

## **Mechanisms of Applying the Principle of Legal Security to Human Rights Norms in National Legislation**

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### **Abstract**

Interestingly, the principle of legal security has increased in recent times because of the successive developments that the world is witnessing at all levels, and all of this requires confronting these developments by ensuring the application of laws issued and protecting those rules from violation by individuals and the ruling authorities. Accordingly, the principle of legal security seeks to provide the necessary protection for individuals' rights and legal positions and ensure a minimum level of consistency and stability in transactions and legal functions. States seek to include the principle of legal security through their constitutions and national legislation, albeit implicitly, to protect these public rights and freedoms from being violated by any party and ensure that individuals know the limits of these rights and freedoms and avoid infringing on them in their dealings.

**Keywords:** Legal Security, Rule of Law, Human Rights, Protection for the Rights and Freedoms

### **Introduction**

Legal security is one of the essential elements of the legal State based on the rule of law, and legal security, in general, means the obligation of the public authorities to ensure some degree of stability of legal relations and a minimum of peace for legal status so that people can act with confidence without being subjected to abrupt actions that disturb their legal status. The principle of legal security derives from the human right to security and tranquillity. Therefore, any guarantee of legal security is an essential entry point for ensuring judicial security as a preventive barrier to persons' interests against abuses to which they are subjected. Legal security for applying and protecting human rights principles is critical at the national and international levels. These rights are only effective if they have adequate safeguards for their application. There is legal security approved by international declarations and conventions, as well as by States' constitutions and domestic legislation. They are essential since the lack of protection of human rights within the State is linked to the threat to international peace and security.

This research is essential to clarify the principle of legal security and its purposes, to ensure the application of human rights norms at the national level, and to avoid abuse of these rights by the authority within the State for any reason whatsoever.

### **Objectives**

The research aims to publicize the principle of legal security and demonstrate the importance of the principle of legal security for applying human rights norms at the national level.

### **Methods**

A methodological framework for research Analytical and descriptive approaches will be used to analyze the texts of states' constitutions and laws, linking them to research hypotheses for achieving goals and achieving the required results.

### **Hypothesis**

Through the research pages, the stability of the principle of legal security will be emphasized in national legislation through the constitutions and domestic laws of states, and the importance of the principle of the legal security of both power and individuals will be emphasized.

## 1. Definition of the Principle of Legal Security and Human Rights

The scientific research curriculum requires that we set out the concept of the principle of legal security and then know human rights to give a preliminary idea of the two concepts.

### 1.1. Definition of the Principle of Legal Security

Jurisprudence has faced difficulties in defining the principle of legal security by viewing this term as a general framework for a set of principles and rights associated with it or as a fundamental objective of each legal system and an essential requirement of the legal State, so there are many doctrinal concepts of this principle. Legal security is a modern philosophical concept; natural law theory considers the concept of security in law as any other legal topic, and there are different approaches relevant to the definition of the concept, but from the theoretical point of view, two main aspects - legal security as a natural right, and legal security as an element of the legal system. In both cases, the idea of security plays an important role (in principle) in enacting laws. Natural law theory considers legal security a natural right to security and establishes a link between human rights and material justice. The Hobbes thinker is the author who understands security as the peace that arises from the social contract, and the citizens hand over their security to power. In his view, the concept of this principle can be limited to two aspects. The first relates to the quality and improvement of the law, such as clarity and effectiveness, and the second concerns the natural or legitimate expectation of the law, such as the irreversibility of laws, the protection of rights, and the stability of contractual positions<sup>1</sup>. Others consider that the principle of legal security contains two types of rules, the first being aimed at the stability or relative stability of legal status in terms of time. The second requires the idea of certainty in legal regulations, namely, clarity and specificity of those rules and decisions of public authorities, which means quality in these rules and decisions<sup>2</sup>.

Some consider that legal security means "the protection of the human person through the preservation of their rights, status or legal status arising under legal texts whose constitutionality has been monitored or by final judgments possessing the power of the judiciary, thereby imposing their protection against any violation that may affect them, whether by authority or private individuals<sup>3</sup>. In this concept, legal security is highly relevant to human rights, recognizing and preserving them and protecting them from interference or violation.

The principle of legal security is defined as "one of the manifestations of the natural human right to security and all its guarantees aimed at ensuring the proper implementation of obligations, without surprise, and avoiding the unreliability of the application of the law to ensure the right of individuals to security." Legal security corresponds with the illegality principle, which guarantees stability to legal centers and rights acquired based on unlawful legal acts<sup>4</sup>. The principle of legal security was defined as "individuals' accurate, assured and clear knowledge of their legal status, enabling them to know their rights and duties and allowing them to act with confidence on their basis without fear or concern about the consequences of such conduct in the independent." Others consider that the principle of legal security is "every guarantee and every legal system of protection aimed at securing without surprises when fulfilling obligations and avoiding or reducing the lack of confidence in the application of the law"<sup>5</sup>.

Legal security falls within the general concept of the term security, which has been confirmed by many legal sources, including Articles II and VII of the French Declaration of the Human Rights and Citizen of 1789, which considers security among the natural rights of man and imprescriptible such as freedom and property, it was believed that the author of this declaration meant the word "sûreté " think about the protection of persons and property, but the fact that security includes the protection of rights, which is confirmed by Article VIII and the tenth of the Declaration, the protection of rights certainly means securing legal stability "la sécurité juridique"<sup>6</sup>.

It should be noted that the principle of legal security is explicitly enshrined in the Constitution or national legislation only in a few States, which shows the difficulty of developing an integrated definition of the principle of legal security. Yet, the concept of the principle of legal security can be explained as "The main guarantee of particular and specific legal rules in their organization of legal centers and ensuring that the expected consequences of the actions of different individuals are secured and relied upon so that everyone knows the results of his conduct whatever it may be<sup>7</sup>.

## 1.2. Definition of Human Rights

Human rights are an inherent concept in the human psyche. They are understood to be the right of every human being to enjoy human rights without discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, or birth, etc.

The human rights guaranteed by international instruments and other sources are guaranteed by law, which protects individuals and groups against acts contrary to fundamental freedoms and human dignity. These rights place an obligation on States to act in a certain way to prevent any infringement of individuals' freedoms and rights within the State<sup>8</sup>.

The concept of "human rights" varies from one society to another and from one culture to another because human rights and the type of human rights are linked to the perception we perceive. Researchers have differing definitions of human rights according to their vision and specialization. The scholars of Islamic Shari'a define human rights in Islam as "Those rights which demonstrate to man that he is a human being irrespective of his religion, race or color; People are all equal as comb teeth. They are similar in fundamental rights, distinguished by the standard of righteousness and adherence to the Islamic Shari'a. Human rights in Islam are distinct from the fact that their persistence is unchanged and complete and does not detract from them, which are the source of the Almighty Allah and not human beings<sup>9</sup>.

According to Swedish expert Jane Bectet<sup>10</sup>, human rights are "that special part of international law, which is shaped by a sense of humanity, and which is aimed at protecting the human person<sup>11</sup>. While Said Fouda<sup>12</sup> defines human rights as "those rights that a human being enjoys simply because he is a human being, and those rights are recognized to a human being regardless of his nationality, religion, ethnic or national origin, social or economic status, which are natural rights owned by a human being even before he is a member of a particular society, they predate and dominate the State." Human rights can be defined as "the set of rights inherent in the human personality enshrined in international instruments and enjoyed by the human person and may not be deprived of them for any reason whatsoever regardless of all manifestations of the human person, religion, language, color, origin, race, sex, etc.". Some defined it as "the natural set of rights possessed by man and inherently adhesive, which still existed but were not recognized, but even more so if violated by an authority<sup>13</sup>.

Jurists of International Law define human rights as "a branch of public international law consisting of a set of legal norms, written and unwritten, designed to protect human rights and well-being in peace." This law has an international character; its themes are human-centered and aim to protect its rights, prosperity, and well-being<sup>14</sup>.

According to the Universal Declaration on Human Rights, "Everyone has the right to life, liberty, and security of person, the right to social security as a member of society (Article 22), and the right to safety in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control<sup>15</sup>.

## 2. Mechanisms for Applying the Principle of Legal Security to Human Rights Norms and Protection at the National Level

The principle of legal security has become a fundamental requirement in the legal State, and its lack of respect for it is an infringement of it. It is a prerequisite and necessary for exercising and protecting individuals' fundamental rights and the stability of contractual transactions among them<sup>16</sup>. In this section, I discuss the principle of legal security and its impact on applying human rights norms at the national level. There are guarantees that the principle of legal security is applied to the standards of the principles of human rights and their protection within each country. These guarantees are the Constitution's protection, the supreme law within the State, judicial warranties, political promises, and the role of civil society organizations and public opinion in monitoring human rights violations .

Originally, efforts and procedures to counter human rights violations within the State itself should be initiated, and there should be an attack on the person, whether by arrest, detention, torture, disappearance, or the threat of arbitrary execution. International treaties and conventions emphasize that the State must take legislative,

administrative, and judicial action to protect human rights. Specific procedures were not defined but instead established the general principle, leaving each State to implement this principle as required by its legislative philosophy and legal and judicial systems<sup>17</sup>.

## **2.1. Constitutional Mechanisms for the Application of the Principle of Legal Security to Human Rights Norms**

Constitutional norms adjust the system of governance within human societies as soon as it is regulated within the State, and constitutional law is linked to the State, which is the largest of institutions. Therefore, the constitution used to be the supreme law of the State, and its rules could not be contravened. There were general constitutional mechanisms and unique constitutional mechanisms.

### **2.1.1. General Constitutional Mechanism**

Several general constitutional mechanisms make the principle of legal security respected by the legal State authorities, including the need for a written constitution, the rule of law, the focus on separation of authority, and the recognition of individual rights.

#### **a. The existence of a written constitution**

It means that the Constitution promulgated by the competent authority in the form of legislative acts State and fundamental legal rights, freedoms, principles, and rules, whether written or customary, the existence of the Constitution or the Basic Law of Government constitute the essential legislation of the legal State and is the primary guarantee of the State's subordination to the law and its commitment to the principle of legal security and its respect for the rights of freedoms, as it resides in the authority therein. Its legal existence is established, and its activity encompasses a legal framework from which it cannot deviate.

Most likely, the Constitution stipulates the principle of legal security implicitly rather than explicitly. The Constitution implicitly defines the types of legal security means and mechanisms on the constitutionality of laws; therefore, monitoring the State authorities' compliance with its provisions is crucial. For example, the United States Supreme Court played a prominent role in finding any breach of the Constitution by the legislative and executive branches, particularly about the rights and freedoms of individuals<sup>18</sup>.

The codification of rights and freedoms in constitutions aims to give them tremendous respect and to ensure legally that the enjoyment of constitutional norms prevails over the rest of the norms, which is known as the principle of "primacy of the Constitution". The codification of rights and freedoms aims to establish rights by defining their content and enabling citizens to claim them specifically<sup>19</sup>.

#### **b. Principle of the Rule of Law**

To reflect the principle of legal security, it is necessary for all people, both judgments, governors, and State authorities, to respect the law as a basis for the legitimacy of their actions<sup>20</sup>. The principle of the rule of law is applied through the strengthening of legal norms, which the State or authority is obliged to embody and use on the ground, with strict procedures and restrictions in the event of modification or repeal of any legal provision of whatever its legal degree<sup>21</sup>. This principle undoubtedly guarantees respect for the rights and freedoms of individuals by abiding by the laws applicable to them by the people's community and by the obligation of the State authorities to respect and apply them. The Omani Statute affirmed this principle by stipulating in Article 59 that "the rule of law is the basis of government in the State"<sup>22</sup>.

#### **c. Principle of Separation of Authorities**

The application of the principle of legal security to guarantee public rights and freedoms within the State requires the obligation to allocate competencies in the State to three powers and not to concentrate them in the hands of one authority since the individual authority in all the affairs and functions of the State will lead to authoritarianism. The legislative authority is competent to draw up laws. The executive authority enforces those laws, while the judiciary adjudicates disputes<sup>23</sup>.

While the doctrinal principle of separation of powers is based on the distribution of the functions of the State to separate bodies that are independent of each other in the performance of their tasks, cooperation, and partial integration between the bodies in the performance of the functions of the State is carried out. This cooperation and relative integration vary in applying the principle of separation of authorities by withdrawing the provisions of the State's Constitution<sup>24</sup>.

The Statute of the Sultanate of Oman refers to this separation of powers by providing three authorities, each with its own function. Article 76 of the Statute states: "The Judiciary is independent and shall be exercised by the courts of all kinds and degrees and shall make judgments by the law."

#### **d. Recognition of Individual Rights**

The principle of legal security guarantees the legal State's adherence to the principle of equality of individuals, determines their political, economic, and social rights, and outlines ways and means of protecting them against the authority or arbitrariness of the State. Therefore, a State that does not recognize or care for these rights cannot be considered legal<sup>25</sup>.

Accordingly, Article 18 of the Basic Law of the Sultanate of Oman stipulates that "Life and dignity are the right of every human being, and the State is obliged to respect and protect them by the law."

#### **2.1.2. Special Constitutional Mechanisms**

The Constitution contains provisions on human rights and fundamental freedoms. Although these rights are outlined, they are of the utmost importance as they prevail over other conditions. These provisions are an essential basis for applying the principle of legal security. Some constitutions prohibit the amendment of constitutional requirements, and some constitutional provisions provide for international treaties ratified by the State's highness and supremacy of domestic law.

##### **a. Constitutional Provisions on the Amendment of Human Rights Norms**

The provisions to amend the Rules of Rights and Freedoms vary from one Constitution to another. Certain constitutions prohibit the amendment of human rights principles, such as the Constitution of Algeria of 1976, while others permit the modification of human rights provisions, but under conditions stipulated in the Constitution itself, such as those provided for in Oman Statute (81), which stipulated that "these Regulations shall be amended only in the same manner as they have been promulgated." These texts are an essential safeguard for applying the principle of legal security of these texts, which guarantees the application of these provisions and does not change them by the wishes of any authority whatsoever.

##### **b. Constitutional Provisions Recognizing the Importance of International Treaties over Domestic Law**

International treaties are written agreements between subjects of international law to arrange legal effects by the rules of international law. The international treaty is in many stages, including negotiation, treaty liberalization, signature, ratification, and registration. They are ratified by procedures provided in each State's Constitution, then published in the Official Gazette, and become part of domestic law<sup>26</sup>.

States' constitutional provisions differ in their approval of the compulsory force of the treaty. Some constitutions stipulate that the treaty is equal in critical terms with the Constitution and above domestic law. Article (55) of the French Constitution 1958 states that "treaties and conventions concluded or ratified fundamentally are a higher argument when published than laws". In contrast, some constitutions provide that the treaty is equal to domestic laws in terms of binding. The Omani Statute affirms this in the article (76): "Treaties and conventions shall have the force of law only after ratification."...

From the previous provision, the Omani Statute recognized that the treaty's compulsory force was equal to domestic law, ratified and published by a royal decree. All the conventions ratified by the Sultanate of Oman on human rights were part of domestic law and could not be violated. These provisions thus reflect the principle of legal security to protect those provisions from change according to the whims of the State authorities.

## **2.2. National Judicial Mechanisms to Apply the Principle of Legal Security to Human Rights Norms**

Applying the principle of legal security to human rights norms requires judicial safeguards imposed by the judiciary in each country, namely judicial oversight of the constitutionality of laws and judicial oversight of the administration's actions.

### **2.2.1. Judicial Oversight of the Constitutionality of Laws**

This control is intended to be granted to a judicial authority that is competent to determine the conformity of laws with constitutional norms and that they do not violate them<sup>27</sup>. Such censorship is regarded as verifying a violation of the Constitution by the law for failure to promulgate it if it has not been enacted, repealed, or refrained from applying it if it has been promulgated. In some States, the Constitution provides that the right to control the constitutionality of laws precedes the enactment of the law using such censorship by a political body, called political or preventive control.

A judicial court shall exercise judicial control over the constitutionality of laws. The plaintiff initiates proceedings before the competent court to demand the repeal of a law contrary to the Constitution. If there is a violation, the court shall verify that the law is invalid and annulled retroactively and against all. Because of the importance and gravity of this method, the predominant trend in the States in which they take it is to make it central to the hands of a single court to avoid inconsistencies in judgments; it can be the Supreme Court or the Constitutional Court<sup>28</sup>.

According to this censorship, an ordinary citizen can sue any law passed that is contrary to constitutional human rights norms. They requested that it be repealed for violating the human rights provisions of the Constitution or international conventions ratified by the State's competent authority. The principle of legal security is thus achieved through continuous judicial supervision of the constitutionality of the State's laws and their protection from texts harmful to individuals within the State.

### **2.2.2. Judicial Oversight of the Department's Work**

The principle of legal security requires monitoring offenses committed by State organs to ensure that the results of the actions of individuals are known. Judicial control of the administration's efforts is an essential means of countering the activities of the administrative organ of the State if it unlawfully infringes a human right, such as a decision involving an infringement of the law or abuse of power.

The importance of such oversight is due to the nature of the work of the administrative organ of the State and the executive branch in general, as it is most vulnerable to infringement of the law by its extensive authorities, as well as more contact with people, which may lead it to violate the rights and freedoms of its decisions and instructions. Judicial oversight of the work of the administrative authority is a guarantee of the judiciary's supposed impartiality and independence, especially in protecting the rights and freedoms of individuals and preventing the administrative apparatus from abusing its authority or violating both the Constitution and ordinary law<sup>29</sup>.

## **Conclusions**

- 1- The difficulty of arriving at a specific concept of the principle of legal security, so jurists have sought to establish general outlines to be developed.
- 2- The principle of legal security is underpinned by the existence of a State that respects the law and is based on the presence of a constitution superior to other legislation, respect for the rights of individuals within the State, and the existence of an independent judiciary with the power to hold to account anyone who violates freedoms and rights.
- 3- The fundamental objective of the principle of legal security is to protect individuals from adverse side effects of the law in the event of inconsistency, complexity of rules and regulations, or their frequent modification, leading to legal insecurity.

4- Legal security requirements are increasing in their relationship with the judiciary, owing to the absence of a written rule and relying solely on jurisprudence to confront unexpected legal situations.

5- There is a close relationship between legal and judicial security. The latter constitutes a preventive barrier for persons against each other's abuses, on the one hand, and prevents the administration authority from going beyond those persons.

6- The protection of human rights and fundamental freedoms is not enshrined in the Constitution or national legislation. Instead, it is necessary to adhere to procedures that provide a legally secure environment, ensuring that legal information is communicated correctly and that the rule of law is easily known, simple, and straightforward.

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