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# PLACE OF JUDICIAL PRACTICE IN SOURCES OF ENVIRONMENTAL LAW OF THE RUSSIAN FEDERATIONS

# LUGAR DE LA PRÁCTICA JUDICIAL EN FUENTES DE DERCHO AMBIENTAL DE LA FEDERACIÓN DE RUSIA

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**Abstract.** Sources of environmental law in a broad sense are generally binding rules of conduct in environmental legal relations, expressed in a special form. To become universally binding, these "rules" must be presented in a certain, official form, fixed by the state. For each legal system of modern states, their sources of law are characteristic. Judicial precedents are the basis of the legal system of the Anglo-Saxon legal family, and therefore they are recognized as the main sources of environmental law in countries such as England, the United States and Canada.

**Keywords**. Environmental law, state, rights, court.

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## 1. INTRODUCTION

In the legal literature, the content of the concept of "judicial practice" is disclosed in different ways. Most authors attribute to judicial practice: a) decisions of the highest court on specific cases related to the interpretation and application of law, when in law enforcement practice there is no unambiguous understanding (interpretation) of legal norms; b) the practice of applying the law, contained in special acts of the highest judicial instance, in which these practices are summarized in the form of instructions to lower courts.

A judicial precedent is a decision of a higher court in a particular case, which is given a regulatory character. In this article, we tried to analyze the place of judicial practice in the system of sources of environmental law. The Russian Federation also belongs to the Romano-German legal family, and the main sources of not only environmental, but all other legal acts. The definition of the normative legal act is contained in the Decree of the State Duma of 11.11.1996 N 781-II GD "On the appeal to the Constitutional Court of the Russian Federation": "a normative legal act is a written official document adopted in a certain form by the lawmaking body within its competence and aimed at establishing, changing or repealing the legal norms.

## 2. STATEMENT OF THE PROBLEM

In turn, the legal norm is understood to mean a compulsory state prescription of a permanent and temporary nature, calculated on repeated application". Different classification of sources of environmental law is suggested, but the classification according to the legal force is generally recognized:

I. Constitution of the Russian Federation.

II. The universally recognized principles and norms of international law and international treaties of the Russian Federation.

III. Federal legislation:

1. Federal constitutional laws.

2. Federal laws

3. Normative legal acts of the President of the Russian Federation (Decrees and Ordinances).

4. Normative legal acts of the Government of the Russian Federation (Decrees and Ordinances).

5. Normative legal acts of federal executive bodies.

IV. Legislation of the subjects of the Russian Federation:

1. Constitution (Statutes) of the subjectof the Russian Federation.

2. The laws of the subjects of the Russian Federation.

3. Normative legal acts of the highest officials of the subjects of the Russian Federation.

4. Normative legal acts of the government of the subjects of the Russian Federation.

5. Normative legal acts of the executive authorities of the subjects of the Russian Federation.

V. Normative legal acts of local self-government bodies.

## 3. DISCUSSION

What is the place of decisions taken by the courts on issues related to the subject of environmental law? Many academic lawyers unequivocally spoke about this. For example, V.V. Petrov expressed the opinion that, despite his literacy, originality, court decisions cannot be regarded as sources of law in Russia. Cases considered by courts should not refer to decisions made by another court in a similar case. Also, the adherents of this position note that when making a decision the courts do not create absolutely new legal norms, they rely on existing ones, therefore, judicial practice is not law-making, but only law enforcement (as well as right-to-speech) activities.

However, there is another position on this issue, some lawyers, for example, M.M. Brinchuk, are of the opinion that jurisprudence is a source of environmental law. In accordance with Art. 14 of the Federal Constitutional Law of December 31, 1996 No. 1-FKZ "On the Judicial System of the Russian Federation" the Plenum of the Armed Forces of the Russian Federation gives to the courts of general jurisdiction explanations on the application of the legislation of the Russian Federation with a view to ensuring the unity of judicial practice. This rule means that the Supreme Court develops rules for the exact application of the current legislation by the courts of general jurisdiction.

The Supreme Court has the right to fill gaps in the legislation, develop a general procedural procedure, and clarify normative acts. Also, Article 126 of the RF Constitution stipulates that the Supreme Court

gives explanations on judicial practice. This norm establishes the constitutional significance of decisions of the Plenum of the Supreme Court. Although the article does not explicitly mention the leading beginning of the decisions of the Plenum of the Supreme Court of the Russian Federation, they are generally binding on the territory of Russia. An example is the Resolution of the Plenum No. 10 of the Supreme Court of the Russian Federation of December 21, 1993, in which the courts are given explanations on the issues of handling complaints about illegal actions that violate the rights and freedoms of citizens, including environmental rights. Subordinate courts must necessarily follow this Decree and do not contradict it. Regarding the decisions of the Constitutional Court, many lawyers are inclined to believe that the Resolutions are sources of the right of environmental law (and other branches of law) and are of a regulatory nature. And they justify this by the fact that the Constitutional Court verifies federal laws, normative acts of the chambers of the Federal Assembly of the Russian Federation, the President of the Russian Federation, the Government of the Russian Federation, constitutions (charters) of constituent entities of the Russian Federation and other normative acts for compliance with the RF Constitution. At the same time, if the normative acts of the RF Constitution are not in compliance, this is an occasion for the recognition of the act as unconstitutional, which entails its repeal. Also, the Federal Constitutional Law of 21.07.1994 No. 1-FKZ "On the Constitutional Court of the Russian Federation" says that it is mandatory to implement unconditionally the decisions of the Constitutional Court throughout the territory of Russia. The decisions of the Constitutional Court are final and cannot be appealed; no state authorities and other officials can confirm the legality of the decisions of the Constitutional Court. Decisions of the Constitutional Court come into force from the day of their official publication in official publications.

These signs allow us to compare the decisions of the Constitutional Court with regulatory and legal sources and talk about its decisions as a source of law. An example of this can be the Decree of the Constitutional Court of the Russian Federation in the case on the verification of constitutionality of clause 3 of Article 1 of the Law of the Russian Federation of May 20, 1993 "On the Social Protection of Citizens Influenced by Radiation from the Accident in 1957 at the Mayak Production Association and the Discharges of Radioactive waste in the river Techa" in connection with the complaint of citizen B.C. Kornilov on March 11, 1996. The court ruled that this clause of Part 1 was not in compliance with Article 19 and Article 42 of the Constitution of the Russian Federation, as a result of which Article 1 of the Law was declared invalid.

## 3. CONCLUSION

Thus, judicial practice is not a source of law in the Russian Federation. However, the decisions of the Plenum of the Supreme Court of the Russian Federation have signs of normality, therefore official clarification of the uncertainty of these courts in the system of sources of law is required.

Thus, acts of higher courts are a secondary source of law. They are based on the law, supplement it with regard to real environmental relations. Making the decisions and explanations of the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation the status of the source of law will not contradict the principle of separation of powers, reduce the role of the Constitution of the Russian Federation, federal constitutional laws and federal laws in the system of sources of law of the Russian Federation. Higher courts can not have the right to change the law, but the function of interpretation, which, if necessary, is possible to adjust and specify the legal norms, should be recognized for them.

Judicial practice is connected with the interpretation by the higher courts of the Russian Federation of unclear legal provisions, overcoming gaps in the legislation. As part of the uniformity of judicial practice, only the explanations and decisions of the plenums of the Supreme Court and the Supreme Arbitration Court of the Russian Federation, which include, among other things, the consolidated opinion of higher courts, in respect of the same decisions made by the lower courts in specific cases, should be considered as a source of law.

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