Future Academy®
Offering excellence in Social and Behavioural Sciences

The European Proceedings of
Social & Behavioural Sciences
EpSBS

eISSN: 2357-1330

ICEEPSY 2016 : 7th International Conference on Education and Educational Psychology

Possible Applications Of Judicial Precedent And Legal Consuetude In The Regulation Of Labor Disputes

Abaideldinov Tleukhabyl[a]*, Askarova Aliya[b], Suleimenova Saule[c]

* Corresponding author: Abaideldinov Tleukhabyl, tleuhabyl@mail.ru

[a]*J.S.C., associate professor of civil law and civil process, labor law department of al-Farabi Kazakh National University, al-Farabi Ave.,71, Almaty,Kazakhstan, tleuhabyl@mail.ru*
[b]*PhD, associate professor of civil law and civil process, labor law department of al-Farabi Kazakh National University, al-Farabi Ave.,71, Almaty,Kazakhstan, askarali-82@mail.ru*
[c]*J.S.D., professor of civil law and civil process, labor law department of al-Farabi Kazakh National University, al-Farabi Ave.,71, Almaty,Kazakhstan, saule.suleimenova@gmail.com*

Abstract

Legal reform and related significant changes in the legal framework and legal matters of the Republic of Kazakhstan brought up to date the problem of the world and national civilization legal heritage use. In particular, now we can speak about "vindication" and "legalization" of such primordial (traditional) source of law as custom in the legal framework of Kazakhstan and accordingly, such form of law as customary law.

Keywords: Consuetude; disputes; law; employers; customary law; international relations; law-making proses; international jurisprudence; customary rule; labor law.

1. Introduction

Since the domestic legal system is still predominantly based on the licensing type of regulation (S. S. Alekseev), the courts almost could not apply the regular rules legally. Now, with the recent partial legalization of customary law the legislative frameworks of its application are greatly extended. Considering the limitations of statutory (legal) rules in certain fields of social life, not to mention the possible contradictions and deficiencies of law, the resignation of other effective forms and methods of regulation was the unforgivable omission. Moreover, it is obvious that the judicial bodies should take

legal i.e. inherently reasonable solutions as appropriate despite the gaps and deficiencies in legislation. R. David the French comparativist wrote that nothing prevents the recognition along with legislation and other important sources of law, in particular the custom: "...it is normal and even necessary to take into account the common human behavior to establish the fact what is considered fair in society" (David R. Joffre-Spinosi K., 1996).

However, referring to a negative opportunity of customary law, the application of customary rules that are contrary to reason, justice and other general principles of law absolutely cannot be allowed. Considered customary rule, obviously must be assessed by the court from the legal point of view. In this regard, the statement of G. F. Shershenevich the famous Russian scientist that "the court that is obliged to apply the legal standards is also not really intended to the ethical assessment of customary rules, as well as legislative provisions" is remarkable, that is why the usual standard "which existence was established with accuracy should be applied by the court, even though it is contrary to the ethical views of judges" (Shershenevich G.F., 1911).

Since the legislators to a certain extent allowed the application of customary norms of the Republic of Kazakhstan, it is inevitable that the problem of the establishment and use of customary norms in judicial practice has arisen. According to G. M. Danilenko the Russian lawyer and international relations expert, there is no need to develop a national doctrine (methodology) of custom establishment (customary law), which would be fundamentally different from currently accepted in international law, because it is likely to cause discord in international legal practice, which gained sufficient experience in this field. That is it is necessary to use the appropriate international legal doctrine.

In international legal precedent, the establishment of customary norms existence is due to thorough study of the practice of international communication. If we are talking about general customary norms of international law, it is necessary to explore the practices of all or majority states and other subjects of international law. Mentioning the regional or local regulations, the practice of certain state groups and other bodies are respectively analyzed. In this regard, it is appropriate to give typical statement of the International court of United Nations (1984) that the presence of customary norms is established by the conclusions, "based on the analysis of a fairly common and convincing practice, and not on the conclusions derived from the established opinion" (Danilenko G.M., 1988).

According to international law, in case of litigation, parties are not obliged to prove the existence of any customary rule. It is obvious that the position of the International court of UNO (hereinafter the Court) was not always consistent on the question of customary norms proof burden. For example, in the case of asylum right (Colombia V. Peru, 1950), the Court proceeded from the fact that the substantiation of the obligation of a regional custom is the responsibility of the party that refers to it. The Court took a similar position while considering the case of American citizens in Morocco (1952). Such practice was subject of fair criticism by scholar lawyers, when the Court released itself from the obligation of law knowledge [54, P. 88, 90]. Later, the Court repeatedly stated in its decisions (1974, 1986, etc.) that "the burden of establishing or proving rules of international law cannot be imposed on any of the parties, because the right lies in the field of knowledge of the Court". Being agreed with this, G. M. Danilenko emphasizes that the Court "must independently examine all existing international law regardless of the evidence that can be presented by the parties" (Danilenko G.M., 1981).

http://dx.doi.org/10.15405/epsbs.2016.11.54
eISSN: 2357-1330 / Corresponding Author: Abaideldinov Tleukhabyl
Selection and peer-review under responsibility of the Organizing Committee of the conference

While studying the states practice and other subjects of international law, the registration and analysis of all documents and materials that may be evidence of customary law is possible. The UN international law Commission noted in one of its reports (1950) that any document, which indicates the behavior of states in relation to various issues arising in international relations, may be evidence of a certain practice.

Since customary international norms are fairly common, they are often directly reflected in various international instruments: conventions (agreements), resolutions and other acts of international organizations, decisions of international judicial bodies, primarily the Court, etc. In this regard, besides the study of such sources, the various international instruments, preparatory materials (for conventions, conferences, trials, etc.), including draft conventions, etc., and special (scientific) literature, particularly the works of reputable international lawyers (Lukashuk I., 1982) are explored to prove the elements of the practice of international communication as additional sources, which is indispensable to establish customary norms. For example, the Court as "subsidiary means for the determination of legal norms" uses judicial decisions and doctrine (work) of "the most qualified experts in public law of the various nations"(Danilenko G., 1997).

However, while analyzing the written sources, it is necessary to be extremely careful as the written fixation (formulation) of conventional norms cannot be the formal or informal expression, "which would serve as the final and indisputable evidence of their normative content and the legal obligation". This is due to the specificity of customary norms, and its simultaneous fixation cannot give a "precise normative content of the applicable customary law" (Danilenko G., 1997).

In the analysis of the customary practice of a particular state, which determines its international customary law obligations, perhaps it is necessary to study all forms of position manifestation of the state on certain important issues in international relations. The external and internal practice of states, in particular the legislative and judicial practice, official statements of the President, the government or the Ministry of foreign Affairs, which reflects the position of the country on any international issue; official statements at international conferences and in international organizations; contractual practice; the protests, the actual respect in mutual relations with other states certain rules of behavior, etc. are explored for it (Genkin D.,1983).

Such thorough analysis of the practice of international communication and other sources relating to international customary law are necessary to determine whether the basic conditions (criteria), sufficient for the emergence and functioning of any customary norm. The modern doctrine and practice of international law calling such criteria as opinio necessitatis (the General acceptance of certain rules of behavior and the corresponding actual behavior) and opinio juris (the General acceptance of a legal nature, the legal obligation of the norm).

The international legal doctrine of custom establishment is now widely recognized and long time used in national courts of countries that acknowledging the international customary law. For example, the United States like other countries of “common law” (the Anglo-Saxon legal family), traditionally holding the opinion that international customary law is an integral part of the national law. This position has been reflected in judicial practice for a long time. So, the U.S. Supreme court in the decision of The Paquete Habana (1900) confirmed that "in the absence of the contract applicable to the

business executive or legislative act or judicial decision, [the courts] must apply to the customs and habitude of civilized nations; and as evidence of this, to the works of jurists and commentators, who have become experts in their field as a result of many years of work, research and experience. Such work shall be used by all judicial bodies, but not as speculation on what the law should be like, but as credible evidence of what it really is". Even today, the decision in the case of Filartiga versus. Pena-Irala (1980), discussed in the Federal United States appeals court, judge I. R. Kaufman convinced in the validity of the approach previously established by the decision of The Paquete Habana, from the point of view of modern international law, studying the relevant international instruments, the general practice of states, applicable judicial decisions and works of legal scholars came to the conclusion that now the torture that is carried out by official persons is prohibited by international customary law (Cross R.,1985).

Socio-economic and political-legal changes in our society actualized the problem of customary law and stipulated the necessity of its use in judicial practice. Therefore, an important task of legal science is the development of custom doctrine (customary law), which, in our opinion should clarify the issues related to the admissibility and limits of the use of customary law in judicial practice, by the methods of establishment (identification) and application of customary norms (custom) in court, etc.

2. Problem statement

The judge is strictly subordinated to the law and must make decisions primarily based on the law in Kazakhstan, as in any other country of the Romano-Germanic legal family. A judge cannot evade this duty and in cases of uncertainty or non-image According to the British stare decisis doctrine, a problem referring to the specific subject of law or fact in itself is a matter of law (Korkunov N., 1997).

As you know, in those countries where operates the jury, there is a general principle that is the trier judge the fact and professional judge – the law. When the sole consideration of the case the judge in his decision summarizes and weigh the evidence, he pronounces his personal opinion about the disputable matter, analyzes the arguments of the parties, reasons which it is based on, conclusions (legal line of arguments) and finally pronounce own judgement. In the jury trial the judge analyzes the facts of the case, argue the case to the jury, and pronounce a final decision on the basis of the conclusions to which they came. It would be strange if *th*e question of the presence or absence of any customary norm is decided by jury. Otherwise, in English law the establishment and use of customary norms is undoubtedly related to the questions of law.

We believe, however, that the partial legalization of customary law by the Civil Code of the Republic of Kazakhstan (General part) of December 27, 1994 and a strengthening of the role of the Court to some extent improved the situation in the republic.

For the first time in modern legal practice in Kazakhstan consuetude was officially recognized as a source of law in the Fundamentals of Civil Legislation of the USSR and the republics of the May 31, 1991, where there are links to business practices (see., Eg, Paragraph 2 of Article 59, paragraphs 2 and 3 of Article 63, Article 64, paragraph 2 of Article 75), as well as "international custom recognized by the Soviet Union" (see. article 156). The Supreme Council of the Republic of Kazakhstan a special

http://dx.doi.org/10.15405/epsbs.2016.11.54
eISSN: 2357-1330 / Corresponding Author: Abaideldinov Tleukhabyl
Selection and peer-review under responsibility of the Organizing Committee of the conference

decree "On regulation of civil relations in the period of economic reform" of 30 January 1993 established that a temporary basis until the adoption of the new Civil Code, in the territory of the republic apply Fundamentals of Civil Legislation (FCL), except for the provisions establishing the powers of the USSR in the field of civil law, and to the extent not inconsistent with the Constitution and legislation of the Republic of Kazakhstan adopted after 1 January 1990. In addition, pursuant to paragraph 3 of this resolution, the provisions of FCL applied in the country only to those legal relations that have arisen after the adoption of this decree.

If solely based on the law, customary law (customary rules) can now be installed in the same way as the Court shall be established (to be installed) rules of foreign law. As is known, pursuant to paragraph 1 of Article 5 of the Civil Code of the Republic of Kazakhstan (General part) of December 27, 1994 (hereinafter - the Civil Code), when provided for in paragraphs 1 and 2 of Article 1 of this Code are - Property and related with their moral relations regulated by civil legislation, are not directly regulated by legislation or agreement of the parties and absent applicable to them, the consuetude, the type of relationship, as it does not contradict their essence, the rules of civil legislation regulating similar relations (analogy of law). In accordance with paragraph 2 of Article 5 of the Civil Code with the inability to use in these cases similar legal rights and obligations of the parties are determined on the basis of general principles and sense of civil legislation and the requirements of good faith, reasonableness and fairness (analogy of law).

Since Soviet times the application of foreign law in the Soviet jurisprudence, in principle, allowed, legal practice and doctrine have gained some experience, reflected in particular in some legislative acts.

The problem of establishing and applying foreign law in the FCL on article 157 "Establishment content international law" and Article 158 "Restriction of the use of foreign law." Here are the norm these articles in full, bearing in mind the importance of the problem, the complexity of its solution based on the latest legislation of the republic, and often little awareness of the problem is not only practical, but also of many theorists.

In accordance with Part 1 of Article 157 paragraph 1 of FCL in the application of foreign law, the court, the arbitral tribunal, the arbitral tribunal or an administrative authority determines the content of its provisions in accordance with their official interpretation, the practice of application and doctrine in the corresponding foreign country. According to Part 2 of paragraph 1 of Article 157 of FCL, in order to establish the content of foreign law court, the arbitral tribunal, the arbitral tribunal or administrative authority may apply in the prescribed manner for assistance and clarification to the Ministry of Justice of the USSR and other competent bodies or agencies in the USSR and abroad or attract experts. In accordance with Part 3 of Article 157, paragraph 1 FCL persons involved in the case are entitled to submit documents confirming the content of the foreign law.

According to paragraph 2 of Article 157 FCL if the content standards international law, despite efforts in accordance with this Article the measures stipulated applied Soviet law. In accordance with Part 1 of Article 158 FCL foreign law does not apply in cases where its application would be contrary to the fundamentals of the Soviet order (order public). According to paragraph 2 of Article 158 FCL, denial of the application international law cannot be based only on the difference between the political or economic system of the respective foreign country from a political or economic system of the

USSR. Although this work is devoted to the establishment and application of the rules is not so much foreign as customary law, still we believe appropriate to note that the issue of the application of other-country the right to not so long ago was the subject of consideration by the Constitutional Council. In particular, on March 2, 1998, President of the Republic appealed to the Constitutional Council with a request for consideration of the Special Part of the Civil Code, adopted by the Parliament of the Republic, on its compliance with the Constitution of the Republic. Having considered the appeal, the Constitutional Council passed a resolution "On the inversion of the President of the Republic of Kazakhstan" On conformity with the Constitution of the Republic submitted for the signature of the Civil Code (special part), adopted by the Parliament of the Republic of Kazakhstan February 4, 1998 № 1/2 dated March 27, 1998, which he admitted to the Constitution of the Republic of certain provisions of the Special Part of the Civil Code.

Returning to the issue of the establishment and application of customary law itself. Customary law, and the right in general, assumed to be known to the judge ex officio (ex officio). As a general principle, the question of the right to the exclusive jurisdiction of the court, it is assumed that the latter knows, at least have to know all the legal rules relating to the case. In any case, it is necessary to proceed from the fact that the judge, as a competent, qualified lawyer knows the law, which should be applied in a particular case, including the applicable customary rules. Therefore, in accordance with the principle of jura novit curia (the court knows the law), the court is not entitled to oblige any of the conflicting parties to provide evidence of the presence or absence of the usual norm. This, of course, does not mean that the parties cannot provide such evidence to support or refute the existence of a particular customary rule on their own initiative.

3. Research questions

In the case of suspense usual norm judge or one of the parties involved in the case, there is a need for it (the usual norm) establishment (proof), means essentially the problem of establishing the right or dilemma justum et injustum - the problem of distinguishing between legal and not legal. As a general rule, it is necessary to prove only the facts, but not the norm, not the right. Establishment (proof) the availability of consuetude has a question of law or a question of fact? At one time in the jurisprudence of the opinion that the common law is a question of fact, so ordinary rules had to be proved by the party that referred to them, otherwise they could not be applied (Supataev M., 1984). Although we believe the obvious positive answer to this question, however should it prove, since this depends on who should bear the burden of proof? In a number of countries in Africa are currently customary law is officially referred to the issues of law, in connection with which the normal rules formally considered mandatory for, in particular, the justice system, although they (rules) and not set by the special procedure of proof. However, the actual judicial practice of these countries until now dominated by former colonial method of establishing the normal rules as a matter of fact.

According to the British doctrine of precedent, problems related to the specific question of law or fact in itself is a matter of law. As you know, in those countries where operates the jury, there is a general principle that the jurors decide questions of fact and questions of law - a professional judge.

http://dx.doi.org/10.15405/epsbs.2016.11.54
eISSN: 2357-1330 / Corresponding Author: Abaideldinov Tleukhabyl
Selection and peer-review under responsibility of the Organizing Committee of the conference

When the sole consideration of the case the judge in his decision summarizes and evaluates the evidence, he expresses his opinion on the disputed facts, analyzes the arguments of the parties, sets out the reasons which guide conclusions (legal arguments) and finally read out their own solutions. The trial by jury the judge examines the facts of the case, turning to the jury and make a final decision based on the conclusions to which they came. It would be strange if the question of the presence or absence of a customary rule jury decided. In other words, in English law the establishment and use of customary rules, of course, relate to points of law.

4. Purpose of the study

In general, binding legal norms, including the customary, is determined by notoriously. If any of the customary norm is known to the court (judge) and the disputing parties, the court can and should treat it as any legal norm, consequently, using the rendering of decision. Thus, at the end of XIX century Official Russian courts have been known to pronounce on the customary law is beyond and even against the will of the parties, regardless of whether the latter knew of its existence. If the customary law was not known to the court, it has been found in one of the cassational decisions of the ruling Senate (1891), the court), the court of reference the parties is obliged to " take all measures at its disposal to on approval with him," such as "call persons capable to provide the necessary guidance on this matter ".

In colonial Nigeria to the adjudication of a case on the basis of the customary law, as is also often required to establish (evidence) the customary norm, the law " On the unification, defining and modifying legal norms" (1945) said that " in deciding of the aboriginal law and custom opinions is appropriate of aboriginal chiefs or other persons having special knowledge of aboriginal law and custom, and any book or manuscript, recognized by the as the legitimate leadership of the aboriginals " (Sinitsyna I. ,1978).

If the parties (party) referred to the customary norm known to the judge, the major issues with its application should not occur. Nevertheless, as the dynamics of customary law judge may take a specialist to ensure the invariability of the normative content of the well-known to him the customary rule. Most often, however, due to various reasons, judges are not aware of the existing in some quarters, practice and existing customary law. A judge may not be aware of specific customary norms, as is quite difficult to have a notion about a specific customary law, are not directly to move in some circle, have nothing to do with them. The need for thorough study of customary law is time-consuming and take effort, and it would be unfair and unreasonable to call on the judge actually impossible, the more so because, according to the justified remark of N.Korkunova , true expert of customary law are not lawyers, and "those who observe and administers customary law".

Accordingly, in the case of lack of legal issues knowledge, the court may and should have recourse to experts on the subject, attracted as specialists or consultants, even if both parties of the case (or one of them) of its own motion argue the presence or absence of any customary norm either can do it.

French jurist Jean Carbonnier wrote that in the precedents of the Western governments for evidence the "professional practices that are relevant to merchant and labor law" is necessary to conclude of

"special experts". As a general principle, the interested party is a relevant certificate prepared by any professional organization (Chamber of Commerce, Association of Entrepreneurs, unions and others.). J. Carbonnier rightly pointed out that this type of evidence of indisputable objective conclusion, if not elsewhere in some cases, it may be questioned. Therefore it offers for greater impartiality delegate similar legal enquiry to such experts in the field of sociology of law. The expert-sociologist, in his opinion, should be, firstly, consider case in fact, i.e. established case law, and, secondly, to study the public opinion in order to establish the existence of opinio juris or opinio necessitates.

G. Danilenko notes that in the in case of a dispute about the presence or absence of a particular customary norm the application of known uniform criteria would exclude violent construction and allowed to pronounce a reasoned decision as being a customary norm, and about whether it is associated a specific subject. The scientist, as well as many other international lawyers, calling two main criteria of customary norm: 1) opinio necessitatis, i.e. the general agreement on the need for specific actions and the agreeably behavior; 2) opinio juris, i.e. the common conviction in the binding power, the law character of this norms.

Finally, customary norms may be established in court, as mentioned above, as well as sometimes required the standard-setting of foreign law, that the judge who often do not know or ought to know. Therefore, the establishment of customary norms is a matter of law.

So, the judge in the consideration of any case in which is possible to use of customary norms must study all available sources that may contain necessary reliable information, namely legal, business practices, legislation, legal judgement in similar cases, the views (works) of authoritative legal jurists, a special (scientific) literature, to have a more or less a clear view of the applicable customary norms, to weigh evidence qualified submitted by the parties, the set of facts of case and, thus, to justify their own law conclusions on the basis of which the decision will be made. With self-establishing customary norms the judge can and must consider to the mentioned and other source of authoritative information, including experts on particular customary law with their involvement, if necessary, as the experts (experts).

Under the laws judge may choose to consider the customary norms secundum legem (in addition to the law), and praeter legem (except by law). Even if referring about the use of custom as an independent source of law, i.e. as a legal basis for adjudication on the merits, it is quite possible involvement of customs (customary norms) for the more adequate construction of the statutory rules, which could greatly facilitate the "finding an equitable decision". In addition, customary norms may be used for the construction of various concepts, terms and expressions used in particular in a variety of business transactions (contracts).

Customary norms contra legem (except by law) cannot be accepted by any court of justice that such a rule clearly established by law. Official judicial bodies especially in the countries Romano-Germanic legal family, by definition quite severely restricted in their activities. As R. David notes, the courts generally "do not like to speak out against the legislative authority", especially where their law-making role is minimize. It's hard to imagine we have a situation where the official court would consider the customary norm, contrary to law, without the express authorization of the legislator. The informal

http://dx.doi.org/10.15405/epsbs.2016.11.54
eISSN: 2357-1330 / Corresponding Author: Abaideldinov Tleukhabyl
Selection and peer-review under responsibility of the Organizing Committee of the conference

arbitration court in this situation has more freedom, though it is largely limited to the mandatory injunctions of the law, at least until the regulatory permissive type dominates in the legal system.

5. Research methods

The paper presented research methodology including analysis and synthesis, generalization and analogy. Also special and particular methods were used: comparative-legal, historical, method of prognosis in order to expose directions of legislation improvement in the area of judicial precedent and legal consuetude in the regulation of labor disputes. The concluding sections some suggestions which are connected with the improvement of current labor legislation and can be used in legislative activity of state bodies, in scientific work.

6. Conclusion

So when considering permit the type of legal system of the Republic of Kazakhstan official courts rather rigidly connected to the activity of the legislative regulation that limits the legal application of the customary norms, the arbitration courts, appearance and sufficiently widespread that in the country with the development of business relations we can predict with a high probability of It is much more free in this sense. At least, there is no any serious circum**st**ance that would prevent the arbitration court is widely used, at its own convenience for example, in dispute over relating to commercial relations, the customary trade norms.

Official recognition of regulatory resolution of the Supreme Court as a source of law, along with the laws and other legal acts (paragraph 1 of Article 4 of the Constitution) was an important major landmark and specific symptom of the apparent increase in law-making role of the judiciary of the Republic. Due regard being had the acquired law-making powers of the Supreme Court would have a certain way to stimulate the application of customary norms of the lower courts and, thus, the development and functioning of customary law in the legal system. In consideration of the prior passivity of judges of inferior courts in this case, the decisive factor could be the application of customary rules directly by the judges of the Supreme Court of the republic, although probably not do without issuing an appropriate regulatory resolution. In India, for example, the Supreme Court has repeatedly stated in its decisions need to ensure the rights of the parties when considering any cases refer to practices that "cannot be ignored by the courts" (Zykin I., 1983). Thus, admitting the possibility and necessity of the establishment of customary rules of the court (the court), it should be emphasized that this does not mean attributing customary law and problems of its evidence to the fact issues. However, in using the jurisprudence of the republic criteria for the validity of customary rules, now recognized by legal science and accepted in the international and foreign judicial practice, one should bear in mind their lack of certainty and, therefore, the need to further their development.

In addition, we believe that the use and application of the common standards in the practice of law, and therefore, the operation of customary law in the legal system of the country is largely determined by the role and significance of the judiciary. In other words, strengthening the role of the courts is

likely to stimulate the growth of the importance of customary law. The judiciary, especially the Supreme Court of the Republic of Kazakhstan, is called and can play a crucial role in the integration of the national legal system, in particular through a more or less organic integration of customary law and the official rights.

Reference

David R. Joffre-Spinosi K. (1996) Principal legal systems of the present. *Per. with fr.* - M., 1996. - p. 95.
Shershenevich G.F. (1911) The textbook of Russian civil law. *Ed. 9.* - Moscow, 1911. - p. 43.
Danilenko G.M. (1988) The custom in modern international law. *Moscow, 1988. - p. 35.*
Danilenko G.M. (1981) Issues of international custom in the practice of the ICJ. *International law and the rule of law.* - M., 1981. - p. 88, 90.
Lukashuk I. (1982) International law documents. *Moscow, 1982.* p. 143.
Danilenko G. (1997) Path to the "realm of law and justice"
Moscow Journal of International Law. - 1997. - № 1. - p. 86-87.
Danilenko G.(1997) International Protection of Human Rights. *Introductory course. - Detroit, 1997.* - p. 41.
Bogdanov I. Case law. - P. 10. Approx. 8.
Genkin D. (1983) Customs and usages of international trade. - M., 1983. - P. 15.
Cross R.(1985) Precedent in English law. - M., 1985. - p. 46.
David R. Joffre-Spinosi K. decree. Op. - p. 98.
Bulletin of the Constitutional Council of the Republic of Kazakhstan. Vol. 2. - Almaty, 1999. - p. 113-116.
Korkunov N. (1997) Lectures on the general theory of law. Ed. 4th. - SPb., 1997. - 288 pp.
Supataev M. (1984)Customary law in the countries of East Africa. - M., 1984. - p. 23-24, 37, 38-39.
Cross R. Decree. Op. - p. 216.
Sinitsyna I. (1978)The custom and customary law in contemporary Africa. *History of the study. Codes of customary law.* - M., 1978. - p. 36.
Carbonier J.(1986) Legal sociology: Trans. with fr. - M., 1986. - p. 309.
David R. Joffre-Spinosi K. decree. Op. - p. 95.
Zykin I. (1983)Customs and usages of international trade. - M., 1983. - p. 56, 69.
Udartsev S. (1996) Supreme Court is gradually turning into one of the main creators of the real rights. *Panorama. - 1996.* - № 36, September
Udartsev S.(1997) Court and law-making. *The legislative process in the Republic of Kazakhstan: Status and Challenges: (Proceedings of the international scientific-practical conference. March 27-28, 1997).* - Almaty, 1997. - p. 181-193.
Krasheninnikov N. (1984). The custom of the right of developing countries (for example India). *Vestnik MGU. - Series 11 Right. - 1984.* - № 2. - P. 34, 38.