STATEMENT OF THE PROBLEM AND ITS RELEVANCE. There are various classifications of precedents in the scientific literature, among which the section of precedents by the authority that established it deserves special attention. Scientists usually talk about the existence of two types of precedents – judicial and administrative.

However, if a sufficient number of scientific works are devoted to the judicial precedent, then the administrative precedent has hardly been studied, most often scientists limited themselves to only indicating the fact of its existence. Therefore, the problem of further study of precedents as a source of law is urgent. The purpose of the article is to reveal the importance of studying a successful example. The author shows the historic experience of legal education at the University of Melbourne, its short and successful path to worldwide recognition.

The University of Melbourne is now one of the world’s leading universities, as well as one of the 50 best educational institutions in the world. More than 46% of its students are foreigners. This school is officially accredited by the Australian Department of Education and Training. Founded in 1853, the University of Melbourne is the second oldest university in Australia. This is a state research university. It consists of 10 colleges located on the main campus and in the surrounding suburbs, which offer academic, cultural and sports programs.

The teaching of law, until 1873 at the University of Melbourne, was governed directly by the board and faculty; there was no council or committee in charge of the faculty, and no head or administrator to lead the law course other than faculty and university officials.

The author of the article argues that building a legal education in Ukraine is impossible without a proper study of the experience, knowledge and practical skills that existed at the University of Melbourne. The opinion is based on the fact that the organization of work, cooperation with students and involvement of a large number of foreigners remains a model to follow. This approach to cooperation and establishing contacts with their structure has made them famous and universally recognized worldwide. We can see this because the University of Melbourne is one of the world’s leading universities, as well as one of the 50 best educational institutions in the world.

Key words: University of Melbourne, law education, law school, international experience and Lviv University.

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LEGAL NATURE OF ADMINISTRATIVE PRECEDENT AS A SOURCE OF LAW

There are various classifications of precedents in the scientific literature, among which the section of precedents by the authority that established it deserves special attention. Scientists usually talk about the existence of two types of precedents – judicial and administrative.

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tence. Therefore, it is important, while examining the place of a legal precedent among other sources of law, to focus on its types, and not to be limited only by a judicial precedent.

The purpose of the article is to study the legal nature of different types of legal precedent with an emphasis on the legal force of administrative precedent. The main features of a precedent as a source of law, as well as the peculiarities of its formation and functioning in different legal systems are considered.

Analysis of research and publications. The researches on the legal force of the precedent as a source of law is not new, discussions on this topic have been going on for a number of years, both among domestic and foreign scientists. In particular, E. Jenks, W. Burnham, J. Baker, A. Dicey and others made a significant contribution to the development of this issue. Among the domestic scientists deserve special attention the works of D. Lukyanov, L. Luts, N. Onishchenko, N. Parkhomenko, S. Pogrebnyak, S. Shevchuk, Y. Shemshuchenko.

Presentation of the main article. Studying precedent as a source of law, the main focus was on judicial law-making, that is, judicial precedent, which is created by judges when considering specific cases, which in turn led to a certain need to consider other aspects of this law category.

It should be noted that scientists distinguish two approaches to understand the essence of an administrative precedent: either it is a decision of any administrative body, or a decision of a specialized authority for the consideration of disputes arising from administrative legal relations. Regarding the latter, it should be noted right away that, for example, in England there are special, quasi-judicial, bodies for considering administrative cases and disputes when the application of the law is associated with certain difficulties. These are different courts, administrations and commissions, operating under the UK Tribunals and Investigation Act of 1958, which was updated in 1971 to become the first general act to regulate the organization and operation of British administrative justice, namely, administrative tribunals and ministerial inquiries.

If we talk about the decisions of the administrative bodies of England, not related to the resolution of disputes, but taken in the manner of their implementation of the functions of executive bodies, then the following should be noted. As we know, it is not the entire decision as a whole that is obligatory for application in solving similar cases, but only that part of it that constitutes the argumentation, the basis for the decision. But the administrative authorities, as a rule, do not justify their decisions, they refer to a certain rule of law, and do not explain why this particular rule should be applied in this case, although such an explanation in itself could constitute the “ratio” of an administrative decision.

That is an interesting position of the American scientist W. Burnham, who points to the existence of two types of case law in the United States: 1) common law; 2) case law, interprets applicable laws. The difference between them lies in their place in the system of sources of American law. According to the scientist, if common law is a separate source of lawmaking, independent of the laws in force, then case law interprets the laws in force, in the hierarchy of sources of law takes the place of the law itself. The scientist suggests the following arrangement of sources of American law in order of decreasing influence and importance: 1) the federal Constitution; 2) federal laws, treaties and rules of court proceedings; 3) norms created by federal administrative bodies; 4) federal common law; 5) state constitutions; 6) laws and rules of state litigation; 7) rules created by state administrative bodies; 8) the common law of the states.

Considering the features of the precedent as a source of law, it’s necessary to note that precedents are historically associated with the process of resolving controversial legal issues, while decisions of administrative bodies are in fact decisions about facts. Thus, even those court decisions that decide only questions of facts, and not law, are not precedents, since they no “ratio decidendi”. Based on this position, the decision of special, quasi-judicial, bodies on certain categories of cases do not represent an administrative precedent, since they are devoid of signs of a source of law. The administrative body, when making a decision, refers to a certain rule of law. But this means that the norm already exists, that is, the act of applying the law in this case creates a new norm, and, accordingly, is deprived of the most important sign of sources of law – the normative content. It follows from this that the division of precedents into administrative and judicial is built on a too free analogy between the activities of these various systems of state bodies.

However, in the scientific literature there is another position on this issue. The fact is that, as noted above, the source of law must have a number of features, including recognition by the state. With regard to the judicial precedent, this feature appeared in the doctrine of precedent, with respect to that part of it that defines the rules for the application of precedents and establishes their binding. However, in relation to the decisions of the administrative tribunals of Great Britain, this doctrine does not apply, formally not bound by their decisions, although they seek to follow them. As R. David notes that the authority that the administrative bodies recognize by their decisions is not exactly known. Perhaps they are close in meaning to the place of judicial practice in French law.

Therefore, for them, precedent binding is not absolute. Thus, for them, precedent binding is not absolute. It might seem that, in this case, the decisions of the House of Lords do not create a precedent, since they may not follow them. However, the fact is that the House of Lords, in principle, is bound by its decisions, but can evade them, and the court is not bound, but tries not to deviate. In addition, the decision of the House of Lords is binding on all lower courts, which cannot be said for the tribunals, since they do not form a system.

So, it turns out that something called an “administrative precedent” could not have arisen in England, primarily because in English law there was no structure analogous to the French “droit administratif”. According to the theorist of constitutional law A. Dicey, the absence in the English language of the appropriate term for the expression “droit administratif” is explained by the fact that this name does not exist precisely because the subject itself is unknown.
In England and countries that, like the United States, received their civilization from England, the system of administrative law and the very principles on which it is based are completely unknown. However, characterizing French administrative law, the same author mentions that, unlike other branches of French law, its norms and principles are not codified, but represent a kind of “case-law” (case law), only produced not by a judge, but by government officials. As you can see, it is in this analogy made by the English author that the answer to the question about the essence of the administrative precedent may lie.

The historical features of the formation of a precedent as a source of law have determined the presence, in addition to the general features inherent in all sources of law, certain features inherent exclusively in the precedent.

Firstly, it is the fact that the precedent was and functions now precisely as a solution to a controversial legal issue. As shown above in considering the structure of precedent, decisions on cases of fact do not create a precedent. In addition, this feature of the precedent as a source of law makes it possible to separate it from the imperious decisions of state bodies, which were made not in the settlement of legal disputes, but in the manner of exercising their powers.

Secondly, one should pay attention to the obligatory nature of the principle established by the precedent for application in similar cases. The wording of legal norms in resolving a particular case determines the special nature of the norms and laws themselves, and consists of such norms. The rule of law, which constitutes the content of the precedent as a source of law, inevitably has a narrower character than the rule created by the legislature. R. David also paid attention to this, he wrote that the English rule of law is closely related to the circumstances of a particular case, it can be made more abstract, this would profoundly change the entire English law. In principle, the translation of the English expression “legal rule” as “rule of law” to a certain extent distorts the idea of what the English rule of law really is. This is because in the minds of a lawyer who has received training in accordance with the “canons” of civil, codified law, the idea of a rule of law as a rule of general behavior established by the state and designed for repeated application is firmly fixed, which is an abstract model of behavior of people and social relationships. Such a rule is formulated for a certain typical situation, while the “legal rule” created by a judge when considering a case is intended to settle a specific situation. Regarding this, R. David notes that English law is an “open system”, it acts as a method that allows you to solve any issue, but does not contain norms to be applied in all controversial situations, in contrast to the “closed system” of Romano-Germanic law, where any issue can and must be resolved, at least theoretically, by interpreting the current rule of law.

Thirdly, the narrowness of the rules created when resolving a particular case determines the following feature of case law as a whole, namely, the presence of gaps in it. Of course, the idea of a law in which there are no gaps seems to be an illusion at present. The presence of gaps in the law, including in countries belonging to the family of Romano-Germanic law, where the main source of law is a normative legal act, is not disputed. However, the gaps in the case law are of a different nature and have other reasons than in the codified one. The reason for the gaps in the case law is that the norm can only be formulated when a case is submitted to the court. The judge, formulating the legal principle on which he bases his decision, cannot go beyond the scope of this case, that is, settle relations that may arise in the future, in connection with the emergence of this precedent, and will require a new rule, even if he foresees the occurrence of such a situation.

**Conclusions.** Thus, if the legislator can theoretically settle any relationship, and gaps arise because certain situations were not foreseen, then the judge, bound by the scope of the case, is not able to do this. The main task of the judge is to solve the case presented to him. Gaps in case law are especially noticeable in the early stages of its formation. Of course, with the development of legislation and the increase in the importance of statutes, this problem is being overcome. The system of case law is supplemented by written law, which makes it possible to combine the abstractness of legislation with the detail of the precedent.

In a system where purely precedent is at work, it seems inevitable that there will be problems with gaps. However, it should be borne in mind that such gaps will be noticeable only if the right is fixed at some particular point in time. If we perceive law as a system that is constantly evolving, it turns out that every time there is a need for a norm regulating certain legal relations, the court creates it, relying on the existing level of development of society. In other words, the presence of gaps in the case law will be a problem only for a lawyer who operates in the categories of civil law, convinced that a judge cannot and should not create general rules in the process of solving a particular case. While this issue is not so important within the common law system, the question is, in fact, only how the judge will determine the principle that he decides to base his decision on.

Summing up the above, we can conclude that the principle of stare decisis, which historically developed in the conditions of the Anglo-Saxon legal family, acquires a new content in relation to the states of “civil law” (continental law) and adapts to the requirements of modern law. This principle, which initially provided for the obligation to make further decisions along the lines of the previous ones (strict adherence to case law), is currently not so strictly observed even in the countries of “common law”. In this regard, it seems unreasonable to deny such a phenomenon as, for example, an administrative precedent on the grounds that the decision of an executive authority or other “quasi-judicial” body does not meet the principle of stare decisis. Since, the obligation to further use administrative decisions as a legal guideline when considering such cases is ensured by the authority and professionalism of the relevant authorized bodies.

Reinforcing the assertion that an administrative precedent, like a judicial one, is a source of law, it is necessary to turn to the features inherent in a legal precedent, namely:
— the sign of casuistry is inherent in the legal precedent, since this source of law is as close as possible to a specific life case (incident), which requires a prompt decision and legal registration. Hence follows the retrospective (past-oriented) character of the precedent itself.

— the sign of a plurality of legal precedent is explained by an unlimited number of instances (judicial or executive bodies) that can create a legal precedent.

— a sign of the inconsistency of the legal precedent lies in the fact that the decisions of various state bodies in solving such cases may differ from each other. The fate of the precedent in such cases will largely depend on the outcome of the dispute over the competence of certain bodies to resolve a certain category of cases.

Considering the above, it can be argued that judicial and administrative precedents as types of legal precedent are an integral element of the system of sources of law of any country and act as a kind of legal provision formulated in an act of the relevant authorized state body: a court, an executive body, a “quasi-judicial” body of administrative justice, in the process of solving a specific legal issue in the absence or uncertainty of its legislative regulation, and act as a legal guideline in solving the following similar cases.

6 Дайси А. Основы государственного права Англии: Введение в изучение английской конституции. 2-е изд. Москва : Типография Тов-ва И.Д. Сытин, 1907. 671 с.

Резюме

Бондаренко Є.І. Юридична природа адміністративного прецеденту як джерела права.

Стаття присвячена дослідженню юридичної природи адміністративного прецеденту як одного з видів правового прецеденту. Складається з двох частин: перша частина розглядає правові особливості адміністративного прецеденту, друга частина розглядає юридичну природу адміністративного прецеденту.

Ключові слова: джерело права, правовий прецедент, юридична сила, правова сім'я, судовий прецедент, адміністративний прецедент.
Yevheniia Bondarenko. Legal nature of administrative precedent as a source of law.

The article deals with the study of the legal nature of administrative precedent as one of the types of legal precedent. A review of scientific research on this topic shows that in different periods the issue of the legal force of legal precedent as a source of law and its various types have been in the focus of domestic and foreign scholars.

However, examining precedent as a source of law, the main focus was on judicial lawmaking, that is, judicial precedent, which is created by judges when considering specific cases, which in turn led to a certain one-sidedness of the study.

The article identifies the need to study the legal nature of different types of legal precedent with an emphasis on the legal force of administrative precedent. The main features of precedent as a source of law, as well as the peculiarities of its formation and functioning in different legal systems are considered.

Key words: source of law, legal precedent, legal force, legal family, judicial precedent, administrative precedent.

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