

Abstracts

The Concept and Scope of Legal Certainty in Spanish Constitutional Law and European Community Law: a comparative analysis. JUAN IGNACIO UGARTEMENDÍA ECEIZABARRENA

This article makes a comparative analysis of the principle of legal certainty in the systems of Spanish Constitutional law and EC law. There are three basic elements of comparison: the formulation of the principle and its composition as a parameter of validity; the content or regulatory significance of the principle (setting out its main conceptual manifestations), and the «logical structure» that characterises it (prescriptive or defeasible obligation). Having identified the similarities, the article goes on highlighting the distinguishing features of EC law, which comprise a number of obligations for the public authorities responsible for creating and implementing EC law and which are imposed on the institutional activities of the EC as well as on the activities of member states which intervene in the sphere of application of EC law.

Sources of legal indeterminacy: a Philosophical Approach. MARISA IGLESIAS VILA

This article elaborates on the problem of legal indeterminacy considering whether this phenomenon should be a major concern for lawyers. Firstly, Iglesias explores some of the sources typically associated with legal indeterminacy such as semantic problems and the use of principles in judicial decisions to show that there is no direct connection, between those factors and the absence of right legal answers. Secondly, the paper underlines that most legal systems provide with tools to prevent and arbitrary use of power in situations of legal indeterminacy. Finally, the author argues that a certain degree of indeterminacy can be fruitful of law even when it affects the expectation of predictability because it helps to attain other legal values and basic targets. Thus, this article aims at explaining why, in scenarios of normality, the fact that law can be uncertain in some cases should not be a major concern for lawyers.

Legal certainty and the binding force of Jurisprudence. GEMA ROSADO IGLESIA

Legal certainty, legal security principle is one of the main basis, foundations, one the indispensable, essential factors of the Constitutional State. Legal certainty answers the demand of knowing the legal system's parameters, so during parliamentary making power. Acts, as so during applications of them (specially, during judicial application), for direct toward, for planning life and behaviour, for taking decisions, and for anticipate the possible consequences of self-decisions and actions. Therefore, the legal certainty suppose introduce an element of security, a factor of certainty in legal system. All legal system in democratic States (so as Anglo-Saxon model's, *stare decisis*, with to set a precedent technique, as the Civil Law States, using High Court Appeals for standardizing the judicial doctrine), have instruments for warrant, as it's possible, evenness, levelness, uniformity in judicial law application. The question is determine the jurisprudence's force, and its limits, always in the absolute respect form Constitutional provisions, with the target of protect the legal certainty, but too, the civil rights, and the Constitutional Principles for balancing powers, and, between them, the judicial independence.

The Regulatory Technique of the EC Legal System. FABIO PASCUAL MATEO

This analysis addresses different problems of a regulatory nature faced by such legal systems as EC law which, due to its own intrinsic characteristics –plurality of regulatory systems over which it superimposes itself, institutional balance in drafting its provisions, diversity in official languages– needs to exercise special caution in guaranteeing adherence to the requirements derived from legal certainty. In particular, special emphasis is placed on the caution needed when planning new legal texts, eliminating unnecessary regulations and restricting novelties to those which effectively accredit their need and the advantage of EC intervention over national intervention, in accordance with the principles of subsidiarity and proportionality. Likewise, an analysis has been made of the impact of the legal basis as a parameter of validity, not just the validity of the regulation approved, but also of its legal attire –regulation, directive, decision, framework decision– and of the drafting procedure, as well as of the alterations to which the general system is subjected to when powers are delegated to the Commission by means of the so-called committee procedure and including the recourse to self-regulation and co-regulation instruments on the part of affected sectors. Provided immediately thereafter are the general lines which serve to guide the drafting of EC acts from a formal point of view, to conclude with a run-through of the codification, consolidation and revision techniques used to incorporate updates and reforms into a single legal text.

The material overflow of state budget laws and legal certainty. JUAN ANTONIO TOSCANO ORTEGA

The analysis is set out as an intentional dialogue with the criteria laid down by the Constitutional Court on this subject (material overflow of state budget laws and legal certainty) in the course of its extended jurisprudence. In short, the work defends a «broad» concept of the material scope of budget laws. Based on this stance, this type of law should include budget matters although, as such, it can also embrace other matters, unless clearly prohibited by the Constitution (sections 2 and 7 of article 134 of the Constitution). Therefore, contrary to that upheld by our Constitutional Court, it is maintained that the fact that the budget law should fulfil a Constitutional function, hold procedural peculiarities and uphold legal certainty, should not be an impediment for this law to include matters which the legislator, in the exercise of his freedom to give shape to regulations, considers convenient, obviously respecting existing material prohibitions in Constitutional Law.

The authority of Law and the Nature of the soft law. DANIEL SARMIENTO RAMÍREZ-ESCUADERO

This paper explores the role of soft law in Spanish public law. It is structured in two sections, firstly with a descriptive analysis of soft law as an autonomous source of public law, and lastly proposing a normative thesis concerning the role to be played by soft law at the time of application. An interpretative role of soft law rules will be proposed, as an alternative to its strict application, finally framing this conclusion in the context of recent debates on administrative governance.

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Víctor Ferreres Comella

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La autoridad del Derecho y la naturaleza del soft law

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