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# The Principle of Legal Certainty: Concept and Main Characteristics

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**Abstract:** The article is devoted to the disclosure of the concept of legal certainty, the problem of finding certainty in law, since the emergence of legal conflicts and legal disputes are often associated with the search for certainty in law. It is advisable to find out whether the principle of legal certainty is a principle of law or is it a non-legal nature. It is argued that the principle of legal certainty is a general principle of law and, together with other fundamental legal maxims, such as the principle of the rule of law, underlies all legal systems, both international and national. The aim of the study is a comprehensive theoretical understanding of the principle of legal certainty: the formulation of its concept, the disclosure of its content and system of requirements based on the analysis of legislation and judicial practice, the clarification of its place in the system of principles of Russian and foreign law and the relationship with other principles of law, the definition of its role and functions in the implementation of legal regulation. The conclusions are drawn that, despite its name, the principle of legal certainty is perhaps the most uncertain in its content. Its provisions, repeatedly repeated in the jurisprudence of the European Court of Human Rights, the Constitutional Court of the Russian Federation, cannot be considered exhaustive and final, since the European Court of Human Rights and the Constitutional Court of the Russian Federation, following the concept of an evolutionary interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, continues to reveal new facets and meanings this principle.

**Keywords:** Principle of Law, Legal Certainty, Rule of Law, Realization of Law

## 1. Introduction

Over the past quarter-century, the vectors of the functioning and development of Russian law, law-making and law enforcement bodies of the state are predetermined by the adoption of the Constitution of the Russian Federation of 1993, the increasing integration of Russia into the international legal space, the implementation of the main stages of the judicial reform of 1991 and the concept of further development of the judicial system. Over the past period, extensive work has been done to bring Russian legislation and the practice of its application by the Constitution of the Russian Federation and acts of an international legal nature, with universally recognized principles and norms of international law implemented in the national legal system.

In the legal literature, there are three main directions in understanding this category. Some scholars do not perceive legal certainty as an independent principle of Russian law, believing that it is not independent in nature, that it cannot be considered as a principle that is part of the general idea of the rule of law. The second, recognizing the fundamental nature of the category of "legal certainty", characterizes only its content elements. The third of its entire content reduces to the properties of the principle of res judicata, noting the complete identity of these principles in both law-making and law enforcement.

Meanwhile, the regulatory content of legal certainty should be interpreted much more broadly, since it covers not only the elements of stability of the current regulatory framework or the essence of the principle of res judicata but also the clarity, consistency of the legal system, the stability of judicial practice, the unity of the will of the law and legal awareness of public participants in legal relationships, their

attitudes. Only with this approach, legal certainty can ensure its original normative purpose - the state of legal stability of the individual, civil society, legal state.

The author in her work refers to the following Russian and foreign scientists in the field of jurisprudence and law enforcement, as: Alekseev S. S., Anishina V. I. and Nazarenko T. N., Borisova E. A., Wildhaber L., as well as Pryakhina T. M.

The practical significance of the study lies in the fact that the theoretical provisions developed in it, practical recommendations and proposals made it possible to: determine the essence and normative significance of the principle of legal certainty in the mechanism of national and foreign legislation; to understand its main elements, their relationship, role and significance for ensuring the regime of legal certainty, legal states and acts; reveal the real reasons for the conflict state of Russian and foreign legislation in the modern period.

The purpose of this study is to find a solution to an urgent scientific problem, which consists in the possibility of implementing the principle of legal certainty, aimed at recognizing this principle as generally binding in the judicial practice of the highest judicial bodies for the judicial system to perform the function of stabilizing social relations, which creates confidence in the fairness and reliability of laws, objectivity, and predictability of justice.

To achieve this goal, it is necessary to solve the following tasks: to explore the concept, essence and specifics of the principle of legal certainty; to study and systematize approaches to the concept of the principle of legal certainty, formulated in legal science; identify the place of the principle of legal certainty in the system of principles of Russian and foreign laws; analyze the legislation of the Russian Federation and materials of law enforcement practice of the Constitutional Court of the Russian Federation, the European Court of Human Rights in order to identify and generalize the meanings of the principle of legal certainty.

## 2. The Principle of Legal Certainty in Legal Doctrine and Russian Legislation

### *2.1. Definition and Main Elements of the Principle of Legal Certainty*

The very concept of certainty means clarity, concreteness, and accuracy.

If we talk about the legal system of law as its certainty (formal certainty) will increase, which means “exact, complete and consistent consolidation and implementation of normative will in law, expressed as: in formal certainty of the content of the rule of law, in the methods of their formulation and forms of consolidation, in regulatory legal acts, in the certainty of the exercise of law” [1].

Well-known pre-revolutionary law researcher I. A. Pokrovsky noted that “one of the first and most essential requirements that are imposed on the law by a developing human person is the requirement of certainty of legal norms. If every person must obey the law, if he must adapt his behaviour to his requirements, then it is obvious that the certainty of these requirements is the first condition for an orderly social life”. [15]

The principles of law, which embody the social nature of law, reflect the laws of its development, and are used in practice as the most general guidelines for behaviour, are important for lawmaking and law enforcement processes.

The principles of law are fundamental ideas, guiding principles that underlie the law, expressing its essence and determining its functioning.

As noted by S. S. Alekseev, the principles of law are its cross-cutting ideas, reflecting its content, expressing the foundations of law, the laws of public life that are embodied in it, which are expressed in legal matter itself. “They are, as it were, “dissolved” in law, “spilt” in it, permeate many legal norms” [3].

Principles permeate all legal norms. They can be enshrined in normative acts, but can, without being enshrined, logically flow from the totality of the rules of law.

The principle of legal certainty is a general principle of law and, together with other fundamental legal foundations, such as the rule of law, the equality of persons before the law and the court, underlies all legal systems, both international and national.

The principle at first glance is relatively new to law and law enforcement but has been known since the days of Ancient Rome, where it was first formulated [17].

The principle of legal certainty is a general legal fundamental principle that does not have normative fixing but is formed in science and law enforcement practice and has a decisive importance in the activities of public authorities, the behaviour of business entities. This principle presupposes a systematic and completeness of the legal regulation of public relations, clarity, accuracy, consistency, and logical consistency of the norms of laws that ensure the possibility of a uniform application of the latter in practice.

In the domestic theory of law, the existence of the principle of legal certainty found some support, but most authors do not have a common opinion about its essential manifestations.

For example, E. A. Borisova believes that “the content of the principle of legal certainty lies in observing the requirement of sustainability of final judicial acts” [7].

V. I. Anishina and T. N. Nazarenko consider this principle as a synonym for the term “formal certainty” [4].

The principle of legal certainty is most widely considered by T. M. Pryakhina, who claims that “it is a set of complementary requirements that the text of the law, the rules of lawmaking and the principles of law enforcement practice must meet” [16].

I. A. Pokrovsky pointed out that the requirements of a developing personality to the law are its certainty and strength, which are “connected with each other: they are both only two sides of the same natural and “inalienable” need of the individual to have a clear and definite place in the life of

a whole social organism". The author, criticizing the vulgarized understanding of natural law, noted that "under the influence of the tendencies of "free law", the legislation is on a slippery slope", because the problem of resolving legal relations does not disappear when a certain legislative settlement is rejected but is simply passed on to judges".

S. S. Alekseev, agreeing with the opinion of I. A. Pokrovsky on the need for certain legal regulation, as one of the foundations of protecting human rights, explained that "inalienable human rights embrace not only the most important social values of a high order in themselves but directly phenomena of a purely legal nature, and only through them the most important social categories, in this case, the individual's needs to have a clear and definite place in the life of the entire social organism" [2].

Perhaps, in this case, it is necessary to speak not about the principle of legal certainty, but about a special social phenomenon that has its development in several legal principles. In support of this thesis, one should consider what constitutes uncertainty in law, how it manifests itself and what are the means to overcome it.

The problem of uncertainty in law is most clearly manifested against the background of the formal certainty of law as one of its most significant features. According to the domestic legal doctrine, the formal definiteness of law means the exact designation of the circumstances that give rise to the legal consequences, the precise definition of the participants and the content of legal relations, prohibitions, and sanctions for their violation.

It seems that the emergence of uncertainty in law is directly related to the process of interpreting formally defined abstract rules of law, where the issue of interpretation subjectivity comes to the fore.

The well-known Italian jurist and philosopher E. Betti wrote that "the interpreter as a living and thinking spirit" and "the spirit objectified in meaning-containing forms" participate in the act of interpretation, which should be understood in accordance with their original purpose - reflection of the formative will of the author of the text [6].

According to philosophical doctrine G. W. Hegel, this spirit, objectified in semantic forms of sources of law, is the "substantial will" of society, embodied in the state system and domestic state law [12].

However, the result of the interpretation of law in many respects depends on the "thinking spirit" of the subject of interpretation, which reflects his moral values, subjective goals, and desires of the interpreter regarding the result of interpretation.

As G. W. Hegel wrote, human self-consciousness is "a formal will, which is the process of translating a subjective goal into objectivity through the mediation of activity and some means".

Thus, if the subject of the interpretation of law lays in him the achievement of a certain subjective goal, the act of interpretation becomes a mediating activity for the implementation of the goal, and the very result of the interpretation of the law becomes a means of achieving the interpreter's subjective goal, which may be far from the ideal of "substantial will".

In other words, depending on the actual goal of the interpreter, not the actual circumstances and goals are brought by him under the rule of law, but rather, the rule of law is brought by him under the subjective goal. The meaning is given to the "interpreted" rule of law, and not the re-construction of its meaning by the interpreter.

G. W. Hegel noted that "the interpretation of law in accordance with a subjective goal often leads to a misconception about law, to untruth, which contradicts what law is in itself, is the appearance of law, but does not correspond to its essence".

O. E. Leist argues that "by formal certainty should be understood the exact designation of circumstances giving rise to legal consequences, the designation of these consequences, qualities inherent in participants in legal relations" [13]. The generally recognized legal norms and their elements are classified according to the degree of certainty into certain (usually imperative) and relatively specific (usually dispositive). The latter require or permit the implementation of the discretion of law enforcement agencies or participants in legal relations. O. E. Leist focuses on the fact that in the tradition of normativism - giving norms an abstract character. Abstractness gives the norm a universal character, which frees it from unnecessary casuistry and allows you to apply legal norms repeatedly in close factual circumstances. However, excessive abstractness can damage certainty and create a situation where norms are blurred and unclear. In addition, O. E. Leist introduces the criterion of "formal uncertainty", i.e. situations when the state is not able to meet the expectations arising from the rule of law. So, as an example, he cites the need to issue special laws in compliance with the norms declared in the Constitution of the Russian Federation. O. E. Leist notes that "a serious problem of the domestic legislator was the lack of a law on alternative civil service, the need for which follows from Article 59 of the Constitution of the Russian Federation" [22]. From this, we can conclude that the above statements of the author testify to his commitment to the position that a formally indefinite norm is not able to give rise to the legal consequences that participants in legal relations are counting on.

Thus, in view of the free interpretation of law by various entities, which often have mutually exclusive interests and requirements for interpretation results, conflicts of interpretation of legal requirements inevitably arise and, as a result, subjective uncertainty in the true nature of the legal regulation of public relations is uncertainty in law.

However, subjective uncertainty in law can arise not only based on subjective reasons for the emergence of uncertainty in law when interpreted but also if there are some objective reasons for the inability to give an unambiguous answer regarding the essence of law. These include flaws in the normative legal regulation of public relations, which may relate both to violations of the formal certainty of law, and to general flaws in law enforcement.

In this case, we can talk about objective violations of

several basic principles of law, such as the principles of formal certainty of law, the rule of law, legality, and stability of judicial acts (res judicata principle). These legal principles were combined by the European Court of Human Rights, and then by the Constitutional Court of the Russian Federation, into a single comprehensive principle of legal certainty, the validity of the construction of which, however, is debatable.

Firstly, the practical necessity of combining the principles of law already existing and recognized in the domestic legal doctrine, legislation and law enforcement practice into a new comprehensive principle is controversial.

Secondly, the complexity and versatility of modern society are expressed in the wide variety of "communicative practices" of various social relations. The stability of their implementation is necessary for the reproduction of the corresponding society, its social and cultural system, and therefore it is included in the circle of its priority tasks.

Thus, the "principle of legal certainty" is not so much a phenomenon of a legal nature as a special social phenomenon that reflects the stability of public relations and has its further development in a few principles of law aimed at ensuring the stability of the legal regulation of public relations.

According to the legal position of the Constitutional Court of the Russian Federation, reflected in paragraph 9 of Judgement of February 5, 2007, No. 2-P "the general legal principle of legal certainty implies the stability of legal regulation and the enforceability of court decisions". In addition, as the Constitutional Court has repeatedly pointed out, in implementing legal regulation, the principle of maintaining citizens' trust in law and actions of the state must be observed, which implies legal certainty, maintaining reasonable stability of legal regulation, inadmissibility of arbitrary changes to the current system of legal norms and predictability of normative policy, with so that participants in the relevant legal relations can reasonably anticipate the consequences of their behaviour and ensure the immutability of its officially recognized status, acquired rights, the effectiveness of state protection.

### *2.2. Implementation of the Principle of Legal Certainty in Different Branches of Law*

Consider the principle of legal certainty in various areas of public relations, based on the provisions of civil, administrative, criminal laws.

#### *2.2.1. Legal Certainty in Civil Legislation*

Legal certainty is achieved by the consistent improvement of certain provisions of the law. For example, it was precisely this goal that the developers of the Concept for the Development of Civil Legislation faced: to replace situational, fragmented and often random rulemaking in the field of private law with consistent and systematic lawmaking. In the process of discussion and adoption of amendments to the Civil Code of the Russian Federation, many "grey" amendments were introduced that were not built into the logic of the necessary measures to improve civil law. However, it is important to indicate that the Civil Code of the Russian Federation acts as an exception, and in the field of private law regulation, lawmaking remains at the same level as it was. An example of this is the uncertainty of the legal significance of state registration of rights to immovable things: a confirmatory or a legal one. The fact is that in the world there are several registration models based either on the priority of the principle of making (the right arises precisely by virtue of registration and abstract in relation to title documents) or on the principle of comparability (the right arises by virtue of legal documents, is confirmed by registration, and can be challenged in court).

#### *2.2.2. Legal Certainty in Administrative Law*

Considering legal certainty in administrative law, should be noted that administrative responsibility, being one of the types of legal responsibility, is aimed at protecting public relations existing in the state. The peculiarity of administrative responsibility that distinguishes it from other types of legal responsibility lies in the possibility of its regulation under the laws of the constituent entities of the Russian Federation provided for by the Constitution of the Russian Federation and the Code of Administrative Offenses.

The possibility of regulating administrative responsibility both at the federal level and at the level of the constituent entities of the Russian Federation has both advantages associated with the possibility of taking regional specifics into account when establishing administrative responsibility, and problems arising mainly from insufficiently clear regulation of these relations in federal legislation. Existing regulatory requirements do not give a clear understanding of the boundaries of regional rulemaking in this area, which leads to numerous errors in establishing administrative responsibility at the level of constituent entities of the Russian Federation.

The legal regulation of the possibility of establishing administrative responsibility at the level of the constituent entities of the Federation follows from the provisions of the Constitution of the Russian Federation and federal laws.

Clause "k" Part 1 Article 72 of the Constitution of the Russian Federation says that administrative and procedural legislation refers to the areas of joint jurisdiction of the Russian Federation and the constituent entities of the Russian Federation. This establishes the possibility of regulating administrative responsibility at the level of constituent entities of the Federation. This constitutional provision is continued in federal law.

Point 39 Part 2 Article 26.3 of the Federal Law of October 6, 1999, No. 184-Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" determines that the powers of state bodies of a constituent entity of the Russian Federation on subjects of joint jurisdiction carried out by these bodies independently at the expense of funds of the budget of the constituent entity of the Russian Federation (with the exception of subventions from the federal budget), the solution of issues of establishing administrative responsibility for violation of

laws and other norms of legal acts of subjects of the Russian Federation, normative legal acts of local self-government bodies, the determination of jurisdiction of cases on administrative offences provided for by the laws of the RF subjects, the organization of production in cases of administrative offences provided for by the laws of the Russian Federation. Thus, the specified Federal Law concretizes the provisions of the Constitution of the Russian Federation, determining the powers of the subjects of the Russian Federation to establish administrative responsibility.

In more detail, the powers of the Russian Federation and constituent entities of the Russian Federation to establish administrative responsibility are defined in the Code of Administrative Offenses of the Russian Federation.

In accordance with paragraph 3 Part 1 Article 1.3 Administrative Code of the Russian Federation, the Russian Federation is vested with the right to establish administrative responsibility on issues of federal importance, including administrative responsibility for violation of the rules and norms provided for by federal laws and other regulatory legal acts of the Russian Federation.

Subjects of the Federation in accordance with paragraph 1 Part 1 Article 1.3.1 Administrative Code of the Russian Federation is authorized to establish administrative laws for the violation of laws and other regulatory legal acts of the constituent entities of the Russian Federation, regulatory legal acts of local authorities by the laws of the constituent entities of the Russian Federation on administrative offences.

It should be agreed with O. V. Pankova that the construction of clause 3 Part 1 Article 1.3 of the Administrative Code of the Russian Federation does not contain a clear legislatively fixed framework for regional law-making. Based on the content of the said norm, the general and basic criterion that determines the lawfulness of regional law-making in the field of administrative-tort relations is expressed in the attribution of or any other issue of federal significance, that is, relevant not only for residents of a certain region, republic but also for the entire Russian Federation [14].

The ambiguity of the legal regulation of the issue of administrative responsibility at the federal level leads to the establishment by the constituent entities of the Russian Federation of administrative responsibility with violations of both the powers of the constituent entities of the Federation and the rules of legal technology. This situation can be traced in the analysis of decisions of the Supreme Court of the Russian Federation on cases of the abolition of the norms of the laws of the subjects of the Russian Federation on administrative offences.

### *2.2.3. Legal Certainty in Criminal Legislation*

Regarding the legal certainty of the application of the criminal law, only their qualitative component, which does not allow for ambiguity, discrepancies, any other interpretation of it, except directly resulting and not contradicting the disposition of the criminal law norm, will create the principle of legal certainty of the criminal rights.

The seriousness of the requirements of law enforcers for its certainty has been repeatedly drawn to the attention of the Constitutional Court of the Russian Federation. In particular, according to the Constitutional Court of the Russian Federation, a violation of the principle of formal certainty of norms allows unlimited discretion in the process of law enforcement and inevitably leads to arbitrariness, and therefore to a violation of the principle of equality in the exercise of constitutional rights and freedoms.

Already in the very first articles of the Criminal Code of the Russian Federation, one can detect legal conflicts, the inconsistency of a number of norms of the Criminal Code of the Russian Federation with each other and the discrepancy of some of them with the doctrinal provisions of criminal law. Not even ambiguity, but an obvious omission, in particular, was allowed by the legislator in the wording of Part 2 Article 2 of the Criminal Code of the Russian Federation, defining measures to implement the tasks of the Criminal Code of the Russian Federation. It provides that for their decision, the Code establishes the basis and principles of criminal liability, determines what dangerous acts are recognized as crimes for an individual, society or state, and establishes the types of punishments and other measures of a criminal law nature for committing crimes. Since Part 2 Article 21 and paragraph "a" Part 1 Article 97 of the Criminal Code of the Russian Federation rightly determine that compulsory medical measures (one of the measures of a criminal law nature) can be applied not only for committing crimes but also for the innocent commission of socially dangerous acts stipulated by the criminal law, then in Part 2 Article 2 of the Criminal Code of the Russian Federation, it would be correct and legally correct to indicate, along with the crime, the commission of socially dangerous acts.

A specific state of uncertainty of a criminal law norm may also result from a clear discrepancy between the style of presentation of its disposition and the real state of affairs regarding the implementation of this norm. In this regard, one cannot but pay attention to the unjustified categorization and unambiguity of the legislative formulation of the principle of humanism (Part 1 Article 7 of the Criminal Code of the Russian Federation), which enshrines (in fact, declares) the provision that the criminal law of the Russian Federation ensures human security.

Apparently, the legislator meant that violations of the prohibitions contained in the norms of the Special Part of the Criminal Code of the Russian Federation, which can be considered as a kind of public offer, are not permissible under the threat of the application of the penalties provided for by the sanctions of these norms. In other words, criminal liability in accordance with the principles of equality of citizens before the criminal law and the inevitability of the criminal responsibility of the guilty person must occur inevitably in each specific case of a crime. Only in this case, in accordance with the criminal law interpretation of the above principles, it can be argued that criminal law ensures human security.

It follows from the foregoing that the criminal law, as well

as the bodies applying it, due to various objective and subjective reasons, today is not able to fully ensure human security. In this situation, it seems appropriate to clarify the presentation of the disposition of Part 1 Article 7 of the Criminal Code of the Russian Federation, formulating it as follows: "the criminal legislation of the Russian Federation has as its goal the provision of human security". In this case, it will not be difficult to find consistency and even some kind of "kinship" between parts of the first and second cited articles, which, I think, is quite justified and logical. Let me remind you that Part 2 determines that "punishment and other measures of a criminal law nature applied to the person who committed the crime cannot aim at causing physical suffering or humiliating human dignity".

In addition to the above, one of the substantive aspects of the principle of legal certainty is the unity of law enforcement.

# 3. Legal Certainty by the Constitutional Court of the Russian Federation and the European Court of Human Rights

### *3.1. Some Conclusions of the Constitutional Count of the RF About the Nature of Legal Certainty*

In the legal position set out in the Judgement of the Constitutional Court of the Russian Federation of June 18, 2018, № 24-P "On the case of checking the constitutionality of paragraph 1 Article 7 of the Federal Law "On compulsory state insurance of life and health of military personnel, citizens called up for military training, ordinary people and the commanding staff of the internal affairs bodies of the Russian Federation, the State Fire Service, employees of institutions and bodies of the penal system, officers of the national guard of the Russian Federation" in connection with a complaint of a citizen A. P. Zvyagintsev", the Constitutional Court of the Russian Federation came to the conclusion that when concluding an agreement on compulsory state life and health insurance, servicemen and equivalent persons insured under such an agreement cannot independently provide for their interests, since they are not party to the contract and do not take part in determining its terms, i.e. the insured persons are not fully covered by the principles that, in accordance with clauses 1 and 2 Article 1 of the Civil Code of the Russian Federation, constitute the basic principles of civil law (equality of participants in relations regulated by them, freedom of contract, acquisition and exercise by individuals of their civil rights of their own free will and in their interest, freedom in establishing their rights and obligations on the basis of the contract and in determining any contract terms that do not contradict the law), respectively, the legal mechanism for the implementation of insurance payments for compulsory state life and health insurance of military personnel and persons equated to them may be different, but in any case it should include effective guarantees of the rights of these persons, adequate to the purpose of this type of insurance and the nature of legal relations arising from the harm to their life or health during service, including guarantees of timely receipt of insurance compensation.

Attention should also be paid to the Judgement of the Constitutional Court of the Russian Federation of January 17, 2019, No. 4-P "In the case of the constitutionality of Article 19.1 of the Law of the Russian Federation "On the Media" in connection with a complaint of a citizen E. G. Finkelshtein", where the Constitutional Court of the Russian Federation came to the conclusion that the second part of Article 19.1 of the Law of the Russian Federation "On Mass Media" restricts a citizen of the Russian Federation who has citizenship of another state in the right to exercise possession, management or control directly or indirectly in with respect to more than 20 per cent of the shares (stocks) in the authorized capital of a person who is a participant (member, shareholder) of the founder of the mass media, the editorial office of the mass media, organization (legal entity) broadcasting. A literal interpretation of this provision does not exclude the possibility of its understanding in the sense that it does not apply to persons who are participants in a business company - the founder of a mass media outlet or broadcasting organization, but only to persons who are participants in a legal entity participating in their in turn, in the legal entity that established the mass media, which is the broadcasting organization.

On the one hand, designed to exclude the possibility of indirect control by participation of a citizen of the Russian Federation, having citizenship of another state, in the authorized capital of the company, which, in turn, is the founder of the media, the broadcasting organization, this norm to a greater extent consistent with the objectives of the contested regulation if it applies specifically to persons who are participants in the company - the founder of the mass media, organization broadcasting. On the other hand, in the absence of a direct and unambiguous prescription for this in the law, the interpretation of the second part of Article 19.1 of the Law of the Russian Federation "On the Mass Media" in this sense would lead to a restriction of constitutional rights not based on the law and to a derogation from the requirement of certainty of legal regulation, would have been broad in nature.

Thus, by virtue of the legal position repeatedly expressed by the Constitutional Court of the Russian Federation that the ambiguity and inconsistency of legislative regulation inevitably impede an adequate understanding of its content and purpose, allow the unlimited discretion of public authority in the enforcement process, and create the prerequisites for administrative arbitrariness and selective justice, how do weaken guarantees for the protection of constitutional rights and freedoms; therefore, in itself, a violation of the requirement of certainty of a legal norm may well be sufficient to recognize such a norm as inconsistent with the Constitution of the Russian Federation (Judgements of December 20, 2011, No. 29-P; June 2, 2015, No. 12-P; July 19, 2017, No. 22-P and others).

Freedom of interpretation of law by various entities, which often have mutually exclusive interests and requirements for interpretation results, conflicts of interpretation of legal requirements inevitably arise and, as a result, subjective uncertainty in the true nature of the legal regulation of public relations - uncertainty in law.

However, subjective uncertainty in law can arise not only based on subjective reasons for the emergence of uncertainty in law when interpreted but also if there are some objective reasons for the inability to give an unambiguous answer regarding the essence of law. These include flaws in the normative legal regulation of public relations, which may relate both to violations of the formal certainty of law, and to general flaws in law enforcement.

It is obvious that the uncertainty in the legal regulation leaves the participants in legal relations the freedom to use other methods that are illegal in nature, including political ones. In cases when a specific legal norm or a stable judicial practice is created, this freedom disappears. Uncertainty is of particular importance in constitutional justice since the Constitution of the Russian Federation itself is built on a "balancing of values" [9]. By fair remark, the judge of the Constitutional Court of the Russian Federation G. A. Gadzhiev, ambivalent decisions are often made in this area to take into account the opinions of all judges. The negativeness of this circumstance is manifested in the fact that these decisions are subsequently subject to application by the courts, which receive freedom, undefined by the Constitutional Court of the Russian Federation, in the administration of justice [10].

Accordingly, it is required to determine by what legal means the phenomenon of legal certainty ensures the stability of the legal regulation of public relations and what are its essential aspects.

First of all, normative acts must be published, clear and accurate, retroactive only in exceptional cases, judicial acts must be binding, stable (excluding arbitrary review), as well as enforceable. Legal certainty is achieved by providing protection to the legitimate interests and expectations of individuals. Consequently, legal certainty ensures the stability of legal relations in the field of various public relations, guarantees the right to a fair trial, including the adoption in accordance with the law of judicial acts establishing a balance of rights and interests of the disputing parties.

The principle of legal certainty of the judiciary is the most important beginning of its organization and activities. The imbalance in the mechanism of empowering judges and their further exercise of judicial power, the uncertainty of the scope and extent of powers, the lack of clearly defined judicial functions in the Constitution of the Russian Federation, the use of judicial mechanisms contrary to its purpose and meaning, undermines the credibility of the judiciary and negates the effectiveness of justice.

### *3.2. European Court of Human Rights About the Principle of Legal Certainty*

Russia builds its legal system in such a way as to be able to optimally interact with other legal systems of other states and international law, as evidenced by its constitutional recognition of generally recognized principles of international law, as well as international treaties of Russia, as part of the legal system (Article 15 of the Constitution of the Russian Federation). These principles have received international legal recognition and consolidation, primarily in the Universal Declaration of Human Rights, adopted by the United Nations in 1948, proclaiming the equality of all before the law (Article 7); the right of everyone to an effective judicial defense exercised by a competent court established based on law, or the right of access to justice (Article 8) and other provisions.

In the formation and functioning of the Russian legal system, an important role is played by taking into account the normative acts of the Council of Europe, and, in particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the practice of applying its norms and provisions in the form of acts of the Commission on Human Rights (valid until 1998) and the European Court of Human Rights. The requirements established for national justice in these acts are continuously developed in the form of legal requirements formulated by the European Court as a result of the consideration of specific cases. The aforementioned acts have normative, universally binding meanings, and failure to comply with certain conditions and requirements established by the international documents of this organization entails the responsibility expressed in political, legal and material sanctions in cases when citizens and organizations file claims against their own state. The jurisprudence of the European Court consistently enforces the rules and provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, filling the provisions of the Convention with deep content in decisions on specific cases, forms standards in the field of justice and legal guidelines for courts in complex and controversial situations in the field of protection human rights.

The content of the principle of "legal certainty" has been repeatedly disclosed by the European Court of Human Rights as a result of the interpretation of the provisions of Article 1, clause 6 of the Convention. The requirement of legal certainty forms "one of the fundamental aspects of the rule of law", is its necessary consequence and condition for implementation.

So, the chairman of the Constitutional Court of the Russian Federation V. D. Zorkin in 2005, was quoted as saying that the Roman-German "rule of law" is equivalent to the Anglo-Saxon "rule of law" and these concepts are used in the legal space, respectively, of common and continental law countries [20]. In subsequent works of V. D. Zorkin noted that the rule of law includes the concept of a rule of law along with other features [21]. The rule of law is often identified with the rule of law [11]. Sometimes these concepts are represented by the

principles of the rule of law [5].

## 4. Conclusion

As L. Wildhaber noted, "it is through the unity of law enforcement that the international and constitutional principles of the equality of all before the law and the court, the equal right of everyone before the law and the court, the equal right of everyone to judicial protection are achieved, and only in this way legal certainty is created. The rule of law and the effectiveness of protecting the rights of all participants in public relations will not be guaranteed in the context of different understanding and application of legal norms by the courts" [19].

It should also be borne in mind that the methods of application (interpretation) of the principles of law may differ depending on the category of the body performing law enforcement functions and the nature of the rule of law with which it deals. For example, according to G. A. Gadzhiev, the Constitutional Court of the Russian Federation in the process of interpreting the principles of law formulates new ideas about them, and "changing ideas about constitutional principles is the result of a constitutional policy implemented by all state bodies" [8]. Indeed, the specificity of constitutional justice is the interpretation of constitutional norms and norms of principles based on criteria of reasonableness, justice and other "principles-ideas", "moral principles" or, as they are called in foreign doctrine, "standards" [18].

Thus, the consistent implementation of the principle of legal certainty by the courts as a standard of proper justice will help strengthen Russian statehood, effectively protect the rights and freedoms of its citizens, correspond to the constitutional legal nature of the status of the judiciary in the Russian Federation, and the full integration of Russia into the world community.

In turn, the formal certainty of law is designed to ensure the stability of the legal regulation of public relations, manifested in a uniform understanding, interpretation and application of law, which represents the implementation of the material side of the phenomenon of legal certainty.

As a property of law, legal certainty implies the accuracy of legal requirements provided by the high quality of legal technology. As a principle of law, it requires clarity in the scope of subjective rights, obligations and prohibitions arising from the law, other forms of law, and law enforcement acts. The values attached to legal certainty are not frozen, concretized and evolving in the practice of the Constitutional Court of the Russian Federation, the European Court of Human Rights, as well as other courts.

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