

Modern Principles of Public Economic Law

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Abstract:

A key feature of modern public economic law, reflecting the state's intervention in the economic domain, is the principle of participatory democracy. This principle emphasizes the involvement of civil society in the governance of public affairs. Another fundamental principle is legal security, which is enshrined in Article 34, paragraph 4, of the 2020 Constitution of the People's Democratic Republic of Algeria. Furthermore, the principle of decriminalization seeks to limit the judiciary's jurisdiction over specific economic offenses, transferring the authority to other institutions in order to enhance efficiency and coordination in the economic sector, ultimately advancing the state's public interest. This paper aims to explore these three principles, elucidating their significance and rationale in the management of public affairs, especially within the economic context

Keywords: Principle of legal security; decriminalization; participatory democracy; economy; state intervention.

INTRODUCTION

The new transformations experienced by modern states, which have shifted from being mere guardian states responsible for security and defence to becoming actively involved in the economic sphere, have led these states to adopt various economic theories and general principles to achieve greater efficiency and effectiveness in the economic domain. The principles of equality and the freedom of trade and industry are among the classical tenets of public economic law. However, many developed nations, particularly liberal ones, have adopted modern principles in response to evolving social and economic dynamics.

From a practical standpoint, the subject is essential as it assists stakeholders, including professors and students, in engaging with and utilizing this research paper for practical purposes, thereby enhancing their understanding of the modern principles of public economic law and their application in Algeria.

Therefore, the primary aim of this study is to answer several hypotheses related to the modern principles of public economic law and assess their effectiveness in achieving the goals of a state governed by law. Additionally, we aim to evaluate the extent to which the Algerian legislator has adopted these principles, focusing exclusively on modern principles without addressing the traditional ones.

This study aims to answer the question: *What are the modern principles of public economic law adopted by the Algerian legislator?* To explore this, a descriptive approach is used, focusing on three key principles: participatory democracy, legal security, and decriminalization.

Section One: The Principle of Participatory Democracy.

This section examines the constitutional and legal foundations of participatory democracy, beginning with the constitutional basis.

Subsection One: The Constitutional Foundation of Participatory Democracy

The 2020 amendment to the Algerian Constitution emphasizes reducing social inequalities and promoting sustainable development through a productive, competitive economy. It also stresses the importance of involving Algerian youth in nation-building to address the country's political, economic, and social challenges, ensuring their access to quality education.

The Constitution further mandates the establishment of institutions aimed at:

- Promoting a diversified economy that utilizes the country's natural, human, and scientific resources.

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- Safeguarding the national economy from corruption, embezzlement, and illicit activities (Constitution of the People's Democratic Republic of Algeria, 2020, p. article 9).

Moreover, the state is tasked with encouraging civil society's active participation in public affairs. Participatory democracy is also promoted locally through civil society (Constitution, 2020, Art. 16). Elected councils play a crucial role in decentralization and citizen engagement in public governance (Constitution, 2020, Art. 19).

Finally, the Constitution ensures the equality of citizens, removing barriers that impede personal development and political, economic, and cultural participation (Constitution, 2020, Art. 35, para. 2).

Additionally, the Constitution guarantees the right to establish associations, which can be exercised simply by declaration, and the state encourages public-interest associations. Associations may only be dissolved by judicial decision (Constitution, 2020, Art. 53). Public authorities work to protect consumers in a way that ensures their safety, health, and economic rights.(Constitution, 2020, Art. 62) Furthermore, economic operators may organize themselves into employers' associations, provided they respect the law.(Constitution, 2020, Art. 69)

Among the mechanisms of participatory democracy are petitions and requests. The Algerian Constitution provides several mechanisms to support participatory democracy. One key provision allows citizens to submit petitions to the administration, individually or collectively, on matters of public interest or issues affecting their fundamental rights (Constitution, 2020, Art. 77).

Citizens can also challenge the constitutionality of laws through the Constitutional Court if they believe that certain legislative or regulatory provisions violate their rights, such as those related to trade, investment, or property (Constitution, 2020, Art. 195).

Additionally, the Economic, Social, and Environmental Council, under the President's authority, acts as a platform for dialogue, consultation, and analysis in economic, social, and environmental matters. It also advises the government on national issues (Constitution, 2020, Art. 209). Its functions include facilitating civil society participation in policy consultations, maintaining ongoing dialogue between national economic and social partners, and providing recommendations to the government (Constitution, 2020, Art. 210).

Subsection Two: The Legal Foundation of the Principle of Participatory Democracy

The principle of participatory democracy is further reinforced in Law 11-10, which recognizes municipalities as the basis for decentralization and citizen involvement in public governance. Municipal councils are tasked with informing and consulting citizens on urban planning and development decisions (Law 11-10, 2021, Art. 11).

The Law on the Wilaya (province) defines the wilaya as a decentralized administrative unit, essential for implementing public policies in partnership with the state. It plays a role in territorial development, economic and social progress, environmental protection, and improving citizens' quality of life (Law 12-07, 2012, Art. 1). The law also requires the Provincial People's Council to create a medium-term development plan to allocate resources for national and local development initiatives. (Law 12-07, 2012, Art. 80)

This plan is adopted as a framework for promoting and advancing economic and social development in the wilaya." Additionally, the Provincial People's Council promotes cooperation and communication between economic actors, training institutions, scientific research organizations, and local administrations to foster innovation in the economic sectors. The Council also works to enhance consultation with economic actors to ensure a favourable environment for investment. (Law 12-07, 2012, Art. 83)

This legal framework emphasizes the role of local governance in involving citizens and stakeholders in decision-making processes, particularly in economic and social development. It also highlights the importance of collaboration between public institutions, civil society, and economic players in promoting sustainable growth and effective local governance.

Section Two: The Principle of Legal Security

Legal security is a modern principle of public economic law that emerged with the evolution of public economic activities. In this section, we will attempt to define it (Subsection One) and then explore its formal and temporal dimensions (Subsection Two).

Subsection One: The Concept of Legal Security and Its Basis

The principle of legal security is embedded in the constitution, although no formal definition is provided. It requires the state to ensure that laws related to rights and freedoms are accessible, clear, and stable (Constitution, 2020, Art. 34, para. 4). The concept of legal security has a long history, first being recognized by the German Federal Constitutional Court in 1961, and later by the European Court of Justice and the European Court of Human Rights in the 1960s and 1980s (Tahari, 2022, p. 164).

Legal security ensures that citizens can easily understand what is permitted or prohibited by law. Legal norms must be clear, predictable, and not subject to frequent, unexpected changes (Shams El Din & Laqabi, 2021, p. 76). It also involves maintaining stability and predictability in legal relationships, so individuals and entities can act confidently without fear of arbitrary legal disruptions (Ben Sahaa & Ben Al-Akhdar, 2020, p. 259).

Thus, legal security has two key dimensions: the formal, which relates to the quality of the law, and the temporal, which concerns its predictability (Shams El Din & Laqabi, 2021, p. 76).

Subsection Two: The Formal and Temporal Dimensions of Legal Security

First: The Formal Dimension of Legal Security

The existence of law alone is insufficient; it must be clear, accessible, and understandable to those governed by it. The formal dimension of legal security requires laws to meet these criteria (Shams El Din & Laqabi, 2021, p. 76).

1. **Clarity of the Law:** Article 34 of the 2020 Algerian Constitution emphasizes the need for laws to be accessible, clear, and stable. It highlights the state's responsibility to ensure that legal norms are understandable and not subject to sudden or frequent changes, which is essential for maintaining legal security. Since law is an art requiring technical formulation to embody its rules, the term "formulation" refers to the precise, creative, and innovative use of legal terminology. This process shapes legal rules into a structured set of terms that constitute "legal language," which is distinct from other types of language due to its strictness, precision, and aim to communicate with the public in a straightforward manner. (Ajaa, 2022, p. 33)

The legal scholar Géný distinguished between two types of formulation: material and conceptual.

- **Material Formulation:** This type of formulation represents the tangible expression of legal norms, presented in a concrete and fixed manner that leaves no room for doubt or interpretation regarding the content of the legal rule.(Fadli, 2016, p. 211)
- **Conceptual Formulation:** This is a mental process that legislators resort to by taking into account presumptions and customary practices among people to maintain the stability of legal transactions.(Fadli, 2016, p. 211)

2. **Accessibility of the Law:** This requirement imposes an obligation on public authorities to establish mechanisms that facilitate and simplify citizens' access to applicable legal norms, especially given their quantitative inflation and continuous evolution. The practical reality is that even legal professionals need help to keep pace with this normative complexity. (Shams El Din & Laqabi, 2021, p. 77)

Second: The Temporal Dimension of Legal Security

The principle of non-retroactivity, outlined in Article 82 of Constitutional Amendment 20-442, states that no tax or fee can be imposed retroactively. It emphasizes that all citizens are equally responsible for tax contributions, and any act undermining tax equality is seen as harmful to the national community (Shams El Din & Laqabi, 2021, p. 80)

This principle also applies to administrative decisions issued by administrative authorities to create legal positions. Such decisions should apply to the present and the future, not past legal positions. This ensures the protection of acquired rights, preserving legal stability. Non-retroactivity is vital for legal security, fostering a stable legal environment, encouraging investment, and attracting foreign capital.

This can only be achieved through respect for the law and its application to the legal positions it governs, without reverting to those established under previous laws.

As previously mentioned, the principle of non-retroactivity mandates that new laws cannot be applied to facts and actions before the law's enactment. (Shams El Din & Laqabi, 2021, p. 84)

Section Three: The Principle of Decriminalization

Decriminalization is one of the modern principles aimed at rationalizing criminal policy by achieving objectives rather than obstructing them, especially in the economic field. This principle has emerged with the establishment of independent regulatory authorities, which have been granted punitive powers that compete with those of criminal courts.

These powers are exercised through the imposition of administrative penalties. In this section, we will define the principle of decriminalization (Subsection One) and examine the role of independent administrative authorities and their relationship with decriminalization (Subsection Two).

Subsection One: Definition of the Principle of Decriminalization

Legal scholars have approached decriminalization from two perspectives to define its meaning. The first perspective focuses on the gradual withdrawal of criminal law without its complete disappearance. This means that decriminalization, in this sense, is achieved even if the criminal nature of the act is retained but with a reduced penalty through reclassification of the crime to a lesser offence. (Delmas-Marty, 2021, p. 20)

The second perspective highlights the withdrawal of criminal law in favour of more effective mechanisms, particularly in the economic field, through what is known as substitution. In this approach, criminal penalties are replaced by administrative sanctions imposed by specialized administrative authorities.

According to legal scholar Mireille Delmas-Marty (Elouazzani Chahdi, 2018, p. 468), decriminalization is "any form of abandonment of the criminal justice system in favour of a civil or administrative alternative, or mediation." (Ordinance 15-02, 2015, Art. 40)

In Algerian legislation, the principle of decriminalizing management was introduced by Ordinance 15-02. (Presidential Directive 02-2021, 2021, p. 2) The executive authority intervened with Presidential Directive 02-2021, issued on August 25, 2012 (Mamoun & Ben Youssef, 2021, p. 2), which lifted criminal liability for management actions to encourage investment by protecting local officials and reviving the national economy.

Given the close relationship between management and public economic institutions' funds, the legislator regulated the criminal liability of

managers of these institutions through scattered legal provisions. This negatively impacted managers' performance, prompting the legislator to amend the Criminal Procedure Code in 2015 through Ordinance 15-02.

This amendment introduced Article 6 bis, which restricted the initiation of public prosecution against managers of public economic institutions wholly owned by the state. (Boujemline, 2021, p. 180)

Subsection Two: Independent Administrative Authorities and Their Relationship with Decriminalization

The emergence and proliferation of independent administrative authorities in French law reflect a shift in traditional administrative organization. These authorities represent a new state intervention characterized by more specialized regulatory bodies not uniformly categorized as legal entities, leading to many criticisms.

Some legal scholars argue that the term "regulatory authority" has no specific legal meaning, as it is linked to existing legal categories, as is the case in French law, where most regulatory authorities are independent administrative bodies. (Guedon, 1991, p. 20) However, some traditional administrative authorities still exercise their regulatory powers.

Independent administrative authorities reflect the evolution of administrative functions and a transformation in public administration's tasks. The shift is from direct management, which relies on qualified public officials following legal rules to achieve traditional public interests, to a more flexible and efficient model, particularly in the economic domain.

Economic activities require speed and adaptability, and from this perspective, independent administrative authorities are considered an effective tool for achieving alignment and integration between administrative and economic aspects.

These authorities play a crucial role in the ongoing reform and adaptation of the state's tasks and structures, transitioning from traditional management by conventional public officials to a more specialized approach, particularly in the economic sector. This shift necessitates entrusting tasks to more technically proficient public officials, unlike regular administrative agents, whether employees, managers, or judges. The effectiveness of these authorities can only be achieved by meeting three essential requirements: professionalism, efficiency, and neutrality.

The liberal system inspired the creation of independent administrative authorities. This system relies on separating political authority from direct economic management. This separation distinguishes the state's role as a public authority guaranteeing economic order and public interest in the market from its role as a participant in public institutions. According to scholars, the independence of these authorities is the *raison d'être* of their existence, allowing them to make decisions in sensitive sectors without the influence of the executive branch. (Guedon, 1991, p. 20)

Independent administrative authorities represent an exception to the principle of separation of powers. They set legal standards and punish violations of those standards through the authority granted to them. This authority, transferred from the criminal courts, is justified by the need for speed and flexibility in administrative deterrence, particularly in the economic sector. (Rosenfeld & Veil, 2008, p. 62).

Conclusion:

In summary, the study highlights the following key points:

- The Algerian Constitution establishes several fundamental principles that support the state's economic involvement and openness, aiming to balance economic actors for the public good. Among these principles is participatory democracy, explicitly outlined in Article 16, paragraph 3: "The state encourages participatory democracy at the local level, particularly through civil society."
- The 2020 Constitution also solidifies the principle of legal security in Article 34, paragraph 4: "To ensure legal security, the state, when enacting legislation related to rights and freedoms, must guarantee its accessibility, clarity, and stability." Moreover, Article 82 introduces the principle of non-retroactivity, which further strengthens legal security.

The study concludes that the constitutional legislator did not explicitly address the principle of decriminalization as a modern principle of public economic law. However, Ordinance 15-02 amended the Criminal Procedure Code through Article 6 bis, decriminalizing certain management aspects. This was further reinforced by Presidential Directive 02-2021, issued on August 25, 2021, concerning decriminalizing management actions.

Recommendations:

- To encourage foreign investment, we suggest adopting more advanced laws that align with liberal systems.
- To achieve legal security, we recommend ensuring more excellent stability in legislation and avoiding frequent amendments to prevent normative chaos.
- We propose modernizing and establishing an international digital platform that compares Algerian and foreign laws in economics and investment.
- We suggest constitutionalizing the principle of decriminalization and adopting it as a principle that promotes investment and expedites the completion of developmental projects.
- We recommend granting independent administrative authorities more extraordinary powers in the realm of legislation related to every economic activity and mandating their consultation in

drafting laws related to their areas of operation, making such consultation obligatory.

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