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JUDICIAL PRACTICE AS A SOURCE OF LAW IN THE ADMINISTRATIVE COURT PROCEEDINGS

Ількoв В. СУДОВА ПРАКТИКА ЯК ДЖЕРЕЛО ПРАВА В АДМІНІСТРАТИВНОМУ СУДОЧИНСТВІ. The states of scientific research of the problem of sources of law in administrative legal proceedings are researched in this article. National Courts should interpret the law of Ukraine during the proceedings. In the vast majority of scientific works, judicial practice and judicial precedent sources of law, in their formal legal sense, are not recognized. Elements of the present interpretation formulated in the reasoning of the court judgments and decisions in which the Court explained that the rule of law and for any reason should be applied when considering specific disputes. The relevant court interpretation summarized higher judicial authorities and launches a source of law, as a decision of the Supreme Court. The features of the judicial precedent in administrative proceedings are the rulings of the Supreme Court, which contain conclusions on the application of the rules of law.

Keywords: *source of law in administrative proceedings, judicial decision, a decision of the Supreme Court, judicial practice, judicial precedent.*

Formulation of the problem.The state of scientific research of the problem of sources of law in administrative legal proceedings is researched for not a long time. The theoretical approaches to understanding the concept of "source of law in administrative legal proceedings", "system of sources of law in administrative legal proceedings" has their scientific reflection and their own definitions of these concepts.

Objective. A particular attention is paid to clarifying the role and peculiarities of application as a source of jurisprudence law, describes the Constitution of Ukraine as a source of law, features of international treaties as sources of law, clarifies the role and features of application of the law and subordinate normative-legal acts as sources of law when considering certain types of public legal disputes. The properties of court rulings of the ECHR and the Constitutional Court of Ukraine as sources of law are revealed.

Basic content.The legal nature of cases of administrative jurisdiction and their influence on the application of sources of law in administrative legal proceedings are revealed. The foreign experience of using the sources of law in the administrative justice of other countries is generalized and the possibilities of its implementation in the domestic legislation are determined.

It is established that the modern domestic theory of sources of law in administrative legal proceedings is in the state of formation, while not fully available a single vision of their nature and system. The acquisitions, developed by the domestic legal science, firstly, laid down exclusively normative, essentially dogmatic approach to understanding the essence of the sources of law; and secondly, became the basis for the modern understanding of many domestic scientists of branch sciences content sources of law, their hierarchical structure, based precisely on these positions. After all, in the vast majority of scientific works, judicial practice and judicial precedent sources of law, in their formal legal sense, are not recognized.

The emphasis is placed on the fact that the problems of legal proceedings are often, among other things, determined by the inadequate quality of the theoretical basis. This conclusion is fully related to the sources of law in administrative proceedings, since the problems of their application by administrative courts are caused, including lack of sufficiently deep and meaningful studies of their nature, properties and hierarchical construction.

The author formulates the definition of the concept of "source of law in administrative proceedings", which refers to the legal acts and acts of the judicial authorities in which, in which the rules that regulate the organization and implementation of justice in administrative

cases, when considering administrative courts of public law disputes and disclosed their properties.

It is substantiated that the Constitution of Ukraine is the central place in the system of sources of law in administrative legal proceedings; international treaties; laws of Ukraine; subordinate legal acts, as well as court decisions of the Constitutional Court of Ukraine and the ECHR.

The emphasis is placed on the fact that when constructing a system of sources of law, judicial practice of administrative courts and precedents of the Supreme Court should be taken into account. It is concluded that the jurisprudence contained in judicial acts - the Supreme Court decisions, which provides an interpretation of the rules of law and concludes that they are being used, is the source of law in administrative proceedings. The features of the judicial precedent in administrative proceedings are the rulings of the Supreme Court, which contain conclusions on the application of the rules of law.

Attention is drawn to the fact that in the countries of the European Community, the highest court of law plays an important role in ensuring the unity of judicial practice. In countries such as Germany, France, Netherlands, Hungary, Poland, the unity of judicial practice is provided in the form of a pre-trial inquiry, a case law, a typical case. The conclusion is drawn on the expediency of borrowing relevant foreign experience in domestic legislation regarding the strengthening of the role of the Supreme Court in ensuring the unity of judicial practice by giving it the authority to consider disputes over competence, to take exemplary court decisions in disputes arising on similar grounds in relations governed by the same rules of law and in which plaintiffs claim similar requirements.

It is substantiated that the Constitution of Ukraine, as a source of law in administrative proceedings, is characterized by the fact that its norms are rules of direct action, which should be applied by courts in the event of gaps in the law or in conflict with the norms of the Constitution of Ukraine of the provisions contained in the administrative-procedural law.

The attention is focused on the problems encountered by administrative courts when deciding on the application as a source of law laws that contain conflict of laws rules. When resolving conflicts, one of the substantive legal rules should use the rule of priority of the norm with the most favorable for the person's interpretation. It is a question of the rule of law enshrined in the Constitution of Ukraine, on the legal values, which are the basis of the entire legal system of Ukraine (Articles 3, 8, 57, 129 of the Constitution of Ukraine) [1].

According to the first paragraph of Article 2 of the Code of Administrative Judgment of Ukraine, the task of administrative justice is to protect the rights, freedom and interests of individuals, the rights and interests of legal people in public law relations from violations of public authorities, local governments, their officials and officers and other subjects exercising their duties on the basis of legislation, including delegated powers by the fair, impartial and timely consideration of administrative cases [2].

In accordance with paragraph 2 of Article 17 of the Code, jurisdiction of administrative courts extends to public disputes, including disputes of individuals with public authority to appeal its decisions (legal acts or acts of individual actions), actions or inaction [2].

Mandatory signs of a public law dispute between the court parties are certain legal subordination of one person to another and mandatory method of regulating these relations, one of the participants in such relationships must carry out power management functions.

Court parties and features of legal disputes, legal position of the subjects, the method of legal regulation and the nature of the dominant interest in the relationship are in the basis separation of administrative jurisdiction from the Civil and Commercial [4, p. 122]

It is concluded that the judicial precedent and judicial practice are unequal concepts. The judicial precedent should be distinguished from judicial practice, since the latter, unlike the judicial precedent, as a single act of the court, is a set of decisions of courts on a particular legal issue. Attention is drawn to the fact that not all judicial decisions and judicial acts can be sources of law in administrative proceedings, but only those which: 1) contain legal norms that have special features of normativity; 2) are obligatory for the courts and subjects of the authority to apply the relevant normative-legal act; 3) contain provisions on the application of the rules of law.

It is substantiated that judicial practice in administrative legal proceedings is objectified in the decisions of the Supreme Court, which contain conclusions on the application of the rules of law; generalizations of judicial practice (references on the results of studying and generalization of judicial practice, approved by the Supreme Court of Ukraine); court summaries

and statistics (case reviews, case studies, case studies); court decisions.

An attention is drawn to the fact that not all forms of court activity are sources of law in administrative proceedings, but only those that contain legal conclusions about the application of the rules of law. The author refers to these acts of the Supreme Court rulings, which contain conclusions on the application of the rules of law; Decisions the Supreme Court.

Conclusion. Based on the analysis of the norms of the CAP of Ukraine, the Law of Ukraine "On the Judiciary and the Status of Courts" dated 02.06.2016 and the draft of the new CAC of Ukraine, the features of the decisions of the Supreme Court and the peculiarities of their application as sources of law in administrative legal proceedings are singled out. The attention is paid to the problematic issues of strengthening the role of the Supreme Court in ensuring the unity of judicial practice, namely those relating to the peculiarities of proceedings in a typical and exemplary case.

It is noted that with the adoption of the Law of Ukraine "On the Judiciary and Status of Judges" of 02.06.2016, the decisions of the Supreme Court of Ukraine are effectively excluded from the provisions of the law. Therefore, courts can and should use their provisions as sources of law [3].

The legal nature of the decisions of the Supreme Court, which allows them to be recognized as sources of law, are examined, as they contain conclusions about the correct interpretation and application of the rules of law by the courts. Failure to take into account the legal position of the Supreme Court and conclusions based on the generalization of judicial practice may lead to the annulment of a court ruling that did not take into account these positions.

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Summary

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