

THE ROLE OF THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL POWERS IN PROTECTING THE PRINCIPLE OF LEGAL SECURITY

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ABSTRACT

The principle of legal security is regarded as one of the most key goals that the law aspires to achieve, as it is one of the fundamental pillars upon which the legal state is built, and in which all state authorities are subject to the rule of law. This means that the legal powers are clear, effective, and not exposed to instability or surprises. It is based on several legal principles that must be abided by in any society that adhered to the rule of law. The most important of which is the clarity of the legal rules, the need for the addressees to cognize them easily, ensure the relative stability of these rules, and the stability of the legal positions of individuals. As a result, each of the three state authorities is responsible for carrying out this concept in a manner appropriate to their respective competencies.

Keywords: Security, Law, Stability of Transactions, Authority.

INTRODUCTION

The principle of legal security is regarded as one of the most crucial aspects of the modern legal state based on the rule of law. This principle implies that public authorities are obligated to ensure a measure of stability in legal relations as well as a minimum level of stability for legal status so that people can act confidently under existing legal rules and regulations, whether at work or elsewhere, and arrange their working conditions accordingly, without being subjected to sudden actions that undermine their legitimate expectations and destabilize their legal (Aqili, 2019).

This research paper addresses the issue of how to achieve legal security because it is an acquired right for all human beings and a basic requirement without discrimination, according to which the right to enjoy the benefits of legal security in all fields and at all levels, whether constitutional, criminal, civil, or administrative security... and so on. Besides that, the notion of legal security as a constitutional concept arose from the community's need to provide security and protection for the holders of legal status within the community, so that the legal status that has been established and stabilized is not jeopardized. Protection must always be accessible that laws change, or societal conditions change; thus, the legislative, executive, and judicial authorities must play a major role in protecting the principle of legal security. Accordingly, the

researchers propose some solutions for the obstacles that face its application. This paper is divided into two axes: The principle of legal security and protecting the principle of legal security. This structure will enable researchers to assess the role of public authorities in securing the protection of the legal security principle.

The Legal Security Principle

The Concept of the Legal Security Principle: Legal security, in general, can be defined as a process aimed at providing a state of stability in legal relations and status by issuing legislation under the constitution and compatible with the principles of international law, to promote confidence and reassurance among the parties to legal relations, so that legislation must not be marked by surprises, turmoil, or conflict.

Generally, legal security can be defined as a process aimed at providing a state of stability in legal relations and status by issuing legislation in conformity with the constitution and compatible with the principles of international law, to attain confidence and reassurance among the parties to legal relations, so that legislation must not be characterized by surprises, turmoil, or excessive texts or retroactive laws and decisions (Assar, 2003). Legal stability as seen by (Hassan, 2003) indicates that the legal rules shall be certain and specific in their organization of legal status and that they guarantee the results so that everyone can expect these results and depend on them by working to achieve balance in the legal and social status within society. According to the preceding, legal security is one of the principles of the state of law, where its basic features are the rule of law, separation of powers, independence of the judiciary, and effective protection of individuals' and groups' rights and fundamental freedoms.

The Essential Components of the Principle of Legal Security

Legal security seeks to protect individuals from the adverse effects of the law, particularly a lack of clarity or instability in legal rules. To achieve legal security in people's transactions and to be embodied on the ground, the matter necessitates the existence of a set of pillars and basic components that comprise the pillar of legal security which are as follows:

1. The principle of nonretroactivity of laws.
2. Legal certainty through clarity and accessibility to the law.

The essence of the principle of non-retroactivity of laws implies that it is only applied to the future that is a law's effect does not extend to include past affairs and cannot pass judgment on events that occurred prior to its implementation. Instead, a law only applies to events that occur after its implementation. As a matter of fact, it is an ancient principle that the Romans applied in many cases, even if they did not grant it as a general rule, and no one since then has contended about its relevance until it became a constitutional principle in the modern era. Many constitutions, including the Jordanian constitution, promulgated in 1952, Article (93, paragraph 2), stipulated that,

“The law shall come into force at its promulgation by the King and the lapse of thirty days from of its publication in the Official Gazette unless there is a special provision in the law that it shall come into force from another date”

The importance of the principle of non-retroactivity of laws is due to these two considerations, namely, respecting acquired rights and not violating them and ensuring the stability of transactions. So, regardless of their stipulation in the constitution, the rule of non-retroactivity of laws is based on several justifications that must be followed by the state's public authorities (Zahir, 1997).

Where the legal certainty through clarity and accessibility to the law can be explained by the fact that Because the basis of legal clarity is incompatible with the concept of natural justice, it is fair and equitable that the law is clear, accurate, and simple to understand, and this principle is now one of the most important elements of legal certainty, through which the purpose of the legislation is fulfilled, and individuals are secure in their rights and subject to the obligations imposed on them. Clarity can be successfully achieved by paying focused attention to the issue of legal drafting and delegating it to specialists, as its goal is to attain the rule of law and good governance and enacting good and developed legislation that is consistent with the constitution and not inconsistent with other laws, is understood by the general public, and is applicable.

Accordingly, one of the most important principles of legal base clarity is the quality of drafting the legal rule "*legislative quality*," which does not allow for interpretations, jurisprudence as well as characterized by the lack of exaggeration or contradiction to legal texts. As a result, legal security was one of the fundamental elements of the legal state, and according to this logic, legal certainty, as an element of legal security, represents an obligation on all authorities in the state in general, and the legislative authority in particular, as it is the competent authority to enact laws. Therefore, the principle of clarity of law has gained special importance in the European Union judiciary. The European Court of Justice applied it from the year 1960 as it stipulated that based on the principle of legal security that forms part of the legal system of European Union law, procedures supposed to be clear and specific and shall notify the concerned parties clearly when the procedure will take effect, and especially concerning the date for the appeal.

The Goal of the Principle of Legal Security

The primary goal of the principle of legal security is to ensure that legislation is enacted under the constitution, as well as with international human rights law and international humanitarian law, in a way that protects rights and freedoms from the negative and secondary effects that may result from enacting laws or regulations characterized by inflation or complexity as a result of the repetition of amendments to laws, as is the case with financial and procedural laws, resulting in a loss of legitimate trust in the state and its laws.

The principle of legal security also necessitates the establishment of a state of the law in which everyone is subject to the provisions of the legal rules in force in the state, regardless of their source or form, including the state's constitutional institutions, which apply equally to everyone and are governed within its framework by an independent judiciary, and in accordance

with the rules and standards International Human Rights. To achieve the principles of the rule of law as a legal goal, institutional and legal mechanisms and means that extend from the constitution to the most basic rules must be provided, the most important of which are the principles of separation of powers, accountability before the law, judicial oversight, independence of the judiciary, and procedural and legal transparency.

Protecting the Principle of Legal Security

Disrupting the Principle of Legal Security: There is no doubt that legal security is achieved by maintaining the stability of legal status and enhancing confidence in legal relations in such a way that the image of the law is not distorted among those who address it. Whereas there are some impediments to the principle of legal security, such as sudden changes in legal texts, which confuse the legal system and thus legal insecurity. These obstacles include the inflation of legislation, the exaggerated complexity of the legal rules, the lack of quality of the texts, the difficulty in understanding the law. In addition to the breach of the principle of equality before the law, the large number of disputes, the retrogression of laws, and the failure of the law to include normative rules, such as projects Laws that merely contain various provisions (Aqili, 2019).

The Role of Public Authorities in Protecting the Principle of Legal Security

Legal security as a constitutional concept arose from the society's need to provide security and protection for the holders of legal status within the community, as the legal status that has been established and settled must not be jeopardized, and protection must always be accessible regardless of any change in-laws or the prevailing social conditions. The following text describes the role of the three powers in protecting the principle of legal security.

The Role of the Legislative Authority

According to Zahawi (2015), the legislative drafting process is the general framework and integrated context, which includes the mechanism of action, organization, role distribution, and skills for dealing with the cases and facts presented to enact a clear legal text. And he emphasized that all of the logic, intelligence, or backgrounds possessed by the legislation's author, all of the additions brought by comparative or national texts, and all of the raw materials available to the draftsman, must be devoted to the service of the legal text through an integrated process, organized efforts, and successive steps. To ensure the issuance of legislation in accordance with the constitution (Khatib, 2008), parliament must adhere to the conditions required by the legal state while proposing or voting on laws, the most important of which is the superiority of the constitutional rule over the legal basis. Indeed, legal security is achieved by adhering to the provisions of the constitution and international agreements in legislation because it surpasses domestic law and not the constitution. Therefore, legislation is characterized by the ability to protect legal rights and status, meaning that most of the legal rules enacted within a state respond to the aspirations and hopes of the people of that state, given that considering those

aspirations ultimately leads to the achievement of peace and social security, because the goal of the legal rule is to be formulated in a way that expresses the will of society, and accordingly, the role of the legislative authority in the field of protection of the principle of legal security is represented in various axis (Aqili, 2019) including the following:

Protection from the abrupt enactment of legal norms, particularly in the area of public freedoms. This can be accomplished by thoroughly reviewing the laws presented by the government to the legislative branch and not voting on or canceling them hastily, rather than carefully studying the texts mentioned to him through committees for the sake of competence and experience.

The protection of legislation when it is issued and is in conformity with the constitution, in a way that guarantees the protection of rights and freedoms from the negative and secondary effects that may result from the legislation by issuing laws and regulations that are unclear, complex, incomplete, or because of repeated amendments to laws, as is the case with procedural, electoral laws, or financial, as this leads to the loss of legitimate confidence in the state and its laws.

Assuring legislative competence and the ability to exercise legislative authority in a satisfactory manner that meets citizens' expectations. This means that the effectiveness of legislative performance is determined by how the Legislative Council is elected and formed (Hajji, 2012), with the ultimate goal of benefiting individuals and society. Therefore, protecting rights and freedoms and raising their status is not only by mentioning them in the body of the constitutional document, rather by stopping risks, and ensuring that the risks that afflict individuals in their legal positions or acquired rights have not occurred.

Protecting the application of the legal text and its correct implementation in practice because it is affected by the accuracy of its formulation. Therefore, the legal drafting process, as an art and science with its origins, style, and standards, must be subject to controls by which accuracy is achieved in drafting the legal text and the conflicting changes are assured. Taking into account the language of the legislation, meaning that the legislation is only in the language of those addressing it and that the language used is sound, accurate, accurate, through which the provisions and purposes of the legislation are investigated in a manner that fulfills the intention of the legislator and clarifies its meaning because the clarity of the legal text is one of the most important applications of the principle of legal security, which is the idea of expectation The project, the legal text must be understood and clear to all those addressing it regardless of their cultures. From this standpoint, the close link appears between the principle of clarity and the principle of legal security, of which the idea of legitimate expectation is one of its aspects.

Generally, it can be said that legal security implies the purpose of the law, and its function is to secure the legal system, from all legislative imbalances that may arise, which calls for the enactment of legislation that must be specific in its rules and to avoid the issuance of troubling legislation, after the growth and emergence of the state of legal insecurity.

The Role of the Executive Authority

Regarding the role of the executive branch in securing the protection of the principle of legal security, it is represented by proposing laws that are presented to Parliament for approval, which are introduced as Government bills. Which must be compatible with the principles of the constitution and respect the rights of individuals through the preparation of laws that must be clear. It is understandable to individuals and does not contain ambiguity in the wording (Aqili, 2019).

The Role of the Judiciary

The judiciary has a prominent role in protecting the legal status of individuals and their acquired rights, whether through the ordinary or the constitutional judiciary, through appeals filed by individuals, due to sudden changes or amendments that threaten their rights. Because the goal of the judiciary is to protect legal security in its various branches, whether administrative or constitutional, the role of the judiciary in protecting the rights of individuals grants people confidence and reassurance. The judiciary performs this effective role through several principles, which are the principle of legitimacy, the independence of the judiciary, as the independence of the judiciary is an effective tool in achieving legal security, which directly contributes to protecting the rights of individuals, and everyone lives under comprehensive human security protected by the force of law, and no one, therefore, dares to encroach individuals' right. The effectiveness of the judiciary, which is an essential part of the concept of legal security, and the judiciary in this sense, is the ultimate guarantor of the rule of law because legal security is one of the most important components of the modern legal state based on the rule of law. Whereas the principles on which legal security is based, of the good functioning of the judiciary, the quality of its rulings, the ease of access to it, and its good management inspires confidence in the judicial institution (Aqili, 2019).

Mechanisms for Protecting the Principle of Legal Security

The most important of these mechanisms can be identified as follows:

Overseeing the constitutionality of laws: There is an important role through overseeing the constitutionality of laws in removing obstacles that lead to disrupting legal security, by respecting the articles and principles of the constitution through previous and subsequent oversight, because achieving justice in society will not be achieved through the legal rule unless they have been formulated properly in accordance with the purpose of their status and the legislative wisdom of their enactment, therefore resorting to the judiciary is the center of gravity in the balance of legal security, and is an effective means for the individual to obtain judicial protection for the substantive right established by the law (Aqili, 2019). In light of the foregoing, the existence of an entity that undertakes constitutional control of laws represents an important

guarantee to protect the principle of legal security, because the purpose of this control is to prevent the law from violating the constitution or deviating from the use of legislative authority.

Providing human competencies: The human element occupies a critical position in the legislation-making, as it is a fundamental actor in the legislative process, therefore, the scientific competence of the drafting body is the first pillar for drafting a tight and effective legal text, and therefore it is imperative to provide human competencies to ensure their ability to formulate legislation with proper quality as soon as possible and in light of the progress witnessed in life at all levels, as it became necessary to keep pace with and take into account when drafting legislation (Dabash, 2015).

The Relative Stability of the Legal Bases

Legislation of all kinds necessitates stability and the avoidance of permanent legal text amendments, as this process jeopardizes the stability of legal status and acquired privileges. As a result, the presence of a stable legal system allows every person, natural or moral, to exercise his or her legal rights, as well as providing reassurance to all individuals. The term stability does not imply a lack of change or modification, but rather a need for relative stability that provides satisfaction and reassurance to the receiver, because the concept of legal security aims to stabilize legal status rather than prejudice it, and thus these established statuses must have legal protection in the event of changing laws or changing conditions in society (Jafur, 2005).

Establishing the State of Law

It is also known as the “*subordination of the state to the law*,” which has become one of the most important features of the modern state, referring to the institutional system in which public authorities are limited in their authority by law. In other words, the state of the law is that state in which the law is supreme, and the legal rules are hierarchically shaped so that each rule directly derives its validity from the higher base. As a matter of fact, the provision of a set of guarantees is required to achieve the rule of law, the most important of which are: the rule of law, the hierarchy of legal rules, equality before the law, separation of powers, recognition of rights and freedoms, and the independence of the judiciary. In sum, the state of the law is the result and embodiment of the principle of legal security and the most prominent component of it, which is what most contemporary societies strive to achieve, to rationalize their rule (Lootah, 1991).

Knowledge of the Legal Base and Easy Access to It

What is meant here is that any person concerned can see the legal or regulatory text related to it, and this can only be achieved by publishing in the official gazette. The law is not implemented in principle except after informing the people of its existence through publication in the Official Gazette. Where in Jordan the Official Gazette is considered the common means of disseminating the law, and in the past, there was a fundamental problem represented in the lack

of access by individuals to the Official Gazette, which leads to a lack of knowledge of the law published in the Official Gazette, but with the information revolution that the world is witnessing and the momentum of knowledge that it contributed to this problem has become almost present today. However, publishing in the Official Gazette does not preclude the use of other forms of media, such as regular newspapers or radio. It is also not illegal to publish in the official gazette if the legislation is already known to individuals. As a result, if the legislation has not yet been published, it does not apply even to those who are well aware of its existence.

However, after its publication and the passage of the period specified for its implementation, the legislation shall be enforceable even if people do not know of its existence, so the purpose of publishing is to provide an opportunity to learn about the legislation and not necessarily knowledge of it (Mansour, 2010).

RESULT

The principle of legal security is a constitutional principle and finds its place in the constitutional texts and general principles, and among its forms is the principle of non-retroactivity of laws, the principle of respect for the rights acquired by individuals, the principle of the state not surprising individuals or clashing their expectations, and the principle of determining controls for the retroactive effect of judgments issued by the constitutional judiciary.

Legal security has become a principle and a requirement in the legal system, as the legal foundation must be based on it. In general, the meaning of legal security can be defined as the goal of the law, and its function is to protect the legal system in society from formal and objective legislative imbalances of texts.

Legal security is a basic condition for societal stability and one of the most essential pillars on which the democratic construction is based, as it is the one that regulates their behavior and controls their relationships in various fields, as well as defines their positions and legal status in the practice of their practical life activities in all their various forms, whether economic, social, or political.

CONCLUSION

In conclusion, the principle of legal security is regarded as one of the most important foundations on which the legal state is built, as the concept of legal security concerns the necessity of the commitment of the state's public authorities to achieve a measure of the relative stability for legal status and a minimum level of stability to achieve security and the reassurance between the parties to legal relations. So that people can act with confidence based on existing legal rules and regulations, and arrange their situations accordingly, without being subjected to surprises or sudden actions issued by public authorities that could undermine the achieved stability.

RECOMMENDATION

This research seeks to evaluate the principle of legal security as a constitutional value, and accordingly, it recommended the following:

An explicit recognition of the principle of legal security and the necessity for constitutional recognition of the principle of legal security, that is, stipulating it in the core of the constitution and considering it a constitutional principle that enjoys constitutional protection, thus nullifying any action or action taken by the state's constitutional institutions without observing it. On the other hand, its enjoyment of constitutional supremacy makes it is a real performance to protect the rights and freedoms stipulated by the constitution.

Work to spread legal culture at all levels so that individuals are aware of their general rights and responsibilities.

Regardless of the nature of the ruling system, the basic constitutional institutions in any country's political system must play an important role in removing any obstacles that lead to disrupting the principle of legal security. As a result, the legislative, executive, and judicial authorities must play an important role in this, particularly the legislative authority, whose role it is to remove the obstacles that impede the principle of legal security by removing the risk of instability caused by the sudden enactment of the law, particularly concerning public freedoms, and this is done by scrutinizing the laws that are presented by the government, and not rushing to ratify or cancel them. And to ensure the issuance of legislation in conformity with the Constitution, in a manner that guarantees the protection of rights and freedoms, from the negative and secondary affects that may result from legislation through the issuance of laws. And work to build the rule of law, to which all persons are subject to equality.

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