

ПРАВОВА ОСБИТА

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THE IMPACT OF THE SUPREME COURT'S LEGAL POSITIONS IN THE PROFESSIONAL PREPARATION OF FUTURE LAWYERS

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Purpose: to analyze the impact of the Supreme Court's legal positions on the formation of the professional skills of future lawyers during their higher education in Ukraine and to summarize recommendations for their use in the professional preparation of future lawyers. **Methods:** the dialectical method of cognition, general scientific and special methods are used in the work. In particular, structural-functional and deductive methods. **Results:** the directions of the impact the Supreme Court's legal positions on the formation of professional preparation of future lawyers had determined, and recommendations on improving the use of legal positions of the Supreme Court in higher education institutions of law had generalized. **Discussion:** directions for expanding and improving the use of legal positions of the Supreme Court in the process of forming professional skills while studying in higher education institutions of law.

Keywords: impact; legal position; Supreme Court; court decision; professional preparation; higher education.

Problem statement and its relevance. The development of Ukraine in the European direction has posed to our country certain challenges, such as: building democracy, increasing trust in the authorities, building respect for the law and ensuring the rule of law, overcoming corruption, building an effective judicial system, and others. Without changing the existing conditions, it is impossible to achieve the set goals. Accordingly, certain areas of social relations need effective reform. Highly qualified lawyers play a major role in achieving the above goals. The implementation of a number of envisaged reforms in Ukraine will not lead to positive results, provided that the existing system of training of lawyers is maintained, in particular, without changes in higher legal education. Practice shows that at the end of the study in higher education institution young specialists do not have the

skills necessary for the implementation of knowledge in professional activity [1, p. 5]. This factor contributes to the lack of quality of young staff and the loss of trust in lawyers. In such circumstances, higher legal education in Ukraine needs to be transformed for acquiring new content, it has to change in line with the state development and taking into account new social needs. International and domestic experts draw attention to the need to adapt educational programs to the needs of the modern professional legal labour market [1, p. 5].

Analysis of research and publications. The Supreme Court's legal positions for a long time the subject of scientific research. This issue has attracted the attention of scholars in the field of the general theory of law, criminal procedure, administrative and civil processes. At different times the legal

positions of the court were the subject of research of such scientists as V.K. Ashurov, N.R. Bobechko, A.I. Wiedergolt, M.O. Vlasenko, A.V. Grinova, P.O. Sound, V.Y. Danko, S.M. Darovskikh, V.M. Campo, O.V. Kaplina, D.V. Kukhnyuk, L.G. Lichman, N.V. Neledva, V.A. Novitsky, N.V. Nor, T.M. Slinko, N.D. Slotvinskaya, V.G. Stepankov, P.M. Tkachuk, I.V. Schulga and others. It should be noted that most of these studies were aimed at identifying the legal nature and features of the legal positions of the courts as a whole, and there were no comprehensive studies of the importance their impact on the professional training of future lawyers in the process of holding the higher education.

The purpose of the article is to research and analyze the impact of the Supreme Court's Legal Positions on the formation of the professional skills of future lawyers in the process of holding higher education in Ukraine and to summarize recommendations for their use in the professional preparation future lawyers.

The presentation of the main material. In the conditions of democracy and the supremacy of law court decisions begin to take on a substantially different meaning for legal practice. At the present stage, the purely procedural understanding of court decisions seems somewhat limited, since its meaning goes far beyond the scope of procedural science. The idea of the supremacy of law, which underlies the concept of the legal state, is inextricably linked to the activities of the courts. Understanding a court decision as a means of satisfying only the needs of a certain addressee who is interested in hearing the case seems insufficient due to the fact that Ukrainian society has an urgent need for the legitimacy and justice of such a decision, which as a result must be a stabilizer of social relations in the relevant field. The addressees of such a decision together with other members of society will undoubtedly be persons for whom it is of professional interest: judges, attorneys, prosecutors, investigators, legal advisers, human rights defenders, scientists [2, p. 13, 15, 16]. Moreover, for the latter category of addressees will be valuable not only the final decision of the court contained in its resolution that also the motivating part, which contains the legal justification for the decision. This justification reflects the result of the mental activity of the judges, their attitude to the legal problem posed,

which formed the basis of this litigation, and is a meaningful source of law that influences the formation of professional competencies of both practitioners and future lawyers.

Therefore, the legal position of the court directly affects the professionalism of the lawyer, his perception of the content of legal rules, their correct understanding, as well as the ability to predict the development of a particular legal situation and its consequences. It should be noted, that this is not only for lawyers who are professionally involved in litigation.

At the same time, it needs to be understood that no lawyer can grasp and investigate the whole plane of the legal position of the courts, even in the field in which he pursues his professional activity. Moreover, given the possible contradiction of such legal positions, the need for their knowledge is not a priority, because a large number of such legal positions objectively necessitates their generalization.

According to clause 2 of Part 2 of Article 36 of the Law of Ukraine "On Judiciary and Status of Judges", the generalization of jurisprudence is vested in the Supreme Court, as the highest link in the judicial system of Ukraine, in the process of implementation of the tasks set before it to ensure the consistency and unity of judicial practice [3]. Accordingly, the knowledge of the results of such a generalization is a priority for the formation of a lawyer's professional competencies. The formation of the basis of professional competences occurs during the acquisition of higher legal education and depends directly on its content. The content of legal education, in general, includes means of how the necessary results are achieved. An important component of the content of legal education is a set of practical cases, tasks and exercises that ensure the formation of professional skills and primary experience of professional legal activity [4, p. 443].

Therefore, the legal positions of the Supreme Court act as a stabilizer of controversial legal relationships and determine the directions of development and improvement of case law and legislation and are an important factor in the formation of professional competencies of the future lawyer.

However, to understand the importance of the legal positions of the Supreme Court and their directions of influence on the formation of professional competences of future lawyers, it is necessary to define the own concept of legal positions.

In the general sense, the concept of "position" in terms of mental activity can be defined as a system of judgments about the attitude to a certain fact, phenomenon, person, etc. Besides, there are approaches in the scientific literature to determine the meaning of the term "position" as a belief system of a particular subject about certain characteristics of the studied phenomenon or process. Describing the term "legal positions" to their main attributes include: systematic; subjective conditionality; persuasion as a form of information dissemination; the specific content of the position; the completeness and internal consistency. [5, pp. 8-9]. Highlighting the features of the concept of "legal position" it is advisable to talk about stability, motivation and public expression. Summarizing these features, a legal position can be defined as a conscious, motivated and publicly expressed activity of the subject, manifesting in a true understanding of the problems of legal reality, their separate forms and manifestations, as well as ways of an effective solution.

The legal positions of the Supreme Court as entire are characterized by the aforementioned features, but at the same time, they have certain peculiarities predetermined by the role of the Supreme Court and its place in the judicial system of Ukraine. As follows, from the research of N.R. Bobechko among the features inherent in the legal positions of the Supreme Court can be distinguished such as: finality, constancy, exemplary (acts as a standard for enforcement by other courts), unity of approaches to the formation of judicial practice, expression in a special judicial form, general character, etc. The own understanding of the legal position of the Supreme Court of N.R. Bobechko interprets as stated in the decision of the highest judicial body of the judicial system of Ukraine in the result of judicial review of the court decision, a view on the interpretation of substantive and procedural rules to the circumstances set out in a particular case, which theoretically substantiated the standards of ways of resolving legal rules, as well as established judicial norms that are binding on other courts, thereby achieving the unity and sustainability of jurisprudence [6, p. 171-172].

It is worth paying attention to the opinion of Professor Yu.A. Tikhomirov, who defines the essence of the legal position, as an assessment of acts and actions in a single conflict situation, not any, namely, consistently repeated in similar situations,

which confirms the feasibility of using the legal position of the court in the professional preparation of future lawyers who need to be able to navigate the prospects of a judicial decision of a particular category of cases [7, p. 73]. In doing so, the legal positions of the Supreme Court are most effective in terms of the need for other courts to consider the application of the rules of law set out in the rulings of the Supreme Court. [3, part 6 of Article 13]. At the same time, this approach serves to eliminate miscarriages of justice and at the same time leaves room for the individual enforcement law activity of the court and other participants in the relevant litigation. Accordingly, such a rule is not accidental, since in the recent past some legal positions of the Supreme Court of Ukraine, which preceded the present Supreme Court, contradicted its other legal positions. As a result, the legal positions of the Supreme Court of Ukraine not served to eliminate systemic judicial mistakes thereby increased their level. Unfortunately, in the case-law of the Supreme Court, such a phenomenon has also recently been observed.

So today, the question is: what is it "the legal position of the Supreme Court" and can we even talk about their use in the preparation of a future lawyer, while this term is not legally defined? Previously, legal positions were outlined in the rulings of the Plenum of the Supreme Court of Ukraine, but the Supreme Court did not determine the need to create such rulings in its Plenum. Today, even in scientific doctrine, there is no single answer to the question of the scope of the concept of "legal position" and its interrelation with the decision of the court. At the same time, the priority from the position of judges of the Supreme Court is the approach that every decision, including the decisions taken by the Supreme Court, contains legal positions.

The current practice of the Supreme Court is indicative of the formation of a certain legal position in each case under consideration, even in cases where the cassation appeal is not satisfied. As a rule, such legal positions are placed in the motivating part of the court decision, which is of particular value in terms of the educational process. The clear structure of Supreme Court decisions it makes it easier to use, as a rules, the motivating part distinguish subheaded as a structural part, and therefore, if one considers the legal position as part of a decision containing generalized Supreme Court percep-

tions of resolving specific legal problems, will not be a difficult task for any applicant for higher law education. Besides, most Supreme Court Chambers also distinguish to the legal position as a structural part by an appropriate heading.

It should be noted, that the legal positions of the Supreme Court set out in exemplary cases and the findings of the Grand Chamber of the Supreme Court plays a special role in shaping the professional skills of future lawyers, as generalized sources for solving problems of high complexity in terms of the prevalence of the legal problem or its exclusivity.

The impact of the Supreme Court's legal positions on the formation of the professionalism of lawyers will only increase over time, given the ability of the Supreme Court to obtain an ECHR advisory opinion on a particular enforcement legal issue, which will enable it to create uniform enforcement based on pan-European standards.

The proper content and assignment of the legal positions of the Supreme Court allow determining the directions of their impact on the formation of future lawyers' professional preparation in the process of holding higher education. Thereby, becoming acquainted with the legal positions of the Supreme Court, future lawyers can acquire most professional competencies such as cognitive-analytical, ability to reconcile and resolve conflicts, law-making competence, ability to work independently with legal documents, controlling, ethical, preventative, advisory, and other competencies.

In the process of acquaintance with the legal positions of the Supreme Court, future lawyers acquire skills in researching, comprehending and evaluating a certain legal problem, learn methods of constructing legal argumentation, the content of the rules of law through their professional interpretation, as well as develop professional skills to find alternative solutions to a specific legal problem, by mastering methods of analysis of certain legal situations. As a result of such cognitive-analytical activity, the ability to model and predict the development of certain legal phenomena or processes is formed. As a consequence, not only the ability to work with legal documents, their proper design and content but also the ability to identify conflicts and gaps in the legal regulation of certain relationships and to find ways to overcome and eliminate them are formed. At the same time, the structure of Su-

preme Court rulings forms an understanding of the formal and logical presentation of the content of procedural documents and the ability to structure them accordingly by the requirements of modern legal technique.

A systematic study of the legal position of the Supreme Court shapes the ability of a future lawyer to control the lawfulness of the actions of other entities and the compliance of their decisions with current law. A thorough understanding of legal norms and processes fosters respect for own profession in the future lawyer and shapes a high level of his legal consciousness and culture.

Therefore, the use of the Supreme Court's legal positions in the educational process directly influences the formation of a lawyer's professional qualification a new level capable of detecting, predicting, correcting and preventing legal mistakes, including minimizing court's mistakes.

As to ways of using the Supreme Court's legal positions in the educational process, they can be very diverse. Undoubtedly, the legal positions of the Supreme Court should be used both during lectures and during practical seminars. The use of examples of law enforcement and interpretation of the rules of law formed in the legal positions of the Supreme Court will give lectures of a more modern practical nature, will be allowed to visualize, personalize abstract theoretical material. It will be effective for students to analyze relevant legal positions during practical and seminar classes. It should be noted that legal positions are an indispensable source of formation of collections of problems, cases, and other practical tasks. Also, students should be advised to study relevant legal positions when studying topics that have been identified for self-study. This will make it possible to logically comprehend and organize the entire layer of theoretical material available on the subject. When mastering the skills of drafting legal documents, including procedural ones, legal positions can be a kind of standard of structuring a legal document, consistency and logical presentation of the text. It should be noted that a systematic approach to the use of the Supreme Court's legal positions in the professional training of future lawyers is required to achieve the relevant results.

Conclusions. The study had found that the Supreme Court's legal positions impact the professional preparation of future lawyers in areas such as

the formation of skills to research, reflect and evaluate a particular legal problem, the ability to resolve conflicts, to model and predict the development of certain legal phenomena or processes, as well as the ability to work independently with legal documents. In the process of mastering the practice of the Supreme Court are formed other professional competencies that are necessary for the future lawyer in practice activity and increases the level of legal consciousness and culture and strengthened respect for their profession. Appropriate study of the legal positions of the Supreme Court is an important element of future lawyers' professional training programs and can be used both in lectures and in seminars, as well as can greatly assist future professionals in the independent work. Accordingly, the study of the legal positions of the Supreme Court is an important element in minimizing the mistakes of the future lawyers in their professional activity, and therefore the court mistakes of the whole, which will contribute to improving the efficiency of the judicial system, strengthening respect for lawyers and developing democracy in Ukraine.

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ВПЛИВ ПРАВОВИХ ПОЗИЦІЙ ВЕРХОВНОГО СУДУ НА ПРОФЕСІЙНУ ПІДГОТОВКУ МАЙБУТНІХ ПРАВНИКІВ

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Сучасний період розвитку України, спрямований на євроінтеграцію, зумовлює численні трансформації життя українського суспільства. Якісних змін потребує і система вищої юридичної освіти. Підготовка фахівців у сфері права змінює свій напрям від системи знань до практичного спрямування освітніх процесів, адже роботодавець очікує молодого спеціаліста, розуміючого основи професії та здатного до реального застосування набутих під час здобуття освіти знань. Основні напрями правозастосування в Україні визначаються Верховним Судом, правові позиції якого ілюструють сучасну практику реалізації норм права. Ознайомлення з ними та вміння їх використовувати є однією із необхідних професійних навичок, якими має оволодіти майбутній юрист під час здобуття вищої освіти, що в перспективі дасть змогу підвищити якість правової діяльності й дозволить мінімізувати помилки в правореалізації, у тому числі й судові помилки.

Мета дослідження: *аналіз впливу правових позицій Верховного Суду на формування професійних навичок майбутніх юристів під час здобуття ними вищої освіти в Україні та узагальнення рекомендацій з їх використання в процесі професійної підготовки майбутніх юристів. Методи дослідження:* у роботі використано діалектичний метод пізнання, загальнонаукові та спеціальні методи. Зокрема, структурно-функціональний та дедуктивний методи. **Результати:** *визначено напрями впливу правових позицій Верховного Суду на формування професійної підготовки майбутніх юристів, також узагальнено рекомендації щодо вдосконалення використання правових позицій Верховного Суду в закладах вищої освіти юридичного спрямування. Обговорення:* *напрями розширення і вдосконалення використання правових позицій Верховного Суду в процесі формування професійних вмінь під час навчання в закладах вищої освіти юридичного спрямування.*

Ключові слова: *вплив; правова позиція; Верховний Суд; рішення суду; професійна підготовка; вища освіта.*