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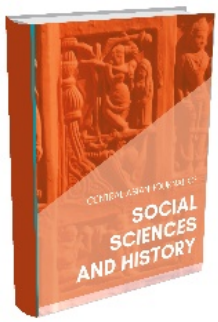

Some Aspects of the Legal Nature of Court Decisions

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ABSTRACT
The article deals with the issues relating to the forms (sources) of law and their types, the legal nature of the decisions of the highest judicial instances, in particular, on the legal and regulatory, as well as the precedent nature of the Supreme Court judgments. The author in the article analyzes some of the positions that take place in the legal literature. Although, the author does not exclude the prospect of acquiring the nature of precedent of the decisions of the highest judicial instances of the Republic of Uzbekistan in the future, also provides justifications for their law enforcement character in the present.

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Among the issues that make up the subject of this science, an important place is occupied by the question of the concept of forms (sources) of law, as well as their types.As D.A. notes Kerimov, that the study of the forms of law, "has extremely important theoretical and practical value, not only because it organizes and expresses the essence and content of law, but also because many factors of legal life depend on their features: general binding, normative, degree of legal the strength of legal acts, methods and methods of legal regulation of public relations, etc. The variety of forms of law involves the definition of their general concept, on the basis of which it will be possible to reveal the

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features and purpose of each of them [1].

It is noteworthy that although there are more than a hundred definitions of this category, however, among scientists, there is still no unanimity in the understanding of the forms (sources) of law, as well as their forms.

Moreover, in many textbooks and scientific works, this legal phenomenon still has a dual name, although many scholars recognize that the term source of law is much wider than the form of law [2].

As G.F.Shershenevich noted in his time, the term source of law “is of little use because of its ambiguity”[3]. According to his expression, the term “source of law” means:

A. the forces doing the law. For example, the source of law is considered “the will of God, the will of the people, sense of justice, the idea of justice, state power;

B. the materials underlying this or that legislation. This meaning of the source of law is used when it is ascertained, for example, that Roman law was the source for the preparation of the German Civil Code, or that the writings of the scholar Pote were used in the development of the Napoleonic Code;

C. historical monuments that "once had the meaning of the law in force". Such legal monuments as sources of law are spoken of when they use Corpus juris, Russkaya Pravda, etc. in research;

D. means of knowledge of the law in force. This meaning of the source of law is used when the right can be learned from the law[3]. It is not by chance that G.F.Shershenevich, argued that "the diversity of meanings attached to the expression" source of law "makes it necessary to circumvent it and replace it with another expression -" form of law. " “By this name should be understood various types of rights, differing in the way of developing the content of norms.

Discussions held and held in the legal literature on this subject before and after Shershenevich enough. In this regard, it would not be superfluous to note that the subject of the training course in the theory of state and law should mainly contain specific knowledge that reflects the patterns of development of modern state and legal reality, rather than scientific discussions.

Based on the above, and taking into account the opinions of numerous authors, the question arises: is it inappropriate to call the “source of law” the “form of law”, meaning by it only the external expression of law? That is, the formalization ("location") of legal norm in the relevant sources, such as legal acts, judicial precedents, regulatory treaties or legal customs, etc.

It should be noted that in the legal literature there is also no unity in the question of the types of forms (sources) of law. Moreover, in textbooks on the theory of state and law there are different approaches in determining the types of forms (sources) of law proposed by scientists[4].

In general, this process is to a certain extent natural, since different legal systems and legal families differ from each other in many parameters, in particular, according to sources of law.

In this article, we would like to dwell separately on the issue of the legal status of decisions of higher courts that has been discussed recently in legal literature.

According to A.V. Illarionov, “the question of whether Russian courts can exercise lawmaking powers, and the relevant judicial decisions contain norms of law and therefore can be sources (forms of expression) of these norms, is debatable. Some scientists, on the basis of a widespread approach to

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judicial decisions as law-enforcement acts that resolve a legal case on the merits, recognize the legal value, in fact, only for judicial precedents, while noting their absence in the Russian legal system " [5].

Other researchers pay attention to the existing variety of forms of judicial law and the inadmissibility of its identification with case law[6].

In the domestic legal literature, this issue is also debatable when it comes to the legal nature of the decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan[7].Separate scientists, considering the role of resolutions of higher courts in the system of normative legal acts (legislation), in the legal regulation of public relations, put forward proposals for their normativity.

They consider that the decisions of the Plenum of the Supreme Court are normative legal acts, appealing at the same time to Article 110 of the Constitution of the Republic of Uzbekistan and Article 5 of the Law of the Republic of Uzbekistan "On Courts", which establishes the general obligation of court decisions. So, doctor of legal sciences F.F. Mukhitdinova argues that the legal status of the ruling of the Plenum of the Supreme Court should be recognized and legally enshrined. In her opinion, in modern conditions, in addition to law enforcement, courts inevitably carry out law-making functions[8].

It is well known that, unlike the common law legal systems, in the continental legal system, acts of higher courts are not always considered sources of law. It is symptomatic that in the legal systems of the CIS countries, mainly related to the continental legal family, there are different positions on the issue of the legal nature of the decisions of the higher courts. For example, in Kazakhstan, this issue is resolved at the legislative level, in contrast to the Russian Federation and other countries of the post-Soviet space.

As academician M. Suleimanov wrote, "If there are still disputes over the legal nature of the Decrees of the Constitutional Court of the Russian Federation and the Plenums of the Supreme Court of the Russian Federation — whether they are normative acts or precedents, then this issue has been resolved at the constitutional level. Resolutions of the Constitutional Council and normative decisions of the Supreme Court of the Republic of Kazakhstan are normative legal acts binding for execution ... " [9].

In our opinion, in the future such a prospect cannot be ruled out for our country. As F.F. Mukhitdinova noted, "the judiciary would not have the same equal powers with other branches of government if it could not influence the legal space itself. Currently, in addition to law enforcement, precedent principles (highlighted by us. MA) are also characteristic of justice, which are manifested in judicial practice" [10]. This thought is shared by the above-mentioned Kazakh scientist, noting that "it is necessary to strive to ensure that the decisions of the Supreme Court in specific cases gradually become exemplary court decisions that would be applied by all the courts of Kazakhstan when considering similar cases ..." [11].

It is noteworthy that such trends also occur in legal systems, which form the foundation of the Roman-German legal family. So, according to the famous theoretician of law J.L.Berzhal, in the French legal system "on the one hand, according to the current legislation, in particular in accordance with Article 5 of the Civil Code of France, judges are forbidden" in decisions on cases subordinate to their jurisdiction, to proclaim general and regulated provisions, "and on the other, based on the practice of normative activity of the judiciary," at present it seems impossible to challenge the fact that the judiciary, and therefore judges, play the role of creators of law ".

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It is possible that the highest court instance, when considering a specific case in the first instance and in the cases established by law, will make such an optimal decision, which, because of its most reasonableness, legality and fairness, can serve as a benchmark when considering similar cases by lower courts in the future.

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