researchers emphasize that these precedents can be useful in the context of the development of technology and innovation, helping to ensure the adaptation of the legal framework to modern challenges and needs of society.

According to the general trend of research conducted by foreign scholars, judicial precedent is recognized as a key tool for the development and stabilization of legal systems. It determines the course of development of law and ensures stability and predictability in judicial practice. Foreign scientists point to the significant role of court precedent in the formation of legal norms, the resolution of complex legal issues, and the development of legal doctrine. In addition, it highlights the importance of distinguishing between two forms of legal thinking: reasoning about law and reasoning according to law, which affects the way judicial precedent is analyzed and applied. At the same time, it is noted that for countries of the continental type, the formation of a precedent type of judicial practice is primarily characteristic. In the context of technological and innovative changes, judicial precedent acquires special importance, as it helps to adapt the legal system to new challenges and changes in society. Research also emphasizes the importance of understanding historical precedents for the correct interpretation and application of legislation in contemporary settings. The role of judicial precedent in European law, in particular through the doctrine of direct effect, is recognized as an important mechanism for the protection of citizens' rights and the effective functioning of European institutions. All these aspects emphasize the importance of judicial precedent as a tool for ensuring legal stability, development and protection of human rights in the modern legal environment.

Each of the studies contributes to the understanding of the role and significance of the precedent in the legal system, both in Ukraine and in the international context, allowing to form a more complete picture of this aspect of the modern legal form of the development of law. Combining key directions in the research of Ukrainian and foreign scientists, the analysis of different approaches of researchers to judicial precedent demonstrates its importance as a tool for ensuring the stability, predictability and development of the legal system, as well as its role in the formation of legal culture

and ensuring the connection between past and modern law, noting the importance of using legal traditions as an organic renewal of modern private law. However, the analysis of scientific works shows in favor of the fact that the role of precedent in the development of the private law of Ukraine still remains insufficiently researched, which emphasizes the relevance of the chosen topic. Taking into account the intensive development of private legal relations under the influence of the development of social relations, the role of precedent in the regulation and resolution of disputed issues acquires a defined different meaning. Changes in society, its economy and the technological environment create new challenges for the legal system, which often require adaptation and innovative approaches. In this context, precedent can contribute to ensuring the stability and predictability of the legal environment for modern challenges and needs of society.

Private law and precedents: Ancient Rome. First of all, the authors of this article considered how private law and precedents are related to each other, as well as how this relationship differs from the relationship with regulation carried out through regulatory legal acts. From the beginning of the era of Roman law, in particular during the time of praetorian law, foundations were laid that influenced the development of private law and justice in the world. Praetors in ancient Rome played a key role in shaping legal principles, many of which are still relevant today. In this context, the custom in maritime law, which was called the Rhodes Maritime Law, was analyzed. In ancient Roman times, the Mediterranean seas were the stage for ships carrying cargoes ranging from wheat to cedar, amphorae of olive oil and other goods. When these ships were caught in a storm, often provoked by Melthamy winds, the captains usually decided to throw some of the cargo overboard to lighten the ship and increase its chances of surviving the storm. After the disaster, when the sea calmed down, the ships continued their route to the port, for example, to Rhodes, but the owners of the lost cargo suffered obvious losses. These losses were necessary to save other goods and the ship itself.

In dealing with the claims arising from these events, the praetors of Rome were faced with a dilemma: whether those who lost their cargo were entitled to compensation from the owners of the salvaged goods, for an equal division of the costs caused by force majeure. Solving this issue formed the basis of a fair redistribution of risks and losses, similar to modern insurance. Thus, a precedent was formed that shaped approaches to solving similar situations in the future, distributing real risks among those who suffered losses due to unforeseen circumstances. This Roman legal principle demonstrates how a particular legal response to a unique problem

could evolve into a general rule through generalization and adaptation to similar future cases. This formed the basis for future legal consideration of similar situations, strengthening the legal tradition that was passed down from generation to generation. During the Justinian era, during the codification of law in the sixth century, there was an important collection of empirical data, but at the same time magistrates were restricted from using such empirical material in favor of stricter rules derived from available sources. This led to a certain loss of flexibility in the judiciary, as judges had to be guided by established general norms, instead of considering each case individually. This juxtaposition between the rule-based continental legal system and the more flexible, associative system of Anglo-Saxon law reflects a profound difference in approaches to law and the judiciary. That is why, in the context of private law, precedent acts as an important tool that ensures the flexibility and adaptability of the legal system.

Precedent accommodates casual interpretation of laws and other sources of law, which allows judges to adapt the content of legal provisions to specific cases, taking into account changing circumstances and socio-economic context. This contributes to a more accurate and fair resolution of cases. In other words, case law allows courts to consider the unique circumstances of each specific case, providing an individualized approach to dispute resolution. It allows law to respond to modern challenges, ensuring that legal norms do not become obsolete, but evolve with changes in society and the economy. This is particularly important in the context of private law, where relationships between individuals require a flexible approach that can adapt to diverse and dynamic circumstances. Precedents and case law allow the legal system to be more responsive to society's needs, ensuring justice is fair and efficient. This is especially important in conditions of rapid social and economic changes, when traditional legal norms may not keep up with the realities of life.

Precedent in the private law of European countries.

Private law in European countries is usually based on a codified legal system, where laws and codes define the rules and regulations that are applied by the courts. However, there are aspects of the development of case law that should be taken into account. The practice of creating precedents existed already from the fourteenth and fifteenth centuries and played a significant role in the formation of law. Sanctioned by the legislative framework, precedents served as a source of law and filled significant gaps in Polish law, in particular land law, due to the fading of legislative activity and a certain stagnation in the field of private law (Lesiński, 2019). After the reception of Roman law in the middle of the 16th

century, a certain stability of the legal system was established in the western part of continental Europe. It was a period when almost all the countries of Western Europe used almost the same legal system. In Germany, as in other countries with limited courts, justice continued to take into account local customs and national characteristics, but despite this process, the principles of German law remained distinctive (Freund, 1890).

A strict hierarchical structure limits the actions of judges in the French justice system. It is worth noting that French judges do not feel the direct pressure of the rules of precedent, which was the norm in other jurisdictions. They have considerable freedom in considering each specific case based on their own interpretation of the law. However, this freedom is limited by the possibility of appeal (“appel”) and cassation to the Supreme Court (Troper & Grzegorzczuk, 1997). Romania’s path in the establishment of precedent law is primarily related to the implementation of the principles of the rule of law, which are based on a broad social and educational movement, and take place from the bottom to the top, promoting the change of values and respect for rules, as well as their creation. At the same time, “the Romanian case tells us that any simplistic reform approach based on the quantitative addition of judicial capacity, which fails to challenge the established legal and social order, will result in superficial and unsustainable outcomes” (Mendelski, 2007). The idea of precedents is known for Hungary. Until the middle of the 20th century, Hungarian jurisprudence relied heavily on customary law, which was formed by judges, but with the approval of the Civil Code in 1960, the law became the main source of decisions in Hungarian civil courts. The system of limited precedent, which is being implemented, consists of established certain rules, namely “reasons justifying deviation from precedents may include instances when “a new circumstance ... arises in the course of the assessment of the particular case which raises doubts about the applicability of the previous rule” or “new economic and political conditions come to light which make it impossible to apply the existing rule unchanged” (Novák, 2020).

In modern Germany, the resolution of court cases depends to a large extent on the legal method used in the country’s highest court, the Supreme Court (BGH). This approach is aimed at ensuring uniform interpretation and development of legislation. The Supreme Court guarantees a certain degree of legal certainty and equal treatment of similar cases, helping to eliminate legal uncertainties. The principle of equality requires the same interpretation and application of the law. In Germany, the provision of legal certainty is one of the key constitutional principles that helps ensure a uniform method of applying the law. This is done to achieve

maximum clarity and rationality in the decision-making process. It is important to note that court decisions must be consistent with the law, both written and unwritten. Judges are given the duty to consider both types of law in order to ensure the adequacy of justice and avoid a narrow positivist approach to cases (Oppermann, 2018). In 2023, the German government passed a new law that allows the country’s highest court to rule on issues related to the main legal issues that arise in mass action cases, that is, cases that bring together a large number of individuals with the same or similar requirements. Under this new law, the Federal Court of Justice (FCJ) gains the ability to select specific cases from the pending appeal list in mass action cases involving a wide range of legal issues. The court can make a “precedential decision”. It is important to note that such decisions, under this procedure, will not become official binding precedents, but will serve as an authoritative guide to lower courts regarding the interpretation of issues that may arise in other cases (Schmidt & Weißbach, 2023).

In the British and Norwegian legal systems, it is common practice to consider individual court decisions as possible bases for the formulation of general legal norms. This practice has two aspects. First, each court decision can be considered part of the norm-making process because it is consistent with, or significantly extends, other decisions dealing with important norms. Second, judicial decisions can act as a basis for establishing, confirming, or changing the rules of precedent, even if the judge does not expressly state these rules. In such a case, the court’s decision is used as an authoritative argument confirming previous judgments. This distinction between judges’ “deeds” and “sayings” is important because judges’ “deeds” can often contradict their “words” in using previous court decisions as a source of law (Svein, 2009).

Therefore, the analysis of the development of case law in Europe reflects the diversity of approaches to legal regulation and the search for a balance between the stability of the legal system and the requirements of modern society. Precedent law in European countries is rooted in ancient traditions and customs that reproduce the rich history of legal culture. It plays a key role in the development of legislation in the era of transformation and formation of national legal systems. Although the attention to precedent law in the countries of Europe differed in different historical eras, modernity shows a tendency towards the convergence of the systems of common and continental law. This is due to the growing attention to the role of precedent and acts of legislation in determining legal standards. However, the development of precedent is inevitably influenced by social, political and historical factors. Under such conditions, it is

important to maintain a balance between the use of case law and its relation to legislation to ensure stability and progress in the legal field.

Precedent in the private law of Ukraine. It is generally accepted that the division of legal systems takes place according to such a basic criterion as the leading source of legal regulation. Whereas for the Romano-Germanic legal family such a source is a regulatory legal act, for the Anglo-American one it is a precedent. A soft form of precedent, which directly follows from the requirement of legal certainty as a component of the rule of law, is characteristic of all the states of the Council of Europe and most of the states that apply the continental approach to the sources of law. First of all, we will analyze the normative foundations of precedent law in Ukraine.

In the Constitution of Ukraine¹ the word “precedent” is not used, as is generally the case in the legislation of Ukraine. Meanwhile, Article 151-2 of the Constitution of Ukraine² indirectly establishes a precedent in the legal system of Ukraine, providing that the decisions and conclusions adopted by the Constitutional Court (CC) of Ukraine are binding, final and cannot be appealed. The bindingness of such decisions has a general order and applies to all national courts. Decisions of the Constitutional Court of Ukraine affected a number of private law issues, especially in the part related to the disclosure of the content of the constitutional principles of private law. In one of its decisions, the Supreme Court of Ukraine formulated an important legal position, according to which the Basic Law of Ukraine – the Constitution clearly regulates the issues of property relations, where special attention is paid to defining the scope of objects and persons who may have property rights (Articles 13, 41, 142, 143), the principle of equality of all participants in property relations (according to Article 13), the protection of the rights of owners and their obligations (Articles 13, 41) and it was declared that the norms regulating the regime of ownership should be established exclusively by Ukrainian legislation (in accordance with paragraph 7 of the first part of Article 92)³. Analysis of these articles, in the opinion of the Supreme Court of Ukraine, points to a distinction between state and communal forms of ownership at the level of constitutional legislation. At the same time, communal property acts as an independent category, not included in state

property, and represents a separate type of property right, the management of which is entrusted to territorial communities or bodies created by these⁴.

In another decision, the Supreme Court of Ukraine formed an important legal position, according to which the right of ownership is not absolute and may be subject to restrictions, but any interference with this right is allowed exclusively on the basis of legislative acts, taking into account the principles of legal certainty and proportionality. The last principle involves ensuring a balanced relationship between the needs of the individual and the interests of the public. Restrictions of one's own rights for the purpose of protecting public interests are considered justified if they constitute the least restrictive of all possible options for actions that carry less burden on the rights and freedoms of⁵. Decisions of the Supreme Court of Ukraine have a significant impact on the development of private law in the country, as they determine the fundamental principles of the legal system and establish parameters for the interpretation and application of laws. The Constitutional Court acts as the highest body of constitutional jurisdiction, which ensures compliance with the Constitution and protects the fundamental rights and freedoms of citizens.

Through its decisions, the Constitutional Court of Ukraine influences the development of private law, establishing key principles of interpretation and application of the provisions of the Constitution of Ukraine⁶, which become starting points for legislative and judicial decisions in the field of civil, family and property relations. This includes defining the limits of private property rights, freedom of contract, and other important aspects of private law. Decisions of the Supreme Court of Ukraine help resolve contradictions in legislation, ensuring its unambiguity and consistency, which is important for the stability of the legal system and the predictability of legal relations. In addition, decisions of the Supreme Court of Ukraine contribute to the harmonization of national legislation with international standards, especially in the context of human rights and fundamental freedoms. This allows Ukraine to effectively integrate into the global legal community, as well as to ensure that domestic law complies with the country's international obligations. In general, the activity of the Constitutional Court of Ukraine is key to the development of private

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

² Ibidem, 1996.

³ Ibidem, 1996.

⁴ Decision of the Constitutional Court of Ukraine No. 5-p(II)/2023. (2023, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/v005p710-23#Text>

⁵ Decision of the Constitutional Court of Ukraine No. 3-p(I)/2019. (2019, June). Retrieved from http://www.ccu.gov.ua/sites/default/files/docs/3_p1_2019.pdf.

⁶ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

law in the country, making an important contribution to strengthening the rule of law, protecting the rights and interests of citizens, and creating legal conditions for economic development.

The influence of the decisions of the Supreme Court on the private law of Ukraine. According to Article 13 of the Law of Ukraine No. 1402-VIII¹ “conclusions regarding the application of legal norms, set out in the Supreme Court’s rulings, are binding for all subjects of power that apply in their activities a regulatory legal act containing the relevant legal norm”, while “conclusions regarding the application of legal norms, set forth in the decisions of the Supreme Court, are taken into account by other courts when applying such legal norms”. From which it follows that none of the decisions of the Supreme Court are binding for judges when considering similar cases. Rather, they have a persuasive character, which, however, cannot prevent a judge from deciding a case to refuse its application in cases where he has reasonable grounds for doing so. This gives judges some freedom in deciding each specific case, allowing them to take into account individual circumstances without being strictly bound by previous decisions. Thus, the same decisions of the Supreme Court can be considered a binding precedent for all subjects of law, but in relation to courts, they have the character of a convincing precedent.

In the light of the above general remarks, there is a need to analyze specific decisions of the Supreme Court to find out how they affect private law in Ukraine. Thus, in the decision of the Joint Chamber of the Civil Court of Cassation of the Supreme Court dated April 18, 2018 in case No. 753/11000/14-ts (proceedings No. 61-11svo17) the approach to the interpretation of contract terms is highlighted². The legal position states that when it is impossible to establish the content of the terms of the contract using generally accepted methods of interpretation, in particular, those defined in parts three and four of Article 213 of the Civil Code of Ukraine³, one should resort to the principle of *contra proferentem*. This approach means that in case of ambiguity in the terms of the contract, they must be interpreted against the party that formulated them. That is, the party that entered a certain condition into the contract bears the risk associated with flaws in the wording of this condition. This

rule applies both to situations where the party formulated the condition itself, and to cases of using standard conditions developed by third parties. According to this principle, *contra proferentem* is used not only for conditions that “were not individually agreed upon”, but also for those that were included in the contract “under the significant influence of one of the parties”. According to this principle, *contra proferentem* should be applied if there are two different interpretations of one condition (or several conditions) of the contract, and not two different versions of this condition (or conditions). This rule is intended to disadvantage the party who has allowed the ambiguity, since it is he who is responsible for the ambiguity. In addition, *contra proferentem* takes into account the reasonable expectations of the party that did not participate in the formulation of the terms of the contract, including the choice of language and wording. Also, this principle applies when it is clear that only one of the parties to the contract participated in determining the wording or even drafted the contract or used standard terms developed by a third party. In case of uncertainty of the terms of the contract, the interpretation should be carried out in favor of the counterparty of the party that prepared the draft of the contract or proposed the wording of the condition. Until proven otherwise, it is presumed that the party who is a professional in the relevant field requiring specialized knowledge is the one who prepared the terms of the contract.

Another important legal conclusion in the field of private law was formulated by the Supreme Court in the ruling of the Civil Court of Cassation of the Supreme Court of May 25, 2022 in case No. 487/6970/20⁴. According to the decision of the Supreme Court as part of the Joint Chamber of the Civil Court of Cassation dated April 18, 2018 in case No. 753/11000/14-ts (proceedings No. 61-11svo17) it was established that the obligation to compensate moral damage arises in the case of causing such damage to another person. This obligation is formed under the condition of moral damage, the illegality of the actions of the person who caused the damage, the causal connection between the illegal behavior and the consequences, as well as the fault of the person who caused the damage. Once the person who caused the damage is determined, the burden of proof is divided

¹ Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges in Ukraine”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

² Resolution of the Joint Chamber of the Civil Court of Cassation No. 753/11000/14-ts “On the Cassation Appeal of the Private Joint Stock Company “Pharmaceutical Firm “Darnytsia” Against the Decision of the Kyiv Court of Appeal Dated 21 November 2017. (2018, April). Retrieved from <https://verdictum.ligazakon.net/document/73500675>.

³ Civil Code of Ukraine No. 435-IV. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁴ Resolution of the Civil Court of Cassation as part of the Supreme Court No. 487/6970/20 “On the Cassation Appeal of the NGO Stop Sludge Against the Decision of the Mykolaiv Court of Appeal of 14 December 2021” (2022, May). Retrieved from <https://verdictum.ligazakon.net/document/104539336>.

between the plaintiff and the defendant: the plaintiff must prove the fact of moral damage and causation, while the defendant must prove the absence of wrongdoing and fault. Moral damage always has a negative character, but not every such damage leads to liability for its compensation. The obligation to compensate moral damage occurs only when the damage is caused by illegal actions of the responsible person. Money, which acts as compensation, turns the damage into a universally measurable expression, and the amount of compensation allows to "estimate" the moral damage. At the same time, the amount of compensation should reflect the moral damage and contribute to the restoration of the victim's condition. In the process of determining compensation, various factors are taken into account, such as the nature of the violation, the depth of suffering, the impact on the victim's abilities, the degree of guilt of the perpetrator, other significant circumstances, as well as the criteria of reasonableness and fairness. The obligation to compensate moral damages has its own characteristics, because at different stages its content may be uncertain, especially regarding the method and amount of compensation. The definition of the content of such an obligation may be based on agreements between the perpetrator and the victim, in particular regarding the amount, method, and terms of compensation. If the parties do not reach an agreement, the court decision determines the method and amount of compensation. Thus, the decision of the Supreme Court of April 18, 2018 significantly affects the development of private law, establishing key principles for consideration of cases related to compensation for moral damage. This decision not only clarifies the circumstances under which the obligation to compensate moral damage arises, but also distributes the burden of proof between the parties. In particular, the decision emphasizes that for the obligation of compensation to arise, it is necessary to prove the fact of moral damage, the illegality of the actions that caused this damage, the existence of a causal connection between the actions and the damage, as well as the fault of the person who caused the damage. Thus, the courts have clear guidelines for assessing the circumstances of the case and the obligations of the parties. The resolution of the Civil Court of Cassation of the Supreme Court of February 23, 2022 in case No. 569/693/21 (proceedings No. 61-13565Cb21 has important role for the development of private law in Ukraine¹. In it, the Supreme Court came to the conclusion that in the context of private law, the

concept of invalidity can be applied to various legal acts, including decisions of general meetings of members of business associations, which are acts of bodies of legal entities. It is important to note that the decision of the general meeting of participants, as an act of a body of a legal entity, differs in its nature from a deed. Thus, the standard provisions of the Civil Code of Ukraine and other legislation that regulate transactions, in particular the rules on the legal consequences of non-compliance by the parties when concluding a transaction with the requirements of the law from Section 16 of the Civil Code of Ukraine², cannot be directly applied to such decisions.

In cases where an interested person files a lawsuit for invalidation of a decision of a general meeting of a company, the defendant is the company itself, and not its individual members, since the decision reflects the will of the general meeting of participants as a body of the company, not an individual participant. The legal position expressed in the aforementioned resolution made an important contribution to the development of private law, in particular, by clarifying the application of the concept of invalidity to the decisions of bodies of legal entities, such as general meetings of members of business associations. The decision emphasizes the differences between transactions and acts of bodies of legal entities, emphasizing that the standard rules governing transactions cannot be automatically applied to decisions of general meetings. This is important for ensuring the correct legal regulation of intra-organizational relations in economic societies, where the decisions of general meetings play a key role. Also, the Supreme Court indicated that in cases of contesting the invalidity of such decisions, the defendant is the business association itself, and not its individual members. This reinforces the understanding that the decision reflects the collective will of the body of the company, which is important for the legal nature and mechanisms for protecting the rights and interests of members of business companies. This decision contributes to the improvement of the legal framework, providing greater predictability and protection in the field of corporate relations, while at the same time emphasizing the need for detailed regulation of intra-corporate processes in accordance with legislation.

In the decision of the Central Committee of the Supreme Court dated 10.02.2021 in case No. 754/5841/17 it was established that the use of private legal mechanisms by participants in civil turnover should not serve as a means of evading the payment of debts or the

¹ Resolution of the Civil Court of Cassation as part of the Supreme Court in case No. 569/693/21 "On the Cassation Appeal of the Ministry of Defence of Ukraine Against the Decision of the Romanivsky District Court of Zhytomyr Region of 22 June 2022". (2022, February). Retrieved from <https://verdictum.ligazakon.net/document/109854993>.

² Civil Code of Ukraine No. 435-IV. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

fulfillment of obligations under the legal force of a court decision on the recovery of debts, losses or damage¹. Abuse of rights and use of private legal instruments in a manner contrary to their purpose is characterized as follows: a person (or a group of persons) uses rights improperly ("rights are used to harm"); the presence of harmful consequences for other persons (these consequences create a certain state in which other subjects find themselves, whose rights directly depend on the actions of a person who abuses their rights; such a state is unsatisfactory for other subjects; they experience deficiencies in the implementation of their rights due to the lack of necessary facts or conditions; the realization of these facts/conditions depends on the actions of the person abusing his rights; such a person may or may not have specific legal relations with the persons affected by his actions); the legal status of the person/persons is taken into account (a person as a participant in legal relations is aware not only of his own rights, but also of the rights of other participants in these relations, and also knows about the procedure for acquiring and exercising these rights; the person is not involved in this relationship for the first time, or the relationship has long-term nature, or the person is a participant in other similar legal relationships). The characterized legal position emphasizes the importance of responsible use of private legal mechanisms in civil transactions. This resolution emphasizes the inadmissibility of abuse of law, which consists in using legal instruments in a way that contradicts their main purpose, in particular, avoiding payment of debts or failure to fulfill obligations determined by a court decision.

According to the decision of the Supreme Court as part of the panel of judges of the Second Judicial Chamber of the Cassation Civil Court in case No. 757/76070/17 (proceedings No. 615817CB21)², it was stated that in the context of private law, which includes labor law, the concept of invalidity can affect various types of contracts, including labor contracts. An important feature of labor legislation is the presence of mandatory norms that not only guarantee minimum social and labor standards, but also establish criteria for the invalidity of contracts or their separate conditions in the field of labor relations. For example, Article 9 of the Labor Code of Ukraine³ defines special cases of nullity of contract terms, when such terms worsen the position of employees in comparison with the current labor legislation in

Ukraine. The legal position expressed in the said decision has a significant impact on the development of private law, in particular on the relationship between civil and labor law. It emphasizes that the concept of invalidity of contracts, characteristic of civil law, can also be applied in labor law, which regulates relations between employees and employers. This is important, because in labor law, a large part of the norms has an imperative character, which determines the mandatory minimum working conditions and protection of the rights of employees. The decision confirms that any terms of employment contracts that worsen the position of employees compared to the guarantees provided by law are invalid. This helps to strengthen the legal protection of workers, ensuring that their working conditions cannot be worsened by the unscrupulous actions of employers.

Summing up, it can be argued that the decisions of the Supreme Court have a significant impact on the development of private law in Ukraine. These decisions are important not only because they provide an opportunity to formally settle a particular disputed substantive legal relationship, but also because they shape the legal practice and doctrine on which the lower courts rely. The Supreme Court through its decisions brings clarity to the interpretation of laws, ensuring their unity and consistency in application. This approach contributes to the stability of the legal environment and the predictability of legal relations. The Supreme Court acts as a guarantor of compliance with the principles of private law, ruling on issues related to property, contractual relations, civil liability and other key aspects of private law. Its decisions help to adapt legislation to modern realities and needs of society, as well as ensure the protection of the rights and interests of individuals and legal entities. Particularly important is the influence of the Supreme Court on the development of legal doctrine through the decisions of the Grand Chamber, which often serve as a guide for the future development of the legal system and legal science. Such decisions contribute to the formation of unified approaches to the interpretation of legal norms, taking into account modern challenges and the dynamics of the development of social relations.

The influence of decisions of the European Court of Human Rights (ECtHR) on private law in Ukraine. The influence exerted by the ECtHR on the system of private law in Ukraine has a two-vector nature. First of all, the practice

¹ Resolution of the Civil Court of Cassation as part of the Supreme Court No. 754/5841/17 "On the Cassation Appeal Against the Decision of the Kyiv Court of Appeal of 03 September 2019". (2021, February). Retrieved from <https://verdictum.ligazakon.net/document/94938438>.

² Decision of the Supreme Court as part of the panel of judges of the Second Judicial Chamber of the Civil Court of Cassation No. 757/76070/17 "On the Cassation Appeal Against the Decision of the Kyiv Court of Appeal of 15 November 2021". (2021, November). Retrieved from <https://ips.ligazakon.net/document/C023094>.

³ Code of Labor Laws of Ukraine No. 322-08. (1971, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08#Text>.

of the ECtHR has a general impact on the implementation of private law norms through the introduction of a certain form of case law in Ukraine. According to the established practice of the ECtHR, the lack of consistency in judicial practice can undermine trust in the legal system and harm the predictability of law enforcement¹. This is because significant differences in court decisions on similar issues create uncertainty and can lead to the perception of justice as arbitrary or unfair. Predictability and consistency in law enforcement are key to ensuring justice, as they allow citizens to understand their rights and responsibilities and to anticipate the consequences of their actions under the law. Thus, it can be concluded that the requirements of the rule of law, in particular in terms of ensuring standards of legal certainty, are the leading reasons for the establishment of the continental model of precedents and case law in Ukraine.

The second important vector of influence is the ECtHR's use of certain principles and standards when resolving private legal disputes about violations of the Convention on the Protection of Human Rights and Fundamental Freedoms. The development of the ECtHR in terms of interpretation and application of Article 1 of the First Protocol to the Convention – protection of property rights – is especially full. Thus, in one of the considered cases, the ECtHR established that the restrictions imposed by the state on the right to property actually limited the applicants' ability to dispose of their property². In another case, the ECtHR recognized a violation of Art. 1 of the First Protocol, finding that the applicant suffered a disproportionate burden due to the state's interference with his right³. In the case of *Kasmi v. Albania*, the ECtHR recognized that the annulment of the judgment by the Supreme Court of Human Rights.

Romania, which recognized the applicant's right to property, was a violation of Art. 1 of the first protocol. The court indicated the absence of substantial grounds for such intervention by the state⁴. Therefore, the practice of the European Court of Human Rights is a source of law when considering cases in the Ukrainian court process related to the violation of human rights and fundamental freedoms. This allows to ensure compliance of court decisions with international human rights standards and contributes to the protection of the rights and freedoms of citizens in Ukraine.

Case law in Ukraine: Discussions in the context of European standards. One of the key discussions in the legal sphere of Ukraine is the question of the presence and nature of precedent law in the Ukrainian legal system. This issue is very relevant in the context of Ukraine's rapprochement with European legal standards and integration into international legal systems. The main subject of discussion is whether it can be considered that precedential law operates in Ukraine, that is, a system in which the decisions of higher courts determine the direction for consideration of similar cases in the future.

Arguments in favor of the fact that case law applies in Ukraine can be found by analyzing the practice of the Constitutional Court of Ukraine and the ECtHR. These courts play a key role in the formation of legal doctrine and law enforcement, as their decisions are binding on judges when considering cases. For example, decisions of the Constitutional Court of Ukraine are binding on all other courts and state authorities, which creates a basis for precedent in Ukrainian law. In addition, it is important to note that the decision of the Supreme Court can be considered a continental form of law enforcement precedent. Although these decisions do not formally have the status of directly binding precedents, as is the case in common law systems, they nevertheless serve as an important reference point for courts of first instance and appellate instance and influence their law enforcement practice. The Supreme Court influences the interpretation of legislation through its rulings and conclusions which brings the Ukrainian system closer to case law. Therefore, it can be considered that a peculiar form of precedent law operates in Ukraine, although its nature and forms differ from the classical understanding of precedent in Anglo-Saxon legal systems. Decisions of the Supreme Court of Ukraine and the ECtHR, as well as the practice of the Supreme Court, create a basis for the formation of precedent legal practice in Ukraine, at the same time emphasizing the importance of such a mechanism to ensure the unity of law enforcement and the predictability of court decisions. This contributes to the strengthening of legal certainty and stability, providing effective protection of the rights and legitimate interests of citizens and legal entities, and also contributes to the development of legal science and education in Ukraine. At the same time, the question of the correlation of

¹Judgment of the European Court of Human Rights No. 17780/18 "On Case of Ismayilzade v. Azerbaijan". (2024, January). Retrieved from <https://hudoc.echr.coe.int/?i=001-230293>.

²Judgment of the European Court of Human Rights No. 21371/10 "On Case of Ismayilzade v. Azerbaijan". (2021, September). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-211786>.

³Judgment of the European Court of Human Rights "On Case of the National Union of Journalists and Others v. France No. 41236/18". (2021, December). Retrieved from <https://hudoc.echr.coe.int/?i=001-229417>.

⁴Judgment of the European Court of Human Rights No. 1175/06 "On Case of Kasmi v. Albania". (2020, June). Retrieved from <https://hudoc.echr.coe.int/?i=001-203153>.

precedents in the national legal system of Ukraine, namely in the context of the interpretation of the Constitution of Ukraine, remains debatable¹.

The main problem is to find out whether the Constitutional Court of Ukraine (CSU) is obliged to interpret the Constitution of Ukraine² take into account the ECtHR's decision, whether, instead, the Constitution of Ukraine has an autonomous meaning, independent of the European Convention and the practice of the Strasbourg Court. On the one hand, the Constitution of Ukraine³ is the Basic Law of the country and has the highest legal force, which exceeds the force of any international treaties to which Ukraine is a party. According to this position, when interpreting the Constitution, international treaties, including the practice of the ECtHR, should not be taken into account as direct sources of interpretation of the Constitution. On the other hand, there is an established practice of interpreting the Constitution of Ukraine⁴, which involves taking into account the provisions of international treaties and the practice of the ECtHR in order to ensure consistency and unity in the decisions of the Constitutional Court of Ukraine and the ECtHR. This approach is based on the assumption that Ukraine, being a party to the European Convention on Human Rights and having recognized the jurisdiction of the ECtHR, must ensure that its domestic law, including the Constitution, is interpreted in a manner compatible with international obligations and consistent with the principles of the rule of law.

This discussion indicates that determining the balance between the sovereignty of the national legal system and the need for its integration into the international legal system lies in the legal orientation of the system on natural law. Accordingly, the approach of conformal interpretation, which is voluntarily adopted by the Constitutional Court of Ukraine, ensures that Ukraine's international obligations are taken into account when providing constitutional guarantees, thereby contributing to the protection of the fundamental rights and freedoms of citizens. This approach can be considered the most justified, as it reflects Ukraine's efforts to ensure high standards of human rights protection, while preserving the principles of national sovereignty.

CONCLUSIONS

In summary, the consolidating influence is characteristic of law enforcement practice. At the same time, consolidation always takes place in the light of certain legal

challenges, and therefore precedents guarantee the constant modernization of legal regulation of private-law relations and are the basis of law-making. Modern technologies not only change the paradigm in the economy and society, but also place new demands on the legal system. In this context, judicial precedent acts as a key tool of law-making and adaptation of legal regulation to modern needs, which ensures stability and progress in the field of private law. The precedent type of judicial practice, which is becoming widespread in Ukraine, crystallizes the gradual adoption of the precedent method, the value of which is in promoting the development of traditions. This process leads to the formation of a new perspective on the understanding of an authoritative court decision as a precedent for application in judicial practice, as well as as a basis for the further development of legal doctrine.

At the same time, the transformation of a court decision into a precedent is not limited to teaching a specific legal position. This process also contributes to the formation of a legal culture in society and reflects the ability of the judicial system to adapt to new challenges and develop, taking into account the fundamental principles of the rule of law. Decisions of the Constitutional Court of Ukraine have a significant impact on the development of private law in the country, as they determine the fundamental principles of the legal system, establishing parameters for the interpretation and application of laws, which is important for compliance with the principles of the rule of law and the predictability of legal relations. The Constitutional Court of Ukraine acts as the highest body of constitutional jurisdiction, which ensures compliance with the Constitution and protects the fundamental rights and freedoms of citizens. The Supreme Court acts as a guarantor of compliance with the principles of private law, making decisions on issues related to property, contractual relations, civil liability and other key aspects of private law. Its solutions help adapt legal regulation to modern realities and the basic dynamic needs of economic development, as well as ensure the protection of the rights and interests of individuals and legal entities. Such decisions are designed to form unified approaches to the interpretation of legal norms, taking into account modern challenges and the dynamics of the development of social relations, and serve as the basis of law-making.

In its approach to resolving disputes in the field of private law, the European Court of Human Rights follows

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

² Ibidem, 1996.

³ Ibidem, 1996.

⁴ Ibidem, 1996.

a broad interpretation of the Convention on Human Rights, especially with regard to the concept of “private life”. The ECtHR believes that the right to private life covers the ability of a person to interact with the outside world, including building interpersonal relationships. This broad interpretation allows for the protection of various aspects of personal freedom and self-expression, based on the understanding that private life is not limited to intimate or domestic aspects, but also encompasses interaction with society and the state. The discussed key issues of the role of precedent and its influence on the development of private law can be considered

through the prism of the search for new approaches in the field of legal system development. This involves the possibility of finding and researching historical aspects of precedent in Ukrainian legal culture, as well as forecasting strategies for the development of private law to modern international trends and innovative changes.

ACKNOWLEDGEMENTS

None.

CONFLICT OF INTEREST

None.

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Вплив прецеденту на розвиток українського приватного права

Анотація. Актуальність дослідження обумовлена пошуком гнучкого правового механізму, який сприяв би розвитку приватного права під впливом технологій. Використання прецеденту як джерела права може створити можливості для формування такого інструменту, який не порушуватиме традиції континентального права, але розширить горизонти думок під впливом сучасних та майбутніх інновацій. Метою дослідження стало визначення місця та ролі прецеденту в правовій системі України та його вплив на розвиток приватного права. Дослідження базується на комплексному підході, який включає в себе кілька основних методів, а саме: методи аналізу та синтезу, системно-структурний, формально-логічний та метод правової герменевтики. У статті висвітлено роль прецеденту у розвитку приватного права України. Розглянуто вплив рішень Конституційного Суду України, Верховного Суду та Європейського суду з прав людини на правову систему країни, особливо в контексті процесів євроінтеграції та постійного розвитку правових стандартів. Висвітлено, як формуються та застосовуються правові норми в українському правосудді, а також як судові рішення впливають на юридичну практику та законодавчий процес. Зазначено, що рішення Конституційного Суду України, Верховного Суду та Європейського суду з прав людини відіграють ключову роль у формуванні правової доктрини і практики в Україні. Підкреслено, що в Україні існує форма прецедентного права, характер якого відрізняється від класичного розуміння прецеденту в англосаксонських системах. Рішення Верховного Суду можна вважати континентальною формою правозастосовного прецеденту, хоча вони формально не мають статусу прямо обов'язкових прецедентів. Це дозволяє стверджувати, що прецедентне право у своїй українській моделі функціонує та орієнтоване на розвиток правової системи, основна роль якої полягає у формуванні єдиної та ефективної юридичної практики. Підсумовано, що розвиток технології не лише змінюють парадигму в економіці та суспільстві, але й ставлять нові виклики перед правовим середовищем. У цьому контексті судовий прецедент виступає важливим інструментом адаптації правового регулювання до сучасних реалій, забезпечуючи стабільність та прогрес у сфері приватного права. Результати дослідження можуть бути використані для подальших наукових розробок у сфері розбудови приватного права, спрямованих на розвиток нових правових концепцій та інструментів, а також для застосування у правозастосовчій практиці.

Ключові слова: судові рішення; Верховний Суд; Конституційний Суд; Європейський суд з прав людини; прецедентне право; англо-саксонська правова система; континентальна правова система