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BOUNDARIES OF INDEFINITENESS IN LAW
LA INDEFINICIÓN Y LOS LÍMITES EN LA LEY

PhD. Manol Stanin
Universidad Suroeste Neofit Rilski, Bulgaria
stanin@law.swu.bg

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Abstract

The Regulatory Law System reflects in itself the intention of the lawmaker and the society for the clearest, exact and unambiguously outlining of the parameters of possible and required actions of the parties of legal norms. However, on the other hand, it shows the inability or unwillingness of the subject of the lawmaking activity to implement and maintain this definiteness. Simultaneously, it captures the tendencies in the public expectations for more freedom within the legal regulation.

Keyword

Boundaries – Indefiniteness – Law – Definiteness

Resumen

El derecho en el sistema jurídico refleja en sí mismo las aspiraciones de la legislatura y la sociedad su delimitación clara, precisa y justa, describiendo los parámetros del comportamiento posible y apropiado de los destinatarios de las normas privadas. Por otro lado, también es evidente la incapacidad o la falta de voluntad de someter la actividad judicial por cumplir y mantener esta determinación. Al mismo tiempo, se capta la evolución de las expectativas de la sociedad por una libertad mayor en las relaciones jurídicas-privadas.

Palabras Claves

Límites – Indefinición – Ley – Definiciones

The Regulatory Law System, on the one hand, reflects in itself the aspiration of the lawmaker and the society for a maximally clear, precise and unambiguous delineation of the parameters of the possible and appropriate behavior of the addressees of norms of private law. But, on the other hand, it is also evident in it the inability or unwillingness of the lawmaker to execute and maintain such definiteness. At the same time, there is perceptible the tendency of expectations of society to more freedom in the object of regulation of law.

The object of investigation is the indefiniteness, used by the lawmaker in structuring the linguistic expression of certain provisions of law through the use of evaluation concepts – good manners, conscientiousness, justice and others. These are the referred to in the theory as relatively defined norms of law.¹ Their characteristic concepts enable the assessment of the relevance of law of various circumstances relevant to the matter, which is subject to regulation of law.

In fact, there are various social relationships for the regulation of law, where applicable norms of law contain evaluation concepts, which largely makes them originally undefined, probabilistic. Indefiniteness enables, in the process of law enforcement, to be taken into account the details and legally relevant characteristics of each particular future interaction between subjects and to be achieved compliance with the law. This, in turn, implies the need for investigation of the possible options for behavior and their association with the relevant life situations.² The presence of a multitude of options for behavior of the addressees of norms of law, on the one hand, is in accordance with their desire for more freedom, but, on the other hand, implies various variants and this is also a prerequisite for indefiniteness. Through synergetics a multitude of options implies disarray.³ The dependence is obvious, as well as the association with the law and the regulation of law. It is established dependence, which is not in accordance with the purpose of the Regulatory Law System to be an effective social regulator. The objectification of some of them will be in literal accordance with the formally established one in law. Others will be within the limits established by the relevant regulation of law or beyond, which implies their mandatory precision. Such specificities burden the lawmaker to make these limits definable to achieve stable legislation by “transferring” this responsibility to the court that “... after consideration of the specific facts on the basis of freely formed conviction to order an equitable solution”.⁴

Synchronizing with the primary, basic, already established regulation of law is possible through the use of indefiniteness, achievable and overcomable through evaluation concepts. Actually indefiniteness in the law should be understood as anything other than an oxymoron. At first glance, a combination between law and the literal understanding of the meaning and significance of the word indefiniteness is not possible. Indefiniteness in law can be framed within certain limits, which actually makes it definiteness, enabling various variants of behavior, each in accordance with the philosophy of the law concerned and its content. In light of the foregoing, it is appropriate to talk about the limits of indefiniteness in law. They should coincide with the limits of the inner conviction of the court when considering

¹ . Вж. Вл. Петров, „Относително определени правни норми“, Сб. Право и език, С., 2010, Университетско издателство „Св. Климент Охридски“, 2010, 137-161; М. Павлова, Гражданско право, Обща част, второ преработено и допълнено издание, С., 2002, 115-116; И. Фаденхехт, Българско гражданско право. Обща част. Обективно право, С., 1929, 118-120.

² . Б. Спасов, Съставяне на правни нормативни актове, Издателска къща „Юриспрес“, С., 1999., с. 25

³ . Г. Хакен, Тайны природы (Синергетика: учение о взаимодействии), Москва 2003, с. 132

⁴ М. Павлова, Цит. Съч., с. 116.

and solving cases. Thus “...it is overcome within the discretionary power of the judge and according to the specific facts and circumstances of the case.”⁵

In legislation there can also be established another indefiniteness arising from the classical understanding of the legal measure. Law should become a project for the future development of social relationships.⁶ Its particularities will be the object of another investigation.

Indefiniteness has been associated with the use by the lawmaker of various evaluation concepts in the process of structuring the norms of law, intended to regulate the social relationships concerned. They are characterized by abstractness and lack of unambiguous definiteness for legally relevant different cases. But, on the other hand, the applicability enables them to investigate and reflect in the process of regulation of law all possible particularities of the respective social interaction, amenable and subject to regulation of law. This is definiteness enabling adaptability of law. One of the consequences of that is taking the utmost account of the interests of the addressees of these norms of law and achieving a clearly defined boundary between them, defensible by law, including expanding the parameters of their legal capacity for the specific legal relationships. This result will be inevitably mediated by other non-legal evaluation events – justice, purpose, freedom, etc., for the evaluation needed for the application of a norm of law containing an evaluative concept should be synchronized, in a system with meta-juridical phenomena in law, defining its characteristics.⁷

The use of evaluation concepts enables to be defined and adjusted the necessary relevant behavior of the addressees. The lawmaker is unable to provide all necessary actions and inactions in the presence of specific probable circumstances. However, it is possible, through the establishment of norms of law to “... show how legal entities should proceed in each specific situation, which is described along common lines within the norm of law.”⁸ Although that behavior is not specifically mentioned as possible or appropriate, the addressee of the norm of law turns out bound by the outcome of the evaluation process. For the specific situation – specific behavior is mandatory even though not mentioned in absolute terms. What objectively exists and cannot be formally provided, but can be expected if adequate to the evaluation concept, determines the possible and appropriate behavior, moreover, in terms of imperativeness. It cannot, however, be claimed these are imperative or dispositive norms in a classic form. Dispositive norms of law provide a choice to the legal entities between the behavior contained therein and the requirements of reality. Imperative norms indicate specific behavior, deviation from which is legally inadmissible. The norm of law containing an evaluative concept does not contain pre-defined mandatory behavior. According to R. Tashev, they are norms of law, characterized by indefiniteness, as a form of ambiguity, “deliberately created by the lawmaker in order to provide the judge's discretion in view of the specific circumstances of the case.”⁹ In its content there also lacks exemplary indicated behavior of its addressees, as well as the ability to choose the course of action or inaction. Under these norms of law there is a visible opportunity for evaluating the

⁵ Т. Колев, Дискреционна власт и вътрешно убеждение на съдията, Университетско издателство „Св. Климент Охридски“, София 2013, с. 236

⁶ Вж. Т. Колев, Теория на правотворческата дейност, Университетско издателство „Св. Климент Охридски“, С., 2006, с. 60.

⁷ Вж.Г. Бойчев, Правният институционализъм, Университетско издателство „Св. Климент Охридски“, С., 2009, 301-306.

⁸ Д. Радев, Обща теория на правото, Лик, С., 1997, с. 168.

⁹ Р. Ташев, Теория на тълкуването, С., Сиби, 2001, с. 147.

definiteness of the behavior of its addressees for future actions or inactions. In cases of established possibility of variability in behavior under dispositive norms of law, it is still bounded in a range of contained therein acceptable behavior as a legislative proposal.

When establishing norms of law containing evaluative concepts, the lawmaker has reasonable assumptions that in the process of law enforcement, there will occur a social interaction, the content of which was initially unable to be determined wholly or partially. At the same time their importance is taken into account, there has been proceeded to the use of evaluation concepts in the content of the system of norms of law, designed to achieve the regulation of law of the relevant kind of social relationships. Thus, any future behavior between predefined entities in connection with the specified objects of the legal reality,¹⁰ respectively, of the used evaluative concept, will be legally guaranteed. And its parameters are influenced by the specifics of the circumstances, which previously could not be specified in law. The effectiveness of the process of regulation of law depends on their specifics at the time of their establishment. Therefore, the lawmaker establishing such indefiniteness (impossibility of definiteness) uses the indefiniteness for regulation of the legally relevant social relationships. This means that the law contains two border components, on the one hand, definiteness, achievable through a formal identification of possible and appropriate behavior and, on the other hand, indefiniteness or, more precisely, definable indefiniteness. Thus, not referred but relevant to the process of law enforcement, actions and inactions can be made clearer through the particularities of the specific case and the used evaluation concept considering its relationship to the other legally relevant evaluation concepts.

Despite the positive conclusions relevant to the applicability of the relatively defined norms of law with the respective content, the presence of their inherent indefiniteness means there is a problem, set by the lawmaker.

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¹⁰ Вж. М. Станин, Обекти на правната действителност, Благоевград, Ираник, 2009

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