

Legal nature of the principle of legal certainty as a component element of the rule of law

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Abstract

One of the main elements of the rule of law is the principle of legal certainty, which provides, inter alia, that in any dispute, a court decision that has entered into force cannot be called into question. The subject of the most discussed today constitutional principle of legal certainty is today seen as a structural element of the rule of law, necessary for the stabilization of legal relations and systems in which the judiciary and courts play an important role. The principle is the main commandment of the system, its true basis; disposition, which radiates different norms, composing their spirit and serving as a criterion for their precise understanding and reason, precisely because it determines the logic and rationality of the normative system, in that it gives it a tonic and gives it a harmonious meaning. The principle is a constitutional category, and there are several that relate to the process. The purpose of this article is to highlight the need to adhere to the principle of legal certainty in various aspects of foundation and understanding that cover a modern topic, starting with the undeniable theoretical and conceptual evolution of its basis and evaluative nature, which, in a more complex and complex form, years has meant a kind of set of content and conditions that are interrelated for the regulation of life between individuals and state institutions, which is a guarantee of the stability of law. The case is relevant because of the complexity of the relations prevailing in the postmodern world, with undeniable insecurity and unpredictability today, especially in the political, social, economic and legal spheres, the reflexes of which in law are even more obvious. From the constitutional principles of equality and justice follows the requirement of certainty, clarity and unambiguity of the legal norm, as otherwise can not ensure its uniform application, does not preclude unlimited interpretation in law enforcement practice and inevitably leads to arbitrariness. Legal certainty is becoming an increasingly important and significant factor in law-making and law enforcement processes. Numerous decisions of the European Court of Human Rights against Ukraine, which have a direct indication of non-compliance by the state with this principle, allow us to qualify the commented legal idea as a fundamental and independent phenomenon. Legal certainty, as it follows from the texts and interpretations of judges, means clarity, certainty and accessibility of the legal standard.

Keywords: rule of law, source of law, principle, legal certainty, European Court of Human Rights, Constitutional Court of Ukraine, judicial practice.

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1. Introduction

The proclamation of a principle of law, even if it concerns a jurisdiction based on principles or general provisions, still remains a formal interpretation and not a normative act, as the judge announces rather than imposes the law. Its competence, however, is not a rule with an abstract and general case, which is subject to a more or less wide range of applications, but rather a specific rule, the application of which cannot be exempted from the circumstances of an individual case provided by the norm itself. The theory of law indicates that the principle of legal certainty is aimed at protecting and preserving the fair expectations of the people. However, in most countries this principle is studied not as an independent principle of law, but as an integral part of the principle of the rule of law. Speaking about the relevance of the principle of legal certainty, in fact, we can note two points: the guarantee of stability of legal relations and the importance of maintaining democracy. This is due to the fact that legal certainty protects the decisions that have already been made. Before attempting to outline the essence and content of the principle of legal certainty, let us clarify that, although it is important for the rule of law, it is not legally regulated, being a creation of legal science. It was first mentioned by the Court of Justice of the European Communities as a rule of law to be observed in the application of the Treaty. It was later used repeatedly in the case law of the European Court of Human Rights.

2. Theoretical part

If the law is the rule of human action, security must be guaranteed both to those whose conduct is lawful and to those who presume that the conduct must comply with the rules, and who, assuming their violation, expects the legal order to determine the specific, usually sanctions-native consequences. As stated in the doctrine, it is the law that should dictate the long-term regulation of human relations, and what is going on is certain. It should be noted that the principle of legal certainty does not coincide with the principle of legitimate expectation. Although they are axiologically related and often tend to coincide in practice, these two elements are nevertheless structurally, substantially and functionally differentiated⁴: from a structural point of view, because security causes complex objective characteristics legal system, while legitimate expectations relate primarily to the (basic) rights of citizens; in terms of content, as security requires understanding, clarity of regulations and infallibility in the application of sanctions (understand lato sensu both positive sanctions and negative sanctions), while legitimate expectations require stability of legal relations and predictability of legislative choice⁵; finally, functionally, because security first protects the effectiveness and efficiency of the legal order and is related

⁴ Selon B. Mathieu, *France, Rapport à la Table ronde sur Constitution et sécurité juridique*, in „Annuaire international de justice constitutionnelle”, 1999, p. 156.

⁵ L. Gianformaggio, *Certezza del diritto*, in „Digesto Discipline Privatistiche”, Sez. civ., vol. II, Turin, UTET, 1988, p. 275.

to freedom only as its precondition, while legitimate trust directly limits the scope of freedom (even in the sense of self-determination) of individuals in their relations with public authorities.

Legal certainty as a component of the rule of law (rule of law) means first of all the requirement of clarity of the grounds, purposes and content of regulations, especially those that are addressed directly to man. A person must be able to foresee the legal consequences of their behavior. Experience shows that the absolute certainty of such consequences is unattainable due to a number of circumstances - the peculiarities of language, which formulates the rules of law, their generality, the inability to predict in them all the real situations and so on. The law, which seeks to regulate people's actions and determine the consequences of such actions through excessive rigidity of wording, is rapidly becoming "fossilized", that is, obsolete. The law must be able to keep up with changing circumstances.

Umberto Avila argues that, regardless of the statement, legal certainty in most cases is related to the very idea of law, a value that, along with justice and social peace, inspires any legal system⁶. For the understanding of legal certainty as a result of the idea of law is the effectiveness of this certainty as a constitutive value of certainty and effectiveness for the law itself:

It is important that legal certainty in this concept, more than a positive meaning, is a concept inherent in the very idea of law. Legal certainty is a constitutive value of law, because without a minimum of certainty, efficiency and lack of arbitrariness can not, strictly speaking, talk about the legal system. The main function of law is the function of security.

Thus, given the importance of life in society and the harmonization of legal relations in modern times, there is an indisputable theoretical and conceptual evolution of the basis and evaluative nature of legal certainty, which in more complex and complex, in recent years has become a kind of set of content and conditions life between people and state institutions. In this direction, L.R. Barroso, in a broader and more relevant approach, believes that in his doctrinal and jurisprudential development, the expression legal certainty came to denote a comprehensive set of ideas and content⁷.

José Afonso da Silva is working on the concept of legal certainty, linking it to the concept of the security of the law itself, a legal value that requires the positivity of the law, while legal certainty is already a guarantee. which is the result of this positive⁸. This is how positive constitutional law, translated into the Constitution, defines the contours of the legal security of citizenship.

⁶ Ávila, Humberto, *Teoria da Segurança Jurídica*, 4. ed. São Paulo: Malheiros Editores, 2016. pp. 144-145.

⁷ Barroso, Luís Roberto. *Em algum lugar do passado: Segurança Jurídica, Direito Intertemporal e o Novo Código Civil*. In: Rocha, Cármen Lúcia Antunes (Org.). *Constituição e Segurança Jurídica: Direito Adquirido, Ato Jurídico Perfeito e Coisa Julgada estudos em homenagem a José Paulo Sepúlveda Pertence*. Belo Horizonte: Editora Fórum, 2004, pp. 139-140.

⁸ Cármen Lúcia Antunes Rocha. *Constituição e Segurança Jurídica: Estudos em homenagem a José Paulo Sepúlveda Pertence*. Belo Horizonte: Fórum, 2004. p. 17.

I. Wolfgang, in turn, believes, in a broad sense, that legal certainty implies a certain stability of legal relations and is an inseparable and fundamental value of any rule of law, arguing that "at least since the Declaration of Human Rights since 1948 (human and fundamental) the right to security has begun to appear in major international instruments and in a significant number of modern constitutions"⁹.

J. Gomez Canotilho warns that the principle of legal certainty is not only an essential element of the rule of law in relation to regulations¹⁰.

The basic ideas of legal certainty revolve around two concepts: (1) the stability or post-effectiveness of legal certainty, given that the decisions of public authorities, once taken, in the form and procedure prescribed by law, cannot be arbitrarily changed because they only reasonably change them when particularly important material assumptions arise, (2) ex ante predictability or effectiveness of the principle of legal certainty, which essentially returns to the requirement of certainty and calculation on the part of citizens as to the legal effect of regulations.

The view of legal certainty as a component of the rule of law was proposed by F. Hayek: the rule of law provides that public authorities should be limited in their actions by pre-established and announced rules that allow to predict with great accuracy coercive measures to be applied by government officials. in a given situation. With this in mind, the individual can confidently plan their actions¹¹. L. Tremblay characterizes legal certainty by three constituent principles of "procedural natural law": 1) "law - aimed at the future"; 2) "the law is clear"; 3) "the law is general"¹². According to W. Brugger, the principle of legal certainty is manifested in the following: a) clarity of definition of legal norms; b) clarity in the rule of law; c) stability of legal norms; d) clear institutional responsibility of the authorities¹³.

S.P. Pogrebnyak noted that the principle of legal certainty "manifests itself not only at the stage of lawmaking, but also at the stage of law enforcement. Thus, it is proposed to distinguish two groups of requirements that derive from this principle: requirements for regulations and requirements for their application"¹⁴. The scholar also agrees that "the principle of legal certainty is intended to guarantee the effective operation of the principle of the rule of law".

⁹ Arlet, Ingo Wolfgang. *A Eficácia do Direito Fundamental à Segurança Jurídica: Dignidade da Pessoa Humana, Direitos Fundamentais e Proibição de Retrocesso Social no Direito Constitucional Brasileiro*. In: Rocha, Cármen Lúcia Antunes (Org.). *op. cit.*, p. 86.

¹⁰ Canotilho, José Joaquim Gomes, *Direito Constitucional e Teoria da Constituição*. 7. ed. Coimbra: Edições Almedina, 2002, p. 264.

¹¹ Hayek, F. A. von., *Law, legislation and freedom: Modern understanding of liberal principles of justice and politics* / F. A. von Hayek; per. from English, M.: Irsen, 2006, 644 p.

¹² Luk B. Tremblay, *The Rule of Law, Justice, and Interpretation* / Luk B. Tremblay. – Montreal [e.a.]: Mc-Gill-Queen's University Press, 1997, p. 366.

¹³ Brugger W., *Concretization of Law and Statutory Interpretation* / W. Brugger // Tulane European and Civil Law Forum, 1996, 11, pp. 211-212.

¹⁴ Pogrebnyak S.P., *Fundamental principles of law (substantive characteristics)*, Kharkiv: Pravo, 2008, 238 p.

Legal certainty is one of the conditions for the effective operation of the rule of law, and ensuring the implementation of the requirements of the principle of legal certainty in its broadest sense is the key not only to effective implementation and protection of human rights, but also significant improvement of the state mechanism.

M.V. Smokovich points out that legal certainty is a universal legal principle, the effect of which extends to such important areas of legal relations between the state and the individual as the implementation and protection of human and civil rights and freedoms, establishing legal responsibility, grounds and procedure for inadmissibility, inadmissibility and inaction, aimed at unjustified restriction of human rights and freedoms, establishing the proportionality of restrictions applied to the person, the exercise of powers by public authorities within the limits set by the Constitution and laws of Ukraine¹⁵.

In turn, A. Priymak, argues that legal certainty is one of the conditions for effective rule of law, and ensuring the implementation of the requirements of the principle of legal certainty in its broadest sense is the key not only to effective implementation and protection of human rights, but also significant improvement of the state mechanism¹⁶. The basis of the principle of legal certainty, according to Yu. Matveeva, is the formal definition of the content of legal norms, which is achieved by logical, consistent and complete regulation of social relations and giving these relations a certain form¹⁷.

3. Judicial practice

In the presence not of a written standard, but of judicial practice, the requirements of legal certainty have special features. Indeed, case law essentially interprets a written rule as it should always have been interpreted, and therefore it is applicable to legal relations that arose before its constitution. Of course, legal certainty is influenced by the retroactive nature of judicial law.

One of the elements of the rule of law is the principle of legal certainty, which states that the restriction of fundamental human and civil rights and the implementation of these restrictions in practice is permissible only if the predictability of the legal norms established by such restrictions is predictable; the restriction of any right should be based on criteria that will allow a person to separate

¹⁵ Smokovich M.I., *The principle of legal certainty in administrative proceedings: some theoretical principles and practical application. Current issues of state and law: Coll. Science. etc. Vip. 88 / editor: G. I. Chanisheva (editor in chief) and others, Odesa: Gelvetika, 2020, p. 116-127, URL: <http://dspace.onua.edu.ua/handle/11300/14225>.*

¹⁶ Priymak, A. M. (2010), *Pryntsyp pravovoi vyznachenosti: poniattia ta okremi aspekty [The principle of legal certainty: concepts and individual aspects]*. Science. notes nats. un-tu «Kyievo-Mohylianska akademiia», NaUKMA Scientific Notes. Yurydychni nauky, 103, 53-55.

¹⁷ Matvieieva, Yu. I. (2017), *Poniattia ta rozuminnia pryntsypu pravovoi vyznachenosti [The concept and understanding of the principle of legal certainty]*. Naukovi zapysky NaUKMA - NaUKMA Scientific Notes. Yurydychni nauky, 200, 93-97.

lawful behavior from illegal, to predict the legal consequences of their behavior¹⁸. Under any circumstances, the requirements of legal certainty stipulate that the introduction of certain restrictions, burdens on the exercise of human rights or the imposition of legal liability on a person should be the subject of public discussion¹⁹. Such measures, in accordance with the principles of objectivity, must meet the real needs of society.

Legal certainty of the rule of law is a key condition for ensuring effective judicial protection for everyone by an independent court” (paragraphs one and two of sub-clause 2.3 of clause 2 of the motivating part of the Decision of 11 June 2020 № 7-r/2020). The Constitutional Court of Ukraine in its Decision of 23 January 2020 № 1-r/2020 stated, in particular, as follows: “legal certainty presupposes that the legislator must strive for clarity and clarity in the wording of legal norms. Depending on the circumstances, each person should be able to find out which rule of law applies in a particular case and have a clear understanding of the specific legal consequences in the relevant legal relationship given the reasonable and foreseeable stability of the law” (paragraph 6, subparagraph 3.2, paragraph 3).

The Constitutional Court of Ukraine considers that the principle of legal certainty requires clarity, clarity and unambiguity of legal norms, in particular their predictability (predictability) and stability²⁰.

According to the Constitutional Court of Ukraine, individuals rely on the stability and stability of legal regulation, so frequent and unpredictable changes in legislation hinder their effective exercise of rights and freedoms, as well as undermine trust in public authorities, their officials and officials²¹. However, the expectations of individuals cannot influence amendments to laws and other regulations.

¹⁸ Judgment of the Constitutional Court of Ukraine in the case on the constitutional petition of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights on compliance of the Constitution of Ukraine (constitutionality) with the eighth paragraph of item 5 of part 1 of Article 11 of the Law of Ukraine “On Police” of June 29, 2010 №17-рп / 2010 URL: <https://zakon.rada.gov.ua/laws/show/v017p710-10#Text>.

¹⁹ Savchin M.V., *Modern tendencies of constitutionalism in the context of globalization and legal pluralism: monograph*. 2nd ed. Uzhhorod: Helvetica, 2020. 648 p.

²⁰ Decision of the Grand Chamber of the Constitutional Court of Ukraine in the case on constitutional petitions of 48 people's deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraphs thirteen, fourteen of paragraph 32 of section I of the Law of Ukraine "On Amendments to the Tax Code of Ukraine Reforms" and the Supreme Court of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the first paragraph of subparagraph 164.2.19 of paragraph 164.2 of Article 164 of the Tax Code of Ukraine (case on taxation of pensions and monthly lifetime allowance) of February 27, 2018 № 1-r/2018, URL: <https://zakon.rada.gov.ua/laws/show/v001p710-18#Text>.

²¹ Separate opinion of the judge of the Constitutional Court of Ukraine Pervomaisky OO in the case on the constitutional petition of the Supreme Court of Ukraine on the compliance of the Constitution of Ukraine (constitutionality) of certain provisions of paragraphs 4, 7, 8, 9, 11, 13, 14, 17, 20, 22, 23, 25 of Section XII "Final and Transitional Provisions" of the Law Of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 № 1402-VIII URL: <https://zakon.rada.gov.ua/laws/show/nd02d710-20#Text>.

Referring to the provision of part one of Article 8 of the Constitution of Ukraine and, in particular, to the Decision of the Constitutional Court of Ukraine of June 29, 2010 № 17-rp/2010, the petitioners link the issue of compliance with the Law with the requirement of legal certainty rule of law, arguing that “the violation of the legislative procedure concerns in particular the provision on the predictability of the situation, as the adoption of the law would not have taken place or the law would have had to be amended if the legislative procedure had been followed”. In this context, the Constitutional Court of Ukraine notes that the requirement of legal certainty as an integral element of the “rule of law” concerns the quality of acts of law and their prescriptions, and not the “situation”. A special study by the European Commission “For Democracy through Law” (Venice Commission) “The Rule of Law” states that the requirement of legal certainty as an integral part of the rule of law (“rule of law”) in terms of predictability of legal acts means that their requirements “should be <... > predictable in their consequences: they must be formulated with sufficient clarity and clarity so that legal entities can organize their behavior in accordance with them” (CDL-AD (2016) 007, paragraph II.B.3.58). Such requirements for the quality of legal acts and their provisions are put forward in order to ensure, in particular, their unambiguity. Legal certainty of any normative act (or its separate instruction) cannot be reached if the text of the act (its instruction) is ambiguous (ambiguous). A special role in this area belongs to the state language. Legal certainty is first and foremost ambiguity. Uncertainty is most fully achieved in a homogeneous language environment. The precepts of national law (constitution, laws, bylaws, etc.) are related to the commonality of professional (legal) terminology, as well as background knowledge of legally significant words and expressions. Such background knowledge is an integral part of the language competence of Ukrainian speakers, so it is due to its application as the only state that it is possible to represent the will of the national legislator, in particular the legislator, in its authentic expression. This is one of the most important factors in the functioning of the Ukrainian language as the state language, ensuring which is a legitimate goal of the Law. On the basis of the above, the Constitutional Court of Ukraine came to the conclusion that the Law does not contradict the prescriptive parts of the first article 8 of the Constitution of Ukraine²².

In a number of its judgments, the ECtHR, in interpreting the provisions of the Convention, also stated that the right to a fair trial guaranteed by Article 6 § 1 of the Convention should be interpreted in the light of the Preamble to the Convention.

Developing this legal position in the context of confirming or refuting the legal certainty of the provisions of law that give discretion to the subjects of law enforcement, the European Court of Human Rights in the cases “Malone v. The United Kingdom” of 2 August 1984 (application № 8991/79), § 66, “Margareta and

²² Decision of the Grand Chamber of the Constitutional Court of Ukraine in the case on the constitutional petition of 51 People's Deputies of Ukraine on the compliance of the Constitution of Ukraine (constitutionality) with the Law of Ukraine “On Ensuring the Functioning of the Ukrainian Language as a State Language” of 14.07.2021. №1-2021 URL: https://ccu.gov.ua/sites/default/files/docs/1_p2021.pdf.

Roger Andersson v. Sweden” of 25 February 1992 (application № 12963/87), § 75 states, inter alia, that: provided that the extent of such discretion and the manner in which it is exercised are defined with sufficient clarity, taking into account the legitimate (legitimate) aim of the matter under consideration, so that the person is adequately protected from arbitrary interference [decision in case of Tolstoy Miloslavsky v. the United Kingdom of 13 July 1995 (application № 18139/91), § 37].

The basic interpretation of the principle of *res judicata* is contained in the decisions of the European Court of Human Rights of December 3, 2003 in the case of *Ryabykh v. Russia*, of November 9, 2004 in the case of *Naumenko v. Ukraine*, of November 18, 2004 in the case of *Righteous v. Russia* in the case of *Hristov v. Ukraine*, dated 03.04.2008 in the case of *Ponamaryov v. Ukraine*, in which this principle is understood as an element of the principle of legal certainty.

According to this principle, neither party has the right to demand a review of the final and binding decision of the court for one purpose only - to seek reconsideration and a new decision in the case. The powers of higher review courts should be exercised to correct judicial errors and deficiencies, not to reconsider the case. Such a control function should not be considered as a disguised appeal, and the mere possibility of the existence of two opinions on the subject matter of the dispute cannot be a ground for a new trial. Deviation from this principle is possible only when required by the relevant compelling and compelling circumstances (paragraph 52 of the judgment of the ECtHR in *Ryabykh v. Russia*, № 52854/39, ECHR 2003-IX, paragraph 46 of the judgment of the ECtHR in the case of *Ustymenko v. Ukraine* № 32053/13).

In the case of the *Sunday Times v. United Kingdom* the Court has stated that the term “prescribed by law” prescribed in the Convention presupposes observance of such a principle of law as the principle of certainty. The ECtHR argues that the term “prescribed by law” refers not only to written law, such as the rules of written law, but also to unwritten law, i.e. the established rules and moral principles of society. These rules, which determine the sustainability of law enforcement, include case law. The Convention requires that all law, whether written or unwritten, be clear enough to allow a citizen, if necessary, to adequately anticipate to some extent, in certain circumstances, the consequences that may result from an action (the ECtHR takes a similar position in the case of *Steel and others v. The United Kingdom*).

A component of the principle of the rule of law is the requirement of legal certainty, according to which the final court decision cannot be questioned, as well as the proper execution of court decisions against public authorities: “The principle of the rule of law is one Articles of the Convention for the Protection of Human Rights and Fundamental Freedoms, obliges the state and any state body to execute court orders or decisions passed against the state (body)” (paragraph 87 of the judgment of the European Court of Human Rights: “Hassan and Cheus v. Bulgaria” from 26.10.2000). In its judgment of 15.10.2009 in *Komnatsky v. Ukraine*, the European Court of Human Rights ruled that the State must provide the guarantees provided for in the Convention and that conflicts between local authorities should not affect the applicant's rights guaranteed by the Convention (04.11.1950) № ETS

N 005 (Convention for the Protection of Human Rights and Fundamental Freedoms). In *Hornsby v. Greece*, the European Court of Human Rights stated that the enforcement of a judgment given by any court should be regarded as an integral part of the proceedings. The exercise of the right to sue in respect of his civil rights and obligations would be illusory if the domestic legal system allowed a final judgment which is binding not to be enforced to the detriment of one of the parties.

The case law of the ECtHR shows that an integral part of the rule of law is the expectation from the court of applying to each offender such a punishment as the legislator considers proportionate (the judgment in *Scoppola v. Italy*, 17 September 20093). This position was used by the CCU in the Decision of January 26, 2011, № 1-rp/2011²³.

The founding treaties of the European Union do not enshrine the principle of legal certainty, but the Court of Justice recognizes it as one of the general principles of European law. In *Salumi*, the Court of Justice emphasized that the effect (consequences) of Community law must be clear and predictable to those to whom it applies. The Court further referred to its previous judgments in *Racke v. Hauptzollamt Mainz* (1979) and *Hauptzollamt Landau* (1979), in which it had repeatedly emphasized the importance of the principles of legal certainty and legitimate expectations, and stated that “the principle of legal certainty is intended to prevent provisions of Community law at the time of their publication and that such a possibility is exceptional when it is for the purposes of the relevant legislation and if the legitimate expectations of those to whom it applies are properly met”²⁴.

Legal certainty must be understood through the following components: clarity, clarity, unambiguity of law; the right of a person in his actions to rely on reasonable and predictable stability of existing legislation and the ability to predict the consequences of the application of the law (legitimate expectations). Thus, legal certainty implies that the legislator must strive for clarity and clarity in the wording of the law. Each person, according to the specific circumstances, should be guided by which rule of law applies in a particular case, and have a clear understanding of the specific legal consequences in the relevant legal relationship given the reasonable and anticipated stability of the law (paragraphs four to six of subparagraph 4.1 of paragraph 4 motivating part of the decision of the Constitutional Court of Ukraine of June 20, 2019 № 6-r/2019).

²³ Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Supreme Court of Ukraine and on the constitutional appeal of citizen Savchuk Mykola Mykolayovych on official interpretation of the provisions of the Criminal Code of Ukraine of 1960 as amended by the Law of Ukraine "On Amendments to the Criminal, Criminal Procedure and Correctional of Labor Code of Ukraine" of February 22, 2000 № 1483-III, on their effect in time in conjunction with the provisions of Article 8, part one of Article 58, paragraph 22 of part one of Article 92, part two of Article 152, paragraph 1 of Section XV "Transitional Provisions" of the Constitution of Ukraine, Article 73 of the Law of Ukraine "On the Constitutional Court of Ukraine", parts two of Article 4, parts one, three, four of Article 5, part three of Article 74 of the Criminal Code of 2001 (replacement of the death penalty by life imprisonment) of January 26, 2011 № 1-rp/2011. Official Gazette of Ukraine. 2011. № 10. St. 471.

²⁴ *Amministrazione delle Finanze dello Stato v. Salumi*, Judgment of 12.11.1981, URL: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61980CJ0212:EN:PDF>.

4. Conclusions

The principle of legal certainty finds much expression in more specific principles, such as the duty of a judge to make a decision in accordance with the law applicable on the day of the request, no retroactive effect of legal norms, binding agreements between the parties, restrictive interpretation of incriminating texts, This conclusion explains why the principle of "pure" legal certainty is rarely expressed in the practice of courts of cassation. The principle of legal certainty is meaningfully objectified due to the need for stable legal regulation, which is revealed through statics and dynamics rights. Thus, the principle of legal certainty is essential for the issue of trust in the judiciary and the rule of law. In accordance with the national legislation of Ukraine, the principle of legal certainty should be considered as a set of requirements for the organization and functioning of the legal system in order to ensure a stable legal position of the individual by improving lawmaking and law enforcement.

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