



Journal Website:  
<https://theusajournals.com/index.php/ijlc>

Copyright: Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

## SOME ASPECTS OF LEGAL DEVELOPMENT OF THE COUNTRIES OF CENTRAL ASIA

**Submission Date:** January 31, 2024, **Accepted Date:** February 05, 2024,

**Published Date:** February 10, 2024

**Crossref doi:** <https://doi.org/10.37547/ijlc/Volume04Issue02-03>

**Akhmedshaeva Mavluda Akhatovna**

Doctor of science in law, Professor, Department of Theory of State and Law, Tashkent State University of Law, Uzbekistan

### ABSTRACT

The article analyzes and compares the legal developments of the countries of Central Asia in the context of digitalization of all aspects of public life, including the legal sphere.

It is noted that the judicial system of these countries is developing along the same vector towards the creation of a truly independent judicial system, which does not exclude the presence of certain aspects in development, in particular the institution of jury trial in Kazakhstan, attempts to create such in Kyrgyzstan, etc. or those common and distinctive features that took place in the systems of sources of law in these countries regarding the status of decisions of the Supreme Courts. The article also notes those trends in the legal development of these countries, such as the influence of English law and its application in the field of international cooperation, more precisely in the field of business and commerce.

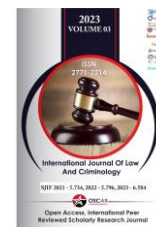
### KEYWORDS

Central Asia, region, legal development, system of law, legal system, sources of law, judicial system, jury trial, status of decisions of higher courts, English law, influence of English law.

### INTRODUCTION

In this article, under the trends of regional development of law, we understand the main

directions of development of modern law in the space occupied by Kazakhstan, Uzbekistan, Turkmenistan, Tajikistan and Kyrgyzstan. Here the question may arise



why it is the law of these states that is analyzed separately from the development of the world legal field. It must be emphasized that there are sufficient grounds to assert that these countries have many common aspects of development that serve to unite them rather than divide them. The commonality of historical development, religion, culture, customs, mentality of these countries, and the territorial region in which they are located, are the basis for uniting these countries into a separate group.

## **MAIN PART**

Currently, in the context of all-round digitalization not only of the economy, but also of all spheres of public life, a certain scientific and practical interest is the analysis of the development of law in the countries of the Central Asian region, as part of the global legal field in general, as well as an important part of the post-Soviet legal space, occupied by the CIS countries.

Since the need to study national legal systems, as M.N. Marchenko notes, “is determined not only by the desire to expand the traditional legal horizons, limited, as a general rule, only by the circle of certain national legal problems, but also by the quite natural need of researchers for a deeper and more versatile study their own legal systems through the prism of other legal systems.”[1].

Is there any need to add to the above that this is not only a requirement of modern legal studies, but also a call of the times. After all, as never before, universal global and national development are interconnected in all spheres of public life, not only in science, but also in legal studies.

In this regard, we cannot but join the opinion of the well-known legal theorist S.S. Alekseev that the national limitations of legal knowledge within a given country, its isolation on purely national positivist

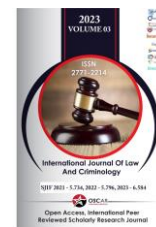
material, with all its importance for every lawyer, are ultimately fatal for jurisprudence as a true science [2].

In view of the foregoing, we consider it necessary and useful to attempt to analyze the development of law in the countries of the above-mentioned region, their relationship with each other, on the one hand, with international and European law, on the other hand.

The constitutional development of these states in the transitional period deserves special attention. In the post-Soviet era, at the beginning of independence, these states faced (arose) the vital question of ways of further development. At that extremely difficult time, they chose the path of democratic development. But everyone knows that democracy is not formed by desire alone. To do this, the political, socio-economic and spiritual foundations of society must mature.

Building their state-legal development at the initial stage of their independence, the Central Asian countries were based both on their national experience of statehood, as well as on the state-legal experience of developed countries, which was reflected in the Constitutions they adopted.

As is known, the legal system of the states of Central Asia is close in its parameters to the Romano-Germanic legal family. Consequently, the main source in this legal family is the written law, but not judges who only apply law to a specific case, not creating it themselves. And the decisions of the Plenums of the Supreme Court are also aimed at ensuring that the relevant norms are applied by the courts in an appropriate manner. At the same time, although the legal systems of the countries of this region are close to the Romano-Germanic legal family, today, in the context of globalization, this legal space cannot be called a zone free from the influence of the Anglo-Saxon legal family.



We can observe the influence of this legal family, especially in the area of business and investment. Based on the experience of the Astana Financial and Business Center, similar to the experience of Singapore, Hong Kong and Dubai, where English law is applied for foreign investors, and also bearing in mind the possibility of applying English law in Uzbekistan, it can be argued that this process appears before us as a development trend rights in the region.

Continuing reflections on the trends in the development of regional law, it is necessary to state that the legal development of the region is not free from the influence of trends in the development of European law. For example, if we take the trend of increasing the role of judicial decisions in the Romano-Germanic legal system or the trend of the influence of English law on the Romano-Germanic legal family, then we can observe that these trends go beyond the EU, affecting, among other things, the legal systems of countries Central Asia.

It should be noted that in the domestic legal literature there are also different approaches to the legal nature of the decisions of the Plenum of the Supreme Court. The authors of these approaches base their vision on the fact that “Judicial acts that have entered into force are binding on all state bodies, public associations, enterprises, institutions and organizations, officials, citizens and are subject to execution throughout the territory of the Republic of Uzbekistan.

Failure to comply with a judicial act entails liability established by law”[3]. For example, Doctor of Law F.F. Mukhitdinova, recognizes the legal nature of the decisions of the Plenum of the Supreme Court, and considers it necessary to enshrine them in legislation. According to the scientist, the courts, in addition to law enforcement, certainly carry out a law-making function [4].

This scientific approach is also typical of the legal system of other states in the region. We can observe that in Kazakhstan a peculiar practice has developed on this issue. So, academician of the Academy of Sciences of Kazakhstan R. Maidan Suleymanov writes: “Although the legal nature of the decisions of the Constitutional Court and the Plenums of the Supreme Court in Russian Federation is still being discussed - whether they are normative legal acts or precedents - this issue is resolved at the constitutional level in Kazakhstan. Decisions of the Constitutional Council and normative resolutions of the Supreme Court of the Republic of Kazakhstan are binding normative legal acts. [5].

It should be noted that although judicial decisions, especially decisions of the Plenum of the Supreme Court, are de facto binding on the respective courts, it is still difficult to consider them as rules of law, since they are inherently law enforcement in nature.

They do not create new rules, they are guidelines aimed at ensuring the correct application of the relevant norms in practice. As Professor M.N. Marchenko noted: “Unlike orders, decrees and orders on specific issues, a legal norm is addressed not to an individual, but to a circle of people. A legal norm continues to operate after its implementation in social relations and human behavior. [6].

Thus, although the decisions of the Plenum of the Supreme Court have some formal features of a norm of law, such as general obligatoriness and an expression of the will of the state, they cannot be considered a norm of law. Since these decisions do not create new rules of conduct, they only aim to ensure the effective application of existing norms of law. So, the realities of today's judicial practice in relation to decisions of higher courts. Considering the peculiarities of the development of law at the regional level, it

seems necessary to pay attention to the discussions that the decisions of the Supreme Court have a precedent character to one degree or another.

In the scientific literature of the CIS, including among the scientists of the region, there is a discussion about the precedent nature of decisions of higher courts of the supervisory instance, focusing on the question of whether these decisions are precedents or normative legal acts. Here it seems not superfluous to recall that this issue is not only scientific and theoretical, but also practical. It should be recalled that several decades ago, the decisions of the Presidium of the Supreme Arbitration Court of the Russian Federation gradually became de facto binding on lower courts when considering cases of the same type.

This circumstance was confirmed by the Constitutional Court in 2010, and was also reflected to a certain extent by the administrative code of procedure and the civil procedural code of the Russian Federation[7].

At this point, attention should be paid to the fact that during the aforementioned period, the Supreme Arbitration Court (which operated until 2014, and then became part of the Supreme Court) employed highly qualified scientists, judges with extensive experience, whose decisions were the most optimal solution to the dispute, and it seems that this circumstance may have played an important role in the gradual acquisition of the precedent nature of the decisions of the above court.

And therefore, it is quite logical that the lower courts took these decisions as a basis, a model for their decisions.

In this regard, the question of how things stand in the legal science and practice of the countries of the region on this important task is interesting. Take, for example, the solution of this issue in Kazakhstan, then we can

see the presence of sufficient certainty. According to academician M. Suleimanov, in Kazakhstan the decisions of the Constitutional Court and the Supreme Court are binding, but cannot be a precedent. At the same time, the aforementioned author does not exclude such a possibility in the future: “decisions of the Supreme Court in specific cases should be gradually transformed into standard judgments of other courts of Kazakhstan in similar cases ...” [8].

If higher courts with highly qualified judges, when considering relevant cases in the first instance, make the most reasonable, legal and fair decision, then it is possible that they will become a de facto model for lower courts when considering cases of the same type. Thus, it can be said that as a result of the legal development of the region, including the development of judicial practice, in particular, the advanced training of judges, the most optimal decisions of these courts, following the results of consideration of certain categories of cases as a first instance, could play the role of a certain model in their qualities, the basis for lower courts when considering cases of the same type.

When it comes to general and specific aspects of the development of law in the countries of the Central Asian region, it would be logical to pay attention to their judicial system. Currently, the following system of courts operates in Uzbekistan, including: the Constitutional Court of the Republic of Uzbekistan;

Supreme Court of the Republic of Uzbekistan;

military courts;

Courts of the Republic of Karakalpakstan, regional and Tashkent city courts;

Administrative court of the Republic of Karakalpakstan, administrative courts of regions and the city of Tashkent;



inter-district, district, city courts for civil cases;

district, city courts for criminal cases;

inter-district, district, city economic courts;

inter-district administrative courts[9].

Consequently, the legal systems of the region exist and function interacting and mutually enriching each other. The development of international relations in the context of globalization between states determines the mutual exchange of experience in the legal sphere. [10].

## CONCLUSION

Based on the analysis of some areas of development of the legal systems of the countries of the Central Asian region, we can come to some conclusions:

1. In the modern development of the legal systems of the Central Asian states, there are quite common features due to the commonality of their history, culture, religion and historical destiny. These legal systems in their parameters belong to the Romano-Germanic legal family;

2. At the same time, it is impossible not to notice a certain specificity in the development of the legal systems of these states, not only associated with different levels of economic, political and social development, for example, in the structure of the judicial system, in the codification of legislation, in the constitutional consolidation of the form of the state, etc.

3. On the example of the legal systems of these countries, one can see the influence of the Anglo-Saxon legal system, more precisely, English law in the field of legal protection of business, commerce, etc.

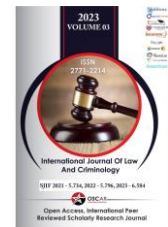
Here we can see a refraction, a reflection of the global trend in the development of law in a particular region;

4. In the legal development of these countries, trends are traced, such as convergence with European law, as well as proximity to the legal systems of post-socialist, now sovereign CIS states;

5. At the present stage of development of the legal systems of these states, there are great opportunities and effective potential for mutual cooperation and its further deepening.

## REFERENCE

1. Marchenko M.N. Problems of the theory of state and law. M.: Prospekt, 2011. (768s.) P.3.
2. 2 Alekseev S.S. The problem of the general theory of law // Bulletin of the Humanitarian University. Series "Law". 2000, No. 1 (2). P. 6.
3. Law of the Republic of Uzbekistan "On Courts" dated July 28, 2021// <https://www.lex.uz/ru/docs/5534928>
4. Mukhitdinova F.F. Formation and development of the judiciary in the Republic of Uzbekistan. Abstract on sois. uch. degree doctorate legal nauk.T.: 2012.S.23.
5. Suleimenov M. Prospects for the introduction of judicial precedent into the legal system of Kazakhstan. C.4. <http://pravo.zakon.kz>.
6. 6 Marchenko M.N. Problems of the theory of state and law. Moscow: Prospekt, 2011.-S.610-611.
7. 7. In 2014, due to judicial reorganization in the Russian Federation, this practice ceased to exist
8. 8. Mukhitdinova F.F. Formation and development of the judiciary in the Republic of Uzbekistan. Abstract on sois. uch. degree doctorate legal nauk.T.: 2012.S.23.



9. 9. Law of the Republic of Uzbekistan “On Courts” dated July 28, 2021// <https://www.lex.uz/ru/docs/5534928>
10. 10. See also: Ahmedshaeva M.A. The role and place of reception of law in modernization of law// <https://www.paideumajournal.com/gallery/4-sep2020.pdf>



**OSCAR**  
PUBLISHING SERVICES