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LEGAL CERTAINTY AND THE "QUALITY OF LAW" REQUIREMENT IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS: IMPLICATIONS FOR LEGISLATIVE DRAFTING IN UZBEKISTAN

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Abstract. *This article examines the principle of legal certainty and the related "quality of law" requirement developed by the European Court of Human Rights, and assesses their relevance for legislative drafting in Uzbekistan. The aim of the study is to identify the criteria that a legal norm must satisfy in order to be regarded as "law" in the qualitative sense and to translate these criteria into practical drafting guidelines. The research is based on the case law of the European Court of Human Rights, the general comments of the United Nations Human Rights Committee, the Rule of Law Checklist of the Venice Commission and the theoretical works of L. Fuller, H.L.A. Hart and T. Endicott. Doctrinal, case-law analysis, comparative-legal and linguistic methods are applied. The results show that the quality of law requirement consists of four interrelated elements: accessibility, sufficient precision and foreseeability, protection against arbitrary discretion, and stability of the law, including the foreseeability of judicial interpretation. It is established that many problems of foreseeability arise from identifiable linguistic features of legislative texts, such as evaluative terms without criteria, open-ended lists and discretionary powers without limits. The article proposes a checklist for assessing draft laws and argues that these standards, although developed in a European context, are directly relevant to Uzbekistan through its obligations under the International Covenant on Civil and Political Rights.*

Key words: *legal certainty, quality of law, foreseeability, rule of law, European Court of Human Rights, legislative drafting, Uzbekistan.*

Introduction. Legal certainty is one of the fundamental components of the rule of law. A person can comply with the law only if he or she is able to know what the law requires. Courts can apply the law consistently only if its content is sufficiently determinate. At the same time, laws must be general enough to cover an unlimited number of future situations, which makes complete precision impossible. The tension between precision and flexibility is therefore a permanent feature of every legal system.

The European Court of Human Rights has developed one of the most detailed bodies of case law on this tension. Several provisions of the European Convention on Human Rights allow interferences with rights only if they are "prescribed by law" or "in accordance

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with the law", and Article 7 requires that criminal offences be defined by law. Interpreting these expressions, the Court has held that the mere existence of a legal provision is not enough: the law must also possess certain qualities [1]. This approach, known as the "quality of law" requirement, has become a central standard for assessing legislation in Europe.

Uzbekistan is not a party to the European Convention. However, the Constitution of the Republic of Uzbekistan proclaims the country a legal state [2], and Uzbekistan is bound by the International Covenant on Civil and Political Rights, whose treaty body applies very similar requirements of precision to restrictions of rights [3]. In the context of extensive legislative reform, the question of how to ensure the quality of legislative texts is therefore of practical importance. The purpose of this article is to systematise the criteria of the quality of law and to examine how they can be applied in legislative drafting in Uzbekistan.

Materials. The material of the study consists of three groups of sources. The first group includes judgments of the European Court of Human Rights in which the quality of law requirement was formulated and developed, in particular Sunday Times v. the United Kingdom (1979), Malone v. the United Kingdom (1984), Kokkinakis v. Greece (1993), S.W. v. the United Kingdom (1995), Hasan and Chaush v. Bulgaria (2000) and Del Río Prada v. Spain (2013). The second group includes international soft-law documents: General Comment No. 34 of the United Nations Human Rights Committee and the Rule of Law Checklist adopted by the European Commission for Democracy through Law (Venice Commission) in 2016. The third group consists of theoretical works on the nature of law and legal language, including the works of L. Fuller, H.L.A. Hart and T. Endicott, as well as the Constitution and legislation of the Republic of Uzbekistan.

Methods. The study is based on doctrinal legal research. The case-law analysis method was used to identify and systematise the criteria applied by the European Court of Human Rights; the comparative-legal method was applied to compare European standards with the requirements of the International Covenant on Civil and Political Rights and with Uzbek constitutional provisions; the method of analysis and synthesis was used to group the criteria into a coherent model; and the linguistic method was employed to identify the textual features of legal provisions that typically reduce foreseeability. On this basis, a practical checklist for assessing draft legislation was formulated.

Results. As a result of the study, it was established that the quality of law requirement consists of four interrelated elements.

The first element is accessibility. In Sunday Times v. the United Kingdom, the Court held that the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable

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to a given case [1, §49]. Accessibility concerns not only the official publication of legal acts but also the possibility of actually finding and understanding them.

The second element is sufficient precision and foreseeability. In the same judgment the Court stated that a norm cannot be regarded as "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct, being able, if need be with appropriate advice, to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail [1, §49]. The Court immediately added that absolute certainty is unattainable and that excessive rigidity is undesirable, since the law must keep pace with changing circumstances; many laws are therefore inevitably couched in terms which are to a greater or lesser extent vague [1, §49].

The third element is protection against arbitrary discretion. In Malone v. the United Kingdom, concerning the interception of communications, the Court held that the law must indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on public authorities [4]. In Hasan and Chaush v. Bulgaria, the Grand Chamber confirmed that a law which confers discretion must indicate the scope of that discretion, since otherwise it would be contrary to the rule of law for a legal discretion granted to the executive to be expressed in terms of unfettered power [5].

The fourth element is the stability of the law, including the foreseeability of its judicial interpretation. In Kokkinakis v. Greece, the Court held that an offence must be clearly defined in law, a condition satisfied where the individual can know from the wording of the relevant provision, and if need be with the assistance of the courts' interpretation, what acts and omissions will make him liable [6]. In S.W. v. the United Kingdom, the Court accepted that criminal law may be gradually clarified by judicial interpretation, provided that the development is consistent with the essence of the offence and could reasonably be foreseen [7]. Conversely, in Del Río Prada v. Spain, the Grand Chamber found a violation of Article 7 where a new and unforeseeable interpretation of the rules on the remission of sentences was applied to the applicant, extending her actual period of imprisonment [8].

In addition, the study revealed that problems of foreseeability are often linked to specific linguistic features of legislative texts. The most typical of them are: evaluative terms used without criteria (for example, "significant harm" or "grounds for suspicion" without indication of how they are to be assessed); open-ended lists ending with expressions such as "and other cases", which leave the scope of the norm undetermined; discretionary powers formulated without conditions or limits; blanket references to unspecified "legislation"; and inconsistent terminology, in which the same concept is expressed by different words in different parts of the legal system.

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Discussion. The results confirm the theoretical insight of L. Fuller, who argued that law is an enterprise which can fail in identifiable ways. Among the eight principles of the "inner morality of law", Fuller listed the promulgation of laws, their clarity, their constancy through time and the prohibition of retroactivity [9]. The quality of law requirement of the European Court of Human Rights can be seen as a judicial operationalisation of several of these principles. Unlike Fuller's philosophical account, however, the Court's case law provides concrete criteria that can be applied to particular legislative texts.

At the same time, the Court's approach reflects the recognition, also present in the work of H.L.A. Hart, that legal language has an "open texture": general terms inevitably have a core of settled meaning and a penumbra of uncertain cases [10]. T. Endicott has argued that vagueness is an ineliminable feature of law and that in some situations it is even valuable, since it allows the law to respond to circumstances that the legislator could not foresee [11]. The European standard does not demand the elimination of vagueness. It demands that vagueness be reasonable in the circumstances, that it be accompanied by safeguards against arbitrariness, and that its consequences be foreseeable with the help of consistent judicial practice.

The same logic underlies universal human rights standards. In General Comment No. 34, the Human Rights Committee stated that, for the purposes of restrictions of freedom of expression, a norm must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and must not confer unfettered discretion on those charged with its execution [3]. The Venice Commission's Rule of Law Checklist similarly lists accessibility, foreseeability, stability and the protection of legitimate expectations among the elements of legal certainty [12]. These standards show that the quality of law is not a regional peculiarity but an internationally shared understanding of what it means for a rule to be "law".

For Uzbekistan, these findings have direct practical significance. As a party to the International Covenant on Civil and Political Rights, Uzbekistan must ensure that restrictions of rights are "provided by law" in the qualitative sense developed by the Human Rights Committee. The European case law, although not binding on Uzbekistan, offers a detailed and well-tested set of criteria that can guide legislative drafters. On the basis of the results of the study, we propose that draft laws be assessed against the following questions: 1) Is the act and all related acts officially published and easily accessible to the public? 2) Are the key terms defined, and are they used consistently with other legislation? 3) Do evaluative terms come with criteria or examples that make their application foreseeable? 4) Are lists of grounds, cases or measures exhaustive, and if not, is their open character justified? 5) Are discretionary powers accompanied by conditions, limits

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and procedural safeguards? 6) Does the act avoid retroactive effect to the detriment of individuals? 7) Can an ordinary person, with appropriate advice, foresee the consequences of his or her conduct?

Such a checklist connects the legal and linguistic dimensions of legislative quality. Questions 2 to 5 concern the wording of the norm itself, and they can be answered only through careful analysis of legislative language. This suggests that cooperation between lawyers and linguists at the drafting stage is not a matter of style but a means of protecting legal certainty and, ultimately, human rights.

Conclusion. In conclusion, the quality of law requirement developed by the European Court of Human Rights transforms the abstract principle of legal certainty into concrete criteria: accessibility, sufficient precision and foreseeability, protection against arbitrary discretion, and stability of the law and its interpretation. The study shows that many deficiencies of foreseeability can be traced to identifiable linguistic features of legislative texts and can therefore be prevented at the drafting stage. For Uzbekistan, whose international obligations include the requirement that restrictions of rights be provided by law, the systematic use of these criteria in legislative drafting could strengthen legal certainty and public trust in the law. These conclusions may serve as a basis for further research on the quality of national legislation and on methods of its linguistic expertise.

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