

## NATIONAL JUDICIAL PRECEDENT AS A SOURCE OF INTERNATIONAL ECONOMIC LAW IN STATES WITH CONTINENTAL LAW SYSTEM

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As a comprehensive legal branch, international economic law includes international and national sources of law. As one of the sources of international economic law is judicial precedent. International judicial precedent is the source of law in states with common and continental legal system. But national judicial precedent can be source of law only in states with common legal system.

**Keywords:** international economic law; sources of law; common law system; continental law system; international judicial precedent; national judicial precedent.

## НАЦИОНАЛЬНЫЙ СУДЕБНЫЙ ПРЕЦЕДЕНТ КАК ИСТОЧНИК МЕЖДУНАРОДНОГО ЭКОНОМИЧЕСКОГО ПРАВА В ГОСУДАРСТВАХ С КОНТИНЕНТАЛЬНОЙ СИСТЕМОЙ ПРАВА

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Как комплексная отрасль права международное экономическое право включает в себя международные и национальные источники права. В качестве одного из источников международного экономического права выступает судебный прецедент. Международный судебный прецедент является источником права в государствах с общей и континентальной правовой системой. Но национальный судебный прецедент может быть источником права только в государствах с единой правовой системой.

**Ключевые слова:** международное экономическое право; источники права; система общего права; система континентального права; международный судебный прецедент; национальный судебный прецедент.

As we know, international economic law is a comprehensive legal sector, which contains both international and domestic legal norms. Judicial precedent, as one of the sources of international economic law. Judicial precedent can be international and national. Among them, international judicial precedent is one of the important sources of international economic law of each country. Judicial

precedent has different meaning in states. So, international and national judicial precedent is the source of law in states with common law system, but in states with continental law system only international judicial precedent can be the source of international economic law [1]. The reason of this situation is the differences between the two legal systems. But in our opinion, it's important to ask the question: «Can national judicial precedent, which is very important part of legal system in states with common legal system, be the part of national legal system in states with continental law system?»

To explore the feasibility of domestic jurisprudence to be considered as a source of international economic law in states with continental law system, it is important to understand the role of domestic jurisprudence in states with continental law system. Although the role of judicial precedent in states with continental law system is extremely limited, it is usually used only in the interpretation of statutory law and is not used as a separate basis for the trial of cases. However, with the development of society, economic prosperity and technology, the jurisprudence system is now gradually recognized by states with continental law system, and the status of judicial precedents has gradually increased in states with continental law system, and judicial precedents play an irreplaceable role in the judicial activities of states with continental law system. The role of judicial precedents in trial activities is usually manifested in four aspects. [2]

The first aspect is the need to take into account the specifics of the individual case. So, written law is characterized by abstraction, and the rapid development of society, social life is constantly changing, in order to make the abstract legal provisions can be accurately applied in the trial activities, usually use judicial precedent to concretize the interpretation of the legal provisions. The second aspect is the legal gaps. The process of making changes and additions to normative legal acts takes time and, accordingly, the law enforcer does not always have the opportunity to make the necessary decision. The third aspect is the alternative function of law, also known as «judge-made law», which is a higher level of the concretization of law and the filling of legal loopholes, the first two ways are the concretization of law and the filling of loopholes in law-making, while the alternative function of law is the creative law-making. The alternative function of law is opportunity of law to play an important role in the trial activity, which, of course, needs to be regulated for judges in the procedure of its application. [3] The fourth aspect is the amending function, which seems to be less powerful than the role of the law substitution function, but in fact it can play a role in the trial activity to modify the written law that does not meet the present requirements, which is significant for the judicial cases in the rapidly developing social life. Of course, while having such

a significant role, we also need to prevent the impact of this modifying function on the written law.

G.A. Vasilevich wrote, that the judge, assessing the likelihood of the development of events, must find the only true and fair decision. It is with this approach that not only the management of powers will be ensured, but also the independence and fairness of court decisions [4].

Thus, we think that national judicial precedent should use how national source of international economic law. However, a good use of jurisprudence has a positive effect of promoting judicial justice, while an irregular use of jurisprudence can jeopardize judicial justice, so it is necessary to regulate the use of jurisprudence in trials in the legal system in order to ensure the justice of judicial activities.

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