

3. О транспорте: закон Азербайджанской Республики от 11 июня 1999 г. № 683-IQ. URL: https://online.zakon.kz/Document/?doc_id=30600972#pos=0;0 (дата обращения: 17.01.2021).

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JUDICIAL PRACTICE AS A SOURCE OF COMMERCIAL LAW

Nowadays the researched topic is relevant because of the amount of discussions about expanding the range of sources of commercial law in the science of commercial law in Ukraine and abroad. European integration and the need to adapt Ukrainian legislation to EU standards have not lost their relevance for a long time. At the same time, reforming Ukraine's judicial system remains a key issue. At first glance, there are no significant differences between the judicial systems of Poland and Ukraine, but in reality there are some.

This question has been studied by many scientists, among whom should be noted R.B. Prylutsky, V.M. Gaivoronsky, N.E. Tolkachev and others. According to S.S. Alekseev, sources of law are official-documentary forms of expression and consolidation of legal norms, giving them legal, universally obligatory meaning, which originate from the state or are recognized by it.

The Commercial Court of Ukraine is a body of the judiciary, which is endowed with the power to apply the rules of substantive and procedural law. The commercial court exercises its powers in the form of its acts - decisions, rulings, resolutions. Decisions of the commercial court are made as a result of the review by the courts of appeal of court decisions that have not entered into force, and the courts of cassation - court decisions of the commercial court that have entered into force [1].

In the Polish court system there are no separate commercial courts. Commercial cases are handled by the commercial division of the common court. Not all district courts have a commercial division. There is usually a commercial division in one district court within the region of each regional court. Sources of law in different circumstances can be not only regulations adopted by public authorities, but also other forms of expression of legal norms which, firstly, can give rise to certain relations, secondly - to regulate and, thirdly, to be sufficient criterion and basis for the settlement in the prescribed manner of any dispute arising from such relations [5, p. 6].

In Ukraine judicial practice does not have such legislative support as one of the types of expression of law. Recently, there is a tendency in the legislation to strengthen the role of judicial practice in the administration of justice, but it can

hardly be argued that today it has a significant status [6, p.174]. However, commercial courts quite often and voluntarily turn to the positions of higher courts, which indicate the expediency of using case law as a source of law in many cases. This obvious fact contradicts the narrow interpretation of the content of Art. 129 of the Constitution of Ukraine, according to which judges in the administration of justice are independent and subject only to the law [3, p. 59].

A major change being done to the Polish judiciary about businesses went into effect on the 3d of May 2012. The separate procedure for commercial cases was eliminated for cases filed after that date. Consequently, the district court now acts as the court of first instance in commercial cases concerning proprietary rights. An appeal against a first-instance decision issued by the commercial division of a district court is heard by the commercial division of the regional court.

The existing organizational division of Polish courts has been maintained too. A commercial case will be heard in the first instance by the commercial division of the court. If the plaintiff files a statement of claim in a commercial case with the civil division of the competent court, it will be forwarded to the commercial division. If the specific district court does not have a commercial division, the case will be moved to the district court with a commercial division, resulting in a change in venue.

Adopted on 07.07.2010 Law «On the Judiciary and the Status of Judges» under № 2453-VI was, in particular, supplemented by the Commercial Procedural Code of Ukraine by Article 111-28, according to which the decision of the Supreme Court adopted as a result of consideration of the application in such respects, are binding on all subjects of power. Courts are also obliged to bring their practice in line with the decisions of the Supreme Court [2, p. 83]. As we can see from the content of this rule, the latter has a lot of reservations about the application of decisions of the Supreme Court. First, the position of the Supreme Court of Ukraine on the application of substantive law only is precedent-setting [4, p. 57].

Thus, analyzing the successful experience of judicial reforms of developed countries, Ukrainian reformers mostly agreed that the experience of neighboring Poland can be considered the closest to the Ukrainian realities. The difference between the judicial systems of Ukraine and Poland continues in the court offices themselves. An atmosphere of full openness to the media, a high level of responsibility of judges and courts, as well as strict public control over income - the hallmarks of the Polish judiciary from the Ukrainian.

Literature

1. State Procedural Code of Ukraine: Law of Ukraine from the 6th leaf fall of 1991, № 1798-XII. Vidomosty Verkhovnoi For Ukraine.
2. Shcherbina V.S. Gospodarske right: pidruchnik. 2ge view. Revision i add. K.: Yurinkom Inter, 2005. 592 p.

3. Parkhomenko N. Dzherela right: problems of theory and methodology. K.: Yuridichna Dumka, 2008. 336 p.

4. Zagainova S.K. Judicial precedent: problems of law enforcement. M., 2002. 176 p.

5. Bogdanovskaya I.Yu. Judicial precedent - source of law? State and law. 2002. No. 12. S. 5-10.

6. Belyanovich V.E. About the «zaprovadzhennya» of the court precedent. Bulletin of the state court. 2002. No. 3. S. 173-177.

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PROBLEMS OF REGULATING THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS FROM THE POINT OF VIEW OF THEIR INTERNATIONAL LEGAL PERSONALITY

The modern world is characterized by a variety of international economic relations. The regulation of these relations in the legal field plays an essential role from the point of view of the integrity and effectiveness of international law. Today, such a phenomenon as transnational corporations (TNCs) has become an important component of international economic relations. International law with its branch – international economic law - can serve as a solid basis for the general international legal regulation of the activities of TNCs. An important role in this process is played by the norms of international legal regulation of foreign investment.

The legislation of most states allows foreign investment in their economies either in the organizational and legal form of joint ventures, or in the form of admitting companies with foreign investment to the national market.

In the first case, TNCs gain access to the most attractive spheres of the country's economy, while the state, by participating in a joint venture, retains the maximum benefit in its favor. This method is typical especially for developing countries and for countries with economies in transition, which have appeared on the world economic arena since the last decade of the twentieth century. Despite the obvious benefits of this kind of deal for both parties, this form of investment currently does not suit both the state and the investor equally. First, joint control inevitably ends with a conflict of interest, because the goal of TNCs is to make profits as quickly as possible, and the goal of the state is to improve the industry, infrastructure, successfully fulfill its social obligations to its own citizens, etc. Secondly, foreign capital is, as a priority, attracted to strategic financial sectors on a competitive basis: the more attractive the sector of the economy, the greater the number of participants will apply to conduct their activities in it as an economic entity. Naturally, this case creates a