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Legal Certainty in Substantive Law as a Condition for Effective Civil Proceedings: The Perspective of the European Court of Human Rights

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Abstract: Historically, the effectiveness of civil proceedings has been analyzed mainly through procedural guarantees; the case-law of the European Court of Human Rights, however, increasingly shows that the quality of substantive regulation also affects the practical effectiveness of judicial protection. Under conditions of normative instability and broad judicial discretion, legal certainty acquires systemic importance for the foreseeability of the law and for public trust in the justice system. Although the principle of legal certainty is well developed in the rule-of-law literature, its structural role as a precondition for effective civil adjudication remains insufficiently explored. This study seeks to demonstrate the fundamental significance of legal certainty in substantive law as a structural condition of civil proceedings, and to develop an account of the quality of substantive regulation as a precondition for the effective enjoyment of the right to a fair trial under Article 6 of the Convention. It applies the dogmatic and comparative methods, together with a structured interpretative analysis of case-law, and examines 180 judicial decisions: 120 judgments of the European Court of Human Rights (2000–2024) and 60 judgments of the highest courts of Poland, France, and Germany, supplemented by civil codes and statutes. The analysis shows that foreseeability, consistency of judicial practice, protection of legitimate expectations, legal stability, and the finality of judicial decisions operate as interdependent indicators of the normative quality of substantive law within the civil limb of Article 6, and that vagueness or internal inconsistency in substantive norms may render formally correct proceedings ineffective as a means of protecting rights.

Keywords: Article 6 of the Convention, civil proceedings, European Court of Human Rights, legal certainty, rule of law, substantive law

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1. Introduction

At the present stage in the transformation of legal systems, and with the growing authority of supranational standards, the significance of legal certainty as an element of substantive law and as a precondition for effective civil proceedings appears particularly acute. Inconsistent legislation, divergent judicial practice, and differing interpretations of the same rules deprive the parties to civil legal relations of any real opportunity to foresee the legal consequences of their conduct. In such conditions, the right to judicial protection formally remains intact, but its effectiveness diminishes because the benchmarks of substantive law are unstable. The case-law of the European Court of Human Rights (ECtHR) has developed standards of foreseeability, quality of law, and consistency of application; the systemic impact of those standards in the specific setting of civil proceedings has not, however, been sufficiently conceptualized. Anatoliy Kostruba emphasizes that the application of the law is itself the concrete realization of rights, linking the abstract guarantees of substantive law to practical outcomes in civil and other legal relations.[1]

The mutability of rule-of-law standards under conditions of institutional instability has also attracted attention in European legal scholarship, in the context of the European Court of Human Rights as guarantor of the stability of legal expectations and of foreseeability in the application of the law. Iain Cameron analyzes the Court's practice in conditions of rule-of-law backsliding and argues that the Court increasingly deploys legal certainty as a criterion of the quality of the national legal order.[2] In particular, the foreseeability of norms and the consistency of their interpretation are indicators of the legitimacy of state choices, especially in the area of judicial protection of civil rights.

A separate dimension of legal certainty concerns the individual's legitimate expectations in substantive legal relations. On this approach, the effectiveness of judicial protection is understood as depending on the stability of the legal regime. Mel Cousins argues that the requirement of legitimate expectations in the case-law of the European Court of Human Rights is simply one articulation of the requirement of legal certainty: a person must have a genuine opportunity to foresee the consequences of legal regulation.[3] The author shows that uncertainty in substantive law translates directly into adjudicative risk in a civil dispute.

Contemporary scholarship draws attention to the cultural and institutional implications of applying standards of certainty. A formally identical norm may mean different things depending on the legal tradition and on the way in which a judge reasons with it. Juan Garcia Blesa holds that certainty in European law is not inherent in the text but results from an intercultural process between the legal norm and its application.[4]

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1 Anatoliy V. Kostruba, "Law Enforcement as a Form of Realization of Right: Phenomenological Analysis Experience (Civilized Aspect)," *Revista de Derecho Civil* 5, no. 1 (2018): 177–90.

2 Iain Cameron, *The European Court of Human Rights and Rule of Law Backsliding* (Stockholm: Swedish Institute for European Policy Studies, 2023), 12.

3 Mel Cousins, "Legitimate Expectation and Social Security Law under the European Convention of Human Rights," *European Journal of Social Security* 23, no. 1 (2021): 24–43, https://doi.org/10.1177/1388262720961792.

4 Juan J. Garcia Blesa, "The Cultural Dimensions of Legal Certainty: A Study on the Use of Intercultural Knowledge in European Law-Application," *European Papers – A Journal on Law and Integration* 10, no. 2 (2025): 405–34, https://doi.org/10.15166/2499-8249/838.

The Court's standards will have real force only to the extent that the national court treats them as part of its own argumentative apparatus, which is crucial to the proper conduct of civil proceedings.

A considerable body of literature treats access to a court as an indicator of the effective protection of rights. Scholars point out that, even where norms are formally clear, the right of access to a court may be curtailed by unpredictable procedural obstacles. Mathieu Leloup analyzes recent case-law of the European Court of Human Rights on the right of access to a court and concludes that the Court increasingly examines not only the formal existence of procedures but also their functional adequacy.[5] This line of analysis links substantive legal certainty to the procedural effectiveness of civil justice.

The finality of judicial decisions and the reopening of cases following judgments of the European Court of Human Rights represent a further research perspective on legal certainty. The balance between the finality of a judicial decision and the restoration of a violated right is examined by Kostiantyn Pilkov, who observes that the mechanism for executing the Court's judgments may itself impair certainty, since reopening proceedings creates a tension between certainty and justice.[6] The author adds that a coherent approach to the review of decisions is a condition of trust in civil justice.

2. Literature Review

Doctrinal conceptions of legal certainty as a component of the rule of law have also developed in recent years. On this account, the principle is understood not merely as a standard with which addressees must comply, but as a structural element of the legal order itself, directed at the legislature and the courts. Oksana Shcherbanyuk et al. argue that the requirements of clarity, stability, and consistency must guide the application of the law, and advocate a systemic approach to implementing the principle; this provides a theoretical basis for assessing the case-law of the European Court of Human Rights in the field of civil proceedings.[7]

The institutional dimension of the problem is addressed in works on the functioning of the judiciary within the rule of law and, in particular, on judicial independence and the foreseeability of judicial practice. Linos-Alexandre Sicilianos points out that trust in the courts is built on consistency of reasoning and on a stable approach to the interpretation of the Convention.[8] Seen in this light, legal certainty emerges as a precondition of effective judicial protection, in civil cases as well. Present-day threats to legal

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5 Mathieu Leloup, "Not Just a Simple Civil Servant: The Right of Access to a Court of Judges in the Recent Case Law of the ECtHR," *European Convention on Human Rights Law Review* 4, no. 1 (2022): 23–57, https://doi.org/10.1163/26663236-bja10055.

6 Kostiantyn Pilkov, "Reopening Cases Following Judgments of the European Court of Human Rights: Room for a European Consensus?," *Access to Justice in Eastern Europe* 16, no. 4 (2022): 7–31, https://doi.org/10.33327/AJEE-18-5.4-a000415.

7 Oksana Shcherbanyuk, Vitalii Gordieiev, and Laura Bzova, "Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law," *Tribuna Juridică* 13, no. 1 (2023): 19–32, https://doi.org/10.24818/TBJ/2023/13/1.02.

8 Linos-Alexandre Sicilianos, *The Rule of Law and the European Court of Human Rights: The Independence of the Judiciary* (Strasbourg: Council of Europe, 2020).

certainty are bound up with digitalization and with changes in the social environment. Scholars point out that new fields of regulation give rise to zones of heightened uncertainty. Mart Susi treats foreseeability as a dynamic phenomenon, arguing that the threshold of certainty is not fixed, and shows that the European Court of Human Rights is faced with the need to strike a balance between flexibility in legal regulation and the requirement of sufficient clarity, which matters for the interpretation of substantive norms in civil disputes.[9]

Theoretical and applied treatments of foreseeability in the Court's practice are found in studies of the principle of *lex certa*, which help to specify the content of the requirement of certainty. Mario Truu shows that the Court assesses not only the formal existence of a norm but also its capacity to give the individual an adequate understanding of the limits of permitted conduct.[10] Although that analysis is devoted mainly to criminal law, the approach also holds for civil proceedings, where the foreseeability of substantive law is of crucial importance. Studies of the mechanisms for resolving conflicts of norms in the Court's case-law bring out the systemic aspect of the question, examining how the Court resolves contradictions between norms and secures their coherent application. Johan Wibye concludes that the conflict-resolution strategy in the practice of the European Court of Human Rights serves to reduce legal uncertainty and to safeguard the stability of the legal order.[11] This is closely linked to the effectiveness of civil proceedings, since the coherence of the Court's standards provides reference points for national courts.

Although there is a substantial literature on the principle of legal certainty and its place in the structure of the rule of law, that literature tends to treat the category piecemeal so far as its effect on the effectiveness of civil proceedings is concerned: most works adopt either a general theoretical perspective on certainty as a property of law or a review of the Court's case-law in criminal and public law.[12] Much less developed is the question of how the requirements of foreseeability, stability of legal positions, and consistency of adjudication translate into specific demands on the content of the norms applicable in civil cases. Nor has the interdependence between substantive certainty and procedural effectiveness yet been systematized, in particular, as regards the consequences of legal uncertainty for access to a court, the stability of judicial decisions, and trust in the administration of justice.

The purpose of this study is to provide a theoretical account of legal certainty in substantive law as a structural precondition for effective civil proceedings, and to develop

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9 Mart Susi, "On Foreseeability and Non-Foreseeability," in *The Non-Coherence Theory of Digital Human Rights*, (Cambridge: Cambridge University Press, 2024), 196–202, https://doi.org/10.1017/9781009407717.020.

10 Mario Truu, "The European Court of Human Rights and the Principle of Foreseeability (Lex Certa and Stricta): How to Determine Whether an Offence Is Clearly Defined in Criminal Law," *Juridica International* 31 (2022): 98–110, https://doi.org/10.12697/JI.2022.31.07.

11 Johan V. Wibye, "Incompatible or Impossible-Legal Conflict Resolution at the European Court of Human Rights," *Human Rights Law Review* 25, no. 4 (2025): ngaf034, https://doi.org/10.1093/hrlr/ngaf034.

12 Anatolii N. Balashov et al., "Risks of Social Communications of Public Administrative Bodies with Regard to Manifestations of Corruption," *Academic Journal of Interdisciplinary Studies* 9, no. 6 (2020): 239–51, https://doi.org/10.36941/ajis-2020-0128.

a conceptual model of the relationship between the quality of substantive regulation and the realization of the right to a fair trial in the light of the standards of the European Court of Human Rights.

The specific objectives are as follows: to elucidate the content of legal certainty as an aspect of the rule of law and to identify its functional connection with the effectiveness of civil proceedings; to systematize the approaches of the European Court of Human Rights to the interpretation of foreseeability, consistency of judicial practice, protection of legitimate expectations, and legal stability in the context of Article 6 of the Convention; to determine the conditions under which vagueness or inconsistency in substantive regulation results in a violation of the right to a fair trial; and to formulate general criteria for assessing the quality of substantive law and to propose a model of the interdependence between the level of legal certainty and the effectiveness of civil justice.

3. Materials and Method

The study was carried out between 2024 and 2026 and consists in a legal analysis of the relationship between the legal certainty of substantive regulation and the effectiveness of civil proceedings in the light of Article 6 of the Convention. The dogmatic method was used to clarify the content of legal certainty as a structural element of the rule of law and to analyze the normative provisions of civil legislation. Legal interpretation served to reconstruct the meaning of foreseeability, consistency of judicial practice, protection of legitimate expectations, legal stability, and the finality of judicial decisions.

The case-law component consisted in reconstructing the reasoning of the European Court of Human Rights on the quality of substantive law and the proper limits of judicial interpretation. The comparative component examines how the highest national courts of selected continental European states have applied the Court's standards in civil justice. The study does not rely on quantitative statistical modeling, since its subject-matter is normative quality and judicial reasoning. The sample was assembled in three stages on the basis of transparent inclusion and exclusion criteria.

The first block consists of judgments of the European Court of Human Rights taken from the official HUDOC database. The database was searched using the terms foreseeability, legal certainty, consistency, legitimate expectations, and finality, the search being restricted to Grand Chamber and Chamber judgments concerning Article 6 in its civil limb. Judgments delivered between 2000 and 2024 were selected where the reasoning on the quality of substantive regulation was substantial. The year 2000 was chosen as the lower limit because it is around that point that the Court's "normal" approaches to the doctrine of foreseeability and to the stability of judicial practice became settled.

The following were excluded from the sample: inadmissibility decisions; repetitive cases in which the Court merely reiterates an earlier finding without further reasoning; cases concerning procedural violations alone (length of proceedings, execution of judgments, and the like) with no discussion of the quality of substantive law; and cases in which the substantive aspect was mentioned only in passing and played no part in the reasoning. Separate opinions were included only where they contained a conceptual

critique of the majority's approach to legal certainty. This left 120 judgments, covering the principal lines of interpretation of Article 6 in its civil aspect from the earliest decisions onwards and permitting stable doctrinal trends to be identified.

To minimize the risk of omissions, the search was repeated with alternative combinations of keywords, and the judgments selected were verified through citation tracing in HUDOC. Although the strategy was designed to be exhaustive within its predefined inclusion criteria, it cannot be excluded that marginal cases were not indexed under the search parameters chosen. The second block comprises 60 judgments of the highest courts of Germany, France, and Poland, taken from the official registers of judicial decisions of those states. These legal systems were selected because they represent different models of judicial review and different degrees of institutional integration of the Court's case-law. The inclusion criteria were: reference to the practice of the European Court of Human Rights; analysis of the foreseeability of a substantive norm or of inconsistency in its interpretation; and a connection with civil legal relations.

The third block is made up of the civil codes of the states concerned, in their draft and current versions, together with legislative amendments prompted by findings of a violation of the Convention. Explanatory memoranda to draft laws and decisions of the constitutional courts were also analyzed where they contained explicit assessments of problems of legal certainty. All normative materials were obtained from official sources and are publicly verifiable. A corpus constructed in this way allows the stable doctrinal tendencies of the Court in assessing the quality of substantive law as a structural precondition for effective civil proceedings to be identified.

4. Results

4.1. Doctrinal Criteria of the Legal Certainty of Substantive Law in the Case-Law of the ECtHR: Systematization and Evolution of Approaches (2000–2024)

The Court's inquiry moves from the formal finality of decisions towards a holistic assessment of the foreseeability of the norm, the consistency of judicial practice, and the protection of legitimate expectations. In the first phase, the Court treats interference with final decisions as eroding legal certainty by undermining the principle of res judicata. In *Brumărescu v. Romania*, it held that a final judgment must not be interfered with: "the interference with a final judgment is closely linked to the failure to respect legal certainty and thus, in fact, to the undermining of the effectiveness of judicial protection, which triggers the operation of Article 6."[13] Later judgments refined this position, notably *Ryabykh v. Russia*, which held that excessive discretion on the part of the State authorities in reviewing cases is incompatible with the requirements of legal certainty. The substantive quality of the norm, as it is now understood, was not yet in play; but by approaching

[13] ECtHR Judgment of 28 October 1999, Case Brumărescu v. Romania, application no. 28342/95, https://hudoc.echr.coe.int/eng?i=001-58337.

the issue through the stability of the parties' legal position, the Court sowed the seeds of the later concern with the quality of regulation.[14]

The second stage involves a turn to conflicting judicial practice, treated as an independent source of uncertainty. In *Beian v. Romania* (no. 1) and *Ştefănică and Others v. Romania*, the Court held that a long-standing and unresolved divergence in the understanding of a substantive norm between different chambers of a national court makes the outcome of a dispute unpredictable.[15] For the first time, consistency of judicial practice was articulated as a component of legal certainty. The same approach appears in *Nejdet Şahin and Perihan Şahin v. Turkey*, where the Court set out the permissible limits of pluralism in judicial interpretation.[16]

The third stage combines the criteria of foreseeability and legitimate expectations: the foreseeability of the outcome of a dispute is made to depend on the quality of the substantive law. In *Sovtransavto Holding v. Ukraine* and *Păduraru v. Romania*, the European Court of Human Rights held that where the normative framework permits conflicting interpretations and there is no mechanism for harmonizing judicial practice, individuals cannot reasonably foresee the legal consequences of their conduct.[17] In *Unédic v. France*, the Court held that a departure from established case-law without sufficient justification defeats the parties' legitimate expectations.[18]

After 2010, the Court's reasoning takes on a systemic character. In *Lupeni Greek Catholic Parish and Others v. Romania*, *Zubac v. Croatia*, and *Xero Flor w Polsce sp. z o.o. v. Poland*, legal certainty is described as a composite standard encompassing the quality of the norm, the stability of its interpretation, and institutional foreseeability. Instability of substantive regulation is treated not as an isolated legislative defect but as something capable of turning a properly designed procedure into an ineffective mechanism for the protection of rights.[19] Systematizing the Court's reasoning yields five doctrinal criteria for assessing the quality of substantive law, which are summarized in Table 1.

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14 ECtHR Judgment of 24 July 2003, Case Ryabykh v. Russia, application no. 52854/99, https://hudoc.echr.coe.int/eng?i=001-61261.

15 ECtHR Judgment of 6 December 2007, Case Beian v. Romania, application no. 30658/05, https://hudoc.echr.coe.int/eng?i=001-83822; ECtHR Judgment of 2 November 2010, Case Ştefănică and Others v. Romania, application no. 38155/02, https://hudoc.echr.coe.int/fre?i=002-710.

16 ECtHR Judgment of 20 October 2011, Case Nejdet Şahin and Perihan Şahin v. Turkey, application no. 13279/05, https://hudoc.echr.coe.int/eng?i=001-107156.

17 ECtHR Judgment of 25 July 2002, Case Sovtransavto Holding v. Ukraine, application no. 48553/99, https://hudoc.echr.coe.int/eng?i=001-60634; ECtHR Judgment of 1 December 2005, Case Păduraru v. Romania, application no. 63252/00, https://hudoc.echr.coe.int/fre?i=001-71444.

18 ECtHR Judgment of 18 December 2008, Case Unédic v. France, application no. 20153/04, https://hudoc.echr.coe.int/eng?i=001-90353.

19 ECtHR Judgment of 29 November 2016, Case Lupeni Greek Catholic Parish and Others v. Romania, application no. 76943/11, https://hudoc.echr.coe.int/eng?i=001-169054; ECtHR Judgment of 5 April 2018, Case Zubac v. Croatia, application no. 40160/12, https://hudoc.echr.coe.int/fre?i=001-181821; ECtHR Judgment of 7 May 2021, Case Xero Flor w Polsce sp. z o.o. v. Poland, application no. 4907/18, https://hudoc.echr.coe.int/fre?i=001-210065.

Table 1. Doctrinal criteria for assessing the legal certainty of substantive law in the case-law of the ECHtR (2000–2024)

Criterion	Substantive content	Legal consequence of violation
Foreseeability	The norm enables a person to reasonably foresee the legal consequences of his or her conduct; absence of internal contradictions.	Unpredictable outcome of the dispute; violation of Article 6 of the Convention
Consistency of judicial practice	Stability and coherence in the interpretation of a substantive norm by higher courts; existence of a harmonization mechanism	Systemic uncertainty; discretionary unpredictability
Protection of legitimate expectations	Prohibition of abrupt and unjustified departure from established case-law; protection of trust in the legal order	Violation of the principle of trust; undermining of the effectiveness of judicial protection
Stability and finality	Inadmissibility of arbitrary reopening of final judgments; respect for *res judicata*	Erosion of legal stability
Limits of judicial interpretation	Prohibition of extensive interpretation going beyond the text of the norm; foreseeability of judicial reasoning	Excessive discretion; absence of legal certainty

Source: Compiled by the authors on the basis of ECtHR judgments (European Court of Human Rights, 1999, 2002, 2003, 2005, 2007, 2008, 2010, 2011, 2016, 2018, 2021).

The answer to the research problem thus becomes clear: legal certainty in substantive law is not an optional extra but a precondition of effective civil proceedings. The Court does not confine itself to assessing procedure; it examines the quality of the norm itself and the stability with which it is understood. The evolution of approaches identified above confirms that instability in substantive regulation, or in its judicial interpretation, may render an ostensibly fair procedure ineffective as a means of protecting rights.

4.2. Substantive Uncertainty as a Factor of Ineffectiveness of Civil Proceedings: Typology of Violations and Mechanisms of Their Emergence

The Court's reasoning consistently shows that formally unimpeachable proceedings fall short of effectiveness where the substantive norm admits of inconsistent meanings or where its operation depends on an uncontrolled exercise of discretion.

In *Sovtransavto Holding v. Ukraine* the European Court of Human Rights linked interference by the State authorities in a corporate dispute to the absence of a stable legal regime, which deprived the applicant of any possibility of relying on a foreseeable outcome.[20] In *Păduraru v. Romania*, substantive uncertainty took the form of conflicting decisions on property rights. The applicant was left for many years in a state of uncertainty which, on the Court's reasoning, went to the heart of the right of access to a court.[21]

[20] ECtHR Judgment of 25 July 2002, Case Sovtransavto Holding v. Ukraine, application no. 48553/99, https://hudoc.echr.coe.int/eng?i=001-60634.

[21] ECtHR Judgment of 1 December 2005, Case Păduraru v. Romania, application no. 63252/00, https://hudoc.echr.coe.int/fre?i=001-71444.

The further development of the doctrine shows that what is essential in the ineffectiveness of justice is not necessarily pluralism of interpretation but the absence of an institution competent to harmonize it. In *Beian v. Romania* (no. 1), the applicant maintained that justice had been ineffective because of a divergence of interpretation.[22] The Court itself found that an enduring and unremedied divergence of practice in the supreme court's case-law caused systemic unpredictability. The same conclusion was reached in *Nejdet Şahin and Perihan Şahin v. Turkey*, where the Court was more precise: "Pluralism in judicial interpretation can be tolerated only in so far as it is accompanied by some mechanism for harmonization."[23] Stated in this way, substantive uncertainty is transformed into a violation of Article 6 through certain channels, which may be typologized (Table 2).

Table 2. Typology of the mechanisms by which substantive uncertainty is transformed into violations of Article 6 of the Convention

Type of violation	Mechanism of emergence	Consequence for the effectiveness of proceedings
Conflicting judicial practice	Absence of harmonization in the interpretation of a substantive norm	Unpredictability of the outcome of the dispute
Retrospective interpretation	Change of interpretation after the legal relationship has arisen	Violation of legitimate expectations
Arbitrary reopening of a final decision	Absence of stability of the parties' legal position	Destruction of the principle of finality
Vagueness of normative construction	Ambiguity or gaps in the substantive norm	Excessive judicial discretion
Institutional fragmentation	Divergent approaches of different chambers without coordination	Systemic legal uncertainty

Source: Compiled by the authors on the basis of ECtHR judgments (European Court of Human Rights, 1999, 2002, 2003, 2005, 2007, 2008, 2010, 2011, 2016, 2018, 2021).

Particular attention must be paid to the mechanism of retrospective interpretation. In *Unédic v. France*, the European Court of Human Rights held that an unexpected change of approach unaccompanied by an adequate transitional period defeats the parties' legitimate expectations.[24] Similar reasoning appears in *Lupeni Greek Catholic Parish and Others v. Romania*: the prolonged absence of a settled approach to an underlying norm

[22] ECtHR Judgment of 6 December 2007, Case Beian v. Romania, application no. 30658/05, https://hudoc.echr.coe.int/eng?i=001-83822.

[23] ECtHR Judgment of 20 October 2011, Case Nejdet Şahin and Perihan Şahin v. Turkey, application no. 13279/05, https://hudoc.echr.coe.int/eng?i=001-107156.

[24] ECtHR Judgment of 18 December 2008, Case Unédic v. France, application no. 20153/04, https://hudoc.echr.coe.int/eng?i=001-90353.

left the parties at a disadvantage.[25] Of particular importance is Zubac v. Croatia, in which the European Court of Human Rights distinguished between the lawful development of judicial practice and impermissible unforeseeable interpretation: a mere change of approach does not automatically constitute a violation; a breach occurs where the interpretative development is not sufficiently objective or is not foreseeable on the basis of the earlier case-law.[26] The dividing line between lawful development and breach is therefore drawn by reference to foreseeability.

Substantive uncertainty has a cumulative effect. Where a norm is vague, the courts acquire greater discretion. Where that discretion is not counterbalanced by harmonizing mechanisms, conflicting case-law results. Where conflicting practice persists over time, structural unpredictability arises. In such a situation, even procedurally correct proceedings do not guarantee effective protection. This mechanism may be represented as a logical model. The model is reconstructed by generalizing the Court's reasoning in the cases selected (Table 3).

Table 3. Logical model of the impact of substantive uncertainty on the effectiveness of civil proceedings

Level	Manifestation of uncertainty	Effect
Normative	Vague or contradictory substantive norm	Expanded judicial discretion
Interpretative	Absence of stable judicial practice	Unpredictability of outcome
Procedural	Formal correctness without substantive foreseeability	Loss of effectiveness of protection
Institutional	Decline of trust in the legal order	Undermining of the rule of law

Source: Compiled by the authors.

Substantive uncertainty is thus not merely a remediable legislative defect. It is capable of producing systemic ineffectiveness in the administration of justice, in which the parties' expectations as to the outcome of a dispute depend not on the law but on shifting interpretation. That is the central point of this subsection.

4.3. Comparative Implementation of Legal Certainty Standards: The Response of Germany, France, and Poland and the Formation of a Conceptual Model

The comparative analysis reveals different institutional paths by which the standards of legal certainty developed by the European Court of Human Rights are embedded in domestic law. Common anchor points can be traced in all three legal orders, but the instruments used to embed those standards in substantive law, the methods of constraining judicial discretion so as to comply with them, and the techniques used to stabilize judicial practice all differ in significant ways. This matters for civil procedure, since it determines whether

[25] ECtHR Judgment of 29 November 2016, Case Lupeni Greek Catholic Parish and Others v. Romania, application no. 76943/11, https://hudoc.echr.coe.int/eng?i=001-169054.

[26] ECtHR Judgment of 5 April 2018, Case Zubac v. Croatia, application no. 40160/12, https://hudoc.echr.coe.int/fre?i=001-181821.

foreseeability becomes the practical predictability of the outcome of a dispute and whether consistency of judicial practice becomes a reproducible standard of adjudication in similar legal relationships.

In the sample examined, the Court's judgments served not as background authority but as a matrix of criteria for assessing how national courts resolve the core issues: what limits to interpretation are permissible, when an expectation is legally relevant, how practice is stabilized, and under what conditions the reopening of a final judgment ceases to threaten legal certainty. The Court's reasoning on finality and res judicata in *Brumărescu v. Romania*, developed in *Ryabykh v. Russia*, was used as a control on national reasoning about the conditions required for the stability of the parties' legal position.[27] The line of cases on conflicting practice served as a touchstone for assessing whether national systems possess mechanisms to neutralize divergences, and how those mechanisms operate in private-law disputes.

The German block reveals a structural commitment to normative certainty, combining the systematic structure of the Bürgerliches Gesetzbuch with the constitutional requirement of determinacy. Analysis of the Bürgerliches Gesetzbuch in its currently consolidated version shows that codification technique is the primary means by which foreseeability is achieved, judicial practice stabilizing it through the disciplined elaboration of doctrinal constructions.[28] The chosen judgment of the Bundesgerichtshof in case No. VII ZR 67/11 is said to show, through the protection of trust in a private-law dispute, how a test is constructed for the legitimacy of expectations and for the extent to which the parties may adjust their legal position when interpretation or practice changes.[29] It reflects the logic of the Court in *Unédic v. France*: an abrupt and unexplained departure from established practice puts legitimate expectations at risk. The German model, however, concentrates on the lawfulness of the transition and on the foreseeability of its consequences for the party, rather than on a declaratory invocation of the principle as such.[30]

The constitutional dimension is illustrated by the judgment of the Bundesverfassungsgericht,[31] which employed the Bestimmtheitsgebot as a test of the quality of the substantive norm and as a safeguard against unacceptable judicial discretion. Within our sample this decision reflects a distinctive feature of the German response, namely that the legal quality of the substantive norm is treated as a prior condition of effective judicial protection rather than as a matter for ex post assessment of the procedural outcome. This accords with the conception, traceable in the Court's approach to systemic inconsistency

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27 ECtHR Judgment of 28 October 1999, Case Brumărescu v. Romania, application no. 28342/95, https://hudoc.echr.coe.int/eng?i=001-58337; ECtHR Judgment of 24 July 2003, Case Ryabykh v. Russia, application no. 52854/99, https://hudoc.echr.coe.int/eng?i=001-61261.

28 *Bürgerliches Gesetzbuch (BGB)*, zuletzt geändert durch Art. 2 des Gesetzes vom 4. Februar 2026, *BGBl. 2026 I Nr. 33*, https://www.gesetze-im-internet.de/bgb/BJNR001950896.html.

29 Bundesgerichtshof (BGH), Urteil vom 22. Dezember 2011, VII ZR 67/11, https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=22.12.2011&Aktenzeichen=VII%20ZR%2067/11.

30 ECtHR Judgment of 18 December 2008, Case Unédic v. France, application no. 20153/04, https://hudoc.echr.coe.int/eng?i=001-90353.

31 Bundesverfassungsgericht (BVerfG), Beschluss des Ersten Senats vom 1. Oktober 2025, 1 BvR 2428/20, BVerfGE 173, 402, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2025/10/rs20251001_1bvr242820.html.

in *Beian v. Romania* (no. 1) and *Ştefănică and Others v. Romania*, that a defect in the quality of the law may deprive proceedings of their efficacy as a mechanism of protection.[32] Access to official databases of higher-court decisions was also found to form part of foreseeability in a practical sense: a stable channel of publication and reproducible legal positions, such as those in the Bundesgerichtshof database, help to reduce the risk of "hidden" standards and to promote consistency in the application of substantive law.

The French block confirms a different configuration: the legal certainty of substantive law is secured through the quality of legislation and through the doctrine of *sécurité juridique* and is not confined to codification technique. Analysis of the Code civil in its consolidated version shows that the architecture of the code itself provides a basic level of foreseeability, while the key protections against uncertainty come from constitutional jurisprudence and cassation practice.[33] Decision No. 99–421 DC established the accessibility and intelligibility of the law as objective requirements of law-making.[34] In the sample analyzed, that standard performs the function of a first-level control on substantive law: where a norm is unclear, its application depends on extensive interpretation, which over time increases the risk that the outcome of a dispute will be unpredictable. Decision No. 2012–647 DC further clarified the requirement of *normativité*, that is, the capacity of a provision to produce determinate legal consequences.[35]

The cassation dimension is represented by the decisions of the Cour de cassation in cases No. 166 F-P+B and Chambre civile 2, in which *sécurité juridique* was invoked against disruptive changes in case-law or in modes of interpretation that would upset a private-law transaction.[36] In terms of internal logic, legal certainty in the French material reflects a balance between the continuing development of the law and the protection of trust in a stable legal regime. This corresponds to the Court's approach to legitimate expectations, as also seen in *Unédic v. France*, while illustrating the specificity of the French model: much of the stabilizing function is entrusted to cassation practice rather than to the text of the norm.[37]

The positions of the courts can be verified in practice through the case-law published on Légifrance. Within the sample, the accessibility of decisions and the reproducibility of reasoning are related to consistency in the Convention sense in so far as they reduce the scope for uncoordinated local departures. The Polish block reveals a close association

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32 ECtHR Judgment of 6 December 2007, Case Beian v. Romania, application no. 30658/05, https://hudoc.echr.coe.int/eng?i=001-83822; ECtHR Judgment of 2 November 2010, Case Ştefănică and Others v. Romania, application no. 38155/02, https://hudoc.echr.coe.int/fre?i=002-710.

33 Parlement Français, *Code civil des Français. Version consolidée au 27 février 2026*, https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/.

34 Conseil constitutionnel, décision n° 99–421 DC du 16 décembre 1999, cons. 13, https://www.conseil-constitutionnel.fr/decision/1999/99421DC.htm.

35 Conseil constitutionnel, décision n° 2012–647 DC du 9 août 2012, https://www.conseil-constitutionnel.fr/decision/2012/2012647DC.htm.

36 Cour de cassation, deuxième chambre civile, arrêt n° 166 F-P+B du 7 février 2019, pourvoi n° H 17–27.099, https://www.legifrance.gouv.fr/juri/id/JURITEXT000038137071; Cour de cassation, deuxième chambre civile, arrêt de 2022, https://www.legifrance.gouv.fr/juri/id/JURITEXT000045939949.

37 ECtHR Judgment of 18 December 2008, Case Unédic v. France, application no. 20153/04, https://hudoc.echr.coe.int/eng?i=001-90353.

between legal certainty and the constitutional principle of citizens' trust in the State and the law, and hence a greater sensitivity to the stability of judicial practice. Examination of the Kodeks cywilny in its current text confirms the codificatory basis of substantive regulation, but the keys to giving effect to legal certainty are found in the practice of the Constitutional Tribunal and of the Supreme Court.[38]

The decision of the Trybunał Konstytucyjny linked legal certainty directly with trust in the State and the stability of legal regulation.[39] Within the sample examined, this approach establishes a normative presumption: the law must be such that its addressee can plan his or her conduct, and changes of regime require foreseeable transitional mechanisms. In terms of the Convention criteria, this standard is structurally close to legitimate expectations. At the same time, a tension around the consistency of judicial practice can be observed in the Polish material. The resolution of the Sąd Najwyższy represents an attempt to develop the principle of legal certainty explicitly, as a basis for stabilizing interpretation and for limiting abrupt departures capable of generating unpredictability in civil transactions.[40] An official database of recent decisions ensures accessibility; accessibility alone, however, does not neutralize the risk of divergence where an effective harmonization mechanism is lacking – which, in Convention terms, is the core of the problem.

The Polish block also includes the Court's judgment in *Xero Flor w Polsce sp. z o.o. v. Poland*, which for present purposes shows that institutional deficiencies may manifest themselves in the requirement of a "tribunal established by law" and may affect foreseeability and confidence in the justice system.[41] This does not displace the analysis of substantive law; it shows that legal certainty in substantive law does not arise in a vacuum but depends on the institutional quality of the application of the law.[42]

Comparison of the three legal systems allows the conclusion that the implementation of the standards of foreseeability, consistency, legitimate expectations, stability and finality is organized around different "centers of gravity." In Germany, certainty is built around constitutional review of the quality of the provision and a strict disciplining of the limits of discretion. In France, it rests on the formal requirement of legislative quality and on the stabilizing effect of cassation practice in private-law transactions. In Poland, certainty is built around the concept of trust in the State and the law, and particular importance attaches to the stabilization of judicial practice itself. A concise comparison of the key parameters of implementation is set out in Table 4.

38 Civil Code of 23 April 1964, Journal of Laws 2025, item 1071, as amended, https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19640160093/U/D19640093Lj.pdf.

39 Polish Constitutional Tribunal, Judgment of 19 December 2002, Ref. No. K 33/02, https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/5617-mienie-zabuzanskie.

40 Polish Supreme Court, Judgment of 7 November 2025, Ref. No. II NSNc 300/24.

41 ECtHR Judgment of 7 May 2021, Case Xero Flor w Polsce sp. z o.o. v. Poland, application no. 4907/18, https://hudoc.echr.coe.int/fre?i=001-210065.

42 Ibid.

Table 4. Comparative models of implementation of legal certainty standards in Germany, France, and Poland

Jurisdiction	Normative "anchor" of foreseeability	Mechanism of consistency of judicial practice	Instrument of protection of legitimate expectations	Barrier against excessive discretion	Typical risk point for the effectiveness of civil proceedings
Germany	Codification systematics of the BGB and determinacy of the provision	Reproducible legal positions of higher courts, accessible in the official database	Test of trust (Vertrauensschutz) in private-law disputes	*Bestimmtheitsgebot* as constitutional review of the norm	Risk arises in cases of extensive interpretation exceeding the determinacy of the provision.
France	Requirement of accessibility, intelligibility, and *normativité* of the law	Stabilization through cassation practice reproduced on Légifrance	*Sécurité juridique* as an argument against disruptive *revirement*	Review of legislative quality and discipline of reasoning in cassation	Risk arises in cases of abrupt change of practice without transitional mechanisms.
Poland	Principle of trust in the State and the law in constitutional jurisprudence	Attempts at harmonization through officially published positions of the Supreme Court	Derivative protection of legitimate expectations through trust and regime stability	Limitation of discretion through the constitutional standard of trust and requirements of certainty	Risk arises in cases of prolonged divergences in practice and weak harmonization mechanisms.

Source: Compiled by the authors on the basis of Conseil constitutionnel (1999, 2012), Bundesgerichtshof (2011), Trybunał Konstytucyjny (2002), Cour de cassation (2019, 2022), European Court of Human Rights (2003, 2007, 2008, 2010, 2011, 2016, 2018, 2021), Bundesverfassungsgericht (2025), Sąd Najwyższy (2025), Sejm of the Republic of Poland (2026), Parlement Français (2026).

The comparative study confirms that the reception of the Court's standards cannot be a matter of formally citing its judgments. It depends on whether the parameters of legal certainty are given effect by domestic mechanisms: constitutional review of the quality of the norm, stabilization through cassation, procedures for harmonizing approaches, and guarantees of the accessibility and reproducibility of case-law. It is this institutional "architecture" that makes a substantive norm genuinely foreseeable to its addressee, rather than merely determinate in theory.

On the basis of the systematization of the Court's reasoning (Section 4.1) and the typology of mechanisms of violation (Section 4.2), a conceptual model can be formulated in which the legal certainty of substantive law appears as a precondition for effective civil proceedings. The model is not intended to displace analysis based on precedent; it presents in a different form something already visible in that analysis – a general doctrinal construction that can be reproduced across legal systems. The first component of the model is normative: it captures the quality of the substantive norm as it bears on foreseeability. In each of the jurisdictions examined, this component manifests itself differently, through codificatory systematics and through the constitutional model of legislative quality.

The second component is interpretive. It consists in the requirement of consistency of judicial practice, which ensures that the same substantive norm yields similar results when applied to similar disputes. The observable marker of this component is the situation described by the Court as a systemic divergence that domestic mechanisms have failed to remedy. The third component is protective. It consists in the effective protection of legitimate expectations, requiring that changes in the application of the rules should not destroy the parties' trust in the stability of the legal regime. At the level of the Convention this component is captured by the prohibition of abrupt and unfounded breaks with case-law; in national systems it takes the form of Vertrauensschutz in Germany,[43] *sécurité juridique* in France,[44] and the principle of trust in Poland.[45]

The fourth component is stabilizing. It comprises stability and finality, that is, the protection of the finality of judicial decisions as a condition of legal certainty and as a barrier against the continual "restarting" of disputes. Its basic formulation is found in the Court's case-law[46] and is used here as a benchmark for determining whether civil proceedings fulfill their function of ending disputes rather than merely postponing legal certainty. The fifth component is institutional. It captures the idea that practical foreseeability depends on the accessibility of sources of law and of judicial positions, and on the system's capacity for self-correction. In the sample, this component is supported by institutional materials reflecting the environment of justice in the EU, in particular the 2024 EU Justice Scoreboard and the 2025 EU Justice Scoreboard, together with the CEPEJ studies prepared for the Scoreboard, which allow the standards of legal certainty to be related to questions of the efficiency, duration and organizational capacity of judicial systems.[47] The normative contour of the institutional component is consonant with the recent materials of the Venice Commission on the rule of law and the quality of legal regulation.[48]

Legal certainty and its interaction with civil proceedings are thus understood as resting not on procedural guarantees alone, but on the interlocking effect of the quality of the substantive norm, the stability of its interpretation, the protection of trust, the definitive

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43 Bundesgerichtshof (BGH), Urteil vom 22. Dezember 2011, VII ZR 67/11, https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=22.12.2011&Aktenzeichen=VII%20ZR%2067/11.

44 Cour de cassation, deuxième chambre civile, arrêt n° 166 F-P+B du 7 février 2019, pourvoi n° H 17–27.099, https://www.legifrance.gouv.fr/juri/id/JURITEXT000038137071; Cour de cassation, deuxième chambre civile, arrêt de 2022, https://www.legifrance.gouv.fr/juri/id/JURITEXT000045939949.

45 Polish Constitutional Tribunal, Judgment of 19 December 2002, Ref. No. K 33/02, https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/5617-mienie-zabuzanskie; Polish Supreme Court, Judgment of 7 November 2025, Ref. No. II NSNc 300/24.

46 ECtHR Judgment of 28 October 1999, Case Brumărescu v. Romania, application no. 28342/95, https://hudoc.echr.coe.int/eng?i=001-58337; ECtHR Judgment of 24 July 2003, Case Ryabykh v. Russia, application no. 52854/99, https://hudoc.echr.coe.int/eng?i=001-61261.

47 European Commission for the Efficiency of Justice (CEPEJ), *Study on the Functioning of Judicial Systems in the EU Member States: 2024 EU Justice Scoreboard* (Luxembourg: Publications Office of the European Union, 2024); European Commission, *EU Justice Scoreboard 2024* (Luxembourg: Publications Office of the European Union, 2024); European Commission, *EU Justice Scoreboard 2025* (Luxembourg: Publications Office of the European Union, 2025).

48 Venice Commission, *Compilation of Venice Commission Opinions and Reports*, CDL-PI(2025)003 (Strasbourg: Council of Europe, 2025).

resolution of disputes, and the institutional capacity of the system to reproduce these standards. That structure in turn allows legal certainty to be assessed not by case-by-case enumeration, but by reproducible criteria applied by the Court across different contexts and given different but comparable effect by national systems.

4.4. The Five-Component Model of Substantive Legal Certainty as a Structural Precondition for Effective Civil Proceedings

The elements drawn from the corpus are not discrete markers: they form a cumulative architecture within which the effectiveness of civil proceedings depends on normative determinacy, interpretative stability, the protection of legitimate expectations, the finality of adjudication, and institutional capacity. Contemporary scholarship also emphasizes the importance of legal doctrine as an interpretive source shaping the development and application of legal norms within national and international legal systems.[49]

At the heart of this architecture lies the quality of the substantive norm. The judgments surveyed show that vagueness, internal contradiction, or the absence of a necessary transitional safeguard enlarge the space of judicial discretion and reduce the foreseeability of the legal consequences attaching to a given set of facts. Where the normative framework is not sufficiently determinate to settle the issue, the individual cannot reasonably predict the outcome of the dispute. The defect lies at the level of regulation itself and precedes any deficiency of procedure or form; it is the substratum on which the rest depends.

Normative determinacy alone, however, does not guarantee effectiveness. The material examined shows that even relatively clear provisions may generate uncertainty where judicial interpretation is inconsistent and unstable. Divergences in case-law become incompatible with Article 6 when they persist uncorrected and produce systemic unpredictability. Stability of interpretation is thus a functional extension of normative quality: it translates textual determinacy into practical predictability and ensures that comparable disputes are resolved by comparable reasoning. The protection of legitimate expectations forms a bridge between structural regulation and individual reliance. The Court has repeatedly held that abrupt and insufficiently reasoned departures from established practice undermine trust in the legal order. Evolution of interpretation is not excluded; but where change operates retroactively and destabilizes established rights without justification, foreseeability is impaired. The protection of expectations therefore mediates between systemic coherence and individual legal security.

The architecture would not be complete without the stabilizing role of finality. The case-law surveyed shows that the casual reopening of final judgments, or procedures permitting unlimited reopening, erode stability and diminish the authority of adjudication. Finality closes the case; without it, civil litigation risks becoming a succession of protracted proceedings rather than an effective means of resolving disputes between individuals. These building blocks rest on an institutional foundation that determines their

[49] Roman I. Tashian et al., "Scientific Doctrine as a Source of Law in International Law and Legal Systems of the World," *Revista Jurídica Portucalense* (Special Issue) (2023): 232–52, https://doi.org/10.34625/issn.2183-2705(ne)2023.ic-12.

weight and value. The accessibility of case-law, the existence of harmonization procedures and constitutional supervision of primary legislation are what prevent determinate norms and settled interpretations from remaining purely theoretical. Institutional weakness does not replace normative weakness but compounds it, by allowing divergence and indecision to prevail. Comparative research also shows that institutional and legal-policy frameworks are essential elements of broader systems of legal and economic security.[50]

The connection is cumulative and progressive: normative indeterminacy breeds discretion; unstructured discretion breeds divergent interpretation; persistent divergence destabilizes legitimate expectations; destabilized expectations undermine finality; and insufficiently robust institutional correction allows systemic unpredictability to take hold. At the end of this trajectory, civil proceedings may satisfy procedural requirements in form while being ineffective in substance. Effectiveness lies not in any single set of guarantees but in the integrity of the whole structure (Fig.).

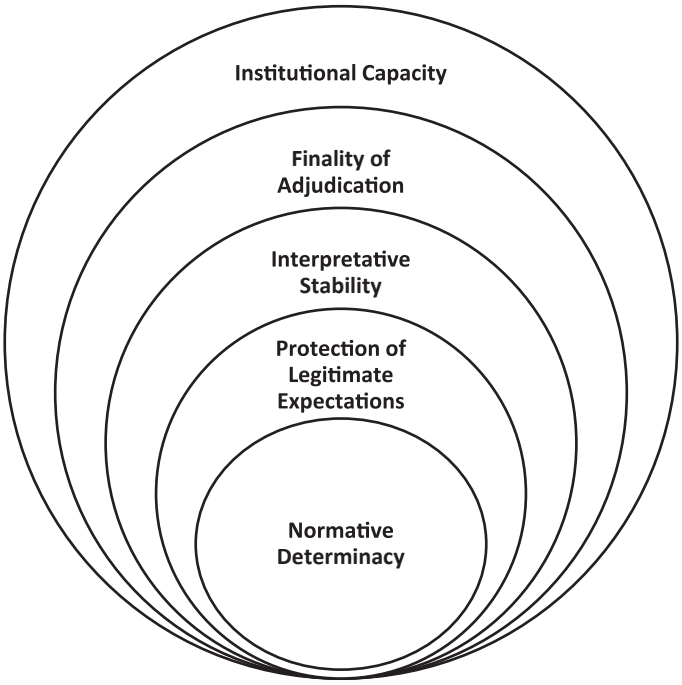

Fig. Cumulative architecture of substantive legal certainty as a structural precondition for effective civil proceedings. (Developed by the authors.)

[50] Olena S. Oliinyk et al., "Economic Security through Criminal Policies: A Comparative Study of Western and European Approaches," *Revista Científica General José María Córdova* 20, no. 38 (2022): 265–85, https://doi.org/10.21830/19006586.899.

The figure conveys the layered interplay between normative determinacy, interpretive stability, the protection of legitimate expectations, the finality of adjudication, and institutional capacity, from which effective civil proceedings emerge. The reconstructed model brings together the doctrinal development traced in the Court's case-law, the typology of the ways in which substantive uncertainty generates violations, and the comparative tendencies in national implementation. It shows that legal certainty in substantive law is a structural condition of effectiveness in civil adjudication. A deficiency at any level gives rise to a systemic vulnerability capable of hollowing out formally fair proceedings, leaving them inadequate as a means of protecting rights.

5. Discussion

The results indicate that legal certainty in substantive law is a structural condition of civil procedure and not a by-product or incidental variable of procedural guarantees. They suggest that the traditional approach, which treats Article 6 of the Convention as a purely procedural obligation, should be abandoned. The study shows that, in the practice of the European Court of Human Rights, foreseeability, consistency of judicial practice, protection of legitimate expectations, stability, and finality operate as indicators of the quality of substantive regulation. This is the conceptual contribution of the study. In literature, legal certainty has usually been examined in connection with legality and the rule of law. Ulyana Andrusiv states that in the Court's case-law legality is unthinkable without the foreseeability of legal regulation.[51] The present findings refine that thesis: foreseeability legitimizes State interference, but it also determines the effectiveness of the civil protection of rights. In this sense, the principle of legality becomes a criterion of procedural effectiveness.

The extent to which the quality of legislation has become an object of assessment by the Court was explored by Nicola Lupo and Giovanni Piccirilli, who drew attention to the "informal" evolution from a formal to a substantive conception of "law."[52] The present results confirm and illustrate that tendency in the civil limb of Article 6, where the Court assesses not only the existence of a norm but also its capacity to produce a foreseeable outcome. The "substantive concept of law" thus acquires practical relevance in the sphere of civil justice. Mark Cammack, in his study of legal certainty in constitutional adjudication, emphasizes that vague norms produce excessive judicial discretion.[53] In the present context, that problem arises at a second level of the civil process: increased discretion under an indeterminate law may compromise the predictability of outcomes. The constitutional stake in legal certainty therefore has implications for private-law adjudication.

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51 Ulyana B. Andrusiv, "Essence of the Principle of Legality in the Case-Law of the ECHR," *Visegrad Journal on Human Rights* 5, no. 2 (2019): 1–15.

52 Nicola Lupo and Giovanni Piccirilli, "European Court of Human Rights and the Quality of Legislation: Shifting to a Substantial Concept of 'Law'?," *Jurisprudence* 6, no. 2 (2012): 229–42, https://doi.org/10.5235/175214612803596668.

53 Mark Cammack, "Legal Certainty in the Indonesian Constitutional Court: A Critique and Friendly Suggestion," in *Constitutional Democracy in Indonesia*, ed. Melissa Crouch (Oxford: Oxford University Press, 2022), 275–98, https://doi.org/10.1093/oso/9780192870681.003.0014.

Bohdan Karnaukh analyzed limitation periods in the Court's case-law as an aspect of legal certainty.[54] For the purposes of the present study, limitation periods are treated as one instrument among others for stabilizing the parties' legal positions. This reinforces the finding that even technical institutions of substantive law contribute to the effectiveness of judicial protection. Questions of the deprivation of rights in civil property relations likewise demonstrate the importance of clear regulation and foreseeability for maintaining legal certainty in substantive law.[55] Hanna Ostapenko analyzes legal certainty in the context of access to justice under martial law, emphasizing the importance of stability for meaningful access.[56] The present findings are broadly consistent with that analysis but extend beyond access as such: even where access to a court is formally assured, instability in substantive regulation may nullify the possibility of protection. Access to a court cannot remedy defects in substantive law. Paolo Cavaliere, discussing the regulation of disinformation, highlights the problems created by vague formulations that permit wide interpretation.[57] That argument accords with what is said here about the boundaries of acceptable judicial interpretation: where the text of a norm admits of several contradictory readings, unexpected outcomes may follow. The problem of normative quality thus proves to cut across fields of regulation.

Andrii Ivaniv addressed the precedential force of the Court's judgments in national law.[58] In comparative terms, the results of this study suggest that implementation in Germany, France, and Poland occurs both through the incorporation of the Court's criteria into substantive law and through mechanisms for aligning judicial practice. The precedential quality of the Court's case-law thus appears not merely in citation but in the reshaping of the normative environment. In a broader examination of the changing character of international adjudication, Russel Buchan et al. observe that the Court increasingly does more than resolve individual disputes: its practice reshapes the substantive law of the States.[59] The present research confirms the transnational character of the standards of legal certainty.

Alexandra Hansen considers the role of facts in the Court's jurisprudence.[60] The present findings are consistent with that study: factual circumstances are conclusive only

54 Bohdan P. Karnaukh, "Limitation Period in Case-Law of the European Court of Human Rights," *Problems of Legality*, no. 134 (2016): 24–36, https://doi.org/10.21564/2414-990x.134.71276.

55 Anatoliy V. Kostruba, "Right Deprivation in the Legal Regulation Mechanism of Civil Property Relations: Comparative Analysis of International Legislation," *Asia Life Sciences*, Supp22 (2) (2020): 143–56.

56 Hanna Ostapenko, "The Role of Legal Certainty Principle in Provision of Access to Justice in Ukraine in Wartime," *Access to Justice in Eastern Europe* 6, no. 3 (2023): a000306, https://doi.org/10.33327/AJEE-18-6.3-a000306.

57 Paolo Cavaliere, "The Truth in Fake News: How Disinformation Laws Are Reframing the Concepts of Truth and Accuracy on Digital Platforms," *European Convention on Human Rights Law Review* 3, no. 4 (2022): 481–523, https://doi.org/10.1163/26663236-bja10044.

58 Andrii R. Ivaniv, "Precedent Nature of the European Court of Human Rights Decisions and Their Place in the Domestic Legal System," *Uzhhorod National University Herald. Series: Law* 89, no. 1 (2025): 60–69, https://doi.org/10.24144/2307-3322.2025.89.1.8.

59 Russel Buchan, Daniel Franchini, and Nicholas Tsagourias, eds. *The Changing Character of International Dispute Settlement: Challenges and Prospects* (Cambridge: Cambridge University Press, 2023).

60 Alexandra E. Hansen, *Facts before the European Court of Human Rights* (Baden-Baden: Nomos, 2022), https://doi.org/10.5771/9783748933229.

within a foreseeable normative framework. Without a sufficiently determinate substantive norm, factual considerations alone cannot secure the stability of legal outcomes. Nadiia Petechyl connects the realization of human rights in the Court's practice with the conception of the rule of law.[61] In the model proposed here, legal certainty appears as the operative dimension of the rule of law, and it is through that dimension that the abstract principle takes effect in the procedural sphere.

Mykola Panov identified problems with the quality of criminal legislation in the light of the Court's case-law.[62] The same issue arises in civil law: the quality of substantive regulation sets the contours of judicial discretion. Joseph Finnerty, analyzing the Polish rule-of-law crisis, shows how procedural mechanisms may become instruments for legitimizing systemic deficiencies.[63] This accords with the conclusion drawn here: a procedurally correct exercise is of little use without stable substantive regulation behind it. Finally, in examining the evolution of proportionality, Lorenzo Dalla Corte points to the growth of judicial assessment in the field of human rights; the findings on judicial discretion suggest that such growth must be clearly delimited if unpredictability is to be avoided.[64]

Bart van der Sloot studies the extraterritorial effect of the Convention. Although that concerns a different aspect, it is further evidence of the global reach of the Court's standards.[65] One of the present conclusions is that the criteria of legal certainty can serve as a general tool for assessing substantive law. Krzysztof Wojtyczek examines precedent in the Convention system;[66] on the present approach, it constitutes a stabilizing mechanism for the interpretation of substantive norms, since there can be no consistency without institutional respect for earlier positions. The research thus confirms and develops other work on legal certainty. This matters because most of the literature has addressed only the theoretical or sectoral dimensions of the principle; the results presented here display its systemic role: the legal certainty of substantive law is part of the condition of effective civil proceedings.

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61 Nadiia M. Petechyl, "Realization of the Principle of the Rule of Law in the Case Law of the European Court of Human Rights," *Scientific Bulletin of Uzhhorod National University. Series: Law* 5, no. 86 (2024): 331–35, https://doi.org/10.24144/2307-3322.2024.86.5.48.

62 Mykola I. Panov, "The Principle of Legal Certainty in the Practice of the European Court of Human Rights and the Quality Problems of the Criminal Legislation of Ukraine," *Problems of Legality* 128 (2015): 8–19, https://doi.org/10.21564/2414-990x.128.52082.

63 Joseph Finnerty, "Confronting Authoritarian Practices through Procedural-Based Review: The Case of the Polish Rule of Law Crisis," *European Convention on Human Rights Law Review* 7, no. 1–2 (2026): 70–94, https://doi.org/10.1163/26663236-bja10150.

64 Lorenzo Dalla Corte, "A Critical Comment on Proportionality in the Mass Surveillance Jurisprudence of the CJEU and the ECtHR," in *Data Retention in Europe and Beyond: Law and Policy in the Aftermath of an Invalidated Directive*, eds. Eleni Kosta and Irene Kamara (Oxford: Oxford University Press, 2025), 45–62, https://doi.org/10.1093/9780191998980.003.0005.

65 Bart van der Sloot, "The Strasbourg-Effect: *Wieder and Guarnieri* and the Extra-Territorial Effect of the European Convention on Human Rights," *European Convention on Human Rights Law Review* 6, no. 3 (2025): 383–409, https://doi.org/10.1163/26663236-bja10130.

66 Krzysztof Wojtyczek, "Precedent in the System of the European Convention on Human Rights," in *Constitutional Law and Precedent*, ed. Monika Florczak-Wątor (London: Routledge, 2022), 233–50.

6. Conclusions

The study supports the conclusion that legal certainty in substantive law is an independent and indispensable element of effective civil proceedings, that is, of proceedings falling within the notion of a "civil right" in Article 6 of the Convention. On the basis of an analysis of 120 judgments of the European Court of Human Rights delivered between 2000 and 2024, 60 decisions of the highest courts of Germany, France, and Poland (including decisions at the level of the courts of cassation), and the current and earlier versions of civil codes and related normative materials, a systemic model has been constructed of the relationship between the quality of substantive regulation and the effectiveness of judicial protection.

Accordingly, foreseeability, consistency of judicial practice, protection of legitimate expectations, stability, and the finality of judicial decisions may all be regarded as indicators of the normative quality of substantive law. Vagueness of wording, the absence of mechanisms for harmonizing practice, and abrupt departures from established interpretation, whether or not accompanied by legislative amendment, all endanger the predictability of the outcome of a dispute, however procedurally correct the court may otherwise be. The effectiveness of civil proceedings depends not only on procedural guarantees but on the internal coherence of the structure of substantive norms and on the stability with which they are applied.

The comparative study confirms that the standard of legal certainty is implemented through different institutions: constitutional review of normative determinacy, the stabilizing effect of the courts of cassation, doctrines protecting trust, and mechanisms for aligning judicial practice. Despite these institutional differences, a common thread runs through them: the foreseeability of a justified "yes"/"no" is a condition of effective justice. Although the comparative analysis is based on three countries – Germany, France, and Poland – the five-component model developed here is not confined to them. The model rests on the jurisprudence of the European Court of Human Rights and on the interpretation of Article 6 of the Convention, which sets standards binding on all member States of the Council of Europe. The criteria identified – that the law be foreseeable, that judicial practice be consistent, that legitimate expectations be protected, that judicial decisions be final, and that institutions be capable of guaranteeing legal certainty – may therefore serve as a general methodological framework for evaluating the quality of substantive law and the effectiveness of judicial procedures across the Convention States. The national examples given in this study are not one-size-fits-all solutions but illustrations of broader patterns. The proposed model accordingly has analytical and practical value beyond the legal systems examined and can be used as a comparative instrument for assessing compliance with Convention standards throughout the legal space of the Council of Europe. The practical significance of the results lies in the possibility of using the criteria formulated here as a tool for analyzing the quality of legislation and the limits of judicial discretion, which could be taken into account in preparing legislative amendments, reforming civil procedure, and developing mechanisms for the unification of judicial practice.

The limitations of this study lie in its focus on continental legal systems and in the absence of any quantitative measurement of the effect of instability in substantive law

on the length or the resolution of disputes. Future research might test the proposed five-component model across a wider range of Council of Europe member States, covering legal systems with differing constitutional traditions and degrees of judicial institutionalization, and might extend the comparative analysis beyond Europe.

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