BG Pulse Journal USA
ISSN:1947-2536 http://www.bgpulseusa.com/index.php/bg
BG PULSE JOURNAL

THE SIGNIFICANCE OF LEGAL PRINCIPLES IN ELIMINATING LACKS IN LAW

Tursunkulov Elbek
2nd-year student of the Faculty of Law at the “TIIAME” National Research University
Abdukhakimov Anvar
2nd-year student of the Faculty of Law at the “TIIAME” National Research University

ABSTRACT: This article analyzes the theoretical and practical significance of legal principles in addressing legal gaps. It substantiates that, in situations where legislation does not contain a specific legal provision, law enforcement authorities should resolve legal issues based on the principles of justice, legality, and the supremacy of human rights. In the research process, these problems were studied in a comparative aspect using the example of national legislation and judicial practice.

Keywords: legal gap, legal principle, analogy of law, law enforcement, proportionality, legality, human rights.

ЗНАЧЕНИЕ ПРАВОВЫХ ПРИНЦИПОВ В УСТАНОВЛЕНИИ РАЗРЯДОВ В ПРАВАХ

АННОТАЦИЯ: В данной статье проанализированы теоретическое и практическое значение правовых принципов при восполнении пробелов в праве. Обосновано, что в случаях отсутствия в законодательстве конкретной правовой нормы правоприменительные органы должны разрешать соответствующие вопросы, руководствуясь принципами справедливости, законности и приоритета прав человека. В ходе исследования данные проблемы были изучены в сравнительном аспекте на примере национального законодательства и судебной практики.

Ключевые слова: пробел в праве, правовой принцип, аналогия закона, правоприменение, принцип соразмерности, законность, права человека.

HUQUQDAGI BO‘SHLIQLARNI BARTARAF ETISHDA HUQUQIY PRINSIPLARNING AHAMIYATI

ANNOTATSIYA. Mazkur maqolada huquqdagi bo‘shliqlarni bartaraf etishda huquqiy prinsiplarning nazariy va amaliy ahamiyati tahlil qilindi. Shuningdek, qonunchilikda aniq norma mavjud bo‘lmagan vaziyatlarda huquqni qo‘llovchi subyektlar masalani adolat, qonuniylik va inson huquqlari ustuvorligi prinsiplari asosida hal etishi lozimligi asoslab berilgan. Tadqiqot jarayonida mazkur muammolar milliy qonunchilik va sud amaliyoti misolida qiyosiy jihatdan o‘rganildi.

Kalit so‘zlar: huquqdagi bo‘shliq, huquqiy prinsip, qonun o‘xshashligi, huquqni qo‘llash, mutanosiblik, qonuniylik, inson huquqlari

INTRODUCTION

Law is one of the most important social regulators governing social relations within society. Normative legal acts adopted by the state serve to regulate legal relations among individuals, legal entities, and public authorities. However, social development, economic reforms, scientific and technological progress, digital technologies, and the emergence of new social relations do not always allow legislation to regulate all such relations comprehensively and in a timely manner.

Consequently, situations arise in legal practice where a particular social relationship requires legal regulation, but no specific legal provision directly governing it exists. In the theory of state and law, such a situation is recognized as a legal gap.

In Uzbekistan, the establishment of the rule of law, ensuring the supremacy of law, and the effective protection of human rights and freedoms constitute one of the priority directions of state policy. The Presidential Decree of the Republic of Uzbekistan No. PF–158 of September 11, 2023, approving the "Uzbekistan–2030" Strategy, identifies improving the quality of justice, strengthening the rule of law, ensuring effective protection of citizens' rights and freedoms, and improving law enforcement practice among its priority objectives [1]. In his speech dedicated to the constitutional referendum, President Shavkat Mirziyoyev emphasized:

"Most importantly, the principle that 'The law is sacred, and justice must prevail under all circumstances' should become a guiding rule of life for every member of society, especially for public officials." [2]

Furthermore, the constitutional principle advanced by the President that "all contradictions and ambiguities in legislation shall be interpreted in favor of the individual" clearly demonstrates the priority role of legal principles in addressing legal gaps. This approach confirms the necessity of ensuring justice, legality, and the supremacy of human rights in law enforcement activities.

A legal gap is one of the fundamental institutions of the theory of state and law and is directly related to the effectiveness of the legal regulation mechanism. It refers to a situation where a social relationship requiring legal regulation exists, yet no specific legal norm governing that relationship is provided in the current legislation. This phenomenon is characterized by three essential features. First, there exists a social relationship requiring legal regulation. Second, the legislation contains no legal norm directly regulating that relationship. Third, legal regulation of such a relationship is objectively necessary. Therefore, a legal gap is not merely legal uncertainty but a theoretical and practical problem requiring a scientifically grounded and fair legal solution during law enforcement.

This issue has also been extensively studied by Uzbek legal scholars. In particular, Professor Kh.T. Odilqoriyev, Doctor of Law, defines a legal gap in his textbook Theory of State and Law as the absence of a legal norm necessary for resolving a particular social relationship within the existing legal system [3]. According to the scholar, in such situations law enforcement authorities should not refuse to resolve the case but should instead apply the mechanisms of analogy of statute or analogy of law. This approach clearly demonstrates the practical significance of legal principles.

Professor Sh.A. Saydullayev argues that the legal system is not merely a collection of separate legal norms but is formed on the basis of general legal principles, values, and fundamental legal ideas. According to the author, legal principles constitute the primary methodological basis determining the substance of the legal system and play an important theoretical and practical role in eliminating legislative uncertainties and legal gaps [4].

Ensuring the consistency and internal coherence of the legal system is closely linked to improving the system of normative legal acts. In this regard, the Law of the Republic of Uzbekistan "On Normative Legal Acts" establishes the basic principles and requirements governing the drafting, adoption, systematization, and quality of normative legal acts [5]. Nevertheless, it is impossible to foresee and regulate all legal situations arising from the rapid development of social relations. Therefore, addressing legal gaps through legal principles remains both scientifically and practically relevant.

According to the theory of state and law, legal gaps are classified as real and apparent, as well as primary and subsequent gaps. A real legal gap exists when the legislator fails to regulate a social relationship that objectively requires legal regulation. An apparent gap arises where a legal norm

exists, but difficulties concern its interpretation. A primary gap exists from the moment legislation enters into force, whereas a subsequent gap emerges due to the appearance of new social relations during societal development. In recent years, the rapid development of the digital economy, artificial intelligence, electronic commerce, blockchain technologies, and digital platforms has significantly contributed to the emergence of new legal relations and, consequently, to the expansion of legal gaps.

The issue of legal gaps has also been extensively examined in foreign legal scholarship. V.V. Lazarev, in his monograph Пробелы в праве и пути их устранения (Legal gaps and ways to eliminate them), argues that legal gaps are a natural phenomenon within any legal system and emphasizes the necessity of overcoming them through the application of the analogy of statute and the analogy of law [6]. A similar position is expressed by S.S. Alekseev in his work Общая теория права (General theory of law) where legal gaps are considered a natural element of the legal regulation mechanism, while legal principles and the general substance of the legal system serve as the principal methodological basis for overcoming them [7].

Legal principles represent the fundamental ideas and guiding values underlying the legal system. They are reflected in such principles as legality, justice, equality, proportionality, good faith, reasonableness, legal certainty, and the supremacy of human rights. In situations where legislation lacks a specific legal norm, these principles become the primary legal standards guiding courts and other law enforcement authorities.

The priority of legal principles is also constitutionally recognized in the Republic of Uzbekistan. Pursuant to Article 15 of the Constitution, the Constitution possesses supreme legal force, has direct effect throughout the territory of the Republic, and serves as the foundation of the unified legal system. Furthermore, Article 20 provides that any contradictions or ambiguities in legislation arising in relations between an individual and public authorities shall be interpreted in favor of the individual [8]. As a logical continuation of these constitutional principles, Article 5 of the Civil Code of the Republic of Uzbekistan establishes the institutions of the analogy of statute and the analogy of law, providing that where no legal norm directly regulates a civil law relationship, the issue shall be resolved on the basis of the general principles and substance of civil legislation, including the requirements of good faith, reasonableness, and justice [9]. Thus, legal principles constitute the direct normative foundation for addressing legal gaps.

METHODS

To determine the theoretical and practical significance of legal principles in overcoming legal gaps, this study employed a comprehensive combination of general scientific and specialized legal research methods.

Using the normative legal analysis method, the Constitution of the Republic of Uzbekistan, the Civil Code of the Republic of Uzbekistan, the Criminal Code of the Republic of Uzbekistan [10], the Law of the Republic of Uzbekistan “On Administrative Procedures” [11], the Law “On Normative Legal Acts”, as well as the resolutions of the Plenum of the Supreme Court of the Republic of Uzbekistan concerning judicial practice, were systematically analyzed. Based on these legal sources, the study examined the normative foundations of overcoming legal gaps through the application of the analogy of statute (analogia legis), the analogy of law (analogia iuris), and general legal principles.

The doctrinal (theoretical) analysis method was employed to examine the scholarly views of leading Uzbek legal scholars, including Kh.T. Odilqoriyev, Sh.A. Saydullayev, I.B. Zokirov, J.I. Yuldashev, and other researchers concerning the theory of state and law and the application of legal

norms [13, 14]. In addition, the study analyzed the theoretical approaches presented in the works of Russian legal scholars V.V. Lazarev, particularly his monograph Пробелы в праве и пути их устранения (Legal gaps and ways to eliminate them), and S.S. Alekseev in his fundamental work Общая теория права (General theory of law), focusing on legal gaps, legal principles, and mechanisms for the application of law.

The comparative legal method was used to compare the role of legal principles in overcoming legal gaps under the legislation of Uzbekistan with the theoretical approaches developed in foreign legal doctrine. Particular attention was given to identifying the similarities and differences regarding the concept of legal gaps, their classification, underlying causes, and the legal mechanisms employed to overcome them.

RESULTS

During the research, based on a systematic analysis of the Constitution of the Republic of Uzbekistan, the Civil Code, the Law "On Administrative Procedures," the Law "On Normative Legal Acts," as well as scientific sources on the theory of state and law, it was established that in overcoming legal gaps, legal principles are applied in close interrelation with the institutions of analogy of statute and analogy of law, and they constitute the methodological foundation of law enforcement activities. The analysis demonstrated that it is objectively impossible to regulate all social relations in a complete and detailed manner in advance through legislation; therefore, legal principles emerge as an essential component of the normative legal regulation mechanism.

As a result of the study, three main legal mechanisms for overcoming legal gaps were identified.

Firstly, the analogy of statute is applied. In this case, a legal norm regulating a substantively similar social relation is extended to the unregulated relationship. Article 5 of the Civil Code of the Republic of Uzbekistan provides that, where civil-law relations are not directly regulated by legislation or agreement of the parties, the norms governing similar relations shall be applied. The analysis shows that this mechanism is of significant practical importance, particularly in regulating legal relations related to the digital economy, electronic platforms, new types of civil-law contracts, and modern technologies.

Secondly, the analogy of law is applied. Where no norm regulating a similar relationship exists, the dispute is resolved based on the general substance of the legal system and legal principles. The second part of Article 5 of the Civil Code stipulates that, in such cases, the rights and obligations of the parties are determined on the basis of the general principles of civil legislation, as well as the requirements of good faith, reasonableness, and fairness. The results of the study confirm that the analogy of law demonstrates the direct normative significance of legal principles in overcoming legal gaps.

Thirdly, the direct application of legal principles appears as an independent mechanism for overcoming legal gaps. In particular, the principles of legality, justice, equality, proportionality, good faith, reasonableness, legal certainty, and the supremacy of human rights serve as key methodological criteria for law enforcement bodies. The analysis shows that these principles ensure the consistency of law enforcement practice and the legality and fairness of decisions in cases where normative regulation is insufficient.

The analysis of the Resolution No. 16 of 23 June 2023 of the Plenum of the Supreme Court of the Republic of Uzbekistan, "On Certain Issues of the Direct Application of the Constitution of the Republic of Uzbekistan in the Administration of Justice," demonstrates that courts may not refuse to apply constitutional provisions on the grounds that there is no special law or that legislation does not fully regulate a particular relationship [12]. This resolution confirms that, in judicial practice,

the direct application of the Constitution is recognized as an important legal basis for overcoming legal gaps.

Furthermore, normative legal analysis revealed that Article 15 of the Constitution of the Republic of Uzbekistan establishes the supremacy and direct applicability of the Constitution, while Article 20 stipulates that all contradictions and ambiguities in legislation arising between individuals and state bodies shall be interpreted in favor of the individual. These constitutional provisions constitute a fundamental legal basis ensuring the supremacy of human rights in overcoming legal gaps.

Table 1. Functional significance of legal principles in eliminating gaps in law

Legal principle	Scope of application	Function in eliminating gaps in law	Normative basis
Legality	All branches of law	Ensures that decisions are adopted only within the framework of the Constitution and laws	Article 15 of the Constitution
Justice	Judicial practice and law enforcement	Ensures a balance of interests between parties	Constitution; Article 5 of the Civil Code
Equality	Judicial and administrative proceedings	Ensures the prohibition of discrimination	Constitution
Proportionality	Administrative law	Ensures that state intervention is necessary and proportionate	Article 20 of the Constitution; Law "On Administrative Procedures"
Good faith	Civil-law relations	Ensures that parties act honestly and in good faith	Article 5 of the Civil Code
Reasonableness	Civil law	Ensures that decisions are logical and well-reasoned	Article 5 of the Civil Code
Legal certainty	All branches of law	Forms a uniform law-enforcement practice for similar cases	Constitution; Resolution No. 16 of 23 June 2023 of the Plenum of the Supreme Court of the Republic of Uzbekistan
Supremacy of human rights	Constitutional and public law	Ensures that ambiguities in legislation are interpreted in favor of the individual	Article 20 of the Constitution

Source: *Compiled by the author based on the Constitution of the Republic of Uzbekistan, the Civil Code, the Law "On Administrative Procedures," and Resolution No. 16 of 23 June 2023 of the Plenum of the Supreme Court of the Republic of Uzbekistan.*

Analysis of the table showed that in eliminating gaps in the law, legal principles do not constitute rules applied separately, but constitute a single, interconnected legal mechanism. In particular, while the principles of legality and legal certainty define the boundaries of law enforcement, the principles of justice, proportionality, integrity, and rationality balance the discretionary powers of the law enforcement agency. At the same time, the principle of the priority of human rights serves to resolve ambiguities in legislation and legal gaps in favor of the interests of the individual. As a result, it was established that the harmonious application of legal principles is an important condition for ensuring the consistency of legislation, uniform law enforcement practice, and fair trial.

DISCUSSION

The analysis of the table demonstrates that, in eliminating gaps in law, legal principles do not function as isolated rules but form an interrelated and unified legal mechanism. In particular, the principles of legality and legal certainty define the boundaries of law application, while the principles of justice, proportionality, good faith, and reasonableness ensure the balance of discretionary powers exercised by law enforcement bodies. At the same time, the principle of the supremacy of human rights serves to resolve ambiguities in legislation and gaps in law in favor of the individual's interests. As a result, the coherent application of legal principles ensures legislative consistency, a uniform law enforcement practice, and fair adjudication.

The present research results indicate that legal principles are one of the key methodological criteria of law enforcement activity in eliminating gaps in law. The conducted normative-legal and doctrinal analysis shows that the institutions of analogy of law (analogia juris) and analogy of statute (analogia legis) are applied in close interrelation with legal principles, particularly in situations where no direct legal norm exists, thereby ensuring a lawful and fair legal resolution. Furthermore, the direct applicability of the Constitution and the supremacy of human rights have been confirmed as the most important constitutional guarantees in eliminating gaps in law.

The obtained results are consistent with the scientific views of Professor X.T. Odilqoriyev regarding gaps in law and the theory of law application. The scholar emphasizes that gaps in law are not defects of the legal system but an objective phenomenon arising in the process of legal regulation, and in such cases the law enforcement body must not refuse to adjudicate the case but should resolve the dispute through analogy of law or analogy of statute. The findings of this study also demonstrate that this theoretical approach is reflected in the current civil legislation and constitutional norms of the Republic of Uzbekistan.

The research results also support the scientific views of Professor Sh.A. Saydullayev on the role of legal principles in the legal system. The author notes that the legal system is not merely a collection of individual legal norms but is shaped by general legal principles and values. The present study confirms that legal principles serve as a key methodological criterion in eliminating legislative ambiguities, interpreting normative legal acts, and ensuring consistency in law enforcement practice.

The comparative legal analysis shows that the mechanism for eliminating gaps in law in the Republic of Uzbekistan shares a common theoretical foundation with legal systems belonging to the Romano-Germanic legal family. In particular, V.V. Lazarev substantiates that gaps in law are a

natural phenomenon resulting from social development and emphasizes that analogy of law and analogy of statute serve as the main tools for addressing them. S.S. Alekseyev, in turn, views legal principles as a fundamental basis ensuring the internal unity of the legal system and highlights the necessity of referring to the general meaning and principles of law in the absence of specific legal norms. The results of this study confirm that these scientific views remain relevant within the legal system of Uzbekistan.

Furthermore, the study found that recent constitutional developments related to the direct effect of the Constitution and the supremacy of human rights have significantly strengthened the practical importance of legal principles in eliminating gaps in law. The fact that the Plenum of the Supreme Court of the Republic of Uzbekistan, in its Resolution No. 16 of 23 June 2023, established that courts must directly apply constitutional norms has reinforced the role of legal principles not only in theory but also in practical law enforcement. This demonstrates that the Constitution's supreme legal force and the principle of the supremacy of human rights are increasingly strengthening their role in modern legal practice.

Overall, the research confirms that legal principles are not auxiliary or secondary tools in eliminating gaps in law, but rather a fundamental legal mechanism ensuring the coherence of the legal system, the rule of law, and effective protection of human rights. Accordingly, the further development of their role in interpreting normative legal acts, applying analogy of law and analogy of statute, and forming a unified judicial approach is one of the key directions for improving the legal system of the Republic of Uzbekistan.

CONCLUSION

In conclusion, gaps in law are a natural phenomenon of the legal system, explained by the faster development of social relations compared to legislation, the emergence of new legal institutions, and the objective limits of normative legal regulation. The research results demonstrate that legal principles constitute the main methodological criterion in eliminating gaps in law. The principles of legality, justice, proportionality, equality, good faith, reasonableness, legal certainty, and the supremacy of human rights provide a reliable legal basis for resolving cases where no direct legal norm exists.

As a result, the comparative and systematic analysis of the Constitution of the Republic of Uzbekistan, the Civil Code, the Law "On Administrative Procedures," and Resolution No. 16 of 23 June 2023 of the Plenum of the Supreme Court confirms that analogy of statute, analogy of law, and the direct application of legal principles form an interrelated and unified mechanism for eliminating gaps in law. At the same time, in law enforcement practice, the direct application of the Constitution, interpretation of legislative ambiguities in favor of human rights, and consistent application of legal principles contribute to the formation of a stable and unified law enforcement practice, effective protection of citizens' rights and freedoms, and further strengthening of the rule of law.

REFERENCES

1. President of the Republic of Uzbekistan. (2023). Decree No. PF–158 "On the Strategy "Uzbekistan – 2030" (11 September 2023). https://lex.uz/docs/6600413

2. Mirziyoyev, Sh. M. (2023, May 1). Speech dedicated to the results of the referendum on the updated Constitution. Presidential Press Service. https://president.uz/uz/lists/view/6277

3. Odilqoriyev, X. T., & Tulteyev, I. T. (2020). Theory of State and Law. Tashkent: Adolat.

4. Saydullayev, Sh. A. (2020). Theory of State and Law. Tashkent: TDYU Publishing House.

5. Republic of Uzbekistan. (2021). Law “On Normative Legal Acts” (Law No. ZRU–682). https://lex.uz/docs/5370819

6. Лазарев, В. В. (1974). Пробелы в праве и пути их устранения. Москва: Юридическая литература.

7. Алексеев, С. С. (1981). Общая теория права (Т. 1–2). Москва: Юридическая литература.

8. Constitution of the Republic of Uzbekistan (Law No. ZRU–837, 30 April 2023). https://lex.uz/docs/6445145

9. Republic of Uzbekistan. (1996). Civil Code of the Republic of Uzbekistan (Part One) (Law No. ZRU–257-I, 29 August 1996). https://lex.uz/docs/111189

10. Republic of Uzbekistan. (1994). Criminal Code of the Republic of Uzbekistan (Law No. ZRU–2012-XII, 22 September 1994). https://lex.uz/docs/111453

11. Republic of Uzbekistan. (2018). Law “On Administrative Procedures” (Law No. ZRU–457, 8 January 2018). https://lex.uz/docs/3496058

12. Supreme Court Plenum of the Republic of Uzbekistan. (2023). On certain issues of direct application of the Constitution of the Republic of Uzbekistan in the administration of justice (Resolution No. 16, 23 June 2023). https://lex.uz/docs/6519142

13. Zokirov, I. B. (2021). Civil Law. General Part. Tashkent: TSUL.

14. Yuldashev, J. I. (2020). Civil Law. Tashkent: TSUL.