

Case law as a source of information

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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

Paper presents an interdisciplinary character, touching such subjects as diverse as: legal sciences (especially judiciary), information and communication technology (ICT), librarianship and information science. Interdisciplinary approach to the subject is always a challenge, which involves additional difficulties. The main problem is the necessity of understanding specialized terminology which belongs to the specified discipline, which is not the parent discipline. In this case these are legal sciences. In the point of view of the researcher the biggest difficulty was 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, s. 41).

One may wonder why it is worth to go outside home area and explore topics related to law? The answer is simple - because the law is applicable to every fields of human life. Commonly known legal Latin phrases say *ignorantia iuris nocet* (ignorance of the law harms) and *ignorantia legis non exculpat* (ignorance of the law excuses no one). These two legal maxims show explicitly that it is in everybody's interest to know the law. For many reasons there is no possibility to know all the legal sources. It's necessary to choose the most important documents and information.

The answer to the question what the most important is, gives Polish lawyer Franciszek Studnicki. 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, s. 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. These 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 (eg, 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 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 are 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, s. 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. 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 case.

2. 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.

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, Powell 2011, s. 32).

Doubtless type of legal system has an significant impact on legal information retrieval. 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 system 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.

3. Characteristics of a case law

It's not so easy way to list all types of case law, because particular countries adopted different solutions in this matter. In some countries documents qualified as case law in the others may have a different status. For example, in Poland entry in the land register is considered as a case law. This type of judicial decisions is very different from the case law model.

At first glance, information structure of case law 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 model case law 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), and 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.

Persons 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 unfortunately rare (for example Dutch *Landelijk Jurisprudentie Nummer* or Belgian *Numéro Justel*).

3.1. Caselaw reporters

Every case law is documented, but not every is published. Editors select cases for their authority, relevancy, and utility to the legal profession generally. A reported decision is a case published in a case law reporter (publication of the full-text decisions of judges). 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.

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.

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 in family law)

There is a possibility to search a case law index in many different ways:

- by subject;
- by the names of the parties or the style of cause;
- by case law cited;
- by the legislation cited;
- by judicial definitions of a word or a phrase.

3.2. Summary of the case law

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.

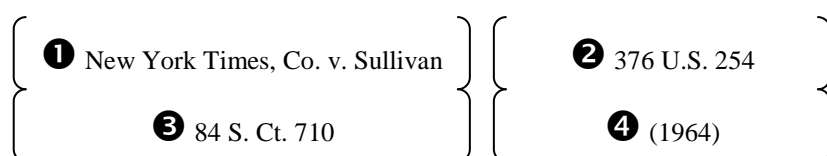
Effective strategy for locating case law is reading summaries of cases. They can be stored in special publications called digests, which index the law by topics or legal issues. In the digests it is possible to find headnotes or case abstracts in which the publishers assign a topic and number to a point 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, Samborn 2008, s. 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.

Figure 1. Example of citing an American case law

New York Times, Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710 (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

3.3. 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 to find 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 obtain 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

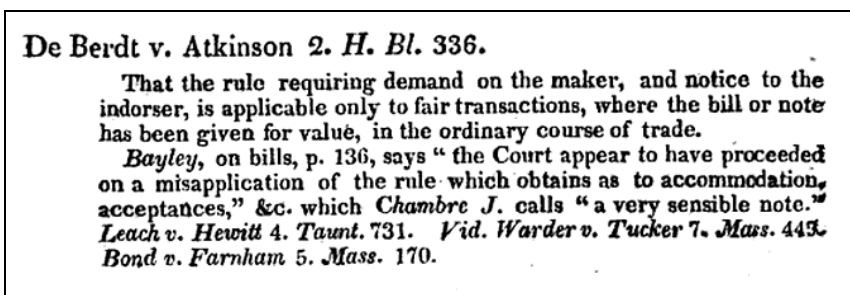
automated information systems. It is worth noting that the case law citations are not used in the civil law countries. There is even no reason to use them. Similarly, automated information systems in civil law countries have no citator services.

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).

Figure 2. Part of the pioneering publication of Simon Greenleaf (Greenleaf 1821, s. 23)



Among the followers of Simon Greenleaf, from the pre-Shepard era, are: Logan Edwin Bleckley, Samuel Linn, William Waite, Melville Bigelow, George R. Wendling, Robert distillation (Ogden 1993, s. 23-27).

3.4. 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 s. 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. Main leaders in this kind of activity are two companies - Westlaw and LexisNexis - that compete with each other in offering users more and more clever tools within their services. Public and free information systems of case law at this stage, unfortunately, can not compare with them.

3.5. Searching strategy

Searching strategy, or information searching behavior, 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. It happens that in automated information systems appear references to related cases, but this is not enough to qualify them as citation indexes.

4. Conclusions

In the common law system jurisprudence is more important than in a civil law system. 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 system there are not any citation indexes and the information searching behavior is slightly different.

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