

# Legal Security and Administrative Judge: A Comparative Study between Jordanian and French Law

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This research sheds light on the principle of legal security as a contemporary legal concept. It is an independent concept that includes many things, including the need to develop the quality of laws and administrative decisions and facilitate access to justice. In fact, the French experience is considered the pioneer in putting this principle into practice through the so-called principle of the necessity of facilitating access to the law. This research addresses the need for legal norms to be clear, understandable, not surprising to those involved and not subject to permanent change and alteration, whereas there is a minimum level of commitment to the principle of non-transformation of legal norms, taking into consideration not to fall into a deadly deadlock. This research also deals with the issue of legal security before the administrative judge in particular, where we find that this principle means the necessity of facilitating the procedures before the administrative judge and enforcing the provisions, especially in cases of an urgent nature. There is no doubt that there is a fundamental relationship between this principle and the principle of the ex post facto laws, which is one of the general principles.

**Key words:** *Legal Security, Administrative Judge; Judiciary, Jordanian Law, French Law.*

## Introduction

Since 1991, the French Consultation Council has focused on the necessity of developing the quality of management decisions, ex post facto administrative decisions, and facilitating access to justice. This paper will focus on France, because France is the first country to hold a workshop to "facilitate the law" and make it accessible to people. The principle of legal security is a general principle of the principles of the European Law since the "Bosch" decision issued in 1962 by the European Court of Justice, which we will present later. The French

Constitutional Council also recognised a constitutional value for the principle of "facilitating access to and simplification of the law".

It is no longer sufficient for the legal text to be understood and coherent, but it has become necessary to know to what extent this text (law, administrative decision) is important for people, as it has become easy for people to criticise legal texts with easy access to them through modern technologies. There is also a need to present the importance of pre-feasibility studies, which means that the public authorities must present legal texts to those concerned in advance and even to the public, and every time we find this possible and necessary.

The second section of this paper will address the problem of procedures before the administrative judiciary and the enforcement of rulings: Legal security before the administrative judge means the necessity of reducing the deadlines for issuing judgments and speeding up procedures. It also addresses in detail the principle of the ex post facto laws due to its close relationship to the legal security issue. The principle of the ex post facto laws falls within the problem of conflict of laws. It is well known that the law is applied from the date of its enforcement, that is, from the date of its entry into force until its abolition, but it is difficult sometimes to leave things as they are under the old law and consequently make huge differences between the old and new legal positions (positions). Finally, this paper will direct our criticism of the principle of legal security, which suffers from fragmented application, despite strengthening its positions in European law, and despite the improvement in its application in France.

### ***Definition, Approaches and the Role of the Judiciary***

The problem of the legal security was raised in 1991 in the general report of the French Consultation Council, where it included: "When the law decides, The citizen only has to abide by it."(Conseil d'État. Rapport public 1991). This is the famous phrase used by the French Consultation in this report for the year 1991, as it focused on the necessity of developing the quality of state decisions (and laws) and ex post facto administrative decisions and facilitating access to justice. In other word, the Consultation wants the citizen to live in a state of reassurance in terms of the stability of legal conditions, not to abruptly cancel decisions, and not to violate the acquired rights.

We shed light on France because it is the first country that has started such a workshop "to facilitate the law" and make it accessible to people. Before highlighting France and presenting positions and experience, let us say that the principle of legal security is applied in many European countries and in more depth than the French situation. In the United States of America, jurists adopt the same definition as in France with emphasis, as in all Anglo-Saxon countries, on the role of the judiciary:

The legal system needs to permit those subject to the law to regulate their conduct with certainty and to protect those subject to the law from arbitrary use of state power. Legal certainty represents a requirement that decisions be made according to legal norms, i.e. be lawful. The concept of legal certainty may be strongly linked to that of individual autonomy in national jurisprudence. The degree to which the concept of legal certainty is incorporated into law varies depending on national jurisprudence. However, legal certainty frequently serves as the central principle for the development of legal methods by which law is made, interpreted and applied (Maxeiner, 2008).

In France, the debate started again, and there were many positions of the President of the Republic, the presidents of the Parliamentary Councils, the President of the Constitutional Council and the Vice-President of the Consultation Council. Reports began to be issued on legal security, like the Mandelkern Report (2002) and the Lasserre Report in 2004. Several circulars were also issued by the Prime Minister on the topic of the quality of legal systems (or administrative decisions) and great efforts have been made to simplify the law and bring it closer to the understanding of ordinary people.

Unfortunately, the concerned observed that despite these efforts, only minor improvements had been achieved. Accelerated decisions and laws have limited the importance of the efforts made, in spite of some progress in the matter of access to justice. Certainly, this issue has become important not only in France, but also in all countries, not only for those working in the field of law, but also for all citizens and individuals.

In its 2006 annual report, the FCC defined the principle of legal security as: “The principle of legal security entails that citizens, without making an exceptional effort, are able to determine what is and is not allowed in the applicable law.” To achieve this goal, the legal norms should be clear, understandable, and not surprising to those concerned, nor should these norms (laws, regulations) be subject to permanent changes, especially when these changes are unpredictable.

### ***Dimensions of Legal Security***

The principle of legal security has two dimensions: objective and temporal

- a) There is no legal security without high quality of the legal norms. The legal text should be clear, that is, it permits, prohibits or announces specific norms or punishes. Any legal text that “chats” weakens itself and raises suspicions. The legal text must also be unambiguous, accurate, and clear.
- b) Legal security also lies in the prerogative of the legal text without going to a traditional approach that kills renewal and contemporarily, but there is a minimum limit that must be adhered to: here we mean that citizens should expect what texts will be issued to some

extent, and legal conditions must be stable. This means that on the one hand, people's expectations and the principle of ex post facto laws and administrative decisions must be respected, and on the other hand, acquired rights must be protected and, in general, respect the principle of legal situations stability.

The principle of legal security forms a general principle of European law since the Bosch decision issued in 1962 by the European Court of Justice. In France, the French Constitutional Council, in Resolution No. 99-421 of December 16, 1999, established a constitutional value for the principle of "facilitating access to and simplification of the law". This Council reaffirmed its position in Resolution No. 2005-530 on December 29, 2005, in which it nullified part of a law relating to public finance because it is so complex and could not be justified by any public interest. The French Consultation Council applies this principle, especially in its views, and we provide an example of this, one of its decisions issued on March 24, 2006, "KBMJ and others." In the judicial field, the Court of Cassation does not fail to mention this principle and rely on it.

### ***Many Approaches and One Goal: Access to and Understanding the Law by Ordinary People***

The approaches followed to develop solutions to legal security problems are very diverse as follows:

- a) The process of issuing laws and decisions must be balanced, that is, it does not exceed the specified quantitative limits.
- b) The issuance of texts should be in accordance with the developed requirements and policies exclusively. However, on the other hand, whenever solutions are found outside the framework of laws and regulations, this is an ominous sign and should be rejected. Therefore, the texts are necessary in the state of law, but the excessive increase in the issuance of texts brings burdens to the economy and complicates matters for the citizen and impairs the credibility of public authorities. The less issued texts, the more pure the issue is.

In conclusion, it is necessary to search for other means outside the framework of issuing and accumulating texts. On the other hand, it should be easier to understand existing texts.

- c) This approach is based on the following observation: It is no longer sufficient for the legal text to be understood and coherent, but it has become necessary to know to what extent this text (law, administrative decision) is important for people, because citizens have become more critical of these texts, especially with technology development and thus the need arose to follow-up the legal and administrative text. Acceptance of the text is a very important issue, and the importance of the legal text is measured by the extent of people's interest and

acceptance. In other words, it is a "rational release" of laws and regulations. This approach is close to what the British call the process of "acceptance or consensual", so to speak, and it is our translation of the English word compliance. This phrase means the acceptance of the texts by the citizens and their participation in formulating them since their birth through their consultation. All this should not be separated from other concepts related to it, such as facilitating access to these issued texts.

This is emphasised by the philosopher Gustav Radbruch, who gives high importance to the international dimension of the principle of legal security and its close relationship with the legal base in the literature of the Organization for Economic Co-operation and Development, and this is evident in the decisions and meetings of the Group of Eight (Maxeiner, 2008).

The fourth approach: This approach relates not to the importance of the text, but to the extent of its actual results, its actual application, and the permanent production of its effects. But one must be aware of an important thing, which is that this approach does not suspect the fundamental value of the law, for example, but it raises questions about its effectiveness and about the possibility of setting criteria for its evaluation and cautioning that there is no wide gap between the law and the intentions and goals of those who set it (a type of feasibility study).

### ***Other Necessary Techniques***

There are several ways to improve the issuance of laws and regulations and enhance legal security.

- a) Preparing texts: it is necessary to respect the norms of preparing and drafting texts. There are several conditions that must be adhered to. The French Consultation Council issued a guide on these norms. Prior studies should be developed: that is, pre-empting the text with a study on its feasibility, which means that the question must be asked why this text is better than another text or better than another solution outside the legal text, and on the other hand, if this text is necessary, whether the norms it issues are all necessary.
- b) Setting pre-feasibility studies: This means that the public authorities must present legal texts to those concerned in advance and even to the people.
- c) Parties proposed a law idea against the laws (loi anti-lois) to counter legislative inflation. The idea is to issue a law prohibiting linguistic exaggeration in drafting laws, prolonging the issuance, and so on. "Heal it with what was the disease", so to speak. However, the Consultation Council disagreed and questioned "the importance of issuing a law defining some procedural justifications, especially subjecting the submission of the draft law to a prior evaluation of its feasibility. "
- d) Legal security requires that the Parliament must respect the constitutional provisions related to the conditions for submitting draft laws and deadlines and not to deviate from the scope

of legislation. By this we mean when Parliament exceeds its limits and adopts laws that are at the core of the executive authority powers.

- e) Simplification: Citizens right complain of administrative complexity and legal security requires that legal transactions are simplified in terms of time and the understanding of texts and help citizens when carrying out their transactions. This was embodied in the civilized countries by adopting the one-stop shop "Guichet Uniqu", meaning that the citizen completes his/her transaction with one employee, not being asked to transfer over time from one employee to another (and from region to region).
- f) Access to the law, which means that the authorities strive to put laws on electronic sites, while facilitating access to them by citizens. France has come a long way in this area with the creation of the legal France website, which provides easy access to texts and administrative documents by "one click".

The principle of facilitating access to the law includes an inherent norm for it, which is access to the judiciary, and this matter can only be done if the administrative judiciary decides to allow the petitioners to access the courts to reduce cases of dismissal of cases, by extending the scope of the effective decisions (final decisions affecting the legal status of individuals) and narrowing the scope of unimplemented decisions.

Legal security is guaranteed whenever the number of enforceable decisions widens, but if the administrative judiciary continues to consider important and influential decisions as ineffective decisions and refuses to appeal them, this matter does not serve the interests of people and does not enhance the concept of legal security.

### ***Codification***

Codification is an advanced method for compiling and tabulating legal texts to make it easier for legal professionals to view texts. In France, we know the civil code and the penal code (code penal) and hundreds of other laws. As for our Arab world, there are some laws that are grouped into an organised and classified book, but the majority of laws are dispersed and must be searched for in several groups, books and texts.

Codification became the future project in the Arab world and legal and political people should set it as a major goal. If we want to implement the norm of “nobody can invoke ignorance of the law” or “that the law does not protect the ignorant”, the public authorities must provide citizens with clear, coordinated legal texts; even if the citizen wants to search for texts that address a specific issue, he would find coded and numbered indexes that help him find his goal in moments.

In France, codification is a major workshop that is currently underway. Since 1989, four groups of entirely new legal norms came to existence: a set of intellectual property norms, consumption, financial jurisdiction, and regional groups. There are six other groups awaiting voting in Parliament and about ten in preparation.

The French Constitutional Council stated in a decision issued on December 16, 1999 that the Codification process responds to a goal of constitutional value embodied in the principle of accessibility and intelligibility of law( Principe d'accessibilité et d'intelligibilité de la loi).

### ***Legal Security in Front of the Administrative Judge and Criticism of the Principle***

This section will highlight two topics; the first one will address the legal security before the administrative judiciary and the enforcement of judgments, especially in urgent cases, and we present the influence of the European judiciary. The second one will highlight the principle of ex post facto laws and decisions, which occupies a fundamental place within the concept of legal security. We also tackle the criticisms of this principle, which according to the protesters suffers from fragmented application. In France, the judiciary explicitly or implicitly refuses to consider legal security as a general legal principle.

### ***Legal Security before the Administrative Judge***

This section will present the necessity of the facilitating procedures before the administrative judiciary and enforcing provisions, especially in urgent cases. The influence of European courts, especially in Belgium, Italy, and Greece, will also be addressed, where work is taking place with great impetus to improve the speedy work of the judiciary.

### ***Facilitating Procedures before the Administrative Judiciary and Enforcing Provisions***

Legal security before the administrative judge means the need to reduce time limits for the issuance of judgments and speed up procedures before the administrative judiciary. In his lecture, the Vice President of the French Consultation Council says that the slow pace is "the disease of litigation before the administrative judiciary". President Sauvé said that there is a necessary slowdown in order for administrative trials to be sound and discreet, but there is often an unjustified slowdown.

If the administrative judge is always required to issue his decisions within reasonable deadlines for ordinary cases, then this requirement becomes much more urgent in the urgent cases. In urgent cases, the dispute with the administrative authorities is more violent, and the issuance of judgments by reasonable deadlines, whether in an urgent cases or in ordinary cases, puts the credibility of the administrative judiciary at stake.



In a case related to a decision to deport a Brazilian citizen because of his illegal residence in Guyane, the European Court of Human Rights decided that the Administrative Court took its decision to deport this person expeditiously while legal security requires to examine the case duly (CEDH 13 décembre 2012, De Souza Ribeiro contre France, n°22689/0). The court also considered that the principles of the urgent judiciary if they allow the judge to study the arguments presented by the petitioner and decide to suspend the decision in some cases, in such case, this possibility was totally absent due to the very short period between the court review and the issuance of the decision (issued after one hour only!).

It could be said that in most European countries new legislation has been issued that strengthens the urgent judiciary because of the protection it represents for the rights of citizens and the guarantee of legal stability. In France, about fifteen years ago, legislation was issued that improved the urgent judiciary, which reflected positively on several areas such as cases of expulsion of foreigners, public deals and cases of violation of fundamental rights.

### *Negation of Interest by the Elapse of Time*

The Legal security requires that the administrative court decide the case expeditiously when the court deems that the petitioner's interest requires determination through the urgent court. However, the administrative judge has to decide what is presented by the petitioner, and he is not responsible to draw the petitioner's attention that his lawsuit must be filed with the urgent court, or to consider it automatically (d'office).

### *Influence of European Courts*

In most European countries, especially in Belgium, Italy, and Greece, they witnessed this impulse towards improving the work of the judiciary, and the ECJ had an active role in this field (CJCE 19, June 1990, Factortame, C-213/8) . In France, amendments were issued following protests from left-wing parties (against the "law and justice of the wealthy"): these parties used to say where is legal security, where is the people reassurance if an unjust decision can be made (deporting a person, banning a lecture, paying exorbitant taxes, an evacuation decision, etc.)? It cannot be quickly dealt with by the endless judicial procedures. Therefore, new laws were issued in France in the year 2000 that laid the foundations for three types of urgent procedures: First "Summary cases - suspension (aimed at suspending administrative decision)" or "Summary cases - freedoms aimed at stopping a decision violating freedoms or "taking the summary cases" as the petitioner asks the judiciary to take any useful decision without prejudicing the implementation of the original decision ( Art. L. 521-2 du code de justice administrative).



One must not forget that the summary cases' judge is the "judge of evidence." It enough that he has doubts about the administrative decision in order to suspend the decision (Art. L. 521-2 du code de justice Administrative.) This is what happened in the decision taken by the French administrative court when it refused to wear Islamic dress on French beaches, but the Consultation Council on 26-8-2016 issued its decisions and suspended the implementation of this decision that was taken by the mayor of one of the French towns Villeneuve-Loubet, in which he prohibited the wearing of religious dress on beaches. The Consultation Council decision also affects legal security because it reassured the French people regarding the application of the principles of secularism. This decision gained added importance because it contradicted the administrative court's decision that did not see any violation in the mayor's decision to the fundamental constitutional principles adopted by the French Constitution (secularisation, religious freedom, separation of religion and the State, individual freedom, etc.). This position is recorded in favour of the French judge, who was not affected by the general sentiments prevailing in France after the attacks by Islamists, but he insisted on the principles of administrative law and equality, considering that the law guarantees the freedom to wear any clothes on the beach while swimming, whether it is veil or mayo (swimsuit).

At the level of legal security, this means that the appeals that will be lodged by the petitioners against other decisions in the same field, such as the decisions taken by other mayors in the matter of Islamic dress on French beaches will receive the same fate and will be voided by the Consultation Council (or their implementation will be suspended).

However, despite the fact that the French administrative summary cases judge is the "judge of evidence" (le juge de l'évidenc), he/she recently expanded his/her authority to include a greater number of fundamental freedoms beyond the freedoms existing in the constitution.

### ***The Necessity of Amending the Summary Cases Law before the Administrative Judiciary and Strengthening the Principle of Legal Security***

In order for the administrative judge in summary cases to carry out his/her mission in the best way, the texts should allow him/her to take actual decisions to protect the rights of citizens, whether in the field of freedoms or in any other field. Let us take an example of this, the recent decision of the Lebanese administrative judge, which was a subject of sharp criticism from civil society. It is the issue of the Lebanese Phoenician temple.

Professor Romanos said that summary cases judiciary is of course one of the most prominent mechanisms that legal jurisprudence has concluded to limit the damages resulting from the slow pace of the judiciary and to protect the rights of the parties by taking precautionary measures pending the decision, or to take a decision on the obvious things that need not be postponed.

The author proposes that the most appropriate and universal solution is the summary case, as “the French legislator did in Law No. 597-2000 issued in 2000, which reorganised the principles of summary cases in order to improve the effectiveness of the law and the administrative judiciary.”

The principle of legal security in Europe is strengthened by the European Court of Human Rights and the European Court of Justice. Let us first point out that the principle of legal security does not exist either in the treaties or in the European Convention on Human Rights and despite this it has been adopted by the European Court of Human Rights and the European Court of Justice. Several years ago, the European Court of Human Rights declared that the principle of legal security is a fundamental principle of the European Convention on Human Rights. The European Court of Justice has also decided since the year 1962 that the principle of legal security is one of the principles of European law and consequently acquires mandatory application in section laws and in national regulations (Decision of *Lakhasoa* issued on April 6, 1962).

Thus, in the last ten years, the influence of European law in France has begun to manifest itself. In a decision of the French Consultation Council KPMH on March 24, 2006, the administrative judiciary included the principle of legal security within the legal block after years of refusing to consider it a general legal principle. We previously pointed out that the French Constitutional Council made the concept of "accessibility and intelligibility of law" of constitutional value, which are principles of legal security. The principle of legal security appears as a standard to oversight the constitutionality of laws and administrative actions. After the issuance of judicial decisions based on the principle of legal security, the legislator began to simplify the laws more and more and administrative authorities began to facilitate the administrative and judicial transactions.

### ***The Principle of the Ex post Facto Laws and Decisions and the Criticism of the Principle of Legal Security***

We will divide the study of this requirement into two sections. In the first section, we address the principle of the ex post facto laws and decisions, and in the second section we will address the criticism of the principle of legal security, while highlighting that the principle of legal security which suffers from fragmented application despite the strengthening of its positions in European law (European Union law) in spite of improvement in its application in France. This principle still a matter of controversy and is unclear.

### ***Principle of the Ex Post Facto Laws and Decisions***

#### ***A- The norm and exception to the norm based on the concept of legal security***

The principle of the ex post facto laws falls within the problem of conflict of laws. It is known that the law is applied from the date of its validity date, that is, from the date of its entry into force until its abrogation. The law is abrogated by another law. However, the issue is not that easy, as it is sometimes difficult to leave things as they are under the old law and consequently make enormous differences between the old and new legal situations. Therefore, the opinions varied, and theories abounded to find the necessary solutions. In this paper on legal security, we can briefly introduce some criteria that would constitute an exception to the application of the principle of the ex post facto. The problem is determining the scope of applying the old and new laws in terms of time. The basic principle is that the old law applies to all acts and behaviours that occurred in the period that extend from the date of its application until the date of its abrogation. As for the provisions of the new law, they only apply to acts and behaviours that occur after the date of their enforcement.

Based on several criteria in this field, we mention the most important of them: First, the criterion of distinguishing between the acquired right and just hope<sup>1</sup>. According to this approach, if it is related to an acquired right, the old law will be applied because the application of the new law in this case gives it a retroactive effect, and then it violates the principle of ex post facto of the law. If it is a matter of hope, the new law will be applied based on the principle of direct effect of the law (Effet direct de la loi).

There is another criterion that occurs when the new law provides for the application of its provisions to the past, according to the norm that the new law does not restrict the legislator. As for the third criterion, it lies in the following: If the new law relates to public order or public morals, then it is applied to the past, even if it violates the acquired rights.

In our study of this principle, and within a research on legal security, we must proceed from a detailed and famous decision of the French Consultation Council, which is the KPMG decision (Arrêt KPMG, Conseil d'Etat, 24 Mars 2006).

The importance of the principle of non-retroactivity of laws and its relationship to the principle of legal security is evident through this decision. In the wake of the financial scandals in the United States of America, France wanted to find controls to reduce impunity and implement sound control over the bank accounts. Therefore, a booklet on accounting ethics (the ethics of accounting auditors) was issued, followed by a decree that made these new norms on ethics legal. However, it was not surprising that big offices in Paris submitted an appeal to the Consultation Council to nullify this decree for two reasons: First, because the code of ethics violated the requirements of the European Union, and secondly because some of the statements

contained in the booklet of accounting ethics lack accuracy, which contradicts with a constitutional principle we have previously discussed: the principle of "accessibility and intelligibility of the law." However, the French Consultation Council did not care about the criticisms against the accounting code of ethics. Rather, it revoked this decree (Issued on 16 November 2005) because it did not notice transitional procedures for the existing contracts.

In this decision, the Consultation Council excluded the principle of ex post facto of laws and decisions in favour of legal security.

***B- The administrative judge enshrines the principle of the supremacy of legal security over the principle of ex post facto of laws***

Legal security is close to the norm of law because it protects the citizen from administrative tyranny or changes the legal conditions that have been acquired.

The Consultation Council considers that "the new law or decision cannot be applied to contractual conditions under implementation without falling into the retroactivity of the texts. Between the principle of the ex post facto and the principle of maintaining legal security for citizens, the Consultation Council preferred the second principle because it considered that the principle of the ex post facto applies only to the previous conditions in time, but it is not applied to the effects of what happened in the past because these effects are continuous. Therefore, this decree should have noticed transitional measures, otherwise these contracts will remain uncontrolled until the end, and this violates the principle of legal security. This issue relates to public order and the interest of the people and is an exception to the principle of the ex post facto. Only the legislator is able to create an exception to the principle of the ex post facto when it is for the sake of public order. Only an administrative judge is able to nullify decrees that ignore the principle of legal security (KPMF decision). When the Consultation Council emphasised this decision, the supremacy of principle of legal security over the principle of the ex post facto by establishing transitional measures; this means, in our opinion, that it chose the compromise. Yes, it must respect the principle of the ex post facto, but it should not impose new conditions on citizens who are not prepared for them, meaning that the amendments are dense and lead to confusion in the contractual conditions.

The French Consultation Council considers that "the regulatory authority has a duty to establish transitional measures for legal security reasons when a new system is issued that requires this". The Consultation Council tries to avoid people getting confused by the issuance of new laws and regulations. However, this requirement that the administrative judge put forward in the KPMG decision is not automatic: setting transitional procedures is not always necessary. These transitional measures should be established only "if necessary". This occurs when the new norms can lead to major breaches of contractual conditions in effect. «Il en va ainsi en

particulier lorsque les règles nouvelles sont susceptibles de porter une atteinte excessive à des situations contractuelles en cours qui ont été légalement nouées ».

Violations must be serious to impose the establishment of transitional measures. By introducing this condition, the French Consultation Council confirmed that the amendments made to the new accounting code of ethics (accounting mission) for this profession have led to significant violations where they should have been attached to transitional measures and therefore decided to nullify the decree.

One of the lessons of this decisive decision is that the administrative judge can direct orders to the administration to put henceforth transitional arrangements under penalty of annulment when the new texts carry large and shocking differences with the previous case.

It should be noted that revoking the decision due to the absence of transitional measures does not necessarily lead to the adoption of these procedures, but forces the decision-maker to adopt them. This is what happened in the KPMG decision where the French government took another decision shortly after and gave time to the accountability commissioners to review the new texts contained in the accounting code of ethics.

Finally, in this decision, the Cases Council of the Consultation Council confirmed that it adopted this position based on the constitutional principle "the principle of "accessibility and intelligibility of the legal norm" which was invented by the French Constitutional Council in its decision No. 99-421 on December 16, 1999 (accessibilité et intelligibilité de la norme).

### ***Criticism of the Principle of Legal Security***

#### ***A) Fragmented Application***

The principle of legal security suffers from fragmented application, despite the strengthening of its positions in the European law (European Union law). Despite the improvement in its application in France, this principle is still a matter of controversy and is unclear.

In spite of incorporating this principle into the legitimacy block, it is still absent in the French and Jordanian constitutional system, while it took place in the constitutions of many European countries such as Spain and Portugal.

Bertrand Mathieu says, "The Consultative Council always refused to consider the principle of legal security as a general legal principle. Moreover, the incorporation of this principle within our national system is a subject of controversy even at the level of the phrase that is still unacceptable." We have seen that the jurisprudence applies the principle without naming it. The best example is the position of the Constitutional Council, which talks about the principle

of accessibility and intelligibility of law and does not use the term legal security (Dossier: Le principe de sécurité juridique, December, 2001).

### ***B) A Contradiction between the Principle of Legal Security and the Principle of Legality***

On the other hand, there is a contradiction between the principle of legal security and other principles such as the principle of legality, that is, the principle of the administration submission to the legal rule. The principle of legality is a fundamental principle that obliges the administration to make all its actions compatible with the higher rules, whether those are derived directly or indirectly from the people (parliament), constitutional rules or rules emanating from international treaties, especially with regard to Europe, the rules of the European Union, which the judiciary punishes its violation. In order to achieve this consensus, citizens must be able to submit appeal reviews to exceed the authority limit, and the French decision that launched this principle is the "Dame Lamotte" decision, whereby the principle of "always open" appeals has become a general legal principle ( Arrêt d'Assemblée du CE du 17 février 1950 *Ministre de l'agriculture c/ Dame Lamotte*)

This is with regard to the principle of legality, but as regards the principle of legal security, as we have already indicated, it seeks to stabilise legal conditions and the importance of the principle of ex post facto of laws and regulations.

Some consider that legality (la légalité) aims at the public interest and consequently must be given priority over the principle of legal security that protects individual rights: it is said that the principle of legal security remains indebted to the public interest (i.e. the principle of legality).

### ***C) Cancelling and Withdrawing Administrative Decisions and Legal Security***

The issue of legal security, although it has achieved an unexpected expansion, has become the solution to all the confusions of citizens in their understanding of legal texts that must be totally clear and received and accessed easily by citizens. But the second aspect of legal security is related to the principle of ex post facto of laws, which raises in addition to the points that we raised the issue of cancelling and withdrawing administrative decisions. We must understand the administration's ability to withdraw decisions even in some cases where there have been acquired rights. This requires us to pause a little before cancelling and withdrawing administrative decisions, but only in terms of their relationship to legal security.

The cancellation is an abolition of administrative work in the future. As for withdrawal, it is the decision taken by the administration, which has administrative work, which aims to cancel the previous and subsequent effects of this work. It must be said first that this issue is centred on a

self-imposed postulate: This concept is based on a postulate that the individual effects of administrative work are “sacred”, where it is absolutely not permissible to prejudice them. How can the administration grant a certain right to a specific individual and then give itself the right to remove such right at will. In addition, there is the social and military security and there is the legal security. However, in some cases, administrative work loses something of its "sanctity", even in the case of individual actions, where it could be cancelled. Three matters control this issue and they intersect exactly with what we mentioned about legal security:

- There is a distinction between legitimate administrative works and illegal administrative works. In the last case, it becomes justified to some extent, in violation of the rules for respecting the rights resulting from administrative actions because we are facing illegal actions.
- A distinction must be made between actions created by acquired rights to individuals and actions that have not created such rights. In the last case, the restrictions are less effective.
- A distinction must also be made between organisational and individual actions. The second actions only create rights, initially.

Most individual administrative work creates rights for individuals. Administrative jurisprudence excludes some actions in which he does not see works that create rights for individuals: works of a temporary nature do not create rights. Likewise, management decisions granting financial rights do not create rights, especially if the decision-making authority does not have discretionary power, and it certainly does not create rights based on fraud and deception.

On the issue of cancelling administrative decisions, the administrative jurisprudence has developed since 1930 to the extent it in some cases forces the administration to cancel administrative work. In France, legal texts were issued in this matter, which have not happened yet in Jordan and Lebanon, but the Lebanese Consultation Council joined this development, even outside the framework of legal texts. Even the French Consultation Council expanded the application of this rule to include, in special cases, individual decisions: Greens Association (Association des Verts), November 30, 1990.

However, if this development becomes a reality that imposes itself and is evidence of the necessity for the administration to deal with great flexibility, it has generally affected organisational decisions only (in case of cancellation). With regard to the withdrawal of decisions: In the event of incorrect work, the authority that took or become valid to take it may, rather must, withdraw it (with retroactive effect) because the incorrect action does not create rights, and therefore it can be withdrawn. But since the withdrawal of work is a severe punishment that addresses the illegality of administrative works, the administration is not allowed to do except what the administrative judge was able to do. Therefore, the



administrative judiciary established the following rule: The incorrect work withdrawal can only take place within two months of the issuance of the administrative work (which is in general the legal period to appeal the administrative decisions). This rule, which was adopted by the Jordanian administrative judge, established a famous French administrative judicial decision; the "Dame Cachet" decision (French Consultation Council, November 3, 1922, / RDP /, 1922, p. 552). Thus, the withdrawal is an acknowledgment by the administration of the right to make mistakes, but for a short period. The aim of this is to assess the violated legitimacy because there is no legal security in case of violators, forgers and those who are deceptive. So, there are two conditions to withdraw the decision: it must be illegal and to take place within two months (Dame Cachet).

### **Conclusion**

From this research, we can conclude that legal security has become an obsession of the political and judicial authorities, as for European bodies and European courts. The issue of legal security has not yet been addressed by Arab legal researchers, and hence our focus has been on French references and on French judicial rulings.

We have seen the importance of what legal security requires: the legal rules must be clear, understandable, and not surprising to those involved. In addition, the legal rules (laws, decrees, regulations) should not be subject to permanent changes, especially when these changes are inapprehensible.

We also saw the importance of codification as an advanced legal security method for compiling and tabulating legal texts to make it easier for legal professionals to view texts. We said with some provocation, if we really want to implement the rule of "nobody can invoke ignorance of the law" or "that the law does not protect the ignorant", the public authorities must provide citizens with clear and coordinated legal texts, even if the citizen want to search for texts that address a specific issue, he/she would find what he/she wants quickly.

In the summary cases, we found that the legal texts should allow the administrative judge to take actual decisions to protect the rights of citizens, whether in the field of freedoms or in any other field, which requires amendments to the current law. We presented the principle of the ex post facto and found that the legislator only can create exception to the principle of the ex post facto when it is for public order. We also emphasised the judge's role in safeguarding acquired rights.



### ***Recommendations***

1. We propose to amend the texts related to the administrative courts to enforce the summary Judiciary before the administrative judiciary, especially in the matter of violating fundamental rights and freedoms.
2. Issuing binding texts to consult citizens before issuing laws or administrative decisions that could have a negative and harmful impact on human groups.
3. We propose to the Parliament to incorporate the principle of legal security into all laws that it issues.



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