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THE DECISION OF THE PLENUM OF THE SUPREME COURT OF THE REPUBLIC OF UZBEKISTAN – A MEANS OF UNIFICATION OF JUDICIAL PRACTICE

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Annotation
The article analyzes several functions of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan. Firstly, the article briefly discusses the unification of judicial practice. It studies how the unification of judicial practice is important for the judicial system. Then it analyzes the theories related to unification of judicial practice.
The purpose of this research is to generalize the theories about plenum decisions and to develop a new theory based on the conclusion obtained as a result. As a result, final purpose of the article is to determine the possible influence of this institution on the independence of the courts.

Keywords: Plenum, Supreme Court, uniformity of judicial practice, court practice, interpretation, application of law.

The need for uniformity of court practice in the Soviet Union was the cause for the creation of the decisions of the Plenum of the Supreme Court. Then from the Soviet era to the present, the goal of the decisions of the Plenum of the Supreme Court has been to ensure accuracy and uniformity in the application of the law. Therefore, it would be useful to examine and analyze the decisions of the Plenum of the Supreme Court from the perspective of uniformity of judicial practice in order to clarify the legal character of the decisions of the Plenum of the Supreme Court. There are many articles dealing with the unification of trial practice and the decisions of the Plenum of the Supreme Court, and most of them emphasize the important role of the decisions of the Plenum of the Supreme Court in the unification of trial practice. In other words, they have a positive view of decisions of the General Assembly as a means of unifying trial practice. The majority of those critical views mainly address the debate as to whether or not the decisions of the Plenum of the Supreme Court are appropriate for unifying trial practice. The following is an introduction to that debate and some discussion of it [1].

First, there are several academic views on the concept of uniformity of court practice. These theories fall into two main groups: (1) Formal Uniformity and (2) Substantive Uniformity. These are (1) formal unification and (2) substantive unification. In (1) formal unification, the Supreme Court forms a certain resolution method for a certain type of case, and other judges resolve the case based on that method. Therefore, the interpretation and application of the law issued by the Supreme Court is the only accurate interpretation and application, and any interpretation and application that differs from it is incorrect. Therefore, a judgment that resolves a case based on a legal position that differs from the Supreme Court's interpretation and application is subject to reversal. If the legal position of the Supreme Court, which is the basis for the unification of judicial practice, violates human rights, judges of lower courts cannot reject that legal position. Such unity of trial practice is contrary to the goals of the judiciary as set forth in the Constitution [2].

Formal interpretation and application of the law without considering its substance is not consistent with the rule of law. Formal application of the law precludes compliance with human rights and legal principles and does not prevent the application of laws that violate rights. Currently, the Supreme Court of the Russian Federation bases the above-mentioned formal approach to the concept of uniformity of judicial practice. When applying a law, judges must assess its legality in terms of legal principles and human rights [3].

In the case of substantive unification, the Supreme Court creates a model for the resolution of cases based on legal principles and statutory law, emphasizing the guarantee of human rights and freedoms. Therefore, unification of judicial practice is necessary to prevent arbitrary activities of judges and decisions that violate human rights. Against the unification of trial practice, it is undesirable to treat it as a policy of the judiciary regarding the application of existing laws [4].

With regard to the unification of court practice, the decisions of the Plenum of the Supreme Court as a means of unifying court practice is highly regarded in academic theory and practice, where the above ideas exist. On the other hand, there is a view that the decisions of the Plenum of the Supreme Court is an inappropriate system for achieving unification of trial practice. We can classify this view into (1) extrinsic and (2) intrinsic issues, depending on the focus of the debate.

According to the extrinsic issue view, the decisions of the Plenum of the Supreme Court are subject to unconstitutional review. If the decisions of the Plenum of the Supreme Court is binding, contesting its legality is important for the prevention of arbitrary activity by judges.

Marshakova emphasizes that the constitutional principle of "independence of judges" is a value that be given more importance than the unity of trial practice guided by the Supreme Court. As noted above, lower court judges cannot correct unjust trial practices unless they take the opportunity to reject the Supreme Court's legal position and make decisions according to their own views.

According to the view of intrinsic problems, problems exist in the institution of the decisions of the Plenum of the Supreme Court themselves. First, the abstract nature of the decisions of the Plenum of the Supreme Court is often the subject of criticism. That is, the Plenum of the Supreme Court does not discuss concrete cases, but abstract discussions of all issues. The Plenum of the Supreme Court that creates abstract norms unrelated to concrete facts, while the Court creates law through interpretation of the law in the hearing of concrete cases.

Bevzenko argues that the decisions of the Plenum of the Supreme Court is a barrier to academic consideration of new solutions by practitioners. Then the failure to describe the legal and political reasons for the explanation in the decisions of the Plenum of the Supreme Court is its major flaw. Anissina should base the unification of court practice on legal positions created through academic rather than administrative methods.

The countries of Eastern and Central Europe are a special region with experience in Western and Soviet law. Then in examining the decisions of the Plenum of the Supreme Court, it seems important to study the previous studies in Eastern and Central Europe. When analyzing those previous studies, it becomes clear that the decisions of the Plenum of the Supreme Court examine from the perspective of an authoritarian approach to law.

A characteristic of the authoritarian argument about law is that the only truth enforces as universal and final. It is the main character of authoritarian argument to assert a social monopoly over and communicate down the meaning of political and legal language as opposed to establishing its meaning.

Zdenek Kuhn takes the authoritarian argument about law as a starting point and argues for the concept of an authoritarian judicial argument Zdenek Kuhn explains the concept as follows. "In the authoritarian judicial argument there is no diversity of views. The "accurate" answer achieves by "one way" means and bases on duress and threat. The parties to the decision cannot participate in the elucidation of the 'exact' solution. In other words, the parties to the judgment are not the subjects of the decision, but the objects of authoritarian decision-making. In authoritarian argumentation, legal meaning is determined from above, and the existence of all

disputes, questions and legitimate differences about the law and the creation of law from below are denied".

Thus, we can conclude that the decisions of the Plenum of the Supreme Court play a key role in the unification of judicial practice. Then lower courts can use the decisions of the Plenum of the Supreme Court as an official interpretation of law in their decision.

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