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THE ROLE OF LEGAL CONCLUSION OF THE SUPREME COURT IN PROVIDING THE LAW PRINCIPLE

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Summary

The purpose of the article is the determination of the role of legal conclusions of the SC in providing the principle of legality. For implementation of this purpose the following tasks were performed: 1) justification of the thoughts that the legal conclusions of the SC in the modern conditions are characterized by the numerous number of signs of court precedent; 2) proving the constantly increasing role of legal conclusions of the SC in providing of the implementation of the principle of legality; 3) determination of the expanded content of the principle of legality based on the obligation of the subjects of authority to take into account the legal conclusions of the SC in their activity.

During the study of the topic of the article, the author analyzed the works of scientists who pay attention to the study of the role and significance of legal conclusions of the Supreme Court in the activities of subjects of power as N. Zozulia, O. Kibenko, M. Sambor, M. Shumylo and others. Some questions connected with the determination of the role of legal conclusions of the Supreme Court in ensuring the unity of judicial practice, were investigated by the author of this article when compiling the "Compendium of Legal Positions of the Supreme Court for lawyers" and developing the content part of the analytical and legal system ZakonOnline (Kibenko, 2022). Nevertheless, in modern legal science there is still a list of unsolved issues in the sphere of the role definition of legal conclusions of the Supreme Court in providing of the principle of legality.

Based on the conducted research, it is concluded that it is established by the law the obligation for all courts and subjects of authorities to consider (apply) legal conclusions of the SC allows to confirm that such approach causes the expanded application of the principle of legality, as the norm of law in fact cannot exist separately from the SC case law (its legal understanding) and the subject of authorities cannot have own approach to understand of this or that norm of law.

Key words: legal position, court precedent, judicial practice, legal conclusions, stability of judicial practice, administrative procedure.

1. Introduction

According to the parts 5 and 6 of Article 13 of the Law of Ukraine On the Judiciary and Status of Judges, conclusions on the application of legal norms set forth in judgments of the Supreme Court shall be binding on all power holders who apply in their activities a regulatory act containing the relevant legal norm; conclusions on the application of legal norms set forth in judgments of the Supreme Court shall be taken into account by other courts when applying such legal norms.

From the content of these legal orders it is seen that legal conclusions regarding the application of the norm of law set out in the judgments of the SC shall be taken into account not only by the courts of all instances and

the SC itself during the application of the relevant provisions of the Law but by all power holders. Moreover, the obligation of taking into account the legal conclusions of the SC according to the above said provisions of the Law concerns exactly the power holders, at the same time the legislator regarding the judges used the term «shall be taken into account» interpreted as a recommendation but not an obligation. Nevertheless, the judgment made by the judge without the conclusion of the SC must have strong arguments and appropriate motivation which would be understandable to an outside observer, ordered and based on the provisions of the Constitution of Ukraine.

The important part in the context of a researched problem are the provisions of part 2 of Article 65 of the Law of Ukraine On Civil Service according to which the disciplinary offence of the government official is in particular the making of decision by the government official that contradicts the law or conclusions regarding the application of the appropriate norm of law set out in the judgments of the SC regarding which the court made a separate ruling.

Thereby, the obligation for applying the conclusion of the SC becomes the continuation of the principle of legality whereas the norm of law (law or other normative legal act) in fact cannot exist separately from the SC case law (its legal understanding) and the subject of authority can't have his own (different from legal conclusion of the SC) approach to understand this or that norm of law.

To confirm such conclusion, it is advisable to provide the provisions of Articles 4 and 6 of the Law of Ukraine On the Administrative Procedure according to which the principles of the administrative procedure is in particular the Rule of Law including legality. Herewith the last principle except other means an obligation of the conclusions about the application of norms of the law set out in judgments of the SC for all administrative authorities (Executive Authority, Authority of the Autonomous Republic of Crimea, Local Government, their official, other subject authorized to perform the functions of the public administration according to the law) who are applying in their activity the normative legal act containing the appropriate norm of the law.

Thereby the lack of knowledge of the role of legal conclusion of the SC in providing the principle of legality, the absence of one scientific approach for understanding of nature of the conclusions of the SC stipulate the relevance of the scientific research of the role and meaning of legal conclusions of the SC in providing the principle of legality.

2. Role of legal conclusions of the SC in providing of the constancy and uniform case law

In the justification of the thought that the legal conclusion of the SC in the modern conditions is characterized by the numerous number of signs of court precedent, the constantly increasing role of legal conclusions of the SC in providing of the constancy and uniform case law being one of the elements of the rule of law is testified.

In particular, according to the paragraphs 1 and 5 of the Conclusion of the Consultative Council of European Judges (CCJE) No. 20 (2017) dated November 10, 2017. The Role of Courts with Respect to the Uniform Application of the Law, the similarity and unity of the law application stipulate the general obligation of the law (legality), provide the principle of equality before the law and also under the legal certainty and predictability being the integral components of the rule of law. In the state guided by the Rule of Law, the citizens are reasonably waiting for being treated as all others and for being able to rely on the previous court judgments in similar cases and thereby the citizens can predict legal consequences of their acts or omissions.

By the paragraphs 6 and 7 of this Conclusion of the Consultative Council of European Judges CCJU No. 20 (2017) it is stipulated that repeated court decision-makings which contradict each other, can create the situation of the legal uncertainty causing the reduce of the trust to the court system whereas this trust is an important element of the state guided by the principle of the rule of law («Vincic and others v. Serbia», application No. 44698/06 and others). The unity of the law application stipulates the trust of citizenship to the courts and improves the public opinion regarding the justice and law.

If the parties understood their positions in advance, they even could decide not to apply to the court; precedents or established court case law which are establishing clear, consecutive and reliable rules can reduce the need of court involvement to resolve the disputes; if there is a possibility to refer to the previous court decisions approved in the similar cases in particular by the higher courts, the appropriate cases could be considered more effectively. Precedents are in principle obligatory *de jure* and considered to be proper source of the law (The Role of courts with respect to the uniform application of the law, 2017).

One of the reasons of establishment of the Institution of the Conclusions of the SC in Ukraine and its approaching to the court precedent is called the need of resolution of instability problem of the case law that is the main defect of the domestic proceedings (Legal positions of the Supreme Court as a basis of constancy and uniform case law, 2017).

It is important that according to the procedural law of Ukraine, taking into account the previously formulated legal conclusions of the SC is demanded from both courts of lower instances and the SC itself.

In this regard, O. Kibenko points out the existence of vertical action of the precedent: taking into account the legal conclusion of the SC by other courts (providing the unity within the court system) and horizontal action of the precedent: obligation of legal conclusion of the SC for the SC itself (providing the unity within the SC itself) (Kibenko, 2019).

The court knows the law and it is inseparably connected with the main function of the cassation court – to provide the constancy and uniform case law, and therefore the SC is obliged to take into account all its conclusions independently of their meaning in cassation claim and accordingly the time formation of the SC.

3. Theoretical and practical aspects of the development and formation of the Institute of Legal Opinions of the Security Court

The obligation of the SC systematically take into account its conclusions confirmed by the provisions of Article 346 of the Code of Administrative Proceedings of Ukraine, under which the court considering the case in cassation proceeding consisting of the panel of judges transfers the case for consideration to the chamber containing such panel if this panel considers as necessity to derogate from the conclusion regarding the application of the legal norm in similar legal relations set out in previous desicion of the SC consisting of the panel of judges of the same chamber or consisting of the such chamber.

The court considering the case in cassation proceeding consisting of the panel of judges or chamber transfers the case for consideration to joint chamber if this panel or chamber considers as necessity to derogate from the conclusion regarding the application of the legal norm in similar legal relations set out in previous decision of the SC consisting of the panel of judges of the same chamber or consisting of the such chamber.

The court considering the case in cassation proceeding consisting of the panel of judges, chamber or joint chamber transfers the case for consideration to the Great Chamber of the Supreme Court (GC SC) if such panel (chamber, joint chamber) considers as necessity to derogate from the conclusion regarding the application of the legal norm in similar legal relations set out in previously desicion of the SC consisting of the panel of judges (chamber, joint chamber) of other cassation court.

The court considering the case in cassation proceeding consisting of the panel of judges, chamber or joint chamber transfers the case for consideration to the GC SC if such panel (chamber, joint chamber) considers as necessity to derogate from the conclusion regarding the application of the legal norm in similar legal relations set out in previous judgment of the GC SC.

The case is subject to be transferred for the consideration to the GC SC when the party of the case appeals the court judgment on the basis of the breach of the rules of subject matter jurisdiction except cases if in particular the GC SC has already set out in its judgment the conclusion regarding the issue of subject matter jurisdiction of the dispute in similar legal relations (The Code of Administrative Proceedings of Ukraine, 2005).

Similar provisions are in Article 302 of the Code of Commercial Procedure of Ukraine, Article 434-1 of the Criminal Procedure Code of Ukraine and Article 403 of Civil Procedure Code of Ukraine.

Given norms of law in fact determine the order of derogation from previously formulated legal positions of the SC, hierarchy of the legal conclusions of the SC and also confirm that in acting procedure law of Ukraine unlike previous acting one (by 2017) the right to initiate the derogation from legal conclusion of the SC is given only to the SC; such possibility for courts of first and appeal instances is absent.

Last ones can in order determined by the Article 290 of the Code of Administrative Proceedings of Ukraine apply with the application to the SC for consideration by it as a court of first instance of exemplary case if in proceedings of one or several administrative courts there are typical administrative cases the quantity of which is determined by the expediency of the exemplary judgment. Though the transfer of the typical case for consideration to the SC as exemplary one is not the option of derogation from the legal position of the SC however in order of resolution of exemplary case the SC forms legal conclusion being asked in fact by the lower-ranking courts. It is typically that the Institute of exemplary case provided only in administrative proceedings.

At the same time in commercial and civil procedures the right of court is provided by the application of the party of the case and also by own initiative to stop the proceedings of the case in particular in the case of the consideration of the court decision in similar legal relations (in other case) in cassation order by the chamber, joint chamber, GC SC (clause 7 of the part 1 of the Article 228 and clause 11 of the part 1 of the Article 229 of the Code of Commercial Procedure of Ukraine, clause 10 of the part 1 of the Article 252 and clause 14 of the part 1 of the Article 253 of the the Civil Procedure Code of Ukraine). Such provisions are in clause 5 of the part 2 of the Article 236 of the Code of Administrative Proceedings of Ukraine.

Regarding the order of derogation from the legal positions of the SC it is necessary to note that in the Conclusion of the CCJU No. 20 (2017) there is information on numerous differences between general and continental systems of the law regarding the issue whether only the court of the same or higher level can overcome the precedent or any court including the courts of lower instances can deviate from the case law if such deviation is ordered.

In this regard it is appropriate to mention the provisions of the part 5 of the Article 13 of the Law of Ukraine On the Judicial System and Status of Judges dated July 7, 2010 (lost its force except separate pro-

visions on the basis of the Law No. 1402-VIII dated June 2, 2016), under which the conclusions regarding the application of the norms of law set out in the judgments of the Supreme Court of Ukraine are taken into account by other courts of general jurisdiction under the application of such norms of law; the court has the right to derogate from the legal position set out in the conclusions of the Supreme Court of Ukraine simultaneously giving the appropriate motives.

Therefore, in the Law of Ukraine On the Judicial System and Status of Judges dated 2010 there was a direct pointing to the right of courts independently to derogate from the legal position of the Supreme Court of Ukraine providing the appropriate motivation.

In acting Law of Ukraine On the Judiciary and Status of Judges the courts of first or appeal instances were taken the possibilities to derogate from the legal position set out in the judgments of the SC and the Supreme Court of Ukraine considering the certain case providing the appropriate motives (Zozulya, 2018).

The absence of such provision in acting Law can testify that the demand regarding the taking into account of the legal conclusions of the SC regarding the application of appropriate norm of law for courts is close to be obligatory.

Researching the question of obligation to take into account the legal conclusions of the SC by all courts including the SC itself it should be noticed that between legal conclusions of the SC there is some hierarchy.

In particular, in court case law there was made a constant approach to determine the hierarchy of the legal positions of the SC consisting of different panels, chambers or joint chamber between legal positions of cassation courts and also cassation court consisting of the SC and GC SC.

So, in the Judgment dated February 13, 2019 in the case No. 130/1001/17 on the basis of the analysis of the positions of the Articles 346 and 347 of the Code of Administrative Proceedings of Ukraine, the SC specified that conclusions contained in the judgments of the panel of judges of cassation court prevail over the conclusions of the panel of judges of cassation court, the conclusions of joint chamber – over the conclusions of the chamber or panel of judges of cassation court, and the conclusions of the GC SC – over the conclusions of joint chamber, chamber and panel of judges).

Besides, the GC SC in particular in Judgments dated January 30, 2019 in the case No. 755/10947/17 and dated November 10, 2021 in the case No. 825/997/17 specified that despite of whether all positions are listed containing the legal position from which the GC SC derogated the courts during the resolution of the same disputes shall take into account exactly the last legal position of the GC SC.

Speaking otherwise in the case if the chamber, joint chamber or the GC SC having the appropriate case to be transferred makes the conclusion about the necessity to derogate from the legal position before the formulated SC, so it is specified in the judgment how the norm of law must be applied and the legal position is pointed out from which the derogation is performed. Herewith despite of whether all judgments are listed which contain the legal position for the derogation from which the case is transferred it is considered that such derogation is performed from the legal position set out in different decrees of the GC SC and the SC. In the future, during the resolution of the same disputes the courts have to take into account exactly the last legal position of the chamber, joint chamber or the GC SC.

Current conclusion applied by the SC, in particular in the judgments dated December 18, 2019 in the case No. 804/937/16, dated March 16, 2020 in the case No. 1.380.2019.001962, dated February 11, 2021 in the case No. 240/532/20, dated February 25, 2021 in the case No. 580/3469/19, dated April 6, 2021 in the case No. 640/14645/19 and dated May 18, 2022 in the case No. 160/5259/20.

It is confirmed that the conclusions of the Supreme Court of Ukraine have the legal force of the conclusions of the GC SC by the provisions of sub-clauses 8 of the clause 1 of the Section VII of the Transitional Provisions of the Code of Administrative Proceedings of Ukraine, under which it is established that the changes to this Code come into force with the consideration of such peculiarities: court considering the case in cassation order consisting of panel of judges or chamber (joint chamber) transfers the case for consideration to the GC SC if such panel or chamber (joint chamber) considers as necessity to derogate from the conclusion in similar legal relations set out in previous Judgment of the Supreme Court of Ukraine.

The same provisions are set forth in the sub-clause 7 of the clause 1 of the Section XI of the Transitional Provisions of the Code of Commercial Procedure of Ukraine and in sub-clause 7 of the clause 1 of the Section XIII of the of the Transitional Provisions of the Civil Procedure Code of Ukraine.

Determining the legal status of the conclusions of the Supreme Court of Ukraine, M. Shumylo pays attention to the question of legal power and obligation of the legal positions of this court in temporal dimension after the beginning of work of a new SC. The scientist points out the existence of such statuses of legal positions of the Supreme Court of Ukraine: supported SC, overcome (the derogation is made) SC, positions formed in the judgments of the Supreme Court of Ukraine in cases where the dispute arose and was solved on the basis of inactive law for today, self-derogation of the GC SC from the legal conclusions used for making the derogation from the legal position of the Supreme Court of Ukraine (Shumylo, 2020, p. 48-49).

At present there are absent statistic data regarding the number of legal positions of the Supreme Court of Ukraine accepted by the SC and gradually implemented

in its practise or those the derogation was made from. M. Shumylo gives appropriate data for the period from the December 15, 2017 to the end of 2020 specifying that the GC SC adopted 117 judgments containing 73 derogations from the legal positions of the Supreme Court of Ukraine, with 15 of them to be in administrative proceedings, 15 – in commercial proceedings, 2 – in criminal proceedings and 41 – in civil proceedings (Shumylo, 2020, p. 49).

In this regard the Judgment is mentioned of the GC SC dated September 1, 2020 in the case No. 216/3521/16-ц, where the methods are differentiated under which the legal positions of the Supreme Court of Ukraine stop being the source of the law namely: 1) passive method when they lost their legal power in accordance with the change of legal regulation (determination); 2) active method when the positions of the Supreme Court of Ukraine are overcome by the GC SC (the derogation is being performed) about what it will be discussed next.

Besides the Judgment of GC SC dated September 4, 2018 in the case No. 823/2042/16 has the summarized conclusion about the basis of the derogation, they are: 1) defectiveness of the judgment (set of judgments) meaning: a) defects of form (technical and legal) of the judgment (ambiguous, mutually exclusive, unclear forming, inconsistency of reasoning and operative parts of judgment); b) defects of essence (content filling) of judgment (fallibility, unreasonableness); c) failure to perform (inefficient option of protection) the judgment; 2) the change of social context.

According to the legal power of legal conclusions of the Supreme Court of Ukraine M. Shumylo makes the conclusion that in the case if the SC accepted the legal positions of the Supreme Court of Ukraine, so such acceptance is necessary to be considered as a new legal conclusion of the SC and in the future to apply exactly it; in the case if the GC SC performed the derogation from the legal conclusion by which previously the legal position of the Supreme Court of Ukraine was overcome, so such positions by itself do not recover their legal power as they are overcome; the GC SC must form own legal conclusion that can be agreeable with legal position of the Supreme Court of Ukraine but it will be a new one and made by the GC SC (Shumylo, 2020, p. 53).

Therefore, legal conclusions of the Supreme Court of Ukraine take the separate place in the hierarchy of the legal conclusions; they can be included in the position having the power of legal conclusion of the GC SC. It is important that the conclusions of the High Administrative Court of Ukraine, High Commercial Court of Ukraine and the High Specialized Court of Ukraine with the consideration of civil and criminal cases do not have such power that is also confirmed by the absence in this courts previously the status of classic court of cassation instance (the SC).

4. Legal conclusions of the Supreme Court as an inseparable element of the principle of legality in decision-making by subjects of power

On the importance of the meaning of legal conclusions of the SC in legal system of Ukraine and performance by them the role of the court precedents also the fact is pointing out that the knowledge of legal positions of the SC and ECHR is a demand required for the candidates on the position of judge and all judges taking the qualification assessment.

In particular, according to the part 3 of the Article 78 of the Law of Ukraine On the Judiciary and Status of Judges, the qualification examination shall be conducted as follows: a candidate for judicial office takes a written anonymous test and anonymously completes a written practical assignment in order to identify his/her level of knowledge, practical skills and abilities in the application of law and conducting a court hearing.

By the part 2 of the Article 85 of this Law it is provided that the examination is a main method to establish the compliance of judge with the criteria of the professional competence and is being taken in the form of anonymous testing and performing of the written practical task with the purpose of testing the knowledge level, practical skills and ability to apply the law, ability to perform the justice in appropriate court and with appropriate specialization (On the Judiciary and Status of Judges, 2016).

According to the paragraphs 2 and 3 of the Regulation On The Procedure And Methodology for the Qualification Assessment, Indicators of Compliance with the Qualification Assessment Criteria and Means of Their Determination, approved by the Decision of the High Qualification Commission of Judges of Ukraine No.143/zp-16 dated November 3, 2016, the knowledge level in the sphere of law including the level of practical skills and abilities in appliance the law are assessed (established) by testing in particular of the knowledge of legal positions of the SC and knowledge of ECHR case law.

The ability and skills of the conduction of court hearing and making the court judgment are assessed (established) by testing in particular the ability clearly and understandably formulate and produce the legal position (legal conclusion) in the court judgment (Regulation On the Procedure and Methodology for the Qualification Assessment, Indicators of Compliance with the Qualification Assessment Criteria and Means of Their Determination, 2016).

On the other hand, according to the paragraphs 5, 10, 11 and 14 of the Provision for the Procedure of Taking a Test and the Methodology for Its Assessment during Qualification Assessment of a Judge approved by the Decision of the Higher Qualification Commission of Judges of Ukraine No. 144/zp-16 dated November 4, 2016, during the selection on the position of the

judge of the SC the candidate has the right during the performance of the practical task to produce the project of legal position of the SC; testing questions must contain the questions for testing the knowledge level in the sphere of law including the level of practical skills and abilities in appliance the law in particular the knowledge of legal positions of the SC and knowledge of ECHR case law; totality of testing questions is a testing base containing questions in particular from established SC case law; practical task shows the ability and skills of conduction of court hearing and making the court judgments in particular the ability clearly and understandably formulate and produce the legal position (legal conclusion) in the court judgment (Provision for the Procedure of Taking a Test and the Methodology for Its Assessment during Qualification Assessment of a Judge, 2016).

Therefore, legal conclusions of the SC became the integral element of the principle of legality whereas their consideration during the application of norm of law in similar disruptive legal relations by the courts of all instances is obliged. Simultaneously, the obligation regarding the application/performance/control of the performance of legislative acts only with legal conclusions of the SC spreads also on the power holders.

Such conclusion is based in particular on the analysis of provisions of the Articles 4 and 6 of the Law of Ukraine On the Administrative Procedure, according to which the principles of administrative procedures are the rule of law including legality; the principle of legality means that administrative authority performs administrative proceedings exclusively on the basis within the authorities and by the method provided by the Constitution of Ukraine, this Law and other laws of Ukraine and also on the basis of international agreements, agreement for obligation is given by the Supreme Council of Ukraine and also applies other normative legal acts approved by the appropriate Government Authority, Authority of the Autonomous Republic of Crimea, or local government body on the basis within the authorities and by the method provided by the Constitution of Ukraine and the Law

This provision of the Law is an important one taking into account the determination (the Article 2 of this Law) of the administrative authority covering by it all Executive Authority, Authority of the Autonomous Republic of Crimea, Local Self-Government, their officials, and also other subjects authorized to perform the functions of the public administration according to the law.

Also it is important to recall the Article 4 of the Law of Ukraine On Administrative Services, according to which the government policy in the sphere of providing the administrative services is based on the principles of the rule of law including the legality and legal determination.

Similar provisions are contained in the Article 3 of the Law of Ukraine On Local State Administrations, according to which local government administrations act on the basis in particular of the rule of law and legality and according to the Article 13 of this Law with awareness of the local government administration within limits and forms provided by the Constitution of Ukraine and the Laws of Ukraine containing the questions resolution of providing the legality and also the citizen rights, freedom and legal interests protection.

Besides, the Article 4 of The Law of Ukraine On Local Self-Government in Ukraine the local government in Ukraine is performed on the principles of people's power and legality, and the Article 38 specially determines the power of authorities of the local self-government regarding the legality providing.

In that regard some scientists put emphasis on the existence in Ukraine the systematic problem of failure to consider by the subjects of authorities the legal conclusions of the SC.

As an example of such failure M. Sambor provides the activity of officials of departments of Pension Fund of Ukraine who realizing the illegality of their actions keep breaching the social rights of pensioners, veterans, reducing the amount of their pensions, making them repeatedly to apply to the court branch of authority, though the range of questions – recalculation of pensions, establishing of its amount according to the law, etc., are already resolved in the court order; the court judgments are performed one time; available exemplary cases, court precedents of the SC do not become a pointer for the activity and usage of appropriate judgments in similar cases by the public officials of public administration authorities (Sambor, 2022, p. 127-128).

5. Conclusions

Performed research in this article gives the basis to make next conclusions.

1. Established by the law the obligation for all courts and subjects of authorities to consider (apply) legal conclusions of the SC allows to confirm that such approach causes the expanded application of the principle of legality (unfailing to compliance by all subjects of private and public right of acting laws in Ukraine, sub legislative acts and legal conclusions of the SC), as the norm of law (law or other normative legal act) in fact cannot exist separately from the SC case law (its legal understanding) and the subject of authorities cannot have own (different from legal conclusion of the SC) approach to understand of this or that norm of law.

2. The importance of legal conclusions of the SC in legal system of Ukraine and their role as the court precedents is demonstrated as follows: 1) the obligation to take into account legal conclusions of the SC by the courts of all instances including the SC itself during the dispute resolution in similar legal relations; 2) deprivation of the courts of the first or appeal instance to

have the opportunity during the consideration of certain case providing appropriate motives to derogate from the legal position set out in judgments of the SC; 3) actual binding of the right to initiate by the party of causational consideration of the case in the SC till the provident in causational claim the circumstance of absence of legal conclusion of this Court, failure to take into account already existing conclusion of the SC by the court of appellate instance or the necessity to derogate from legal conclusion of the SC; 3) legislative formulation of special order of the derogation from legal conclusions of the SC in particular transferring the case for the consideration to the chamber, joint chamber or the GC SC; 4) establishment of obligation to consider of legal conclusions of the SC by the subjects of authorities during the application by them in their activity the norms of law regarding which there is already formed legal position of the SC; 5) providing a requirement for candidates for the position of judge and all judges undergoing qualification assessment, to knowledge of the legal positions of the Supreme Court and the ECHR, as well as the ability to apply and form them.

3. In the system of legal conclusions of the SC is formed four hierarchy levels: 1) conclusions of the GC SC (and similar to them according to legal power conclusions of the Supreme Court of Ukraine) prevail over the conclusions of joint chamber, chamber and panel of judges; 2) conclusions of joint chamber – over the conclusions of the chamber or panel of judges of cassation court; 3) conclusions contained in judgments of the court chamber of cassation court – over the conclusions of panel of judges of cassation court; 4) conclusions contained in decrees of the SC approved by the panel of judges.

4. Commonly known principle of procedural law jura novit curia (the court knows the laws) is integrally connected with the main function of the court of cassation instance – to provide the constancy and unity of case law, and therefore the SC after the opening of cassation proceedings is obliged to take into account all its conclusions regardless of their mentioning in cassation claim and according to the time formation of such legal conclusions of the SC.

5. The courts of first and appeal instances do not have the possibility independently to derogate from legal conclusions of the SC, instead the Code of Administrative Proceedings of Ukraine established the Institute of exemplary case giving the right to the administrative courts considering cases that have the signs of being typical to apply to the SC with the application to consider one of such cases as exemplary; in such case the courts can stop the proceedings in all other cases till the completion of consideration by the SC of exemplary case; in administrative, commercial and civil procedure provided the right of court by the application of the party of the case and also by own initiative to stop the proceedings of case in particular in the case of consideration of court judgments in similar legal relations (in other case) in cassation order by the chamber, joint chamber, the GC SC.

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РОЛЬ ПРАВОВОГО ВИСНОВКУ ВЕРХОВНОГО СУДУ У ЗАБЕЗПЕЧЕННІ ПРИНЦИПУ ЗАКОННОСТІ

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Анотація

Метою статті є визначення ролі правового висновку Верховного Суду у забезпеченні принципу законності. Для реалізації цієї мети були виконані такі завдання: 1) обґрунтовано думки про те, що правовий висновок ВС у сучасних умовах характеризується значною кількістю ознак судового прецеденту; 2) доведено постійно зростаючу роль правових висновків ВС у забезпеченні реалізації принципу законності; 3) визначено розширений зміст принципу законності, що ґрунтується на обов'язку суб'єктів владних повноважень враховувати правові висновки ВС у своїй діяльності.

Під час дослідження теми статті автором було проаналізовано праці науковців, що приділяють увагу вивчення питання ролі та значення правових висновків ВС у діяльності суб'єктів владних повноважень як Н. Зозуля, О. Кібенко, М. Самбор, М. Шумило та ін. Деякі питання, пов'язані із досліджуваною темою, застосування правових висновків ВС у забезпеченні єдності судової практики, досліджувалися автором цієї статті при укладанні «Збірника правових позицій Верховного Суду для адвокатів» та розробки контентної частини аналітично-правової системи ZakonOnline. Проте у сучасній правовій науці залишається низка нерозкритих питань у сфері визначення ролі правових висновків Верховного Суду у забезпеченні принципу законності.

На основі проведеного дослідження робиться висновок, що встановлений законом обов'язок для всіх судів та суб'єктів владних повноважень враховувати (застосовувати) правові висновки ВС дозволяє стверджувати, що такий підхід зумовлює розширене застосування принципу законності, оскільки норма права фактично не може існувати відокремлено від практики ВС (його праворозуміння), а суб'єкт владних повноважень не може мати власного підходу до розуміння тієї чи іншої норми права.

Ключові слова: правова позиція, судових прецедент, судова практика, правові висновки, сталість судової практики, адміністративна процедура.