

The Principle of Legality in Administrative Law

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Abstract:

The principle of legality no longer applies exclusively to individuals' adherence to legal stipulations; it has expanded to encompass the actions of governing authorities, particularly within the administrative sphere. This principle mandates that administrative actions must not only aim to fulfill lawful objectives but must also strictly comply with pre-established legal conditions and procedures.

Granting administrative bodies, a modicum of discretion, provided it serves the public interest, does not contravene the principle of legality. Rather, such discretionary acts are considered legitimate, contributing constructively to the overarching framework of legal conformity.

This principle stands as a crucial constitutional safeguard, protecting rights and freedoms in contemporary states and embodying a core aspect of the rule of law. To uphold this principle, states diligently maintain oversight of administrative decisions through comprehensive mechanisms, including judicial scrutiny, thereby ensuring adherence to the principles of legality and equality before the law.

Keywords: Principle of legality, Administrative law, Judicial review, Discretionary power, Rule of law

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1. INTRODUCTION

The essence of the rule of law is that both the state and its constituents must submit to the governance of law. This submission is pivotal in safeguarding rights and freedoms and reflects a nation's commitment to democratic values and legal maturity. Should administrative bodies be permitted to operate outside the bounds of legal constraints, the resultant scenario would likely involve a degradation of rights and an encroachment on freedoms due to administrative arbitrariness.

Consequently, nations strive to preserve the principle of legality, a foundational element of the rule of law. This principle is particularly prioritized in Algeria, where the law mandates that all administrative actions, whether unilateral or consensual, be firmly anchored in legal authority. Therefore, administrative agencies are required to comply with legal norms in their interactions, whether with employees or the general public. Any deviation or negligence by an administrative entity necessitates judicial intervention to address potential grievances through various administrative legal proceedings. Such actions ensure that any administrative misconduct, unless it constitutes an act of sovereignty aimed at serving the public good, is subject to annulment or compensation, thus reinforcing the adherence to and the sanctity of the principle of legality.

In analyzing this principle, this paper is structured into two distinct sections: the first delineates the conceptual framework of the principle of legality, while

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the second explores its scope and the enforcement mechanisms that oversee its implementation.

2. Conceptual Framework of the Principle of Legality:

The principle of legality constitutes a fundamental tenet of the rule of law, requiring that all state institutions, administrative bodies, and individuals operate strictly within the bounds of legal norms. It mandates that every governmental act must be legally grounded; otherwise, it is deemed unlawful and subject to annulment.

A distinction must be drawn between legality and legitimacy. The latter encompasses broader normative considerations, reflecting justice and the ideal aspirations of the legal system—what the law ought to be. By contrast, legality refers strictly to the requirement that administrative action adheres to established legal rules, irrespective of broader moral or political considerations.¹

2.1 Definition of the Principle of Legality:

The principle of legality dictates that administrative authorities act within the framework of the law, ensuring that all their decisions and measures are legally sound. However, legal scholars have long debated the precise contours of this obligation.

One school of thought maintains that an administrative act is lawful only if it derives explicitly from a legal rule. This restrictive approach significantly limits administrative discretion, as it requires that every administrative action be directly authorized by a pre-existing legal provision.

Conversely, an alternative perspective holds that an administrative act is lawful as long as it does not contravene existing legal norms. This broader interpretation grants administrative authorities greater latitude, enabling them to exercise discretionary powers so long as their actions do not explicitly violate legal provisions.

The prevailing view seeks to reconcile these positions, asserting that the principle of legality entails the subjection of all entities, including administrative authorities and their various branches, to the rule of law. In its narrow sense, the principle of legality is confined to strict compliance with formal legal provisions. In its broader interpretation, however, it extends beyond statutory compliance to encompass the general obligation of both individuals and administrative bodies to act in accordance with the overarching legal framework governing the state.

2.2 Sources of the Principle of Legality:

The principle of legality draws its normative force from a stratified hierarchy of sources, bifurcated into codified (written) and non-codified (unwritten) categories. This analysis focuses on codified sources, which derive their authority from formal enactment by the state's legislative organs.

2.2.1. Codified Sources:

Codified sources encompass rules promulgated through formal legislative processes and enshrined in written instruments. Their hierarchical primacy is structured as follows:

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a. The Constitution

At the pinnacle of the legal hierarchy, the Constitution constitutes the supreme legal norm of the state. It serves as the foundational legal instrument from which all subordinate laws derive their validity and legitimacy. The Constitution defines the structure of governance², delineates the separation of powers, enshrines fundamental rights and freedoms, and establishes the overarching principles governing political, economic, and social order.

Given its normative supremacy, all legislative, regulatory, and administrative measures must conform to the Constitution. Any legal provision or governmental action that contravenes constitutional norms is inherently void. Additionally, all state institutions are bound by a fundamental duty to uphold and adhere to constitutional mandates.³

To institutionalize constitutional fidelity, Algeria's 2020 constitutional reform replaced the Constitutional Council with a Constitutional Court, an autonomous judicial body endowed with jurisdiction to define its own competences.⁴

b. Treaties.

Upon ratification, international treaties acquire supra-legislative status, prevailing over domestic statutes under the principle of *pacta sunt servanda*. Such treaties impose *erga omnes* obligations, mandating compliance by all state entities and private actors

c. Parliamentary Legislation.

Statutes enacted by the legislature within

constitutionally⁵ enumerated domains apply universally across the state's jurisdiction. These laws operationalize constitutional principles, and their binding force obligates strict adherence by all public and private actors.

d. Delegated Legislation.

Delegated legislation comprises administrative regulations issued by executive agencies. Unlike parliamentary statutes, these instruments lack legislative character but establish general, abstract legal rules. Despite their administrative provenance, such regulations bind even the issuing authority, and any contravention constitutes a breach of the principle of legality.

2.2.2. Non-Codified Sources.

In the absence of codified legal provisions, courts resort to non-codified legal norms to adjudicate disputes, underscoring their pivotal role as subsidiary sources of legality. These unwritten rules bridge lacunae in statutory frameworks, ensuring continuity in legal reasoning and administrative coherence. Non-codified sources bifurcate into two principal categories:

a. Administrative Custom.

Custom stands as one of the oldest and most enduring non-codified sources of law, notwithstanding modern states' efforts to codify legal rules. Within administrative law, custom functions as a normative framework guiding administrative conduct in the absence of explicit statutory directives. Its significance lies not only in its gap-filling role but also in its capacity to generate *sui generis* legal norms through institutional practice.

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Administrative custom may further subclassify into constitutional custom (governing foundational state practices) and administrative custom (regulating executive conduct). For the purposes of this analysis, we focus on administrative custom, defined as recurrent behavioral patterns adopted by administrative bodies in the course of their functions. Over time, such practices crystallize into binding norms, acquiring the force of law through consistent application and institutional acquiescence.

For an administrative custom to attain juridical validity, it must satisfy two cumulative elements.

- Material Element (Corpus)

This requires a uniform, continuous, and generalized practice by administrative authorities. The conduct must be repeated consistently across analogous contexts, evolving into a settled institutional habitus.

- Psychological Element (Opinio Juris)

This entails the administration's subjective belief in the binding nature of the practice. Authorities must adhere to the custom not merely out of convenience but from a perceived legal obligation, akin to compliance with codified law. Crucially, the custom must not contravene higher-order legal norms (e.g., constitutional or statutory provisions), preserving the hierarchy of legal sources.

b. General Principles of Law

In administrative law, the general principles of law constitute unwritten norms jurisprudentially articulated and endowed with binding authority through the rulings

of administrative courts. These principles serve as foundational pillars of legality, particularly in jurisdictions lacking comprehensive codification of administrative law. Courts routinely invalidate administrative decisions contravening such principles.

The French Council of State (Conseil d'État) has been instrumental in crystallizing these principles. Notable examples include

- Equality in Access to Public Services (égalité devant les services publics): Prohibiting discrimination in the provision of state services.
- Equal Opportunity in Public Employment: Ensuring merit-based access to civil service positions.
- Right to a Fair Defense (droits de la défense): Guaranteeing procedural fairness in administrative proceedings.
- Principles of Justice and Equity (justice et équité): Mandating proportionality and reasonableness in executive actions.
- Safeguarding Fundamental Freedoms: Protecting individual liberties from arbitrary administrative encroachment.

The judiciary imbues these principles with normative force, treating them as judge-made law (droit prétorien).⁶

3.The Scope of the Principle of Legality and Mechanisms of Oversight

At its core, the principle of legality mandates that administrative authorities, in all their structures and functions, operate strictly within the confines of legal

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norms. However, the principle is not absolute. The question arises as to whether administrative action must invariably adhere to legal provisions or whether certain exceptions allow for deviation in extraordinary circumstances. How should administrative bodies respond when confronted with unforeseen exigencies that demand flexibility? Moreover, what oversight mechanisms exist to ensure that any administrative action-whether in routine or exceptional circumstances-remains within the bounds of legality?.

3.1. The Scope of the Principle of Legality

Every general rule admits exceptions, often compelled by extraordinary circumstances that defy conventional legal frameworks. Such exigencies may justify administrative deviation from strict legality to preserve public welfare, potentially circumventing judicial review. The principle's flexibility is shaped by three key factors:⁷

3.1.1. Discretionary Authority

In carrying out its functions, the administration is often vested with a degree of discretion, allowing it to determine the most appropriate course of action based on prevailing circumstances. This discretionary power is most evident in public order regulation and administrative policing, where authorities must act swiftly and effectively to maintain stability and security.

Unlike situations governed by binding legal provisions, where administrative bodies have no choice but to comply strictly with statutory requirements, discretionary power affords them a margin of flexibility.

However, this does not imply unfettered freedom to act arbitrarily. Judicial oversight remains an essential safeguard, ensuring that discretion is exercised within reasonable limits and does not violate fundamental rights or constitutional principles.

3.1.2. Exceptional Circumstances

As a general rule, administrative actions must conform to the principle of legality. Any deviation renders an act unlawful and subject to annulment. However, in times of public emergency, the administration may be permitted to temporarily depart from standard legal norms in order to restore order and ensure the continued functioning of state institutions.

In such situations, the state assumes broader executive powers, allowing it to take exceptional measures beyond the ordinary legal framework. The rationale behind this exception lies in the necessity doctrine, which dictates that the preservation of public safety and national security may, in rare cases, justify temporary suspensions of legal constraints.

Despite this temporary expansion of executive authority, judicial oversight remains in place—though often adjusted to account for the exigencies of the situation. Courts may apply a more flexible standard of review, balancing the public interest against individual rights, rather than rigidly enforcing legal constraints.

3.1.3. Acts of State (Ames de Gouvernement)

The doctrine of acts of state, a jurisprudential construct originating from the French Conseil d'État, refers to a category of executive actions that are immune

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from judicial review—whether by way of annulment, compensation, or suspension. These acts pertain to high-level governmental functions, particularly in areas such as foreign affairs, national security, and constitutional governance.

Critics argue that the doctrine of acts of state represents a significant limitation on the principle of legality, as it shields certain executive decisions from judicial scrutiny, thereby creating an exception to the general rule of legal accountability.

In practice, acts of state are often linked to sovereign functions, including constitutional preservation, internal and external security, military operations, and essential matters of public policy. However, the precise boundaries of this doctrine remain contentious, with legal scholars and courts continuing to debate its implications for administrative and constitutional law.⁸

3.2. Mechanisms of Oversight over Administrative Conduct

Administrative acts and decisions are subject to a multi-layered oversight framework designed to ensure compliance with legal norms. These oversight mechanisms can be classified as follows:

3.2.1. Administrative Oversight

Administrative oversight refers to internal control mechanisms exercised by administrative authorities over their own acts. This form of oversight is primarily structured in two ways:

a. Hierarchical (Presidential) Oversight

In accordance with the principle of administrative hierarchy, subordinates operate under the authority and supervision of their superiors, who hold the power to review, modify, or annul their decisions. This oversight can be exercised proactively or in response to an internal administrative appeal (known as a presidential appeal).

a. Supervisory Oversight (Tutelle Control)

Algeria's administrative system operates on a dual structure comprising centralized and decentralized authorities. While decentralized administrative bodies enjoy a degree of autonomy, they remain subject to tutelle control (administrative guardianship), a form of supervisory oversight exerted by central administrative bodies to ensure compliance with legal and policy directives.

For instance:

- Wilayas (governorates) function under the supervision of the Ministry of the Interior.
- Regional directorates are subject to the authority of their respective ministries at the national level.
- Universities operate under the tutelage of the Ministry of Higher Education and Scientific Research.

Tutelle control thus strikes a balance between local administrative autonomy and state oversight, preventing abuses of power while ensuring policy coherence across different levels of governance.

3.2.2. Political Oversight

Political oversight serves as a counterbalance to executive power, ensuring that administrative decisions align with the public interest and democratic

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accountability. This oversight is exercised through various channels, including parliamentary control, where elected representatives scrutinize administrative actions through legislative inquiries, debates, and oversight committees, and political parties, which, through their elected officials, challenge and debate governmental policies within representative assemblies. Additionally, public opinion and civil society, encompassing trade unions, advocacy groups, and non-governmental organizations (NGOs), exert pressure on the administration through petitions, legal actions, and public mobilization. The media, particularly investigative journalism, plays a crucial role in exposing administrative mismanagement, fostering transparency, and holding public officials accountable. Furthermore, public demonstrations, strikes, and journalistic reports serve as powerful instruments for pressuring administrative bodies to uphold legal and ethical standards, thereby reinforcing mechanisms of accountability within the public sector.

3.2.3. Judicial Oversight

Judicial oversight remains the most authoritative and impartial mechanism for ensuring administrative legality. It provides a binding review of administrative acts, ensuring that public authorities do not act *ultra vires* (beyond their legal powers). This oversight is exercised through various legal remedies, including:

a. Annulment Action (Recourse for Annulment)

An annulment action (*recours pour excès de pouvoir*) is a fundamental remedy in administrative law

through which an individual or entity requests the administrative judge to nullify an unlawful administrative act.⁹ This judicial recourse is invoked when a decision is deemed illegal, procedurally defective, or in violation of fundamental rights.

The administrative judge, in this context, undertakes a legality review, assessing whether the contested act suffers from a defect of legality. If the judge finds that the act is unlawful, they may order its annulment, thereby rendering it legally void and unenforceable.

b. Compensation Action (Liability Lawsuit)

A compensation action (*recours en responsabilité*) falls within the jurisdiction of full jurisdiction courts and aims at redressing harm caused by administrative actions-whether legal or factual.¹⁰

This remedy allows individuals who have suffered damages due to an administrative decision¹¹ or act to seek financial compensation for their losses. It is based on the principle that public authorities may be held liable for their wrongful acts, particularly when they cause harm to private individuals.

c. Interpretation Action

Courts may resolve ambiguities in administrative decisions to delineate legal rights and obligations.¹² Judges employ interpretive methodologies-¹³ textual, contextual, and purposive-to ensure consistent application of law. This mechanism is particularly useful in cases where administrative ambiguity leads to legal uncertainty affecting the legal standing of individuals or

entities.

d. Legality Review Action

A legality review action (*recours pour appréciation de légalité*) is an objective, non-personalized judicial remedy aimed at evaluating the legal conformity of an administrative decision. Unlike an annulment action, which seeks to invalidate a decision, this remedy is designed to assess whether an act aligns with the legal framework. The administrative judge, in this case, does not have the authority to annul the contested act but rather issues a judicial declaration on its legality.

4. CONCLUSION

Through this study, it becomes evident that the principle of legality stands as one of the most vital constitutional safeguards for protecting rights and freedoms within the state. As the cornerstone of a rule-of-law framework, its realization necessitates robust guarantees. These include effective societal mechanisms—such as an engaged civil society, independent political parties, and a free Press unbound by institutional allegiances—alongside legal safeguards enshrined through the state’s commitment to subject all administrative acts, whether unilateral (e.g., regulatory decisions) or consensual (e.g., public contracts), to rigorous judicial scrutiny.

Administrative accountability is operationalized through diverse judicial remedies, including claims before administrative courts to annul unlawful acts or seek redress for damages. Criminal jurisdiction further intervenes when administrative misconduct constitutes statutory offenses, such as breaches of public procurement regulations (e.g., bid-rigging, unjustified privileges, or fraud). Such judicial oversight not only

deters malfeasance but also institutionalizes transparency and equality before the law, ensuring that no entity—public or private—operates beyond the law’s reach.

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