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## LEGAL PRECEDENT AS SOURCE OF JUDICIAL RIGHT

In the conditions of modern integration tendencies of becoming the home legal system can not take place it is isolated. Especially it touches experience of the use of not popular to the Ukrainian right instruments of the legal adjusting, such as a legal precedent. Presently there is rethinking of value of role of precedent as source rights in those legal systems, the doctrine of that before denied possibility of existence of legal norms in other form, except an official normatively-legal act.

Without regard to that legal precedent as source in the aspect of judicial right in detail not investigated to Ukraine, in practice the decisions of the higher specialized courts undertake to attention the courts of the first and appellate instance during the decision of that or other dispute. For this reason expediency of research of legal precedent as a source judicial rights for Ukraine deserves the detailed consideration.

The modern legal systems of the world are characterized by dynamic and mutual influence does not walk around these processes and our state that ran into the necessity of research and application of precedent as sources of judicial right in the field of legal. A term "precedent" has many values. This term is used, foremost, in the context of legal precedent in anglo-saxon legal family (countries of "common law"), legal precedent in legal family (countries of "continental right"),

precedent practice of the European court on human rights examining a legal precedent as a source of judicial right it costs to distinguish two aspects of this problem. In first case, a precedent must be examined as a direct source of judicial right, id est legal position on that it is possible to refer at an acceptance legally of meaningful judicial decisions is properly executed. In second case, the question is in influence of precedent, and mainly by character of judicial practice, on the processes of lawmaking and law enforcement and also on forming of legal practice on the whole. N.M. Parkhomenko considers that on anoma the stage of confession of legal precedent can a disbalance the distribution of power that will not answer basic principles of the legal, democratic state and will conflict with existent permanent practice of creation of the state and lawmaking system the source of right.

Not having regard to that legal precedent as source of judicial right in Ukraine officially not, judges, making decision from difficult businesses, call earlier made decision or to elucidations of courts of higher instances. Therefore to assert that a legal precedent does not work in Ukraine, it would be wrong. However often on one question it is possible to find the opposite decisions of judges. And in such case such decisions becomes an instrument for the ground of "necessary" position. Of that if courts will be

under an obligation to be oriented on concrete practice of higher courts, from it there will be a benefit only then, when higher courts will accept all decisions in accordance with only position of, but not from certain persuasions.

For today legal precedent as source of judicial right in Ukraine already you. In fact, coming from positions of all codes of practice, under for the appeal second thought there is different application by courts the same on law. It confirms existence in Ukraine of legal precedent and

reference to him

For the search of effective mechanism of application of decreets in practice in Ukraine sources of judicial right it follows to define their nature and to the function that will give an opportunity to understand their legal construction. On this stage of development of the legal system of Ukraine a precedent: belongs to the sources of judicial right it is Decision of the European court on human rights it is Decision of the Constitutional court