

# **COURT PRECEDENT AND COURT PRACTICE**

## **AS SOURCES OF LAW**

O. V. Kuzmenko, Candidate of Pedagogical Sciences, Associate Professor  
National Technical University  
"Kharkiv Polytechnic Institute", Kharkiv city

A judicial precedent is a court decision in a specific case, which is binding for the court of the same or a lower instance when deciding all similar cases in the future. The important role of judicial rule-making was already recognized in ancient Egypt, Greece, and Rome. For example, in Ancient Greece, judges relied on previously passed court decisions to resolve trade disputes. Ancient Roman judges followed the practice of their predecessors, in particular, in matters of judicial procedure. Since the 13th century, case law has spread in England and Wales, where it was formed by royal courts. It was assumed that the court has the right to officially formulate the legal norms formed in the legal customs of the country. The famous English jurist and lawyer William Blackstone formulated an important proposition that a judge does not create, but only discovers the law that already exists in society. The general doctrine of judicial precedent as a mandatory source of English law was formed in the second half of the 19th century. It was connected with the official publication of the decisions of higher courts and the formation of a unified centralized system of courts. The basis of judicial precedent is the fact of repetition of certain social relations. This is what determines the conformity of the idea of a precedent to human nature and society's expectations. Judicial precedent is based on the idea that similar cases should be resolved similarly. At the same time, the court decision is fair if it does not differ from the earlier decision, provided that the actual circumstances of the case coincide. The main features of court precedents: they are normative; they are the result of judicial rule-making activity; they are mostly formulated by higher courts; they are binding on lower courts; higher courts are bound by their previous precedents and should not deviate from

them without clear necessity; they are a written source to be published in official publications; they have a casuistic character, that is, they are created as a result of the resolution of individual life situations (it gives rise to a multiplicity of precedents, their certain incoherence). Precedential (normative) significance is not the entire court decision, but its motivational part. This part justifies the answer to the question before the court. It is this part of the court decision that contains a new rule, that is, a rule of precedent law, a kind of judicial standard, which should be followed in the future when solving similar cases. For example, in 2003, the European Court of Human Rights considered the case "Poltoratskyi v. Ukraine". The applicant then stated that he had been sentenced to death and was on "death row" awaiting the execution of the sentence. He was not subjected to physical or mental violence. However, the conditions of waiting for the execution of the sentence were unbearable from a psychological point of view. The applicant complained about the violation of Article 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms. This article provides for the right of everyone to be free from torture, inhuman or degrading treatment or punishment. The European Court of Human Rights came to the conclusion that the absence of the state's intention to humiliate the applicant cannot be a basis for excluding the conclusion that it violated Article 3 of the Convention. In the opinion of the Court, the conditions of detention in which the applicant was kept caused him great mental suffering and degraded his human dignity. Therefore, the Court for the first time formulated the principle that it is possible to recognize as a violation of Article 3 of the mentioned Convention actions that did not have the direct intention of humiliating a person, but actually led to it. In this way, a court precedent was created, which will be the basis for solving similar cases in the future. The totality of court precedents forms the so-called "case law". Judicial precedent is the primary and mandatory source of law in the legal system of common law. Judicial practice is court decisions in specific cases, which contain legal models of uniform multiple application and interpretation of legal norms. Judicial practice is summarized by higher courts. The importance of judicial practice as a source of law becomes

especially noticeable in the legal regulation of relations that are incompletely or inconsistently regulated by legislation. Also – when the courts apply the principles of law and human rights norms. As a rule, case law is not mandatory, but is a secondary source of law. It can provide a persuasive rationale for a court decision, but a reference to case law alone is insufficient. It should be combined with a reference to the relevant regulatory act or other formally binding source of law. In Ukraine, judicial practice was not officially recognized as a source of law for a long time. However, lower courts have always tried to be guided by the practice of higher courts when considering similar cases. Otherwise, their decisions could be overturned in an appeal or cassation procedure. In addition, since Soviet times, there has been a phenomenon of resolutions of plenums of the Supreme Courts of the USSR and the Union Republics as a certain normative reference point for judicial practice. Consequently, the judicial practice of higher courts has always served as a reference point for both lower courts and other law enforcement bodies in Ukraine. In modern Ukraine, judicial practice is increasingly becoming mandatory and becoming a source of law. Thus, Article 17 of the Law of Ukraine "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights" provides that courts apply the practice of the European Court of Human Rights as a source of law. Article 263 of the Civil Procedure Code of Ukraine states that when choosing a rule of law for a disputed legal relationship, the court takes into account the conclusions regarding the application of the relevant rules of law set out in the decisions of the Supreme Court.

## **STUDY OF THE ECONOMIC ESSENCE AND FEATURES OF THE FORMATION OF THE MARKETING POLICY OF THE DISTRIBUTION OF A MODERN ENTERPRISE**

Lesia Marchuk, PhD in economic sciences  
National Technical University  
"Kharkiv Polytechnic Institute", Kharkiv