

Legal Security within the Framework of the Rule of Law: An Analytical Study of Its Concept and Foundations

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Abstract:

Legal security is a fundamental element of the modern state governed by the rule of law and founded on the supremacy of law, it requires public authorities to guarantee a reasonable degree of stability in legal relationships and legal positions. For this principle to operate effectively, legal rules must rest on solid foundations: they should avoid undue complexity, be clearly framed, and emerge from the social context they seek to regulate. Without such conditions, the establishment of a stable and secure legal environment becomes highly problematic.

In this light, the present study examines the concept of legal security, given the absence of a comprehensive and precise definition in legal scholarship, and seeks to identify its principal substantive components, it concludes inter alia, that the constituent authority, through the 2020 constitutional amendment, has for the first time expressly recognised legal security and elevated it to the rank of a constitutional principle that may not be infringed.

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introduction:

A state governed by the rule of law is anchored in the effective guarantee and protection of the rights and freedoms accorded to both natural and legal persons. At the heart of these rights lies the right to security—an overarching and foundational entitlement that permeates all aspects of individual and collective life. Within this broad spectrum, the legal sphere assumes particular significance, for it constitutes the structural framework through which rights are exercised and obligations are regulated. Consequently, the role of the rule-of-law state extends beyond merely safeguarding individuals against arbitrariness and disorder; it encompasses the construction of a coherent and predictable legal order free from substantive and procedural deficiencies. This is the essence of the principle commonly referred to as legal security.

Legal security thus emerges as a core objective that the legal system seeks to achieve. Its conceptual foundation rests upon the obligation of public authorities to ensure a reasonable degree of stability in legal relationships and a minimum threshold of predictability in legal positions. Achieving this objective presupposes the incorporation of several essential elements into the legal framework, including accessibility and intelligibility of legal norms, equality before the law, clarity and internal coherence of legislation, the foreseeability of legal rules, respect for vested rights and established legal positions, and adherence to the principle of non-retroactivity of laws, among other fundamental requirements.

In this respect, legal security constitutes a pillar of the modern rule-of-law paradigm. It contributes to the development of a sound, precise, and coherent legislative environment that regulates relations between individuals, institutions, and the state, while ensuring uniform and reliable safeguards for the protection of rights and freedoms. The consolidation of these guarantees reinforces citizens'

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trust in the legal system and strengthens the foundations of justice, equality, and social stability.

The present study aims to elucidate the normative content of the principle of legal security, highlight its legal significance, and identify the principal foundations through which it is operationalized in practice. This gives rise to the following central research question: **What is the meaning of legal security, and upon which fundamental pillars does it rest?**

To address this question, the study employs a descriptive method to delineate the conceptual contours and characteristics of legal security, and to examine the legal weight afforded to this principle in Algeria and selected European jurisdictions, notably France. The study also draws upon an analytical approach to examine relevant legislation and judicial decisions.

Accordingly, the research is structured into two main sections: the first explores the conceptual framework of legal security, while the second examines its essential structural foundations.

Section I: Legal Security — A Conceptual Approach

The foundational purpose of the rule-of-law state is to ensure security for individuals of all categories—whether in the form of food security, military security, or otherwise. However, with the evolution of the needs of modern society, the law itself has increasingly become a source of concern and uncertainty for individuals, both in the way legal rules are drafted and in the manner in which they are implemented in practice. The notion of security is intrinsic to all aspects of life, including—and indeed foremost—the legal sphere.

The concept of legal security has been the subject of considerable debate within legal scholarship due to the ambiguity surrounding its content and the diversity of its meanings. This ambiguity is manifested in the lack of consensus regarding the legal status that should be attributed to legal security. It has been described at times as a basic need or necessity, at other times as a requirement or imperative, and in

yet other contexts as an objective of constitutional or legal value, or as one of the general principles of law. However, regardless of the variations in its characterization, the substantive content of legal security remains constant.

A) The Definition of Legal Security:

Legal security is one of the essential foundations upon which the rule-of-law state is constructed, owing to its role in ensuring the stability of legal positions and acquired rights. For this reason, states strive to incorporate legal security into their legal systems so that the latter may remain stable across all domains—even where its manifestations differ, such as economic security, judicial security, environmental security, or social security. All such forms ultimately fall under the broader principle of legal security, which establishes the regulatory framework for these fields.

1- The Meaning of Legal Security

Legal security is widely regarded as an essential and indispensable requirement for the establishment of a state governed by the rule of law. This principle has attracted considerable scholarly and judicial attention, particularly in recent years, through legal doctrine, jurisprudence, and legislation, despite the persistent ambiguity that continues to surround it.

First: Doctrinal Definition

Legal scholars generally agree that the concept of legal security is broad and difficult to define with precision, given the multiplicity of fields to which it applies. Its meaning varies across societies, environments, and historical contexts. For this reason, comparative legal scholarship continues to grapple with providing an all-encompassing definition, despite numerous attempts. This scholarly interest appears to stem largely from a growing sense of mistrust in legislative texts due to their inability to keep pace with the constant developments of reality and the inherent difficulty of amending or updating them.

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The difficulty of formulating a comprehensive definition also arises from the fact that legal security manifests itself in diverse forms, carries multiple meanings, and operates across numerous domains.¹

Some scholars define legal security as one of the expressions of the human being's natural right to security. Based on this perspective, it has been described as "any guarantee intended to ensure the proper enforcement of obligations and to avoid uncertainty in the application of the law in a manner that safeguards the individual's right to safety"².

A concise definition of legal security is provided in the Dictionary of Legal Terms published under the supervision of M. Cabrillac, which describes it as "the ideal state sought by the law through the enactment of coherent, relatively stable, and accessible rules that enable individuals to build reasonable expectations"³.

This definition appears to be among the more precise and widely accepted ones, as it highlights the core idea underpinning legal security—namely, predictability. However, even if one assumes that all legal texts are physically accessible, full intellectual accessibility remains an ideal that is difficult, if not impossible to achieve.

In another sense, legal security has been defined as "the individual's right to have the legal rules applied to him remain stable—that is, the right not to have his expectations undermined by the retroactive application of judicial decisions or legislative texts." This definition approaches legal security from the subjective

¹ Said Ben Ali ben Hassan Al-Maamari & Radwan Ahmed Alhaf, *The Principle of Legal Security and the Components of Legislative Quality*. *Journal of Legal and Economic Sciences*, Vol. 12, No. 79, 2022, pp. 14-15.

² Badaoui Abdeldjalil and Hennane Ali, *concept and requirements of the principle of legal security*, *Journal of Public Service Studies*, Vol. 04, No? 02, 2021, p. 04

³ Houari Ameur and Hadfi Laid, *The Constitutional consecration of the principle of legal security is aguarantee for the embodiment of the modern state of law in Algeria*, *Journal of Political Orbits*, Vol. 05, No. 01, 2021, p. 137.

perspective of individuals rather than from the perspective of objective legal norms. Nonetheless, its substantive meaning does not differ significantly from the first definition; the distinction lies primarily in its focus on the personal dimension of those concerned.¹

Accordingly, legal security may be understood as a condition in which individuals and institutions enjoy sufficient certainty and confidence that the laws and regulations governing their conduct will remain stable, foreseeable, and intelligible, and that effective mechanisms exist to ensure their implementation and oversight. As such, legal security is indispensable for achieving social and economic stability, as it contributes to strengthening justice and safeguarding rights.

Second: Judicial Definition

The principle of legal security has acquired an international dimension, as reflected in the case law of regional human rights courts. The European Court of Human Rights, for instance, has treated this principle as being embedded within the European Convention on Human Rights, particularly in relation to the right to property. In this context, the Court has emphasized that the law must be formulated with a sufficient degree of precision to enable the person concerned to foresee, to a reasonable extent, the consequences that a given act may entail.

In France, the principle of legal security has been the subject of hesitation and extensive debate within the judiciary. Some commentators have argued that German pressure on the European Union to formally recognize the principle played a role in its gradual reception into French law, on the assumption that the French legal system—by virtue of its high normative quality and strong protection

Kaci Fouzia, *Requirements for Establishing the Rule of Law: Constitutionalization of the Principle of Legal Security — A Comparative Study Between the European and Algerian Experiences*, PhD Thesis in Political Sciences, University of Oran, Algeria, 2017/2018, p. 89.

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of rights and freedoms—already provided a fertile ground for the consolidation of legal security. Despite this, the principle was not explicitly enshrined in French legislation, and references in French legal discourse initially appeared under the notion of “legal foreseeability” rather than “legal security” as such. Under the combined influence of the European Court of Human Rights and the Court of Justice of the European Union, however, the principle came to be viewed as an unavoidable necessity.

In French administrative case law, the principle first emerged in a relatively discreet manner, before being implicitly acknowledged in the landmark decision of the Conseil d’État of 24 March 2006 in the well-known Société KPMG case. In that decision, the Conseil d’État laid the cornerstone for judicial recognition of legal security and examined it through two fundamental dimensions: an objective dimension and a subjective one. Legal security was defined as follows: “The principle of legal security requires that citizens, without undue difficulty, be in a position to determine what is permitted and what is prohibited under the applicable law. To achieve this result, the applicable rules must be clear and intelligible and must not be subject to frequent or unforeseeable changes over time”¹. This formulation highlights the indispensable link between clarity, stability, and the protection of legitimate expectations.

As for the role played by the Algerian judiciary in recognizing the principle of legal security, the courts have thus far confined themselves to referring to the principle without providing an explicit definition. The first express reference appears to have been made by the Tribunal des Conflits (Court of Jurisdictional Conflicts) in Decision No. 000114 of 9 January 2012 in the case of “Team (Kh) v. Wali of Skikda.” This was followed by a similar stance adopted by the

¹ Iftissen ourida and bennacer wahiba, Constitutionalization of the Principle of Legal Security: The Algerian Experience as a Model.” *Journal of Legal Studies, Academic Journal of Legal Research*, University of Abderrahmane Mira – Béjaïa, Vol. 13, No. 02, p. 974.

Conseil d'État (Council of State) in a decision rendered on 9 January 2014 in the case of “(M.Y.) v. Wali of Tiaret”¹. These decisions indicate an emerging judicial awareness of the importance of legal security, even if its contours have not yet been fully developed in Algerian case law.

In light of the foregoing, it becomes evident that it is difficult to formulate a single, comprehensive, and exhaustive definition of legal security. The concept is inherently broad and resistant to strict delimitation, given the diversity of fields to which it applies and its variable manifestations across societies, environments, and historical periods.

Third: Legislative Definition

The Algerian Constitution of 2020 introduced, for the first time, the notion of legal security explicitly and elevated it to the rank of a constitutional principle that may not be infringed upon by any domestic legislation, regardless of the branch of law concerned. Article 34, paragraph 4, provides that: “In order to achieve legal security, the State shall ensure, when adopting legislation relating to rights and freedoms, that such legislation is accessible, clear, and stable.” It is noteworthy that the constituent power did not provide a formal definition of legal security; rather, it treated it as a teleological objective to be attained through the fulfillment of the conditions it set, namely accessibility, clarity, and stability. As previously indicated, this legislative choice is likely attributable to the inherent complexity of the concept itself ².

In a related contribution, the governance expert and Professor of Administrative and Political Organization, Bouhenia, in an

¹ Hamami Adel, *Principles of Legal Security in the Jurisprudence of the Algerian Council of State: A Comparative Study*. Doctoral thesis in Administrative Law, Faculty of Law and Political Science, University of Ghardaia, 2022/2023, p. 20.

² Dhiyf Sara, *Legal security under the Algerian constitution 2020*, *The Algerian and Comparative Public Law Journal*, University of Djilali Liabes - Sidi Bel Abbès, Algeria, Vol. 08, No. 02, 2022, p. 228.

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intervention entitled “Legal Security and the Quality of Legislative Drafting in Algeria,” affirmed that legal security is one of the manifestations of the individual’s right to safety and a means of ensuring that citizens resort to the law with full confidence. He emphasized that legal provisions must be efficient and effective, and that they must be drafted with sufficient quality to avoid error, contradiction, and ambiguity. In his view, legal texts should be formulated in strictly legal, rather than literary, language, and the provisions associated with legal security should guarantee stability in legal relationships. Bouhenia further observed that the principle of legal security in Algeria became fully operative after its express inclusion in the 2020 constitutional amendment, noting that the constituent power referred to legal security twice—once in paragraph 16 of the Preamble and again in Article 34—thereby underscoring its fundamental importance.

On the basis of the foregoing analysis, several key observations may be drawn:

- Legal security constitutes a fundamental concept in law.
- The purpose of legal security is to ensure certainty and stability in legal relationships.
- Legal security reflects the importance of laws and regulations being clear, accessible, and stable.
- The principle of legal security is essential for guaranteeing stability and justice within the legal system.
- Legal security contributes significantly to the consolidation of a democratic society and the protection of human rights.

2- Main Characteristics of Legal Security

Legal security is marked by a number of salient characteristics that may be summarized as follows:

- **Generality:**

Legal security is directed to all persons and is not confined to any particular group, thereby giving concrete effect to the principle of equality before the law. This generality is reflected in the legal rules that constitute the normative framework of legal security.

- **Universal Character:**

Legal security is one of the principles that has been affirmed judicially in many legal systems and is shared, in essence, by all human beings. Accordingly, the State is required to guarantee the conditions necessary for its realization for all individuals, each of whom enjoys legal capacity and legal personality under both public and private law. This has led, in some countries, to legal security being accorded constitutional value.

- **Permanence**

Legal security is not confined to a specific category of persons; rather, it is enjoyed by all. It is one of the rights that may not be disposed of, save in the exceptional situations expressly provided for by law, such as certain forms of immunity granted to particular categories of office-holders.

- **Rights-Based Nature:**

Legal security is a human right that the State is obliged to protect by all appropriate means designed to guarantee its effective realization ¹.

¹ Gachi Allel and Bouchekiou Abd Elhalim, The Pillars of Legal Security and its Threats, Legal and Political Research, Vol. 06, No. 02, 2021, p. 206.

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- **Capacity for Development:**

A key feature of this principle is that it is inherently dynamic and subject to evolution and change in line with emerging phenomena and transformations within society. Legal security must keep pace with societal development and is influenced by the same considerations that affect the protection of human rights and fundamental freedoms across various fields. The ultimate aim is to create a safe and stable regulatory environment within a legal system that is just, effective, and responsive to change.

- **A Constituent Element of the Rule-of-Law State**

Legal security has become one of the defining attributes of the rule-of-law state. The submission of all state authorities to the law, in its broad sense, and their commitment to the limits it prescribes in all their acts and decisions ensures that the exercise of public power is itself governed by legal constraints. The exercise of authority is no longer regarded as a personal privilege, but as a function exercised on behalf of, and for the benefit of, the community. Working to achieve the law's objectives—namely, safeguarding individual rights and freedoms and providing a secure and stable life—is among the most important constituent elements of the rule-of-law state.

- **Legal Security as a Shared Right**

International human rights law imposes obligations on states and governments that they are required to respect and implement in order to promote and protect human rights and fundamental freedoms. Among these rights is the right to legal security, which constitutes a common entitlement enjoyed equally by all human beings without exception or discrimination. Everyone has the right to benefit from a legal framework that provides stability, security, and reassurance, and that preserves the legal positions of each member of society in a

manner that guarantees enjoyment of the rights recognized and protected by the State ¹.

- **Legal Security as an Inalienable Right:**

Legal security is one of the fundamental rights of the human person. It cannot be alienated or appropriated exclusively by any individual or group to the exclusion of others, and all persons enjoy this right on an equal footing without discrimination. The only exceptions are those specific situations in which the law permits limitations on the exercise of this right, in accordance with clear and established legal procedures that must be objective and respectful of the rights of all individuals alike².

3- Distinguishing Legal Security from Other Concepts

The term legal security overlaps with several other concepts that may give rise to a degree of confusion, notably human security and judicial security. These will be distinguished as follows:

- **Human Security**

Human security refers to the sense of reassurance that flows from trust and from protecting the individual against poverty, deprivation, fear, and violence. Although the concept of state security remains important, it is not sufficient on its own to guarantee the security of individuals. In line with this realization, the notion of human security has evolved with the development of societies and the intensification of both internal and external threats. This evolution has necessitated a renewed focus on the individual as an active and influential agent within society.

¹ Said Ben Ali ben Hassan Al-Maamari & Radwan, Ahmed Alhaf, op.cit., pp. 24-25.

² Lakhdari Abdelhak, The Principle of Legal Security and Its Role in the Protection of Human Rights, EL - HAKIKA (the Truth) Journal for Social and Human Science, Vol. 15, No. 02, 2016, p. 228.

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Human security and legal security converge in their common objective of protecting legal positions; however, human security is broader and more comprehensive in scope ¹.

▪ Judicial Security:

As a concept, legal security rests upon the independence of the judiciary, which constitutes a fundamental principle for safeguarding and strengthening individual rights and freedoms. Judicial independence provides reassurance to litigants regarding the decisions rendered by the courts and ensures respect for the guarantees of a fair trial between the parties to a dispute.

It is clear that, in order to achieve judicial security, the judiciary must offer an environment of reassurance to litigants during the adjudication of disputes, as well as to citizens who appear before the courts as defendants, victims, or witnesses. This also requires facilitating access to the courts and ensuring that disputes are resolved within reasonable time limits. Such objectives cannot be realized in the absence of firmly established legal security ².

B) The Legal Nature of Legal Security:

In order to determine the legal nature of the principle of legal security, it is necessary first to examine its value as a general principle of domestic law, and then to consider its value as a principle of a global character.

1-The Value of Legal Security as a General Principle of Domestic Law:

Some legal scholars maintain that the idea of legal security represents a general value within the legal system that must be realized, even if it cannot always be invoked as a binding rule. Regardless of the characterisation accorded to the concept of legal

¹ Bidda Fatima, Ben Ahmed Hadj, Legal security: A study of the concept and guarantees, *Journal of Legal Studies*, Vol. 11, No. 01, 2024, p. 273.

² Bidda Fatima, Ben Ahmed Hadj, *op.cit.*, p. 274.

security—whether it is regarded as the foundation of the legal system, its primary or vital need, its aim, or its function—all such descriptions converge on the conclusion that security constitutes a value that must be achieved ¹.

Legal systems have consistently sought to secure this value throughout their historical development, in recognition of their pressing need for it. This may be traced back to Roman law, which remains a foundational reference to this day. The Law of the Twelve Tables, for example, was long regarded as a model of clarity, precision, and simplicity in legislative drafting.

The concern with the value of legal security has not been confined to legal scholarship; it has also been reflected in numerous official positions at both the international and domestic levels (Bouزيد, 2015/2016, p. 38)². At the international level, the European Court of Justice has treated legal security as a fundamental value. In a decision dated 22 October 1987, the Court observed that divergences among the courts of the Member States regarding the validity of acts adopted at the Community level would jeopardize the unity of the Community legal order and undermine the essential requirement of legal security.

The French Conseil d'État has likewise underscored the importance of legal security in two notable reports.

The first, issued in 1991 under the title “Legal Security,” identified a number of structural deficiencies affecting the French legal system, including legislative and regulatory inflation, instability, and declining legislative quality—all of which contributed to a sense of legal insecurity among citizens.

The second report, issued in 2006 under the title “Legal Security and the Complexity of the Law,” addressed the growing complexity of

¹ Ait Oudia Belkheir Mohamed, *Legal Security and Its Components in Administrative Law*, Alkhaldounia Publishing House, Algeria, 2018, pp. 34-35.

² Bouزيد Sabrina, *Competition Law: No Legal Security or a New Conception of Legal Security?*, Master's thesis in Law, Faculty of Law and Political Sciences, University of 08 Mai 1945-Guelma, Algeria, 2015/2016, p. 38.

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legal provisions and its impact on the rule-of-law state, and proposed a series of measures to mitigate that complexity ¹.

The French Constitutional Council has also shown particular concern for the consolidation and protection of this value. In its decision of 29 December 2005, it held that Article 78 of the Finance Act for 2006 was unconstitutional. The Council based its reasoning on the excessive complexity of the provision, noting in particular its length, its overlapping and obscure structure from the perspective of the taxpayer, the ambiguous character of some of its clauses even for the tax administration, and the large number of cross-references to other provisions that were themselves complex. The Council concluded that the uncertainty resulting from such drafting was likely to generate legal insecurity, misunderstandings, and disputes ².

At the domestic level (in Algeria), legal security has acquired increasing importance in light of the extensive debates surrounding it, its wide dissemination, and its close connection to the modern rule of law state. This prompted the constituent power, in the 2020 constitutional amendment, to respond to calls for elevating this principle to the rank of constitutional principles, as previously noted ³.

Accordingly, the constituent power has enshrined the principle of legal security as one of the most significant principles to be consolidated in the present millennium. This development constitutes a positive step towards strengthening and reinforcing legal protection guarantees. The constitutionalization of legal security reflects a broader transformation in the concept of protection itself, linking it to a modern normative dimension that legal security adds to the overall architecture of guarantees, alongside the notion of democratic security⁴.

¹ Ait Oudia Belkheir Mohamed, *op.cit.*, p. 36-37.

² *Ibid*, p. 37.

³ Hamami, Adel, *op.cit.*, p. 37.

⁴ Yahia Abdelhay, *The Principle of Legal Security and Its Applications in the Jurisprudence of the Council of State*, Doctoral thesis in Public Law, Faculty of Law

2-The Value of Legal Security as a Principle of Global Character:

Legal security is no longer merely a domestic or regional aspiration; it has also come to be recognized as a principle of genuinely global character. Ensuring legal security at the level of international legal norms governing relations between states and other actors has become a necessary requirement for the effective protection of the various human rights recognized in international law. States are accordingly under an obligation to comply with their legal commitments relating to the respect of individual rights, in accordance with the provisions of the international treaties and conventions to which they are parties.

Section II: The Fundamental Pillars of the Principle of Legal Security

Legal security is expressed through a set of principles or foundations upon which it rests and around which it revolves. Among the most important of these are: the principle of non-retroactivity of legal rules, the clarity of legal rules, and the protection of legitimate expectations.

A) The Principle of Non-retroactivity of Legal Rule:

The principle of non-retroactivity of legal rules is one of the fundamental principles of legal science. It means that new laws do not apply retroactively; in other words, they do not affect acts or facts that occurred prior to their entry into force.

1- The Definition of the Principle of Non-retroactivity of Legal Rules:

The principle of non-retroactivity means that, as long as legislation produces its effects immediately and directly on legal acts performed by individuals from the date of its promulgation and entry into force, there is no basis for applying it to events that occurred

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before its enactment. This principle can be traced back to ancient civilizations. In Roman civilization, for example, Cicero opposed a praetorian edict concerning wills that purported to have retroactive effect, asking rhetorically: “What kind of legislative system is this?” He stressed that new legislation in civil law ought to respect past events. Roby similarly notes that Roman jurists did not envisage that the rules they enacted would extend into the past.

In France, the early revolutionary reform laws initially disregarded the principle of non-retroactivity until the objectives of the revolution had been consolidated, which led to significant disruption in legal relations. One of the most striking examples was the law on inheritance, which was applied retroactively from 14 July 1789. This resulted in serious consequences: individuals became heirs who had not previously been so, while others lost their status as heirs; acts performed by heirs who were later excluded from the succession were rendered void. This experience provided a powerful lesson to the leaders of the French Revolution regarding the importance of respecting the principle of non-retroactivity, which ultimately led to its enshrinement in Article 14 of the Declaration of the Rights of Man and of the Citizen ¹.

The principle also means that the effects of legal rules do not extend into the past and are confined to facts and acts occurring from the date of their entry into force. This serves, on the one hand, to achieve justice for those subject to the law, who regulate their conduct in light of the existing legal framework, and, on the other hand, to preserve public order by ensuring the stability of social and legal relations among individuals.

From the perspective of legal security, non-retroactivity requires that legal provisions should not apply retroactively, save in

¹ Djellab Abdelkader and Ghouthi Elhadj Goussem, *he Principle of Non-Retroactivity of Laws as a Mechanism for Achieving Legal Security*, Journal of Research in Law and Political Sciences, Vol. 04, No. 02, 2018, p. 73.

exceptional circumstances, as the principle seeks to preserve legal positions and acquired rights formed under prior law. Retroactive effect is therefore regarded as a serious matter that violates justice and undermines acquired rights, which may ultimately erode legitimate trust in the stability of the legal order. Consequently, legislation is intended to operate for the future only, without prejudice to prior acts and events.

In the Algerian legal system, the principle of non-retroactivity has both constitutional and legislative value. The Constitution expressly affirms this principle in Article 43, which provides that “no one may be convicted except pursuant to a law in force prior to the commission of the punishable act,” and in Article 82(4), which states that “no tax, levy, duty, or fee of any kind shall have retroactive effect”¹.

In addition to the position of the constituent power, the Algerian Council of State and the higher courts have also referred to this principle in their case law. For example, the Administrative Chamber of the former Supreme Court, in a decision dated 26 May 1984, held that “individual administrative decisions detrimental to individuals do not apply retroactively, but only from the date of notification of the decision imposing the penalty; any administrative decision imposing a disciplinary sanction in breach of this principle is unlawful.” Similarly, in Decision No. 098751 of 20 November 2015, the Council of State held that “an administrative circular does not apply retroactively to a contract that was drafted and registered with the Directorate of Registration and Stamp Duty of the municipality on 06/08/2002, pursuant to the principle of non-retroactivity of laws.”

With respect to the withdrawal of unlawful administrative decisions that create rights, the Administrative Chamber of the Supreme Court held, in a decision dated 19 December 1993, that

¹ Yahia Abdelhay, *op.cit.*, pp. 62-63.

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“administrative decisions create rights as soon as they are signed, regardless of whether they have been published, notified, or entered into force; their withdrawal, in all such cases, is unlawful. Even though judicial precedent exceptionally allows the withdrawal of unlawful decisions, such withdrawal must occur before the expiry of the time limit for judicial review, which condition is not satisfied in the present dispute”¹.

In simpler terms, the principle of non-retroactivity of legal rules means that new laws and regulations do not apply to facts and situations that occurred before their promulgation. In other words, a new law may not be applied to acts or events that took place prior to its entry into force.

2- Conditions for the Non-retroactivity of Legal Rules:

The conditions for the application of the principle of non-retroactivity may be summarized as follows:

- The existence of legal positions that have arisen and been fully constituted under a previous legal regime, in such cases, these positions must not be affected when the legal framework changes. Only individual legal positions that are fully formed enjoy relative stability and are protected from interference through retroactive decisions. The person concerned must have actually benefited from a concrete legal position conferred by an individual decision applying a general legal rule to his or her case. By contrast, a mere attempt to initiate procedures or to begin steps towards acquiring a legal position is not sufficient to create a vested legal position, the retroactive effect must be such as to interfere with those legal positions.

¹ Hamami Adel and Ait Oudia, Belkheir Mohamed, The principle of non-retroactivity between administrative legality and legal certainty, *Ijtihad Journal On Legal and Economic Studies*, Vol. 12, No. 01, 2022, p 279.

- In other words, the decision that operates retroactively must alter personal legal positions that arose and were fully constituted before the decision was published or announced. Where a decision affects such pre-existing positions, it is deemed retroactive. However, if the decision affects positions that were not yet complete at the time of its entry into force, or if it concerns general regulatory positions of an abstract nature, the decision cannot be characterised as retroactive in the strict sense ¹.

3- Justifications for the Principle of Non-retroactivity of Legal Rules

Several justifications have been advanced in support of this principle, to the point where it has become one of the settled principles in modern legal systems. Among the most important reasons are the following:

- From the standpoint of justice, a new law should not apply to legal situations that arose before it came into force. Individuals cannot fairly be required to comply with a law that did not yet exist or of which they could not reasonably have been aware.
- Applying laws retroactively undermines confidence in the legal order, and such confidence is one of the key components of legal security.
- The principle of non-retroactivity is essential for the stability of social and economic relations. Failure to respect this principle leads to instability in legal transactions that were concluded under the previous law ².

B) The Principle of Clarity of Legal Rules:

The way in which a legal provision is drafted plays a decisive role in achieving and consolidating legal security. The clearer and more

¹ Ibid., pp. 297-298.

² Yahia Abdelhay, op.cit., p. 65.

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precise a legal rule is in its wording and meaning, the easier it becomes to comprehend and to understand the scope of its application. Conversely, if a legal rule is obscure, imprecise, or poorly drafted, this inevitably gives rise to disagreement as to its interpretation and leads to uncertainty and instability in its application¹.

1- Definition of the Clarity of Legal Rules:

Some legal scholars define the principle of clarity of legal texts as the ability of those to whom the law is addressed to understand its provisions and to reasonably foresee the legal consequences that flow from them.

Another view defines the principle as an obligation imposed on the legislator to enact legal provisions that are sufficiently precise so as to prevent the body responsible for their implementation from interpreting them in a manner that contradicts the Constitution.

A third position considers that the purpose of the principle of clarity is to protect citizens from any interpretation of ambiguous legal texts that would conflict with the Constitution or allow other branches of the State to act arbitrarily in implementing the law, or that would, in effect, transfer the task of law-making to the executive or judicial authorities.

A fourth view holds that the principle of clarity of legal texts essentially rests on two elements: first, the ability of those subject to the law to understand it; and second, the prior and objective delimitation of the scope of action of the authorities responsible for its application and enforcement².

Accordingly, the clarity of a legal rule implies that it must be intelligible and understandable, free from ambiguity, contradiction, or irrationality, and drafted in such a way that its addressees can grasp its

¹ Aljarbou Hala bint Abdullah, The Principle of Legal Security: An Analytical Study in Light of Regulations and Judicial Applications in Saudi Law, Qadha Journal No. 31, April 2023, p. 553.

² Alaa Mohy El-Din Mostafa Abu Ahmed, The Principle of Clarity of Legal Provisions in Light of Constitutional Court Judgments: A Comparative Study, Journal of Legal and Economic Research, Vol. 13, No. 84, 2023, pp. 150-151.

meaning. This facilitates its application by both judges and litigants without strangeness or obscurity.

On this basis, the clarity of the law means that its provisions are devoid of ambiguity, excessive interpretive latitude, and internal inconsistency, thereby making it easier for those subject to it to understand and assimilate its content, regardless of their educational level or cultural background.

The significant development in Algeria is that this principle was constitutionalized in the 2020 constitutional amendment. Article 34(4) provides that: “In order to achieve legal security, the State shall ensure, when enacting legislation relating to rights and freedoms, that such legislation is ... clear ...”. This explicit reference reflects the elevation of clarity from a mere drafting technique to a constitutional requirement linked directly to legal security.

2- Manifestations of a Lack of Clarity in Legal Rules

A lack of clarity in legal rules may take several forms, among which the following are particularly noteworthy:

- **Ambiguity of Legislative Provisions:**

Ambiguity refers to obscurity in the wording of a term such that its meaning is concealed or uncertain and requires significant interpretive effort to determine. An ambiguous provision is any legal text that requires clarification or interpretation, whether because it is unclear or incomplete. In other words, an ambiguous text is one whose meaning is not evident on its face and does not convey the intended sense except by recourse to elements external to its wording, namely, the various methods of interpretation.

The ambiguity of legal rules may stem from several causes, including the use by the legislator of imprecise terminology. Ambiguity becomes apparent when a provision contains a term that appears, at first glance, to be clear, but in reality encompasses

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multiple branches or sub-cases, thereby giving rise to confusion and interpretive uncertainty ¹.

▪ Inflation of Legislative Texts:

Legislative inflation refers to the proliferation of legal provisions governing a given subject, whether through repeated amendments, additions, or supplementary enactments for various reasons. This leads to an undesirable increase in the volume of legislation and makes it difficult for specialists and practitioners to master the applicable rules, whether within a single statute or across the legal system as a whole ². Excessive legislative production often results in fragmentation, inconsistency, and difficulty in identifying the applicable norm, thereby undermining legal security.

▪ Conflicts Between Legislative Provisions:

The correct application of the law presupposes that the decision-maker is familiar with the necessary rules for resolving situations of conflict, overlap, or ambiguity between legal provisions. Ignorance of these conflict-of-laws rules may lead to the disregard of the provision that ought to be applied and to the frustration of its objectives, thereby compromising the soundness of judicial decisions. Among the most important of these rules are those governing the relationship between general and special provisions, and between absolute and qualified provisions ³.

Under general principles, conflict may arise between legal instruments of different hierarchical levels, in which case the

¹ Said Ben Ali ben Hassan Al-Maamari & Radwan Ahmed Alhaf, op.cit., p. 171.

² Muammar Khalid Abdulhamid Aljubouri, Legislative Inflation in Penal Legislation: Consequences, Effects, and Implications for Deterrence and Reform – The Iraqi Penal Code as a Model: A Critical Analytical Study, Tikrit University Journal of Rights, Vol. 06, No. 03, 2022, p. 143.

³ Tahtah Allal, Law enforcement controls - Conflict of texts - ,Journal of Legal and Political Sciences, University of El Oued, 2021, Vol. 12, No. 02, p. 882.

superior norm prevails over the inferior one. Where the conflict is between instruments of equal legal force adopted at the same time, or between provisions within the same statute, it becomes necessary to determine whether one of the provisions can be preferred over the other on the basis of recognised interpretive criteria ¹.

C) The Principle of Legitimate Expectations:

The notion of legitimate expectations—also referred to as legitimate trust—constitutes the very essence of the principle of legal security. Legal security is fundamentally concerned with facilitating and protecting individuals’ pre-existing expectations, as well as safeguarding their right to form reasonable expectations about the future. Some authors even define legal security itself through the lens of legitimate expectations, as “the model legal rule, understandable and accessible, which enables those to whom it is addressed to form a reasonable expectation of the legal consequences of their acts and conduct”².

2-Definition of the Principle of Legitimate Expectations:

The concept of legitimate expectations has been defined as follows: general and abstract rules issued by the legislative authority in the form of statutes, or by the executive authority in the form of administrative regulations, must not be adopted in a sudden and unexpected manner that clashes with the legitimate expectations of individuals—expectations that are based on objective grounds drawn from existing legal regimes, the official policies announced by public authorities, and the assurances and promises emanating from them ³.

From this perspective, legal rules must preserve for individuals their right to legitimate expectations, and this, in turn, contributes

¹ Said, Ben Ali ben Hassan Almaamari and Radwan Ahmed Alhaf, *op.cit.*, p. 172.

² Bouab Ameer and Hennane Ali, The right to project expectation (Legitimate trust) as one of the pillars of legal security, *Journal of Legal Studies*, Vol. 07, No. 01, 2020, p. 65.

³ *Ibid*, p. 66.

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directly to the realization of legal security. The relationship between the two concepts is therefore organic: the protection of legitimate expectations is one of the principal means by which legal security is entrenched.

The principle of legal security seeks to ensure the stability of laws, including the stability of legal acts and transactions. Nevertheless, a legal rule, at its core, is a social norm and must evolve in line with societal developments, needs, and transformations. There can be no law without society and no society without law¹. Hence, the protection of legitimate expectations is not intended to “freeze” the law, but rather to ensure that legal change occurs in a manner that is foreseeable and fair.

When examining this principle, it is important to distinguish between two types of expectations:

- Procedural legitimate expectations, and
- Substantive (or material) legitimate expectations.

Procedural legitimate expectations arise where individuals base their expectations on the procedures that the administration customarily follows, such as consulting stakeholders, or hearing the employee concerned before imposing a disciplinary sanction, and similar procedural guarantees.

Substantive legitimate expectations, by contrast, relate to the individual’s expectation of obtaining a right or benefit that has been created on the basis of previous conduct by the administration. The protection afforded in this context does not stop at requiring the administration to follow a particular procedure; it extends to compelling the administration, where appropriate, to honour its previous assurances and representations.

¹ Yahia Abdelhay, op.cit., p. 76.

2-The Legal Basis of the Principle of Legitimate Expectations:

The idea of legitimate expectations has been recognized as having constitutional value on the basis of Article 2 of the 1789 Declaration of the Rights of Man and of the Citizen. Moreover, the institutions of the European Union have required Member States to give effect to this principle in all legislation and regulations they adopt, treating it as one of the fundamental legal principles binding upon the European legal order in order to guarantee the rights of individuals.

In the Algerian constitutional context, respect for expectations finds its basis in Article 117 of the 2020 Constitution, which provides that: “Within the framework of its constitutional powers, Parliament shall remain faithful to the trust and expectations of the people.” This provision reflects the idea that the expectations of citizens are among the factors that the law cannot ignore.

The same logic underpins, for example, Article 182(2) of the Civil Code, which provides in substance that the debtor is liable only for the damage that could normally have been foreseen at the time of the conclusion of the contract. It is clear from this rule that the legislator has taken into account the expectations of the contracting parties: the debtor is liable only within the bounds of what was reasonably foreseeable when the contract was formed, unless he has committed fraud or gross fault. In such situations, the debtor is deemed to have departed from the conduct that could legitimately be expected of him.

The legislator’s concern for expectations is further illustrated by the exclusion of the debtor’s liability where the harmful act is attributable to an unforeseeable event such as force majeure. There is no civil, criminal, disciplinary, or political liability where a case of force majeure—an event that could not reasonably be foreseen—constitutes the cause of the damage or the breach. The same

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consideration of expectations also supports the rule that a new law applies only for the future and does not govern past events ¹.

The global character of the principle of legitimate expectations was affirmed from an early stage, when it was received by the Court of Justice of the European Communities (now the Court of Justice of the European Union) shortly after its development in Germany. Beginning in 1962, German law accorded the principle the rank of federal law, and individuals were permitted to invoke it against both legislation and administrative acts².

Conclusion

In conclusion, the principle of legal security constitutes a fundamental element of any legal system that seeks to protect individual rights and promote justice. The consolidation of this principle requires sustained efforts by all actors, including the government, the judiciary, and civil society.

1. Results

Among the main observations and conclusions that can be drawn from this study are the following:

- Legal security refers to a situation in which individuals and institutions enjoy certainty and confidence that the laws and regulations governing their lives are stable, known, and predictable.
- The constituent power has enshrined the principle of legal security, which may be regarded as one of the most significant principles to have been affirmed in the current millennium.
- The principle of legal security has clearly acquired a genuinely global dimension, as the need to secure it at both the international and national levels of legal regulation has become indispensable for the protection of the various human rights.

¹ Ibid., pp. 78-79.

² Hamami Adel, op.cit., p. 39.

- Legal security requires that legal provisions should not have retroactive effect, save in exceptional circumstances.
- The drafting of legal texts plays a decisive role in achieving legal security and stability. The clearer and more precise a legal rule is in its wording and meaning, the more likely it is to be properly understood and applied.

2. Recommendations

In light of the above, the study puts forward the following recommendations:

- The constitutional recognition of the principle of legal security must be reflected in the quality of legislative and regulatory drafting.
- The essential elements of the rule-of-law state must be properly entrenched in order to give concrete effect to legal security.
- The right of individuals to legitimate expectations must be safeguarded as a necessary condition for the realization of legal security.
- The proliferation of legislation should be curtailed, and what is commonly referred to as “legislative inflation” should be avoided.
- Since legal security constitutes a pivotal axis for the progress and development of societies, it must be placed among the core priorities of any state that aspires to achieve comprehensive and sustainable development.

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