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The Concept of the Principle of Legal Security and Its Constitutional Value

Abstract

The law is the only means that leads to achieving public interests by protecting the rights and freedoms of individuals in addition to achieving the common interests of the components of society, whether they are natural or criminal persons. Therefore, it was necessary for legislation to provide some protection for legal rules. Despite the existence of the supremacy of the law or legislation, it may happen that the legislation becomes a subject of controversy and contradiction. The origin is that legal rules are characterized by stability and clarity. From here, the term legal security appeared, through which legislators seek to achieve this stability with regard to legal rules.

Keywords: Legal security, rights, risks, legitimacy

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Hüquqi təminat prinsipi konsepsiyası və onun konstitusiyaya dəyəri

Xülasə

Qanun, istər fiziki, istərsə də cinayət törətmiş şəxs olmasından asılı olmayaraq, cəmiyyətin tərkib hissələrinin ümumi mənafeələrinə nail olmaqdan əlavə, fərdlərin hüquq və azadlıqlarını qorumaqla ictimai mənafeələrə nail olmağa aparən yeganə vasitədir. Buna görə də qanunvericilikdə hüquqi qaydaların müəyyən qədər müdafiəsi zəruri idi. Qanunun və ya qanunvericiliyin aliliyinin mövcudluğuna baxmayaraq, qanunvericilik mübahisə və ziddiyyət predmetinə çevrilə bilər. Mənşəyi ondan ibarətdir ki, hüquqi qaydalar sabitlik və aydınlıq ilə xarakterizə olunur. Buradan qanunvericilər hüquqi qaydalara münasibətdə bu sabitliyə nail olmağa çalışan hüquqi təhlükəsizlik termini meydana çıxdı.

Açar sözlər: hüquqi təhlükəsizlik, hüquqlar, risklər, qanunilik

Introduction

It is widely recognized that every country has the right to issue laws and regulations it deems appropriate in any sector. One of the most important criteria for measuring the modernity and development of societies is the clarity of legal foundations within the country and their alignment with the provisions of the constitution. This can only be achieved through the establishment of a well-regulated legal system based on legal principles within the institutional framework of the state.

The rule of law is considered a fundamental feature of the state, as it subjects rulers and all state apparatuses exercising power to the constraints imposed by the law.

The rule of law requires acting in accordance with a legal system with defined objectives, the most important of which is the stability and consistency of relationships and the legal status of individuals and entities. Only then can the issue of legal security be raised. Therefore, we have chosen to address the issue as follows: What is the foundation of the principle of legal security, and what is its constitutional value?

Research

To answer this question, we have attempted to divide our study into two parts. In the first part, we addressed the concept of the principle of legal security. In the second part, we discussed the foundations of the principle of legal security.

I. The Concept of the Principle of Legal Security

Historically, the principle of legal security did not have a specific definition because the elements of the modern state were not established, and legal rights and statuses were only those determined by rulers. Following that, the idea of separating the concept of rights and law emerged, which was expressed through the theory of natural law (Gmeja, 2008, p. 10).

However, with the beginning of the 20th century, several legal theories emerged, suggesting that the foundation of any legal system should be based on the idea of obligation, not on the idea of rights. This theory soon faced many criticisms, the most important of which was the issue of linking law with the state. Based on this, the concept of legal security began to emerge. Therefore, we will first address the constitutional value of the principle of legal security.

1. Definition of the Principle of Legal Security:

The term “legal security” has not been defined by legislators, just like many other legal terms. This matter has, therefore, been left to jurisprudence and the judiciary to provide a definition. Several doctrinal approaches have emerged regarding its definition. Some have defined legal security as one of the manifestations of the natural human right to safety. According to this view, it is defined as “any guarantee of obligations and avoiding mistrust in the application of the law, individuals aimed at ensuring thereby securing the proper implementation right to safety (Gmeja, 2018, p. 391).

Others have based their definition on the idea of legitimate expectation, meaning any situation in reality that can be inferred from the clarity and precision of the applicable legal rules, allowing an individual to know their rights and duties and take a position based on that.”

Some have viewed the content of legal security according to a subjective criterion, defining it as the presence of a kind of relative stability in legal relationships and the stability of legal positions to spread security and reassurance among the parties involved, whether they are private or public legal entities. These parties can arrange their affairs based on the existing legal rules at the time of performing their actions, without encountering unexpected surprises or actions from any of the three branches of state power that could destabilize their trust and stability in the state and its laws (Constitution, 1996).

Others have looked at the content of legal security from an objective perspective, considering it as the respect for the hierarchy of legal norms, which contributes to the harmony and coherence of the legal system. This view defines it as the optimal effectiveness of a law that can be understood and accessed, allowing individuals to predict the legal consequences of their actions, respecting their pre-established legitimate expectations and working towards achieving them (Muhsen, 2010).

It is also defined through the goals it achieves. It is described as a process aimed at ensuring stability in legal relationships and positions by issuing legislation that is consistent with the constitution and compliant with international law principles, with the goal of fostering trust and reassurance among the parties involved, whether in private or public law.

Perhaps the clearest and most comprehensive definition of the principle of legal security is the one provided by the French Council of State in its 2006 report, which states: “The principle of legal security requires that a citizen be able to determine what is allowed and what is prohibited under the applicable law without the need for additional efforts on their part to reach this result. The laws must be clear and understandable and should not undergo excessive changes over time, especially not unexpected ones.” This report divides the content of legal security into two axes: the formal axis related to the quality of the law in terms of clarity and the temporal axis related to the law’s predictability, ensuring that legal positions remain relatively stable (Constitution, 1996).

From the previous definitions, we can conclude that jurisprudence has not agreed on a comprehensive and definitive definition of legal security. This is mainly due to the fact that the theory of legal security is multi-faceted, with diverse meanings and dimensions. For many, this concept has a variable structure, multiple meanings, and is not precise.

2. The Constitutional Value of the Principle of Legal Security

The value of any principle derives its strength from its source, and as we know, the constitution is the supreme source of legal systems. So, is legal security considered a constitutional principle or merely a legal one?

A - The Constitutional Value of the Principle of Legal Security in European Union

Countries:

The German legislator is considered one of the pioneers in enshrining legal security as a constitutional principle in 1949. This principle is intrinsically linked to the principle of the rule of law, which implicitly involves the oversight of state power, the clarity of laws, and the judicial protection of individual rights. According to a ruling by the German Federal Constitutional Court on December 19, 1961: Legal security, as a necessary element of the rule of law, implies that a citizen should be able to anticipate potential state interventions in legally protected areas, and appropriate judgments should be made to ensure that their actions in accordance with the prevailing law will be recognized with all the legal consequences associated with the” Since that time, it has been considered a constitutional principle, and this was further reinforced by the European Court of Justice in 1962 under the term “legitimate expectation,” which aligns with the principle of legal security. This position has been adopted by the European Court of Human Rights since 1981. Whether the origin of this principle comes from German constitutional jurisprudence or European jurisprudence, this stance has led to legal security being granted a constitutional character in Europe, as reflected in the Spanish Constitution of 1978, specifically in paragraph (3) of Chapter 9. It has also been applied by the judiciary in Switzerland, the Netherlands, Portugal, and Austria (Constitution, 1996).

In France, however, the constitutionality of the principle of legal security has not been definitively confirmed. It was not included in the 1958 Constitution, nor was it affirmed by the French Constitutional Council. Opinions have been divided on whether the principle is constitutional. In a decision issued on April 9, 1996, the Council considered that the legislator had enshrined this principle to limit the methods of appeal, which could be understood as the Council constitutionally endorsing the principle. However, in another decision on December 30, 1996, the French Constitutional Council rejected the constitutional nature of the principle of legitimate expectation due to the absence of explicit constitutional provision. As a result, many French scholars have asserted that while the French Constitutional Council did not give legal security a constitutional status, it did not explicitly exclude it either. However, in accordance with the European Convention on Human Rights and comparative international law, the French Constitutional Council has, in a way, constitutionalized the principle of legal security through a series of decisions affirming this principle. Judicially, the principle was only recognized in the case *Société KPMG* on March 24, 2006. Additionally, the principle of legal security has judicial applications in the British legal system, particularly in the protection of expectations founded on individuals from sudden changes in public administration policies (Constitution, 1996).

II. The Fundamentals of the Principle of Legal Security

Legal security is one of the fundamental concepts prevailing in laws and international agreements, ensuring the creation of laws that do not contradict the constitution. This requires consensus on a set of demands that are considered basic principles (First demand), as well as efforts to mitigate the risks that threaten legal security (Second demand) (Khadari, Benjeddou, 2018, p. 391).

1. Requirements for Achieving Legal Security

The principle of legal security can only be realized when certain conditions, which are simultaneously essential principles that must be respected and implemented, are met. Among the most important of these principles are: the prohibition of retroactive laws (Subsection 1), the principle of respecting acquired rights (Subsection 2), the principle of legitimate expectation (Subsection 3), and the principle of limiting the retroactive effect of unconstitutional rulings (Subsection 4).

A - The Prohibition of Retroactive Laws

In general, the prohibition of retroactive laws means that new legislation does not apply to events that occurred before its enactment. It cannot review past legal statuses or have a direct effect on events that have already occurred and have been adjudicated under the old legislation. This rule primarily takes the value of ordinary legislation, as stated in the first paragraph of Article 2 of the Civil Code:

“The law shall only apply to what occurs in the future and shall not have retroactive effect” (Aïtoudia, 2018, p. 14)

However, it gains constitutional value in both criminal law and tax legislation, as outlined in Article 46 of the Constitution: “No conviction except by a law issued prior to the commission of the criminal act,” and in paragraph 4 of Article 64: “No tax, levy, fee, or any other right, regardless of its type, may have retroactive effect” (Constitution of Algerian, 2020).

B - The Principle of Respect for Acquired Rights

This principle means that no one, whether a public authority, regardless of its power in the state, or another private individual, may violate or infringe upon a legitimate right acquired by an individual through legal means or by a final decision.

This especially applies to fundamental rights and freedoms enshrined in the constitution, such as property rights and citizenship rights. An acquired right is defined as “a right that arises from a legal act and creates a legal status.” The concept of acquired rights relies on the necessity of the stability of legal positions and, thus, the stability of related actions (Belhamzi, 2019, p. 78).

C - The Principle of Legitimate Expectation

The principle of legitimate expectation refers to the idea that general abstract rules issued by the legislative authority in the form of laws, or by the executive authority in the form of administrative regulations, should not be enacted suddenly in a way that contradicts the reasonable expectations of individuals, based on objective foundations drawn from existing systems. The European Court of Justice defines legitimate expectation as: “Any situation in reality, unless otherwise decided, to be assessed according to the rules of the applicable law, and the law must be clear and precise so that an individual can understand their rights and obligations and act accordingly” (Rabi, 2018, p. 192).

The principle of legality, which means the rule of law, targets the subjection of all public authorities to the law and the restriction of administration by laws and regulations. Its scope can be found in the written sources of the state’s legal system, including the constitution, ordinary legislation, and regulatory orders, or in unwritten sources such as the general principles of law, which the judiciary derives and enshrines in its rulings, such as the principles of equality, the *res judicata* principle, the guarantee of the right to defense, and so on. Additionally, both Islamic law and customary law play a role in defining and promoting the principle of legality (Ben Abderrahmane, 2017, p. 99).

D- The Principle of Limiting the Retroactive Effect of Unconstitutional Rulings

This principle refers to the withdrawal of the effect of a legal rule on the past and limiting it to the facts that occur after the rule comes into effect. This means that the new law has two aspects: a negative aspect, where it has no retroactive effect, and a positive aspect, where it has a direct effect. The law cannot address events that occurred before its enactment; it cannot review what happened under the old law, including the creation or dissolution of legal positions, or the establishment of elements that form or dissolve such positions, or the consequences related to them. A ruling declaring a law unconstitutional after a certain period may harm the acquired rights of individuals or the legal positions they obtained under the now- repealed law, thus violating the principle of legal security. Given the significant harm caused by this, some thinkers have emphasized the need to establish limits and controls on the retroactive effect of rulings declaring laws unconstitutional, ensuring the protection of individual rights and the reinforcement of the principle of legal security (Boukmash, Kalash, 2017, p. 24).

2- Risks Affecting Legal Security and Ways to Mitigate Them

Legal security faces a number of obstacles that can affect the principle, leading to the spread of legal insecurity (First Subsection). To avoid these obstacles, systems work on finding a set of solutions (Second Subsection).

A - Risks Threatening Legal Security

The main risks threatening legal security are as follows:

First - Legislative Inflation and Poor Quality of Texts

We are living in a chaos of legislation, laws, regulations, and judicial interpretations that are hard to absorb even by specialized legal professionals, let alone the ordinary citizen. This is due to the

overly complex nature of legal rules. Legislation is an art, and a difficult one at that. The incorrect use of terms, lack of clarity in sentences, and errors in imperative formulations will inevitably cause difficulties in application in the future. Legislative work is a precise and meticulous craft. The way legal rules are formulated in Algerian legislation carries with it many issues of literal translation that strip the text of its content and purpose. On the other hand, it suffers from the lack of appropriate phrasing, which leaves judges confused when applying and interpreting laws. There is also frequent criticism of thinking in this area (Boukmash, Kalash, 2017, p. 150).

Second - Contradiction of Rules and Difficulty in Understanding the Law

Contradiction and overlap are defects that reduce the value of legal texts and expose them to criticism. A legal text should be free from contradictions to prevent judges, individuals, and relevant parties from being in doubt and confusion when searching for the truth hidden in the text. Therefore, such contradictions should be avoided. Legal texts should be drafted in simple, clear words and phrases that are directly understandable by different segments of society, regardless of their cultural and educational backgrounds. The law does not address a specific group, but addresses individuals in general (Karim, 2017).

Third - The Law's Failure to Include Standard Rules and Retroactive Laws

Legal security and its requirements Standard rules are guidelines and frameworks that the legislator follows when establishing constitutional provisions, legal rules, and even when judges issue rulings. Therefore, those involved in drafting legal texts must be trained in legislative techniques according to legal thinking. While the principle of non-retroactivity of the law is fundamental in establishing legal security, retroactive laws represent a violation of legality, causing harm to previous contractual or legal positions. The danger of retroactivity has already been clarified in the principle of non-retroactivity mentioned earlier (Aïtoudia, Mohamed, 2018, p. 7).

Fourth - Violation of the Principle of Equality Before the Law

The principle of equality is one of the fundamental principles deeply rooted in history and enshrined in all systems and laws, with no dispute over it. It is the foundation of justice, reducing disputes, and ensuring the stability of societies. No constitution or declaration is without reference to it. The principle of equality is one of the basic principles upheld by all constitutions across all fields, and it is the cornerstone upon which states are built, ensuring justice, which is the basis of governance. The Algerian Constitution refers to equality in many articles, including Article 68, which states, "The state works to promote gender parity in the labor market." This refers generally to the necessity of equal duties among all citizens in exchange for enjoying rights. At the same time, the Constitution emphasizes the violation of the principle of equality in tax payments and considers it a danger to the national interest, classifying it as a criminal behavior deserving punishment. The text is explicit on this matter, as stated in Article 05/78 "Any action aimed at evading the equality between citizens and legal entities in paying taxes is considered an infringement on the national interest, and the law punishes it" (Ben Ali, 2020, p. 65).

Fifth - The Increase in Disputes

The more disputes there are in a society, the more it indicates poor legal rules and their ineffectiveness. This may be due to these rules not aligning with the customs, traditions, and values of the individuals. The law must conform to the environment in which it exists, as it requires conditions and factors to grow and fully develop. A political constitution begins as a custom, then becomes a norm, and eventually becomes a legal standard (Al-Assar, 1999, p. 245).

3. Means to Mitigate the Risks Threatening Legal Security

Given the negative impact of these risks on the principle of legal security, there is a resort to assessing the risks of legal insecurity and establishing teams and working groups to evaluate the performance of legal texts in practical reality. One of the adopted means in this regard is preliminary evaluation, which involves the phase prior to the establishment of legal rules. In this stage, factors related to the effective implementation of legal rules, such as public interest, the target group for the legal rule, and its acceptance by that group, are studied. Additionally, there is the training of those who draft the laws to ensure the quality of drafting the legal rule. Alongside this, there is post-evaluation related to the proliferation of laws, the inconsistency between different legal texts, and the

effect of sudden legal amendments. Moreover, the issuance of implementing decrees for laws, which, if not issued, leads to the paralysis of those laws. These evaluation methods have required many countries; systems to work on providing mechanisms to assess the effectiveness of the law after its enactment (Belkacem, 2018, p. 122).

Conclusion

In conclusion, it can be said that the principle of legal security is a modern concept, yet its essence is as old as the legal rule itself. It serves as a tool for building trust throughout society, ensuring stability and consistency in legal relationships and legal positions. Most importantly, it emphasizes the clarity of legal rules and their immunity from sudden and unexpected changes. The clearer the legal rule is, the easier it becomes for individuals to understand and internalize it. Therefore, all legal systems should enshrine this principle in their constitutions, as it guarantees the rights of individuals and strengthens the rule of law. Moreover, all systems must respect the principles of legal security, including the non-retroactivity of legal rules, the respect for acquired rights, the principle of legitimate expectation, and the restriction of the retroactive effect of rulings declaring laws unconstitutional.

Furthermore, it is necessary to address all risks that threaten the stability of legal security. Among the adopted means in this regard is the preliminary evaluation, which involves the phase before the legal rule is established. In this phase, the consideration of several factors related to the effective implementation of the legal rule, such as public interest, the target group for the legal rule, and its acceptance, must be studied. Additionally, those drafting laws must be trained to ensure the quality of legal texts. Post-evaluation is also crucial, particularly regarding legislative inflation, the inconsistency between different legal texts, the impact of sudden legal amendments, and the issuance of implementing decrees for laws, the failure of which results in the paralysis of those laws.

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