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**«МЕЃУНАРОДЕН ДИЈАЛОГ: ИСТОК - ЗАПАД»**  
(ПРАВО И ПОЛИТИКОЛОГИЈА)

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на научни трудови

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## THE CONCEPT OF LEGAL CERTAINTY AND ITS CHARACTERISTICS

**Abstract:** The main objective of this paper is to analyze the legal certainty which includes the idea of clarity, understandability, consistency, predictability and coherence of the law. This paper explains the subject of research, namely the characteristics of legal certainty, and in this part of the paper we explain in detail the concept of legal certainty and its functions through laws and policies that should be characterized with stability, clarity, uniformity, implementation, transparency, and predictability. We can conclude that the rule of law increases the legal certainty in any country.

**Keywords:** law, certainty, concept, legal certainty, characteristics of legal certainty.

## КОНЦЕПТОТ НА ПРАВНАТА СИГУРНОСТ И НЕГОВИТЕ КАРАКТЕРИСТИКИ

**Резиме:** Основната цел на овој труд е да ја анализира правната сигурност, што ја вклучува идејата за јасност, разбирливост, доследност, предвидливост и кохерентност на законите. Овој труд го објаснува предметот на истражување, потточтно карактеристиките на правната сигурност, и во рамките на овој дел детално го објаснуваме концептот на правната сигурност и неговите функции преку законите и правилата коишто треба да се карактеризираат со стабилност, јасност, идентичност, имплементација, транспарентност и предвидливост. Можеме да заклучиме дека владеењето на правото ја зголемува правната сигурност во секоја земја.

**Клучни зборови:** право, сигурност, концепт, правна сигурност, карактеристики на правна сигурност.

One of the primary functions of law is to ensure that the legal structure governing all social relations is predictable, coherent, consistent, and applicable. All these characteristics of law taken together are referred to as legal certainty. In traditional approaches to legal certainty, law is regarded as a hierarchic system of rules characterized by stability, clarity, uniformity, calculable enforcement, publicity, and predictability. However, the current reality is that national legal systems no longer operate in isolation, but within a multilevel legal order, wherein norms created at both the international and the regional level are directly applicable to national legal systems.<sup>1</sup>

The focus on individual rights illuminates important aspects of the construction of legal certainty as a characteristic of the legal order. First, the discourse on individual rights emphasizes that legal certainty can be obtained by individuals if their rights vis-à-vis the state is protected within a specific legal order.<sup>2</sup> Second, primary focus is that

<sup>1</sup> Nupur Chowdhury, (2014), "European Regulation of Medical Devices and Pharmaceuticals – regulate expectations of legal certainty", Springer 2014, pp.v.

<sup>2</sup> Gribnau H (2013), "Equality, legal certainty and tax legislation in the Netherlands fundamental legal principles as

on the securing of individual rights within public law.<sup>3</sup> Third, legal certainty is viewed as a guarantee that is a logical rational aspiration of the legal order and therefore it is the duty of the state to ensure and uphold. Fourth, legislation and administrative action are two aspects of the legal order that face scrutiny in case of delivering legal certainty. And, fifth, since legal certainty is expressed in terms of rights - there is an inherent presumption - that limited or low level of rights claims in the judicial system would be an evidence of the presence of legal certainty (and the absence of legal uncertainty) within a particular legal order.<sup>4</sup> Protection of individual rights being the primary basis for the principle of legal certainty, and the Courts have also sought to create a coterie of supportive rights - these include the principle of equal treatment and the obligation of transparency.<sup>5</sup>

From the above discussion, we can identify specific notions of what constitutes legal certainty. It includes the notion of clarity, intelligibility, consistency, predictability and coherence. It is also established by the Court, that there are chiefly two sources of violations of legal certainty. First, is the text of the law - legislations and regulatory orders. It therefore emphasizes that the administrative institutions should ensure textual precision, clarity and consistency. Second, is the issue of functioning of administrative institutions, such institutions have to take regulatory decisions in a manner that is transparent, consistent and predictable. Namely, in every country or in every modern market economic system, the legal certainty is a basic environment of its existence, and it is implemented through the adoption and implementation of laws and regulations.

Besides the above mentioned characteristics of the legal framework, the creation of the legal framework of the modern market economic system must respect certain rules and regulations.<sup>6</sup> Namely, there is widespread opinion that the best regulatory systems are those that create little, and not too many laws. The existence of a large number of laws has a negative effect in terms of their disregard of the citizens. Good and successfully developed regulatory system is the first prerequisite for acceleration of economic activities and the achievement of economic development of each country, whereas there must be a sound legal framework. Here it is that the laws, equally as the overall regulatory framework, should be consistent with the principal moral social norms that are universal in their character.<sup>7</sup>

Finally, it means in itself that the respect of legality is an inevitable part of good governance in each country,<sup>8</sup> which in turn means enforcement of the law on a completely uniform manner, without (or anyone's) favoritism or discrimination. It actually represents a practical implementation of the provision of non-discriminatory business environment, or creation of equal opportunities for all entities that are participating on the market in a country. In economic terms, the respect for legality covers primarily: the protection of property and contractual rights, respect for property and contractual obligations, protection of human rights, tax collection, prudence in

checks on legislative power: a case study", *Utrecht Law Rev* 9, pp.52-74.

3 Tridimas T (1999), "The general principles of EC law", Oxford University Press, Oxford, U.K, p 163.

4 D'Amato A (2010), "Legal uncertainty" Faculty Working Papers, Northwestern University School of Law Scholarly Commons.

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6 Braithwaite J (2002), "Rules and principles: a theory of legal certainty", *Aust J Legal Philos* 27, pp. 47-82.

7 Suchman MC, Edelman LB (1996), "Legal rational myths: the new institutionalism and the law and society tradition", *Law Soc Inq* 21, pp. 903-941

8 European Commission, Brussels, 9.11.2016 SWD(2016) 362 final, Commission Staff Working Document The former Yugoslav Republic of Macedonia 2016 Report, Accompanying the document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2016 Communication on EU Enlargement Policy (COM(2016) 715 final), pp.1-35.

spending public spending and the elimination of corruption.<sup>9</sup>

We can conclude that the rule of law increases the legal certainty in any country, so in order to become a development country it is necessary to increase the legal certainty and the rule of law.

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