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TÍTULO: Concepto y características generales del precedente judicial como fuente de derecho.

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RESUMEN: En el sistema legal interno, el papel del poder judicial en el campo de la legislación está creciendo, lo que junto con las autoridades legislativas y ejecutivas, complementan la regulación legal existente, llenando los vacíos y eliminando situaciones de inseguridad jurídica. Durante muchos años, el precedente judicial ha sido negado en la teoría del derecho soviético, aunque ha habido intentos de justificar teóricamente la creación y aplicación de precedentes judiciales (práctica judicial) por parte de los órganos judiciales superiores. Esta pregunta sigue siendo insuficientemente estudiada y aplicada al sistema legal de la Rusia moderna.

PALABRAS CLAVES: Ley, legislación, normas legales.

TITLE: Concept and general characteristic of the judicial precedent as a source of law.

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ABSTRACT: In the domestic legal system, the role of the judiciary in the field of lawmaking is growing, which, along with the legislative and executive authorities, supplement the existing legal regulation, filling in the gaps and eliminating situations of legal uncertainty. For many years, judicial precedent has been denied in the Soviet theory of law, although there have been attempts to theoretically justify the creation and application of judicial precedent (judicial practice) by higher judicial bodies. This question remains poorly understood and applied to the legal system of modern Russia.

KEY WORDS: Law, legislation, legal norms.

INTRODUCTION.

The concept of a regulatory contract is an agreement of two or more parties that establishes, amends or repeals legal rules within their competence. Such contracts are domestic and international. There may be joint legal acts expressing the mutual expression of the will of law-making bodies, the reciprocal assumption of legal obligations by each of them. These are such documents, which contain the will of the parties regarding the rights and obligations, establish their circle and sequence, and also establish voluntary consent to fulfill the obligations assumed.

Relative unity in the issue of distinguishing a regulatory contract from the total mass of contracts does not mean a common understanding of this legal phenomenon. In the educational and scientific literature, one can often find the most diverse categories that characterize, in fact, the same source of law - a regulatory agreement. In one case it is called a “normative contract”, “legal contract”, in another it is simply a contract, sometimes even a standard contract, and often a “contract of regulatory content” or “contract with regulatory content”; other combinations can be found (Alexandrov, 2008; Baldanov, 2010; Bartsits, 2009).

Thus, regardless of how to perceive the contract (as an agreement or legal act), the essence of a normative contract is reduced to standardization. The normative content contract, in fact, is an individual contract, which is regulated by the rule of law and is based on the will of specific individuals, therefore it is deprived of normative.

Consideration of the contract as a source of law is inextricably linked with a specific sign of normativity. In most cases, the norm is perceived as a product of a strong-willed, specialized activity of various subjects of rule-making, determined by objective reality (Belyaev, 2012). In addition, the problem of normativity is most often reduced only to a legal norm, which is the initial element in the mechanism of legal regulation, although they also include norms-principles, norms-declarations, norms-definitions, etc. For this reason, the use of broader synonymous concepts, such as “generally binding order” or “normative legal establishment”, “precept”, will be acceptable (Khamukov, 2010). The contract is an individual legal establishment, for a long time the contract was considered exclusively a private law category and was not considered in accordance with the sources of law. In law science, he has traditionally been investigated through the theory of legal fact, but as a source of legal norms, the agreement was initially recognized exclusively as the science of international law, which is natural due to the specifics of international law.

DEVELOPMENT.

Discussion and results.

An agreement is an effective legal means of determining rights and obligations, rules of relations between citizens and legal entities.

The contract in relations between states has a great relationship. However, the contract is no less important as one of the main sources of law in the field of commercial relations and property turnover.

The subject of the contract may be things, securities, real estate, property rights and other objects of

civil rights. The peculiarity of the contract as a by-law source of law is that the parties can conclude both stipulated and not stipulated by law or other legal acts contract.

The content of a regulatory contract is a legal act that enshrines the will of the parties regarding mutual rights and obligations. It not only establishes the rights and obligations of the parties on the basis of existing rules of law, but, in contrast to a simple agreement, aims to establish the rules of law to which their participants undertake to obey in the future (Kolyushkina, 2007).

A regulatory agreement should give rise to rights and obligations for an indefinite number of persons, and not only for contracting parties. Normative treaties take place mainly in international law, but recently, regulatory treaties have become widespread in domestic Russian law. First of all, we should mention the 1992 Federal Treaty on the Formation of the Russian Federation, as well as bilateral treaties between the Russian Federation and its individual entities on the redistribution of competencies and powers. In my opinion, all contracts can be divided into individual (legal facts) and regulatory (sources of law).

A normative contract can be defined as a contractual act establishing legal norms (rules of conduct), mandatory for a large and formally indefinite circle of people, designed for repeated application, valid regardless of whether the specific legal relations provided for by it have arisen or terminated. For regulatory contracts, as special types of contracts, the following main features are characteristic:

- ✚ Designed to regulate the most stable and typical types of social relations.
- ✚ Are in the public interest to achieve socially useful goals.
- ✚ Extend their action to formally indefinite circle of persons.
- ✚ Designed for repeated use.
- ✚ As a rule, do not have a fixed validity period.
- ✚ The requirements contained therein are binding.

- ✚ Contain rules of conduct that are legally significant not only for direct participants in the contractual relationship (internal legal impact), but also for other persons (external legal impact).

Contracts must contain specific rights and obligations of the parties and are approved by federal law.

Not every contract is normative. An agreement with regulatory content has the following properties:

- ✚ Contains the norm of the general content.

- ✚ Voluntary conclusion.

- ✚ The community of interest.

- ✚ Equality of the parties.

- ✚ Consent of the participants on all essential aspects of the contract.

The significance of a regulatory contract as one of the sources is determined by the fact that the law of its essence, agrees with the subjects of law on the nature of legally significant behavior in society in a given situation for various reasons.

The following features of a regulatory agreement can be distinguished:

1. A regulatory agreement is an agreement based on the voluntary coordination of the will and will of the parties. This characteristic is inherent in a regulatory contract by virtue of the fact that it is one of the types of contracts. The normative contract is characterized by the essence of the contract, consisting in its conciliatory nature, based on the coordination of separate free will and expression of will.

2. A normative contract is characterized by a plurality of entities or the presence of at least two entities concluding a regulatory agreement and having the power to create law.

3. The main feature of a regulatory contract is the presence of legal norms in it, and the regulatory contract itself is an act of lawmaking, an act establishing the rules of law. They are in the public interest, their target orientation is the achievement of the common good.

4. The subjects of a normative contract may be only lawmaking entities with the authority to create, amend and terminate legal norms, government bodies, officials or entities vested with the functions of lawmaking (with delegated authority).

5. one of the features of a regulatory contract is public interest, which finds its concrete manifestation in that: the parties to the regulatory contract are mainly the state as a whole or its individual bodies, as a rule, it is not private that is manifested and fixed, but common, public will - the will of its parties, entities concluding a contract, the main purpose of concluding a regulatory contract is a public goal, the essence of which is the adequate expression and satisfaction of public interests - the settlement of law relationship.

6. contractual standards are always designed for long-term exposure and repeated use.

A normative contract is an independent source of law, differs from a normative legal act and has specific features peculiar to it. If some attitudes are supported only by the actual use of coercive measures, they cease to be objectively determined, and therefore, become normative only in form and not in nature, losing their content and meaning, but at the same time, all the signs of normativity are inextricably linked with each other, they do not exist by themselves, but are a manifestation of a single whole - "social normativity as a social law, as an objective property of social reality ..." (Koretsky, 2008; Kovalenko, 2019). Thus, "normativity is the primary, initial property of social matter, predetermined by its internal need for orderliness and the ability to self-organize" (Morozova, 2015; Nersesyants, 2008; Protasov, 1999).

However, one should not belittle the role of the subjective factor, since objective processes cannot exist. In addition to the objective process of forming norms, there is also a subjective process associated with the awareness of their formulation (verbally or in writing) by the relevant authoritative and authoritative instances of the collective, society, and the state (Vasechko, 2008; Zakharov et al., 2019). This approach seems to be broader, since it considers the norm not only as a

form, but also its nature, allows to overcome the existing misconceptions of a narrow positivist approach, and also harmoniously combines the objective, due to social necessity, and the subjective, associated with the "consciously-focused process of formulating" beginning. Understanding the dilemma of "objective-subjective" allows you to further explore the genesis of social norms, including legal ones (Kydyrbaev, et al.,2013; Lukasheva, 2007).

Thus, we denote the following features of a normative contract: a legal act through which separate agreed will and expression of will of various legal entities are expressed; parties with an equal volume of rights and obligations participate in contractual relations (equality of parties is typical); the contract involves an agreement of the parties on all its essential aspects; the parties are mutually liable for non-performance or improper performance of the obligations assumed; in a regulatory agreement, at least one of the parties assumes the participation of the state and its bodies, that is, public authorities; provision-binding nature of the normative contract; a regulatory contract contains rules of conduct of a general nature; according to the agreement - the entities whose relations are regulated by a regulatory contract must issue legal acts, conclude agreements, and perform legally significant actions; a special, strictly formal procedure for concluding regulatory agreements and a special procedure for the consideration of disputes and conflicts related to their implementation; official publication of a regulatory contract.

An interstate agreement is one of the ways to regulate relations within a federation. The conclusion of such agreements is not the only method of organizing federal relations, since domestic agreements are an individual way of resolving relations between state bodies of the Russian Federation and state bodies of a subject.

An interstate treaty, being a source of constitutional law, among interstate treaties, treaties between the Russian Federation and its subjects, the so-called intra-federal treaties, stand out for their significance in the formation of Russian statehood. The intra-federal treaties fulfill the function of the

stability of federal relations: on the one hand, they ensure the exercise of the powers of the federal government on the territory of a particular subject of the Russian Federation, and on the other, the federal government. Inter-federal treaties act as the legal basis for the publication of other legal acts, including the conclusion of agreements on the delimitation of powers.

In the literature, the most active among the types of regulatory legal agreements is the collective agreement. The content of a collective agreement is understood to mean the conditions agreed upon by the parties to regulate social and labor relations in this organization. These conditions determine the rights and obligations of the parties and liability for their violation.

There are three types of conditions of a collective agreement: normative, binding and organizational. Thus, an intrastate agreement has limits of use: for delimiting powers or for realizing part of powers.

CONCLUSIONS.

Consequently, a regulatory agreement is a formally defined agreement that arose during the coordination of separate free wills of equal subjects of law, possessing law-making powers, establishing rules of law. The value of a regulatory contract as a source of law is determined by the fact that it is a free form of law.

A normative contract is one of the types of sources of law, represents an agreement (as a rule, at least one of the parties in which the state or its part acts), from which the generally binding rules of conduct, legal norms follow. An essential feature that distinguishes an agreement from a legal act is its authorization by several subjects of law-making.

A regulatory agreement contains rules of conduct of a general nature; according to the agreement - the entities whose relations are regulated by a regulatory contract must issue legal acts, conclude agreements, and take legally significant actions. Signs of a legal norm are: economic, socio-political conditionality, general obligation.

Based on the fact that the contract is the oldest form of law, it is concluded that the feature of the regulatory contract is the direct immediate desire of the parties, aimed at creating a generally binding norm. Compromise of interests and values. Therefore, parties to the agreement can only be law-enforcement entities endowed with the law-making functions that have the corresponding powers in accordance with the Constitution of the Russian Federation and laws.

Since the nature of the agreement is to regulate public relations on the basis of the free will of persons who voluntarily agreed to establish a certain procedure or perform mutual actions aimed at ensuring the interests of the parties, as well as other interests supported by the parties to the agreement; therefore, the regulatory agreement is part of the legal system of the Russian Federation and a form of Russian law, acting as an independent element of the mechanism of legal regulation.

The regulatory agreement is developed in the field of international relations. An international treaty is an agreement between states that establishes a general rule of conduct in the form of mutual rights and obligations.

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