Judicial practice as a legal tool and source of environmental law: problems of uniformity

A.N. Sachkov, S.V. Studenikina, I.V. Yelizarov, and I.V. Orlova

1 Don State Technical University, Gagarin square 1, Rostov-on-Don, 344000, Russia

Abstract. The authors consider the main theoretical approaches and practical recommendations related to the perception and application of the principle of uniformity of judicial practice in the field of ecology as the basis of justice. The publication proposes a model of positioning judicial practice in its two forms of being: as an instrument and a source of law in their dialectical unity.

Key words: judicial practice as a tool and source of environmental law, existence forms, new normality, principle of uniformity, "pain points" of uniformity implementation in judicial practice in the field of ecology.

1 Introduction

Very heated debates about the place and role of judicial practice in the legal system of Russia are still raging in the professional community. In the new conditions of legal life, this tool, taking into account the attribute - ensuring uniformity of judicial practice, turned out to be in great demand, and, as a consequence, the requirements to it a re increasingly stringent.

The effectiveness of judicial practice characterises its practical value in the system of legal means regulating social relations. There is also no doubt that such a result is a derivative of interrelated, coordinated and interacting actions with means the law as another basic legal.

2 Main part

The Constitution of the Russian Federation defines that the only source of law in the Russian Federation is a normative legal act, or rather - a legal act that has the signs of normativity (Resolution of the Plenum of the Supreme Court of the Russian Federation of 25.12.2018 N 50 “On the practice of consideration by the courts of cases on contesting normative legal acts and acts containing explanations of legislation and having normative properties”. ConsultantPlus).

In paragraph 2 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 31.10.1995 N 8 (ed. as of 03.03.2015) “On Some Issues of Application of the Constitution of the Russian Federation by the Courts in the Execution of Justice” it is

* Corresponding author: andrejsachkov@yandex.ru

© The Authors, published by EDP Sciences. This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/).
explained to the law enforcers that according to part 1 of article 15 of the Constitution of the Russian Federation, the Constitution has supreme legal force, direct effect and is applied throughout the territory of the Russian Federation. In accordance with this constitutional provision, when considering cases, courts should assess the content of the law or other normative legal act regulating the legal relations under consideration by the court, and in all necessary cases apply the Constitution of the Russian Federation as an act of direct effect.

In this regard, N.S. Bondar wrote: “There is no doubt that almost any innovation of the Constitution is usually perceived, especially in the first approximation, as a development, deepening of constitutional-legal means of influence on the relevant sphere of relations.”

However, in real legal life, it turned out quite naturally that in order to preserve and enhance the viability of the legal system had to increase the status role of judicial practice as an indispensable instrument of legal regulation, constitutional and legal means of influence on the relevant sphere of relations.

It is precisely as an indispensable instrument of legal regulation that judicial practice has become so much in demand by the public authorities that it is used not only as an instrument of law, but also becomes its source.

Undoubtedly, this also applies to the environmental legal sphere. The solution of problems of effective application of environmental legal norms is facilitated by reference to the practice of the Constitutional Court of the Russian Federation, which, interpreting the norms of the Constitution of the Russian Federation, contributes to the uniform application of norms of environmental legislation.

Any practicing lawyer will agree that without the legal positions of the Constitutional Court of the Russian Federation, explanations of the Supreme Court of the Russian Federation in the relevant resolutions of the Plenums and Reviews of judicial practice today no judicial dispute can be properly resolved.

In this case, is judicial practice a tool or a source of law?

Perhaps, judicial practice is both a tool and a source of law in their dialectical unity.

This is the universal value of jurisprudence for any lawyer.

Consequently, talk about alleged case law in Russia as a source of law is devoid of any practical sense. I do not think that abstract and contemplative reasoning on this topic has any value either.

Case law as a national-historical phenomenon of foreign states based on casual law, and the national-historical phenomenon of judicial practice in Russia based on the Basic Law of the sovereign state and legal positions of the Constitutional Court of the Russian Federation, are different legal worlds overlapping, if necessary, but not similar to each other.

In this regard, philosophy has a principle of "comparing similar to similar". After all, it is not by chance, perhaps, for the first time in the legal field of Russia there appeared a constitutional thesis on the legal equivalence of federal legislation and judicial practice, where it is no longer as an instrument of law, but as an independent, equal to the law, source of law.

In the Decision of the Constitutional Court of the Russian Federation of 02.10.2022 no. 36-P "On the case of verification of the constitutionality of the international Treaty between the Russian Federation and the Donetsk People's Republic on the admission to the Russian Federation of the Donetsk People's Republic and the formation of a new subject in the Russian Federation" indicated the following:

"By virtue of the direct action of the Constitution of the Russian Federation with regard to the observance of federal laws by all subjects of legal relations, these requirements are in any case applicable as a general rule. The resolution of possible contradictions caused by..."
The peculiarities of the transition period can be ensured both by subsequent federal legislative regulation and judicial practice. (Resolution of the Constitutional Court of the Russian Federation from 02.10.2022, no. 36-P “On the case of verification of the constitutionality of the international Treaty between the Russian Federation and the Donetsk People's Republic on the admission to the Russian Federation of the Donetsk People’s Republic and the formation of a new subject in the Russian Federation”).

This position of the Constitutional Court undoubtedly requires deep scientific and practical understanding, but it is already acceptable to assume that in this case the Russian legal system has moved to a new historical stage of its development. This is the Court’s reaction to the new normality in the Russian statehood, to those threats and challenges generated with a high degree of activity by the modern real and virtual world. Under conditions of high degree of non-obviousness of social life, on the one hand relying on the traditions of national law and domestic justice, and on the other hand understanding the vital need to adequately respond to what is happening, the High Court, in fact, determines the historical perspective of domestic law and justice.

In the new constitutional and legal conditions of the country's life, the stated principle “the resolution of judicial disputes may be ensured both by federal laws and judicial practice” characterizes a new interpretation of Article 15 of the Constitution of the Russian Federation, which, as the author of this publication hopes, will expand the boundaries of judicial protection of citizens.

This formulation of the principle is a consequence of the legal position of the Constitutional Court. It indicates the recognition of the enduring instrumental value of judicial practice and the admissibility of raising its status in the legal system of the country to a source of law.

The Constitutional Court of the Russian Federation acts as a judicial instance that finally resolves such public-law disputes by adopting a decision on the basis of which normative environmental-legal acts recognized as unconstitutional are invalidated by virtue of a direct instruction of the Constitution (Determination of the Constitutional Court of the Russian Federation of December 10, 2002, No. 284-O).

At the same time, it is fundamentally important to note that judicial practice, although it is one of the sources of law, but its place and role in the legal regulation of public relations in relation to the law should always be auxiliary, and supportive.

Such a correlation between the Law and the Judicial practice is very important, it provides stability and stability of the legal system and not only in the short term.

When studying the phenomenon of judicial practice, the authors are not talking about single judicial acts on specific court cases, but about the results of evaluation of their entire array, which is expressed in the legal positions and explanations of the Supreme Courts of the country. In this case, it should be taken into account that in the scale of evaluation measurement of single judicial acts, judicial practice as a subject of evaluation by the Supreme Courts arises only when the judgement in a case has not only entered into legal force, but also when it is actually executed! Meanwhile, the level of execution of court judgements in Russia is critically low, which is unacceptable.

It should also be taken into account that the Supreme Courts, despite the differences in competences, have a common legal goal: to ensure uniformity of judicial application of legal norms, which means that each in its own way ensures uniformity of judicial practice.

Acts of the Constitutional Court of the Russian Federation are of particular importance for ensuring uniformity of environmentally significant judicial practice. Noting that the uncertainty of norms of Russian legislation generates contradictory law enforcement practice and does not meet the principle of equality of citizens before the law and the court, the Constitutional Court of the Russian Federation points out that the legislator is bound not
Recognition of the admissibility of such reasoning allows us to conclude that the principle of uniformity of judicial practice is one of the basic principles of justice, which is now recognized at the constitutional-legal level of the state system.

In this rationale, it appears that uniformity of judicial practice is not the invariability of legal assessments of the circumstances of a court case, nor the search for a stencil similar to the legal dispute you are facing.

The principle of "uniformity in judicial practice" can be formulated as follows. The principle of "uniformity of judicial practice" is a substantive unity of legal approaches and principles of judicial application of legal norms that allow to find the truth in an individual court dispute or at least to approach its ideal and, ultimately, to ensure the achievement of constitutionally significant goals of justice.

How not to recall the formula known to jurists: "Everyone has his own truth, but the truth is always the same...".

Thus, for example, I.M. Shevchenko identifies five meanings of the concept of "uniformity of judicial practice": 1) application of the same standards of evidentiary proof; 2) uniform interpretation of laws; 3) application of the positions of the highest judicial instances, which are law-making in nature; 4) application of scientific concepts developed by the highest judicial instances; 5) realization and the same solution of fundamental doctrinal problems [3].

Only in this case we can talk about judicial practice as an independent legal phenomenon, about its uniformity as a mandatory attribute of its existence.

It is important to note that the achievement of uniformity of judicial practice is based on the prescriptions of the Constitution of the Russian Federation, decisions of the Constitutional Court of the Russian Federation and clarifications of the Supreme Court of the Russian Federation.

This statement has an important practical significance, and in this regard, it makes sense to at least briefly present a few arguments in support of it.

The term "uniformity of judicial practice" is used in domestic procedural legislation in only one case. The current legislation establishes as a ground for cancellation or amendment of a court ruling by way of supervisory review the category of "uniformity in the interpretation and application of legal norms by the courts" (clause 3 of Article 308.8 of the APC RF, clause 3 of Article 391.9 of the Code of Civil Procedure of the RF). This position is confirmed by the Supreme Court of the Russian Federation in paragraph 2 of the Review of judicial practice of the Supreme Court of the Russian Federation N 2 (2016), approved by the Presidium of the Supreme Court of the Russian Federation on 06.07.2016 (Review of judicial practice of the Supreme Court of the Russian Federation N 2 (2016), approved by the Presidium of the Supreme Court of the Russian Federation on 06.07.2016. ConsultantPlus).

Violation of uniformity in the interpretation and application of legal norms by a court ruling means such interpretation and application of legal norms contained in the court ruling, which contradicts the explanations contained in the Resolution of the Plenum of the Supreme Court of the Russian Federation, as well as in the Resolution of the Presidium of the Supreme Court of the Russian Federation (paragraph 8, point 1 of the Review of Judicial Practice of the Supreme Court of the Russian Federation N 3 (2015), approved by...
For the judicial authorities carrying out the verification of judicial acts in the appellate and cassation procedure, violation of the uniformity of judicial practice in the adoption of a decision is not an unconditional ground for cancellation. However, the power of the Plenum of the Supreme Court of the Russian Federation to provide courts with explanations on issues of judicial practice in order to ensure uniform application of the legislation of the Russian Federation (paragraph 1, part 3, article 5 of the Federal Constitutional Law of 05.02.2014. N 3 FKZ "On the Supreme Court of the Russian Federation") is aimed at maintaining uniformity in the interpretation and application of legal norms by courts of general jurisdiction and is one of the elements of the constitutional mechanism of protection of the unity and consistency of the Russian legal system, which is based on the provisions of article 15 (part 1), 17, 18, 19, and 120 of the Constitution of the Russian Federation and the implementation of which in procedural regulation is ensured by the possibility, established by law, of cancelling court rulings, including in case of their discrepancy with the rulings of the Plenum of the Supreme Court of the Russian Federation containing explanations on issues of judicial practice.

Accordingly, after the adoption of the Resolution of the Plenum of the Supreme Court of the Russian Federation, Review of judicial practice, which clarify the meaning of this or that rule of law, the application of specific legal norms by the courts in the course of consideration of the case should correlate with these explanations, because otherwise it may indicate a judicial error made in resolving the case (Decision of the Constitutional Court of the Russian Federation of 23.12.2013 N 29-P "On the case on the verification of the constitutionality of the first paragraph of paragraph 1 of Article 1158 of the Civil Code of the Russian Federation in connection with the complaint of citizen M.V. Kondrachuk").

Thus, we extract and formulate a simple but important idea: within the framework of Russian constitutionalism, the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation not only form judicial practice, but also ensure its uniformity in real legal relations. Otherwise, an individual judicial act adopted in a particular case cannot be recognised as lawful.

Perhaps, it should be noted that our reference to the phenomenon of Russian constitutionalism is far from accidental. Russian constitutionalism is a historical phenomenon of our country, which in the value dimension characterises the outlook and ideology of domestic law and judicial enforcement.

In this regard, O.E. Kutafin wrote: "...a constitutional state is characterised primarily by the fact that it ensures the subordination of the state to the law" [4].

The mere declaration of the principle of uniformity of judicial practice does not in itself make this particular practice an instrument and source of law. The principle of uniformity of judicial practice is a dynamic value and it is always ready to change, as it has the necessary potential and resources for this purpose.

It seems that the "pain point" in the implementation of the principle of uniformity of judicial practice lies in the plane of objective and subjective beginning of the problem. The model of implementation of this principle can be presented in the form of a scheme (fig. 1) revealing the structure and "pain points" of the principle of uniformity of judicial practice on the example of administrative cases.
Judicial practice in administrative cases is certainly different from judicial practice in civil cases and criminal cases. But it is the Constitution of the Russian Federation and the prescriptions of the Supreme Courts of the country ensure the systemic unity of judicial practice in all types of legal proceedings and determine the legal features of each type of judicial practice.

Uniformity is a mandatory attribute of judicial practice in administrative cases, both in the interpretation and application of the norms of the Russian Federation Administrative Court Procedure Code. This circumstance is fundamental for understanding the problem.

1. in the predictability of justice in administrative cases
2. by reducing the conflict of public relations between citizens and the authorities
3. in achieving a balance of private and public interests in administrative legal relations

**Fig. 1. The model of implementation of principle**

**3 Conclusions**
In this case, the authors set themselves exactly a methodological task to formulate the problem and reveal the structure and logic, approaches to solving the scientific problem. This first stage is mandatory for any legal research. In case of recognition of the correctness and admissibility of the judgments and conclusions set forth in this publication, it is probably possible to proceed to the substantive consideration of general and specific issues of uniformity of judicial practice.

References

2. V.V. Nikishin, Russian Law 28 (2010)
3. I.M. Shevchenko, Russian Law Journal 6 (2022)