Case law as a source of information in an international scale*

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Abstract: Case law research is a part of legal research, the process of identifying and retrieving information necessary to support legal decision-making. Nowadays it refers to work in an electronic environment and in use of specialized databases. They can be used by anyone with a need for legal information - lawyers, law librarians and common citizens. Case law research depends on country and its legal culture. There are apparent differences in retrieving information in civil law system and common law system. These differences relate to used information retrieval solutions and kind of collected information resources.

Keywords: case law, legal research, legal information, information science, information system, information retrieval, judiciary, common law, civil law

1. Introduction

This paper presents an interdisciplinary approach to the legal information. One may wonder why it is worth to make this effort. The answer is simple and indisputable – because the law pervades every field of human life. Interdisciplinary approach is always a challenge for researcher. The biggest difficulty makes the heterogeneity of legal nomenclature. The law uses the *de facto* several languages. Most important are legal language and quasi-legal language (Zielinski, 2004, s. 9-18). In legal language are formulated rules of law. The language is very precise and it contains terms, which may, but don't have to, be defined in statutes or it may come from everyday language. Referring to the current understanding of legal terms is generally insufficient or incorrect, because these terms are clearly defined by the legal doctrine. Legal language is opposed to the quasi-legal language, which is less precise. In this language are formulated broadly defined statements about the law, including court decisions (Petzel, 1999, p. 41).

2. Classes of legal information

One may wonder which legal information is the most important. Unfortunately there is no satisfactory answer to this question. Polish lawyer Franciszek Studnicki tried to find a solution to this issue. On the basis of the needs of members of social life he identified three classes of legal information:

1) Basic information,

2) Minimal necessary information relative to particular social groups or social function,

3) Information *ad hoc* (Studnicki 1978, p. 14).

"Basic information" class is related to the general orientation in the current legal order. This is elementary civic knowledge usually learned in the early stages of education. Without this knowledge working of the state would be impossible. This information includes problems related to the state constitution, the basic duties and prohibitions under the rules of law and of general rules in the major branches of the law.

Class "minimal necessary information relative to particular social groups or social function" includes a basic set of legal information necessary to carry out the duties or to benefit the privileges of membership of a social group (for example, occupational group) or to perform a social function. Knowledge of the major legal issues is necessary for every member of social group, including librarians. Rules of law applicable to librarians are called commonly the 'librarian law' (Howorka, 2010, pp. 6-7). There are two kinds of rules

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important to librarians: 1) rules relating directly to organization and functioning of the library and 2) rules indirectly related to the profession (for example elements of labor law, intellectual property law, civil law, privacy law related to the protection of personal data). This class contains rules, which belong to the category of sources of universally binding law. In international aspect, these sources could be statutes and precedents in the common law systems.

The man uses "ad hoc information" class just in case of need. This kind of information regulates specific matters and it does not belong to the classes previously mentioned. Knowledge of this type is not useful in everyday life. From the librarian point of view ad hoc information may relate to unusual cases, which sometimes take place, for example in the event of a disaster or a in the situation in which the library is heir of the set of some valuable documents. Access to information belonging to this class is mainly associated with the skills of: search, interpretation and application of relevant rules of law

Legal information can be searched in many ways and by different media. Franciszek Studnicki distinguished seven basic types of communication processes involved in transmitting information about rules of law (Studnicki, 1969, pp. 86-87):

- Type P: the processes by which the user receives information about rules of law directly from the publicator, for example from official journals;
- Type M: the processes by which the user receives information about rules of law by mass media, for example newspapers with wide range of reading, radio, television and the Internet;
- Type S: the processes by which the user receives information about rules of law by other ways than those listed in the type P and type M types, for example university, course, scientific conference;
- Type R: the processes by which the user receives information about rules of law from individual legal decisions (for example court decision, administrative decision);
- Type U: the processes by which the user receives information about rules of law by participating in the process of creation rule of law, for example giving / overruling decision or making legislative act;
- Type E: the processes by which the user receives information about rules of law by contact with experts, such as lawyers or legal advisers;
- Type A: the processes by which the user receives information about rules of law by informal contacts with other people, such as contacts with friends, family, co-workers, etc.

There is a clear division among the documentary sources taking a part in the communication processes connected to transmitting information about rules of law. Some of them can distinguish statutes (acts of legislation, public laws) from the type P and texts containing judicial interpretations of the law from type R. The paper is only related to second of these – the judicial interpretations – and focuses on the case law (decisions, opinions) defined as decisions giving by courts in individual cases.

3. Legal system and its influence on legal research

The importance of judicial decisions mainly depends on adopted legal system in the country. The two most widespread legal systems of the world are: a statutory law (civil law) present in most continental European countries and the common law system characteristic for, most of all, the Anglo-Saxon countries and some post-colonial states. Later in the text such terms will be used like 'civil law country' for countries with civil law legal culture and 'common law country' for countries which belong to common law legal system.

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Common law is a system of law that is derived from judges' decisions (which arise from the judicial branch of government), rather than statutes or constitutions (which are derived from the legislative branch of government). One of the main differences between civil and common legal traditions relates to the doctrine of precedent. The doctrine of precedent is one of the most distinguishable features of common law and sets it apart from civil law. This common law practice is known simply as case law, which is defined as the decisions of judges laying down legal principles derived from the circumstances and characteristics of particular disputes coming before them (McLaughlin Mitchell and Powell, 2011, p. 32).

Doubtless type of legal system has a significant impact on legal information retrieval. For example it is associated with information searching strategy as well as the use of certain information tools to support legal research.

Lawyers – group that uses legal resources fully and in the most advanced way – have a predetermined timetable for the use of sources of law. In the common law system lawyer begins with preparing for a trial by checking whether the case is a precedent. If the precedent exists, he must check if it is still good law. So, in the first place he goes to the source of case law.

In the civil law countries lawyers primarily go to the legislation to identify the legal basis of case. At first place they go to the official journals containing texts of statutes. The case law is not so important for them because it has not a status of the source of law in this system. It has not got any binding force on similar cases, too. The case law can be useful only to analyze trends in the judiciary.

4. General characteristics of a case law documents

It's not so easy way to list all types of case law documents, because particular countries adopted different solutions in this matter. It can be assumed that the model case law document is a judgment. It occurs most likely in every legal system.

It should be noted, that in some countries documents qualified as case law document in the others may have a different status. For example, in Poland 'entry in the land register' (in Polish 'wpisy do ksiąg wieczystych') is considered as a case law. This type of judicial decisions is very different from the model case law. From a formal point of view, it consists of tables in which entries and removals are made.

At first glance, information structure of case law documents in international scale looks very different. But if you look closely, it turns out that the judicial decisions contain similar information elements. For example, the judgment usually contains a sentence with:

- The date of the judgment,
- The date of court session,
- Names of the parties,
- Bench in a given case,
- Case identifier,
- Tenor (this formula is an essence of the decision),
- Opinion (explanation written by a judge).

Special attention should be paid to the case law identifier. It is unique designation of case law used to distinguish judicial decisions from each other. It also makes information retrieval and citation easier. Information users from the common law country, that would like to go to jurisprudence resources of civil law country, probably will notice the lack of case titles. Instead of citation and simple 'Ahern v. Bus Eireann' to which they are accustomed, they will have to deal with complicated identifiers often created without keeping any standards (even within the same court!). Identifiers created in accordance with standards are

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unfortunately rare (for example Dutch ‘Landelijk Jurisprudentie Nummer’ or Belgian ‘Numéro Justel’).

5. Case law reporters

In common law countries, the same as in civil law countries, every case law is documented, but not every is published. A reported decision is a case published in a case law reporter (publication of the full-text decisions of judges). There are two main types of law reporters:

— General law reports, which contain decisions from: a) a specific court, or b) several courts within a specific jurisdiction, or c) from several courts within several jurisdictions;
— Specialized law reports, which include decisions discussing specific subjects of law independent of court or jurisdiction (for example cases related to family law).

Editors select cases for their authority, relevancy, and utility to the legal profession generally. Cases are often published in several reporters simultaneously. For example U.S. Supreme Court cases are published in U.S. Reports (the official publisher of Supreme Court cases) as well as Supreme Court Reporter,

U.S. Law Week and Lawyer's Edition. These are parallel citations (see Figure 1). The text of the opinion is always the same in parallel citations although some sources offer extra notes.

Figure 1. American parallel citation – an example

New York Times. Co. v. Sullivan. 376 U.S. 254. 84 S. Ct.

❶ New York Times, Co. v. Sullivan	❷ 376 U.S. 254
❸ 84 S. Ct. 710	❹ (1964)

❶ Case title with names of the parties involved in the case
❷ Official citation
U.S. – the abbreviated name of the reporter in which the case was published
376 – volume number of the reporter
254 – page number in the reporter volume where the case begins
❸ Parallel citations with the location of the case in a different reporter
❹ Date of the decision / opinion

Many cases are never published in a print journal. This does not mean the case remains unavailable. Vast amount of unreported case law is nowadays available in online commercial systems.

Texts of published decisions are often accompanied by some additional information created by legal editors (usually lawyers). The most useful are the descriptions of the case law in the form of commentaries or headnotes. They may contain information such as a summary of the principal points of law raised in the decision or a summary of the legislation, jurisprudence and secondary sources cited in the decision.

Effective strategy for locating case law is reading summaries of cases. They can be stored in special publications called digests, which index the law by topics or legal issues. In

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the digests it is possible to find headnotes or case abstracts in which the publishers assign a topic and number to a point of law. The headnotes can be used for additional support in finding other cases that are relevant to the issues presented in your case (Yelin and Samborn, 2008, pp. 76-77).

What can summaries of case law and digests offer? First of all, they allow to determine whether reading the case in full will be useful or not (initial pertinence) in quick way. At second, digest is the reference tool. At the end of each summary, you will find the citation to the full text, which you can then retrieve online or in paper either.

6. Problem with case law citations

The basic idea of citation indexes is to show the bibliographic material in two ways: 1) as the documents cited and 2) as the citing documents. Citation index is tool that provides current and retrospective information. It also allows finding out who cites whom and who is cited by whom.

Retrospection is associated with the possibility of tracing the history of the selected decision and obtains information whether anyone was citing on the case law, and if so, what was the result of this relying (for example if the precedent was upheld or merely mentioned). The citing documents may be legislative enactment, legal (for example articles in legal reviews).

In the common law countries precedents, as well as legislative acts in the civil law system, can be overruled. This is why there is a need to track the status of individual decisions and verify if the precedent is still a 'good law'. Case law indexes therefore play the role of validators.

Indexes can be an integral part of a case law reporter or can exist as a separate publication (analytical index). Today indexes are an important component of automated information systems. It is worth noting that the case law citations are not used in the civil law countries. There is even no reason to use them. Similarly, automated information systems in civil law countries have no expanded citator services.

It is interesting that the first and most important ideas in the case law citations were born in the United States and not in the United Kingdom. American legal system derived directly from English law and it has much more shorter history.

The British are reluctant to admit to the use of foreign solutions. In place of the popular all over the world term 'shepardization', meaning in the American legal jargon process of verifying the status of a case law by citation indexes, which emphasise the roots of this idea, they use a synonym 'noting up' (Young, 1998). Shepardization is a term associated with the person of the nineteenth-century publisher Frank Shepard (1848 - 1902) author of 'Shepard's Citations' (1873). He is considered to be the father of legal citation indexes by many researchers. This is not true, because this idea was born much earlier, before the Frank Shepard was born.

In 1821 an American lawyer Simon Greenleaf (1783-1853) issued a 'A collection of cases overruled, denied, doubted, or limited in their application, taken from American and English reports' (Greenleaf, 1821). This argument proves enough to consider him as the author of the first legal citation index (Ogden 1993, s. 2-7). Each description of case law from Greenleaf's book had own case title, the location in the publicator, references to the case law which overruled given precedent and to other documents (see Figure 2).

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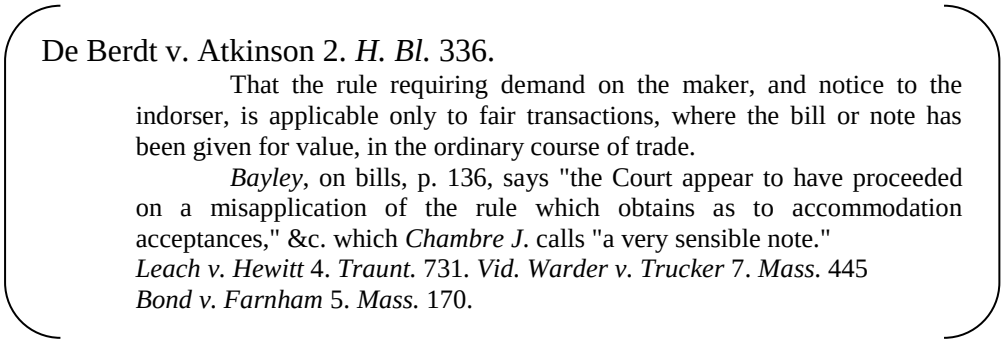
Figure 2. Section of the pioneering publication of Simon Greenleaf (Greenleaf, 1821, p. 23)



De Berdt v. Atkinson 2. *H. Bl.* 336.

That the rule requiring demand on the maker, and notice to the indorser, is applicable only to fair transactions, where the bill or note has been given for value, in the ordinary course of trade.

Bayley, on bills, p. 136, says "the Court appear to have proceeded on a misapplication of the rule which obtains as to accommodation acceptances," &c. which *Chambre J*. calls "a very sensible note."

Leach v. Hewitt 4. *Traunt.* 731. *Vid. Warder v. Trucker* 7. *Mass.* 445

Bond v. Farnham 5. *Mass.* 170.

7. Searching in automated case law information systems

The traditional printed reports consisting of tens of thick volumes and supplements are still in use, but the development of information and communication technology and the rise of other legal research tools allow them to move into the electronic environment. Automation, hypertext, the Internet completely changed the paradigm of finding information about case law (Hanson, 2002 p. 564). The main goal of the automated information systems of case law is to provide access to the full texts of courts decisions, summaries and citation indexes in one place.

Searching strategy, or information searching behavior, using the computerized information system largely depends on the user's level of legal knowledge and on the legal system. There are different searching strategies and associated information tools to help the user in the extraction of information from print and electronic legal information resources.

In common law countries there can be distinguished three main ways of searching for case law:

1) The use of citation indexes,

2) Using the list of cases in the case law reporters,

3) Analyzing the texts of the legal doctrine (for example digests, legal encyclopedias, monographs, commentaries, reviews of the law),

4) Using automated information systems, which combine the three above methods.

In civil law countries users do not use the case law citation indexes on a large scale. It happens that in automated information systems appear references to related cases, but this is not enough to qualify them as citation indexes within the meaning of the common law system.

8. Main conclusions

In the common law countries jurisprudence, and case law documents, seems to be more important than in a civil law countries. Precedents, if they belong to the so-called “good law”, are there the source of the law and an important part of legal proceedings.

It does not matter whether users are professionals, librarians or ordinary citizens, their judicial information needs may be different in every particular country. The information providers have different ways of meeting those needs, too.

The main differences are related to the type of legal system adopted in the country. These are mainly related to searching strategy and information tools. It should be remembered that in the civil law countries there are not expanded citation indexes and the information searching behavior is slightly different than in the common law countries.

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References

Greenleaf, S (1821), A collection of cases overruled, denied, doubted, or limited in their application, taken from American and English reports (Portland, OR: printed by Arthur Shirley).

Hanson, FA (2002), 'From Key Number do Keywords: How Automation Has Transformed the Law', Law Library Journal 94.

Howorka, B (2010), Bibliotekarz i prawo: podstawowe informacje o prawie dla pracowników bibliotek (Warszawa: Wydawnictwo SBP).

Miączyński, A (1975) 'Struktura i funkcja orzeczeń w sprawach cywilnych', Zeszyty Naukowe Uniwersytetu Jagiellońskiego: Prace Prawnicze 51.

Ogden, P (1993) 'Mastering the Lawless Science of Our Law: A Story of Legal Citation Indexes', Law Library Journal 85.

Petzel, J (1999), Informatyka prawnicza: zagadnienia teorii i praktyki (Warszawa, LIBER).

Studnicki, F (1969), Cybernetyka i prawo (Warszawa: Wiedza Powszechna).

Studnicki, F (1978), Wprowadzenie do informatyki prawniczej: zautomatyzowane wyszukiwania informacji prawnej (Warszawa: Państwowe Wydawnictwo Naukowe).

Yelin, AB and Samborn, HV (2008), The Legal Research and Writing Handbook: A Basic Approach for Paralegals (New York: Wolters Kluwer Law & Business).

Young, SE (1998) 'Shepardizing English Law', Law Library Journal 90.

Zieliński, M (2004), 'Język prawny, język administracyjny, język urzędowy' in Malinowska, E (ed) Język – prawo – społeczeństwo (Opole: Wydawnictwo Uniwersytetu Opolskiego).

Mitchell, SM and Powell, EJ (2011), Domestic Law Goes Global: Legal Traditions and International Courts (Cambridge, UK: Cambridge University Press).

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