

# Theoretical Problems of Plenary Assembly Decisions in Uzbekistan

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**Annotation:** This article analyzes theories on the theoretical framework for examining Plenary Assembly decisions and create a theoretical framework for examining Plenary Assembly decisions of the Supreme Court in Uzbekistan. Firstly, the research considers theories on the theoretical framework for examining Plenary Assembly decisions from the perspective of judicial independence to clarify the relationship between Plenary Assembly decisions and judicial independence. Next, it discuss the state of modern justice and considers the situation of judicial practice from the perspective of the rule of law. Based on the results, this paper clarifies a more appropriate theoretical framework for examining the relationship of Plenary Assembly decisions of the Supreme Court in Uzbekistan to judicial independence.

**Keywords:** Supreme Court, uniformity of judicial practice, court practice, interpretation, Plenum, application of law.

Plenary Assembly decisions have not been sufficiently studied in Uzbekistan. There are thought to be various reasons for this lack of research. Many scholars were educated in Soviet law and are unable to break away from the idea of Soviet law. It seems that such theories do not bring out the problems of Plenary Assembly decisions. Theories on General Assembly decisions in Uzbekistan since independence have been influenced by Russian legal scholars. Therefore, the main subject of academic debate is the view of General Assembly decisions as a type of legal interpretation and their source of law. Therefore, it is thought that it will be difficult to obtain suggestions for creating a theoretical framework for future analysis from previous research on General Assembly decisions in Uzbekistan.

In a few papers on the legal status of Plenary Assembly decisions in the Soviet era, the course of the judiciary at that time was divided into several periods. For example, based on the views of Vereshagin A.N. and Xudoba V.N., the judiciary in the Soviet era is divided into the following periods:

- a) 1924-1938 period;
- b) 1938-1957 period;
- c) 1957-1979 period;
- d) 1979 to the collapse of the Soviet Union period;

However, the above classification is not based on the scholars' views on the legal status of Plenary Assembly decisions, but on the changes in the judicial system. In other words, it is a classification that examines the changes in the powers of the Supreme Court of the USSR and the regulations regarding Plenary Assembly decisions in each period.

Next, we will briefly examine the views of scholars at that time on the changes in laws regarding the judicial system and the legal status of Plenary Assembly decisions in each period.

- a) The Soviet judicial system from 1924 to 1938

On November 23, 1923, the "Rules of the Supreme Court of the USSR" were enacted, which gave the Supreme Court of the USSR the power to provide guiding explanations. Article 43 "a" of the 1924 Soviet Constitution also stipulated the power of the Supreme Court of the USSR to "provide guiding explanations to the federating republics on the issues of all-federal legislation."

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#### b) The Soviet judicial system from 1938 to 1957

On August 16, 1938, the "Law on the Composition of Courts in the USSR, Federal and Autonomous Republics" was enacted. Article 75 of this law stipulated that the Supreme Court of the USSR would provide "guiding instructions" on issues of judicial practice based on precedents on cases heard by the Supreme Court of the USSR. This became the basis for active debate among scholars regarding the legal status of the Plenary Assembly decisions.

Orlovskiy P. E. stated that only the Plenary Assembly decisions of the Supreme Court of the USSR represent judicial practice and are therefore a source of law. According to Isaev M.M., the directives have the character of law creation and are the source of criminal law. Shargarodskiy M.D. argued that if court decisions are binding on the parties in a case, the directives of the Supreme Court of the USSR Plenary Assembly decisions are binding on judicial practice. Therefore, he argued that the Plenary Assembly decisions are the source of law. On the other hand, there were many scholars who held the opposite view.

Piontovskiy A.A. argued that the role of the Supreme Court of the USSR Plenary Assembly is to interpret the law and to provide legal norms, not to create law. Tishkevich I.S. also took a similar position to Piontovski and rejected the source of law of the Plenary Assembly decisions. Tishkevich emphasized that the Plenary Assembly decisions are not the source of law from the perspective of the separation of powers. Furthermore, the interpretation of law in the Plenary Assembly decisions is not a normative interpretation, but a specific judicial interpretation. On the one hand, General Assembly decisions are binding and important for the uniform application of law. What is strange about Tyszkiewicz's view is that he rejects the source of law of General Assembly decisions from the perspective of legality, but on the other hand asserts the importance of General Assembly decisions in ensuring legality. According to Golunskiy S.A. and Strogovich M.S., Directives collect typical judicial errors and instruct lower courts on how to prevent them. In 1956, the journal "Soviet State and Law" summarized the views of scholars on the legal status of the Directives at that time, and concluded as follows:

- Plenary Assembly decisions are normative acts and sources of law;
- The legal interpretation in the Plenary Assembly decisions is the normative interpretation;

Analyzing the views of scholars at this time, the following commonalities seem to exist:

1. The majority opinion was that Plenary Assembly decisions were binding;
2. The focus of the debate on Plenary Assembly decisions was their source of law;
3. Scholars were divided into two views on the source of law of Plenary Assembly decisions;

#### c) The Soviet judicial system from 1957 to 1979

On February 12, 1957, the "Regulations on the Supreme Court of the USSR" were enacted, and Directives were changed to Directive Explanations. In addition, the Supreme Court of the USSR was given the right to submit bills. Article 9 of the Rules established two methods of the right to propose legislation:

1. submitting a proposal to the Presidium of the Supreme Soviet of the USSR on issues that require legal solution;
2. submitting a proposal to the Presidium of the Supreme Soviet of the USSR on issues that require legal interpretation;

Bezina A. and Lazarev V. stated that Plenum decisions are the embodiment of law and correspond to normative legal acts. They also distinguished the embodiment of law by Plenum decisions from the embodiment of legal creation. The embodiment of law begins in the first instance and continues in the Plenum of the Supreme Court of the USSR.



Vengerov A.B. examined Plenum decisions from the point of view of interpretation, i.e., asserted the concept of the precedent of interpretation. Vengerov stated that the goal of the precedent of interpretation is the creation of legal propositions, and Plenum decisions are normative, i.e., binding. On the other hand, they limited the binding power of the Plenary Assembly decisions by applying their binding power only to judicial institutions and the parties to the case.

According to Cherdanutsev A.F., the concretization of legal norms is an element of legal interpretation, not an act of law creation. The goal of interpretation is to express the content of legal norms in detail and clearly. Therefore, the Plenary Assembly decisions of the Supreme Court of the USSR are binding.

Bratus S.N. argued that Plenary Assembly decisions are a method of judicial practice, concretizing and elaborating legal norms and creating legal propositions. Therefore, Plenary Assembly decisions are binding and are subordinate normative acts. The interpretation of law in Plenary Assembly decisions is a specific judicial interpretation. Regarding precedents for interpretation, he had a different view from Venugelov. That is, he stated that precedents for interpretation arise not from Plenary Assembly decisions, but from judgments on specific cases.

Alekseev S.S. stated that the interpretation in Plenary Assembly decisions is a normative interpretation, and acknowledged the binding power of Plenary Assembly decisions. It should also be noted that the role of the Plenary Assembly decisions in judicial practice was emphasized.

Based on the views of scholars of this period, it seems possible to conclude the following:

- Many scholars considered Plenary Assembly decisions as one element of judicial practice;
- Legal interpretation was the main criterion for examining the legal nature of Plenary Assembly decisions;

d) Judicial system from 1979 to the collapse of the Soviet Union

On November 30, 1979, the "Law on the Supreme Court of the USSR" was enacted, and Article 3 of the law stipulates that "The Plenary Assembly of the Supreme Court of the USSR shall provide the court with guiding explanations on the issues of the application of law, and these guiding explanations shall be binding on the courts, other institutions and public officials."

According to Zivs S.L., there is one shortcoming of many papers on the legal status of Plenary Assembly decisions. It is that the nature of Plenary Assembly decisions is expressed in terms of a general meaning regarding judicial practice. In other words, the same evaluation criteria are used in a broad sense for Plenary Assembly decisions and judicial practice. As a result, certain conclusions that can elucidate the characteristics of General Assembly decisions are also applied to judicial practice, losing their efficiency.

Zivs also argued that the unique validity, retroactive effect, and codification of General Assembly decisions are elements that prove their normativeness.

During this period, with the enactment of the above-mentioned "Supreme Court Act" in 1979, discussions regarding the binding force of General Assembly decisions lost their value.

In modern Russia, which was the center of the birth and development of Soviet law, General Assembly decisions are still the subject of various discussions. As mentioned above, academic theories on General Assembly decisions in Russia mainly discuss their legal nature. However, it seems that previous research based on such a framework has not fully clarified the characteristics of General Assembly decisions. One factor for this is that many scholars were active during the Soviet era or have not departed from the ideas of Soviet law.

The two frameworks introduced above are therefore thought to be useful for the analysis of this paper. They are the view on the administrative nature of General Assembly decisions and the view that they are a means of unifying judicial practice.



First, we will briefly consider and analyze view. Burkov's discussion of the Plenary Assembly decisions focuses on the process of adoption of Plenary Assembly decisions. He considers the history and role of the Plenary Assembly, and the design of the system for unifying judicial practice under Soviet law, and uses these discussions to support his views. Even during the Soviet era, there was a view that unifying judicial practice through Plenary Assembly decisions was an administrative method, not a procedural method. Furthermore, Western scholars have also criticized the adoption process of Plenary Assembly decisions, arguing that they are not related to the conduct of trials.

Burkov seems to have fully clarified the administrative nature of Plenary Assembly decisions. However, Burkov's discussion focuses on the administrative nature of Plenary Assembly decisions, and does not discuss the impact of such Plenary Assembly decisions on judges of the Supreme Court and lower courts. On the other hand, Burkov argues that the administrative nature of Plenary Assembly decisions is important for ensuring their normativeness and efficiency. Therefore, the question of how the administrative nature of Plenary Assembly decisions affects the independence of judges is not included in the scope of his examination.

Next, we will discuss the problems with Plenary Assembly decisions as a means of unifying judicial practice. The role of the General Assembly's decisions as an institution is to ensure the accurate application of the law and uniformity of judicial practice. Therefore, it is believed that a more appropriate discussion can be made on the legal nature and problems of General Assembly decisions by examining them from the perspective of uniformity of judicial practice.

First, the concept of uniformity of judicial practice is discussed. Marshakova criticizes the uniformity of judicial practice in Russia as being based on the idea of legal positivism. In other words, she argues that it is undesirable for lower court judges to formally follow the method of resolving cases established by the Supreme Court. In other words, the formal uniformity of judicial practice is denied. On the contrary, she emphasizes that substantive uniformity, which allows each judge the room to resolve disputes based on an interpretation of the law that differs from the legal position of the Supreme Court, is more desirable. Therefore, in order to prevent arbitrary decisions by judges, the legal standard of uniformity is taken up. The standard is the human rights and legal principles guaranteed by the Constitution.

Next, it is discussed whether General Assembly decisions are appropriate for realizing substantive uniformity of judicial practice. Then, the external and internal problems of General Assembly decisions are pointed out. However, in Uzbekistan, simply subjecting General Assembly decisions to constitutional review does not seem to solve the problem. Several issues with constitutional review in Uzbekistan can be cited as contributing factors. First, in Uzbekistan, the parties involved cannot apply for legal issues with the Constitutional Court. Second, judges cannot directly transfer cases to the Constitutional Court. Judges are supposed to transfer cases to the Constitutional Court through the Chief Justice of the Supreme Court, but to date not a single case has been transferred. Moreover, in Uzbekistan, the Constitutional Court takes a passive stance toward constitutional review, so the above-mentioned problems are unlikely to be solved. For this reason, it is important to pay attention to the inherent problems of General Assembly decisions.

In conclusion, we can conclude that the most notable inherent problem with General Assembly decisions is the lack of a mechanism to overcome General Assembly decisions. In other words, it is not possible to correct an unjust legal position in a General Assembly decision, or to make a judgment based on an interpretation of the law that differs from that in the General Assembly decision. There are various reasons for this, but one is the abstract nature of General Assembly decisions. Because General Assembly decisions do not state the reasons for the Supreme Court's legal positions, they cannot be challenged or overcome. This is considered to be a significant obstacle to the effective independence of judges.



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