

IZABELA DZIEWULSKA-GAJ

A look at the principle of certainty in the context of its sources

Summary

The sources of the principle of certainty constitute the first phase of the search for answers about the purpose, understanding and practical application of the principle. The basis for the considerations in the subject matter is primarily the Polish Constitution, the case law of the Constitutional Court and the much more modest achievements of the doctrine. Because the principle of certainty does not only bear its legal aspect but also the linguistic one, the literature within the scope of linguistics has been also taken into consideration. In its legal aspect, the principle encompasses its relation to the law in general and as well as its axiological and normative foundations.

The principle of certainty is undoubtedly a legal issue. It arises from the very concept of law, as certainty is an inherent feature of the law, especially of positive law, and hence its linguistic aspect. The principle of certainty in the axiomatic foundations protects human dignity setting out the framework for the activities of the state in the sphere of the regulation of restrictions of rights and freedom, the protection of which is an integral element of the rule of law. It is the guarantor of the implementation of the idea of *lex est rex*, which is a determinant for a constitutional clause of the rule of law. To provide effective protection to the citizen against the omnipotence of the state, the principle had to obtain the rank of a constitutional one, while in order to pursue its practical objective, the rule of law must obtain a linguistic dimension. Thus, the principle of certainty being a legal category cannot exist outside the language realm. Defining is primarily a linguistic activity. The linguistic aspect of the principle of certainty allows to determine a clear boundary between what is and is not lawful, a boundary which forms the basis of the principle of *ignorantia juris non excusat*.

The principle of certainty in its axiomatic foundations protects not only the dignity of a man, but also the balance in the functioning of the state. A failure to implement the rigour of the principle of certainty in the sphere of the regulation of restrictions of rights and freedom causes confusion and fear of an unidentified threat. It suggests that the rights granted are only apparent. The principle of certainty as a value is therefore a guarantee of legal security and its implementation is an act of loyalty of the state authorities to the citizen. Conclusively, there arises an assumption that a lack of a regulation is always a conscious action of a rational legislator, therefore the silence of a legislator regarding rights restrictions means that such restrictions do not exist.

Keywords: principle of certainty – *nullum crimen sine lege certa* – legal security – legal certainty