

A READING IN THE CONCEPTS AND PILLARS OF THE LEGAL SECURITY

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Abstract:

The legal security is one of the main principles of the modern state of law, as it ensures stability and focuses on the clarity and steadiness of the legal positions to avoid exposing the law subjects to abrupt provisions and texts. The legal security is based on a set of principles that must be respected, such as the awareness about, access to, and predictability of the legal rule. This aims at fostering the citizens' trust in the laws and protecting their freedoms and rights.

Keywords: legal security; judicial security; personal security; material security; law state.

INTRODUCTION:

The legal security is one of the common concepts in the legal field, mainly for the evaluation of a given legal system, or for the study of the enactment of regulations by the legislator or their enshrinement by the judicial advisory opinions. Undoubtedly, the interest of individuals and communities lies within enacting laws, respecting and committing to them, sanctioning their violation, and providing security and reassurance in the legal practices. In addition, the legal rule is a human work that aims at covering the whole life aspects. However, it is always missing parts and needs renewal because the society is continuously changing.

In the attempt to cope with the political, economic, social, and technological developments, the expression “legal security” emerges. Such developments and changes create the feeling of human instability and, at the same time, increase the interest in the legal security. Based on this, this study revolves around the legal security and its pillars, and attempts to answer the problematic that says:

Problematic: what are the concept and pillars of the legal security?

To answer this question, we divided the study into two chapters. The 1st is about the legal security and sheds light on its definitions, differences from the similar concepts, and the historical background of its genesis and development. The 2nd is about the characteristics and pillars of the legal security. In the end, the study provides results and recommendations that shall enrich the topic.

Chapter one: The concept of the legal security:

The expression “legal security” is tightly linked to the “legal rule” and to its genesis, as it is historically linked to the pillars of building the law state that places the legal rule at its top. This chapter defines the legal security. In so doing, it linguistically and judicially defines the concept, and, then, shows the differences from the other concepts. After that, the study focuses on the historical background of the genesis and development of the legal security through the different laws and legal systems.

Section one: Definition of the legal security and its difference from the other concepts:

The legal security is a wide and flexible notion; therefore, it is difficult to cover it. In addition, it differs from one society to another and from one time to another, and encompasses different fields and aspects (al Samet, 2016, p. 273). Moreover, the legal security is one of the components of security as a whole, what makes it difficult to set a comprehensive definition (Boujemaa, 2022, p. 467). Despite these difficulties in setting a definition, the jurisprudence and justice attempted to define it.

Part one: definition of the legal security:**First: the linguistic definition:**

Cambridge Dictionary defines security as the protection of a person, building, organization, or country against threats such as crime or attacks by foreign countries.

Second: the judicial definition:

The French State Council defined the legal security in its general report of 2006 as the principle that requires that the citizen be in a level that allows identifying what is permitted and what is forbidden by the applicable law. To reach this result, the laws must be clear and understood, and avoid recurrent unexpected changes in time (al Tai, 2018, p. 123). In this regard, the principle of the legal security includes the individuals' conclusions to determine the liability of their actions, and the clarity of the legal rule.

Third: the jurisprudent definition:

Some jurisprudents define the legal security as the individuals' exact and confirmed knowledge about their legal positions, rights, and duties to behave fearlessly about the consequences of their actions. In addition, others defines it as achieving a set of relative steadiness in the legal relations and the stability of the legal positions to spread security and reassurance among the parties of the legal relations, be them special or general legal persons. In this context, these parties can know their situations according to the applicable law when exercising their activities, without fear of abrupt results they had not known about, which destabilize their trust in the state and its laws (Mazen, 2020, p. 18).

Furthermore, it is any legal system that aims at securing the optimal execution of the obligations and ending, or at least reducing, the doubt about the law application (Ourak, 2017, p. 257). We can say that most of the jurisprudent definitions agree that the aims behind the legal security is the individuals' feeling of security and stability of the legal texts to increase their trust in the laws.

Part two: The differences from the other concepts:

The legal security is very important for the state of law that targets making the applicable law flexible to protect the individuals' freedoms and rights and increase their feelings of security, trust, and stability. In this regard, there are other terms and concepts that target the same goal; however, they differ from the legal security.

First: The personal security:

It is based on the notion of securing the individuals from any oppressive measures taken by the public authorities without legal ground, or any aggression from the others. In addition, it targets spreading reassurance for the individuals to exercise their lives and freedoms far from violations, such as detention and other measures that violate the human decency (al Maameri, 2018, p. 53). Moreover, it secures the individuals from psychological intimidation, physical torture, and slavery. Furthermore, it applies the principle of legality of crimes and sanctions that provides that no public authority shall issue illegal sanctions. Thus, the importance of this principle emerges, as it surrounds the authority by laws (Mhicen, 2011, p. 204).

Based on what was said, the applications of the personal security focus on protecting the moral and material sides of the humans. As for the legal security, it protects the human through protecting his rights, positions, and legal situations established by constitutional laws and provisions, which must not be violated by any individual or authority.

Second: The material security:

It revolves around a set of necessary human economic and social rights because they secure his socioeconomic conditions. These rights are constitutional and must be protected by the state to protect its security and stability. Examples of these rights include the right to work, social insurance, healthcare, etc (al Maameri, p. 49).

Third: The legal security:

It is trusting the judicial branch and its decisions, provisions, and orders that target the protection of the individuals and communities, as long as the basic principles exist, namely the independence of justice, easy access to it, and the efficiency of its provisions (al Samet, p. 276).

The similarities and differences from the legal security lie within the act that the legal security requires a complementary legislative system that includes the legal security criteria, namely their clarity and suitability to the fairness and justice principles. In addition, the relation between them manifests in the role of justice in protecting the legal security, as the courts in the different judicial systems confirm the sovereignty of the law, spread the trust and stability of the legal relations and positions, and foster the individuals' trust in the law and justice (Karim, 2018, p. 325).

Section two: The historical background of the genesis and development of the legal security:

From the philosophical side, the legal security has different theories and principles, namely the Natural Law Theory whose supporters see that the natural law rules are higher than the legal rules because they come before the state per se. Therefore, the state authority must be limited by the natural law rules (Chiha, n.d., p. 212). In addition, the Social Contract theorists, mainly Jean Jacques Rousseau and some other jurists, stated that the emergence of the state and the authority was based on an agreement and contract between a group of individuals to organize and secure their lives through founding an authority that represents them and fairly and securely achieves their needs. Besides, the Individual Rights Theory, pioneered by Kant and Hegel, said that the individual enjoys rights he was born with, and that the individuals rejected their intrinsic life and substituted it with an organized political system governed by an authority that protects the rights and security and must respect their natural rights. This surrounds and limits the authority with the individual rights protection (Lila, 1971, p. 17).

We can say that the first landmarks of the legal security in the modern era appeared with the French jurists who provided basic perceptions that revolve around the negative effects of the instability of the legal rules. However, the expression "legal security" was not used at that time. In addition, its applications in laws and provisions date back to when some legislatures and judges became convinced about the necessity of turning them into laws and provisions (Karim, p. 318). Therefore, the notion of the legal security was limited to the literature of the law philosophy, considering it as an oral value or a general aim of the law in its general meaning. Later, it penetrated the legal studies with the development of the European legal discourse. Thus, the notion shifted from the theoretical philosophy to the application in the legal reality, and many law men called for the necessity of recognizing it as a constitutional principle or a legal criterion that governs the work of the public authority without segregation between the legislative, executive, or judicial authorities.

The European Court of Justice enshrined this principle and considered it a basis for the laws of the European Community in 1962, under the expression "the legislative culture that goes with the legal security theory" (Abd al Latif, 2013, p. 644). This expression was the basis for the European Court of the Human Rights in 1981 in its decision that confirmed the necessity of respecting the legitimate expectation as a basis for the legal security (al Houari, Hadfi, 2021, p. 136). In addition, this principle has official application and clear enshrinement in some constitutions, such as the Spanish and the Portuguese. However, this clear enshrinement was no more than a general guarantee to the citizens, not a generally recognized right, because if it were so, it would have paralyzed the activity of the public authorities, which were not able to integrate amendments on the applicable law due to a group of people that could argue seriously about the reform or amendment of any law based on the right to legal security (Ben Ali, 2022, p. 20).

We must point that this principle has been recognized as an independent principle in the German constitution after the German Federal Court had confirmed its constitutionality since 1961 (Jabou Rabbi, 2018, p. 192). Its justice found that the principle of the legal security primarily means protecting the legislative trust of the citizen. As for the French system, the principle of the legal security had been literally absent in the laws and constitutions during 1958, despite that some see that the French State Council played a vital role in the process of receiving the notion of the legal security, mainly in the light of its annual report of 1991, which was followed by another in 2006 (Ait Aoudia, 2018, p. 19).

As for the French constitutional Council, despite it did not explicitly express the constitutionality of the legal security principle, it protects it through the question of non-retroactivity of law and the quality of law that is based on the clarity of the legal rule and the use of standard rules. The jurisprudence sees that the protection of the Constitutional Council to the principles of non-retroactivity of law and the clarity of the legal rule show the orientation of the French Constitutional Council towards establishing a system to protect the legal security principle.

Nevertheless, the French law, later, explicitly adopted the legal security, mainly in the light of the development of different relations and behaviors, which obliged the French to enshrine this principle that fosters the relations' stability and balance. Thus, in 1996, the French Constitutional Council issued a decision that aimed at strengthening the legal security (Ghajima, 2009, p. 33). Regarding the Algerian law, it had not explicitly provided for the principle of the legal security before the Constitutional Amendment of 2020; rather, the notion was just alluded to through recognizing some principles that make part of the legal security, such as the legal protection, the citizens equality, the non-retroactivity of laws, and the legality of crimes and sanctions (al Houari, Hadfi, p. 42). After the Constitutional Amendment of 2020, the legal security was enshrined and enforced through literally mentioning it in the preamble that stated that the constitution guarantees the legal security, and in paragraph 04 of Article 34 that provided that the state works to achieve the legal security.

The Algerian justice adopted the legal security in its applications, such as in the decision of the Court of Disputes No° 000114 on 09/01/2012 on Article 02 of the Civil Law regarding the principle of the non-retroactivity of laws. We can say that the Algerian legislator did well in adopting the legal security thanks to its high importance in strengthening the citizens' trust in the laws, which comes from the stability and balance of the legal provisions, and from the absence of abrupt and sudden laws that affect this trust.

Chapter two: the characteristics and pillars of the legal security:

Section one: the characteristics of the legal security:

The principle of the legal security is characterized with different points, which identify its legal nature, including:

Part one: the publicness and binding nature

First: the publicness:

The principle of legal security is characterized with publicness, which means addressing all the citizens without segregation. It is about addressing them for themselves, not for their qualities, to create equality between all the categories (al Assar, 1991, p. 51).

Second: the Binding nature

The legal security has a binding nature and denies any contracting text because it is necessary for the justice and is one of the constitutional principles adopted by the justice and legislatures.

Part two: the universality and development

First: the universality:

The legal security is a necessity for all the international legal rules that govern the international relations to protect the different human rights. In this regard, it is an international, not an internal or regional claim. Undoubtedly, the absence of the legal security from the international relations shakes and destabilizes the legal positions of the states and individuals. Here, the importance of the stable and steady international rules manifests. Many international courts referred to this principle in their applications, such as the European Court of the Human Rights and the Court of Justice of the European Community, what adds the international nature, increases the importance, and grants the binding force of the principle in the field of national public authorities work.

Second: the development:

We can say that the legal security can develop based on the change and development of new phenomena to cope with the society transformations. In this regard, it gets affected by all considerations that affect the society in all the fields related to protecting the human and his

freedoms to create a secure and stable organizational development in the light of a developed, efficient, and fair legal system (Ben Ali, pp. 23-24).

Part three: one of the law state pillars and a common right:

First: one of the law state pillars

The legal security is one of the law state principles. This manifests in subjecting all the state authorities to the law in its wide meaning, and in respecting its provisions in making any activity. In this context, exercising the authority is no more a personal privilege; rather, it is a representation of the community in achieving the goals and protecting their freedoms and rights.

Second: A common right:

Undoubtedly, the International Law of the Human Rights imposes obligations on the states and governments to foster the protection of the human rights and freedoms, including the right to the legal security. In this regard, the latter is a demand and right for all the humans to reach stability, maintain their legal positions, and enjoy their rights (Ben Ali, p. 25).

Section two: The legal security pillars:

The legal security is tightly linked to the legal rule issued by the competent legislative authorities. To embody the legal security, the lawmakers must establish a legal frame that clarifies and identifies the legal rule, which must meet some characteristics that help the individuals access it and know its content to be able to respect it and expect the outcomes of their activities. In addition, this frame must be reliable to allow the citizens to set long-term projects inside it. Based on what was said, we shall tackle the pillars as follows:

Part one: the clarity and recognizability of the legal rule:

First: the clarity of the legal rule:

The clarity means that the legal discourse must have no vague sides that shall make it difficult to identify its meaning.

The recognizability of the legal rule:

The legal rule must have no complexity that makes it not understood. To achieve the legal security, the rule must be formulated in simple, exact, and clear words to allow the subjects to easily understand and comply with its provisions. In this regard, the vague and complicated language brings about disaccords and troubles, which go against the legal security and stability. Moreover, the legal expressions and terms used must be easy and clear to avoid irrelevant interpretations (Zahran, 2006, p. 247).

Part two: the legal rule accessibility:

To achieve a legal security, a clear language must be used and understood by the citizen. In addition, all the tools that allow him to access the legal information must be provided, and all the difficulties that hinder access must be removed. To know the law and achieve the legal security, the legal principles must be enshrined and spread, because every legal rule is binding. In this regard, publishing the laws is the tool to make them known and tell the citizens about them; it is unfair to apply laws on people who are not aware about them. The publication is necessary because the law is not binding until it is legally published (Ben Ali, p. 54).

Part three: the legitimate expectation of the legal rule:

Currently, the legal security is the backbone of the legal rule, as we cannot talk about the value of the legal rule until considering its stability and its protection of the rights and positions, which affect the citizens' trust in the whole legal system. In this context, the trust in the law is the essence of the legal security. The expectation is the ability to predict something before it happens, what helps in taking decisions about adopting a conduct. In addition, the legitimate expectation or legitimate trust means that the abstract general rules issued by the legislative authority in the form of laws, or by the executive authority in the form of decrees, must not be abrupt to avoid colliding with the individuals' legitimate expectations that are built on objective bases drawn from the established systems.

Based on this idea, the individuals' legitimate expectations must be respected to reassure them regarding their actions. The violation of the established rights is a violation of the legal

security, and so is the threatening of the legitimate hopes. Therefore, the legitimate expectation or legitimate trust requires avoiding abrupt unexpected laws that collide with the citizens' legitimate expectations and destabilize their legal positions (al Samet, p. 278).

CONCLUSION:

The topic of legal security gained much attention in the national and international arenas due to its big importance for the citizens in creating reassurance, protecting freedoms and rights, and enshrining the state of law. The principle of legal security primarily aims at issuing laws that guarantee the protection of the rights and freedoms from the negative effects that may result from issuing laws that affect the individuals' trust in the laws. Based on what was said, we notice a continuous increase of the efforts that target the legal security. Upon this study, we reach some results and recommendations, as follows:

THE RESULTS:

- The legal security is a wide notion with different aspects and meanings. It is found in different fields, what makes it difficult to identify it with specific statements. It differs from one society to another, one environment to another, and one time to another.
- The legal security is a cornerstone for the contemporary legal state. It means that the legal positions are clear without abrupt behaviors. It is based on a set of legal principles, which must be respected in every society based on the legal rule, such as the awareness, the accessibility, and the expectation of the legal rule.
- The legal security means the existence of a relative steadiness for the legal relations, and a minimum stability for the legal positions to provide security and reassurance for all the parties of the relation in accordance with the state of law and rights. To achieve this, the legal rules must be clear, understood, and easily accessed so that the parties can make informed decisions.
- The legal security aims at adapting the laws to the people needs. It avoids the provisions that do not suit their aspirations. This double meaning of the legal security makes it efficient, as it fosters the citizens' trust in the law by avoiding the instability and sudden changes, and by coping with their needs.
- The legal security is a necessary requirement and guarantee to organize the legal relations, as it is the basis of the state of law and institutions because the state of law imposes respecting this principle to avoid violating the state principles.
- The clear constitutional enshrinement of the legal security in the last Algerian constitutional amendment may help build an efficient legal system thanks to the complementary relation between the legal security and the state of law.

RECOMMENDATIONS:

In the end, we see that it is necessary to

- Constitutionally, legislatively, and judicially enshrine the legal security.
- Spread the legal culture that calls for the necessity of the legal security on the national and international levels and in all the fields, because there is no legal security without legal awareness.
- Increase the studies about the legal security to give an exact image, mainly in the light of the absence of the notion of legal security in many laws.
- Create a balance in the legislative work between the process of updating and enacting new laws and the necessity of considering the stability and steadiness in the legal positions and transactions.
- Increase the legal value of the legal security at the national and international levels, because it is an important guarantee of the freedoms and rights.

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