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Research Article

TOPICAL ISSUES OF ANTIMONOPOLY LEGISLATION APPLICATION: JUDICIAL PRACTICE AND LEGAL POSITIONS OF THE SUPREME COURT OF THE REPUBLIC OF KAZAKHSTAN

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ABSTRACT

Background: *This article examines the role of the Supreme Court of the Republic of Kazakhstan's legal positions in ensuring consistency in judicial practice in cases involving the application of competition (antimonopoly) law. It focuses on the judiciary's evolving role in the context of the establishment of administrative justice and the increasing complexity of state market regulation. It argues that decisions of the highest judicial authority increasingly go beyond resolving individual disputes and acquire systemic significance for legal interpretation and enforcement.*

Method: *The study employs formal legal, systemic-structural, and comparative legal methods. The empirical basis includes administrative court decisions and the Supreme Court of the Republic of Kazakhstan rulings in antimonopoly cases. These methods allow identification of stable patterns of judicial interpretation and assessment of their impact on the development of competition law regulation.*

Results and Conclusions: *The analysis shows that the Supreme Court's legal positions serve a coordinating function, ensuring coherence in judicial practice in the absence of a formally established doctrine of precedent. The study identifies a gradual shift from a formalistic to a functional approach in assessing administrative acts issued by competition authorities, where emphasis is placed not on the form of the act but on its legal effects. It also shows that Supreme Court jurisprudence helps fill legislative gaps and resolve normative uncertainties, thereby shaping more predictable standards of legal application. The study shows that in Kazakhstan a model of de facto precedential influence is gradually taking shape, where the Supreme Court's legal positions begin to play a guiding role for lower courts. This contributes to greater consistency in judicial practice and improves legal certainty in antimonopoly regulation. At the same time, this development inevitably raises broader questions about how far courts should go in shaping the content of law and where the boundary lies between interpretation and law-making.*

1 INTRODUCTION

The application of antimonopoly legislation by administrative courts has become increasingly important in the Republic of Kazakhstan (RK), particularly amid ongoing economic transformation, growing market competition, and rising demands for business transparency. In recent years, the state has taken consistent steps to strengthen a fair competitive environment. However, the real effectiveness of these measures largely depends on judicial practice. Through the fair and lawful application of legislation, as well as the development of coherent legal positions, courts help shape behavioural standards for market participants. Ultimately, this contributes to more consistent and effective implementation of antimonopoly rules by all actors involved in legal relations.

Although the Agency for the Protection and Development of Competition of the RK and its territorial bodies primarily oversee the implementation and observance of antimonopoly legislation in Kazakhstan, administrative courts play an important role in the state control system. Their participation in applying antimonopoly legislation is extremely important, since the court, as a rule, resolves disputes about the law.

Foreign researchers also write about this, emphasising that judicial control is an integral part of ensuring fairness, transparency, and accountability in competition law enforcement in all jurisdictions.[1] Moreover, according to some researchers, it is the judges who determine the content of competition law.[2]

1 Rigin S Thomas, 'The Role of Courts in Reviewing Competition Agencies' Decisions to Prevent Arbitrariness' (2025) 5(1) Indian Journal of Integrated Research in Law 729 <https://ijirl.com/volume-v-issue-i/> accessed 19 April 2026.

2 Frederic Jenny, 'Opening Speech' in *Judicial Enforcement of Competition Law* (OCDE/GD(97)200, Roundtables on Competition Policy no 13, OECD 1997) 16 <https://dx.doi.org/10.2139/ssrn.141067> accessed 19 April 2026.

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This topic is relevant for Kazakhstan because the administrative justice system has been fully operational for only a few years. With the adoption of the Administrative Procedural and Process-Related Code of the RK on June 29, 2020[3] and the creation of specialised administrative courts, the legislative formalisation of the administrative justice system in the RK has been completed. At the same time, theoretical and practical developments to further improve the system of administrative courts that hear complaints about the actions and decisions of government agencies and officials are actively continuing.

One of the most important issues in the legal regulatory mechanism is the formation and development of a legislative system. The quality and stability of antimonopoly legislation play a crucial role in transit countries such as Kazakhstan, where there were no market relations in the economy for a long time during the Soviet era. High-quality legislative regulation of relations in this area is necessary to prevent abuse of a dominant position in the market and regulate the actions of its participants, who may use their position to conduct unfair competition, endanger small and medium-sized enterprises, and harm consumers.[4]

Consequently, an appropriate legal system designed to preserve and create conditions for competitive activity is the basis for ensuring its real functioning. Legislation in this area, recognising the principle of private property and freedom of contract and giving a precise definition of these legal institutions, is designed to promote competition.[5]

At the same time, the legal literature has rightly pointed out that the desire to issue clear, specific, and precise legislative norms without gaps often leads to a situation where solving this problem does not yield the necessary result. On the one hand, the desire for clear, concise legal norms stems from the fact that it is impossible to require coordinated behaviour of subjects of legal relations in accordance with legislative prescriptions without clarity and simplicity of the law.

On the other hand, in life the necessary simplicity and clarity of legal regulations often clash with the complexity of human experience. As a result of the resolution of this contradiction, which is mainly carried out through law enforcement activities, primarily by the court, one or another national legal system is largely being formed.[6]

Modern researchers share this view, emphasising that the legislature cannot and should not regulate every issue in the economy, society, and the world in every individual case.

3 Administrative Procedural and Process-Related Code of the Republic of Kazakhstan no 350-VI (adopted 29 June 2020) <https://clck.ru/3SsGLD> accessed 19 April 2026.

4 Sishang Zhang, 'An Analysis of the Roles of the Anti-monopoly Law in Sustainable Economic Development' (2023) 63(1) Proceedings of the 2nd International Conference on Financial Technology and Business Analysis 40 <https://doi.org/10.54254/2754-1169/63/20231368> accessed 19 April 2026.

5 Thibault Schrepel, 'Friedrich Hayek's 'Contribution to Antitrust Law and Its Modern Application' [2014] ICC Global Antitrust Review 199 <https://ssrn.com/abstract=2548420> accessed 19 April 2026.

6 Ronald J Allen, 'Foreword: The Nature of Discretion' (1984) 47(4) Law and Contemporary Problems 1 <http://www.jstor.org/stable/1191684> accessed 19 April 2026.

In the process of judicial application of the law, the legal certainty of its norms is clarified, and the issues of justice are specified.[7]

In this regard, the purpose of this article is to analyse the importance and role of the legal positions of administrative courts in ensuring the protection of the rights and freedoms of economic entities in the RK.

Within the framework of this goal, the task is to separately review the activities of the Supreme Court of the RK, which creates new legal provisions and specifies the norms of the law in the process of adopting its instructional acts, which are officially called 'Regulatory Resolutions of the Supreme Court of the RK'. The Supreme Court also puts forward its legal positions when deciding specific cases. Through this activity, the Supreme Court ensures uniformity in judicial practice. It improves and develops antimonopoly legislation by identifying gaps and inaccuracies in the legal regulation of relevant public relations.

2 RESEARCH METHODS

The methodological framework of this study reflects its subject matter. It aims to show how courts apply antimonopoly legislation and to clarify the Supreme Court of the RK's role in ensuring consistency in judicial practice. To achieve this, the research relies on a combination of methods that allow not only description but also interpretation and explanation of the legal phenomena under review.

A key element of the methodology is the review and analysis of academic literature, which provides the study's theoretical basis. By synthesising doctrinal approaches to judicial practice, legal positions of courts, and their place within the system of legal sources, it becomes possible to outline the conceptual framework of the research and to guide the subsequent analysis of case law. Importantly, this theoretical work is consistently compared with empirical material, which helps to align doctrinal assumptions with actual judicial practice.

A significant part of the study is devoted to analysing case law, particularly decisions of administrative courts and the Supreme Court of the RK in antimonopoly disputes. The focus here is on identifying the legal positions developed in judicial decisions and assessing how they influence later adjudication. This makes it possible to move beyond a mere description of individual cases and instead identify broader and more stable patterns in judicial practice, supporting the conclusion that the Supreme Court's positions play a de facto guiding role in the development of consistent case law.

7 Bemd H Oppermann, 'On the Role of Precedents and Legal Certainty in German Private Law' (2018) 27(1) Studia Iuridica Lublinesia 107 <https://doi.org/10.17951/sil.2018.27.1.107> accessed 19 April 2026.

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The systemic-structural method examined antimonopoly legislation, judicial practice, and legal doctrine as interrelated elements of a single legal system. Its application made it possible to determine the interaction between normative regulation and judicial interpretation, as well as to identify instances in which courts fill legislative gaps and remove legal uncertainties. On this basis, the study supports the proposition that the Supreme Court's legal positions serve a law-making function in conditions of dynamically evolving legal regulation.

Comparative legal analysis was also employed, enabling the correlation of identified features of Kazakhstani practice with approaches developed in other legal systems. This made it possible to interpret more convincingly the increasing role of judicial practice and to explain courts' factual reliance on the positions of the highest judicial instance in the absence of a formally established precedent mechanism.

The study's normative basis consists of current RK legislation, analysed through official legal sources. Comparing it with judicial practice revealed discrepancies between statutory provisions and their application, which directly informed the conclusions about the role of judicial interpretation in the development of antimonopoly law.

Together, these methods enabled the study to move beyond a purely descriptive account of the problem and to produce substantive findings. Engagement with the academic literature helped to clarify the theoretical framework and to avoid an overly formalistic understanding of judicial practice and legal positions of courts. The analysis of judicial decisions showed that lower courts, in practice, tend to rely consistently on the positions of the Supreme Court, pointing to its de facto guiding role despite the absence of a formal doctrine of precedent.

The system-structural approach further showed that many uncertainties in antimonopoly legislation are addressed through judicial interpretation rather than formal amendments to statutory provisions. The comparative perspective, in turn, suggests that similar developments appear in other legal systems and are not unique to Kazakhstan. Finally, comparing statutory norms with their practical application revealed a gap between formal regulation and implementation, supporting the conclusion that judicial practice plays an important role in enhancing legal certainty in antimonopoly law.

Taken together, these methodological approaches ensured a comprehensive analysis of the research problem and support the conclusion that the legal positions of the Supreme Court of the RK not only contribute to the uniformity of judicial practice but also influence the development and clarification of antimonopoly legislation.

The empirical basis for this study consists of judicial decisions issued by the Specialized Interdistrict Administrative Courts (SIAC), appellate courts, and the Judicial Chamber for Administrative Cases of the Supreme Court of the RK between 2023 and 2025. To ensure a representative sample, we analysed and summarised twenty court cases related to antitrust

disputes, competition protection, and challenges to administrative acts of regulatory authorities. However, to provide a thorough doctrinal analysis, this article focuses primarily on three landmark cases (complex areas of review) and the relevant legal framework. These selected cases serve as key indicators of existing gaps in law enforcement, the limits of judicial review, and shifts in legal positions across all levels of the judicial system. The data collection and extraction process involved remotely retrieving primary legal data from the state platform "Judicial Cabinet", specifically from the "Bank of Judicial Acts" database. To comply with state security requirements and ensure data verification, access to the database required mandatory remote authentication using an electronic digital signature (EDS) managed by the RK National Certification Authority. We conducted a targeted search for relevant judicial acts in accordance with a structured three-stage protocol.

To validate our findings and align them with official judicial positions, we cross-referenced the retrieved raw data with the Bulletin of the Judicial Board on Administrative Cases of the Supreme Court of the RK. Analysing this Bulletin enabled us to examine verified case studies and official reviews of judicial practice, ensuring that the selected cases reflect systemic trends rather than isolated anomalies.

We limited the search parameters to "administrative proceedings", categorised the files by specific court levels (courts of first instance, appellate courts, and the Supreme Court), and established a time frame. Contextual search by descriptors: because common search queries, such as "antitrust dispute", yielded low-relevance results due to database indexing limitations, we used precise legal descriptors and document types. These included phrases such as "on declaring a notification unlawful", "on challenging a conclusion", "on challenging an investigation report", "Agency for the Protection and Development of Competition", and "dominant position". By analysing various instances, identifying key Supreme Court decisions by their unique identifiers (e.g., № 6001-23-00-227 or № 6001-24-00-6ap/1850) or by the names of market participants, we reconstructed the full procedural sequence, including proceedings in the court of first instance, appeal, and cassation. This method enabled us to systematically track how the highest judicial body's final legal positions evolved.

3 RESULTS AND DISCUSSION

3.1. The Role of Regulatory Resolutions of the Supreme Court of the RK to Ensure the Uniformity of Judicial Practice in the Field of Competitive Activity

The issue of uniform application of the law is central to discussions of the judiciary's authority and public trust. The "Overview of the national mechanisms to ensure uniformity of judicial practice: in France, Germany, Italy, and Lithuania" emphasises that mechanisms

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and tools for ensuring uniform application of the law by courts play an important role in shaping the views of the legal community and the general public about the judicial system.[8]

In almost all countries, the highest courts are primarily responsible for achieving national uniformity of judicial practice.[9]

In the RK, the Supreme Court, in most cases, ensures the unity of judicial practice through its legal positions expressed in regulatory rulings.

This means that judicial practice in all categories of cases, including the resolution of antimonopoly disputes, is guided not only by laws adopted by the Parliament of the RK, but also by regulatory decisions of the Supreme Court of the RK.

The legal nature of these acts is still being discussed among scientists and practitioners, since paragraph 1 of Article 17 of the Constitutional Law of the RK on the Judicial System and the Status of Judges, defining the powers of the Supreme judicial instance of the RK, establishes that the Supreme Court clarifies judicial practice through the adoption of regulatory rulings.[10]

In reality, the Supreme Court does not clarify issues of judicial practice; rather, it clarifies legislative norms on issues arising from their judicial application. According to many modern researchers, such instructions and regulations from higher courts have existed since the Soviet judicial system, when courts, in resolving cases, expected instructions from above and could not express their legal position without proper guidance. Consequently, active judicial activity was unacceptable and limited.

This long-standing practice of formalism and passivity on the part of the judiciary persists in several post-Soviet states: many judges today, either out of inertia or because the law requires them to do so, as in the RK, passively await clarification from the supreme courts to resolve complex cases, instead of actively and effectively administering justice.[11]

Some researchers in Kazakhstan, to whose opinion we also subscribe, believe that the Supreme Court of the RK, issuing regulatory resolutions for the judiciary of lower instances in the form of mandatory instructions, turns, in fact, into a law-making and even legislative body (through the creation of mandatory norms detailing and specifying

8 Council of Europe, *Overview of the National Mechanisms to Ensure Uniformity of Judicial Practice: In France, Germany, Italy, and Lithuania* (Project 'Support for judicial institutions and processes to improve access to justice in Ukraine', CoE 2022) <https://rm.coe.int/overview-of-the-national-mechanisms-to-ensure-uniformity-of-judicial-p/1680af07ad> accessed 19 April 2026.

9 Jacob Sandler, 'Uncompelling Uniformity' (2024) 76(6) Florida Law Review 1961 <https://dx.doi.org/10.2139/ssrn.5027826> accessed 19 April 2026.

10 Constitutional Law of the Republic of Kazakhstan no 132 'On the Judicial System and Status of Judges in the Republic of Kazakhstan' (adopted 25 December 2000) <https://clck.su/BbMpQ> accessed 19 April 2026.

11 Nazar Stetsyk, 'Case Law of the Supreme Courts in Post-Soviet Legal Systems' (2018) 11 Juridiskā Zinātne 62 <https://doi.org/10.22364/jull.11.05> accessed 19 April 2026.

laws), which contradicts the principle of separation of powers and independence of judges in administering justice.[12]

At the same time, while maintaining this position in principle, we believe that the Supreme Court must clarify the law at this stage of Kazakhstan's development, given the judiciary's relative weakness, constant changes in legislation, and the formation of new institutions in the republic's legal system.

Until 2021, when specialised administrative courts had not yet been established and the Administrative Procedural and Process-Related Code of the RK had not entered into force, all court cases concerning appeals against actions of state bodies and officials were resolved in accordance with the norms of Chapter 29 of the Civil Procedure Code of the RK.[13]

During this period, the Regulatory Resolution of the Supreme Court of the RK dated December 24, 2010 No. 20 «On certain issues of application by courts of the norms of Chapter 29 of the Civil Procedure Code of the RK» was in force.[14]

This regulatory resolution, which all judicial instances followed, stated that any person has the right to challenge a government agency's decision (action or inaction) in a special claim procedure if the act was carried out while performing managerial functions in the relevant field of state regulation (paragraph 1). An additional feature that allows for an appeal against such a legal act: a decision taken in the performance of managerial functions may be related to the monitoring or supervision of compliance by a market entity with the generally binding rules of conduct established by law (subparagraph 2 of paragraph 3).

The Supreme Court's normative resolution contributed, to some extent, to the uniformity of judicial practice. It stopped the practice developed by some courts of terminating proceedings on complaints by market participants against orders approving conclusions and prescriptions issued following antitrust investigations. The termination of proceedings was often based on the court's reasoning that the notification, order, or instruction issued by the antitrust authority allegedly did not infringe on the legal and factual status of the market participant and therefore could not be appealed.[15]

12 Aizhan Abdrassulova, 'Official Clarification of Normative Legal Acts: The Experience of the EAEU Countries and Gaps in Legal Regulation of the Republic of Kazakhstan' (2021) 3(136) Bulletin of LN Gumilyov Eurasian National University: Law Series 11 <https://doi.org/10.32523/2616-6844-2021-136-3-11-20> accessed 19 April 2026.

13 Civil Procedural Code of the Republic of Kazakhstan no 377-V (adopted 31 October 2015) <https://adilet.zan.kz/eng/docs/K1500000377> accessed 19 April 2026.

14 Regulatory resolutions of the Supreme Court of the Republic of Kazakhstan no. 20 'On Some Issues of Implementation by Courts Standards of Chapter 29 of Civil Procedure Code of the Republic of Kazakhstan' (no longer in force) (adopted 24 December 2010) <https://adilet.zan.kz/eng/docs/P100000020S> accessed 19 April 2026.

15 Dmitry Bratus, 'Protection of Civil Rights in Antimonopoly Disputes (Problems of Judicial Practice for the Investment Ombudsman's attention)' (*PRG*, 30 November 2018) <https://prg.kz/document/?doc_id=33386552&pos=9;223> accessed 19 April 2026.

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However, after the Administrative Procedural and Process-Related Code of the RK came into force, the Supreme Court of the RK resolution "On certain issues of application by courts of the norms of Chapter 29 of the Civil Procedure Code of the RK" (2010) became invalid.

The Supreme Court has not issued a similar regulatory decision on courts' application of the norms of the RK Administrative Procedural and Process-Related Code, except for a regulatory resolution that indirectly affects protection in the field of competition. This is the regulatory resolution of the Supreme Court of the RK dated November 29, 2024 No. 5 "On Judicial decision on administrative cases".[16]

As a result, courts today focus on the legal positions of higher courts and the Supreme Court, as expressed in their decisions on specific cases. Below we will analyse the legal positions of the Supreme Court of the RK on the application of antimonopoly legislation.

3.2. Judicial Practice of Consideration of Administrative Cases Related to Violation of Antimonopoly Legislation

a) The legal position of the Supreme Court of the RK on specific cases as a factor ensuring the uniformity of judicial practice

If we consider the evolution of antimonopoly law enforcement in the RK in a broader institutional context, it becomes evident that its stability is shaped less by the literal content of statutory provisions than by their judicial interpretation. At the same time, the central role is gradually concentrating at the level of the Supreme Court, whose legal positions in practice begin to serve as a systemic coordinator of judicial practice, ensuring uniformity in the absence of a formally established precedent mechanism.

The most illustrative issue concerns the legal nature of notifications issued by the competition authority regarding indications of violations of competition protection legislation, sent before the initiation of a full investigation. Formally, such notifications fall within the preliminary stage of the administrative procedure and do not have the characteristics of a final legal act. However, economic actors often perceive them more broadly: they are frequently seen as an early indicator of possible state intervention, giving them enhanced regulatory significance that does not always match their strict legal nature.

This discrepancy between the formal legal characterisation and its practical perception gives rise to the key problem of judicial qualification. During the formative stage of administrative justice in Kazakhstan, case law demonstrated a significant lack of consistency: some courts proceeded on the basis that such notifications may affect the rights

16 Normative Resolution of the Supreme Court of the Republic of Kazakhstan no 5 'On the Court Judgement in Administrative Cases' (adopted 29 November 2024) <https://adilet.zan.kz/eng/docs/P240000005S> accessed 19 April 2026.

and legitimate interests of market participants and are therefore subject to judicial review; others treated them as internal organisational measures of an administrative authority that do not produce independent legal effects. This uncertainty reveals the lack of a stable criterion for distinguishing procedural actions from legally relevant administrative acts.

In this context, the Supreme Court, in the case brought by JSC A. (No. 6001-23-00-227), adopted a fundamentally different doctrinal position. The court held that the disputed notification lacks independent legal force, does not alter the legal status of its addressee, and does not create external legal consequences. It operates exclusively within the competition authority's internal administrative logic. It constitutes an element of a preparatory stage aimed at organising subsequent procedures, rather than regulating the rights of legal subjects.

This approach allows a more fundamental theoretical and legal explanation. From the perspective of H. Kelsen, the distinction between a normative act and other administrative actions is determined not by the form of their expression, but by their capacity to produce legal effects within the hierarchical structure of the legal system.[17] In other words, the legal nature of an act depends not on its formal appearance, but on its normative significance and its position within the hierarchy of legal norms. In this sense, a notification issued by the competition authority does not reach the level of an independent legal norm, as it does not alter the legal situation of its addressee and does not form part of the chain of normative effect as a completed legal element.

This distinction is linked to the criterion of judicial review: only acts that produce external legal effects may be challenged in court. For this reason, the Supreme Court effectively establishes a functional test of justiciability based not on the document's formal nature, but on its actual impact on the affected subject's legal position.

At the same time, the broader theoretical meaning of this position becomes evident when viewed through the lens of H. L. A. Hart's concept. Within his framework, the stability of a legal system is ensured not only by primary rules of conduct, but also by the "rule of recognition", which encompasses established institutional practices of legal interpretation.[18] In this sense, the legal positions of the Supreme Court begin to function as an element of such a rule of recognition, gradually shaping the benchmarks for acceptable interpretation of competition law.

However, the court's interpretative role is not without limits. In this regard, J. Raz's position is particularly relevant, as he links the authority of law to its capacity to ensure the predictability of legal subjects' behaviour, while also emphasising that an excessive expansion of interpretative discretion may undermine the normative certainty of the legal system. This approach demonstrates that the authority of law is connected to its ability to

17 Hans Kelsen, *Pure Theory of Law* (University of California Press 2022).

18 Herbert Lionel A Hart, *The Concept of Law* (2nd edn, OUP 1994).

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guide behaviour and ensure predictability, given that an overextension of discretionary power may weaken legal certainty.[19]

In this context, judicial interpretation must ensure uniformity in legal practice while preserving the boundary between interpretation and the creation of new legal norms.

An additional dimension of this issue is developed in R. Dworkin's theory, which views judicial decision-making as a process of constructing the best possible interpretation of the legal system as a whole.[20] In this sense, the position of the Supreme Court in competition law cases should not be regarded as an isolated ruling, but rather as part of a coherent reconstruction of the meaning of legal regulation aimed at eliminating inconsistencies in the practice of lower courts.

From a comparative law perspective, it becomes clear that such a transformation is not an exclusively national phenomenon. M. Cappelletti, in his research, points to the gradual convergence of legal systems and the emergence of elements of "hidden precedent" even within classical civil law jurisdictions, where the principle of *stare decisis* is formally absent.[21] In this sense, decisions of higher courts acquire de facto normative significance, albeit implicit, since the legislation of the Republic of Kazakhstan does not formally allow lower courts to cite the legal positions of the Supreme Court. However, such decisions ensure the de facto uniformity of judicial practice through institutional authority rather than formal binding effect.

Naturally, adherence to precedent is typically characteristic of common law jurisdictions, where the doctrine of *stare decisis*, under which courts are required to follow previous decisions handed down by courts of equal or higher rank or jurisdiction, is a foundational principle of adjudication in the United Kingdom.[22]

However, even in Germany, a civil law jurisdiction where the doctrine of *stare decisis* does not govern the court system, judges in practice may take into account, and frequently do consider, decisions handed down in previous cases, even though they are not formally bound to follow them.[23] As a result, the highest courts in Germany (Bundesgerichtshof, Bundesverwaltungsgericht, Bundesfinanzhof, and others) ensure a certain degree of legal certainty and equal treatment of comparable cases.

19 Joseph Raz, *The Authority of Law: Essays on Law and Morality* (OUP 1979) <https://doi.org/10.1093/acprof:oso/9780198253457.001.0001> accessed 19 April 2026.

20 Ronald Dworkin, *Law's Empire* (Harvard UP 1986).

21 Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (Clarendon Press 1989).

22 Lewis Craham, 'Strong Decisions and Stare Decisis in Co-ordinate Courts' (2024) 35(2) King's Law Journal 224 <https://doi.org/10.1080/09615768.2023.2236733> accessed 19 April 2026.

23 'German Legal Research' (*Georgetown Law Library*, May 2025) <https://guides.ll.georgetown.edu/germanlegalresearch/judicialdecisions> accessed 19 April 2026.

Thus, the Supreme Court of the RK's practice in competition law demonstrates, as in some other civil law jurisdictions, the emergence of a hybrid model of adjudication. On the one hand, the continental legal structure remains intact, being based on the supremacy of statute and the absence of formal precedent. On the other hand, judicial interpretation is increasingly strengthened as a de facto mechanism for unifying legal practice.

This enhances the predictability of legal regulation while also highlighting a broader theoretical issue: the limits of judicial involvement in shaping the substance of law within a civil law system.

At the same time, it would be advisable for civil law jurisdictions to consider adopting a greater number of common law methods, like the historical evolution of the common law itself, since, unlike common law systems, civil law systems lack certain necessary methodological tools.[24] This recommendation is also relevant for the RK, which identifies itself as belonging to the civil law tradition.

b) Filling in inaccuracies, deficiencies, and gaps in legislation

Defects, gaps, and inaccuracies in legislation are a natural phenomenon inherent in any legal system, since no system of positive law, even the most perfect one, can fully encompass the diversity of real-life situations. As a rule, the shortcomings of legislation are identified much later, at the stage of law enforcement.[25] In such circumstances, the theory of interpretation and argumentation in law comes to the rescue.[26] As a result, the court actually participates in the formation of positive law, since it fills a possible "open space" in the law, acting creatively[27] and creating new legal provisions. These legal provisions result from interpreting and detailing general principles of the law in court decisions, shaped by the judge's personal experience, beliefs, and social context. This makes the law dynamic and adaptable, reflecting socio-economic interests and government policy.[28]

Contemporary research in competition law also indicates that the effectiveness of an antitrust system depends not only on the quality of legislation, but also on the extent of

24 Oppermann (n 7).

25 Anatoliy Kostruba and others, 'Legal Gaps: Concept, Content, Problems of the Role of Legal Doctrine in Overcoming them' (2023) 44(2) Statute Law Review 1 <https://doi.org/10.1093/slr/hmac016> accessed 19 April 2026.

26 Marijan Pavčnik, 'Questioning the Nature of Gaps in the Law [(Organic) Gaps in the Law]' (2012) 7(16) I-Lex: Rivista di Scienze Giuridiche, Scienze Cognitive ed Intelligenza Artificiale 119 <http://www.i-lex.it/articles/volume7/issue16/pavcnik.pdf> accessed 19 April 2026.

27 Michael C Ogwezzy, 'Appraisal of What Constitutes Legal Gaps and How They Are Filled in Different Jurisdictions' (2014) 41(1) Journal of Malaysian and Comparative Law 141 <https://ejournal.um.edu.my/index.php/JMCL/article/view/14340> accessed 19 April 2026.

28 Sakshi Andhare, 'Role of Judges in Development of Law with Reference to Realist Theory' (2025) 5(12) Indian Journal of Legal Review 438 <https://ijlr.iledu.in/role-of-judges-in-development-of-law-with-reference-to-realist-theory/> accessed 19 April 2026.

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its judicial interpretation. In particular, OECD reports emphasise that fragmented regulatory frameworks and the rapid pace of legislative change strengthen the role of courts as an institution ensuring legal certainty and the uniform application of the law. In this sense, judicial practice becomes a key mechanism for stabilising the legal system under conditions of regulatory uncertainty.[29]

A clear illustration of such judicial law-shaping, where case law acquires not a subsidiary but a system-forming function, ensuring predictability of legal application and stability of regulatory governance, can be found in certain decisions of the Judicial Chamber for Administrative Cases of the Supreme Court of the RK.

In this field, the Supreme Court of the RK generally demonstrates a shift from a formal-dogmatic model of legal application to a functional-interpretative model, in which the meaning of a legal norm is determined not only by its literal wording but also by its systemic role within the regulatory framework.

This approach aligns with contemporary developments in European competition law, where judicial interpretation is seen not as a departure from regulation, but as a mechanism for securing its effectiveness. EU competition law, in particular, is characterised by a functional and purposive method of interpretation, under which courts contribute to strengthening the effectiveness of legal regulation rather than confining themselves to its literal wording.[30]

A clear illustration of these issues appears in court decision No. 6001-25-00-6ap/475 of 23 June 2025,[31] which concerned amendments to Article 224 of the Entrepreneurial Code of the RK following the 2024 reform. The abolition of the requirement that the competition authority's conclusion be approved as an administrative order led to divergent judicial approaches. In particular, lower courts tended to adopt a formalistic position, holding that such acts were not subject to judicial review. This reasoning reflects a traditional form of legal formalism, where an act's legal relevance derives primarily from its formal classification rather than its actual legal effect.

However, in contemporary administrative and competition law doctrine, a purely formal classification of administrative acts is widely accepted as insufficient to meet the requirements of effective judicial protection, because it fails to account for the actual impact of regulatory decisions on the legal position of affected parties.

29 OECD, *OECD Peer Reviews of Competition Law and Policy: Kazakhstan 2025* (Competition Law and Policy Reviews, OECD Publishing 2025) <https://doi.org/10.1787/b7659978-en> accessed 19 April 2026.

30 Richard Whish and David Bailey, *Competition Law* (10th edn, OUP 2021).

31 Judicial Collegium for Administrative Cases of the Supreme Court of the Republic of Kazakhstan, 'A Brief Overview of the Administrative Cases Considered in Cassation for 6 Months of 2025' (*PRG*, 2025) <https://prg.kz/Document/?doc_id=33065686> accessed 19 April 2026.

Often, a purely formal classification of administrative acts proves insufficient to ensure effective protection of competition actors, as such protection requires assessing how regulatory prescriptions affect real legal relations. In this context, a key factor underpinning effective enforcement in the field of competition lies in the powers vested in the competition authority.[32] At the same time, judicial positions that identify the actual impact of normative legal acts on real legal relations should enhance the effectiveness of other actors' law enforcement activities through judicial oversight.

In its analysis of recent legislative amendments and parliamentary debates, the Supreme Court of Kazakhstan found that the legislature did not intend to restrict the right to judicial protection; rather, it merely reorganised certain procedural elements of antitrust enforcement. This reasoning reflects a more modern approach to contextual judicial analysis, where the meaning of a legal norm derives not only from its wording but also from its purpose, its place within the legal system, and the practical consequences of its application.

From this position, the Supreme Court of the RK concludes that the antimonopoly authority's decision retains the character of an independent law enforcement act, since it generates legally significant consequences and initiates subsequent stages of administrative proceedings. Consequently, the conclusion cannot be excluded from the scope of judicial review.[33]

This conclusion is in line with current approaches to standards of judicial review in competition law, where courts effectively set the minimum requirements for the justification of administrative and economic decisions, applying a standard of reasonableness in their rulings.[34] At the same time, some scholars argue that the role courts play within the administrative model of competition enforcement is greater than is commonly assumed.[35]

Thus, the Supreme Court's judicial position under consideration forms a broader model of interaction between legislative uncertainty and judicial interpretation. In this case, the court does not exceed its competence but systematically corrects legal regulation, ensuring its internal consistency and functional integrity.

As a result, modern judicial practice in the field of antimonopoly regulation of the RK is developing towards strengthening the role of judicial interpretation as a tool for ensuring

32 Maciej Bernatt and Laura Zoboli, 'The Enforcement of Competition Law in the EU: A Critical Overview' (*SSRN*, 30 December 2023) <https://dx.doi.org/10.2139/ssrn.4309073> accessed 19 April 2026.

33 Judicial Collegium for Administrative Cases of the Supreme Court of the Republic of Kazakhstan (n 31).

34 Dina Awad, 'Judicial Review Post-Vavilov: Are Courts "Correcting" Administrative Decisions?' [2020] Dentons Canada Regulatory Review <https://www.canadaregulatoryreview.com/judicial-review-post-vavilov-are-courts-correcting-administrative-decisions/> accessed 19 April 2026.

35 Roksolana Ivanova, 'Growing Influence of Judicial Control of Administrative Courts on Public Administration Bodies' (2023) 9 Economics, Finances, Law 82 <https://doi.org/10.37634/efp.2023.9.19> accessed 19 April 2026.

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access to justice and improving the quality of legal protection for market participants. This aligns with the broader European trend of strengthening the judiciary's role in administrative and competition law. Thus, the documents and analytical notes of the Organisation for Economic Co-operation and Development (OECD) note the increasing role of courts and institutional actors in balancing public values in competition law, reflecting a broader trend towards value-based and interpretative decisions: «The judicial system plays a central role in the implementation of competition policy. Competition laws are formulated in a broad sense, and judicial precedent is important for interpreting these laws, even in countries where there is no common law».[36]

c) The role of Supreme Court Decisions in individual cases in the improvement of legal norms at the legislative level

Practice shows that the legal positions of the RK's Supreme Court in competition law disputes are gradually moving beyond the traditional understanding of judicial interpretation. In certain cases, they are increasingly perceived as reference points that the legislature considers when amending and refining regulatory frameworks, particularly where procedural mechanisms lack clarity.

It should be noted that the doctrine of constitutional and administrative law increasingly emphasises that the interaction of the court and the legislator in complex regulatory areas is not linear, but reciprocal, since courts and legislative bodies play different but complementary roles in dialogue not only with each other, but also with society.[37]

Judicial practice does not merely "apply" the law; it also identifies those points within the legal framework where its literal wording no longer ensures predictability and procedural protection for market participants.

In the Kazakhstani context, this issue is reflected in the ongoing discussion on amendments to Article 224 of the Entrepreneurial Code.[38] The proposed changes envisage introducing a mechanism for the deferred entry into force of conclusions issued following antitrust investigations, with their legal effect being linked to the possibility of judicial review. In practical terms, this approach aims to ensure that administrative measures do not produce irreversible consequences before judicial control has been exercised.

Taken together, these developments indicate a gradual movement towards strengthening judicial safeguards in competition law. At the same time, they align with broader tendencies

36 Darryl R Biggar, *Judicial Enforcement of Competition Law* (OCDE/GD(97)200, Roundtables on Competition Policy no 13, OECD 1997) <https://dx.doi.org/10.2139/ssrn.141067> accessed 19 April 2026.

37 Catherine A Fraser, 'Constitutional Dialogues Between Courts and Legislatures: Can We Talk?' (2005) 14(2-3) Constitutional Forum 7 <https://doi.org/10.21991/C9QX0S> accessed 19 April 2026.

38 Entrepreneur Code of the Republic of Kazakhstan no 375-V (adopted 29 October 2015) <https://adilet.zan.kz/eng/docs/K1500000375> accessed 19 April 2026.

observable in European competition law, where greater emphasis is placed on effective judicial protection within regulatory processes.

In particular, the legal press informs about the implementation of the principle of effective judicial protection in relation to administrative decisions that may affect market behaviour, since judicial control plays a central role in the direction and evolution of EU competition law.[39]

Importantly, such changes cannot be seen as a mere mechanical borrowing of foreign models. Rather, they reflect the gradual formation of an internal logic of interaction between the judicial and legislative branches, in which decisions of the highest court identify systemic defects in legal regulation.

In this sense, the legal positions of the Supreme Court should be understood not so much as a source of law in the formal sense, but rather as a mechanism of "feedback" within the legal system. They capture situations in which existing regulation requires clarification or a redistribution of procedural safeguards among participants in competition law relations.

Thus, an emerging and stable trend is evident: judicial practice in competition law is gradually becoming a factor shaping the content of future legislative decisions, thereby strengthening its role in the development of the legal system as a whole. For example, the proposed provisions of the draft law "On Amendments and Additions to Certain Legislative Acts of the RK on Competition Issues"[40] fully correspond to the legal position previously articulated by the Supreme Court in its ruling, thereby confirming the thesis that legal positions developed in the course of adjudication serve as a key to understanding the distinctive role of higher courts as a source in the formation of legislative norms.[41]

d) Digitalisation and its Impact on Judicial Positions

In the context of the digital transformation of public administration, it is not only the technical infrastructure of justice that is undergoing change, but also the very logic of judicial review of administrative acts. Digitalisation has increased expectations of transparency, efficiency, and accessibility in administrative procedures, while also raising new legal questions about how far formal requirements should be taken when assessing alleged administrative violations.

39 Pablo Ibáñez Colomo, 'Law, Policy, Expertise: Hallmarks of Effective Judicial Review in EU Competition Law' (2022) 24 Cambridge Yearbook of European Legal Studies 143 <https://doi.org/10.1017/cel.2022.7> accessed 19 April 2026.

40 Law of the Republic of Kazakhstan no 101-VII 'On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Competition Issues' (adopted 3 January 2022) <https://adilet.zan.kz/kaz/docs/Z2200000101> accessed 19 April 2026.

41 Earl M Maltz, 'The Function of Supreme Court Opinions' (2000) 37(5) Houston Law Review 1395 <https://houstonlawreview.org/article/4810-the-function-of-supreme-court-opinions> accessed 19 April 2026.

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The modern doctrine of digital administrative law proceeds from the fact that the introduction of electronic management systems should not replace guarantees of due process and judicial protection; however, excessive procedural formalism can lead to unjustified restrictions on public functions of the state.[42]

Contemporary digital administrative law starts from the idea that introducing electronic governance systems must not come at the expense of core guarantees of due process and judicial protection. At the same time, it is also recognised that overly rigid procedural formalism may unnecessarily constrain the effective functioning of public administration. In current academic discussions, this tension is often framed in terms of "algorithmically mediated justice", highlighting the need to strike a balance between the efficiency of digital procedures and the preservation of fundamental due process guarantees.[43]

A relevant illustration appears in a case concerning the judicial review of a regulatory order issued by the authority for natural monopolies, where the courts adopted different approaches to the legal significance of the digital form of the administrative procedure.

Article 45 of the Administrative Procedural and Process-Related Code of the RK establishes the equivalence between an electronic document signed with a digital signature and a paper-based document. This provision reflects a broader shift towards recognising the functional equivalence of digital and traditional forms of administrative acts.

In Case No. 6001-24-00-6ap/1850 of 13 February 2025,[44] the courts of first instance and appeal held that the absence of electronic formalisation of inspection results and their failure to be entered into the state control information system constituted a breach of mandatory procedural requirements, which, in their view, rendered the entire administrative act unlawful.

The Supreme Court of the RK adopted a different approach. The Judicial Panel held that the form of recording inspection results (whether paper-based or electronic) cannot, in itself, be regarded as a decisive criterion for the legality of an administrative act, provided that its substantive content complies with the requirements of legislation. Moreover, responsibility for the technical functioning of information systems cannot be automatically attributed to the administrative authority exercising the supervisory function.

This approach reflects a broader trend in contemporary administrative justice, shifting from formal procedural review to an assessment of the substantive legality of administrative

42 Firdaus Arifin, 'Reforming State Administration Law in the Digital Era: The Impact on Public Policy Efficiency' (2024) 23(3) Pena Justisia Media Komunikasi dan Kajian Hukum 7403 <https://dx.doi.org/10.31941/pj.v23i3.5078> accessed 19 April 2026.

43 Mireille Hildebrandt, 'Algorithmic Regulation and the Rule of Law' (2018) 376(2128) Philosophical Transactions of the Royal Society A 20170355 <https://doi.org/10.1098/rsta.2017.0355> accessed 19 April 2026.

44 Case no 6001-24-00-6ap/1850 (Supreme Court of the Republic of Kazakhstan, 13 February 2025).

decisions. Modern literature on administrative and digital law notes that excessive emphasis on formal procedural requirements may reduce the effectiveness of public administration. In contrast, deviations from digital standards should not automatically invalidate an administrative act, provided such violations do not affect the substance of legal protection or distort the balance of procedural safeguards. This is because an analysis of the legality and transparency of automated administrative decisions shows that government agencies are increasingly relying on intelligent systems, which can pose legal challenges, especially in matters of oversight and accountability.[45]

As a result, the Supreme Court effectively affirmed the primacy of a substantive assessment of an administrative act over formal defects in its digital form, holding that not every procedural irregularity arising outside the control of the administrative authority should lead to the annulment of the act, provided that it does not affect its legal essence.

Thus, the digitalisation of administrative procedures entails not only technological changes but also a transformation of the standards of judicial review. The emerging case law shows that courts are gradually moving away from a formal-digital approach towards a functional-legal analysis of administrative acts, ultimately strengthening the balance between the effectiveness of public administration and the guarantees of judicial protection for legal subjects.

4 CONCLUSIONS AND SUGGESTIONS

The transition of the RK to the administrative justice system has strengthened the protection of market participants' rights and freedoms, since the regulatory authority can, through administrative procedure, suppress possible abuses by any entity in a dominant position under competition law.

On the other hand, state bodies that oversee the implementation and observance of antimonopoly legislation in Kazakhstan may violate entrepreneurs' rights and freedoms. In this context, administrative courts play a key role in safeguarding the rights and freedoms of the relevant parties and in protecting their interests against unlawful actions and decisions of public authorities.

The effectiveness of such protection largely depends on the judiciary's ability to articulate its legal position clearly when applying antimonopoly legislation, while balancing fairness and legality and addressing gaps and inconsistencies in competition law. In practice, courts frequently encounter situations where public authorities misinterpret or improperly assess

45 Ahmed Mokhtar Abdel Hamid, 'Administrative Liability for Damages Caused by Artificial Intelligence Systems in Public Services: An Analytical Study in Light of the Principles of Legality and Transparency' (2025) 13(4) Humanities and Social Sciences 382 <https://doi.org/10.11648/j.hss.20251304.21> accessed 19 April 2026.

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evidence, fail to rely on direct proof, or apply a purely formal approach to inspections and regulatory control. Judicial decisions often note that the competent authorities do not always ensure consistency in administrative practice, particularly in relation to established procedures for analysing competition conditions in commodity markets. Procedural deadlines are also not infrequently exceeded, and administrative acts are sometimes adopted in a predominantly formal or mechanical manner. In the context of the ongoing digital transformation of public administration, this problem becomes particularly acute. As our analysis shows, the transition to electronic control and registration systems often prompts administrative authorities to overemphasise digital procedural formalities. However, as recent RK Supreme Court jurisprudence shows, deviations from technical or digital standards must not automatically invalidate an administrative act if its substantive content is legal. Courts are increasingly adopting a functional-legal approach, ensuring that algorithmically mediated or digitally executed administrative procedures do not override the substantive guarantees of legal protection for market participants.

The Supreme Court of the RK plays a special role in this process. The analysis in this study shows that, in practice, its legal positions serve not only an interpretative function but also act as a mechanism for shaping approaches to resolving similar cases. This explains the consistent orientation of lower courts toward the Supreme Court's positions, even without a formally established precedent mechanism. Courts typically use these judicial findings as guidance in resolving competition-related disputes, thereby contributing to uniformity in judicial practice.

We also agree with the Supreme Court's position reflected in the Summary of Judicial Practice and the Bulletin of the Judicial Panel on Administrative Cases. Case law analysis indicates that courts should continue to ensure proper preparation of administrative cases, accurately determine the relevant circumstances, comply with antimonopoly legislation, and fully implement the principle of the court's active role established in Article 16 of the Administrative Procedural and Process-Related Code of the RK.

Particular attention should be paid to assessing evidence and consistently applying competition law in public procurement procedures.

At the same time, the results of this study allow for a more general conclusion regarding the transformation of the role of judicial practice in RK's legal system. The analysis shows that, in antimonopoly regulation, the Supreme Court's legal positions are not limited to interpretation but increasingly function as a mechanism for shaping the content of legal regulation. This makes it possible to characterise the emerging model as hybrid, combining elements of a continental legal system with a de facto reliance on judicial positions that function similarly to precedent.

The study's scientific contribution lies in substantiating this conclusion through analysis of specific case law and showing that judicial practice serves not only a stabilising function, ensuring uniformity in law enforcement, but also a corrective and developmental function,

compensating for legislative gaps and influencing subsequent legislative developments. This corrective role is vital in adapting administrative law to the digital age. By prioritising substantive legality over formal digital defects, the Supreme Court prevents electronic administrative systems from becoming an obstacle to fair market competition, striking a balance between public administration efficiency and robust judicial protection. In this sense, the Supreme Court's legal positions can be an important institutional tool for ensuring legal certainty amid the dynamic development of antimonopoly legislation.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

АКТУАЛЬНІ ПИТАННЯ ЗАСТОСУВАННЯ АНТИМОНОПОЛЬНОГО ЗАКОНОДАВСТВА: СУДОВА ПРАКТИКА ТА ПРАВОВІ ПОЗИЦІЇ ВЕРХОВНОГО СУДУ РЕСПУБЛІКИ КАЗАХСТАН

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АНОТАЦІЯ

Передумови. *У статті досліджено роль правових позицій Верховного Суду Республіки Казахстан у забезпеченні єдності судової практики у справах, пов'язаних із застосуванням конкурентного (антимонопольного) законодавства. Основну увагу приділено трансформації ролі судової влади в контексті становлення адміністративної юстиції та ускладнення механізмів державного регулювання ринку. Обґрунтовано, що рішення найвищої судової інстанції все частіше виходять за межі вирішення окремих спорів і набувають системного значення для тлумачення та застосування права.*

Методи. *У статті використано формально-юридичний, системно-структурний та порівняльно-правовий методи. Емпіричну основу дослідження становлять судові рішення адміністративних судів та постанови Верховного Суду Республіки Казахстан у справах про порушення антимонопольного законодавства. Застосування зазначених методів дає змогу виявити сталі моделі судового тлумачення та оцінити їхній вплив на розвиток правового регулювання конкуренції.*

Результати та висновки. *Аналіз засвідчує, що правові позиції Верховного Суду виконують координаційну функцію, забезпечуючи узгодженість правозастосовної практики за відсутності формально закріпленої доктрини судового прецеденту. Виявлено поступовий перехід від формального до функціонального підходу в оцінці актів антимонопольних органів, де вирішальне значення має не зовнішня форма документа, а його реальні правові наслідки. Доведено, що практика Верховного Суду сприяє заповненню законодавчих прогалин і подоланню нормативної невизначеності, формуючи більш передбачувані стандарти правозастосування. У результаті в Казахстані de facto формується модель прецедентного впливу вищих судових інстанцій. Це підвищує правову визначеність, водночас актуалізуючи питання щодо меж судової дискреції та нормотворчості.*

Ключові слова: *Антимонопольне законодавство, судове правозастосування, правова позиція Верховного Суду, нормативні постанови Верховного Суду, єдність судової практики, усунення прогалин у сфері конкурентного права, адміністративна юстиція, адміністративний суд.*

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