

*Korchevna L.O.,
Doctor of Law Sciences,
Professor, Head of department of constitutional law and justice,
Odesa National University named after I.I. Mechnikov*

COURT PRACTICE AS SOURCE OF WESTERN LAW

The only source of law was recognized normative act in the legal system of previous years. According to modern Western lawyers, none of the forms of law (legislation, common law, contract law, doctrinal law, judicial law) cannot claim to be the only practical and fair. Each of these forms has its advantages and disadvantages. The state already exists in different jurisdictions, each jurisdiction where the related law of other jurisdictions.

Today characteristic basis of Western law - is legislation which empowers lawyers to refer to natural and legal reasoning in making decisions of the case. That is, for example, art. 7 of Austrian Civil Code, art. 6 of Spanish Civil Code, art. 1 of Swiss Civil Code. The last says: «If the law and custom are absent, the judge must decide the case on the grounds: a rule which he had brought, if the legislator was, going after tradition and jurisprudence».

Turning to the rules of the Swedish judges, we find that some judges have broad powers in the application of the law. As a rule, for example, says: «The law, which is unuseful stop to be a law».

Constitutional principles of Western countries have the doctrine of natural law at their basis. That is why Western

countries have extensive case law invalidating laws claimed on the fundamental rights of citizens enshrined in the Constitution.

Any judge (it is done in similar position in the USA) is able to declare the law disputed with the Constitution and refuse to use it in Japan and many countries in Latin America. Of course, the Supreme Court controls such decisions. The constitutionality of laws entrusted to specially created for this purpose, the constitutional courts: a state of affairs in Germany, Austria, Italy, Turkey, Monaco and others. If an ordinary court has doubts as to the constitutionality of the law, he is able to close the case and file a request with the Constitutional Court.

It is theoretically possible Court rejection of law application as unconstitutional in Sweden, Denmark, Norway. But practice does not give examples of recognition of the law as unconstitutional.

Analysis of court law has great theoretical and practical significance for the research in contemporary Ukrainian law. This analysis leads to practical reform of Ukrainian law institutions, achievement of national law progress and bringing it closer to the civilized world and European legal standards.