



SOME REFLECTIONS ON THE PRINCIPLE OF LEGAL CERTAINTY

Yusupov Ilkhomjon Ibodillaevich,

Teacher of the Department of Theory of State and Law
of Tashkent state university of law
e-mail: i.yusupov@tsul.uz

| Article history: | Abstract: |
|---|---|
| Received: 14 th March 2024 Accepted: 10 th April 2024 | This article presents some considerations regarding the specifics of the principle of legal accuracy. At the same time, reasonable opinions are given on the application of the principle of legal accuracy in the field of legislative activity. The reasoned opinions of scientists on the principle of legal certainty are also given. |
| Keywords: principle, principle of legal certainty, primacy of law, constitutionality, legality, application of law, international law, European Court of Justice | |

The application of the principle of legal accuracy in the field of lawmaking is aimed at ensuring the high quality of the norms of basic law and, as a result, ensuring the effectiveness of the entire legal system.

First of all, the word "principle" is used in the Constitution of the Republic of Uzbekistan 18 times, including the introduction (the principle of State sovereignty and generally accepted principles of international law), in the title of the first section, in article 11 (the principle of separation of State power), article 13 (universal principles), article 14 (principles of legality, social justice and solidarity), article 16 (principles of social justice), article 20 (principle of proportionality), article 49 (principle of sustainable development, article 129 (basic principles of the Central Election Commission of the Republic of Uzbekistan), article 135 (principle of independence of the judiciary), article 141 (principles of advocacy), article 148 (principles of formation of the state budget) [1].

Now, speaking about the principle of legal certainty, which occupies a special place in the system of principles of law, it is worth noting that

the principle of legal certainty, expressing statics, acts as a kind of limiting factor in the dynamic field of legislative creativity, firstly, as a mechanism for ensuring the rational stability of legislative regulation, and secondly, as compliance with the legislative framework the requirement to predict the legal consequences of certain actions of a private person, established by the European Court of Human Rights.

Compliance with the requirements of the principle considered by the legislator allows you to create a rule of law that best meets the goals of legal regulation, does not require modification or cancellation for a long time. Thus, following the principle of legal certainty in law-making activities contributes to the formation and maintenance of private individuals' trust in the law and the state.

Based on the conclusions of the European Court of Human Rights, one of the main aspects of the rule of law is the principle of the accuracy of the law. The same court considers that the law in any case must comply with the standard established by the convention, which requires the formation of legislative norms with sufficient accuracy and, if necessary, seeking legal assistance, allowing you to know in advance what consequences certain of its actions may entail[2].

In the European legal literature, the concept of legal certainty is compared with the so-called legal security. The activity of the European Court of Human Rights records the origin of national legislation from the requirements of legal certainty of documents.

In particular, the convention states that "there should be a normative legal document as a guide for a citizen on lawful behavior and its consequences, and that the law applied in a particular case should be sufficient, taking into account the norms."

In this norm of the convention, the principle of legal accuracy is recognized precisely through its use in the process of applying the law.

However, in the "Sunday Times v. United Kingdom" case, as well as in the "Canton v. France" case, the European Court of Human Rights requires that the creator of the law also adhere to legal accuracy.

The European Court of Human Rights has repeatedly noted violations of the rule of law in the following form:

- granting powers to revert to new laws;
- repeated invalidation of court decisions that have entered into force;
- to include or not to include in the legislation provisions that do not meet the legitimate requirements of an individual (for example, the inability to receive compensation due to the lack of instructions in the Budget Law;
- inconsistency of personal and public interests in the law or court decision, etc.



Thus, from the above, it can be concluded that the European Court of Human Rights considers national legal acts if they generally comply with the principle of legal certainty and meet the following basic requirements as a law suitable for achieving the objectives of the convention: openness, predictability, accuracy of the definition of a crime and the punishment imposed for it, the existence of grounds and procedures.

Legal clarity occupies a special place in the complex of structural principles of the Spanish legal system, enshrined in paragraph 3 of article 9 of the Spanish Constitution. The Constitutional Court of Spain, in its decision No. 20 of July 20, 1981, defined the principle of legal certainty as a set of legal force of norms and transparency of norms that allow the development of reliability and legality of norms, hierarchy and equality of justice and freedoms within the legal system. The principle of legal certainty binds public authorities at all levels and is aimed at achieving two main interrelated goals - ensuring reasonable stability and reliability of legal regulation.

Professor DJ from the University of Helsinki. Rocio refers the principle of legal certainty to the basic general principles of law, which include the prohibition of retroactive force of law and the protection of legitimate expectations of legal entities. This principle, according to the scientist, provides a balance between formal justice and material justice in making legal decisions[3]. Legal accuracy as a principle of the legal system is used both in the field of legal creativity and in law enforcement, in the interpretation of legal norms and normative legal acts, in the application of law, in all types of legal practice.

As noted above, legal clarity arises from the fact that it is not allowed to review the essence of the case already considered. As an exception, one can cite a parable about invalidation or changing the final decision of the court in newly opened cases. We are used to the fact that newly initiated cases serve as an unspoken basis for considering a case, including for refusing to overturn a previous court decision.

Article 4 of the Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan" provides for the authority to comment on the norms of the Constitution and laws[4]. However, article 55 of the law "On Normative Legal Acts" notes that the official interpretation of normative legal acts is carried out in case of inaccuracies in a normative legal act that is applied in practice in an incorrect or contradictory way[5].

Thus, it can be concluded that the arbitration court can comment on the norms of constitutionality and law in the presence of ambiguities.

This indicates that, in fact, the mechanisms for introducing legal certainty, especially methods, are not regulated even in the decision of the Constitutional Court, although the Constitutional Court determines the status of the subject with a legal explanation.

Legal scholar B.K. Khodjaev cites the following positive aspects of the judicial precedent:

1. forms a clear judicial position and ensures the stability of the legal position of the court;
2. Simplifies the administration of justice, reduces the judicial burden;
3. serves to prevent external factors (harassment) and corruption in the courts, promotes the independence of judges;
4. allows you to anticipate and predict the practice of law enforcement[6].

Supporting the opinion of the scientist, it can be predicted that the sphere of influence of the Supreme Court and the Constitutional Court in our country is already significant, and the possibility of using legal precedent in the judicial practice of the Republic of Uzbekistan, as well as in the application of the law, is high.

N.A. Vlasenko investigated the issue of legal understanding in terms of types of uncertainty and accuracy. He considers the perception of law as a movement from uncertainty to clarity, rightly noting the need for a clear, monolithic characterization of law. From a practical point of view, the ambiguity of its understanding leads to ambiguity and incomprehensibility of its norms in the creation and application of law, and this inevitably creates conditions for violation of the law, the rights and legitimate interests of subjects of law[7].

It is necessary to try to correlate the existing types of legal understanding and the possibilities of solving problems related to uncertainty and accuracy in the law. The statistical type of legal understanding is best suited to ensure accuracy in the application of the law. Analytical jurisprudence has developed its own arsenal of rich tools that have existed for centuries to solve these problems. This applies both to the elimination of uncertainty and to the relative accuracy resulting from the irregularity of legal regulation. In particular, we are talking about the issuance of additional regulatory documents, the use of auxiliary forms (sources) of law, assumptions, casual situations, etc. in the case of granting powers to implement the so-called "model laws".



Concretization is of particular importance as a method of moving from uncertainty and relative accuracy to certainty. Concretization involves clarifying the norms themselves and resolving questions about the possibility of their extension to certain legal facts. It is closely related to the problems of interpretation of legal norms, the use of analogy of law and law enforcement practice, the discretion of the court and other law enforcement agencies, as well as other legal phenomena that ensure the transition from uncertainty (lack of confidence) to legal accuracy.

V.M. Baranov argued that the phenomenon of concretization of a rule of law arises when it is determined that there are flaws in it, inconsistency in regulated public relations, improper reflection of activities of legal significance[8].

Uncertainty in the law creates problems for the court, but it is not fatal for legal entities. Legal uncertainty arises when a court performs its functions incorrectly, which, unfortunately, is inherent in our legal system. Our legal literature constantly writes about the problem of unsubstantiated court documents, the problem of not refuting the testimony of the participants in the case[9]. In some cases, some courts themselves create ambiguity in legislation by applying the law in contradiction with its content. This, in turn, does not make it possible to clearly apply the law and, as a result, generates practices that do not meet the requirements of the principle of legal certainty, which we are talking about.

CONCLUSION

Based on the above, the accuracy and uncertainty of the law should be considered through the norms of the law, since the person applying the law (judge, prosecutor, investigator, inquirer, etc.) applies the norms of law, a certain case, the fact should be clear, if not, then interpret the norms of the law, properly regulate public relations by specifying and eliminating inaccuracies in achieving the rule of law.

For a person applying the law, it is important that the rule of law be clear, he does not apply the law, but a certain rule of law, and he needs the accuracy of the rule of law, not the law itself, since the disputed relations are regulated only by a certain rule of law.

REFERENCES

1. Қонунчилик маълумотлари миллий базаси, 01.05.2023 й., 03/23/837/0241-сон // <https://lex.uz/docs/6445145>
2. Конвенция о защите прав человека и основных свобод (Рим, 4 ноября 1950 г.) (в ред. от 13 мая 2004 г.)

3. Raitio J. The principle of legal certainty in EC law // Law and Philosophy Library. 2003. Vol. 64. 468 p.
4. Қонунчилик маълумотлари миллий базаси, <https://www.lex.uz/uz/docs/-6445145>.
5. Қонунчилик маълумотлари миллий базаси, <https://www.lex.uz/uz/docs/-6445145>.
6. Ходжайев В.М. Ўзбекистонда суд президенти: ҳуқуқий аниқлик ва stare decisis доктринasi / Юриспруденсия ҳуқуқий илмий-амалий жurnали. TDYU, 3-сон, 2023. – 23-b.
7. Воронцов С. Г. Признаки предпринимательской деятельности: проблемы терминологической определенности // Вестник Пермского университета. Юридические науки. 2016. Вып. 34. – С. 410.
8. Власенко Н. А. Проблемы правовой неопределенности. – М., 2016. – С. 30.
9. Баранов В. М. Негативные аспекты конкретизации юридических норм // Конкретизация права: теоретические и практические проблемы. – М., 2015. – С. 55.
10. Власенко Н. А. Разумность и определенность в правовом регулировании. – М., 2015. – С. 99.