

UNDEFINITION IN LAW AND LEGAL REGULATION OF HUMAN RIGHTS: SPECIFIC ISSUES FOR DISCUSSION

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INTRODUCTION

The categories of "uncertainty" and "certainty" provide the deepest insight into the properties of law, as well as the patterns of its functioning and development. It is through the lens of these concepts that one can assess the quality of legal regulation, particularly in the sphere of human rights protection, the degree of predictability of law enforcement, and the level of legal security in society. This study is aimed at a comprehensive theoretical and legal analysis of the category of legal uncertainty, identifying the forms of its manifestation, the degree of its impact on the legal life of society, and uncovering its essence as a unique legal phenomenon. Legal uncertainty is considered not as a paired or polar category in relation to legal certainty, but as an independent phenomenon that may possess both negative and positive attributes. The research was carried out using dialectical, formal-legal, structural-functional, comparative-legal, logical-legal methods, as well as legal text linguistic analysis. The study found that legal uncertainty manifests at different levels: in legal principles, customs, norms, and normative legal acts. It was established that legal uncertainty complicates the process of legal regulation, causes vagueness in the criteria for lawful and unlawful behavior of legal subjects, generates legal risks, and reduces the effectiveness of law implementation. The paper argues that legal uncertainty reflects the imperfection of legal regulation, which is expressed through gaps, contradictions, conflicts, linguistic-logical, and legal-technical defects in legal provisions. At the same time, the constructive potential of legal uncertainty is emphasized—particularly its ability to allow legal adaptation to evolving social conditions and its contribution to the flexibility of legal influence.

Within the framework of the study, provisions of the Constitution of Ukraine (2004)¹, the Conclusion of the Constitutional Court of Ukraine No. 2-v/2015 dated August 30, 2015, regarding the compliance of the decentralization draft law with Articles 157 and 158 of the Constitution, as well as separate dissenting opinions of the judges, were analyzed. These sources contributed to disclosing the content of legal uncertainty in acts of official interpretation of legal norms and in documents that provide

¹ Конституція України : Закон України від 28 червня 1996 р. № 254к/96-ВР / Верховна Рада України. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text> (дата звернення: 25.05.2025).

authoritative clarification of legal rules. The use of the formal-dogmatic method made it possible to define both objective and subjective factors influencing the abstract formulation of legal constructs in normative legal acts, particularly their structural and legal-technical characteristics. Based on the methodology of a systemic approach, the research analyzed static, structural, and dynamic components of legal uncertainty, its internal and external manifestations, interrelations with the system of legal sources, and interactions with the mechanism of legal regulation of social relations. The structural-functional method enabled the detailed examination of the level of certainty within each element of a legal norm (hypothesis, disposition, and sanction). The dialectical method allowed for a comprehensive analysis of the phenomenon of legal uncertainty and its connections with other legal phenomena such as judicial discretion and legal interpretation. As a result, the dynamics of the transition from uncertainty to certainty in legal provisions were studied in both logical and substantive dimensions.

Special attention was given to legal uncertainty arising from violations of legal drafting techniques in the processes of law-making and law enforcement. It was found that such uncertainty often stems from linguistic-logical deviations and structural deficiencies in the formulation of legal norms. At the final stage of the research, using the functional method, a differentiation between positive and negative types of legal uncertainty was carried out. The problem-analysis method was employed to identify key challenges that arise in legal practice (particularly legal conflicts), and recommendations were proposed to minimize manifestations of legal uncertainty in order to improve the effectiveness of legal regulation.

Thus, legal uncertainty is viewed as a complex, multidimensional phenomenon that requires systematic understanding and the development of reasoned mechanisms to overcome it, with the ultimate goal of ensuring legal stability, predictability, and the effective protection of human rights and freedoms.

1. The objective property of certainty and uncertainty of law.

Forms of manifestation of uncertainty in law

Law, as a social phenomenon, is characterised by uncertainty and certainty at the same time. Achieving its ultimate certainty is generally debatable. Thus, it is possible to talk only about a greater or lesser degree of certainty or uncertainty of law. According to S.V. Vasiliev², the development of law from a lower degree of certainty to a greater degree (a greater degree of uncertainty to a lower degree of uncertainty) can be carried out only by law-making bodies and officials. For example, when specifying the law by

² Васильєв С.В. «Невизначеність» у механізмі правового регулювання процесуальних правовідносин та юридичні інструменти її усунення. *Правова держава*. 2021. № 42. С. 24. DOI: 10.18524/2411-2054.2021.42.232409.

the specified subjects, within the limits of the competence established for them, in a strictly established procedural form, on the basis of initial, abstract, which have a lower degree of certainty of the principles and norms of the law (without their change and (or) addition) are produced (are established, adopted, etc.) more specific, which have a greater degree of certainty, the principles and norms of law contained in the forms of national and international law, which, first of all, have less legal force and are implemented in the state. This approach will produce homogeneous legal regulators of social relations.

The objectivity of the properties of certainty and uncertainty covers material and immaterial nature. The universality and dialectical unity of the categories "uncertainty" and "certainty" of the legal norm are confirmed by the external manifestation of the regulatory feature of the legal norm and the degree of spread of its influence on the regulation of social relations. From the standpoint of the dialectical-materialist approach to understanding, the categories "certainty" and "uncertainty" are used to characterise the properties of moving matter, the cognitive process, and objective– practical activity. They must also be used when characterising law as a general social matter and when studying legal phenomena as a cognitive tool. Uncertainty and certainty have various forms of manifestation, and each matter has its own manifestations of certainty and uncertainty. Law as a type of social matter is no exception. Analysing uncertainty in law, it is necessary to distinguish between the concepts of "uncertainty" and "abstractness". The concept of uncertainty is more spacious, capacious, inherent in any matter of knowledge, and is impossible without the use of abstraction. The uncertainty of legal matter reflects its inexhaustibility. The concept reflects the general definition of any object by abstracting it as a specific form of the cognitive process. Legal norms are recognised as the result of human cognitive activity. Their content is characterised by generalisations and abstractness of the presentation of the legal construction, as conditions of legal regulation.

Legal scholars (for example, Y. Matveeva, W. Brugger, Paul Reynolds)³ traditionally draw their attention to studying the certainty of legal norms, considering uncertainty in law as a negative phenomenon, a defect of legal regulation, which is defined as the atypical, incomplete and inconsistent

³ Матвеева Ю.І. Правова визначеність та суддівське правотворення. *Наукові записки національного університету «Києво-Могилянська академія»*. Юридичні науки. 2010. Vol. 103. С. 50–53. URL: <https://ezp.ukma.edu.ua/bitstreams/6bfe16d4-00b6-4e96-a918-e573644f1c5a/download> (дата звернення: 10.06.2025). Brugger, W. Concretization of Law and Statutory Interpretation. *Tulane European and Civil Law Forum*. 1996. № 11. P. 211–212. URL: <https://journals.tulane.edu/teclf/article/view/1509/1377> (дата звернення: 20.05.2025). Reynolds Paul. Legitimate Expectations and the Protection of Trust in Public Officials. *Public Law*. Vol. 2011. p. 330. 2011. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1689518 (дата звернення: 27.05.2025).

establishment of the proper behaviour of the social relations subject; the technical and legal inaccuracy of the legal prescription of the regulatory act. Therefore, in order to ensure the accuracy of legal regulation, legal uncertainty is used, which certainly does not imply the existence of arbitrariness.

According to A. M. Priymak⁴, uncertainty (as well as certainty) can be inherent in a legal norm (its individual structural elements), legal institution, law, some parts of codes and other normative legal acts. Taking this into account, it is appropriate to analyse uncertainty in law as a broader generalising legal category, branching out the subject component of research into the specified object of legal reality. Legal uncertainty can be contained in the elements of a legal norm, because the nature of legal norms presupposes an abstract way of presenting their content in a legal regulation based on generalisations as a condition for the legal regulation of social relations. In addition, the uncertainty of the legal norm elements (disposition, sanction) creates conditions for the freedom to choose the most appropriate and acceptable options for solution from the point of view of law enforcement. In other words, legal uncertainty allows us to take into account the features and dynamics of the development of social relations.

The level of abstractness of legal norms varies and depends, on the one hand, on the scope of the social relations sphere regulated by the legal norm, and on the other hand, on the extent to which the features of factual circumstances of social relations regulated by law are subject to formalised, empirically fixed description. Of course, the wider the range of social relations covered by the legal norm, the more generalised, abstract and uncertain its content becomes. Legal norms with a minimally defined content of a legal regulation regulating a certain type of factual social relations falling under legal regulation are often called abstract. Most normative legal acts of the current legislation are distinguished by a high degree of generalising the normative legal regulation. For example, the Constitution of Ukraine, its legal norms regulate the most important social relations (the institution of democracy, state structure, political regime, etc.) or framework laws (the generalised form of presenting the normative legal regulation mainly concerns the legal regulation object of joint jurisdiction and is used as a result of delegating state powers). Thus, uncertainty in the constitutional and legal regulation of public relations can act as a tool of legal technique, which is used to regulate the relationship between public authorities and a person, creating conditions for implementing and ensuring the free exercise of

⁴ Приймак А. М. Принцип правової визначеності: поняття та окремі аспекти. *Наукові записки національного університету «Києво-Могилянська академія»*. Юридичні науки. 2010. Vol. 103. С. 53–55. https://ekmair.ukma.edu.ua/bitstream/123456789/3845/1/Pryimak_Pryntsyp_pravovoi.pdf (дата звернення: 20.05.2025).

fundamental rights, as well as a balance of various social interests, reducing the arbitrariness of public authorities, leaving freedom of choice in making a political and legal decision in accordance with the principle of state powers separation⁵. Constitutional and legal uncertainty concerns, in particular, the methods of interpreting the Constitution, may be a consequence of different perceptions and understanding of the meaning or inconsistency of the essence of constitutional and legal norms in the mechanism of legal regulation of public relations. Such uncertainty in law is mainly associated with the problems of organisational, legal and legal-technical mechanisms for ensuring legal regulation as a system of means that should guarantee the effectiveness of such mechanisms.

The practice of applying framework normative legal acts is widely used in the process of delegating state powers to local government bodies and local government bodies⁶ (key legal concepts are formulated, the competence and powers of local government bodies or local government bodies, the rights and obligations of participants in legal relations, etc. are determined). On the one hand, by defining the general foundations of legal regulation, framework normative legal acts ensure the unity and integrity of the legal system, the same functioning of legal foundations, for example, in the sphere of legal regulation of objects of joint jurisdiction of government bodies. On the other hand, there is an opportunity for local government bodies and local government bodies, within the limits of delegated powers, to adopt normative legal acts taking into account the specifics of a particular region that do not contradict the provisions of the main normative legal act in the sphere of legal regulation of an object of joint jurisdiction. Framework laws can also act as a kind of program for the development and adoption of thematic laws or other normative legal acts at the local level. The uncertainty of framework laws ensures the elasticity and balance of legal regulation at the national level. Such legal regulation can be recognised as a kind of transition from legal uncertainty to legal certainty.

Uncertainty can also be inherent in acts of interpretation and documents that officially clarify legal norms. The reasons for such a situation can be objective and subjective, including technical and legal ones. The content certainty of the interpretation act depends on the quality of the linguistic and

⁵ Рабінович С. Правова невизначеність в актах конституційного судочинства: Pro et contra. *Український часопис конституційного права*. 2017. № 1. С. 45-46. URL: <https://www.constjournal.com/pub/1-2017/pravova-nevyznachenist-aktakh-konstytutsiinoho-sudochynstva-pro-contra/> (дата звернення: 27.05.2025).

⁶ Богачова Л.Л. Нормативно-правовий акт як джерело національного та європейського права. *Альманах міжнародного права*. 2016. Vol 14. С. 7-9. URL: <http://inlawalmanac.mgu.od.ua/v14/3.pdf> (дата звернення: 17.05.2025).

logical foundations of the interpretive text⁷. Stricter requirements for compliance with the rules of legal technique (external design, structure of the presentation of legal material) are rightly put forward to official acts of interpretation of legal norms. Special attention should be paid to draw attention to the uncertainty of the Constitutional Court of Ukraine acts: decisions are often incomplete, which prevents their exact execution. Establishing the presence or absence of grounds for verifying the constitutionality of a law concerns, among other things, identifying the true will of the legislator in the contested act and its compliance with the content of constitutional principles and provisions. Thus, the judge of the Constitutional Court of Ukraine S.V. Sasa⁸ expressed himself quite precisely and harshly regarding the property of uncertainty in connection with the activity of the legislator: the legislator, when making decisions, must be guided by the general legal criterion of certainty, clarity, and unambiguity of the adopted legal norms. These principles come from the constitutional principle of equality of all before the law and the court, and such equality can be ensured only under the condition of unambiguous understanding and interpretation of the legal norm by all law enforcers; the uncertainty of the content of the legal norm, on the contrary, allows the possibility of unlimited discretion in the process of law enforcement and leads to arbitrariness, which means to the violation of the principles of equality and the rule of law⁹.

Uncertainty in the law, manifested in legal terms, is contained in the texts of normative legal acts. A legal (legal) term, as a verbal designation of a concept that is part of the system of concepts of the field of professional knowledge – jurisprudence, is a word or phrase used in law, is a synthesised name of a legal concept that has a defined meaning, and is characterised by functional stability and, as a rule, semantic ambiguity. Terms should be used systematically in law, that is, they should be introduced to indicate key lexical units of a legal norm, if possible, have an unambiguous interpretation in all branches of law and a kind of connection with other legal terms. Taking into account the fact that the terms are intended for the formation of a special

⁷ Гультай М. & Кияниця І. Правова визначеність у рішеннях Конституційного Суду України. *Вісник Конституційного Суду України*. 2012. № 5. С. 83–93. URL: http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/Vksu_2012_5_14.pdf (дата звернення: 20.05.2025).

⁸ Сас, С.В. Окрема думка судді Конституційного Суду України стосовно Висновку № 2-в/2015 від 30.08.2015. URL: <http://zakon3.rada.gov.ua/laws/show/nf02d710-15/paran2#n2> (дата звернення: 27.05.2025).

⁹ Мельник М.І. Окрема думка судді Конституційного Суду України стосовно Висновку № 2-в/2015 від 30.08.2015. URL: <http://zakon3.rada.gov.ua/laws/show/nd02d710-15/paran2#n2> (дата звернення: 27.05.2025).

(professional) vocabulary, the inaccuracy of the application of individual business lexical units in the text of a regulatory legal act often leads to a misunderstanding of the essence of a legal norm, distortion of the original intention of the legislator, loss of the purpose of this or that rule. Agreeing with the position of O.F. Skakun¹⁰, note that the prerequisites for legal terminological uncertainty of a normative legal act may be: different meaning that is attached to the same term in different branches of law; introduction of terms, without a definitive explanation; using a term that does not correspond to the scope of the content of its concept, as well as synonyms, homonyms without taking into account the requirements of the legislative technique; the use of evaluation categories in the texts of normative legal acts is not justified.

In view of this, "uncertainty of law" is closely related to the legal category "judicial discretion": the rule-maker intentionally or where he for one reason or another failed to normatively express his opinion in a certain normative-legal form, creates an opportunity to normalise social relations by making a decision through "judicial discretion". That is, judicial discretion acts as a technical and legal means of transitioning legal uncertainty into legal certainty. In those cases, when the legislator does not consider it necessary under any circumstances to detail legal regulation by means of legal prescriptions, he thereby relies in advance on judicial discretion¹¹. This is an element of the so-called flexibility of legal regulation, which is based on the transition from uncertainty to unconditionality in connection with the application of a legal norm. Judicial discretion is also used in cases of gaps and conflicts in the law. Thus, the decision-making "at its own discretion" by the rule-maker presupposes the presence of uncertainty in the regulation of social relations. Idealisation of the existing situation when analysing the quality of the legal norm of the institute of law, codes, exaggeration of the value of their certainty, amplification of the problem of degrees and levels of legal prescriptions certainty – these are the main reasons for the reduction of the real value of the uncertainty of legal norms. The essence of the uncertainty of the law, as a rule, is revealed through the connection with certainty. Uncertainty of law is not the antipode of its certainty, not an even category and its polar concept.

Certainty and uncertainty are equivalent properties of law, but in legal regulation there is an interdependence and interaction between them. The movement from uncertainty of the content of law to its certainty is carried out

¹⁰ Скакун О. Ф. Метод інтерпретації правових ідей і правових норм: загальне й особливе. *Актуальні проблеми держави і права*. 2009. Vol. 50. С. 240. URL: http://nbuv.gov.ua/UJRN/apdp_2009_50_40 (дата звернення: 05.06.2025).

¹¹ Польшиков В. В. Деякі аспекти визначення суддівського розсуду в теорії права. *Право.ua*. 2015. № 2. С. 13-14. URL: http://pravo.unesco-socio.in.ua/wp-content/uploads/2016/11/Pravo_ua_2015_2.pdf (дата звернення: 22.05.2025).

through concretisation. Therefore, such a property of law as concretisation can be considered an intermediate element between uncertainty and certainty as legal phenomena. For example, law-making concretisation is an objectively conditioned lawful activity of competent state authorities to establish legal norms, carried out by reducing the concepts volume of a general abstract norm based on expanding their content in order to increase the accuracy and certainty of legal regulation of social relations¹². It should be noted that all social regulators, including legal ones, have the properties of certainty and the ability to move from uncertainty to certainty, which is a necessary feature of any social and normative regulation.

The movement from uncertainty to certainty in the content of legal prescriptions is partially conditional in two ways: logical and substantive. Logical concretisation, appropriate for use in cases where the legal regulation of social relations does not take place in full by the existing legal norm for this purpose, or the subject area of social relations is not covered by the content of the legal prescription for legal regulation, logical concretisation helps to guess the main idea of the rule maker, with the aim preserving the effectiveness of legal regulation of specific social relations¹³. In the case of adoption of legal norms that are not logically consistent with the previous ones, conditions arise for the use of logical subject concretisation. First of all, we are talking about substantive specification, additional regulation of procedural laws, which are adopted to specify and implement the corresponding content of material legal norms. That is, these are cases of additional regulation of legal relations, which are characterised by a general subject of legal regulation, and the need for mediation by procedural (procedural) material norms.

The uncertainty of the legal norm can cause the content uncertainty of the law enforcement act, as a result of non-compliance of the law enforcement act with certain requirements of the legal technique. In particular, the uncertainty of a legal norm can be caused by logical and linguistic deviations, deformations in the construction and expression of legal norms, which inevitably leads to a decrease in the regulatory properties of the law, making it difficult to interpret its content and the effectiveness of its implementation.

The language of law enforcement acts should not contradict the language of regulatory legal acts. The ambiguity of the content of law enforcement acts often arises due to a violation of the speech techniques of their drafting.

¹² Koksanowicz Grzegorz. Zasada określoności przepisów w procesie stanowienia prawa. *Studia Iuridica Lublinensia*. 2014. № 22. P. 474. URL: <http://dx.doi.org/10.17951/sil.2014.22.0.471> (дата звернення: 03.06.2025).

¹³ Iashchenko V. & Balynska, O. Methodological Paradigm of Modern Legal Science in Ukraine. *Social and Legal Studios*. 2020. № 3(4). P. 3-10. URL: <https://doi.org/10.32518/2617-4162-2020-4-12-20> (дата звернення: 03.06.2025).

Speech ambiguity is manifested in deviations from the standards in the use of regulatory sentences, phraseological units, phrases, words, etc. Logical ambiguity of a legal text is the result of non-compliance with the rules of formal logic in the preparation and execution of regulatory legal acts. Logic ensures the consistency of the semantic structure of a regulatory legal act, which rationalises its structure and contributes to its stability and effective implementation¹⁴. Compliance with logic allows you to present legal information identically, ensure its internal unity, brevity and the necessary completeness. Logical uncertainty of normative legal acts leads to inconsistency in the presentation of normative material, affecting its completeness and clarity, as well as the relationship with current legal regulations within the relevant institutions and branches of law¹⁵. Consequently, the implementation of the requirements of the legal technique of individual law enforcement acts is a condition for their certainty. This is especially important to consider when preparing court decisions, since here certainty acts as a guarantee of judicial protection.

Uncertainty in law is reflected in the main element of law – legal norms and its elements. Uncertainty as a property of law is reflected in the structure of the norm as a way of organising its content. Depending on the certainty of the content, hypotheses are divided into definite and relatively definite. Taking this criterion into account, the dispositions of legal norms are divided into absolutely definite and relatively definite. The degree of certainty of sanctions can also be different, and depending on this, they can be divided into absolutely definite, definite and alternative. It should be noted that alternative sanctions often provide the opportunity to choose one of the measures of state coercion. The "either-or" principle applied in this case is one of the forms of expressing uncertainty in law.

The nature of the legal rule lies in its abstract nature, based on generalisation, as the main condition for the legal regulation of social relations. The uncertainty of the elements of the legal norm (dispositions, sanctions) is a condition for the freedom to choose the most expedient and acceptable decision options. Thus, legal uncertainty allows taking into account the peculiarities and dynamics of the social relations development¹⁶.

¹⁴ Проблеми тлумачення правових норм : посібник / автор-упорядник О. М. Балинська. Львів : Львівський державний університет внутрішніх справ, 2021. С. 87, 168, 175. URL: <http://dspace.lvduvs.edu.ua/handle/1234567890/4092> ()

¹⁵ Юркевич О. Логічні підстави юридичної невизначеності: до постановки проблеми. *Вісник Національної юридичної академії України імені Ярослава Мудрого*. 2010. № 3. С.119-121. URL: https://dspace.nlu.edu.ua/bitstream/123456789/3355/4/Yurkevych_118.pdf (дата звернення: 28.05.2025).

¹⁶ Проблеми тлумачення правових норм : посібник / автор-упорядник О. М. Балинська. Львів : Львівський державний університет внутрішніх справ, 2021. С. 133-135. URL: <http://dspace.lvduvs.edu.ua/handle/1234567890/4092>.

The level of abstractness of legal norms is different and depends on the volume, sphere of social relations regulated by the legal norm; from the extent to which the signs of factual circumstances regulated by law are amenable to a formalised description. It is obvious that the wider the range of relations covered by a legal norm, the more generalised and uncertain its content becomes. Legal norms with a minimally defined content, which regulate the type or type of actual social relations, are mostly called abstract. Uncertainty as a property of law is reflected in the structure of the norm as a way of organising its content. Depending on the content certainty of the legal norm, its hypotheses are divided into defined and relatively defined.

Considering this criterion, dispositions of legal norms are divided into absolutely-defined and relatively-defined. Relatively defined legal norms, as an expression form of uncertainty in law, are also characterised by an abstract way of presenting a legal prescription. The wider the circle of social relations covered by the norm, the more generalised is the description of its content (for example, the legal norms of the Constitution of Ukraine). The degree of sanctions certainty can also be different, and depending on this, they can be divided into absolutely-certain, relatively-certain and alternative. It should be noted that the alternative sanction provides for the possibility of choosing one of the measures of state coercion. The "either-or" principle applied in this case is one of the expression forms of uncertainty in law. A decrease in the abstractness and generalisation of primary norms leads to the concretisation of the regulatory influence of a legal norm in relation to various situations (as a result, for example, absolutely-defined, relatively-defined, casual, principles-norms, etc. are formed). Legal regulation of social relations is carried out taking into account their special and individual features, and the content of the activities of the subjects for the implementation of these acts acquires greater accuracy and specificity.

2. Subjective and objective levels of uncertainty in law

Uncertainty in law can be at the subjective and objective level. Subjective uncertainty in law manifests itself as a false uncertainty that arises due to insufficient knowledge of legal subjects of legislative activity and law enforcement practice, while objective uncertainty in law exists and is caused by legal defects in the legal regulation of social relations that form the subject of such legal regulation. Therefore, it is important to distinguish objective uncertainty in law from subjective uncertainty. It is also necessary to distinguish between legal uncertainty and actual legal uncertainty in practice. If the uncertainty in the law is related to the defects of legal regulation, then the actual legal uncertainty is caused, for example, by the lack of clarity in the legal regime of the object of legal regulation.

The uncertainty of legal norms creates conditions for maintaining the use of such means of legal regulation of social relations as: "reasonable actions", "reasonable terms", "reasonable interests", "reasonable conduct of affairs", "reasonable compensation", etc. With the help of these legal categories, a certain certainty of the legal norm regarding the regulation of specific legal relations is achieved¹⁷. Therefore, legal uncertainty, as a sign of law, is manifested in the imprecision of the form and content of legal phenomena; as a property of law, has both positive and negative meaning; the regularity of the transition from uncertainty to certainty is characteristic of law as well as other social phenomena.

Uncertainty of law is a conditional, abstract, almost metaphorical category, which is not inherent in real-legal action. Uncertainty (as well as certainty) can be inherent in a legal norm (its individual elements), a legal institution, a law, some parts of codes and other regulatory legal acts. Legal uncertainty is a phenomenon that has both negative and positive features. Legal uncertainty reflects the quality and level of legislative technique, reveals the formal and legal characteristics of law. Legal uncertainty is a reflection of the essential nature of legal regulation.

Contradictions of legal norms can also be considered an example of uncertainty in law. This is the most serious defect of the legal system, as the contradiction of legal norms encroaches on the main inherent right – to be a coordinated and balanced social regulator of social relations. The conflict of legal norms complicates the process of law enforcement, reduces the legal effect as a whole. In the case of conflicting norms, the law enforcer finds himself in a situation of uncertainty, when it is not clear which of the norms should be given priority. Collisions of norms, taking into account the reasons for their occurrence and other circumstances, can be divided into temporal (temporary), spatial, hierarchical (between norms of different legal force) and substantive¹⁸. Collision coincidence situations are possible, when two or more collision situations exist at the same time. The level of legal uncertainty in this case is much higher, and therefore the law enforcer finds himself in a more difficult situation regarding the selection of a normative regulator of social relations. However, not every conflict of legal norms is negative, and therefore not every legal uncertainty is a defect in the legal regulation of social relations. For example, the competition of norms – a collision between general and special, general and exclusive norms – is not an inconsistency of law, but a technical and legal method of legal regulation. Another type of

¹⁷ Страшинський Б. Р. Принцип розумності в праві: теоретико-правові аспекти : дис. ... канд. юрид. наук : 12.00.01. Київ, 2022. С. 92-96.

¹⁸ Zygmunt Ziemiński. Tworzenie a stanowienie i stosowanie prawa. *Ruch prawniczy, ekonomiczny i socjologiczny*, 55 Rok LV. 1993. z. 4. P. 44. URL: <http://hdl.handle.net/10593/16183> (дата звернення: 29.05.2025).

imbalance of legal norms is gaps in the law – the absence of legal norms that should be in the legal system from the point of view of the subject of legal regulation, its scope and content. Under these conditions, the law enforcer is also in a situation of uncertainty. Gaps are eliminated through rule-making, analogy of law or analogy of law. As you know, language norms are temporary, amorphous and this is another source of uncertainty: it is difficult for the legislator to choose the optimal option, because the language of law in this context is no exception, which means the inevitability of its uncertainty. The symbolic nature of the language of law, its variability under the influence of behaviour patterns of subjects of social relations contribute to the uncertainty of law.

Uncertainty is an integral part of the decision-making process within the framework and in the process of public administration, exerts a significant influence on the process and results of administrative decision-making, is a real and inevitable factor in the design, programming, adoption and implementation of such decisions in many situations in the implementation of public administration. Given this, uncertainty (including rights) has a certain degree of certainty (possible outcomes are outlined) and it allows the regulator to function successfully. Another thing is that not all subjects of legal regulation are satisfied with this, they seek greater certainty. The categories "uncertainty" and "certainty" are, of course, in a dialectical relationship, which does not mean their parity at all.

Legal uncertainty is related to legal certainty. It interacts with reasonableness, justice, equality, legality and humanism of law. Legal uncertainty is one of the most important means of implementing the principle of the rule of law. Uncertainty can be considered as an inherent property of the main regulatory elements of law, which exists and functions in special technical-legal forms that synthesise (concentrate) the incompleteness of knowledge in different proportions. Social uncertainty, social regulation in conditions of uncertainty is an absolutely normal state of social life, and legal uncertainty is only one of many reflections of this state. The technical-legal form of legal uncertainty appears as a set of technical-legal means that are designed to express a certain degree of abstractness and the level of casuistry of legal instructions. The uncertainty existing in the law prevents the absoluteness of the principle of legal certainty, the perception of its unconditional value. Legal uncertainty reflects the incompleteness of legal regulation of social relations.

3. Interaction of legal uncertainty and sources of law

Legal certainty is fundamental for legal realism, is based on social and legal practice, represents a variant of legal positivism and is responsible for the stability and predictability of law, is reflected in formally recognised

sources, in accordance with the results of social and legal practice of society¹⁹. The value of legal uncertainty is observed in the prospect of temporary regulators to be changed and clear rules for regulating social relations, taking into account the previous experience of legal regulation of social relations by certain sources of law (legal customs, normative legal acts, legal doctrine, principles of law, legal norms, etc.).

Thus, legal custom as a result of the natural-historical development of society, which reflects the general practice of people's social relations, their legal associations, and states over a long period of time. It is the commonality of this regulator that determines its uncertainty. So, for example, customary law as a form of legal life of society, based on a normative system of social regulation of individual behaviour; recognised by other social entities (including the state) as a rule of general behaviour, due to its multiplicity and stability, multiple models of behaviour, universality, conviction in the justice and optimality of behaviour, are actually and unanimously observed by the individual in his relationships for the purpose of forming and ensuring law and order. In addition, customary law is considered as a system of natural-behavioural norms that have developed in the functioning process of a stable group of people, united by various criteria (ethnic, age, professional, etc.), non-observance of which is associated with potential psychological or physical coercion as from the side of the mythical authority, as well as from the side of this collective²⁰. Customary law prevailed in the traditional, but continues to operate alongside statutory law informally in industrial (and post-industrial) society. Legal uncertainty is also characteristic of international custom, because it is due to the fact that the set of norms of international law, which regulate interstate relations in matters of the formation of international custom, its effects, changes, and the regulation effectiveness of international relations, is objectified in the form of an unwritten agreement, which may not have official consent or written form, and therefore, in case of recognition of its legal norms, the member states of such an agreement may interpret the norms of this agreement differently²¹. Also, the long, sometimes contradictory process of forming the norms of international custom inevitably leads to different perceptions of the content

¹⁹ Богачова Л. Л. Принцип правової визначеності в європейському і національному праві (змістовна характеристика). *Теорія і практика правознавства*. 2013. Vol. 2. С. 146-149. URL: <https://dspace.nlu.edu.ua/handle/123456789/6063> (дата звернення: 27.05.2025).

²⁰ Бедрій М.М. Сучасні підходи до визначення поняття правового звичаю. *Аналітично-порівняльне правознавство*. 2023. № 4. С. 16-17. URL: <https://doi.org/10.24144/2788-6018.2023.04.1> (дата звернення: 01.06.2025)

²¹ Щокін Ю. В. Міжнародно-правовий звичай: проблеми теорії і практики. Харків: Право, 2012. С. 105-108. URL: <https://dspace.nlu.edu.ua/handle/123456789/12897>

of the legal prescriptions of international agreements by states that can defend their own different interests.

Sometimes the subjects of international law, trying to establish the existence of a customary norm of international law, try to pass off wishful thinking, taking the position that if no one protested, it means that everyone agrees with the developed and adopted norms. One-sided establishment of mass tacit agreement with the practice, according to Yu.V. Shkokina can lead to false statements that the customary norm has developed, the imposition of subjective positions of individual states on the world community, and their promotion of their sometimes selfish political, economic, and other interests. International legal customs are characterised by considerable uncertainty, but they also have positive frameworks and positive standards, as they form a single, universal legal basis of the international legal system, and are the basis of a changing world order.

The highest level of uncertainty in law can be observed in the principles of law, which reflect its main ideas. The principles of law in their general form are intended to reflect the regularities of social life, transforming them into the basis of the content of law. The principles of law are extremely abstract and therefore to a large extent are undefined state regulators of social relations, because they are recognised as objective regularities of legal consciousness, enshrined in legal doctrine, have a direct (direct) effect in legal regulation, are endowed with a higher legal force, a highly abstract character, flexibility and are the foundation of the legal system²². The principles of law are largely recognised as a framework regulator, an ideal model, a high standard, and a general algorithm for regulating social relations²³. It is not possible to formulate the principles of law without abstracting and synthesising specific life situations, transferring them to the level of social normative prescriptions. Principles of law, as defined by O.V. Zaichuka – objective, universal, global ideas about the most effective organisation of the legal aspect of the social order, reflecting the objective properties of human nature and the objective regularities of social interaction. That is, the principles of law are objective ideal models of the emergence, development and termination of legal relations, in which the essential properties and long-term interests of individuals, their groups and social formations are most optimally ensured and realised in their totality; these are general algorithms of optimal interaction of people formed in full accordance

²² Колодій, А.М. Принципи права: генеза, поняття, класифікація та реалізація. *Альманах права*. 2012. Vol. 3. С. 43. URL: <http://dspace.nbuv.gov.ua/handle/123456789/63807> (дата звернення: 28.05.2025).

²³ Зайчук О.В. Принципи права в контексті розвитку загальної теорії держави і права. *Альманах права*. 2012. Vol. 3. С. 23, 25. URL: <http://dspace.nbuv.gov.ua/handle/123456789/63854> (дата звернення: 26.05.2025).

with the objective laws of the development of society, the observance of which most fully ensures the comprehensive realisation and freedom of the individual, prevention and settlement of conflicts, and the general balance of interests in society.

Any evaluative concept involves the generalisation of certain states, processes, actions, objects, phenomena, which means the "loss" of some of their signs and indicators. This is the uncertainty that is inevitable and that does not depend on whether there is a definition of such a legal evaluative concept in the legislation or there is no definition. The vagueness of the legislative evaluation concept can be reduced by the definition, but it cannot be eliminated by a completely appropriate definition, and it is not necessary. Of course, when the scope of the evaluative concept is disclosed in detail in the legislation, its uncertainty is significantly reduced, but not completely eliminated. Revealing the evaluative concept, actions (factors, state, processes) leave a certain part of it undefined. At the same time, they form the appropriate scope of discretion by the subject of law enforcement activity. For example, Article 214 of the Criminal Procedural Code of Ukraine²⁴ is interpreted in different ways, which indicates that the basis for opening criminal proceedings is the presence of sufficient data indicating the signs of a crime. The sufficiency of this kind of data cannot be determined without taking into account the type of crime, and a definition will not help here. The open legislative list is a widespread technical – legal tool that is interpreted ambiguously: there are positive assessments (it is undoubtedly an option and a certain degree of legal certainty), but negative doctrinal judgments still prevail. There is even a radical proposal plan – to abandon open lists and, if necessary, use an exhaustive list that is constantly improved (shortened or increased). However, the open legislative list, based on the review of A.O. Dutko²⁵, is an acceptable and, in a number of situations, optimal form of realistically required uncertainty. Their use in the current legislation cannot, as often happens, be interpreted as a law-making defect that opens up the possibility of using the discretion of the law enforcer in the mechanism of legal regulation of social relations. But not every discretion of the law enforcement entity is harmful. An obvious technical and legal form of expression of uncertainty in law is the widespread use of such typical lexemes – "another", "other", "of a different kind", "i.e. n. and "etc". Specialists in such cases, as a rule, limit themselves to complaints about the undesirable use

²⁴ Кримінальний процесуальний кодекс України : Закон України від 13 квітня 2012 р. № 4651-VI. Дата оновлення: 09.05.2025 / Верховна Рада України. URL: <https://zakon.rada.gov.ua/go/4651-17> (дата звернення: 26.05.2025).

²⁵ Дутко А.О. Юридичні конструкції та їх використання в законотворчій практиці України. Львів: Львівський державний університет внутрішніх справ, 2013. С. 82-83. URL: <https://dspace.lvduvs.edu.ua/bitstream/1234567890/89/1/dytko%20urud%20konstruk.pdf>.

of such lexical turns, but do not name the criteria when it is necessary and when it is unacceptable.

Legislation strategies and similar programmatic legal documents due to their orientation are also characterised by a certain legal uncertainty, since they are intended to normatively express close or distant perspectives of state development, ideal goals (sometimes ideals) of modernisation of civil society. The same category of uncertain legal acts includes national projects and model legislation²⁶. Each legal definition, according to the requirements of formal and dialectical logic, has uncertainty.

Implementation of technical and legal forms of uncertainty of state regulators takes place in different ways: some of them function successfully and do not encounter serious obstacles from the state authorities and do not cause inconvenience to citizens and officials. Other technical-legal forms are not defined in legal regulating certain spheres of social relations and may run into administrative and managerial and other barriers, creating discomfort in the sphere of both public and private life of citizens and institutions of civil society.

4. The debatability of positivity and negativity of uncertainty in law

The relevance and importance of the research topic is confirmed by the fact that a significant number of scholars in the field of jurisprudence deal with this issue, expressing and arguing their own different views on the problem of uncertainty in law. Thus, given the functional feature of uncertainty in law in the legal regulation of social relations, legal uncertainty can be differentiated into positive and negative, which in turn creates conditions for the emergence of a debatable direction of this research. Using this aspect, legal scholars mainly use two main approaches to the study of uncertainty in law: the first – where the uncertainty of law is considered in positive and negative aspects (in particular, S. Rabinovych²⁷, G. Koksanowicz²⁸, and others adhere to this position; the second – exclusively in a negative sense (for example, the scientific views of A. Tkachuk²⁹, Z.

²⁶ Петришин О.В. & Колодій О.А. Модельні правові акти: теорія та практика реалізації. Київ: Алерта, 2016. С. 47-50.

²⁷ Рабинович С. Правова невизначеність в актах конституційного судочинства: Pro et contra. *Український часопис конституційного права*. 2017. № 1. С. 47. URL: <https://www.constjournal.com/pub/1-2017/pravova-nevyznachenist-aktakh-konstytutsiinoho-sudochynstva-pro-contra/> (дата звернення: 27.05.2025).

²⁸ Koksanowicz Grzegorz. Zasada określoności przepisów w procesie stanowienia prawa. *Studia Iuridica Lublinensia*. 2014. № 22. P. 476 URL: <http://dx.doi.org/10.17951/sil.2014.22.0.471> (дата звернення: 03.06.2025).

²⁹ Ткачук А. Законодавча техніка. Київ: ІКЦ «Легальний статус», 2011. С. 125-202. URL: http://ukr.lib-krm.org/photos/ZakTech_CSI_2011_Novem.pdf.

Ziemiński³⁰. From the standpoint of the first approach, when considering uncertainty as a property of law and its limits, attention is drawn to the fact that they are in the legal system with the help of certain legal norms and their fixation by available alternative means of establishing the upper and (or) lower limits of possible decision options, describing certain conditions (temporary boundaries, occurrence of certain circumstances, etc.), which allows the subject of law enforcement to resolve a disputed situation using own discretion. In this case, uncertainty is considered in a positive sense, since such a technique is optimal, fair and effective in order to achieve the goals of legal regulation. At the same time, the wider the circle of social relations regulated by the rule of law, the higher the level of its abstractness, as well as the degree of its uncertainty. In this case, uncertainty appears in the content and structure of the legal norm.

Agreeing with the position of scientists of this approach and relying on our own analysis, we note that positive legal uncertainty, as a technical-legal tool, ensures dynamism, flexibility, and strength of legal regulation of social relations; is a catalyst for legal activity of subjects of public relations. The discretion of the subject of law enforcement in the presence of positive legal uncertainty is not the only and perhaps not the main option of its activity, but can be considered as a basis for overcoming the uncertainty of law in specifically defined social relations during the adoption of the relevant regulatory decision.

In addition, the opinion of O. Savayda³¹ is correct, that positive legal uncertainty will always exist, because in case of insufficient action of the regulatory capabilities of legal norms as means of legal regulation of social relations in any state, there are "reserve" means of social and normative regulation social relations: socio-cultural norms, customs, principles, traditions, religious norms and business customs, which, if necessary, are effectively used in the mechanism of legal regulation to regulate social relations. Considering the manifestation of the uncertainty of law in a positive sense, we note that today there exist and will continue to exist such legal regulators as principles of law, which, despite the fact that they are characterised by a greater degree of uncertainty (less degree of certainty), abstractness compared to the norms of law, allow, for example, law enforcement agencies to effectively carry out individual regulation of social relations.

³⁰ Zygmunt Ziemiński. Tworzenie a stanowienie i stosowanie prawa. *Ruch prawniczy, ekonomiczny i socjologiczny*, 55 Rok LV. 1993. z. 4. P. 48. URL: <http://hdl.handle.net/10593/16183> (дата звернення: 29.05.2025).

³¹ Savayda Olena. Ukrainian Mentality between Mentalities of the Peoples of the World. *Social and Legal Studios*. 2020. № 3(2). С. 163. URL: <https://doi.org/10.32518/2617-4162-2020-2-161-165> (дата звернення: 29.05.2025).

Uncertainty as an objective feature is characteristic of all legal phenomena and can take different forms and be formed as a result of the activities of both legislative and law-enforcing bodies of state power, thus also exist in legislation, sub-legal normative acts, as well as interpretative and law-enforcing acts, contractual forms etc. From the point of view of the scientifically based concept of integrative legal understanding, the opinion of O. Stovba³² is interesting that if the uncertainty is formed as a result of the activity of law-making subjects and is expressed in the accepted principles and norms of law contained in various forms of national and international law, which are implemented in the state, one can conditionally talk about the uncertainty of the law. If the uncertainty arises as a result of the activities of law enforcement bodies or bodies that carry out the interpretation of the law, and is expressed in the relevant acts, then we are talking conditionally about the uncertainty of the wrong, namely, the uncertainty that arises as a result of law enforcement activities or when interpreting the law expressed in accordance with law enforcement acts or acts of interpretation (interpretive acts).

However, at the same time, we see that legal uncertainty can contribute to the correct assessment of the significance of a controversial legal situation, and strengthens the search for directions and ways of a reasonable way out of it. Thus, legal uncertainty creates conditions for learning and "implementing" new legal information; creates space for finding effective technical and legal means and structures to fill the missing elements in the mechanism of legal regulation of social relations. At the same time, a new legal model or an innovative moral guideline or another artificially false legal construction may emerge. Such a feeling of free "legislative space" is a positive moment of legal uncertainty, as it aims at professional and moral activity in revealing the meaning, value and possibilities of this phenomenon.

In contrast to the above-mentioned position, supporters of the second approach hold the opinion that the uncertainty of law is exclusively negative, acting as a defect in law. In a negative sense, from the position of A. Tkachuk³³, the uncertainty of law can arise in connection with objective and subjective reasons and manifests itself in the results of law-making activity or concretisation of law. Thus, it can be expressed, first of all, in the principles and norms of law contained in the forms of national and international law, which are implemented in the mechanism of legal regulation in the state. At the same time, these legal regulators should complicate the further realisation of the right, the occurrence of legal consequences, as well as lead to the violation of the rights and legal interests of various participants in social

³² Stovba, O.V. The Normativity of Law: Legal-Philosophical Reasoning. *Social and Legal Studies*. 2018. № 1(1). С. 13-14. URL: <https://doi.org/10.32518/2617-4162-2018-1-11-16> (дата звернення: 30.05.2025).

³³ Ткачук А. Законодавча техніка. Київ: ІКЦ «Легальний статус», 2011. С. 133. URL: http://ukr.lib-krm.org/photos/ZakTech_CSI_2011_Novem.pdf.

relations, and accordingly be characterised by instability, short-term effect, changeability. Such legal uncertainty is usually established as a result of individual regulation of legal relations. In these conditions, its elimination within the framework of this process is impossible, in particular, due to the peculiarity of the subject structure of individual legal regulation of social relations³⁴. Based on the previously presented material of the article, we also note that as a text defect, the uncertainty of a legal act manifests itself: in linguistic (lexical) uncertainty (as a result of violation of language techniques and means of formulating legal texts: the use of ambiguous and polysemous words or phrases, synonyms and homonyms, etc.) ; in logical uncertainty (as a result of non-observance of the principles and rules of formal logic during the preparation and adoption of regulatory legal acts: operation of concepts, use of scientific and other terms, formulation of definitions, logical presentation of material according to individual parts of the draft legal act, etc.; use of logical contradictions, use concepts not in accordance with their generally accepted meanings, violations of the proportionality of definitions, the presence of alogisms to the normative legal act); in graphic uncertainty (violation of the regularities and rules of organisation of normative and legal material: it is the graphic standards of the text that give it clarity and structure).

In view of this, the general norms more deeply and more accurately reflect the essence of the regulated relations, and also systematically provide for their individualisation by the law enforcer; principles of law designed to maximally cover the essence of a social phenomenon that needs regulation. However, uncertainty (ambiguity) in the texts of normative legal acts has negative manifestations. Thus, an ambiguous understanding of a normative legal act or its separate legal norm leads to the emergence of different interpretations of the norms of a normative legal act, creates prerequisites for abuse of rights by participants in legal relations, using different interpretations of normative prescriptions, contributes to the adoption of ambiguous, and sometimes opposing court decisions, is the basis for manifestations of legal nihilism in society, which prevents the strengthening of the regime legality. The reasons for such a legal defect in a legal norm can be various circumstances – from violation of the rules of legislative technique in the preparation of the texts of normative legal acts to changes in social, economic, political, technological and other conditions in society. Legal uncertainty as a defect of a legal norm indicates that the legal norm does not meet one or more characteristics of legal certainty, namely: clarity of behaviour, impossibility of arbitrary interpretation by the law enforcer, consistency with the system of current legal regulation; the possibility of specifying the legal norm with the help of acts of application of the law; the

³⁴ Ткачук А. Законодавча техніка. Київ: ІКЦ «Легальний статус», 2011. С. 135-138. URL: http://ukr.lib-krm.org/photos/ZakTech_CSI_2011_Novem.pdf.

presence of clearly expressed consequences of non-compliance with the legal norm. On the one hand, in this definition, the uncertainty of the law is theoretically justified, opposed to the certainty of the law. On the other hand, it should be noted that legal regulation of social relations occurs not only with the help of legal norms, but also primarily with the principles of law. Thanks to the latter, orderliness and consistency of the entire legal system is ensured. They contribute to the reduction of problems in law enforcement activities related, for example, to collisions or gaps in legal acts.

Supporting the position of scientists regarding the argumentation of legal uncertainty in its negative meaning, Y. Mykolayevich³⁵ adds that such a situation can take place in such important components of the mechanism of legal regulation as the legal system, legislation and law enforcement practice. As a result, uncertainty in the law creates conditions for the occurrence of legal risks: negative consequences for participants in legal relations in the form of legal sanctions (imposition of an administrative fine, recognition of a contract as invalid, deprivation of a special right, etc.) or the occurrence of financial, economic or reputational risks.

The debatable nature of the investigated issues and the presented vision of the author of the article regarding uncertainty in the law, contribute to the formulation of the statement that the contradiction of norms as a manifestation of uncertainty in the law is the biggest serious defect of the legal system, because it creates an opportunity to harm the coherence and balance of the social regulator of social relations. Such indeterminacy of legal prescriptions creates conditions for the emergence of conflicting legal norms, which complicates the process of law enforcement and reduces the effectiveness of legal regulation of social relations, because it is not clear which of the legal norms should be applied to regulate a specific type of social relations³⁶. The negative manifestation of legal uncertainty is associated with the impossibility of ensuring the equal application of the law, weakens the guarantees of protection, constitutional rights and freedoms, creates the possibility of abuse of powers by state authorities, which gives rise to contradictory law enforcement practices, can lead to arbitrariness, violation of the principles of equality and the rule of law, serves as a sufficient basis for recognising such a legal norm as unconstitutional. But, at the same time, we should not forget that positive legal uncertainty (its reasonable limits) strengthens the essence of legal certainty, reduces the processes of concretisation, and inhibits the mass introduction of changes to legislation.

³⁵ Mikołajewicz Jarosław. System prawa w perspektywie jego stosowania. *Przegląd Prawa i Administracji*. 2016. Tom CIV (104). Systemność prawa. P. 188. URL: <https://doi.org/10.19195/0137-1134.104.12>.

³⁶ Лилак, Д. Д. Проблеми колізій у законодавстві України (теорія і практика) : дис. ... канд. юрид. наук : 12.00.01. Київ, 2004. С.51-55.

CONCLUSIONS

Based on the above, the following conclusions can be drawn. Since there is no absolute certainty of anything in the objective world, it seems that absolute certainty of law is also impossible. Law is simultaneously characterised by both certainty and uncertainty. Formal certainty in law is one of the main properties of law, which is characterised by complete, precise and consistent consolidation and implementation of the normative-legal will in law. It is manifested in the certainty of the content of legal norms; in the methods of their formulation and forms of consolidation and expression; in normative acts; in the certainty of the implementation of law.

Uncertainty in the broad sense is a phenomenon of imperfection of legal regulation caused by objective and subjective factors of law formation. It defines the imprecise, incomplete and inconsistent consolidation and implementation in law of regulatory and legal will. This is a kind of imperfection of the law, a defect of the will of the rule-maker. Uncertainty in law in the narrow sense is a technical and legal defect of the legal text as an external, written form of its expression. Uncertainty in the law can also be characterised as a state of legal regulation, which is determined by the presence of gaps in the law, legal conflicts, other defects and creates legal and other risks for the subjects of legal relations. However, not every legal gap, conflict or other legal defect means the presence of legal uncertainty at the same time.

Uncertainty in the broad sense is a phenomenon of legal regulation imperfection caused by objective and subjective factors of law formation. Defines the imprecise, incomplete and inconsistent consolidation and implementation of regulatory will in law. This is a kind of imperfection of the law, a defect of the rule-maker's will. Uncertainty in law in the narrow sense is a technical and legal defect of the legal text as an external, written form of its expression. Uncertainty in the law can also be characterised as a state of legal regulation, which is determined by the presence of gaps in the law, legal conflicts, other defects and creates legal and other risks for the subjects of legal relations. However, not every legal gap, conflict or other legal defect means the presence of legal uncertainty at the same time.

Uncertainty of law must be distinguished from uncertainty in law enforcement activities or implementation of the interpretation of law and that is expressed in accordance with law enforcement acts and acts of interpretation (interpretive acts). The uncertainty of the law can be considered both in a positive and negative sense. Speaking about the positive aspect of the uncertainty of the law, first of all, it can be noted that it is characteristic of the principles of law, which, in comparison with the norms of the law, are mostly uncertain (to a lesser extent defined), abstract. The abstract way of presenting legal norms, dispositive and relatively defined legal norms, the legislator's use of "framework" laws, evaluative concepts, etc. determines the positive property of uncertainty in law as a means of social relations legal

regulation. This reveals the possibility of applying individual regulation of social relations (legal discretion). In a negative sense, the uncertainty of law can arise in connection with objective and subjective reasons and is manifested in the results of law-making activity or the concretisation of law during the development (establishment, adoption, etc.) of legal regulators, which complicate their further implementation, the occurrence of legal consequences, and also lead to a violation of the rights and legal interests of various participants in social relations. Uncertainty in the law as a technical-legal defect manifests itself in logical-linguistic deviations, deformation in the construction and expression of legal norms (absence of precise, complete normative-legal establishment), which causes a decrease in the regulatory properties of the law, complicates the interpretation of its norms and prevents their effective implementation. Thus, it is appropriate to consider uncertainty in law from the point of view of a scientifically based concept of integrative legal understanding, within which law is limited, first of all, to the principles and norms of law contained in a single, developing and multi-level system of forms of international and national law, which are implemented in the state, and it is also distinguished from an illegal phenomenon.

SUMMARY

Uncertainty and certainty in law are key categories for analyzing the nature of law, its functioning, and development. The study explores the essence of legal uncertainty as a unique phenomenon that does not oppose certainty but coexists with it. Legal uncertainty manifests at various levels – in legal principles, customs, norms, and regulatory acts. It can complicate legal regulation by creating ambiguity about the boundaries between lawful and unlawful behavior. The causes of uncertainty include linguistic and logical flaws, technical deficiencies in lawmaking, conflicts, and legal gaps. At the same time, such uncertainty is not always negative; it can contribute to the flexibility of law enforcement. This is particularly relevant in the field of human rights, where rigid interpretation of norms may limit individual freedoms. The protection of rights requires a balance between sufficient legal clarity and the capacity to adapt to specific circumstances. Thus, legal uncertainty can pose a risk to the realization of human rights or serve as a condition for their flexible protection. Studying this phenomenon provides a deeper understanding of the mechanisms for ensuring and upholding human rights in complex legal environments.

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