

HYPOTHESIS, DISPOSITION, AND SANCTION IN UZBEKISTAN'S LEGISLATIVE PRACTICE

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Abstract: *The article explores rational ways to balance the three elements of legal norms using cutting-edge technologies such as AI. One more time approved the inadmissibility of an imbalance between hypotheses, dispositions, and sanctions, or even the lack of one of them, is worse than for the prosperity of societal interests. The author stated that, despite electing the best minds to the representative body, this might not be sufficient to achieve a fully nationwide, balanced representation of diverse populations because of elected officials' political interests. Therefore, using AI in the lawmaking process might be the best way to secure a balanced legal act that serves societal interests. In addition, the article considers the possibility of paying attention to the use of mathematical methods in ensuring types of hypotheses, disposition, and sanction. For this reason, the author cited several currently active legal acts, urging the intellectual Uzbek community to consider those aspects of the lawmaking process.*

Keywords: *Hypothesis, disposition and sanction, a balance between elements of legal norms, a variety of dispositions, a rational rule-making, artificial intelligence in rule making, "legal maneuvering", prescriptive, prohibitive, and authoritative dispositions.*

INTRODUCTION

The rule of law is currently the normative model and the measure for evaluating democracy, since Law is the most rational regulator of social relations from a worldwide perspective. Law prevails as a guarantee for the peaceful and mutually beneficial coexistence of all subjects. By nature, law is a normative regulator; its social purpose is manifested in the regulation of life processes, i.e., in the conscious organization of order, its maintenance, preservation, and protection for the sake of the people, under the



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terms of people's sovereignty. (Maltsev. 2011. P.5). Therefore, law is usually established in the form of a legal act, code, or constitution. This is where critical questions arise: how do we establish our rights and duties so that they serve the common good equitably? In a spirit of distributive justice, how does law create equal opportunities for all to enjoy all benefits? How does law secure and not infringe on our civil and political liberties and our free will?

One of the most pertinent elements of Uzbekistan's legal theory tradition, as it has been formed in the long process of unification of the methods of the soviet socialist legal culture, is the assumption that norms of law consist (and should consist) of three integral structural elements: *hypothesis, disposition, and sanction*. In other words, there is a tripartition between ideological, material, and practical elements of the legal norm.

Due to the almost century-long operation of the socialist law family on the territory of Uzbekistan, the older and current middle generations take this approach to defining legal norms for granted. Nevertheless, there are several attempts to elaborate, with all necessary sophistication, a post-Soviet theory of the elements of the legal norm. It is difficult to agree with the verdict that a legal norm naturally consists of two elements: the establishment of conditions for the application of the norm and the formation of the norm itself (Korkunov, 2003, P.128) One can further dispute I.A. Mankovsky's statement on the need to revise the modern theory of the legal norm in favor of a two-element concept of its logical structure (Mankovsky, 2015, p. 61).

There is certainly a basis for the three-element thesis. After all, nature has created people in such a way that people want everything but cannot achieve everything. And since the desire to acquire is always greater than the corresponding opportunity, it is their dissatisfaction with their property and dissatisfaction with their position (Law of Uzbekistan "On the Safety of Hydraulic Structures" 2023).

In other words, the absence of sanctions in the law is fraught with abuses. The third structure (sanction) seems to serve to restrain a person's excessive desire to achieve everything, even at the expense of others' rights. We believe that, due to the historical legacy, the majority of approaches, not only in rulemaking but also in lawmaking in general, proceed from the norms of socialist law, in which the executive power was characterized by "command and

dictation". Consequently, the absence of a sanction for failure to comply with the disposition's prescriptions may, in most cases, lead to adverse consequences. Namely, abuse of the right.

However, we are going to analyze the issue of varieties of disposition and their impact on the rule of law itself. The disposition in most definitions is disclosed as a part of the norm, which indicates the content of the rule of behavior, that is, the legal rights and obligations attributed to the subjects (Krashennikov. 2011. P.8). The main legal technique of disposition is to provide individuals with various material public benefits, such as education, health care, social, and tax benefits (R. Dahl & c. Lindblom. 1969. P. 97).

We have metaphorically compared the disposition to the practice, i.e., to the executive power, while the hypothesis is similar to the legislative power, establishing ideological and purely theoretical issues in the norms of law, and in turn, the sanctions indicate measures of influence, which is comparable to the judicial power. Thus, recognizing the exceptional importance of all three structural elements, it is still worth noting the super importance of the competent construction of disposition. It can be defined as a structural element containing approved or censured by the state modes of behavior of subjects in the form of indication of permissions (subjective rights, legal freedoms, authority), legal duties, or normative exceptions (prohibitions, restrictions, in some cases legal benefits) (Ilalutdinov, 2013. P 157-158).

CORE ISSUE

The disposition can be characterized as a scale of proper behavior of subjects of social relations. Structurally correct construction of the disposition helps implement the norm effectively, as the disposition is the most practical part of the norm and serves to achieve its goals. By determining the legal model of behavior of the bearers of subjective rights and obligations, it is possible to determine the limits of the norm and predict its effectiveness. The disposition can be classified on various grounds, but in order to achieve the rational effect of the rule of law, it is necessary to balance the varieties of disposition by the degree of legal orientation.

Post-Soviet scientists have a wide range of views on this type of disposition. Thus, according to F.N. Fatkullin, by its legal

orientation, there are possible representative-binding, empowering, binding, authorizing, fixing, recommending, encouraging, granting benefits, prohibitive, and restrictive dispositions (Fatkullin F.N. 2003. P.237). Nevertheless, according to the formed theory of law, dispositions are of three types: prescription, prohibition, and authorization. Under current legal practice in Uzbekistan, the first and last types of disposition are compared with prohibition. And in general, the disposition itself has absolutely the largest part of the norm compared to other structural elements, which, in our opinion, is the reason for the low level of legal compliance with the norms of law, abuse of normative-legal acts, and still maintaining a fairly high level of corruption in the public-law sphere.

So, in order to avoid such negative consequences or at least to reduce the side effects of irrational rule-making, it is necessary to analyze the ratio of balances of structural elements of the norm of law and, even more precisely, the ratio of balances of disposition varieties - prescription, prohibition, and permission. According to our preliminary calculations, these types of dispositions should be in mathematical balance with about 55% prescription, 20% prohibition, and 25% permission. After all, excessive prescription can paralyze the executive power, which should effectively execute the norms of law, and vice versa, excessive permissiveness can lead to malfeasance.

The scope of permissible discretion in the enforcement of legal norms by officials should be limited to reasonable limits, especially given the peculiarities of Uzbek post-Soviet society. This percentage ratio was not chosen by chance; the smallest number of prohibitions is also aimed at creating more "space" for "legal maneuvering" of its executors, as well as the presence of prohibitive norms is justified by the prevention of excessive abuse of power, which is a kind of lever for compliance with the principle of legality. Consequently, each word should have a meaning understandable to all or have a clear legal description. It seems possible to develop a "formula" according to which the norms of prescription, prohibition, and permission have a proportional difference. Thus, the norms of prohibition should not outweigh the norms of permission and prescription. Besides, it is necessary to specify in the norm the mechanism of responsibility for non-fulfillment of norms of prescription, prohibition, and permission. This already concerns the sanction in the norms of law.

It should be emphasized that prescriptive norms constitute the bulk of the structure of a legal norm; therefore, they should be stated as clearly and easily as possible. The legislator should avoid declarative norms that do not create any obligations. Expressing the words of A.I. Ilaluddinov, recommendatory (permissive) dispositions are possible only in those norms that provide exclusively positive sanctions (Ilaluddinov, 2013, p. 154). Otherwise, it can become a subject of abuse of right. The statement of the norm in the disposition implies a duty for each member of society (Robert S. Summers, 1971, P. 733). Thus, we give examples from currently valid statutes:

a) according to the second part of Article 8 of the Law of the Republic of Uzbekistan "*On the State Border of the Republic of Uzbekistan*". The Cabinet of Ministers of the Republic of Uzbekistan is granted the right to implement and other powers in accordance with the legislation [8. Legal act] in matters of the state border, i.e., it is allowed to develop new rules outside this law regarding the establishment

b) Article 7 of the Law of the Republic of Uzbekistan "*On the Safety of Hydraulic Structures*" also states that "the Cabinet of Ministers of the Republic of Uzbekistan may exercise other powers in accordance with the legislation" [9. Legal act] or in the same norm of law it is established that "A specially authorized state body represented by the Inspectorate for Control over Safety of Water Management Facilities and Water Use under the Ministry of Water Management of the Republic of Uzbekistan in the implementation of state control and inspection of the safety of hydraulic structures may involve the user of a hydraulic structure, design and contracting organizations, as well as interested ministries and other republican bodies of executive power". Here one should pay attention to the word "may". In other words, when exercising control, the Inspectorate is not always obliged to involve the relevant bodies and agencies, but may do so only when necessary. That is, it is possible to involve them, or not to involve them, which depends on what "mood" the representatives of the Inspectorate will be in. Also, Article 9 states: A specially authorized state body may exercise other powers in accordance with legislation, including the Law of the Republic of Uzbekistan "*On the Safety of Hydraulic Structures*" (2023). That is, once again, the executive branch is authorized to act at its discretion, sometimes bypassing the law's goals and principles.

c) If the norms are established by the state in legislative acts, we believe that they should serve primarily in the interests of

society, not the state. As H. Kelsen notes, the social technique that we call "law" is to induce a person to certain actions or to refrain from interfering in the sphere of interests of others (Kelsen, 1941. P. 79-80). For example, in part two of Article 19 of the Law of the Republic of Uzbekistan "*On State Property Management*", which lists the public property not subject to privatization, it is established that by the decision of the President of the Republic of Uzbekistan to the state property not subject to privatization may be attributed other public property (Law of the Republic of Uzbekistan "*On management of state property*" 2023). In other words, the executive power leaves itself the possibility to further define, or rather expand, the list of such public property, so that such rulemaking can sometimes remain not transparent enough and bypass this law. We believe that such an approach will further strengthen executive power and, accordingly, diminish the legislature's power. And such a prospect will certainly disrupt the equilibrium of checks and balances among the branches of power. So, in the balance of varieties of dispositions in the norms of law lies the possibility of ensuring a clear distinction between the branches of power.

d) One more norm on the subject of correlation of permissive dispositions will be analyzed. However, in the Law of the Republic of Uzbekistan "*On Education*," which consists of 75 articles, there are more than 80 permissive norms. Thus, 10 norms use the word "may", 24 norms use the word "might", 9 use the word "entitled", and more than 40 norms use the word "or". For the sake of fairness, it is worth noting that not all of these permissive dispositions represent an imbalance between types of dispositions. We are interested in the extent to which public authority "pulls the blanket" over private law subjects. However, among these 80 permissive dispositional norms, it is allowed and not reasonably "taking into their hands" key issues on the part of the executive power, which in practice leads to the inhibition of the relevant sphere. For example, article 62 "State educational institutions have the right to independently dispose of funds received by them through the provision of paid educational and other services and engaging in entrepreneurial activities" (Law of the Republic of Uzbekistan "*On Education*" 2020). A fair question arises: What does "entitled" mean? And who else will dispose of the funds they have earned if not themselves? By asking such questions, we can tentatively answer them ourselves: it means that the central body of executive power (it may be the Cabinet of Ministers) does not want them (state educational institutions) to

independently dispose of funds. And in that case, they will not go forward! They are likely to lose interest and motivation to develop, as they do not have the opportunity to manage their funds independently. In addition, in this law, one can also find many formulations like "The Cabinet of Ministers of the Republic of Uzbekistan may exercise other powers in accordance with the legislation", while the law grants it 18 different powers to regulate the educational sphere. Also, the Inspectorate for Supervision of Education Quality has 6 extensive powers described in Article 24. In part three of the same article, it can exercise other powers in accordance with the legislation [Law of the Republic of Uzbekistan "On Education" 2020]. Here we are alarmed by the wording: "in accordance with the legislation", which implies regulation outside the norms and rules of the law in question, but at the subordinate level, based on the interests of the executive authorities. Consequently, any interpretation changes the law (Endicott, 2000, p. 179), in the sense that the decision goes beyond the semantic limits of the wording of the law (Matthias Klatt, 2008, p. 13).

All these formulations are of a permissive nature, testify to such a need to balance not only the hypothesis, the disposition, and the sanction, but also between the varieties of the disposition itself. Hence, the reason for the occurrence of a few effective laws in practice. Legal indeterminism may arise for many reasons, but one of the most prominent is vagueness of wording (Matthias Klatt, 2008. – P. 10).

If permissive dispositions on the one hand contribute to the resolution of various practical situations not provided for by the law, on the other hand, they form vague norms. At first glance, they seem harmless; however, they show that, in the norms of law, firstly, dispositions prevail over other structural elements, and, secondly, among them, the permissive disposition holds a significant place, thereby creating "convenience" for the executive authorities. And this is fraught with unfavorable consequences.

Theoreticians and legal scholars have developed the following opinions about prohibitive dispositions: According to A.V. Malko, "*the prohibition of a certain action is equivalent to the obligation not to commit a certain action*" (Malko, 1997. P. 5), i.e. the prohibition acts as an obligation to passively refrain from a particular behavior. We find such an approach in the works of S.S. Alekseev, who notes that on the regulatory side, prohibitions are expressed in legal obligations of passive content - obligations to refrain from committing actions of a certain kind (Alekseev, 1998,

pp. 205-206). Syrykh notes that prohibitive dispositions do not enshrine any rights; they establish only the obligation of citizens and other persons to refrain from committing prohibited actions.

Prohibitive dispositions are primarily contained in the norms of criminal and administrative legislation, which establish responsibility for committing crimes and administrative offenses (Syrykh, 2008, pp. 266-267). However, we do not agree with Syrykh's opinion; we believe that prohibitive dispositions are necessary in the norms of all branches of law, as an important element of the balance of the law's norms, leading to the achievement of their results, as mentioned earlier. Our opinion regarding prohibitive dispositions is as follows: this model of behavior is deliberately restricted, prohibited, and condemned by the legislator, and failure to comply with it may lead to the entry into force of another element of the legal norm, such as a sanction.

We can find confirmation of this statement in the works of Western researchers, who distinguish the prohibition as a prescription, formulated as an act or inaction, that should be eliminated under the usual conditions of the order supported by the law. The behavioral formula of a legal prohibition is expressed in the opposite, legally significant act of will and consciousness of a person. On the basis of the prohibition and its logic, the legislator constructs a protective norm, addressing it to the law enforcer (Clarence Morris, 1997, p. 577).

Conclusion

As some content analyses of legal acts have revealed, there are many issues in balancing the elements of legal norms and their sub-elements. It is significant to design workable laws to meet societal interests. For this reason, it might be appropriate to use AI to secure a strict balance among the sub-elements of legal norms.

1. As for the previously analyzed Law of the Republic of Uzbekistan "*On Education*", which consists of 80 permissible dispositions, most of which relate to the powers of the Cabinet of Ministers, as well as a special Inspectorate for supervision over the quality of education, but what actions are not allowed to be performed by these state bodies in the exercise of their powers in the field of education is not clearly defined, which suggests the

idea of providing unlimited opportunities to the Cabinet of Ministers or a special Inspectorate to interfere in the educational sphere. After all, the extra-legal rule "everything that is not forbidden is allowed" comes into effect. Perhaps it is the imbalance in the rule-of-law structure that leads to excessive bureaucracy and hinders the development of the education sector in the Republic of Uzbekistan in accordance with international standards.

2. Moving to analysis of another law, which, in our opinion, has a fairly good structure with compliance with the rules and norms of legal technique, and, most importantly, proportionality in the ratio of dispositional elements, we refer to the new edition of the Law "*On Competition*", which entered into force in October 2023. If we focus on prohibiting dispositions, Article 22 of this law contains prohibitive norms governing the actions or inaction of the republican executive authorities. 12 prohibiting dispositions in Article 1, very clearly and concisely define what the republican executive authorities cannot do, without the right to maneuver or circumvent the law, which in turn affects the implementation of this law and the achievement of the goals and objectives of this legal act.

Summarizing the analysis of prohibitive dispositions, it should be noted that the correct and balanced formulation of the prohibitive disposition is crucial in assessing the effectiveness and validity of legal norms. Thus, it should be noted that ensuring a balance among these elements of law is a pressing issue today.

This raises the question: how can this balance be ensured? Who is capable of monitoring this balance mathematically accurately, closely, and strictly? Surely it is not the task of man! A human being, with his feelings and personal and collective interests, can definitely not act as a "balance-keeper". In this matter, of course, it is important to have the will not only of the legislature but also of the public authorities in general to rely on artificial intelligence to control the meaning of the introduced words and wording in the draft rules of law. If we take into account that public authorities worldwide fully support and encourage the development of AI, we can observe a positive attitude towards this issue in industrialized countries. As for developing countries, especially those with a slow pace of development, where management is largely "manual," it is difficult to expect a positive attitude. We can assume that such a banal technical way will contribute to the quality of laws and the effective implementation of their norms. Consequently, the