

**SUPREME COURTS' CASE LAW AS A SOURCE OF LAW IN EUROPE:
A COMPARATIVE STUDY IN UKRAINIAN PERSPECTIVE****СУДОВА ПРАКТИКА ВЕРХОВНИХ СУДІВ ЯК ДЖЕРЕЛО ПРАВА В ЄВРОПІ:
ПОРІВНЯЛЬНЕ ДОСЛІДЖЕННЯ В УКРАЇНСЬКІЙ ПЕРСПЕКТИВІ**

Skidan N.V., PhD Student at the Department of Criminal Justice
Yaroslav Mudryi National Law University,
Visiting Researcher

Institute of Criminal Law, Criminal Procedure, and International Criminal Law of University of Liege

Case law is not recognised as an official source of law in Ukraine, as it is in most countries in the Romano-Germanic legal family, but the application of the law demonstrates the reverse. The aim of this scientific paper is to discover an acceptable mechanism for legal regulation and enforcement of Supreme Court case law as a source of law in the context of Ukraine's eventual European Union membership. To achieve this, the experiences of member states such as Belgium, the Netherlands, and the Czech Republic, all of which are part of the same legal family as Ukraine, were reviewed. The paper also focused on the Cour de Cassation / Hof van Cassatie in Belgium, the Hoge Raad in the Netherlands, and the Nejvyšší Soud in the Czech Republic in order to select the most acceptable approach for enhancing the national Supreme Court.

The review of the legislation of all the countries that were chosen validated the concept that the supreme courts, in addition to dealing with justice, also universalise the country's case law. However, the legal instruments in the possession of supreme court justices vary greatly depending on the peculiarities of each state's domestic legislation.

Following the study, the implementation of the Belgian experience appears to be difficult to apply in Ukraine, given the internal and unique features of its legal system, as opposed to the Czech Republic and the Netherlands, whose approaches have particular advantages and can thus serve as a guide in developing Ukraine's own model on their basis.

In the author's view, the Supreme Court's case law is a source of law as a phenomenon, but not all of its decisions should be regarded as such. It is vital to distinguish the most important decisions from the others and publish them separately (for example, in a special journal, as in the Czech Republic or the Netherlands). This way, it would become clear which Supreme Court decisions are a source of the law. Furthermore, this approach will assure that they have such status legally.

Key words: case law, source of law, law application, Supreme Court, Ukraine, Belgium, the Netherlands, the Czech Republic.

Судова практика не визнається офіційним джерелом права в Україні, так само як і в більшості країн романо-германської правової сім'ї, але правозастовча практика свідчить про протилежне. Метою наукової статті є пошук прийнятної механізми правового врегулювання та застосування судової практики Верховного Суду як джерела права в контексті можливого членства України в Європейському Союзі. Для цього було проаналізовано досвід таких країн-членів, як Бельгія, Нідерланди та Чеська Республіка, які входять до тієї ж правової сім'ї, що й Україна. Для обрання найбільш прийнятної концепції удосконалення національного Верховного Суду фокус статті було звернено також і на Cour de Cassation / Hof van Cassatie у Бельгії, Hoge Raad у Нідерландах, а також Nejvyšší Soud у Чехії.

Дослідження законодавства усіх обраних країн підтвердило тезу про те, що верховні суди, окрім здійснення правосуддя, також виконують і функцію щодо узагальнення судової практики в країні. Однак, правові механізми, якими керуються судді верховних судів, суттєво відрізняються в залежності від особливостей внутрішнього законодавства кожної з держав.

За результатами проведеного дослідження, імплементація бельгійського досвіду видається складною для застосування в Україні з огляду на внутрішні та унікальні особливості її правової системи, на відміну від Чехії та Нідерландів, чиї підходи мають певні переваги, а отже, можуть слугувати орієнтиром у розробці власної моделі для України на їхній основі.

На думку авторки, судова практика Верховного Суду є джерелом права як явище, але не всі його рішення слід вважати такими. Тому вкрай важливо виокремлювати найважливіші рішення з-поміж інших і публікувати їх окремо (наприклад, у спеціальному журналі, як у Чехії чи Нідерландах). Адже таким чином стане очевидно, які саме рішення Верховного Суду є джерелом права. Крім того, зазначений підхід гарантуватиме, що вони мають цей статус юридично.

Ключові слова: судова практика, джерело права, правозастосування, Верховний Суд, Україна, Бельгія, Нідерланди, Чехія.

Introduction. One of Ukraine's most significant legal dilemmas today is whether the Supreme Court case law is a source of law. This issue, which has been an enduring topic of debate, drives us to argue that Ukraine, as with all countries in the Romano-Germanic legal family, should have its own distinct approach to incorporating such a source of law into the legal system.

The issue at hand involves two mutually exclusive viewpoints. On the one hand, Ukrainian case law is not a legally recognised source, and case law is referred to as a secondary source of law in this context. On the other hand, some scholars and practising lawyers argue that the Supreme Court in Ukraine already influences the enforcement of legal norms and even 'creates' new rules through its decisions.

Understanding the complexities of the Supreme Court's case law is critical if Ukraine is to move on from its candidate status, which the European Parliament granted on 23 June 2022, to become a full member state of the European Union (EU) [1].

This paper aims to determine whether Ukraine can draw inspiration from the role Supreme Courts in other EU member states play to enhance the existing national model and ensure

its survival in the European space. While discussing the role of case law in Ukraine, the paper also seeks to give European readers a glimpse into the Ukrainian legal system in general.

Considering that the term 'case law' is commonly used to refer to a wide range of subject matters, for the purposes of this research, it can be defined as 'for the law of a particular subject as evidenced or formed by the adjudged cases' [2]. Although it is significant to mention that 'case law' is also 'a professional name for the aggregate of reported cases as forming a body of jurisprudence' [2]. However, to avoid any uncertainty regarding the last definition, the term 'jurisprudence' will be used for that.

Methods. To achieve that, the paper draws on Ukrainian and European legislation and scholarly literature. The core method for this study is comparative law since it explores the significance and role of Supreme Court case law in establishing all jurisprudence in three EU Member States and Ukraine. A comparison of the legal systems of Belgium, the Netherlands, and the Czech Republic was chosen for several reasons.

The first and most evident is that the legal systems of all selected countries belong to the continental legal family. The

second is that likewise to Ukraine, case law in Belgium, the Netherlands, and the Czech Republic is not acknowledged as a source of law at the legislative level, but it has a substantial impact on the settlement of similar situations, and lower courts follow it. The third is that, according to the legal provisions of all of the aforementioned countries, the supreme courts endeavour to guarantee that the law is uniform and consistent, while higher court rulings serve as a reference.

The induction method was used to arrive at the study's final conclusions. Initially, it was used to examine the legal frameworks of the selected EU nations, as well as certain samples of case law from their supreme courts and scholars' assumptions on the mentioned theme. The Ukrainian legal system was then examined using the same methods, allowing us to form conclusions on which of the comparative countries' models has the most advantages to serve as an example for the national one. Additionally, by comparing the conceptions of case law inherent in the observed countries as well as employing analysis and synthesis methodologies, this paper reached conclusions about how to solve this problem in Ukraine.

Results and Discussion. When comparing common and civil law systems, researchers note that judicial precedent¹ in the Romano-Germanic legal family refers to the institution of established judicial practice (*jurisprudence constante*), which is used by courts in continental law countries to enact laws [3, p. 355]. Without a doubt, this doctrine is distinguished by self-sufficiency, a precedential or normative-precedent character, and a low level of systematicity [4, p. 39].

In spite of the fact that this approach is more universal and general for all countries of continental law, each state has unique models for nominating and defining the legal phenomenon under consideration, taking into account its internal division (Romance and Germanic groups, as a matter of course) and peculiarities.

Given the study's goal and objectives, it will be represented in the following sections: I. The significance of supreme court case law in the legal systems of several EU member states; II. Prospects for enhancing Ukraine's legal system based on the models of some members of the EU.

I. The significance of supreme court case law in the legal systems of several EU member states

A. The Kingdom of Belgium

As is widely spread in most countries, the challenge of cassation is an extraordinary remedy. Consequently, it is not an issue of a third degree of jurisdiction, but of a procedure of repairing illegalities: its objective is thus not to determine the merits of the conflicts, but to sanction judgements or rulings to ensure the respect for the law and some jurisprudence uniformity [5, p. 267].

National legislation, in particular, confirms such conclusions. According to the Art. 147 of the Coordinated Constitution of Belgium and Art. 608 of the Judicial Code the Supreme Court (*Cour de Cassation / Hof van Cassatie*) has no competences over the substances of the case [6]. As a result, its competence is precisely limited, and its primary task is to ensure that the law has been correctly applied. As with other courts, the Court of Cassation cannot establish general rules [7, p. 12].

Besides, scholars have stated that 'in verifying the legality of a decision, three elements are considered. These are (1) the legal text; (2) the preparatory works; and (3) the previous case law of the Court of Cassation. In this regard, it should be noted the Court of Cassation cannot be regarded as a "court of third instance". In principle, therefore, when

a judgement or a decision is annulled, the Court of Cassation restricts itself to referring the case back to a court of the fact of the same rank as the court whose decision has been quashed' (Art. 1110 of the Judicial Code of Belgium) [7, p. 12–13; 8].

Equally important is that when a case is referred to the Supreme Court, the Judicial Code provides two options. In the first example, the court rejects the application, and the previous court decision stands. When the Supreme Court rules in favour of the applicant, it reverses the contested decision and remands the case to the same level of court that rendered the contested decision. And there are two options here as well: the contested decision is entirely or partially void. The Supreme Court's decision is not binding on this court. However, if the Supreme Court overturns this court's decision on the same grounds, the court to which the case is subsequently remanded will be bound by the Supreme Court's decision on this point (Art. 1120 of the Judicial Code of Belgium) [8].

'Other courts are not bound by the decisions of the Supreme Court, but these decisions have a significant authoritative value, which means that lower courts generally tend to follow the approach taken by the Supreme Court' [9, p. 6]. This leads to the conclusion, which is noted in science, that the Court of Cassation also serves another purpose, which is to fulfil a normative task in the sense that its mission is to develop a single coherent body of law and ensure its proper interpretation and application. The issues before the Court of Cassation allow it to refine and classify the points of law in their proper order, with the goal of achieving the greatest possible unity and uniformity in jurisprudence and once achieved, ensuring legal certainty [7, p. 12].

The straightforward activity of the Belgian Supreme Court is a notable example of its role and relevance. For example, numerous points of control over the regularity of the investigative procedure are influenced by its judgments.

The basic rule is defined by Article 235bis of the country's Criminal Procedure Code, but it was the Supreme Court that explicitly stated that the control of the regularity of the instruction, on the requisition of the public prosecutor or at the request of one of the parties, is only mandatory for the indictment division if the main request, to which the procedure under Article 235bis is added, is admissible [10]. Furthermore, the Supreme Court states that Article 235bis does not permit direct reference to the indictment chamber during the investigation for the annulment of an illegal act or the control of the procedure's regularity [11]. Even if the material is illegally seized, the indictment chamber may exercise this control *ex officio*. Hence, it is a faculty option, not a requirement [12].

There are other court decisions on this matter, but I merely want to emphasise that the Supreme Court formulates the practise of considering cases involving certain problematic or contentious aspects in specific fields, as well as the interpretation and specification of legislative provisions, and sometimes fills them with new content.

To put it in a nutshell, the case law of the Belgian Supreme Court is a source of law that establishes the axis of addressing similar cases, and so is a source of law.

In the research on the phenomenon of overruling as practised by both the Belgian Court of cassation and the Appellate Committee of the House of Lords, Belgian scientist Isabelle Rorive casts doubt on the cogency of the fact that precedent is one of the most significant distinctions between common law and civil law systems. 'The Belgian and English systems exhibit a very similar jurisprudence with respect to departure from existing case law as practised at the highest level in the judiciary', she believes. In other words, she concludes that this approach puts into question the appearance that formal definitions account for the difference in attitude toward precedent between the two countries, and more broadly between common law and civil law systems, while not denying the existence of a distinct legal culture [13, p. 321].

¹ In this case, the term 'judicial precedent' is used in a comparative legal context, and the Anglo-Saxon legal family's equivalent is 'jurisprudence constant'. This legal phenomenon, in my opinion, cannot be designated as 'judicial precedent', 'legal precedent', or simply 'precedent' in countries belonging to the Romano-Germanic legal family. These terms can only be used in the context of 'classical' precedent, which is only common law, so terminology should be clear and consistent to avoid confusion.

From my point of view, there are no ‘pure’ legal systems in essence, by reason of their convergence has become a feature of modern legal reality. Then again, the separation into legal families may appear conditional in this context, although it is difficult to agree with. Therefore, to get a more reliable conclusion, let us continue with the review of the following country.

B. The Kingdom of the Netherlands

Criminal offences in the Netherlands are dealt with by three levels of courts, the highest of which is the Supreme Court (*Hoge Raad*) [14, p. 55].

Overall, as stated in Art. 79 of the Judiciary Organisation Act of the Netherlands this court follows the classic model of all Supreme Courts in that it does not consider cases of fact but only checks the correctness of lower courts’ application of the law, thus serving as a court of cassation [15]. Nevertheless, there are some exceptions in which the Supreme Court may serve as both the first and final instance in certain types of cases. Articles 76 and 77 of the Judiciary Organisation Act define these cases, which include serious and minor public office offences committed by members of the States General, ministers, and state secretaries, as well as jurisdictional disputes between bodies mentioned in Art. 77 [15]. As follows, I strongly feel it is ample evidence that such powers exceed the authority of most Supreme Courts in other states, distinguishing the Netherlands.

Equally, in his investigation of the Dutch Code of Criminal Procedure, Prof. Mr P.J.P. Tak claims that the Code is determined by Supreme Court case law [14, p. 31]. Indeed, scientists get such outcomes in the majority of Roman-German legal systems, because the Supreme Court currently widely becomes the ‘creators of law’ (in a broad sense). As a result, their legal positions are increasingly being implemented into legislation, giving them legitimacy.

Nonetheless, another duty of the Dutch Supreme Court that is not explicitly stated in state statute but exists is of particular importance in the context of this study. So, lower courts, which are independent and not obligated to accept the Supreme Court’s decision, do so because the Supreme Court rarely deviates from previous judgements and gives conclusions of principle on criminal law matters [14, p. 58–59; 16, p. 13].

In my opinion, there is also one interesting fact in the Dutch system that is relevant to this research. Lower court case law is published bi-monthly in the periodical *Nederlandse Jurisprudentie Feitenrechtspraak Strafzaken*, while Supreme Court rulings are published weekly in the periodical *Nederlandse Jurisprudentie*. Besides that, criminal case law abstracts are published in the *Nieuwsbrief Strafrecht* [14, p. 103].

Throughout my interpretation, the fact that Supreme Court rulings in the Netherlands are published more frequently than lower court judgements is another piece of evidence that Supreme Court case law has a special and important significance: it greatly influences the development of the country’s entire jurisprudence and determines its vector. Thus, they are released more frequently to inform both lower court judges and other participants in the process.

Additionally, a concrete example from the court’s practice is the best proof of all the aforementioned theses. For instance, in euthanasia cases, the Supreme Court has played a crucial role. Two of its rulings, along with one from the Court of Appeal, established new approaches for the legal shaping of this topic throughout the country: *Schoonheim* (Supreme Court, 1984) [17] and *Chabot* (Supreme Court, 1994) [18].

First of all, the Supreme Court clarified the meaning of the legislative construction ‘taking another person’s life’ in the *Schoonheim case*, as well as resolving a contradiction generated by special legal terms in the Dutch language. In addition, it handled another terminological issue produced by a prior Supreme Court decision, as well as determining what conditions should be considered in cases of this nature [17].

Further, the Supreme Court has ruled in the *Chabot case* when euthanasia, notwithstanding the prohibitions were present at that moment, can be considered justified. Furthermore, the justifiability of assisting with suicide in the event of non-somatic suffering and a patient who is not in the final phase was evaluated separately. Another issue was determining if the request was voluntary in the case of a psychiatric patient, and the medical disciplinary proceedings [18].

After all, these are not the only rulings of the Dutch Supreme Court about the legal regulation of euthanasia issues; nonetheless, as several scientists have noticed, the judges of this court demonstrate genuine inventiveness in dealing with the problem of medical behaviour that shortens life [19, p. 321].

Hence, in the case of the Netherlands, we have once again demonstrated that even within the same legal family, each country has its own peculiarities. On the one hand, it preserves and reinforces each state’s individuality and distinguishes it from the others; on the other hand, it hampers processes of unification and approximation of their legal systems, which is sometimes essential, particularly within the framework of a union such as the EU.

C. The Czech Republic

Evidently, the Czech Republic also has a Supreme Court named the *Nejvyšší Soud*, which is ‘the highest judicial body in matters that fall within the jurisdiction of courts, with the exception of matters that come under the jurisdiction of the Constitutional Court or the Supreme Administrative Court’ (Art. 92 of the Constitution of the Czech Republic) [20].

Noticeable that the Czech legislation provides for the Supreme Court to examine the case in two ways.

Firstly, it hears extraordinary appeals on final appellate rulings from regional and high courts. An exceptional appeal should only address legal problems. Secondly, in criminal proceedings before the Supreme Court, there is a special remedy known as a complaint of illegality. Only the Minister of Justice has the authority to seek this extraordinary remedy before the Supreme Court; its applicability is limited to major procedural flaws that may have resulted in the illegality of an (otherwise final) judgement pursuant to § 266 of the Code of Criminal Procedure of the Czech Republic [21].

In fact, the Supreme Court of the Czech Republic, like all other courts in the continental legal family, possesses standard powers, such as a court of cassation, as well as unique powers that are unique to it.

Nevertheless, the focus of this study is on the impact of the Supreme Court and its case law, and it is crucial to recognise in this context that the Supreme Court’s role is most properly and eloquently articulated on its website, where it is mentioned that ‘(it) plays a vital role in unifying case law. It achieves this by deciding on extraordinary appeals and issuing opinions on a uniform interpretation of the law’ [22].

Furthermore, this thesis is also supported by scientists who argue that there is universal consensus in the Czech legal community that judicial rulings of apex courts (*meaning the Supreme Court*²) are argumentatively binding. As they stated, this arises from the concept of legal certainty, which states that a person has the right to have her issues adjudicated in the same manner as past similar cases. Actually, court decisions are widely researched and used for legal argumentation by judges, attorneys, and students alike because of this rationale. The outcome of apex court decision-making is used as a source of legal knowledge by scholars and academics [23, p. 170–191].

As in the case of the Netherlands, it is worth emphasising that in the Czech Republic, there are peculiarities in the publication of Supreme Court decisions that, in my opinion, demonstrate the fact that case law is of critical importance and, as such, is the source of law. As a result, the most important Supreme

² Emphasis added.

Court rulings, as well as the views of the Supreme Court's Divisions or Plenary Sessions, are published in the Collection of Supreme Court Decisions and Standpoints (*Sbírka soudních rozhodnutí a stanovisek*) [24; 22].

Nevertheless, as some scholars point out, because the judgements of the highest courts (including the Supreme Court) are published on the web pages of the relevant courts or in commercial legal information databases, access to their texts can be difficult. This causes delays and higher costs. The lack of an inter-court standard for the data format in which courts send their judgements exacerbates the problem. Furthermore, courts' databases usually lack adequate documentation [25, p. 1].

Indeed, these are highly fascinating and essential concerns within the context of a wider study, but in this project, I merely want to point out that there are no 'prepared and optimum' samples that can be easily adopted. First and foremost, it should be noted that the importance of Supreme Court rulings is also underlined by the fact that they are published separately in a special collection and are preliminarily selected. This means that only the most important and crucial decisions are included in such compilations. As a result, such exclusivity enables the establishment of case law in the state while also requiring lower to take into account Supreme Court decisions when establishing their own.

The singularity of the Czech experience, however, does not end there. In effect, it's concerned with a special instrument handled by Czech highest courts (for this research, *just the Supreme Court*³ – dealing with all other civil and criminal proceedings), that a so unifying opinion.

As is well known, unifying opinions are abstract interpretations of law given without any actual contact with one concrete case. In this regard, Terezie Smejkalová highlights that these opinions assume that lower court case law on similar issues is not consistent and that lower courts interpret the same legislation or scenario differently. The goal of the high court in this hypothetical situation is to determine which of the developing plausible interpretations is correct and should be implemented by the lower courts accordingly. Although these opinions are not officially binding, they have an impact on lower court decision-making since they show how the supreme courts will be determined in the future. So, lower courts tend to adhere uncritically to these views (and supreme courts' case law in general) to avoid overruling their rulings [26, p. 1–2].

Vitaly to remark that this, in essence, unique Czech experience has a plethora of advantages, and borrowing it can be hugely beneficial for many countries in the Romano-Germanic legal family. The bottom line is that 'work for the future' is his most significant and valuable accomplishment. This approach, I honestly believe, can fully unify the entire jurisprudence within the country, ensuring its unity.

II. Prospects for enhancing Ukraine's legal system based on the models of some members of the EU

A. Ukraine

As the legislative establishment of the status of the superior courts by the Supreme Court is common in states with continental law and fully fits into its general concept, Ukraine does not differ from the majority of countries in this legal family (Art. 125 s. 3 of the Constitution of Ukraine [27]; Art. 17 s. 2 and Art. 36 s. 1 of the Law of Ukraine 'On the Judiciary and the Status of Judges' [28]). Furthermore, being the highest court in the Ukrainian judicial system, the Supreme Court protects jurisprudence's stability and uniformity in accordance with procedural law (Art. 36 s. 1 and s. 2 subss. 2, 6, 7 of the Law of Ukraine 'On the Judiciary and the Status of Judges') [28].

Considering the provisions of Section 5 of Article 434¹ of Ukraine's Criminal Procedure Code (CCP), it is feasible to reach an over-solid conclusion that not just

the Supreme Court, but precisely its Grand Chamber, is in charge of the formation of a final unified jurisprudence, since chambers or joint chambers may further transfer criminal proceedings to it for this purpose. Furthermore, there is one vital additional condition: they conclude that the case contains an extraordinary legal difficulty, which is why it is transferred, as this is the only opportunity to handle it, along with ensuring the development of law in general and establishing unified jurisprudence [29].

Conversely, if this Code is interpreted broadly, including other sections of the cited article, the foregoing thesis does not appear to be as unambiguous, as various challenges surface.

Firstly, it is possible to conclude that both chambers and joint chambers create case law, but not ultimate (this right belongs only to the Grand Chamber) (Art. 434¹ s. 1 of the CCP) [29]. Secondly, they may amend their internal case law within the bounds of each chamber or united chamber (Art. 434¹ ss. 1, 2 of the CCP) [29]. Thirdly, if the chambers or united chambers decide to depart from the conclusion regarding the application of the legal rule (norm) in similar legal circumstances set out in a previously adopted decision of another court of cassation's panel of judges, chamber, or united chamber, they may appeal to the Grand Chamber (Art. 434¹ s. 3 of the CCP) [29]. Fourthly, they come to the Grand Chamber when they consider it necessary to deviate from the Grand Chamber's previously approved decision concerning how to apply the legal rule (norm) in similar legal circumstances (Art. 434¹ s. 4 of the CCP) [29].

As O. Shylo and N. Glynska aptly pointed out in their comments on this article of the Code, the legislator has thus established a particular hierarchy of Supreme Court legal positions that must be observed in law enforcement [30, p. 136].

In my assertion, the procedure, while thoroughly explained, is inherently complex, raising questions such as: Are all Supreme Court decisions a source of law? If not, which ones (decisions of the chamber, joint chamber, or Grand Chamber) are they? What is the decision's content as a source of law?

It is plain that these and other issues are now entirely within the purview of the legislator, but within the scope of this project, and regarding the work performed above, I intend to offer some of my own thoughts⁴.

B. Improvement of the national model

Hence, within the context of the indicated topic, which evolved throughout the research, the unifying element of the Netherlands and the Czech Republic is a specific mechanism for publishing Supreme Court rulings, which separates them from others and backs up their distinctive status. However, when comparing the analysed models, I truly believe they are essentially similar: periodic publication of decisions in a separate collection. Notwithstanding, Czech is best suitable because they are deliberately picked for publishing specifically as system-forming, and so they acquire the sense of legal sources. Thus, this legitimises them, and the most essential thing is that they are easier to detect and identify for lower-level judges and all participants in the process. Additionally, this system is enhanced by a mechanism known as the phenomenon of unifying opinions, which makes it more perfect and future-oriented.

To my mind, the Supreme Court's case law (as a legal phenomenon in general) is the source of Ukrainian criminal procedural law, but not all its decisions fall into this category. As a result, it is necessary to extract the most important judgments from their complete array so that they can take the shape of a source of law defined as case law [31, p. 59-60].

Assuming this challenge, the appropriate methods to separate them and, as a result, legitimate them as sources of law is to publish the most important decisions in a special journal.

⁴ As I previously indicated, I prefer to focus my attention on the Dutch and Czech experiences because the Belgian one is more convoluted and distant, as Belgium's legal system, despite being continental, leans toward common law.

³ Emphasis added.

Conclusion and Future Work. To summarise, although not being explicitly recognised as such, case law is a source of law in all the countries surveyed, including Ukraine. This finding is supported by objective reality, as outlined by jurisprudence in similar circumstances in each of the states. Meanwhile, certain countries, such as the Czech Republic, have unique legal institutions that enhance this concept through legislation. In terms of incorporating components from other national legal systems, the Czech Republic, in my opinion, is the most relevant for Ukraine.

The final additional argument that appears compelling throughout the examination of the benefit of the Czech approach is as follows. According to M. Bobek, ‘in the Czech Republic,..., there is just one purpose of a grand chamber within a supreme court: to integrate the chambers’ different case law’ [32, p. 523]. The aforementioned notion and approach, in fact, exist in Ukrainian reality. Consequently, the subject at hand is particularly fascinating from a Ukrainian perspective and should be explored more in subsequent research.

As a logical consequence, further work to discover particular methods for the introduction of European techniques seems potential. However, it is essential to work it out carefully, bearing in mind the uniqueness inherent in Ukraine’s legal system as well as the new expectations placed on it as a candidate country for membership in the European Union. Besides, the subject of judicial law-making as a distinct legal phenomenon, and even one of remarkable importance, since that case law is a source of law, is of tremendous importance to me.

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