THE ROLE OF PRECEDENT IN THE SYSTEM OF SOURCES OF LAW

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1. ROLE OF A PRECEDENT IN THE COMMON LAW SYSTEM

A judicial precedent is defined as a court's judgement or decision that acts as a guide for achieving the same result in subsequent cases. It is derived from the Latin phrase "*stare decisis et non quieta movare*", which simply means to stick to a decision and avoid disrupting what has been established. This implies that once a case settles a particular legal issue, subsequent cases involving the same facts and circumstances are bound by this prior decision. This doctrine is a body of common law that is developed in a case to aid courts in deciding on similar situations in future proceedings. Thus, a precedent is also referred to as case law.

Essentially, case law or a court precedent constitutes the body of law established by judicial decisions. A judicial precedent is a legal basis for a court decision. This is the decisive factor (literally, the reason for the decision). The phrase "*stare decisis*" (short form of "*stare decisis et non quieta movare*") refers to the practice of sticking to prior decisions in later cases concerning the same problems. It implies that the legislation was publicly declared and specified in the previous case. It does preclude lower court judges from reversing a decision. Thus, inferior courts are constrained by the concept of *stare decisis*. When a judge issues a decision in a matter, he or she summarises the facts, the applicable statutes, and only then issues the decision. Not every aspect of a judgement is relevant in determining the court's underlying thinking. The remainder of the judgement contains some useful information. Thus, the decision or judgement of the court may be split into two categories: the *ratio decidendi* (reason for the decision) and the *obiter dicta* (justification for the decision or "other things said"). It is critical to have a strong understanding of what makes *ratio decidendi* and *obiter dicta* when determining what forms a precedent. The *ratio decidendi* in a case is the legal theory or relevant doctrine upon which a decision is based. When a judge adjudicates on a case, he summarises the facts

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he feels have been established via the evidence. He then applies the law to the facts and reaches a decision, which he supports with *ratio decidendi*. In a judicial case, the *ratio decidendi* is not the conclusive verdict or judgement, such as "guilty" or "the defence is obligated to pay compensation". Instead, it establishes a precedent, which is the legal norm that the judge or judges will apply to handle the legal issue presented by the circumstances and facts of the case. Consequently, this rule, which is derived from those circumstances, is known as the *ratio decidendi* of the case. Of course, the judge may provide his opinion on how his decision would have been altered if the facts of the case had been different. This is *obiter dictum* (plural: *obiter dicta*), a Latin term that means "said in the passing" or "other things said". It is important to remember that in the common law system, the *ratio decidendi* is a legally binding part of a judgement and comprises a precedent as such, while *obiter dicta* are not conclusive since they are not technically necessary and are used "by the way."

When analysing the technical aspect of precedents, we are referring to the formal sources of law and the theory of *stare decisis*. Previous court judgements are often not legally binding on future judicial decisions under the civil law systems, while in the common law system, it is the complete opposite. Precedents, as formal sources of law, are not only illustrative, but they also bind the courts in the future. This is a significant finding on the power of precedents in the common law systems. This collision may be paradoxical or confusing at first glance. Nevertheless, a comprehensive analysis of the role that precedents play in legal systems concluded at the end of the twentieth century that a precedent now plays a significant part in legal decision–making and the construction of law, regardless of whether it is officially acknowledged as legally binding. Consequently, it is fair to claim that *de jure* aspect of application of a precedent plays a minor role, especially when one considers the obligation to use a precedent as a key aspect that differentiates common law from the civil law system.

Often, common law judges make great efforts to differentiate precedents, and precedents of the same court or level are rejected from time to time, distinguished or overruled in order to achieve an objective of fair justice. Authorities' public claims and announcements of governing legal standards, as well as any implicit duties imposed by controlling authorities, must be harmonised. This is referred to as regulated synthesis, and it is used to develop the prevailing legal norms applicable to a particular legal problem, which may include both definitional and interpretive rules provided by authorities. The other concept is the concept of a rule synthesis or a rule proof, which is based on the assumption that case law and administrative law may and do change the content and requirements of the law, necessitating the consideration and synthesising of many sources that pertain to the problem. For example, case law in comparison to statutory law in the common law systems reflects the general trends more accurately.

Another key problem is the possibility of amending case law, which is possible under both legal systems. While it is more difficult with common law precedents, both systems contain a mechanism for amending case law that has become obsolete or has been determined to be wrong. Despite the concept of *stare decisis*, the common

law system has no trouble with overruling. A higher court with the ability to reverse a decision plainly can and does so. Thus, the overturned rationale of a case also loses its authority. Judges and lawyers in the common law system may take for granted that all courts in all systems of law provide detailed descriptions of the background and operative facts of each case they decide on, as well as an extensive and comprehensive accounting of the judicial history of a case and a justification of the court's rationale for its decision supported by citations of authority. However, this is only relevant to courts operating under a common law regime. If the courts acknowledge that cases may be persuasive authority for definitional and interpretative norms, then citing and relying on those cases as persuasive authority is feasible. However, the application of precedents is not necessary and *stare decisis* does not apply unless they are overcome by equally strong reasoning based on some other legal authority.

Due to the fact that a precedent exists under the common law system, the courts address cases more quickly. A precedent in the legal system provides fairness and efficiency for all parties concerned by ensuring that the judicial process runs predictably. The outcome may be predicted in each case if the circumstances are the same. This is one of the primary goals of the concept of a precedent. Despite the obvious advantages of precedent–setting in the courts, this practice also has its pitfalls. Rather than putting a stop to wrongdoing, a precedent may sometimes set the stage for it to continue, and reversing this process would create inconsistency within the judicial system and its hierarchical structure. Even if a precedent and *stare decisis* are not perfect, the value they provide considerably outweighs any possible flaws, as it contributed to one of the most effective and acknowledged justice system that ever existed.

2. ROLE OF A PRECEDENT IN THE CIVIL LAW SYSTEM

The literature on legal theory freely and publicly asserts that the civil law systems do not regard precedents as a source of law. It is a circumstance where the Constitutional Court derogates a part of a law or legislation because of its unconstitutionality. Consequently, the court judgement has the character of a formal source of law solely because it in some way modifies the legislation that is considered to be a formal source of law. No longer regarded to be a full–fledged precedent or a source of law, it is known as "negative legislation", which is one of the ways of abrogating a law. However, this is considered to be the only circumstance in which a court decision clearly constitutes a source of law in the framework of civil law. As a result, the civil law system has always recognised just legislation and normative treaties as sources of law. It is a common idea that under the civil law system courts cannot establish new legal principles or norms. The court exists to resolve a dispute between two parties, and its decision is *inter partes* binding. Theoretically, or *de jure*, a court cannot issue a judgement that applies to non–parties to the case, therefore becoming a law due to its general scope of application. As a result, a court cannot establish a broad rule that other courts must follow in the future when deciding on a similar case. Thus, the civil law system, unlike the common law system, does not recognise precedents in this manner.

Vincy Fon and Francesco Parisi come to the conclusion that the civil law systems do not adhere to the *stare decisis* idea since precedents play a persuasive role in resolving any given legal dispute. According to their logic, the way civil courts actually operate is they are bound to follow earlier judgments when the case law is sufficiently consistent; the greater the consistency of prior decisions, the more compelling the case law is. Despite the fact that civil law countries do not allow judges to dissent, cases deviating from the general tendency serve as a signal of judicial dissent. In various legal systems, such instances have varying degrees of influence on future judgements, while nonetheless swaying judicial decisions through modern jurisprudential tendencies in case law. This is also consistent with John A. Gealfow's belief that the distinction between common and civil law approaches to precedents is quantitative rather than qualitative in nature.

Civil law precedents also serve as *jurisprudence constante*, a civil law alternative to common law precedent that is comparable due to the way it functions. It has long been acknowledged that the goals of *jurisprudence constante* and *stare decisis* are similar. The first fundamental contrast between them is, as it is obvious, the need that *jurisprudence constante* be founded on a series of judgements rather than a single one. The second important distinction is that *jurisprudence constante* is thought to have great persuasive power. It means that it should never be regarded as a main source of legislation. According to Igor Tokmadzic, there is no substantial difference between the notions guiding existing case law in the civil and common law systems. On the other hand, it is becoming clear that the longstanding limits on the application of such case law in the civil law systems are losing their importance.

When examining the binding impact of a judgment, we can also distinguish between cassation and precedent related binding effects. When a higher court overturns a lower court's ruling, the lower court is logically bound by the upper court's decision. Only the parties to the proceedings, particularly the lower court, are bound by this decision. A cassation binding effect is a component of all systems that recognise the hierarchy of courts. A precedent binding effect is the second type of binding effects. This might be the topic of a debate because the term "precedent related" indicates that this influence is only applicable in legal systems where precedents are recognised as a source of law. However, the term "precedent binding effect" refers to the notion that a previous judgement is "in some way" binding on future decision–makers. Still, accepting this viewpoint fails to distinguish all of the options, such as how a prior ruling might be adopted by other courts in their own arguments, or how disregarding a previous decision may in reality indicate the unlawfulness or unconstitutionality of a court's decision. While precedent–based reasoning is required in civil law, legal certainty, as a fundamental foundation of the rule of law, requires that similar circumstances be handled identically. Law should maintain the essence of legal clarity. However, as J. A. Gealfow notes, legal certainty and predictability are not adequate if other legal qualities are not present. Uniform decision–making does not necessarily indicate accurate decision–making, hence legal uniformity should not be achieved by any means. For instance, despite the fact that Nazi Germany's rules were predictable, they did not achieve positive outcomes. A country in which the law is unpredictable cannot be called just and fair,

but pursuing predictability and clarity at the price of true protection for persons and their rights is equivalent to rejecting justice. There is no thought given to ensuring legal clarity and predictability, because the guiding idea is that a court must decide upon the issue brought before it and should not distract its attention to later matters. The idea that its ruling would have an impact on future cases is immaterial at the time of decision–making, because the primary goal of the civil law court system is to resolve a disagreement between two parties.

However, the civil law system is today confronted with the reality that, as a result of de facto influence of precedents, there is a need to organise it, rather than rejecting its functional similarities to common law *stare decisis*. Regardless of its final form, the primary focus should be a principled approach to its application in the light of the above discussion. Critical considerations should instead focus on how a precedent may be used most effectively to achieve its legitimate goals, rather than legal manoeuvres that seek to block its use in the pursuit of potentially out-dated political and theoretical objectives. The problem is that the recognition of precedents in the civil law system is evolving mainly among the ranks of the judiciary, with little ability to spread to the legislative and executive branches.

Leszek Leszczynski created a methodology that may aid in the implementation of reasons for the use of precedents in civil law court disputes. To begin, it is crucial to remember that the content of a case and *ratio decidendi* may be easily detected and applied to the current case. As a consequence, the normative basis of the prior decision may be linked back to the reconstruction of the norm applied to the present decision. The logic of the judgement, in addition to the *ratio decidendi*, is a measure of how mature the court's practise is and how successfully a specific court can explain its objective. As a result, the justification for a judgement must be of sufficient quality to serve as a precedent for the decision–making process. To serve as a precedent under the civil law system, the case must not only be referenced, but the rationale in that judgement must also be presented. The pivotal task is to provide a detailed reasoning why the previous choice was adapted to the current decision–making process. Having said that, focusing on one or more previous judgements and their link to the current choice gives reasons for the most flexibility in adjusting former decisions. When applying previous decisions, it is critical to discover the *ratio decidendi*, which must be accurately generalised and amended, which means explaining the history and justification of the decision. There is also a need for annotations to the reasoning of the preceding decision in the light of the present decision–making process. Annotations should explain why a past decision is cited and how it relates to the present one. This is vital for the technical aspect of the application of precedents and, although in civil law judiciary there is no such practice as consideration of the possible impact of the judgement on future cases, the above-described approach would give clarity to the sequential chain of cases alike in the civil law system.

When it comes to judicial decisions in the civil law system, there are different constitutional rights, which must be adhered to. They include, inter alia, the right to a fair trial, legal certainty, equal treatment, and legal uniformity. These principles, even if they do this unintentionally, still support the idea that case law

is binding. Not in accordance with the legislation, but due to the need to sustain a properly working justice system, because if similar cases lead to different judgements, this means that the justice system is not working properly, or is even corrupted. When arguing in support of binding decisions, whether in the common or civil law jurisdiction, these ideas are used and their effect on the judicial process is undeniable; consequently, a judicial precedent as a phenomenon will inevitably be used regardless of the system, as long as the above–listed principles exist.

3. COMPARING A PRECEDENT IN THE CIVIL LAW AND COMMON LAW SYSTEM

While studying and deciding on any judicial case, a judge in the non–precedent-based system must follow not only the legislation but also work and examine the previous cases which may be legally relevant to a current case in a situation when an applicable code does not provide the necessary explanation which would help to solve a judicial case. This mainly relates to functions a judge exercises; it is not limited to being an "arbitrator" but also involves exercising the functions of law–shaping.

Articulating the evolutionary development of the law, it is worth considering that law itself must perfectly follow the changes taking place in culture and social development because going hand–in–hand with dynamic social development is extremely important in order for the law to be practically applicable to the context of a modern–day agenda. Despite the fact that the law must adapt to this rapid process, it is not only the source of law that should be the subject of concern. In fact, another obvious formal source of law is jurisprudence, which realises itself both in the continental legal system, which mainly exercises its judicial practice with reference to the codified law, and the common law system known for practising binding precedents during the decision–making process. Generally, the states belonging to different legal systems perceive jurisprudence as a self–sufficient source of law, additional to the laws and regulations, and in the overall framework, it is relevant for exploring the nature of precedents. Thus, it is difficult to elaborate on the role and functions of precedents without mentioning the United States, because this country applies *stare decisis*, which is the judges' obligation to be aware of the decisions and justifications of the previous cases in relation to a subject matter of the current case, resulting in the fact that the judgment is binding not only on the parties, contrary to a common belief. William Geldart classifies *stare decisis* as both a virtue and a problem, because despite the fact that *stare decisis* indeed brings stability and coherence to a decision and law–making systems, it may also lead to complex situations in case of illogical distinctions related to the subject matter. Thus, during every single case, a judge must consult and follow the previous judicial decisions, but in common law systems, it is a lot harder for the judicial system to adapt to social and cultural changes within the state (unlike in continental law systems, where the process of adherence to previous law cases is completely different in its application, perception, and structure). Consequently, the role that jurisprudence

plays in this context cannot be perceived without the publication of the law, since when court cases and decisions are published, then the society can study them and they will become part of the jurisprudence and integrate and assimilate the law into social changes.

While evaluating the correlation between past judicial cases and subsequent judgments on the cases of a similar type, scholars end up trying to simplify and structure the roles played by judicial precedents. Obviously, it is complicated to arrange and formulate the common approach to decision making by the judiciary within the states of the non–precedent-based system; this is evident after the comparison of France and the Czech Republic, where the former completely prohibits referring to past judgments and in the latter "the apex courts have been expressing their ideas on how to use past judicial decisions through the rationales to their decisions". The very logical question which arises during the analysis of the different kinds of judicial practice in the continental legal systems is what motivates judges to make reference to other judicial decisions if it is completely unnecessary from the legal perspective. Considering the fact that there is a lack of legally "precedent-based" cases, it is essential to explore and take into account the criteria of selection of the cases, decisions, and justifications that the judges refer to in their own cases, because the theoretical approach to this problem has been shaped by legal scholars, who tried to explain the actual precedent related value of the previous cases via drawing correlations, qualitative analysis approach, and examining the willingness and preferences of the judges to use any specific practice in their own justification. The applicability of the qualitative methods based on the examination of the factual occurrence of references to specific cases may also be used as an argument to detect the judicial decisions which are being applied most often in the future. However, in such a controversial issue as analysing the impact of a precedent de facto in the continental legal systems, it is distinctly complicated to reach consensus, so the fact that lawyers and scholars may repeat the ideas of each other in the attempt to offer the solution is not unpredictable, according to Terezie Smejkalova.

Nevertheless, the judges' motivation to use a particular case may be basically described by the following two points. First, the judges decide on their own whether there will be a reference made to previous cases at all, while there might be an outside influence of the order of the judicial system, which may (not necessarily) impose certain requirements under particular circumstances. Second, based on common sense and experience, judges may choose the case to refer to, as it is evident for them that within the court's practice, some cases may be of major significance in comparison to the others. Specifically, the reasons for willingness to refer to a judgment may vary from its similarity to the actual case, and the influence of the decisions of the courts of higher instance, to the level of debates the case has caused in society, and the frequency of mentions in other court cases, among others.

As it has been already mentioned, a decent layer of research aimed at studying and exploring the citations of previous court cases focuses mainly on the number of references while attempting to evaluate their significance in this context. Among those who dedicate their works to exploring where is the solid ground in detecting which case is significant in its ability to establish a "precedent" and which is not,

Matthew P. Hitt introduces and utilises a number of concepts and ideas. Basing his assertions on the idea of legal importance, M. P. Hitt raises the question how the scale of the legal significance of a specific case relates to its popularity within society and the media and the actual quantity of mentions and references during other cases and processes (jurisprudential influence).

Also, the study by James H. Fowler et al. is another major one related to the evaluation of judgments in terms of their precedent-related significance, which do not intend to explore one specific extraction which must serve as an accurate description of legal relevance of one or another case but review it under the scope of the overall framework of developing a particular judgment. Their perceptive argument is that there is no absolute legal significance or relevance for a previous judicial decision, i.e. the decision stays precedent relevant only until it remains applicable in the context of developing a solution to a case. Thus, the main criterion that helps to measure the legal significance of the previous case is the number of citations in the judicial cases that follow. Such an outlook on the subject matter as that presented by J. H. Fowler et al. may be claimed popular, if not obvious; still, they justify it saying that any reference or citation is "a latent judgment by a judge regarding the relevance of the case for helping to resolve a legal dispute". Concluding the line of argumentation of J. H. Fowler et al., the above strengthens the argument of legal relevance of a particular case being to a large extent a relative variable rather than a constant, as the logic behind all the justifications and decision–making is sensitive, if not vulnerable, to numerous external factors which are important to consider while developing a statement whether a particular judicial decision possesses the precedent power or not.

By employing the extensive examination, which allows for determining a value of a potentially precedent-based case or decision, J. H. Fowler et al. generally found the means of finding an argumentative explanation why a particular case may be legally relevant. Moreover, they also try to investigate the ways that would allow for solving the issues connected with the notion that only the fact of the reference to any judgment does not essentially mean that it serves as a basis for current decision–making, as the citation may be made for other legislative or procedural reasons.

In terms of the development of active application of precedents with the consideration of such characteristics as legal relevance within the states of the continental legal system, Matthias Derlen and Johan Linholm provide one of the most extensive studies. M. Derlen and J. Linholm contribute a lot of their work to classifying the importance of a decision on a case to the opposing parties and the role a decision may play in the course of the history of the development of jurisprudence, and the change it may cause in various legal aspects. They provide their own view on the notion of the significance of a judicial decision. From their perspective, the importance basically stems from whether the judicial decision is valuable as a precedent while emphasising that in order to be considered important or influential from a legal perspective, the decision should create a certain legal constant that other judges would count on and that would be distinguishable from other cases in this essence within a legal framework concerned.

The approach of Mattias Derlen and Johan Lidholn is extremely important for examining and exploring a precedent in the civil law systems and for the comparison with the common law system as well, because outlining the characteristics of an important judicial decision (which will be mentioned later) provides a solid ground for understanding, analysis, and comparison of the de facto influence of a precedent in various states' judicial systems, not limiting it to a quantitative approach. These criteria are: whether the decision is frequently cited in scientific textbooks or not (the opinion in published studies and works reflects the objective significance of the decision), whether the decision covers a lot of aspects within the scope of a particular theme, whether it by itself includes references to previous cases of similar matters, etc.). The opinions of the above-mentioned authors and the introduction of the concept of relevance or importance of judicial decisions shed light on the proper perception of the precedent itself in the functioning of the judiciary within the civil law system.

However, it is very important to note that the references to previous judicial cases and the functions of precedents may change as new decisions and new cases occur constantly, which creates certain dynamics (and the judicial system is sensitive to it), even not mentioning the interference of the courts of higher instance and the effects of horizontal effect. Thus, the influence of cases relevant to a precedent is also a dynamic and relative subject, not only according to the professional opinions but also due to external factors, which change with the continuation of the judicial practice and time.

Holger Spamann et al. conducted an interesting study to find an answer to two questions. Firstly, they wanted to explore whether judges and law practitioners think differently when it comes to interpreting the law in the common and civil law systems. Secondly, whether the judicial decisions are affected by the horizontal effect of the legal precedents. The results proved to provide negative answers to the above-mentioned questions. Of course, in their study they note that some of the effects, excluding their metrics used for answering the above, which are hard to detect, are not considered. They make an important comparison of the influence of a horizontal precedent with the judges' vulnerability to biases, because if the objectiveness of the decision is sensitive to biases and horizontal effect equally, then this depreciates the overall value of the principle of a judicial precedent. Unfortunately, the study showed that the difference between the influence of biases and the horizontal effect of precedents on a decision is insignificant. However, for studying the common law systems, they only considered India and the US, but this fact is of smaller significance, because even though the horizontal effect may be considered lower due to the fact that it is comparable to biases, a lot of lower courts in states with properly functional judicial systems still refer to the precedents established by higher courts, as well their own courts' decisions. This is proved by the case related to same–sex marriages decided by the Supreme Court of the United States. Even the courts whose decisions were contradictory to the decision of the Supreme Court in such cases still obeyed and paid credit to this case as a valuable precedent. However, the relevance of this fact may also be questionable because otherwise the decision of the court may be dismissed. The situation becomes even more confusing

when the hierarchically inferior courts decide on a legal issue never faced before. In such cases, the number of cited precedents may be extremely substantial, sometimes to the extent that it ends up being unclear what the significance a precedent has to the current case. This happened in the case Obergefell v. Hodges, where the amount of citations was more than one hundred. This sheds the different light on the ideas discussed, as it becomes confusing whether the precedent-related value of a particular case is even worth being claimed applicable and relevant. H. Spamann et al. raise an important question regarding modern state of affairs when it comes to classifying the jurisdictions as the common law and civil law systems. In their opinion, a principally new system of classification must be subject to further research and ideological development of legal innovations.

According to Matthias Van Der Haegen, for instance, the fact that a previous judicial decision is cited does not mean that the justification of the referenced case serves as a background for the existent decision; it only means that it is the judge's decision to include it in the case, which may solely be the result of the request of the attorneys to use it as evidence or the result of mere work with the assistant of the judge, etc. However, what actually is a common indicator of the relevance of precedents presented by the authors allows for the analysis of the legally "strong" or important judicial case and decisions which would give the opportunity to reveal the functions and actual mechanisms of interactions with the previous decisions during the judicial process within the non–precedent-based legal systems. Consequently, having the possibility and criteria to determine and find correlations between the important cases would lead to the capability of extensive analysis of the functioning of the judicial system and precedents in both the common and civil law systems.

Summarising the above analysis, from the operationalization of the legal importance and relevance of a particular judicial decision, it is rational to conclude that such a notion as relevance depends largely on the context and dynamics around a particular theme of the judiciary within a state, which is also related to the social changes and the noteworthiness of a decision, among other factors.

4. CONCLUSIONS

A precedent is something that lawyers always address and come across in the context of judicial practice and the system of sources of law. A precedent in the law ensures that the judicial process may be reliably followed, which benefits everyone involved, as it makes the result predictable in all cases, provided that they have the same conditions. This article allows for concluding that basically any well–functioning judicial system requires the application of a precedent, as it provides basis for comparable instances of each case and results in similar verdicts. Otherwise, it suggests that the system is not functioning correctly or is corrupt. Conclusively, a judicial precedent as a phenomenon and as a source of law should be employed and its impact on the judicial process is evident enough regardless of the system.

To a large extent, globalisation has played a huge role in blurring the lines between legal cultures in regard to the judicial precedent and doctrinal functions attributed to it. The slow but steady shift towards a more unified global legal culture is one of the most significant current developments in the evolution of legal systems. There are more and more instances of precedents being used globally and it indubitably transforms the judiciary inside legal cultures. The analysis of various ideas in this article shows a vast space for further research, discussion, and comparison of what a judicial precedent actually represents, especially taking into consideration the obvious instances of its application and transformations that a precedent went through in the civil law system. When the traditional theory declares that a judicial precedent is a source of law in the common law system, the de facto situation is different and it should not be ignored. In any legal system, the judiciary is one of the last instances to transform and it is considered quite insensitive to the temporary events and changes. However, positive dynamics on the legal map are also visible and with enough political will and legal research it is fair to assume that further convergence between the legal systems and the development of a legal precedent as a source of law in the context of legal pluralism will be witnessed even to a larger extent.

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Summary

The purpose of the article is to explore and compare the role of judicial precedents in the system of sources of law in the common law and civil law cultures. The technical and functional features of a precedent are evaluated, as well as its *de jure* and *de facto* influence, with the definition of the relevant factors that have impact on and drive the dynamics of the development of the judicial system. The notions of the precedent value and legal importance are explored and applied for evaluation and classification of the role that a particular judicial decision may play. As a result of the analysis, it is concluded that the variety of determinants, that must be considered in order to evaluate the scope of influence of a judicial decision, is extremely broad and context–dependent. In conclusion, instead of conventional methods of analysis that are accepted in the common law and civil law systems, there is a demand for a principally new system of classification that must be subject to further research and ideological development of legal innovations.

Keywords: civil law, common law, precedent *de facto*, *ratio decidendi*, *jurisprudence constante*

ROLA PRECEDENSU W SYSTEMACH ŹRÓDEŁ PRAWA

Streszczenie

Celem artykułu jest zbadanie oraz porównanie roli precedensów sądowych w systemach źródeł prawa w kulturach prawa precedensowego i prawa stanowionego. Ocenie poddane są techniczne i funkcjonalne cechy precedensu jak również jego wpływ *de jure* i *de facto*, wraz z definicją odpowiednich czynników wpływających na i napędzających dynamikę rozwoju systemu sądowego. Badaniu poddane są pojęcia wartości i znaczenia prawnego precedensu oraz są one zastosowane do oceny i klasyfikacji roli jaką może odegrać konkretna decyzja sądowa. Wynikiem przeprowadzonej analizy jest konkluzja, że asortyment wyznaczników, które muszą być rozważone by ocenić zakres wpływu decyzji sądowej, jest niezwykle szeroki i zależny od kontekstu. Podsumowując, zamiast konwencjonalnych metod analizy przyjętych w systemach prawa precedensowego i prawa stanowionego, istnieje zapotrzebowanie na zupełnie nowy system klasyfikacji, który musi być przedmiotem dalszych badań oraz ideologicznego rozwoju innowacji prawnej.

Słowa kluczowe: prawo stanowione, prawo precedensowe, precedens *de facto*, *ratio decidendi*, *jurisprudence constante*