RELAÇÕES INTERNACIONAIS NO MUNDO ATUAL

CENTRO UNIVERSITÁRIO CURITIBA - UNICURITIBA - VOLUME 2 - NÚMERO 35/2022 CURITIBA/PARANÁ/BRASIL - PÁGINAS 197 A 213 - ISSN: 2316-2880

ONTOLOGY OF THE SOURCES OF RUSSIAN CIVIL PROCEDURAL LAW

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ABSTRACT

Background: In the Russian doctrine, as well as in the international legal doctrine, there are different points of view regarding the sources of law. To date, no unified concept of the external form of civil procedure law has been developed. In the last decade, integration processes between the two families of law – the Anglo-Saxon and the Continental – have intensified at the international level, which has effectively called into question the previous modus vivendi regarding the divergence of sources between the legal families. **Purpose:** the study aims to reveal the ontology of the essence of the sources of civil procedural law, examine the current problems of the institute of the sources of law, and identify trends in the development of the institute of the sources of law in Russia. **Methods:** the problem of the study is disclosed from the standpoint of general scientific research methods (systemic, theoretical, and historical analysis) and the specialized methods of comparative legal science, logical and technical-legal analysis, concretization, and interpretation. **Results:** the authors explore and identify the gnoseological characteristics of the sources of procedural law in Russia in their historical context, compare the sources of procedural law in Russia with those in other countries, demonstrate the relationship of such concepts as judicial precedent and judicial discretion, and describe the impact of constitutional changes in Russia in 2020 on the institute of the sources of law.

Keywords: Sources of law; Judicial precedent; Judicial discretion; Judicial law.

Relações Internacionais do Mundo Atual Unicuritiba.
[Received/Recebido: Outubro 15, 2021; Accepted/Aceito Fevereiro 19, 2021]

ONTOLOGIA DAS FONTES DO DIREITO PROCESSUAL CIVIL RUSSO

RESUMO

Antecedentes: Na doutrina russa, assim como na doutrina jurídica internacional, existem diferentes pontos de vista sobre as fontes do direito. Até o momento, nenhum conceito unificado da forma externa do direito processual civil foi desenvolvido. Na última década, intensificaram-se processos de integração entre as duas famílias jurídicas – a anglo-saxônica e a continental –, o que efetivamente colocou em questão o modus vivendi anterior quanto à divergência de fontes entre as famílias jurídicas. **Objetivo:** o estudo visa revelar a ontologia da essência das fontes do direito processual civil, examinar os problemas atuais do instituto das fontes do direito e identificar tendências no desenvolvimento do instituto das fontes do direito na Rússia. **Métodos**: o problema do estudo é apresentado sob o ponto de vista dos métodos gerais de pesquisa científica (análise sistêmica, teórica e histórica) e dos métodos especializados da ciência jurídica comparada, análise lógica e técnico-jurídica, concretização e interpretação. **Resultados:** os autores exploram e identificam as características gnoseológicas das fontes do direito processual na Rússia em seu contexto histórico, comparam as fontes do direito processual na Rússia com as de outros países, demonstram a relação de conceitos como precedente judicial e discricionariedade judicial, e descrever o impacto das mudanças constitucionais na Rússia em 2020 no instituto das fontes do direito.

Palavras-chave: Fontes do direito; Precedente judicial; Discricionariedade judicial; Direito judiciário.

1. INTRODUCTION

The sources of law do not solely serve the gnoseological function, they are also of major practical significance and constitute the most essential criterion for distinguishing between continental and common law. The question about the sources of law is among the primary questions in understanding the matter of law since these sources constitute the external form of the existence of law. Only the study of the ontology of the sources of law can lead to a reasonable combination of the space of law with its form. Thus, it is natural that the sources of law are the subject of research by both Russian and foreign scholars. However, despite such close attention paid to the institute of the sources of procedural law in specialized literature, so far in the legal doctrine, there are different judgments and theories about the epistemological essence of the sources of law.

In the Russian legal doctrine, there historically developed three concepts regarding the sources of law. The first concept suggests that a source of law is a law-making decision. Representatives of the second line of reasoning view the sources of law as the location of the legal norms and, in this sense, the source is the carrier of legal

[Received/Recebido: Outubro 15, 2021; Accepted/Aceito Fevereiro 19,, 2021]

norms, i.e. the form of existence of the law. According to the third concept, a source of law is considered to be a historical legal document, the importance of which lies in respect for the continuity of the law. Meanwhile, all three concepts mean by the source of procedural law only a law. Nevertheless, in the past decade, the practical significance of other sources of procedural law has been increasing. In this sense, the doctrine is falling behind the practice.

A debatable issue in modern Russian doctrine is the legal position of the European Court of Human Rights, the Supreme Court of the Russian Federation, and the Constitutional Court of the Russian Federation in terms of their recognition as the sources of procedural law.

Of major practical significance is also the question of the hierarchy of the sources of procedural law. This suggests that the amendments to the Constitution of Russia made in 2020 regarding the role of international legal acts in the system of the sources of Russian law also require separate consideration and study.

2. METHODS

All the aforementioned circumstances predetermine the methodology of the current study.

The methods employed in the research process include general scientific research methods, namely, the principles of objectivity systematism, as well as the methods of theoretical and historical analysis.

Along with the general methods of scientific research, the study uses the specialized research methods of comparative legal science, logical and technical-legal analysis, and concretization, as well as theoretical methods (analysis, synthesis, comparison, generalization) for the study of literary sources concerning the research problem;

A total of 24 information sources are selected for the purpose of the study, of which are monographs, articles published in scientific journals, and articles on the proceedings of scientific conferences.

The first group of sources includes monographs and articles published in journals indexed by Scopus and Web of Science that contain provisions on contemporary Russian doctrine.

The second group of sources comprises articles from journals indexed by Scopus and Web of Science and conference presentations of researchers from various countries

[Received/Recebido: Outubro 15, 2021; Accepted/Aceito Fevereiro 19,, 2021]

that concern the role of international legal acts in the system of sources of Russian law.

3. RESULTS

In Russian doctrine, the first notable scholarly work that explores the sources of law is the 1909 textbook on Russian civil law written by Professor G.F. Shershenevich (1909) of Moscow University. Shershenevich understands by the sources of law the forms of expression of positive law that have the status of mandatory means of familiarization with current law. In the early 20th century, only customary law and legislation were attributed to the sources of law. Meanwhile, already in the 20th century, some researchers included in the sources of law judicial practice and the science of law. The former, however, was only a type of customary law, and familiarity with the law through science did not meet the criterion of being obligatory.

Article 38 of the Statute of the International Court of Justice (1945) distinguishes among the sources of law international treaties, international customs, the general principles of the law of civilized nations, judicial decisions, and doctrines as subsidiary means of determining legal norms.

Surely not all of these sources of law will be so in civil procedure law.

Judge of the Constitutional Court of the Russian Federation G. A. Gadzhiev (2013, p. 207), noting the vagueness of positive law, distinguishes as an independent source the legal positions of the Constitutional Court of the Russian Federation and the legal positions of the European Court of Human Rights, which, in his view, form judicial doctrine. However, to date, science has not developed a common position on whether the rulings of the Constitutional Court of the Russian Federation should be considered as sources of procedural law.

Some authors argue for the existence of such a source of law as a local normative act. In particular, I. S. Shitkina (1999) and Iu. G. Leskova (2016) study corporate acts as a source of law. However, the legal literature does not pay much attention to the study of local rulemaking, despite that the issue of local rulemaking is debatable and, at the same time, interesting from an applied point of view (Svirin, 2022, p. 97).

The composition of the sources of law in different countries in not uniform. This divergence of sources is especially pronounced between the continental family of law and common law countries. For instance, England recognizes as the sources of law

[Received/Recebido: Outubro 15, 2021; Accepted/Aceito Fevereiro 19,, 2021]

statutes, precedents, the doctrine, and constitutional customs. Herein, it should be noted that Great Britain has no constitution, but does have a system of judicial law. In Germany, the doctrine is not recognized as a source of law. In France, judicial precedent is not officially recognized as a source of law, but in practice, the legal positions of the French Court of Cassation have the same weight as the law. In Greece and Germany, laws and customs are sources of law of the same order.

Across the entire history of procedural law in Russia, both before 1917 and after, science and practice alike have not distinguished such a source of procedural law as an Order of the Chairman of the Supreme Court of the Russian Federation. In this context, this refers precisely to an order of the head of a government agency and not judicial practice. At the same time, in practice, such orders contain the norms of procedural law in them, factually acting as the sources of procedural law.

On the one hand, a court of any instance, including the Supreme Court of the Russian Federation, has the right to apply norms of law, but not to create them. At the same time, the court, as a bearer of judicial power in its law enforcement practice with the purpose of uniform application of law norms, has the power to create judicial norms. This power of the court to create judicial norms is reflected in some studies both in Russian doctrine and in European countries. However, the Chairman of the Supreme Court of the Russian Federation, when issuing orders of normative content, acts not as a court exercising judicial functions, but as the head of a state body. In this light, we argue that such orders do not constitute judicial acts, do not express the legal position of the court, and, therefore, are not sources of procedural law.

Up to 1889, civil procedural customs were recognized as sources of procedural law. For example, A. KH. Golmsten (1913, p. 26) understands by procedural customs the norms defining a civil procedural relation that are developed in practice and applied due to the perceived need to comply with them. The 19th-century doctrine distinguished two types of customs: independent and by origin.

Independent customs are established and developed independently, whereas the second type of customs includes merely interpretations of the law for the purpose of its further development.

Until 1889, customary law in Russia was developed in the practice of volost courts and superseded laws. At present, there is a consensus in the doctrine that within the

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system of sources of civil procedural law, customs cannot be sources of procedural law.

The Russian procedural doctrine postulates that such normative acts as Decrees of the President, Resolutions of the Government, and other subordinate acts do not constitute the sources of procedural law. Thus, it is presumed that the source of procedural law is only the law and not subordinate normative acts.

In the meantime, after 2015, more and more often not only the highest judicial body of the country acts as a subject of law-making but also the Judicial Department under the Supreme Court of the Russian Federation, which issues regulations governing procedural relations. One example is the Order of the Judicial Department under the Supreme Court of December 27, 2016 No. 251 “On approval of the procedure for filing documents in electronic form, including in the form of an electronic document, with federal courts of general jurisdiction”. As indicated in the literature, such documents have normative content but are issued not by the executive or legislative powers, which contradicts the principle of separation of powers (Svirin et al., 2021).

In our opinion, the source of procedural law is not the judicial decision of the highest judicial body itself, but the legal position formulated in it. For example, Clause 5 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8 of October 31, 1995, as amended on February 6, 2007, formulates a general rule according to which in administering justice, the courts must proceed from the principle that the generally recognized principles and norms of international law, embodied in international covenants, conventions, and other documents are an integral part of the legal system of the Russian Federation (Plenum of the Supreme Court of the Russian Federation, 1995).

In this resolution, the Supreme Court of the Russian Federation effectively formulates the legal definitions of such categories as: “international treaty”, “principles of international law”, and “norms of international law”, which essentially are autonomous and independent categories of law.

Naturally, the most important source of law is the legal positions of the European Court of Human Rights. This is explicitly stated in the Resolution of the Plenum of the Supreme Court No. 21 of July 27, 2013, “On the Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, and its Protocols by General Jurisdiction Courts”. This resolution postulates that the legal

[Received/Recebido: Outubro 15, 2021; Accepted/Aceito Fevereiro 19,, 2021]

positions of the European Court of Human Rights set out in the rulings that have become final and adopted in respect of other states, should be taken into account by Russian courts in judicial practice (Plenum of the Supreme Court of the Russian Federation, 2013). However, in science, this point of view is under debate. In particular, N.V. Samsonov (2020, p. 98) argues the following: “It can be justifiably argued that the rulings of the ECtHR act immediately as individual law enforcement acts but are not perceived as a source of civil procedure law in the sense of a form of law in the domestic judicial system”.

In accordance with the 1992 Constitution of the Russian Federation, international treaties are also a source of procedural law and, along with generally recognized principles and norms of international law, are an integral part of the legal system. Before the 2020 amendments to the Russian Constitution, it was the rules of an international treaty of the Russian Federation and not the norms of domestic law that were applied first if the agreement to oblige Russia to the treaty in question was adopted in the form of federal law. Russia is a party to many multilateral and bilateral international treaties, conventions, and agreements on legal assistance in civil and commercial matters that bind the Russian Federation to more than one hundred states. The amendments made to the Russian Constitution in 2020 have significantly changed the hierarchy of legal sources. Now international treaties can be applied and be in force on the territory of the Russian Federation only if they do not contradict the Constitution of the Russian Federation. Thus, the Constitution of the Russian Federation outstrips international treaties in terms of legal force.

In January 2020 in the annual message of the President of the Russian Federation to the Federal Assembly of the Russian Federation V.V. Putin voiced the need to amend the Constitution of the Russian Federation, among other things, with respect to the recognition of international treaties as a source of law that takes precedence over Russian national legislation. Following this, in a discussion on the Echo of Moscow radio station, the Russian Foreign Minister commented that under the USA Constitution, international treaties are treated as secondary acts and do not take precedence over U.S. law. This position of the Russian Ministry of Foreign Affairs appears to be wrong. Article 6 of the U.S. Constitution stipulates that all treaties entered into by or on behalf of the United States are U.S. Supreme Law. Moreover, the 2019 U.S. Supreme Court Practice Review (the previous review was published in

[Received/Recebido: Outubro 15, 2021; Accepted/Aceito Fevereiro 19,, 2021]

1987) refers to the legal position of Chief Justice John Marshall, who in 1829 articulated the following principle: “Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision”. Thus, a treaty that is signed by the President of the United States and ratified by the Senate becomes a domestic law. The USA is a union of states. The Constitution delineates the rights of the State and the Federal government, with the rights of the State above the Federal government. However, under Article 6 of the U.S. Constitution, the provisions of an international treaty are superior to state laws, and, therefore, each state judge must follow the provisions of the treaty even if they contradict state laws.

In other democratic states, the hierarchy between international treaties and domestic law is organized in a similar way. For this reason, the constitutional amendments adopted in 2020 violate the fundamentals of international law and introduce uncertainty into relations between states on legal issues, including cooperation in civil and commercial matters. Russia is a party to multilateral treaties with CIS member states, which regulate legal cooperation, legal proceedings included. The treaties enshrine certain peculiarities of the performance of procedural actions in relations with various states.

In the application of the norms of international treaties, it should be taken into account that by virtue of paragraph 3 of Article 5 of the law “On International Treaties of the Russian Federation”, the provisions of officially published treaties of the Russian Federation that do not require the adoption of domestic acts for their application are directly applicable in Russia (State Duma of the Federal Assembly of the Russian Federation, 1995). In other cases, along with an international treaty of the Russian Federation, a domestic legal act adopted to implement the provisions of this international treaty should also be applied.

At present, we have to recognize that the Constitution of the Russian Federation is at the top of the hierarchy of the sources of procedural law. The Constitution enshrines the most important principles of judicial proceedings. The Constitution has the highest legal force. The provisions on the supreme legal force and direct action of laws enshrined in the Constitution mean that all constitutional norms take precedence over laws and subordinate acts, by virtue of which courts must be guided by the Russian Constitution when hearing cases.

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The court, in settling a case, applies the Constitution directly in the following cases:
a) when the provisions enshrined in the norm of the Constitution, proceeding from its meaning, do not require additional regulation and have no indication of the possibility of its application on the condition of the adoption of a federal law regulating human and civil rights, freedoms, obligations, and other provisions;
b) when a court concludes that a federal law adopted after the Constitution of the Russian Federation came into force is in conflict with the relevant provisions thereof;
c) when a law or any other normative legal act adopted by a constituent entity of the Russian Federation on the subjects of joint jurisdiction of the Russian Federation and its constituent entities contradicts the Constitution, and there is no federal law regulating the legal relations under consideration by the court. The Constitution guarantees everyone the right to have their case heard by the court and by the judge within whose competence it falls by law.

The source of law coming after the Constitution is a Federal Constitutional Law. An example of such a law is the law “On the Judicial System of the Russian Federation”, under which the courts comprising the system of federal courts of general jurisdiction include: cassation courts; appellate courts; supreme courts of republics, territorial and regional courts, courts of cities of federal subject significance, courts of autonomous regions and autonomous districts, and district courts. Courts of the constituent entities of the Russian Federation include a justice of the peace court (State Duma of the Federal Assembly of the Russian Federation, 1996).

The Code of Civil Procedure of the Russian Federation is the main source of civil procedural law. The current Code of Civil Procedure of 2002, while preserving all the institutes and legal norms of the 1964 Code that have proven themselves in practice, has significantly expanded the scope of procedural regulation. The newly emerged institutes of procedural law are focused on improving the procedure of hearing and resolving new categories of cases in order to provide additional guarantees for the protection of the rights of citizens. The current Code contains new normative provisions and modernized preexisting norms. The Code is constantly updated and supplemented with new provisions.

A judicial precedent is also considered a source of law, including procedural law. However, the ontological essence of a judicial precedent is understood differently by different authors. Some authors view a judicial precedent as any decision of any court,

[Received/Recebido: Outubro 15, 2021; Accepted/Aceito Fevereiro 19,, 2021]

even the court of the first order. Others understand under a judicial resolution not the entire resolution, but only its law-making part. The third group of authors believes that judicial precedents are only constituted by resolutions of the Supreme Court of the Russian Federation.

Over four centuries ago, M. Hale proposed a theory suggesting that judges were not the creators of the law but the oracles of the law. This theory later received the title of declarative theory (Postema, 1986). In 1892, Lord Asher also argued that there is no judicial law because judges do not create law (Williams v. Baddeley, 1892, p. 128). This theory lasted until the end of the 19th century.

British lawyers, followed by legal scholars from other European countries, began to compare their law to ancient Roman law, defining it as being shaped by judges on the basis of the “principle of similarity” that stipulates that cases based on similar facts are to be resolved in the same way. Therefore, the birthplace of legal precedent is traditionally considered to be England. Today, English courts not only apply the law but also create it.

In the 19th century, one of the founders of German procedural law Oskar Bülow developed the doctrine of judicial law. In his view, a judge engages in law-making independently, and the ruling of the court is a source of law (Bülow, 2019, p. 8). However, the view of a judicial precedent as a source of law remains a topic of scientific debate to date. Literature indicates that a judge essentially determines what precedent to consider obligatory. As a result, it is not the judge who is subject to the law, but the law that depends on the judge’s subjective beliefs. Even the most “rigid” precedent is quite flexible in practice because the judge has great latitude in his choice of precedent (Bogdanovskaia, 2013). At the same time, we believe that the use of judicial precedent helps resolve differences in interpretation of the same rule of law and allows for uniformity in judicial practice.

The essence of judicial precedent was formulated by the English lawyer Rupert Cross and is based on basic principles, which are as follows:

1. A precedent is not formed by all judges, but only by the supreme judges.

2. Each court is required to follow the decision of a higher court, and appellate courts are bound by their prior resolutions. Precedent is coercive.

3. The administration of justice should assume that similar cases are to be treated in a similar manner.

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4. Precedent is the essence of a resolution, and the rest is incidental (Cross, 1985, pp. 151-154).

The essence of precedent is that rulings in future court cases should be made by analogy with the rulings in previous cases.

The role of precedents in procedural law is critical because the precedent system helps reduce corruption in courts, forms a broad set of legal positions that are well known to market participants, and ensures the predictability of court decisions. Precedents allow identifying “odd” decisions that deviate from the “established practice”. It seems that judicial precedent speeds up the judicial process because consideration of similar cases does not have to be started from scratch. Judicial precedents give the ontological analysis of law a pragmatic nature. For example, in England, it is not uncommon for a decision to be based on 500-600 years old judicial acts, which clearly confirms the stability and consistency of law enforcement practice.

The importance of precedent law has significantly increased in recent decades in continental law countries, particularly in Germany, France, and Switzerland. The lawmaking role of judicial precedent is now recognized in Spain and Portugal. Sadly, the official Russian procedural doctrine has not yet recognized precedent as a source of law. Meanwhile, in continental law countries, the importance of judicial precedent is rising, and in the Anglo-Saxon legal family, there is a steady increase in the role of legislation, so the two families of law are gradually converging.

Here it is worth noting that in common law countries, a precedent is constituted not by the entire resolution but only by its operative part. In the reasoning part of the resolution, the court sets forth and consolidates the facts established in court, which are the prejudicial facts, but by no means a precedent.

D. Ia. Maleshin distinguishes between the concepts of judicial practice and judicial precedent. Judicial practice cannot serve as a source of law, while judicial precedent does constitute a source of law (Maleshin, 2011, pp. 237-238). It is also necessary to distinguish legal positions of the highest judicial instance from judicial precedent.

Analyzing Russian and foreign doctrines, we should conclude that a judicial precedent is a legal resolution formulated in the judicial acts of the highest court instance on a particular civil case. Such a resolution is generally obligatory for application by courts and other bodies and officials. While court practice is composed of the judicial acts of all lower courts, it must not contradict the judicial precedent.

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Considering a judicial precedent as a source of law makes sense when the professional competence of the judges themselves will be at a high level. Sometimes practice presents peculiar cases that demonstrate the low level of legal education of a Russian judge. For example, a judge of the Arbitration Court of St. Petersburg in a particular decision directly referred to the statement of the President of the Russian Federation at a meeting dedicated to the 85th anniversary of the Supreme Court of the Russian Federation, thereby showing a low level of professionalism and a high level of political engagement.

The legal position of the Supreme Court of the Russian Federation, in contrast to judicial precedent, is a general judicial norm formulated as a result of the study of judicial practice and enshrined in the resolutions of the Plenum of the Supreme Court of the Russian Federation. Such a legal position meets all the criteria of a norm of law, namely: not limited in time and space, aimed at an unlimited range of persons, designed for repeated application. Therefore, we are convinced that the legal position of the highest judicial instance clearly does constitute a source of procedural law.

Over the past few years, the role and importance of the legal position of the Supreme Court of the Russian Federation have been gradually increasing in Russia. In particular, this is indicated by the following fact. The Plenum of the Supreme Court of the Russian Federation adopted 25 decisions on the protection of consumer rights alone, containing more than 400 legal positions on this category of cases. The Presidium of the Supreme Court of the Russian Federation addressed the issues of consumer rights protection 47 times and approved Reviews containing more than 200 legal positions in this sphere. The increasing role of legal positions of the court is not exclusive to Russia. Scientific literature points to the fact that in the countries of the Romano-Germanic legal family, the law consists not only of the legal norms formed by the legislator but also includes the interpretation of the law by the judges, which are called secondary norms (David & Jauffret-Spinosi, 2009, p. 84). In the modern world, supporters of positivism, on the one hand, gradually abandon the understanding of the law as it appeared in the 19th century, and, on the other hand, recognize the creative role of judges (Portalis, 1989).

In our view, such categories as the legal position of the Supreme Court of the Russian Federation and judicial discretion should not be generalized. However, the scientific literature sometimes treats such concepts as synonymous. The current

[Received/Recebido: Outubro 15, 2021; Accepted/Aceito Fevereiro 19,, 2021]

Russian legislation does not offer a definition of “judicial discretion”. We argue that judicial discretion and the legal position of the highest court are heterogeneous concepts. If we assume the existence of such a source of law as judicial discretion, there is a risk of judicial arbitrariness in the judicial process. In this regard, E. M. Kobzarenko (2020) quite rightly points out the need to limit judicial discretion, suggesting that this measure will increase the efficiency of justice in civil cases.

As for lower court decisions, they can hardly be regarded as a source of law, although they can be used in the formation and generalization of judicial practice, on the basis of which the Supreme Court subsequently formulates legal positions (Svirin, 2020).

After Russia’s accession to the European Convention on Human Rights, the precedents of the European Court of Human Rights became necessary to be included in the sources of Russian procedural law. In our opinion, rulings of the European Court are not only a formal legal source of law, but also act as a kind of reference point for reforming domestic law. At the same time, there are other judgments in the doctrine that regard the precedents of the European Court as legal regulators rather than the sources of law, which suggests that they are not subject to mandatory implementation in Russia and only serve as a prerequisite for consideration of the case under new circumstances.

Various countries have their own national systems of the sources of procedural law. The Federal Court has a standing Committee on Lawmaking, whose purpose is to develop rules of procedure that address gaps and shortcomings in current law. The Committee takes the final decision on amendments to existing legislation. The French Supreme Court has a similar function.

Considering the sources of law, we cannot overlook recent scientific discussions that the positivist understanding of law and its sources in the modern world is becoming more narrow. Therefore, as rightly pointed out by D. E. Bogdanova, there is a blurring of exclusivity of normative acts as sources of law. However, we can hardly agree with the above author that judicial decisions should be rendered on the basis of the principles of “justice” and “good faith” (Bogdanova, 2015, p. 39). In recent years, there has been an increasing number of studies in the Russian legal press devoted to judicial law as a source of law.

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In this way, the legal understanding of the sources of procedural law, as before, remains debatable, which certainly affects the uniformity of judicial practice, since each judge has an independent opinion on what constitutes a source of procedural law.

4. CONCLUSION

Based on the above, the following conclusions must be made:

Precedents of the European Court of Human Rights serve as a source of Russian procedural law.

Judicial practice and judicial precedent are heterogeneous concepts. Judicial practice is not a source of law, while judicial precedent should be considered as a source of procedural law in Russia.

After the amendments to the Russian Constitution in 2020, the Russian Constitution began to prevail over the norms of international law in the hierarchy of sources of law in Russia.

In the last decade, in Russia, there have factually emerged such quasi-sources of procedural law as the Order of the Chairman of the Supreme Court of the Russian Federation and the Order of the Judicial Department under the Supreme Court of the Russian Federation. Thus, in violation of the principle of separation of powers, the Chairman of the Supreme Court of the Russian Federation is engaged in rule-making activities, approving normative legal acts.

Legal positions of the Supreme Court of the Russian Federation and the Constitutional Court of the Russian Federation should be considered as a judicial norm and, in this sense, they present sources of law.

5. ACKNOWLEDGMENTS

This paper has been supported by the RUDN University Strategic Academic Leadership Program.

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